

PROPERTY RESTITUTION AND COMPENSATION

Practices and Experiences
of Claims Programmes



IOM International Organization for Migration

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The International Development Research Centre (IDRC) is pleased to support the publication of this landmark volume of comparative research on claims programmes by the International Organization for Migration (IOM), part of an effort to create knowledge that will help in the design of a workable implementation mechanism for Palestinian refugees.

IDRC is a Canadian Crown Corporation which works in collaboration with researchers from the developing world in their search for the means to build healthier, more equitable and more prosperous societies. Since 1992, IDRC, through its Expert and Advisory Services Fund (EASF), has worked closely with Canada's Department of Foreign Affairs and International Trade (DFAIT) and the Canadian International Development Agency (CIDA) to produce knowledge and increase capacity for policy planning and coordination by Middle Eastern parties on the Palestinian refugee issue as they seek sustainable solutions.

The EASF, managed by IDRC's Special Initiatives Division, has been a Canadian contribution to the Middle East Peace Process and the multilateral negotiations. The EASF supports Canada's role as 'gavel-holder' of the Refugee Working Group in its efforts to promote a comprehensive solution to the refugee problem. One of EASF's main programming themes has been the issue of compensation to Palestinian refugees. Other themes include a focus on the issue of planning for absorption into a Palestinian state, gauging and engaging public opinion, and host countries and refugees.

IDRC's collaboration with the IOM dates back to 2002. The comparative research on various legal and technical aspects of claims programmes presented here is an example of research which has the potential to inform policymakers and negotiators as they plan and design the most appropriate implementation mechanism for the Palestinian refugee case. It gives an overview of the various approaches taken to deal with the restitution of property rights, payment of compensation and other remedies to victims of conflict. Drawing on its past experience and on work directly with key Palestinian and Israeli experts and policymakers, the IOM analyzes experiences and lessons learned in national and international claims processes.

Special thanks go to Michael Molloy, Canada's Special Coordinator for the Middle East Peace Process (SCMEPP) at the Department of Foreign Affairs and

International Trade from 2000 to 2003 for identifying the IOM as a special partner on this important initiative, to Jill Sinclair and Peter McRae respectively Canada's SCMEPP from 2003 to 2006 and from 2006 to 2008 for their continued support to this work and to CIDA for funding most of the IOM's work along with IDRC. Thanks also to Roula El-Rifai at IDRC, who has managed EASF activities since 1999, including the IOM project.

IDRC firmly believes that there is a role for technical research to support negotiations and inform parties with a "menu of options" that is realistic and feasible. The last detailed Palestinian-Israeli negotiations at Taba, in January 2001, showed that there had not been enough technical support prior to the negotiations. The work of the IOM is part of the EASF approach to contribute knowledge that has a long shelf life and that will be useful to a negotiations process.

Work on the Palestinian refugee issue is especially challenging as both Palestinians and Israelis perceive this issue as an existential one. Over the years the refugee issue has become one of the stumbling blocks in the various formal negotiations processes, all the more reason to think creatively about ways to help resolve this problem, and as the IOM has done here with Canadian support, to contribute to a sustainable solution.

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Claims programmes that provide for restitution of land and property rights, compensation or other remedies to victims of conflict and gross human rights violations, play an ever increasing role in reconciliation and rebuilding measures following a conflict or crisis. They are an important rehabilitation tool for countries in transition and reduce the risk of a country relapsing into conflict. The complexity of resolving many thousands of claims in a short period of time, under high political pressure and with limited financial resources available requires careful early consideration of different possibilities and challenges for the implementation of a fair and effective process.

This book reports on the practices and experiences of international and national claims programmes and aims to give an overview of the different approaches taken for large-scale restitution of property rights and payment of compensation. As such, it outlines different options that could benefit those concerned with the planning, negotiation or design of future claims programmes.

The publication was commissioned by Canada's International Development Research Centre ("IDRC"). The IDRC's cooperation with IOM is part of the Canadian Government's wider efforts to prepare for and contribute to a comprehensive solution for Palestinian refugees. IOM's involvement in these efforts began in 2002 when Canada, as Chair of the Palestinian Refugee Working Group, through the Office of the Special Coordinator for the Middle East Peace Process at the Department of Foreign Affairs, asked IOM to host workshops with Palestinians and Israelis to review state-of-the-art claims processing practices and programmes. These workshops provided participants with an opportunity to examine and evaluate institutional and practical issues that accompany the establishment of international claims commissions.

As a follow-up to these workshops, the IDRC commissioned IOM in 2004 to carry out a fact-finding mission to the region to discuss with Palestinian and Israeli government officials, academics and civil society representatives technical issues relating to restitution and compensation schemes as part of a comprehensive solution for Palestinian refugees. Following the mission, IOM submitted a report to the IDRC that summarized the discussions with interlocutors and that contained evaluations and recommendations for future areas of work. In particular, the report suggested that certain aspects of claims programmes be examined further by identifying options available for the designers and implementers of such mechanisms and by

outlining their implications for the process. Based on these recommendations, the IDRC asked IOM to prepare comparative studies on certain legal and technical aspects of the implementation of claims programmes.

These studies formed the basis for the comparative overview contained in this book. Each section describes the practices of a number of mechanisms with respect to a particular issue or stage in the process and evaluates the experience of each mechanism. The comparative sections are preceded by an introductory chapter on some of the most salient issues faced in connection with the implementation of large claims programmes.

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LIST OF ACRONYMS

CIVPOL	–	Civilian Police Monitors
CPA	–	Coalition Provisional Authority, Iraq
CRLR	–	Commission on the Restitution of Land Rights, South Africa
CRPC	–	Commission for Real Property Claims of Displaced Persons and Refugees, Bosnia and Herzegovina
CRRPD	–	Commission for the Resolution of Real Property Disputes, Iraq
CRT	–	Claims Resolution Tribunal for Dormant Accounts, Switzerland
DLA	–	Department of Land Affairs, South Africa
GFLCP	–	German Forced Labour Compensation Programme
HPCC	–	Housing and Property Claims Commission, Kosovo
HPD	–	Housing and Property Directorate, Kosovo
ICEP	–	Independent Committee of Eminent Persons
IDRC	–	International Development Research Centre
IDP	–	Internally Displaced Person
IOM	–	International Organization for Migration
IPCC	–	Iraq Property Claims Commission
KFOR	–	Kosovo Force
KPA	–	Kosovo Property Agency
OIOS	–	United Nations Office of Internal Oversight Services
OSCE	–	Organization for Security and Cooperation in Europe
PCC	–	Property Claims Commission
SRSG	–	Special Representative of the Secretary General
UNCC	–	United Nations Compensation Commission
UN HABITAT	–	United Nations Centre for Human Settlement
UNHCR	–	United Nations High Commissioner for Refugees
UNMIK	–	United Nations Mission in Kosovo
UNOPS	–	United Nations Office for Project Services

Large-scale claims programmes providing for restitution of rights or compensation increasingly form part of rehabilitation and peace-building strategies in the wake of conflict or authoritarian rule. Bringing the victims' interests and perspectives to the forefront of transitional justice, these programmes are set up to resolve land and property rights disputes, or to provide compensation to individual or communities of victims who suffered gross violations of human rights and serious violations of international humanitarian law.

These claims programmes often serve as a tool to provide individualized reparations, which today have a firm basis in international law. Reparations for victims in the form of restitution, compensation, rehabilitation, satisfaction or guarantees of non-repetition are called for in many international treaties.¹ More recently they have been elaborated in declarative instruments, notably the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law² and the Principles on Housing and Property Restitution for Refugees and Displaced Persons.³

Claims programmes typically address one or more of the following issues. They may provide for the restitution of a right, a piece of property or an asset that was lost or taken during a conflict or authoritarian rule. Such resolution of land and property rights disputes is a major requirement for a sustainable return and reintegration of refugees and internally displaced persons (IDPs), and lingering disputes are seen as a threat to peace and a country's stability.⁴ If restitution is not possible or feasible, these programmes may provide compensation in lieu of restitution.

Claims programmes might also aim at rehabilitating victims or victim communities through the provision of in-kind benefits, such as free medical or educational services, housing, land, building materials or seeds, or through the payment of a mostly symbolic and often standardized amount of compensation.⁵

Set up in the aftermath of a conflict or authoritarian rule, claims programmes need to take into account the historic and factual circumstances that led to the losses or violations on the one hand as well as the specific situations that victims find themselves in on the other hand. As a result, each programme has its unique features and challenges that impact upon the legal framework and operational structures. At

the same time, there are a number of similar features that can be found in practically all claims programmes:

- Large numbers of cases that effectively exclude the possibility of resolving them within the domestic court system, in particular in countries in transition where the legal sector is dysfunctional and in need of reform.⁶
- High expectations within the victim communities and strong political pressure to deliver results in a short period of time.
- Limited financial and human resources available to administer the programme and/or to fund compensation or in-kind benefits.

These features, although not equally present in each programme, have forced policy makers and implementers of claims programmes to balance individual justice concerns and aspirations with the necessity to bring a just solution to all claimants within a reasonable timeframe. Striking the right balance between the interests of the individual and the interests of the claimant community as a whole in the different areas of programme implementation represents the main challenge for policy makers and programme implementers striving for a fair and efficient process.

The challenge starts with the need to have a clear understanding and agreement at the policy level on the events that the programme is to address and is not to address, so that the legal parameters can then define (1) who will be eligible to benefit under the programme, i.e. what type of violations or losses will be addressed and (2) what type of remedies will be made available.

In the reparations context, a holistic approach should be taken and the programme should be linked to other justice initiatives that are being undertaken or foreseen in the country, such as individual prosecutions, truth-seeking, vetting and institutional reform.⁷

The policy setting at the outset of the programme has to include an assessment of what will be politically and financially feasible, and it may involve decisions about prioritizing certain groups or about implementing a programme in phases. To ensure that claims programmes are complete and take into account the needs and concerns of vulnerable groups, in particular women, policy decisions on the legal and other parameters of a programme have to include the development of gender-sensitive strategies and need to be preceded by consultations with victim and civil society groups.

In this regard, a timely and comprehensive communication strategy is important which informs potential beneficiaries and the public about the programme, manages their expectations, and ensures transparency with regard to all aspects of the process so that the programme not only be fair and unbiased, but also be perceived as such in all respects.

Another area of programme implementation requiring a careful balancing of the different interests at stake is the administration of evidence.

The information and evidence required from claimants as part of their claims usually concern the distinction between the victims of conflict and crisis in general and the beneficiaries of the programme in particular. For the individual claiming a benefit, it is usually not sufficient to show that she or he is a victim of the conflict, but rather that she or he meets the programme's eligibility criteria to receive benefits, i.e. that she or he suffered a particular type of violation or loss during a certain period of time and due to certain circumstances. Depending on the type of the programme, a claimant might also be required to substantiate a particular loss by submitting information that will allow a valuation of the loss and the fixation of the compensation sum to be paid.

However, the circumstances under which the violation or loss occurred often make it difficult, and sometimes impossible, for claimants to provide the necessary information or documentation. Those fleeing from a war zone seldom have the foresight or are able to take with them the evidence that will later be required to prove their eligibility and/or to substantiate a claim in a claims programme. The same is true for those who are driven from their homes by hostile forces or whose homes and personal belongings are destroyed.

Additionally, the more time has passed between the violation or loss and the establishment of the programme, the harder it is for claimants to gather information necessary to substantiate a claim. Family members who might have witnessed the events might have passed away and memories about the fate of relatives or the family history may have faded.

The poor quality or the destruction of public records that occurs during a prolonged or violent conflict, and limited access to such records after the conflict, often add to the difficulty most claimants face in providing evidence in support of their claims. If ownership deeds and cadastral records or birth, marriage and death certificates cannot be obtained or replaced in the aftermath of a conflict, it is difficult for claimants to prove their right of ownership or inheritance. The same is true for certain types of property rights that are not reflected in documents or public records at all, such as certain user rights to land and housing.

Claims programmes have addressed these evidentiary challenges by relaxing the evidentiary requirements in favour of claimants. While the burden of proof in principle rests with the claimant, mass claims processes have eased this burden by stipulating an obligation for other parties directly or indirectly involved in the claims resolution process to cooperate in the gathering of evidence. In particular, the secretariats of most claims processes have themselves actively participated in the gathering of evidence.

While not true for all programmes,⁸ the majority of recent claims programmes have applied relaxed standards of proof, in order to assist claimants and to make up for the above-described difficulties that they face in proving their claims. Many of the Holocaust related claims programmes, for example, applied the standard of plausibility requiring claimants to demonstrate that it was plausible in light of all the circumstances that they suffered a certain loss or violation that entitles them to the programme's benefits.⁹

Another important means of facilitating the proof and substantiation of claims is the use of presumptions. Presumptions are developed by compiling together different pieces of information received from individual claims and historical research conducted by the secretariat, and they are applied to fill gaps in the evidence provided by individual claimants. The use of presumptions has proven to be of particular importance for claims where claimants had to establish the link between their losses and the events or actions that caused them.

The evidentiary rules of a programme inevitably impact upon the accuracy of the decisions taken. While strict evidentiary rules help to guarantee that only those who are truly entitled will receive the programme's benefits, they might also result in the exclusion of worthy claimants who are unable to document their claims. "Claimant-friendly" rules help to ensure access for victims to benefits, but they also increase the risk that benefits are awarded to persons who are not entitled to them and that fraudulent claimants successfully abuse the process.

The amount of information required for the decision-maker to decide the claims fairly and consistently and the extent of evidence needed to ensure the integrity of the process depend on the circumstances the claims programme is set in, i.e. the history of the conflict, the prevailing distrust within society or between different ethnic groups, but also the question of who bears the costs of erroneous decisions.¹⁰ Ultimately, the decision about the evidentiary standards requires again the striking of a balance between the interest of the individual to have access to benefits and the interest in fair decisions and an effective programme as a whole.

Finally, the area that most starkly demonstrates the need to weigh individual justice interests against the necessity to resolve many thousands of claims in a reasonable amount of time is the area of claims processing and the techniques used therein.

Relying extensively on information technology, the claims processing techniques that have been developed aim at streamlining the verification of claims and the decision-making, in particular through the grouping of claims and computerized data matching.¹¹ Computerized data matching is mainly used for the verification of claims. Information provided in a claim is compared with information from external records. While data matching can be complex because it involves bringing together data from different sources, stored on different technical platforms and in different formats, it is a powerful tool for the gathering and verification of claim information.

The grouping of claims means that claims with the same fact patterns or similar legal or other profiles are identified with the help of the information contained in a claims database and are then treated together. Grouping requires that key data of every single claim, such as identifying information about the claimant, the types of violations or losses asserted, the remedies sought and the circumstances giving rise to the claim, is entered and stored in a structured way in the programme's database system. Once groups of claims have been created, it is possible to supplement one claim with necessary information that is lacking but that is provided in another claim. Furthermore, it allows claims administrators to process "easy" or "straight-forward" claims in bulk, and thus to focus resources and the decision-making body on deciding the principal legal and factual issues in precedent-setting decisions. All remaining claims in the group can then expeditiously be decided according to the precedent.¹²

The area of claims processing and the techniques applied tend to be the most controversial area when it comes to striking the balance between individual justice and an efficient claims process, as these techniques appear to be in conflict with notions of due process and procedures traditionally known in domestic courts.

While the considerations above provide the context for the evaluation of practices and experiences of claims programmes in general, the comparative sections of this book take a detailed look at some of the aspects that, in the experience of past and existing programmes, have a particular impact on how the balance is struck between individual justice and the streamlined processing of all claims: The legal framework; the organizational and funding structures of claims programmes; the handling of heirs claims and inheritance issues; the types and management of legal remedies

available against decisions of the programme; the issue of secondary occupancy in real property restitution programmes; and the development and use of standardized valuation methodologies in compensation programmes.

While there cannot be a “one-fits-all” solution or a general “blueprint” for future processes, it is hoped that the practices and experiences reported in the comparative sections will stimulate and assist policy makers and future claims programme implementers in designing and evaluating different options and their consequences for the fairness, efficiency and effectiveness of a programme.

PRACTICES AND EXPERIENCES OF CLAIMS PROGRAMMES – COMPARATIVE OVERVIEW

The ten programmes examined in the following comparative sections, while not an exclusive list of past programmes, represent the broad spectrum of claims programmes that have been implemented over the past 15 years. The list includes programmes that provide for the restitution of real property rights, those that provide compensation for the loss of real or personal property, as well as those that provide compensation for certain types of suffering or other losses related to serious violations of human rights. Some of the programmes were established and implemented by the international community. Others were initiated and based entirely at the national level. Finally, the programmes examined differ considerably regarding the number of claims processed, ranging from 10,000 to 2.6 million claims. The list of programmes includes the relevant part of the Comprehensive Settlement Agreement of the Cyprus Problem, the so-called Annan Plan for Cyprus. Although it was never implemented, the Annan Plan was included as it serves as a valuable example of a mechanism designed to address the complex issues of property restitution after prolonged conflict and internal displacement.

The first three comparative sections on the legal framework of claims programmes (A.), their organizational structure (B.) and their funding structure (C.) examine all ten programmes. The following comparative sections on issues related to the processing of claims by heirs (D.), the legal remedies available against programme decisions (E.), the issues surrounding secondary occupancy in property restitution programmes (F.) and the methodologies developed for the valuation of losses in compensation programmes (G.), only look at those programmes where these issues were prominent and had a significant impact on how claims were processed.

Table 1 below gives a quick overview of the ten programmes examined by laying out the main parameters of all programmes, i.e. the dates of their operations, the number of claims processed (as of June 2008), and the remedies provided for the different types of violations or losses, as well as the legal documents that provided the basis for the programmes' establishment.

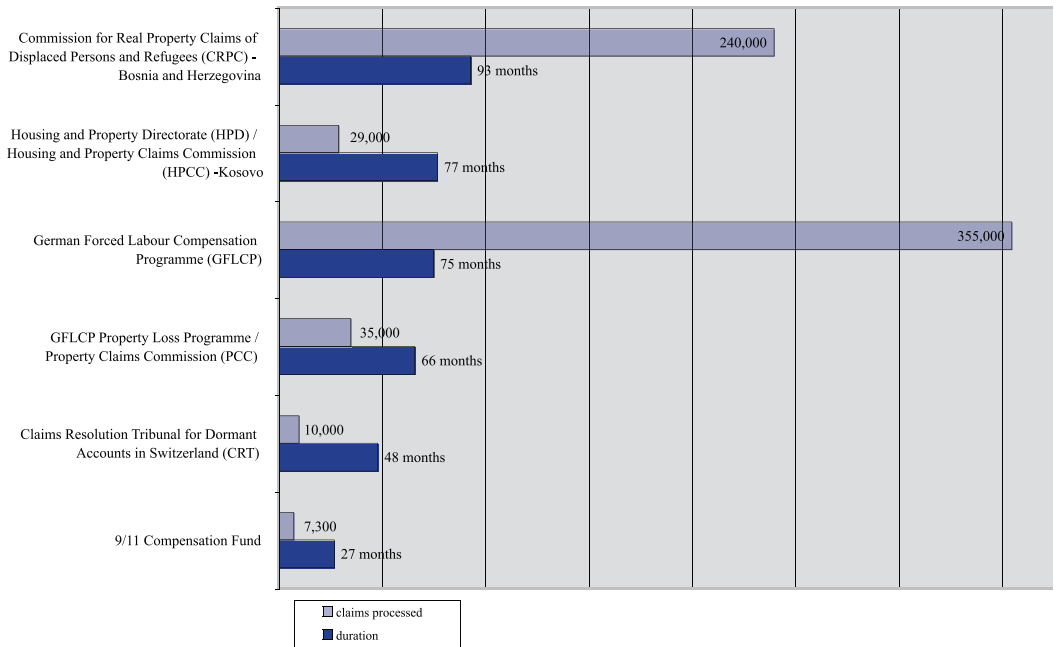
TABLE 1

PROGRAMME	DURATION	NUMBER OF CLAIMS (APPROX.)	REMEDY	VIOLATION / LOSS ADDRESSED BY THE PROGRAMME	CONSTITUTING DOCUMENTS
CRPC					
Commission for Real Property Claims of Displaced Persons and Refugees -Bosnia and Herzegovina	1996 – 2003	240,000	<ul style="list-style-type: none"> Restitution <p><i>Note: Compensation never implemented</i></p>	<ul style="list-style-type: none"> Real property loss 	Annex VII of the "General Framework Agreement for Peace in Bosnia and Herzegovina" ("the Dayton Peace Agreement"), 14.12.1995
HPD / HPCC					
Housing and Property Directorate / Housing and Property Claims Commission - Kosovo	1999 – 2006	29,000	<ul style="list-style-type: none"> Restitution of property rights 	<ul style="list-style-type: none"> Loss of ownership, possession or occupancy rights to residential real property 	UNMIK Regulation 1999/23, 15.11.1999 UNMIK Regulation 2000/60, 31.10.2000
CRRPD					
Commission for the Resolution of Real Property Disputes - Iraq	2004 - ongoing	145,000	<ul style="list-style-type: none"> Restitution Compensation Allocation of alternative land 	<ul style="list-style-type: none"> Real property loss 	Iraqi Law, 06.03.2006
CRLR					
Commission on Restitution of Land Rights - South Africa	1995 – ongoing	80,000	<ul style="list-style-type: none"> Restitution Compensation Alternative remedy 	<ul style="list-style-type: none"> Real property loss 	Restitution of Land Rights Act No. 22 of 1994
UNCC					
United Nations Compensation Commission	1991 – ongoing	2,600,000	<ul style="list-style-type: none"> Compensation 	<ul style="list-style-type: none"> Forced departure Personal injury, death Personal property loss Business losses Environmental damage 	UN Security Council Resolution 687, 03.04.1991

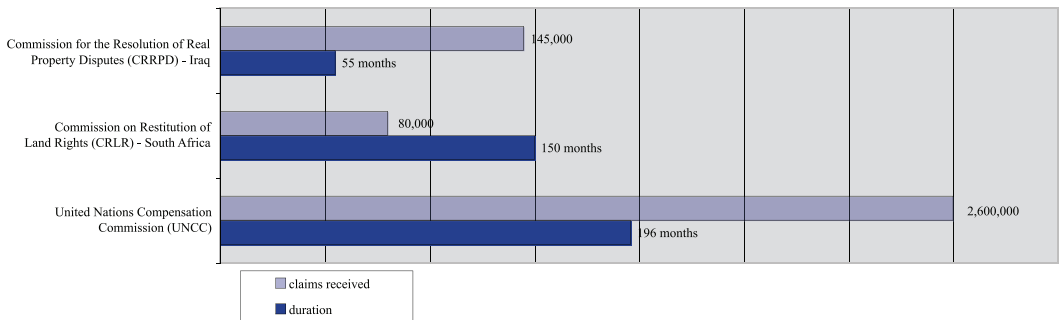
GFLCP						
German Forced Labour Compensation Programme	2000 – 2006	355,000	• Compensation	• Slave labour • Forced labour • Personal injury • Death of children	Law on the Creation of a Foundation "Remembrance, Responsibility and Future" (the "Foundation Act"), 12.08.2000	
GFLCP Property Loss Programme						
Property Loss Programme of the German Forced Labour Compensation Programme	2001 – 2006	35,000	• Compensation	• Personal and real property loss • Business losses	Law on the Creation of a Foundation "Remembrance, Responsibility and Future" (the "Foundation Act"), 12.08.2000	
CRT						
Claims Resolution Tribunal for Dormant Accounts in Switzerland	1997 – 2001	10,000	• Restitution (Decision about entitlement to assets in a bank account)	• Right to assets in Swiss bank accounts	Memorandum of Understanding of 2 May 1996 between the World Jewish Restitution Organization, the World Jewish Congress and the Swiss Bankers Association	
9/11 Compensation Fund						
September 11th Victim Compensation Fund	2002 – 2004	7,300	• Compensation	• Personal physical injury • Death	Air Transportation Safety and System Stabilization Act, 22.09.2001	
Annan Plan for Cyprus						
Annan Plan for Cyprus	N/A	N/A	• Restitution • Compensation	• Real property loss	Annex VII to the Comprehensive Settlement of the Cyprus Problem ("the Annan Plan"), 31.03.2004	

Figure 1 shows the programmes' duration in relation to the number of claims processed. Obviously, the number of claims that need to be registered, reviewed, decided and notified has considerable impact on the length of a programme's duration. However, it is important to note that other factors, such as the security environment in which a programme takes place, the political support, and the political will to "make things happen", and, last but not least, the staff and other resources available greatly affect how efficiently and how fast the resolution of claims can be completed. These factors also impact, if not dictate, the framework and the processing methodologies that can or need to be established and applied in order to deliver remedies to beneficiaries in the most efficient and effective manner. They thus need to be taken into account when evaluating any of the options portrayed in the following comparative sections.

FIGURE 1
COMPLETED PROGRAMMES



ONGOING PROGRAMMES*



* As of mid-2008, the CRLR and the UNCC had completed the processing of all claims and had made most of the compensation payments.

A. LEGAL FRAMEWORK

The constituting documents establishing claims programmes differ greatly as to the extent of detail they provide about the programmes' structure and the operational procedures to be applied for the resolution of claims.

While the different organs of a mechanism are usually laid out in the constituting instruments, few of these also contain detailed rules of procedure for the claims resolution process. The time available and the political urgency involved in announcing the creation of the claims programme as well as the question of how much agreement can be reached during the negotiations on such details, influence the amount of detail that is provided in the constituting instruments.

A significant factor in determining how much liberty is left to the implementing organs, in particular the policy-making and the decision-making body or bodies, to subsequently promulgate rules and thus shape the programme during the claims resolution process, seems to be whether responsibility for the implementation of the programme is to rest with the international community or with domestic agencies. Especially in post-conflict environments where a claims programme might play an important role in securing a newly found and often still fragile peace, acceptance and trust in the neutrality of international experts seems to be greater than in that of domestic actors. In addition, international involvement in the programme can help domestic agencies that are responsible for certain aspects of a programme, for example the enforcement of decisions, to implement difficult and unpopular decisions by giving them the ability to “hide behind” the international actors.

There is no single correct answer to the question of how much detail is needed in constituting documents and what should be regulated when. Detailed provisions in the founding documents, while providing certainty about the characteristics of a programme, also result in less flexibility to make adjustments to the programme according to the legal, operational and political needs as they inevitably evolve during the claims resolution process.

Less detail might be particularly beneficial when the founding documents are developed and drafted at the political level (with little or no input from claims processing experts) and their content is thus aimed at and guided by political concerns and compromises rather than the establishment of an effective claims resolution process that brings redress to all victims in a fair and efficient manner.

The following section on the legal framework of claims programmes shows that there is generally a discrepancy between the programmes' mandates and the realities of their implementation. None of the programmes covered in this study has been able to meet all of the ambitious goals that had been laid out in the founding legal instruments.

This is particularly true for the timelines stipulated for filing claims and for completing the claims resolution process. In some cases, however, the shortcomings in the implementation have gone beyond the failure to meet timelines. In Bosnia and Herzegovina, for instance, the legal documents setting up the property claims programme included the possibility of obtaining compensation for lost property. However, as this part of the programme never received funding, this aspect of the programme was never implemented.

The difference between what is laid out in the programme's mandate and the realities of the implementation has disappointed many claimants' expectations. Particularly, in environments where the programme is to contribute to the reconciliation process in a country or is to help build trust in a new government, these disappointments should be taken seriously and as much care as possible should be taken to avoid them.

I. CRPC IN BOSNIA AND HERZEGOVINA

1. The establishment of the claims programme

The Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC" or "the Commission") was created under Annex VII of the "General Framework Agreement for Peace in Bosnia and Herzegovina", also referred to as the Dayton Peace Agreement, that was signed in Paris on 14 December 1995 following a four year war in the former Yugoslavia.¹³

While the Republic of Bosnia and Herzegovina,¹⁴ the Republic of Croatia and the Federal Republic of Yugoslavia were all parties to the Dayton Peace Agreement, Annex VII was signed and endorsed only by the Republic of Bosnia and Herzegovina and its entities.¹⁵

The war had left one third of housing destroyed or otherwise uninhabitable and the systematic practice of ethnic cleansing had forced more than half of Bosnia's 4.5 million pre-war inhabitants to seek refuge abroad or shelter in areas of Bosnia and Herzegovina where the majority of residents were of the same ethnic origin.¹⁶

Although the CRPC was not the first structure ever created to deal with claims for real property lost during a conflict, the CRPC may have been the first attempt to immediately address a situation of massive displacement in the same place where the displacement occurred, and to provide some form of speedy relief. In this respect, Article 1 of Annex VII of the Dayton Peace Agreement stated that:

All refugees and displaced persons have the right to freely return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.

The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.

The remaining Articles in Annex VII concern fundamental aspects of the property claims programme, such as the composition of the Commission,¹⁷ staffing and funding of the programme, and the programme's relationships with domestic and international agencies. Moreover, Article 12 of Annex VII provided the basic principles regarding the proceedings before the CRPC, stating in particular, that "Commission decisions shall be final, and any title, deed, mortgage, or other legal instrument created or awarded by the Commission shall be recognized as lawful throughout Bosnia and Herzegovina."

The CRPC was an independent international body of a specific kind, a "public international institution" created by the Dayton Peace Agreement and recognized by the Republic of Bosnia and Herzegovina in a Headquarters Agreement. Its mandate, however, was per se limited in time. It was originally foreseen in Article 16 of the Dayton Peace Agreement that, five years after the signing of the Agreement, the CRPC's financing and operations would be transferred from the Parties to the Government of Bosnia and Herzegovina, unless the Parties agreed otherwise.

Instead of the transfer of the CRPC as an institution to the domestic authorities, through which the CRPC would have lost its international character, only the unresolved claims and the undelivered certificates were handed over, and the Commission as such ceased to exist on 31 December 2003.

2. The mandate and jurisdiction of the claims programme

With half of Bosnia's population displaced from their homes during and after the war, a solution to property issues for internally displaced persons and refugees was central to the realization of the general objective of the Dayton Peace Agreement, namely the establishment of sustainable peace. In addition, clarification of the status of property rights was crucial for any economic development and reconstruction in a country where infrastructure, industry, agriculture and other sources of income were shattered, and land remained one of the few valuable assets left. It is important to note that only those persons who had their property rights confirmed could sell their homes or receive international reconstruction aid.

In order to enable internally displaced persons and refugees to return to their pre-war homes to support the process of inter-ethnic reconciliation and the stabilization of Bosnia and Herzegovina, as well as to undo the ethnic cleansing and re-create a multi-ethnic society, Article 11 of Annex VII provided the mandate of the CRPC that covered both the return of property and just compensation in lieu of return:

The Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return.¹⁸

Article 12 Paragraph 6 further explained that “in cases in which the claimant is awarded compensation in lieu of return of the property, the Commission may award a monetary grant or a compensation bond for the future purchase of real property.”

However, due to a lack of funding to operate a compensation scheme and to replenish the compensation fund as such, compensation payments never became available for claimants and this part of the CRPC's mandate was in fact never implemented. A general fear that a choice between compensation and return of property would undermine the fundamental goal of the Dayton Peace Agreement, namely undo the ethnic cleansing and recreate a multi-ethnic society, resulted in opposition to support the fund. In addition, critics argued that a compensation plan would reward those groups who obstructed the return process. The acceptance of compensation would have required the cancellation of the pre-war ownership right, leaving the property to the temporary occupant (who was usually a member of the majority ethnicity).

The CRPC's mandate covered claims for real property only. This was originally interpreted by the CRPC to mean claims regarding private property rights only. However, this limitation did not sufficiently reflect the needs of the claimant population. Before the war, the majority of apartments were not held as private property, but as socially-owned property and inhabitants had been granted occupancy rights. Given the fact that occupancy right holders were facing as much if not greater obstruction by municipalities to regain their right of occupancy, the CRPC decided to also accept and decide claims regarding occupancy rights that had been lost during the war.¹⁹

According to Article 1 of Annex VII, the CRPC's direct beneficiaries were displaced persons or refugees who had involuntarily sold or otherwise transferred their property since 1 April 1992 and who did not enjoy possession of that property. According to Article 2 and 3 of the Book of Regulations on Occupancy Rights of Displaced Persons and Refugees ("Book of Regulations II"),²⁰ the same applied to occupancy right holders. Furthermore, persons who had a legal interest in the real property, because they were a family member or in a civil law relationship with the pre-war right holder, could also claim under the programme.²¹ For eligibility purposes, both the status of being an IDP or refugee and the fact that a claimant was not in possession of his or her property were presumed.²²

Annex VII of the Dayton Peace Agreement stipulated that the CRPC's mandate was to expire at the end of 2000. In recognition of the fact that many property questions were still to be solved, in the summer of 2000 the Peace Implementation Council ("PIC"), which had been created following a peace implementation conference in early December 1995, extended the CRPC's mandate until the end of 2003.²³

II. HPD/HPCC IN KOSOVO

1. The establishment of the claims programme

From 1974 until 1989 Kosovo was an autonomous province within the Republic of Serbia, one of the six republics that made up the Socialist Federal Republic of Yugoslavia. In 1989 the Serbian government repealed Kosovo's autonomous status and introduced nationalist legislation that discriminated against the Kosovo Albanian population. A separatist movement grew, which in 1998 resulted in an armed struggle for independence between Kosovo Albanian militant groups and Serbian government security forces. Thousands were killed and hundreds of thousands expelled from their homes. On 24 March 1999, NATO forces intervened

in the conflict and commenced a bombing campaign against Serbian security forces in Kosovo as well as targets in Serbia proper. After 78 days, Serbia agreed to withdraw its security forces from Kosovo. These were replaced by NATO troops and, on 10 June 1999, the United Nations Interim Administration Mission in Kosovo (“UNMIK”) began.

As part of the UNMIK mission, Security Council Resolution 1244 of 10 June 1999²⁴ gave the Special Representative of the Secretary General (“SRSG”) in Kosovo, *inter alia*, the authority to establish institutions responsible for the restitution of property in Kosovo. Acting upon this authority, the SRSG passed UNMIK Regulation 1999/23 on 15 November 1999, which established the Housing and Property Directorate (“HPD”) and the Housing and Property Claims Commission (“HPCC”). The HPD and the HPCC were international ad hoc institutions whose authorities derived from the UN interim administration of Kosovo.²⁵ Apart from formally establishing the HPD and the HPCC, UNMIK Regulation 1999/23 also defined the mandate and jurisdiction of these two bodies,²⁶ outlined the staffing of the HPCC²⁷ and provided that the general structure of the HPD was to consist of an Executive Director and the staff that he or she was to appoint.²⁸

Almost a year later, the establishment of the claims programme was further advanced by UNMIK Regulation 2000/60 of 31 October 2000, which laid down the substantial rules for the resolution of claims,²⁹ the rules of the HPD³⁰ as well as the rules of procedure and evidence for the HPCC.³¹ While UNMIK Regulation 2000/60 provided mechanisms for the HPD and HPCC to adopt additional rules should these become necessary for the bodies to carry out their functions,³² it also reiterated the SRSG’s authority to issue directions for the implementation of the claims programme.³³

By March 2006, the HPD/HPCC had resolved the vast majority of claims for residential property. While the HPCC continued to resolve the small number of remaining claims that were still pending before it, the HPD and its staff and assets were subsumed into the newly established Kosovo Property Agency (“KPA”). The KPA was mandated to resolve all claims with respect to immovable property including agricultural and commercial property.³⁴ Furthermore, it assumed responsibility for the implementation of all residential property cases that were still pending with the HPD on 4 March 2006.³⁵

2. The mandate and jurisdiction of the claims programme

The mandate as it was defined in the two UNMIK Regulations 1999/23³⁶ and 2000/60 mainly provided for the resolution of property disputes and the restitution of property rights concerning residential property. As an exception to the jurisdiction

of the local courts, the HPD was authorized to receive and register certain types of residential property claims, which corresponded to the type of property violations that had occurred in Kosovo between 1989 and 1999:

As an exception to the jurisdiction of the local courts, the Directorate shall receive and register the following categories of claims concerning residential property including associated property:

- a) Claims by natural persons whose ownership, possession or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent;
- b) Claims by natural persons who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989;
- c) Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred.

To the extent possible, the HPD was to resolve these claims and underlying disputes over property rights through mediation, and, if mediation was not successful, the HPD was to refer the claims to the HPCC who had exclusive jurisdiction to decide and finally settle the claims:

As an exception to the jurisdiction of local courts, the Commission shall have exclusive jurisdiction to settle the categories of claims listed in section 1.2 of the present regulation. Nevertheless, the Commission may refer specific separate parts of such claims to the local courts or administrative organs, if the adjudication of those separate parts does not raise the issues listed in section 1.2. Pending investigation or resolution of a claim, the Commission may issue provisional measures of protection.

The resolution of claims concerning residential property was the programme's main focus and this aspect of the mandate was fully implemented.

Another aspect of the mandate of the HPD was to conduct an inventory of abandoned private, state and socially owned housing.³⁷ This part of the mandate was implemented only to a limited extent. Inventories were initiated in 2001 and 2002 before large numbers of claims were decided and ready to be enforced. An additional inventory project called "The Survey of Abandoned Properties" was initiated by the HPD in 2003. This project was limited in time and extent, and focused only on socially owned properties. The project ended in 2004.

Furthermore, the HPD was to provide overall direction on property rights in Kosovo until the Special Representative of the Secretary General determined that local governmental institutions themselves were able to carry out this function. In particular, the HPD was to conduct research leading to policy recommendations and legislation concerning property rights and to provide guidance to UNMIK, including CIVPOL and UNHCR, as well as KFOR on specific issues related to property rights. The research and policy guidance have not been a main or continuous focus of the HPD, but rather a task carried out upon request.

Finally the HPD was mandated to supervise the utilization or rental of abandoned property for humanitarian purposes on a temporary basis. Rental income from abandoned private and socially owned property was to be recorded in a separate account in trust for the rightful owner, subject to the deduction of relevant expenses.³⁸ While abandoned properties placed under HPD administration were allocated to persons on humanitarian grounds, for example if these persons had to vacate the property they were occupying and had no other place to go, the HPD only established a limited rental scheme for abandoned property.

The direct beneficiaries of the property claims programme in Kosovo were those victims of the conflict who once enjoyed a right to residential property but lost that right between 1989 and 1999 due to the conflict, and who submitted a claim for restitution of this right to the HPD. The HPD/HPCC only accepted claims filed by natural persons; claims submitted by legal entities were not admitted.³⁹ The process was open to Power of Attorney holders and heirs of victims, if they could provide evidence that they inherited the property right from the victim.

III. CRRPD IN IRAQ

1. The establishment of the claims programme

Reflecting the turmoils of post-war Iraq, the property claims programme in Iraq was restructured twice before it found its current form.

In the wake of the 2002/03 Iraq war and before the governing powers were handed over from the Coalition Provisional Authority (“CPA”) to the Interim Iraqi Governing Council, the CPA, by Regulation Number 8 of 14 January 2004, authorized the Iraqi Governing Council to establish the Iraq Property Claims Commission (“IPCC”). A Statute on the Establishment of the IPCC, the provisions of which had been discussed between the Governing Council and the CPA, was annexed to Regulation 8. This Statute became effective on 15 January 2004.⁴⁰ The

CPA reserved the right to alter the Statute or any procedures developed for the IPCC, or to otherwise intervene in the claims resolution process, if required in the interests of justice. Six months later, on 24 June 2004, CPA Regulation Number 12 was issued which amended and supplemented Regulation Number 8 and promulgated Instructions for Operation of the Iraq Property Claims Commission.

On 6 March 2006, a new Iraqi law was introduced that superseded CPA Regulation Number 12 and that replaced the IPCC with the Commission for the Resolution of Real Property Disputes (“CRRPD”).⁴¹ The CRRPD Statute defines the internal structures and organs of the CRRPD and their main functions and contains an overview of the claims process.

Although the property restitution process was initiated by the Coalition forces in Iraq, the current programme is entirely national. The CRRPD is an independent body of the Iraqi Government that was created for the express purpose of providing redress for the wrongful taking or interference of real property rights. It has precedence over all Iraqi courts with respect to claims that fall within the jurisdiction of programme. It is staffed with over 1,400 national Iraqi staff.

As of May 2008, the CRRPD had received over 142,000 claims, out of which approximately 59,000 claims had been resolved at the first instance. The security situation in Iraq has hampered the work of the CRRPD and has led to delays in the implementation of the programme. Although the programme has been operational since the beginning of 2004, a number of features of the programme are still being developed and implementation is not complete. Nevertheless, the CRRPD continues to function and is working through its large volume of claims in a steady manner.

2. The mandate and jurisdiction of the claims programme

The mandate of the CRRPD is to rectify the wrongful deprivation or violation of real property rights that are associated with or occurred as a result of the policies of the Ba’athist regime between 17 July 1968 and 9 April 2003,⁴² in particular the arbitrary and forced removal of innocent civilian populations.

In resolving property disputes, the CRRPD has jurisdiction over claims regarding properties that, during the period of 17 July 1968 and 9 April 2003, were confiscated and seized for political or ethnic reasons or on the basis of religion or religious doctrine or any other events resulting from the policies of the previous regime of ethnic, sectarian and nationalist displacement. Furthermore, it has jurisdiction over properties that were seized without consideration or appropriated with manifest injustice or in violation of the legal practices adopted for property acquisition and for State real properties that were allocated to the factions of the previous regime

without consideration or for a symbolic amount. In contrast to this, the CRRPD has no jurisdiction over properties that were seized pursuant to the law of agricultural reform, for properties where “in kind” compensation was paid, and for properties that were appropriated for purposes of public use, provided that these were in fact utilized for public use.

The CRRPD’s beneficiaries are individuals and companies or other entities irrespective of their nationality, religion or ethnicity who suffered violations or loss of their real property rights due to intentional acts and policies associated with the former Ba’athist regime, in particular the arbitrary and forced removals of innocent civilian populations. More concretely, this includes persons, or their heirs, who have been wrongfully deprived of real property because of actions taken by the Ba’athist regime between 17 July 1968 and April 2003.

IV. SOUTH AFRICA PROGRAMME

1. The establishment of the claims programme

Much has been written on the dispossession of property and land rights in South Africa, which has taken place over the past few centuries.⁴³ In the last century, this dispossession became systematic and constituted one of the primary tools in the social engineering project that was Apartheid. Through the establishment of the Homeland system that purported to create independent states within the territory of the Republic of South Africa, and special legislation that designated specific areas in the Republic for particular racial groups and led to mass forced removals, the different racial groups were segregated.⁴⁴

In the late 1980s, however, the impetus for political change began to produce results which would ultimately lead to the dismantling of the Apartheid system and the establishment of a democratic electoral system. The changes took place gradually and involved a protracted process of negotiation. To that end, the Congress on a Democratic South Africa (“CODESA”) was formed in 1991. This was a multiparty negotiation forum which resulted in the adoption of an Interim Constitution for the country in 1993.⁴⁵ The Interim Constitution paved the way for the country’s first democratic elections, after which the “Final Constitution” was drafted and adopted by the newly elected government.⁴⁶

One of the major points of discussion during the negotiations was that of property rights: both the loss of rights through racial discrimination and the protection of private property of existing right holders. This culminated in a three-pronged

approach to land reform in South Africa: (1) tenure reform; (2) redistribution; and (3) restitution of land rights lost as a result of racial discrimination.

Regarding the latter, the Interim Constitution specified that an Act of Parliament was to “provide for matters relating to restitution of land rights” and set out the eligibility criteria for a restitution claim. It further stipulated that the Act of Parliament would establish a Commission on Restitution of Land Rights to deal with such claims, i.e. investigate the merits of claims, mediate and settle disputes, draw up reports on unsettled claims as evidence and present the evidence to a court of law, and set out the remedies available in respect of claims referred to court.⁴⁷ The remedies included restoration of land rights to the claimant (including provision for purchase or expropriation of the land from a private owner where feasible, just and equitable), granting of a right to alternative state-owned land, and payment of just and equitable compensation or alternative relief.⁴⁸

Implementing the obligations laid down in the Interim Constitution, Parliament passed the Restitution of Land Rights Act 22 of 1994 (“the Act”), which established the Commission on Restitution of Land Rights (the “Commission”) and the Land Claims Court (the “Court”). Regarding the Commission, Chapter II of the Act detailed the composition of the Commission and its functions, as well as the qualifications of Commissioners. Furthermore, the Act contained specific provisions on the eligibility criteria for restitution claims, the formalities to lodge and the procedures to process a claim, the Commission’s power of investigation, and the manner in which claims should be referred to the Court.

The Court’s jurisdiction, composition and some process stipulations were set out in Chapter III of the Act, which also contained provisions regarding the qualifications and appointment of judges and assessors. Additionally, Section 32 of the Act empowered the President of the Court to promulgate rules governing the procedure of the Court.

Both the Commission and the Court are national bodies. The Court is a Court of Law, having the same status as a High Court in civil proceedings. However, under the Restitution of Land Rights Act the Court has more inquisitorial powers than ordinary High Courts.

As the work progressed and frustrations grew over the slow pace of delivery, the Minister of Land Affairs appointed a review Task Team to undertake business process re-engineering.⁴⁹ The outcome was the formal integration of the Commission into the Department of Land Affairs (“DLA”). The DLA is an executive organ of the Government responsible for settling restitution claims and dealing with other land reform issues. As representative of the State, the DLA takes the position of

Respondent in all restitution claims, regardless of whether the property concerned was publicly or privately owned.⁵⁰ As a result of this restructuring, claims are now processed by the Commission – including negotiation and settlement – with the DLA providing a supporting function.⁵¹

Amendments to the Act in 1997 and 1999 added provisions enabling the Minister of Land Affairs to enter into agreements with claimants restoring property rights, granting rights in alternative property, awarding financial compensation or a combination of these remedies. The legislative amendments to the Act⁵² considerably changed the nature of the process, primarily by allowing the executive government in the person of the Minister of Land Affairs to settle claims by agreement with the parties without recourse to the Court. This was intended to speed up the processing of claims, in light of the time-consuming nature of the Court proceedings and the volume of claims received.

When the Final Constitution was adopted in 1996, the detailed provisions relating to restitution as set out in the Interim Constitution were not repeated, as they had already been comprehensively dealt with in the Restitution of Land Rights Act. The respective constitutional provision contained in section 25(7) stated only that “a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that right or to equitable redress.”

The difference in the degree of detail provided in the provisions of the Interim Constitution and the Final Constitution initially raised concerns that the constitutional imperative behind the right to restitution was vulnerable to being undermined, as the details were now contained only in an Act of Parliament and not in the Constitution itself. However, the political issues surrounding land rights continue to carry significant weight in South Africa (particularly in light of land reform measures taken in neighbouring countries) and the Government has so far remained committed to its land reform programme.

2. The mandate and jurisdiction of the claims programme

The mandate of the property restitution programme was defined in the Interim Constitution and later incorporated into the Restitution of Land Rights Act 22 of 1994.⁵³

According to the preamble of the Act, the purpose of the claims process is to provide restitution of property or equitable redress to a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices.

The Commission's vision is that persons or communities dispossessed of property after 19 June 1913 as a result of past racial discriminatory laws and practices have such property restored or receive just and equitable redress. As such, the Commission is to contribute towards equitable redistribution of land in South Africa, to promote reconciliation through the restitution process, and to facilitate development initiatives by bringing together all relevant stakeholders, especially the Provincial Government and Municipalities.⁵⁴

The Commission's functions were described initially in the Interim Constitution as being to investigate the merits of claims, mediate and settle disputes, draw up reports on unsettled claims as evidence and present the evidence to a court of law.

While the jurisdiction over claims as set out in the Act remained unchanged, the Commission's functions were expanded through the restructuring of the DLA making the Commission the branch responsible for both settling and processing the claims.

While there are no discrete aspects of the mandate that have not been implemented, questions are repeatedly raised within the country about the pace of the land reform and whether the restitution process has been able to contribute to the land reform process. The time period for finalizing claims was not stipulated in the founding documents and has been largely dictated by the number and nature of claims received. The Government initially planned on five years for processing the claims and 10 years to implement the resolution of the claims. The deadline for filing claims was extended by legislative amendment to the Act to 31 December 1998.

V. UNITED NATIONS COMPENSATION COMMISSION

1. The establishment of the claims programme

Iraq's occupation of Kuwait in August 1990 ended with the surrender of Iraq following an Allied Coalition air campaign and ground operation against the invader in January and February 1991. The UN Security Council established Iraq's legal responsibility for losses resulting from Iraq's invasion and occupation of Kuwait in its Resolution 687 of 3 April 1991:⁵⁵

Iraq ... is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals, or corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait.⁵⁶

The Security Council decided in its resolution to create a fund to pay compensation for claims that fall within this legal responsibility and to establish a Commission to administer the fund. Furthermore, the Security Council directed the Secretary General to develop and present to the Security Council, recommendations for the fund and a programme to implement decisions concerning this legal responsibility.⁵⁷

On the basis of the Recommendations of the Secretary General which were adopted in Security Council Resolution 692, the United Nations Compensation Commission (“UNCC”) was established as a subsidiary organ of the UN Security Council to process claims and pay compensation for losses resulting from Iraq’s invasion and occupation of Kuwait.

Part I of the Report of the Secretary General⁵⁸ contains provisions on the compensation fund, the structure and composition of the Commission including its legal status, privileges and immunities and the functions of its three organs which are the Governing Council, the Panels of Commissioners and the Secretariat.

In its Resolution 692 the Security Council directed the Governing Council to proceed in an expeditious manner to implement the provisions of Section E of resolution 687, taking into account the recommendations in Section II of the Secretary General’s report.⁵⁹ The recommendations in Section II included mechanisms for determining the appropriate level of Iraq’s contribution to the Fund, as well as recommendations for the claims procedure, including the filing, processing and payment of claims.

As envisaged in the Secretary General’s Report, the Governing Council issued “Provisional Rules for Claims Procedure” (“UNCC Rules”)⁶⁰ which contained detailed rules on the submission and filing of claims, the appointment of the Commissioners, the procedure governing the work of the panels, the applicable law and evidentiary rules.

The UNCC was set up as a subsidiary organ of the United Nations Security Council. It was neither a court nor a tribunal with an elaborate adversarial process.⁶¹ Rather, the Commission was created as a claims resolution facility that could make determinations on a large number of claims in a reasonable time. As such, the Commission operated in an administrative manner rather than in a litigation format.

The United Nations Compensation Commission has been the largest international claims commission to date. It had to resolve over 2.6 million claims submitted through 96 governments. The Commission was set up for a limited time period and has for all practical purposes completed its work. With the processing and deciding

of claims and the payment of awards concluded, the Commission is now finalizing a number of residual tasks, such as archiving its records and monitoring the use of funds awarded for environmental loss and damage.

2. The mandate and jurisdiction of the claims programme

According to its constituting document, UN Resolution 687, the UNCC was established to process claims and pay compensation for losses and damages suffered by individuals, corporations, governments and international organizations as a direct result of Iraq's unlawful invasion and occupation of Kuwait on 2 August 1990. Iraqi debts before the invasion were excluded from the jurisdiction.

The UNCC did not have exclusive jurisdiction to deal with claims arising from Iraq's unlawful invasion and occupation of Kuwait. Claimants could also pursue their claims against Iraq in their domestic legal systems.⁶² In that case, Claimants were under an obligation to notify the UNCC of the domestic court proceedings pending with regard to their loss.⁶³

To organize the UNCC's enormous caseload and the review of claims, the Governing Council organized the claims into six categories, known as categories A through F. These comprised four categories of claims for individuals, one for corporations and one for governments and international organizations, which also included claims for environmental damage.⁶⁴ Category A claims are claims by individuals who had to depart from Kuwait or Iraq between the date of Iraq's invasion of Kuwait on 2 August 1990 and the date of the cease-fire, 2 March 1991. Category B claims are claims submitted by individuals who suffered serious personal injury or whose spouse, child or parent died as a result of Iraq's invasion and occupation of Kuwait. Category C claims are individual claims for damages up to USD 100,000 each. Under this category, claimants were able to claim 21 different types of losses, including those relating to departure from Kuwait or Iraq, personal injury, mental pain and anguish, loss of personal property, loss of bank accounts, stocks and other securities, loss of income, loss of real property, and individual business losses. Category D claims are individual claims for damages above USD 100,000 each. The types of losses that could be claimed under category D are the same as those under category C. Category E claims are claims of corporations, other private legal entities and public sector enterprises. They include claims for construction or other contract losses, losses from the non-payment for goods or services, losses relating to the destruction or seizure of business assets, loss of profits, and damage and losses caused to Kuwait's oil sector. Category F claims are claims by governments and international organizations for losses incurred in evacuating citizens, providing relief to citizens, damage to diplomatic premises and other government property, and damage to the environment. Category F claims included also the claims by Kuwait for damage to its infrastructure.

In its first decision, the Governing Council decided to give priority to individual claimants for their smaller claims in categories A, B and C, in both the processing and the payment of claims.⁶⁵

According to Article 5 of the UNCC Rules, only governments and international organizations were entitled to submit claims to the Commission. A government could submit claims on behalf of its nationals and, at its discretion, of other persons resident in its territory. Furthermore, a government could submit claims on behalf of corporations and other entities that, on the date on which the claims arose, were incorporated or organized under the law of that state. If a government failed to submit a claim on behalf of a corporation or other private legal entity within the established time-limit, the corporation or other private legal entity could itself bring the claim to the Commission within three months following the deadline.⁶⁶

In contrast to governments, international organizations could submit claims only on their own behalf.

Under the UNCC's Rules, claims could be filed on behalf of a deceased victim by any family member or even by a non-related person. However, only the family members listed in the first Decision of the Governing Council were eligible to receive award payments for the claim of a deceased victim. These family members included the spouse, children and parents of a deceased.⁶⁷

VI. GERMAN FORCED LABOUR COMPENSATION PROGRAMME

1. The establishment of the claims programme

During World War II, the German Reich and German companies exploited massive numbers of slave and forced labourers and deprived individuals of their private property. In the late 1990s a waive of class action lawsuits were filed in US courts against the Government of Germany and German companies to obtain financial compensation for former slave and forced labourers and certain other victims of National Socialist (Nazi) injustice. Facing the unpredictable outcome of these lawsuits, long and difficult negotiations began, which resulted in the signing of the "Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the Foundation 'Remembrance, Responsibility and Future'" (the "Agreement") on 17 July 2000.⁶⁸

Following the Agreement, the German Parliament passed the "Law on the Creation of a Foundation 'Remembrance, Responsibility and Future'"⁶⁹ (the

“Foundation Act”),⁷⁰ which entered into force on 12 August 2000. The organization created through this law is a German Government agency in the nature of public law foundation, whose main purpose was to establish a compensation programme for slave and forced labourers of the National Socialist regime.

The Foundation Act named seven partner organizations⁷¹ and their respective areas of responsibility to implement such a programme, one of them being the International Organization for Migration (“IOM”).⁷² This and the following comparative sections only examine the German Forced Labour Compensation Programme (“GFLCP”) that was implemented by IOM. Throughout this programme, IOM processed more than 400,000 claims and paid compensation to over 90,000 slave and forced labourers and 1,656 victims of other personal injury. The programme was closed at the end of 2006.

The German Foundation Act contained provisions regarding the organization of the Foundation and its two supervisory bodies, the Board of Trustees and the Board of Directors. The Act also laid out the general principles of the compensation process, in particular who was eligible to receive compensation and the deadlines for filing a claim. The Foundation itself was subject to the legal oversight (“Rechtsaufsicht”) of the German Ministry of Finance.

The rules of procedure for the processing of slave and forced labour and personal injury claims by IOM were not contained in one single document. Rather, they were found in a number of instruments, including the German Foundation Act, a contract between the German Foundation and IOM, decisions of the Foundation’s Board of Trustees, and legal circulars issued by the Foundation’s Board of Directors. However, these provisions set out general principles only and left the elaboration of the details of the processing, review, and determination of the claims to IOM.⁷³ As such, the GFLCP at IOM was an independent claims programme, governed by its own rules within the framework of the Foundation Act and the above decisions and directives.

2. The mandate and jurisdiction of the claims programme

The mandate of the GFLCP derived from the mandate of the Foundation as codified in the German Foundation Act. According to this, the Foundation was to make financial compensation available, through its seven partner organizations, to former slave and forced labourers and to those affected by other injustices from the National Socialist period.⁷⁴ Being one of the partner organizations, IOM was responsible for and had jurisdiction over claims from non-Jewish claimants anywhere in the world except in the Czech Republic, Poland and the Republics of the former Soviet Union.⁷⁵

According to the German Foundation Act, not all persons who had been subjected to forced labour were eligible to receive compensation under the programme. The programme set up by the Foundation was intended to provide humanitarian payments for the benefit of those groups of persons “who at the time of the National Socialist regime suffered a much harsher fate than average” or who due to the Cold War had so far not been able to receive any payment from Germany or who received only minimal payments.⁷⁶

As such, claimants had to meet specific requirements set out in the German Foundation Act. According to the Act, a person was eligible to receive compensation as a *slave labourer* if the person had been held in a concentration camp or in another place of confinement outside the territory of what is now the Republic of Austria, or a ghetto under comparable conditions, and was subjected to forced labour.

A person was eligible to receive compensation as a *forced labourer* if the person had been deported from his or her homeland into the territory of the German Reich within the borders of 1937 or to a German-occupied area, and had been subjected to forced labour in a commercial enterprise or for public authorities or in agriculture and subjected to conditions resembling imprisonment or similar extremely harsh living conditions.⁷⁷

In addition to compensation for slave and forced labourers, the German Foundation Act also set up a separate fund for victims of “other personal injuries”. Compensation for other personal injuries was available to victims of medical experiments, to children who were separated from their parents and lodged in a home for children of slave and forced labourers, and to parents whose children died in such homes. The German Foundation Act initially foresaw that compensation for other personal injuries was also to be made available to persons who suffered extremely severe and lasting damage to their physical or emotional health, resulting in a permanent handicap of more than 60 per cent. However, given the limited funds available for personal injury claims, the Foundation Act established a hierarchy whereby compensation for permanent handicap was to be awarded only once all other eligible claimants had been compensated. When a first comprehensive review of all claims submitted had shown that the available funds would be fully exhausted by payments to victims of medical experiments and children lodged in special homes as well as to parents whose children died in such homes, the Foundation advised all partner organizations that they could not grant compensation to claims for a permanent handicap.

The right to claim under the GFLCP was personal. Heirs of slave and forced labourers or victims of personal injuries could only claim if the victim had not died prior to 16 February 1999, i.e., if the victim was still alive on the day the German

Federal Chancellor and German companies announced their intention to set up a programme to compensate forced labourers.⁷⁸ Regarding the determination of the eligibility of heirs to receive compensation, the German Foundation Act did not refer to national inheritance laws, but set up a “self-contained regime” of inheritance rules, which restricted the eligibility of heirs to hierarchical tiers consisting of the closest relatives of the victim, i.e. surviving spouse and children, grandchildren, siblings and heirs under the victim’s will.⁷⁹ Relatives in lower tiers were only compensable, if those in higher tiers were no longer alive or did not file a claim. Except for heirs under the will of the victim, legal successors received their compensation in equal shares. In addition, religious communities and organizations and their legal successors could receive compensation under the Foundation Act, if they suffered the property losses.⁸⁰

VII. GFLCP PROPERTY LOSS PROGRAMME

1. The establishment of the claims programme

While the Agreement between the Governments of the United States and the Federal Republic of Germany mainly focused on the compensation of slave and forced labourers, it also specified that the Foundation was to provide compensation payments to persons who suffered loss of, or damage to property during the National Socialist era as a result of racial persecution or other Nazi wrong and directly caused by German companies.⁸¹ Article 1 of Annex A to the Agreement laid out the basic principles of such a property programme and determined that a three-member committee, later called the Property Claims Commission, was to be established. The Property Claims Commission was responsible for all claims regarding property loss irrespective of the claimants’ place of residence. The Agreement also addressed the politically sensitive question of how the three Commissioners were to be elected by specifying that “the United States and the Federal Republic of Germany [would] each appoint one member [and that] these two members [would] appoint a chairman.”

Implementing the property aspect of the Agreement, the German Foundation Act foresaw that IOM was to host the Property Claims Commission and support it in the processing of all property claims. Following a cooperative agreement between the German Foundation and IOM, the GFLCP Property Loss Programme was established at IOM’s offices in Geneva, Switzerland, benefiting from the Organization’s global support structures.

Upon its establishment in May 2001, the Property Claims Commission adopted detailed “Supplemental Principles and Rules of Procedure” (“PCC Rules”) that

contained inter alia provisions on the submission of claims, the registration and initial review of claims, substantive determinations and evidentiary standards, decisions and requests for reconsideration.⁸² The Property Claims Commission finished its work in the spring of 2006, having received and resolved more than 35,000 claims.

The Property Claims Commission was an independent body, governed by its own rules, but placed within the general framework of the German Foundation Act.

2. The mandate and jurisdiction of the claims programme

The mandate of the GFLCP Property Loss Programme was to address the losses of those persons who, due to the political circumstances following the war, had not been able to benefit from German federal indemnification or restitution laws:

The Foundation legislation provided that persons who suffered loss of or damage to property during the National Socialist era as a result of racial persecution directly caused by German companies were eligible for compensation under the GFLCP Property Loss Programme. The eligibility under the GFLCP Property Loss Programme was limited to persons

- (1) who could not receive any payment under the Federal Indemnification Law (“BEG”) or Federal Restitution Law (“BRueckG”) because they did not meet the residency requirement or could not file their claims by the deadline because they lived under a government with which the Federal Republic of Germany did not have diplomatic relations;
- (2) whose claims were rejected under the BEG or BRueckG where legal proof became available only after the reunification of the Federal Republic of Germany, provided the claims were not covered by post-reunification restitution or compensation legislation; and
- (3) whose racially-motivated property claims concerning moveable property were denied or would have been denied under the BEG or BRueckG because the claimant, while able to prove a German company was responsible for seizing or confiscating property, was not able to prove that the property was transferred into then-West Germany (as required by law) or, in the case of bank accounts, that compensation was or would have been denied because the sum was no longer identifiable, where either (a) the claimant can now prove the property was transferred into then-West Germany or (b) the location of property is unknown.

The Foundation legislation, by making available the amount of 50 million DM, provided a potential remedy for all non-racially motivated wrongs of German

companies directly resulting in loss of or damage to property during the National Socialist era. The Foundation referred such matters for review and processing to the Property Claims Commission.⁸³

According to this complicated jurisdictional provision, the GFLCP Property Loss Programme's main purpose was the compensation of persons who suffered property losses as a consequence of persecution or other Nazi wrongs with essential, direct and harm-causing participation of German businesses, and who had been ineligible to file claims for compensation against Germany or German companies under previous legislation. This mandate remained unchanged throughout the entire claims process and was implemented in all its aspects.

The Agreement between the Governments of the United States of America and the Federal Republic of Germany, its Annexes and the Foundation Act itself used the term "property" in a general sense, without specifying the types of property to be covered by the programme. The Property Claims Commission, in Section 1 of the PCC Rules, defined property as "any and all immovable, moveable, tangible and intangible assets" applying the same broad definition of property that previous German post-Holocaust compensation and indemnification laws had applied.

The GFLCP Property Loss Programme's jurisdiction was, however, limited to those losses that were caused "with essential, direct, and harm-causing collaboration of German businesses". The Property Claims Commission interpreted the term "direct, essential and harm-causing collaboration" to cover all involvements of German enterprises which were more than just ancillary and not too remote from physical confiscation, thus including scenarios from instigation to directly attributable takings.

Regarding the beneficiaries, the same rules applied for the GFLCP Property Loss Programme as for the Slave and Forced Labour Programme: In the event that the actual victim, i.e. the person who had lost the property, had passed away, certain heirs (legal successors) were eligible for compensation in order of priority. These rules provided that only spouses, children, grandchildren and siblings, in descending order, were considered eligible heirs. It further provided that only if no such relatives existed, heirs under a will of the victim could claim and were eligible to receive compensation.

VIII. CLAIMS RESOLUTION TRIBUNAL FOR DORMANT ACCOUNTS IN SWITZERLAND

1. The establishment of the claims programme

The Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT”) was established as a consequence of an international controversy regarding the destiny of dormant assets deposited with Swiss banks prior to or during World War II. The controversy had resulted in a number of class action law suits against Swiss Banks before US Courts in which plaintiffs alleged that the Swiss banks had failed to identify and return assets deposited in the banks by victims of Nazi persecution, and that the banks had accepted and laundered Nazi assets which had been looted or generated through the use of slave labour.

In response to these lawsuits, a Memorandum of Understanding of 2 May 1996 between the World Jewish Restitution Organization and the World Jewish Congress on one side and the Swiss Bankers Association on the other established the Independent Committee of Eminent Persons (“ICEP”). ICEP was tasked with the identification of Swiss bank accounts belonging to victims of Nazi persecution that had been dormant since World War II and to assess the treatment of these accounts by the Swiss banks.⁸⁴ The Memorandum of Understanding also foresaw the establishment of a process for the original owners or their heirs to claim these accounts. While the ICEP investigations were ongoing, ICEP, the Swiss Bankers Association and the Swiss Federal Banking Commission agreed on a comprehensive claims resolution process for accounts in Swiss banks which were dormant since 1945.

In July and October 1997, the Swiss Bankers Association published two lists with the names of account holders whose accounts had been dormant since 9 May 1945. The lists comprised 5,570 accounts owned by non-Swiss nationals or residents (foreign accounts) and 10,758 accounts owned by Swiss account holders and persons of unknown domicile (Swiss accounts). Following the publication of these lists, Contact Offices were opened in five cities around the world, where claims could be filed for these accounts.

At the same time, the CRT was established in Zurich, Switzerland, to decide all claims filed against the accounts published in the two lists. The establishment and work of the CRT was overseen by the Independent Claims Resolution Foundation, governed by a Board of Trustees. The Board of Trustees issued the rules of procedure for the claims resolution process (“CRT Rules of Procedure”)⁸⁵ and appointed the Chairman of the Tribunal as well as 16 international lawyers, judges, financial advisers, economists and diplomats who served as the CRT’s arbitrators.⁸⁶

The CRT was operational until September 2001. During this period it rendered decisions in 9,918 cases and awarded approximately 65 million Swiss Francs to claimants from more than 70 countries.

Upon completion of all arbitration proceedings and the entire claims resolution process regarding the two 1997 lists, the Claims Resolution Tribunal began a new phase of its existence. In a process commonly referred to as CRT II, the Tribunal was charged with reviewing claims of Deposited Asset class members of the Settlement Agreement in the Holocaust Victim Assets class action litigation in the U.S. District Court for the Eastern District of New York, Chief Judge *Edward R. Korman* presiding (“Global Settlement”). In this second phase, the Claims Resolution Tribunal serves as an administrative arm of the U.S. Court in the implementation of the Global Settlement. The work of the CRT II, which started in 2001, is still ongoing.⁸⁷

2. The mandate and jurisdiction of the claims programme

Article 1 of the CRT Rules of Procedure defined the Tribunal’s mandate, providing that the CRT had to review claims to accounts opened by non-Swiss nationals or residents that were dormant since 1945 and published the Swiss Bankers Association in 1997 (or a later date). This included published dormant accounts that had been opened by Swiss nationals, if and to the extent a Sole Arbitrator determined, after consultation with ICEP, that such accounts might have been held by a Swiss intermediary for a victim of Nazi persecution.⁸⁸

The CRT’s jurisdiction was strictly limited to accounts published on the July and October 1997 lists and, given the obligation to resolve all claims within as short a time as possible and the costs of the claims resolution process, the Arbitrators could not go beyond the scope of Article 1 of the CRT Rules of Procedure and resolved controversies involving accounts that had not been published on a voluntary basis.

During the course of the proceedings, the question arose as to whether the CRT had authority to rule on claims for damages for allegedly mismanaged accounts. The Arbitrators adopted a common legal approach and decided that the CRT’s jurisdiction was limited to the adjudication of entitlement to an account, i.e. the determination whether a claimant, as the original account holder or a legal successor of the original account holder, was entitled to the account and the payment of adjustments for interest and fees. The arbitrators based this decision mainly on the fact that the CRT Rules of Procedure which required the arbitrators to conduct the proceedings “in an informal manner under relaxed procedural rules that are convenient for the claimants”⁸⁹ were inadequate to be applied to the complex issues arising in connection with mismanagement claims.

The Claims Resolution Tribunal was an arbitral tribunal, which meant that claims were resolved in arbitration proceedings with the claimant as one party and the bank that held the dormant account in question as the other. Both the claimant and the bank had to agree explicitly to the CRT's jurisdiction and sign a Claims Resolution Agreement which incorporated the CRT Rules of Procedures by reference.⁹⁰

While the CRT had been established to provide an efficient and simple process, the CRT did not have exclusive jurisdiction and claimants could pursue their claim through the domestic court system. However, given the fact that the proceedings before the CRT were free of charge for claimants and given the relaxed standard of proof that was applied, the CRT was the more "claimant-friendly" and promising option for those alleging a right to one of the dormant accounts published.

IX. 9/11 COMPENSATION FUND

1. The establishment of the claims programme

In the aftermath of the terrorist attacks on 11 September 2001, the United States Congress enacted the Air Transportation Safety and System Stabilization Act ("the Act").⁹¹ This legislation, which sought to preserve the continued viability of the air transportation industry, also established the September 11th Victim Compensation Fund of 2001 ("9/11 Compensation Fund"). Title IV of the Act provided for compensation to persons and their heirs who were physically injured or killed as a result of the terrorist related aircraft crashes on that day and who had submitted a claim before 22 December 2003. In creating the 9/11 Compensation Fund, the US Congress intended to establish a mechanism that would provide federal financial assistance to the victims of the attacks and the families of deceased victims without the uncertainties, delays and costs of traditional court litigation.

The Act did not include detailed administrative regulations but required the Department of Justice to issue administrative regulations within 90 days of the date of enactment. The Department of Justice and the Special Master appointed to implement the programme solicited public comments and the views of all interested parties,⁹² and on the basis of these comments, issued the Final Regulations on 13 March 2002 ("Regulations").⁹³

The Regulations set forth guidelines for the determination of economic and non-economic losses and directed the Special Master to develop a methodology for computing "presumed" economic and non-economic losses for claims on behalf of deceased victims based on objectively verifiable factors.⁹⁴ Furthermore, the

Regulations provided procedures for the submission of claims as well as deadlines for the determination of compensation awards.

The 9/11 Compensation Fund was a federal programme created by the United States Congress. Decisions made by the Special Master concerning the 9/11 Compensation Fund were final and binding and could not be reviewed by a court. Every claimant who filed for compensation under the programme had to sign a waiver stating that they would not file a civil action in any federal or state court for damages sustained as a result of the terrorist attacks.

The Programme ended in June 2004. By that time, the families of deceased victims who otherwise would have had to pursue lengthy and costly lawsuits had received compensation through the Fund.⁹⁵

2. The mandate and jurisdiction of the claims programme

The mandate of the 9/11 Compensation Fund was to provide compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of 11 September 2001, as well as to personal representatives of those who died as a result of the crashes. Recourse to the Fund was not limited to American citizens. Compensation payments included payments to non-US victims and families from over sixty countries.

Generally, eligibility was limited to:

- (1) Individuals other than the terrorists aboard American Airline flights 11 and 77 and United Airlines flights 93 and 175;
- (2) Individuals who were present at the World Trade Center, the Pentagon, or the site⁹⁶ of the aircraft crash at Shanksville, Pennsylvania at the time of the crashes or in the immediate aftermath⁹⁷ of the crashes; or
- (3) Personal representatives of deceased individuals who would otherwise be eligible.

Moreover, to be eligible for an award, an individual had to have suffered physical harm or death as a result of one of the terrorist-related air crashes. Others who may have suffered losses as a result of those events, e.g. those who lost employment or property, were not included in the programme. Compensation was provided only for losses related to personal physical injuries or death.

The Regulations defined physical harm in a narrow way. It included “all physical injury to the body that was treated by a medical professional within 24 hours of the injury having been sustained, or within 24 hours of rescue, or within 72 hours of injury or rescue for those victims who were unable to realize immediately the

extent of their injuries or for whom treatment by a medical professional was not available on September 11th or within such time period as the Special Master may determine for rescue personnel who did not or could not obtain treatment by a medical professional within 72 hours, and required hospitalization as an inpatient for at least 24 hours or caused either temporarily or permanently, partial or total physical disability, incapacity, or disfigurement.” This definition excluded psychological injuries.

The statute provided that the claimant should be either the victim or, in the case of a decedent, the personal representative of the decedent. Both had the right to be represented by an attorney.

The statute also stated that no more than one claim could be submitted on behalf of a deceased individual.⁹⁸ Therefore it was important to know who the personal representative was. To determine this, the Regulations looked at the pertinent state law of the victim’s domicile. In many cases the state probate courts had already appointed the appropriate personal representative for the administration of a victim’s estate. Therefore the Regulations foresaw that the personal representative should be the person appointed by a competent court either as the personal representative of the decedent or as the executor or administrator of the decedent’s will or estate. In addition, the Regulations provided that, in the event the personal representative had not been appointed by a court and there was no pending court proceeding regarding this issue, the Special Master had the discretion to appoint a personal representative for the purpose of compensation by the 9/11 Compensation Fund.⁹⁹

To provide other potential beneficiaries with notice that the personal representative filed a claim or to allow other potential beneficiaries to object to the authority of an individual to file as the personal representative, the Regulations required that written notice of the claim had to be provided by the purported personal representative to any person who might reasonably be expected to assert an interest in an award or to have cause of action to recover damages relating to the wrongful death of the decedent.¹⁰⁰

The personal representative was required to submit with the claim a list of individuals notified, along with certification that the required notice had been provided to all individuals either by personal delivery or registered mail and that the personal representative was not aware of any other person to whom such notice should have been provided. The certified list was reviewed and verified by the 9/11 Compensation Fund against other sources. To ensure that the personal representative had notified all interested parties, the Fund also published the names of the deceased victims for whom claims had been filed on the Fund’s official website for 90 days.¹⁰¹

X. ANNAN PLAN FOR CYPRUS

1. The establishment of the claims programme

The Comprehensive Settlement of the Cyprus Problem, commonly known as the “Annan Plan”, that was submitted by Secretary General Kofi Annan to both the Greek and Turkish Cypriot communities in its final form on 31 March 2004, was a draft multi-party agreement intended to provide the framework for reuniting the island of Cyprus.¹⁰² On 24 April 2004, both communities on the Island submitted the plan to simultaneous referenda. In the North, Turkish Cypriots accepted it with 64.9 per cent of the votes, while Greek Cypriots in the South rejected the plan with 75.83 per cent of the votes thus preventing the implementation of the Comprehensive Settlement and the unification of the island at the time.¹⁰³

The Annan Plan contained six parts, among them the Foundation Agreement and its nine Annexes that specified the structure and operation of the new state; the contingent state constitutions; a treaty to be signed by Cyprus, Greece and Turkey on matters relating to the new state of affairs in Cyprus; and a draft act related to the terms of an accession of a United Cyprus to the European Union. Annex VII to the Foundation Agreement contained the provisions relating to the resolution of property issues and the associated claims programme. Annex VII consisted of 23 articles (divided into 5 parts) and 5 attachments.¹⁰⁴

Annex VII of the Annan Plan described a number of aspects of the property claims programme in specific detail. These included the internal structures and organs and certain procedural aspects, such as the priority in processing and resolving claims and certain timelines in the processing cycle. The Annex also contained detailed regulations governing the exercise of property rights. Other aspects, however, such as the judicial review of first instance decisions,¹⁰⁵ were described in much less detail.

The property claims programme described in Annex VII of the Annan Plan was designed to provide a “domestic remedy for the solution of all questions related to affected property.”¹⁰⁶ The institution proposed to provide this remedy – the Cyprus Property Board – was to be an independent, impartial, administrative body.¹⁰⁷

2. The mandate and jurisdiction of the claims programme

The operational sections of Annex VII charged the Cyprus Property Board with the processing and resolution of claims, with the responsibility for making housing arrangements for persons affected by the property regime and with the management of the compensation fund.¹⁰⁸

Regarding the time frame of the programme, the Annan Plan anticipated that after ten years, the Property Board would wind up its activities. After the ten year period, the Supreme Court of Cyprus could extend the operation of the Cyprus Property Board one year at a time, if the Board had not completed its work at the end of ten years.¹⁰⁹

The main purpose of the property claims programme was to deal with and resolve issues related to affected property.¹¹⁰ The property claims programme entailed both restitution of property lost and compensation for property lost. Compensation was to constitute a greater part of the settlement while restitution was to constitute a smaller and strictly limited part.¹¹¹

The Annan Plan distinguished between three groups of beneficiaries – current users, dispossessed owners, and owners of improvements. A current user was defined as a person who has been granted a form of right to use or occupy property belonging to a dispossessed owner.¹¹² A dispossessed owner was a natural or legal person who, at the time of dispossession, held a legal interest in the affected property as owner or part owner.¹¹³ An owner of an improvement was the person who paid for significant improvements that were made to an affected property.¹¹⁴

The heirs or successors by title of current users, dispossessed owners or owners of improvements were also to benefit from the Annan Plan's provisions concerning affected property.

B. ORGANIZATIONAL STRUCTURES

The organizational structures of claims programmes are typically set out in the constituting documents for the programme. The extent to which the relationships of the different bodies and their interactions are regulated, however, differs from programme to programme. In addition, most of the claims programmes have undergone structural changes and adjustments during their lifespan, either due to funding shortages or process modifications after “lessons learned” or simply due to shifts in the focus of activities according to the different processing stages (registration, resolution, notification and enforcement of decisions or the payment of claims). As a result, it is difficult to capture the organizational structures comprehensively for a comparative overview. Adding to the difficulty is the fact that the terminology used to describe the organs differs considerably. While the term “Commission” is often used to describe the decision-making body (e.g. in the CRPC, the HPD/HPCC and the GFLCP Property Loss Programme), this is not true for the South Africa Programme, the UNCC, the CRRPD or the 9/11 Compensation Fund where there is not a single body for decision-making or a strict functional division of the different bodies involved in the claims resolution process. Similarly, the German Forced Labour Compensation Programme did not have one single body that was solely responsible for deciding claims.

In an attempt to provide a comprehensive overview of the organizational structures that can usually be found in claims programmes and the functions of and relationships between the different organs or departments, this section provides information on the following topics:

1. The organs/departments of the claims programme
2. Centralized or decentralized structures
3. The policy-making body
4. The decision-making body or bodies
5. The support structures (Secretariat)
6. The body responsible for enforcing or implementing decisions
7. External supervision/auditing on administrative or financial matters

A review of the programme reports below illustrates the variety of options that have been chosen in structuring a programme.

The most complex aspect of any programme seems to be the allocation of

policy-making functions to the programme's organs on the different levels of the programme's implementation.

The “big-picture” - policies outline the fundamental principles of the programme's political goals and, where applicable, aim to ensure that the programme is adequately embedded in the general framework of a country's reconciliation policies and efforts. Examples show that these functions are left to bodies that are otherwise not involved in the day-to-day implementation of the claims programme, like the Board of Trustees in the German Forced Labour Compensation Programme and the GFLCP Property Loss Programme, or political entities, like the Special Representative of the UN Secretary General in Kosovo.

Another policy-making level concerns the policies for the decision-making process itself on issues such as evidentiary standards and presumptions to be applied or the valuation methods. To the extent these questions are not yet answered in the constituting documents,¹¹⁵ the development of these policies is usually left to the decision-making bodies themselves (see the CRPC, HPCC, the UNCC and the GFLCP Property Loss Programme as examples).

A third level of policy-making is found on day-to-day issues of the practicalities of claims processing. Policies on this level are to ensure an efficient and smooth running of the claims resolution process and need to be made by persons who are familiar with the operational details of the process. The reports show that this function usually falls to the executive head of the Secretariat who coordinates the cooperation between the different organs and the different departments within the support structures. Often, a lot of detail regarding the working relationships, particularly between the decision-making body and the Secretariat, is left to be developed throughout the process.

The size of the support structures that existed in all programmes shows that claims programmes are “Secretariat-heavy” and that Secretariats exceed the set-ups known from domestic courts. This not only because of the high numbers of claims to be resolved in an acceptable period of time and all the logistical, clerical and administrative functions that go with this, but also because of the fact that functions and roles of the Secretariat overlap with those of the decision-making body by assigning the responsibility for the claims review and the drafting of decisions and proposals for the formal decision-making body to the Secretariat staff. The more standardized a decision-making process is, the more it is possible to save time and costs by entrusting the Secretariat with the claims review and the preparation of decisions while concentrating the decision-making body's responsibilities on the development of the standards to be applied and the formal adoption of decisions after reviewing samples for quality control to ensure that the standards have been followed.

In post-conflict environments, which are often governed by mistrust, suspicion, and personal interests, the organizational structures and the interrelationships between the different organs of the programme are crucial to ensure impartial decision-making and to prevent deadlock and corruption. Safeguards in this respect have been an international presence in the organization at all levels and, where applicable, a multi-ethnic composition of Secretariat teams as well as stringent quality controls.

I. CRPC IN BOSNIA AND HERZEGOVINA

1. The organs/departments of the claims programme

The Commission for Real Property Claims of Displaced Persons and Refugees (“CRPC”) had two organs, the Commission and the Executive Office. The Commission dealt with legal as well as operational questions and was the programme’s first and second instance decision-making body. The Executive Office, headed by the Executive Officer, consisted of the following departments and units:

- Executive Office Management (and Administration) Unit
- Department of Legal and Policy Affairs/Executive Legal Department
- Public Information Unit
- Legal Department with Regional Offices
- IT Department
- Finance Department
- Executive Monitoring Unit

As the Dayton Peace Agreement did not give the CRPC the power to enforce its decisions and an enforcement body within the claims programme did not exist, the implementation of the decisions rested with the domestic authorities. However, the Executive Monitoring Unit was established to monitor the implementation and enforcement of the decisions by the domestic bodies.

2. Centralized/decentralized structures

The Executive Office, with its seat in Sarajevo, was a centralized organ that depended on a decentralized network of Regional Offices. At the peak of its work in 1999, the CRPC’s Executive Office was supported by 23 Regional Offices: nine in Bosnia and Herzegovina,¹¹⁶ two in Croatia,¹¹⁷ five in Serbia and Montenegro,¹¹⁸ and seven in Western European countries that hosted large numbers of refugees.¹¹⁹ Each Regional Office had its own structure with a head-of-office, a legal adviser and, depending on size and claimant population, up to 30 staff members. The Heads of

Regional Offices reported directly to the Director of the Legal Department and met regularly following each Commission session. In addition, many Regional Offices had mobile teams, since many claimants were elderly, immobile or financially unable to travel long distances. Hence, the mobile teams covered municipalities where no Regional Offices were located but a high demand for claimant contact existed.

3. The policy-making body

The Commission was the policy-making body of the CRPC. It was composed of three international Commissioners who were appointed by the President of the European Court of Human Rights, and six national Commissioners. Of the six national Commissioners, two were appointed by the Republika Srpska and four were appointed by the Federation of BiH resulting in an ethnically balanced membership of two Bosniacs, two Croats and two Serbs. The President of the European Court of Human Right also appointed the Chairman of the Commission from amongst the international Commissioners.

The Commission developed the legal and operational framework to implement its mandate as laid down in Annex VII of the Dayton Peace Agreement. As such, the Commission had the competence to promulgate rules and regulations necessary to carry out its functions as well as policies in particular regarding the claims resolution process and evidentiary standards to be applied. Policy decisions were adopted by consensus.

The Commission adopted two Books of Regulations: First, the “Book of Regulations on the Conditions and Decision Making Procedure for Claims for Return of Real Property of Displaced Persons and Refugees” (“Book of Regulations I”); and second, the “Book of Regulations on Confirmation of Occupancy Rights of Displaced Persons and Refugees” (“Book of Regulations II”), which dealt with the admissibility of claims, the decision-making process and the confirmation of property rights.

4. The decision-making body or bodies

The nine Commissioners responsible for the policy-making were also in charge of decision-making. They met in plenary sessions in Sarajevo every four to six weeks deciding claims in batches and by a majority vote. In deciding claims before them, the Commissioners applied the Books of Regulations I and II that they had adopted.

Between plenary sessions the national Commissioners met in Sarajevo to review draft decision proposals, discuss specific claims if necessary and exchange views on

other matters of importance. Although Article 9 of the Dayton Peace Agreement allowed for sessions in panels, the Commission never used that opportunity.

Furthermore, the Commissioners were responsible for deciding reconsideration requests of a decision and, as such, served as the programme's second instance decision-making body.

As the functions of the Commission and Secretariat were very much intertwined during the decision-making, further details on the process are outlined in 5. below.

5. The support structures (Secretariat)

The CRPC had a large Secretariat that at the peak of operations in 1999 had more than 400 staff members of which all but ten were national staff.

The Executive Office with its Headquarter in Sarajevo had several specialized departments, which were each managed by department heads, who in turn were supervised and coordinated by the Executive Officer. The Executive Officer and the directors of the Finance, IT, Monitoring and Legal Departments were the only international staff members of the CRPC. All other staff members were national, many of whom were experts in their field and who brought invaluable knowledge of local structures, legal and geodetic systems, as well as the region's history and languages.

The CRPC's Legal Department was at the heart of the claims programme. It was in charge of the entire claims process, from claims collection to claims review, and eventually to the delivery of decision certificates. According to its wide spectrum of responsibilities, the Legal Department was divided into the following sub-sections:

23 Regional Offices and their mobile teams were responsible for all claim related claimant contacts (i.e. claims collection, deficiency interviews and decision certificates delivery). Claims collected by the Regional Offices were data-captured electronically by the IT Department and hard-copies were then transferred to the Legal Department for review. In late 1999/early 2000, approximately 200 staff members worked in the Regional Offices and mobile teams.

The File Management Section was responsible for the organization of the movement of claims from and to the Regional Offices, as well as within the Department. It ensured that each legal team in the Claim Determination Section had a sufficient number of claims available to fulfill the weekly quotas. In addition to the movement of hard-copies, the File Management Section also disseminated the claims electronically, assigning all claims for a certain team via a claim tracking software.

The Claim Determination Section was in charge of reviewing claims and of drafting decisions. The section had five legal teams, four teams to confirm private property rights and one team to confirm occupancy rights. Each team had three lawyers, one of whom was the team leader, and a data-entry clerk. Each team included one lawyer from each of the ethnic groups (i.e. Bosniak, Croat and Serb) to ensure fairness and mutual oversight.¹²⁰ The teams worked towards weekly quotas and the team leader quality controlled each decision prepared by his or her team lawyers.

The work of the Verification and Cadastre Section was twofold. On the one hand, the five verification officers undertook individual claim verification across the 148 municipalities in Bosnia and Herzegovina, whenever evidence was missing.¹²¹ On the other hand, to maximize efficiency in the decision-making process and to lighten the burden of individual claim verification, the section collected cadastral data from municipalities and implemented this data into its in-house-developed cadastre land survey database. The success of this unit was in large part due to the personal pre-war contacts of its staff members that helped to obtain evidence and data.

To ensure maximum quality in a highly politicized multi-ethnic environment, the Quality Control and Certificate Section performed a second round of review of 50 per cent of all decisions. In addition, this section was responsible to ensure the printing of decisions as certificates (which were printed on special safety paper¹²² and dry-stamped to guard against forgeries, and which contained a unique serial number for proper tracking) and for their delivery to Regional Offices and Mobile Teams.

Although Article 12 of the Dayton Peace Agreement determined the Commission's decisions would be final, in 1999 the CRPC introduced the possibility to file a request for reconsideration, taking into account the imperatives of due process and the possibility of potential for error in a mass claims process.¹²³ Although more than three hundred thousand decisions were rendered by the Commission, the total number of reconsideration requests did not exceed 2,500, or 0.8 per cent of all decisions. Consequently, the Reconsideration Section remained very small with one to two lawyers and a clerk.

In light of increased pressure and public attention about the claims programme, the CRPC's Legal Department introduced (in addition to the Executive Public Information Unit's claimant information hotline) a Claimant Info Unit, with three lawyers solely dedicated to answering telephone calls and responding to written queries from claimants and receiving visitors. The objective of this unit was to provide claimants with comprehensive, consistent and specific answers on the substance of

their claim¹²⁴ in the shortest feasible time. These contacts with claimants were also used to determine whether claimants had additional evidence at their disposal that could rectify any deficiencies.

Finally, the Legal Department had a Translation and Administrative Support Section with a secretary, two to three translators/interpreters and a professional proof-reader for Bosnian, Croatian and Serbian.

The Department of Legal and Policy Affairs was headed by the Executive Legal Adviser and provided support to the Executive Officer and the Commissioners (in particular the Chairman) with regards to legal analysis, drafting of policy proposals and coordination with external partners. In addition, the Department also carried out reconstruction checks,¹²⁵ provided implementation assistance to CRPC certificate holders¹²⁶ and general legal advice on property issues to claimants. During its peak period, the department had one international and approximately 20 national staff members.

Annex VII of the Dayton Peace Agreement did not provide the CRPC with implementing powers and it was therefore important for its work to monitor the implementation of its certificates by the municipal housing bodies. Established in 2000, the Executive Monitoring Unit monitored the enforcement of decisions and supported the elimination of double-occupants who, after repossessing their pre-war homes, continued to occupy other peoples' homes without a legal basis and therefore hindered their return. The Unit had three staff members.

The Finance Department served the Executive Office and Regional Offices on all financial matters, both in terms of any issues regarding the administrative budget (such as approval of contract extensions, purchases, etc.) and salary payments.¹²⁷ In addition, the Executive Finance Officer supported the Executive Officer in fund raising. During its peak period, the Finance Department was staffed by one international and five national staff members all of whom had a business or accounting background.

The Executive Office Management Unit was in charge of running the office. It oversaw personnel issues and contract extensions, the translator pool, the logistics section (with drivers, technicians and guards), as well as the protocol. During the peak period in 1999/2000 the Executive Office Management Unit had approximately 30 national staff members.

The Public Information Unit was responsible for claimant outreach, the claimant information hotline that answered general questions about the programme.¹²⁸ Outreach, which had to cover the territory of the former Yugoslavia, and the main

Western European countries, was carried out by brochures, radio and TV spots, news paper advertisements, articles, press-conferences, and information support to Regional Offices and Mobile Outreach Teams. In particular during the period of massive claims collection between 1998 and 2000, the claimant information hotline focused on informing claimants of filing deadlines, claim requirements, location of Regional Offices and mobile teams to submit their claims, etc. They answered several hundred calls per week, received visits and processed large amounts of written requests. The Executive Public Information Officer, who supervised the unit, supported the Executive Officer and wrote press releases and newsletters, interviewed victims and coordinated and collected information from all departments, on a regular basis, to generate the necessary statistics. During the peak period, the Public Information unit had approximately ten national staff members.

The CRPC had a large IT Team (with almost 40 staff members) that served all teams and was subdivided into four sections: The System Support Section performed all helpdesk functions for hard- and software for all 200 users in Sarajevo, as well as assistance for Regional Offices and in particular their connections to the Executive Office. The System Administration Section maintained the network, as well as the various databases. The System Development Section was in charge of development of new applications according to user requirements and specifications, as well as updating existing applications. All of CRPC's databases were relational databases programmed in SQL. When the claim intake at Regional Offices was switched from computer operated claim intake to manual intake in late 1999/early 2000, a Data Center was created, where data entry clerks would capture the data provided on hard-copy claims and code the relevant evidence.

Recruitment of staff across all departments was usually subject to a vacancy notice and an interview by the department director. In addition, for the legal positions, written tests and interviews with representatives of the National Commissioners were required. Given the nature of the CRPC's work in the post-war environment, equal opportunities for all ethnicities and a fair distribution of positions at all levels was crucial for the work climate and for public perception. In addition, all candidates had to undergo a housing-check to ensure that none of CRPC's staff was either illegally occupying someone else's property or a double occupant.

6. The body responsible for enforcing or implementing decisions

Annex VII of the Dayton Peace Agreement did not empower the CRPC with authority to implement its decisions. Rather, the implementation and enforcement of CRPC decisions rested with the domestic authorities. In Article 8 of the Dayton Peace Agreement the Parties committed themselves to “cooperate with the work of the Commission, and [to] respect and implement its decisions expeditiously and

in good faith, in cooperation with relevant international and nongovernmental organizations having responsibility for the return and reintegration of refugees and displaced persons.” Depending on the type of CRPC decision (i.e., confirming private property rights or occupancy rights), either the municipal office for legal property questions or the municipal housing organ was responsible for the implementation of CRPC decisions. In addition, a wide field presence of Human Rights Officers, in particular of the OSCE and OHR, helped to build up pressure and intervene on individual cases to ensure the implementation of decisions.

7. External supervision/auditing on administrative or financial matters

According to Article 7 of Annex VII of the Dayton Peace Agreement, the CRPC was established as an “independent Commission”. Therefore it was not subject to official supervision. As a “Dayton Institution” it reported to the Peace Implementation Council, which also determined budgetary needs etc. about once a year.

While individual donors audited the CRPC with respect to their respective voluntary contributions and funds, no global audit was carried out regarding the entire budget, administrative spendings or financial management.

II. HPD/HPCC IN KOSOVO

1. The organs/departments of the claims programme

The structures commonly found in claims programmes of a policy-making body, a decision-making body, a secretariat and an enforcement body, are not easily related to the organizational and functional divisions of the Housing Property Directorate (“HPD”) and Housing Property Claims Commission (“HPCC”) in Kosovo. This in particular, as the different departments of these bodies have undergone a number of functional and organizational changes during their existence, either because of funding restrictions (in particular at the beginning of the mandate), or because of the shifting focus of the programme from claim collection in 2001-2002 to decision making in 2003-2004 and to decision implementation in 2004-2005.¹²⁹

Initially, the international agency coordinating the implementation of the HPD and HPCC mandate was the United Nations Centre for Human Settlements (“UN HABITAT”). At the outset of the programme, UN HABITAT was the policy-making body for the HPD and HPCC.¹³⁰

In November 2004 the UN HABITAT mandate was transferred to the United Nations Interim Administration Mission in Kosovo (“UNMIK”) under its Pillar II Civil Administration. Since that time, all administrative and policy-making functions of the claims programme have been directly under UNMIK and the Special Representative of the Secretary General (“SRSG”). UNMIK and the SRSG can thus be considered the policy-making bodies of the HPD and HPCC. In addition, the SRSG established an Advisory Board to the SRSG to advise on the implementation of UNMIK’s mandate and the development of policy initiatives.¹³¹ However, the Advisory Board only dealt with the bigger policy issues affecting the UN mission as such and the political stability in Kosovo, rather than policy issues specifically related to the HPD and HPCC.

The HPD and HPCC had an independent standing within UNMIK and, within the mandate given in the legislative framework, the Executive Director and his Executive Office at the HPD could be regarded as the policy-making bodies for the day-to-day implementation of the mandate.

The main decision-making body was the HPCC. This decision-making authority covered both the first and the second instance, since UNMIK Regulation 2000/60 foresaw a request for reconsideration as the only legal remedy available against HPCC decisions.

While the HPD was responsible for certain categories of claims that could be resolved in an administrative procedure and for which no decision on the substance was necessary,¹³² its main function was to provide the logistical and administrative support for the claims resolution process. It could thus be seen as the Secretariat of the programme, where claims were received, registered and prepared for a decision by the HPCC. To serve these functions, different departments existed within the HPD, such as the Department of Field Operations, the Regional Offices, File Services, the Central Case Processing Unit, and the Office of the Registrar/Administration, which served as a support unit specifically for the HPCC. The HPD, in particular its Office of the Registrar/Implementation, also took on the functions of an enforcement body.¹³³

Another international actor involved in the programme was the United Nations Office for Project Services (“UNOPS”). UNOPS was contracted to provide administrative assistance on personnel and budgetary matters. Playing a purely administrative role, it did not take part in the policy- or decision-making of the programme.

2. Centralized/decentralized structures

The HPD had its headquarters in Pristina, Kosovo. The Executive Office and Registry were fully centralized. The HPD's Department of Field Operations had a decentralized structure with a number of Regional Offices throughout Kosovo.

The HPCC also had a centralized structure, with its seat in Pristina, Kosovo.¹³⁴ The Registrar and the staff members providing administrative, technical and legal support to the Commission were located in the HPD headquarters office in Pristina.

3. The policy-making body

Formally, the HPD/HPCC programme had two policy-making levels: the Advisory Board to the SRSG, and the Executive Office at the HPD. While the Advisory Board to the SRSG dealt with broader political issues regarding the UN Mission and the stability in Kosovo, the Executive Office at the HPD was responsible for the policies regarding the day-to-day implementation of the claims programme. The following section will thus discuss the structure and functioning of the Executive Office.

The Executive Office was headed by the Executive Director who was responsible for the programme's policies within the legal framework and mandate of the HPD as defined in UNMIK Regulation 1999/23. In addition to the policy-making, the Executive Director was responsible for the overall management of the programme, including external relations, reporting to UNMIK Pillar II Civil Administration, donor contacts and fundraising for the HPD and HPCC.

The Executive Director was assisted by staff serving in the functional areas of programme management, logistics and administration (including IT), administration of properties, and external relations (including HPD offices outside Kosovo, in Belgrade and in Podgorica). Each of these functional areas was headed by an international staff member with national staff members providing technical, legal, administrative and logistical support. Although the number of employees changed considerably throughout the mandate period, the Executive Office had on average 37 staff members with a ratio of 7 international staff members to 30 national staff members. International staff members held UN contracts (at the professional level), consultancy contracts, or UN Volunteer contracts. National staff members held international contracts with UNOPS (at the general service level), or local contracts under the Kosovo Consolidated Budget.

4. The decision-making body or bodies

Responsibility for decision-making rested with the HPCC which included one national and two international Commissioners. One of the international Commissioners acted as the Chairperson.¹³⁵

The formal qualifications required of the HPCC members were stated in the founding document. Pursuant to UNMIK Regulation 1999/23 Section 2.2., the members should be “experts in the field of housing and property law and competent to hold judicial office”.

The Commission convened in Pristina, Kosovo, approximately once a month. Assisted by the Registrar of the Commission, and in consultation with the Joint Advisory Council on Legislative Matters and other relevant actors, the Commissioners were responsible for the progressive development of the Rules of Procedure and Evidence of the Commission. The Rules of Procedure and Evidence included detailed provisions on the administration of evidence, the substantive assessment of property claims, the preparation and adoption of Commission decisions and the reconsideration of decisions.

The Commission was an independent quasi-judicial body that adopted final and binding decisions on individual claims or disputes referred to it by the HPD. Assisted by the Registrar, the Commissioners developed guidelines and mechanisms to categorize claims and disputes that presented identical legal and factual issues and could be resolved in groups on the basis of procedures they developed for this purpose. In order to avoid unreasonable delays, the Commissioners identified categories of claims that could be resolved in administrative procedures and on a collective basis, without going through a lengthy judicial examination of each individual claim.

The only legal remedy against decisions of the UPCC available under the programme was a request for reconsideration by the HPCC itself, which thus also acted as the second instance decision-making body. UNMIK Regulation 2000/60 provided that, if two or more Panels of the Commission would be established, the reconsideration should be conducted by a different Panel than the one that had decided the claim or, alternatively in plenary session.¹³⁶ However, throughout its operation the HPCC consisted of one Panel only, so the same Panel decided the claim both in the first instance and in the second instance following a request for reconsideration.

5. The support structures (Secretariat)

Secretariat functions were carried out by the HPD, in particular the Department of Field Operations, the Department of File Services, the Central Case Processing Unit and the Office of the Registrar/Adjudication.

The Department of Field Operations supervised the regional offices and represented the HPD on the regional level. It was mainly responsible for delivering notifications of claims on claimed properties as well as decisions to claimants and respondents. The Department also coordinated the gathering of evidence in local courts, cadastres or utility companies for the verification of the property rights claimed.

The Department of File Services coordinated the information-, claim-, and file-flow within the HPD and HPCC. It set up and administered an archive system and, in cooperating with the IT department, was responsible for developing and maintaining the claims database and for providing statistical information on the claims process to other departments.

The Central Case Processing Unit prepared claims for referral to the HPCC. To the extent additional verification of property rights claimed was necessary, this also involved the collection of evidence in local courts, cadastres or utility companies.

The Office of the Registrar/Adjudication provided administrative, technical and legal support to the Commission.¹³⁷ It reviewed property claims submitted by the Central Case Processing Unit for the HPCC and ensured that claims were being prepared in accordance with the Commission's instructions. Legal staff in the Office researched international and local law for the HPCC and assisted the Commissioners during their sessions.

6. The body responsible for enforcing or implementing decisions

The Office of the Registrar/Implementation within the HPD was responsible for the enforcement of all HPD and HPCC decisions. This Office was under the control of the Commission, as stated in UNMIK Regulation 1999/23 Section 3.

Through the Regional Offices, the Office of the Registrar/Implementation delivered decisions to claimants and respondents and, if needed, issued eviction warrants and enforced these in cooperation with local law enforcement authorities. The Office also received and processed requests for closure of cases and for the repossession or the transfer of properties to HPD administration.

In October 2003, the Office of Registrar/Implementation established a call centre that contacted claimants when a case had been decided and made an appointment for the claimant to collect the decision at one of the HPD offices in or outside Kosovo. The call centre also served as a hotline where claimants could inquire about the status of their claim.¹³⁸

7. External supervision/auditing on administrative or financial matters

The HPD/HPCC was monitored and audited by its international donors (governments and international organizations), in particular in connection with applications for new funding.

III. CRRPD IN IRAQ

1. The organs/departments of the claims programme

The Commission for the Resolution of Real Property Disputes in Iraq consists of Judicial Committees which are responsible for the review and resolution of the real property claims, an Appellate Commission¹³⁹ which is competent to review the appeals against the decisions issued by the Judicial Committees, and a National Secretariat responsible for providing administrative and procedural support to the claims resolution process.

2. Centralized/decentralized structures

The CRRPD has both centralized and decentralized structures. While the Appellate Commission is centrally located in Baghdad, the Judicial Committees are decentralized over Iraq with one or more Committees in each Iraqi Governorate. Similarly, the Secretariat consists of a central National Secretariat located in Baghdad as well as branches in each of the Governorates.

3. The policy-making body

The CRRPD Statute outlines the general policies and basic principles for the decision-making process. The Statute has the status of law in Iraq and may be supplemented by the Iraqi Government. As such, the Iraqi Government has the authority and responsibility to promulgate policies regarding the CRRPD decision-making process.

At the same time, Article 33 of the CRRPD Statute provides that the Head of the Commission may issue instructions to facilitate the implementation of the Statute. The Head of the Commission is responsible for supervising all activities of the Commission and its branches and has the authority to create or cancel any staffing position, as the work of the Commission requires.

Within the policy framework set by the Iraqi Government and the Head of the Commission, it is up to the National Secretariat to establish the day-to-day policies necessary to ensure proper implementation of the programme. Most importantly, the National Secretariat coordinates the different Judicial Committees and Regional Branches to ensure that the regulations and instructions are applied consistently throughout the country and that claimants receive equal and fair treatment no matter where they submit their claim and no matter which Judicial Committee is responsible for deciding it.

Another key player shaping the policies to be applied to the claims resolution process is the Appellate Commission. The Appellate Commission may issue an advisory opinion on any unresolved question of law or on common issues of fact to establish the rule to be applied uniformly to subsequent similar cases. The Judicial Committees follow the general rules and principles of the Appellate Commission although they are not formally bound to do this.

4. The decision-making body or bodies

Within the CRRPD's structure, the Judicial Committees are responsible for deciding claims in the first instance, and the Appellate Commission is responsible for deciding appeals.

A Judicial Committee is composed of (1) a judge appointed by the Supreme Council of Judges of Iraq who functions as the chairperson of the Committee; (2) the Director of the Real Property Registration Department in the Governorate or his representative; and (3) a legal officer nominated by the Head of the Commission from the CRRPD staff who has legal experience or has practiced law for a minimum period of ten years.¹⁴⁰

While each Judicial Committee is an independent decision-making body within the legal framework provided, close cooperation with the other Judicial Committees to ensure consistency throughout the country is key for the success of the programme. The National Secretariat plays a leading role in this, and its information-sharing, directives and guidance are crucial given the de-centralized structures of the decision-making process.

The Appellate Commission is composed of seven judges who have practised in the Iraqi Court of Cassation.¹⁴¹ The judges are nominated by the Supreme Council of Judges either from active or retired judges. Two of the judges must be from the Kurdish provinces. The Appellate Commission is a permanent body working full-time with its seat at the CRRPD headquarters in Baghdad. The Appellate Commission not only has jurisdiction to decide the appeals relating to decisions issued by the Judicial Committees, it is also competent to consider requests for advisory opinions, transfer a claim from one Committee to another, disqualify the chairman of a Judicial Committee and reject judges.¹⁴²

The Appellate Commission receives assistance from administrative staff and the legal counsellors in the Secretariat of the CRRPD. Furthermore, it has access to all CRRPD files and Government records relevant to the settlement of a dispute submitted to it.

5. The support structures (Secretariat)

The CRRPD's support structures consist of a centralized National Secretariat and its Regional Branches.

The National Secretariat is composed of the Head of the Commission, operational managers, legal advisers, auditors, data managers, public relations personnel and other support staff. The Secretariat is responsible for establishing a national database of claims, coordinating the claims review among the different branches of the CRRPD, issuing manuals and operating guidelines, managing the CRRPD's public relations and communications and for supporting the Appellate Commission and the Judicial Committees. In that respect, its coordination function is most important to ensure consistency in the Commission's decision-making.

In addition to the National Secretariat, there is a Secretariat to support the work of each of the respective Judicial Committees in the Governorates. Each Secretariat receives claims and, if necessary, forwards them to the competent Branch of the Commission according to the location of the property. Furthermore, the Secretariats request from the relevant Real Property Registration Department a detailed report about the transactions made on the claimed property. The Secretariats examine the claim form and the report of the Real Property Registration Department to ensure that the claim meets the necessary requirements. The Secretariats also notify any party who might have an interest in the claimed property to allow them to respond within a specified period.

6. The body responsible for enforcing or implementing decisions

The enforcement of restitution decisions is not included in the mandate of the CRRPD. These decisions are executed by the Enforcement Department of the Ministry of Justice and the Real Estate Registration Department of the Ministry of Justice pursuant to the provisions of Iraqi law. To the extent that decisions of the CRRPD award compensation, they are implemented by the CRRPD itself. Payments are made by cheque. The Compensation Department of the CRRPD requests the necessary funds for a group of claims from the Ministry of Finance. After receipt of the funds, it issues a cheque to each beneficiary in the group. The beneficiaries can cash the cheque at a branch of the largest Iraqi bank on which the cheques are drawn.

7. External supervision/auditing on administrative or financial matters

As a national body, the CRRPD is subject to the audit provisions applicable to government bodies under Iraqi national law. For example, the Iraqi Ministry of Finance oversees all financial matters of the CRRPD.

IV. SOUTH AFRICA PROGRAMME

1. The organs/departments of the claims programme

The organs of the South Africa Land Reform Programme reflect the fact that this is a national programme embedded in the structures of the South African government.

The policy-making organ of the programme is the Chief Land Claims Commissioner who sets the policy for the Commission on Restitution of Land Rights (“Commission”).

Regional Commissioners and the Land Claims Court are responsible for the decisions on certain types of claims. In addition, the Minister of Land Affairs, who represents the State as the Respondent to the claims, can reach settlement agreements with claimants if the claim meets the requirements for eligibility under the Law (Section 42D). When settling claims, the Minister acts through the Department of Land Affairs. Since the Commission has been integrated into the Department of Land Affairs as one of its branches, it is the Commission that is responsible for settling claims.

Finally, in its capacity as the body responsible for registering, reviewing and referring cases to the Land Claims Court, the Commission also acts as the Secretariat of the programme.

2. Centralized/decentralized structures

The Chief Land Claims Commissioner is based in Pretoria. Supported by a research directorate and legal officers who liaise with regional offices, his office is centralized.

The processing of claims, however, is decentralized: claims are processed by Regional Land Claims Commissions (there are 7 offices nationwide). The jurisdiction of the respective Regional Commissions is determined by the location of the land under claim. The Regional Commissions are staffed inter alia by legal officers and researchers who support the regional Commissioners.

The Land Claims Court is a centralized body, although its seat varies according to the region in which the claimed property falls.

3. The policy-making body

The Chief Land Claims Commissioner through the Directorate for Restitution Policy sets the policies for the programme and promulgates rules of procedure for the Commission on Restitution of Land Rights. These rules apply to all Regional Commissions and their offices.

The policies set by the Directorate for Restitution Policy are informed by the provisions of the applicable law and the judgments of the Land Claims Court.

4. The decision-making body or bodies

The Regional Commission in whose jurisdiction the claim falls is empowered to reject those claims that it determines do not meet the substantive or formal admissibility criteria. All such decisions of a Regional Commissioner are subject to judicial review by the Land Claims Court. The Regional Commission is also required to publish a notice of claim where it is satisfied that the claim was correctly lodged, is not precluded by substantive provisions of the Act and is not frivolous or vexatious. This decision is usually taken upon advice of a Legal Officer.

The Land Claims Court is the final adjudicator of claims referred to it by the Regional Commissions or brought before it by claimants directly under the Direct

Access provisions of the governing Act. The Land Claims Court can also review administrative decisions taken by the Minister of Land Affairs.

The Land Claims Court has the status of a High Court of the Republic and follows a full court process in resolving claims. It has inquisitorial powers not usually enjoyed by other High Courts in the country. Cases are usually dealt with individually unless their facts are sufficiently similar to deal with them together.

The Land Claims Court has been and remains independent. At the start of the process it played a crucial role in interpreting the applicable laws and clarifying the process and the requirements for eligibility under the law. Its decisions on these matters impacted directly on the work of the Commission and the Department of Land Affairs.

With the shift to administrative settlement of claims, the Land Claims Court's role in settling claims has increasingly been limited to those cases where agreement cannot be reached or where claimants wish to challenge a decision of the Minister or a Commissioner.

Currently there are four judges on the Land Claims Court, all of whom are South African nationals. The President of the Court is appointed by the President of the Republic, acting on the advice of the Judicial Service Commission. Other judges of the Land Claims Court are appointed by the President of the Republic after consultation with the President of the Court and the Judicial Service Commission. In addition, High Court Judges can be seconded to the Land Claims Court by the Minister of Justice. Acting Judges can also be appointed by the Minister of Justice upon request of the Minister of Land Affairs.

Appeals may be heard by the Supreme Court of Appeal after application for leave to appeal by the Land Claims Court itself or, where that is refused, by the Supreme Court of Appeal itself or where appropriate by the Constitutional Court.

5. The support structures (Secretariat)

Under the Restitution of Land Rights Act in 1994, the Commission was initially established as a body independent from the Department of Land Affairs, responsible for solicitation, intake, registration and investigation of claims with a view to facilitating settlement between the claimant and the Department of Land Affairs or, where that is not possible, referring the claim to the Land Claims Court for a decision. As such, the Commission acts as the Secretariat of the programme.

With the restructuring of the process and the organizations, the Commission became a branch of the Department of Land Affairs and took over the responsibility of settling claims where appropriate and possible. Where settlement cannot be reached, the Commission is still empowered to refer the matter to the Land Claims Court for a decision. In addition to the Commission's referral, the claimants themselves can approach the Land Claims Court directly for a decision and are no longer reliant on the Commission to do this.¹⁴³

The offices of the Commission are staffed by government officials appointed or seconded under Sections 8 or 9 of the Act. The Regional Offices operate independently in processing claims falling under their jurisdiction, but cooperate closely with the Chief Land Claims Commissioner's office. Each office has access to researchers to investigate the circumstances of the claim and prepare a report, which would ultimately become part of the Land Claims Court record should the claim be referred to the Court for a decision. Finally, case officers take the lead on negotiating and attempting to settle particular claims.

Each office also has outreach functions to facilitate claim intake, a public information service for claimants wanting progress reports, and administrative staff responsible for claim registration, archives and general office administration.

The Chief Land Claims Commissioner, who has to be a South African citizen, as well as his or her deputy and the Regional Commissioners are appointed by the Minister of Land Affairs. The public is invited to nominate candidates for the position of the Chief Land Claims Commissioner.

6. The body responsible for enforcing or implementing decisions

The vast majority of claims have been resolved through settlement agreements and as such are enforceable through the ordinary contract law of South Africa. The Restitution of Land Rights Act does allow for a Commissioner to refer an agreement to the Land Claims Court to be made an order of the Court. Section 28K of the Act stipulates that orders of the Court have effect throughout the country.

Where an agreement is made an order of Court, a party failing to comply with the terms of the agreement can be forced to do so by approaching the Court for an enforcement order under national law. Orders are executed by the Sheriff of the Supreme Court appointed for the area concerned. As such, the programme makes use of existing legal mechanisms for enforcement of court orders and no new mechanisms were created for this purpose.

In some cases enforcement might require the acquisition of land currently owned by a private owner. The Commission's approach has generally been to negotiate with the current owners. However recent news reports indicate that the Commission is dissatisfied with the efficacy of this approach and critical of the attitude displayed by white farmers, in particular, towards settlement negotiations. This might result in an increased use of the Commission's powers of expropriation under Section 42E of the Restitution of Land Rights Act. The amount of compensation payable upon expropriation is determined by agreement or in accordance with Section 25(3) of the Constitution.¹⁴⁴

7. External supervision/auditing on administrative or financial matters

The programme does not include special rules concerning external supervision or auditing on administrative or financial matters. Due to the fact that the programme is one under national law, the usual audit provisions applicable to government bodies according to South African domestic law are also applicable to the programme.

V. UNITED NATIONS COMPENSATION COMMISSION

1. The organs/departments of the claims programme

Over the course of 14 years, the work of the UNCC involved the processing of over 2.6 million claims under 17 separate sub-programmes, using over this time period a staff of over 630 individuals and 58 Commissioners working on 19 separate Panels. The supreme organ of the United Nations Compensation Commission ("UNCC") was the Governing Council. It served both as the UNCC's policy-making body as well as the final decision-making body that had to approve the reports of the Panels of Commissioners. The Panels of Commissioners were appointed by the Governing Council to evaluate and decide the claims and to recommend the amounts of compensation. The claims programme also included an Executive Secretary¹⁴⁵ and a large Secretariat that supported both the Governing Council and the Panels of Commissioners.

2. Centralized/decentralized structures

The Commission had centralized structures. The processing of claims was centralized in Geneva. However, the outreach to claimants, the collection of claims and their payment were conducted through the respective governments and therefore decentralized.

3. The policy-making body

The Governing Council is the organ of the UNCC that set its policies within the framework of the relevant Security Council Resolutions that established the Commission. It is composed of the 15 member States that form part of the UN Security Council at any one time. China, France, the Russian Federation, the United Kingdom and the United States are thus permanent members. The ten non-permanent members are selected by the General Assembly for two-year terms, with five being replaced each year.

The Governing Council elected its own president and two vice-presidents, each for two-year terms.

The Governing Council usually held four formal sessions per year, with occasional special sessions to deal with particular issues as they arose. In principle, a majority of at least nine of its members was needed for decisions of the Governing Council, with no veto rights applied. If consensus was not achieved on any matter for which it was required, the question could be referred to the Security Council on the request of any member of the Governing Council. In practice, this never happened.

As the policy-making organ of the UNCC, the Governing Council had the responsibility for establishing guidelines on all policy matters, in particular, those relating to the administration and financing of the Compensation Fund, the organization of the work of the UNCC and the procedures to be applied to the processing of claims as well as to the payments to be made from the Compensation Fund.¹⁴⁶

The Governing Council *inter alia* adopted Provisional Rules governing all aspects of the processing of claims as well as the selection and appointment of Commissioners.

At its first session, the Governing Council identified the types of claims that were later organized into the six categories of claims. In its subsequent decisions, the Governing Council established rules, principles and criteria for a variety of matters. For example, in its very first decision, the Governing Council decided to give priority to individual claimants in both the processing and the payments of claims.¹⁴⁷ Other decisions provided guidance for the processing of claims, including in particular, decisions No. 3 – mental pain and anguish claims, No. 4 – business losses of individuals eligible for consideration under the expedited procedures, No. 8 – monetary ceilings for mental pain and anguish claims, No. 9 – types of business losses and their valuation, No. 11 – claims by members of the Coalition Armed Forces, No. 13 – measures to avoid multiple recovery, No. 15 – embargo-related

losses, No. 16 – awards of interest, No. 19 – military costs, No. 21 – multi-category claims, and No. 24 – multi-category departure claims.¹⁴⁸

The Governing Council was also responsible for approving the budget of the Commission, which was reviewed by the Council's Committee on Administrative Matters.

4. The decision-making body or bodies

The Commissioners of the various Panels were appointed for specific tasks and for fixed terms by the Governing Council upon nomination by the Secretary General on the basis of recommendations of the UNCC's Executive Secretary. They were usually chosen from a Register of Experts that was established by the Secretary General in 1991 and which was regularly updated by the Commission's Secretariat. The Commissioners were experts in fields such as finance, law, accounting, insurance, environmental damage assessment, oil, trade and engineering. The Commissioners worked in 19 panels of three members each, meeting in Geneva at the Commission's headquarters.¹⁴⁹

The function of the Commissioners was to verify and evaluate the claims and assess the value of the losses suffered by the claimants and, where applicable, recommend compensation. After receiving claims from the Executive Secretary, the Commissioners examined them and met to deliberate and prepare reports with their recommendations to the Governing Council.¹⁵⁰ The reports contained detailed reasons for the determinations of the Panels and the recommended amount of compensation. The Panel reports were reviewed by the Governing Council and the amounts recommended for compensation were subject to approval by the Governing Council.

A right to appeal or a review on procedural, substantive or other grounds did not exist.¹⁵¹ The only exception was the so-called Correction of Decisions, which only allowed for a correction of computational, clerical, typographical or other similar errors. The Governing Council approved these corrections and, for these limited cases, could be seen as the second instance decision-making body. In making its decisions on requests for correction, the Governing Council relied on the recommendations of the Executive Secretary, who in turn, relied on the recommendations of the relevant Panels of Commissioners and/or the division of the Secretariat's Legal Services Branch to whom the responsibility to review requests for correction was delegated.¹⁵²

5. The support structures (Secretariat)

The Secretariat of the UNCC played a key role in servicing the Governing Council and the Panels of Commissioners, providing administrative, technical, registry and legal support. The Secretariat also administered the Compensation Fund. It was headed by an Executive Secretary. The Executive Secretary was appointed by the UN Secretary General after consultation with the Governing Council.

Given the number of claims filed with the Commission and the legal, technical and administrative complexities involved in the processing, resolution and payment of the claims, the Secretariat had to be large in terms of financial and human resources. At the peak of the UNCC's operations, it had approximately 300 staff members and a budget of around USD 25 million per year. The staff that came from nearly 60 different countries consisted of lawyers, accountants, loss adjusters, statisticians, computer experts and administrative support staff. In addition to the Office of the Executive Secretary, the Secretariat comprised the Legal Services Branch which was made up of various claims sections and units; the Verification and Valuation Support Branch; the Registry; the Payment Section; the Executive Office dealing with general administration; the Information Systems Section; and the Governing Council Secretariat.

Given the large numbers of claims in categories "A" and "C", the relatively small fixed amount of compensation available for each claimant and the acceptance by Iraq of legal responsibility for damage arising directly from its invasion of Kuwait, the Commission determined early on that a detailed individual review of these urgent individual claims was neither warranted nor feasible. To deal with these claims in an efficient and fair manner, the Commission employed, in addition to individual review of claims where necessary, a variety of mass claims processing techniques, including computerized matching of claims against external verification information, sampling and, for loss elements in category "C", statistical modelling. While these techniques made use of established national and international experiences, the Secretariat developed these methods and techniques much further, and a number of subsequent claims mechanisms drew on the work of the UNCC in this area.

In categories "D", "E" and "F", the claims were more complex and sought large amounts of compensation and the Rules required that each of these claims be reviewed individually. Nevertheless, the similarity of loss types and issues across significant numbers of claims allowed the Commission to employ precedent-setting procedures. To the extent that claims in a particular category or sub-category possessed similar legal and factual characteristics, the Commission resolved such common issues and developed standard valuation methods during the review of the

first instalment of such claims. Once relevant legal and factual precedents had been established by decisions of the relevant Panels of Commissioners, these precedents were applied to subsequent instalments of claims, thus limiting the work of the Panels to the verification and valuation of the claims and the calculation of any allowable compensation.

The organization of the category “D”, “E” and “F” claims by the Secretariat into various sub-categories according to loss types and similarity of factual, legal and valuation factors was essential to this precedent-based procedure. For each sub-category of claims, the Commission established a Panel of Commissioners and a corresponding Secretariat support section of claims unit.

The processing of category “D”, “E”, and “F” claims followed a number of steps that were set out in the Rules and which were further elaborated in a work programme prepared by the Executive Secretary. This included the registration of each claim; where possible the grouping of claims according to loss types and similarity of factual, legal and valuation factors; and the checking of the claims for compliance with certain formal requirements. Claims undergoing formal review were included in quarterly reports of the Executive Secretary to the Governing Council issued pursuant to article 16 of the Rules (“Article 16 reports”). These reports listed the total number of claims covered and, for each country, the relevant category and total amount of compensation sought. The reports also indicated significant factual and legal issues raised by the claims. The reports were made available to the Governing Council, the Government of Iraq and to all Governments and international organizations that had filed claims with an invitation to submit any additional information and views they might have on the issues raised. That information was subsequently taken into consideration by the panels of Commissioners.

Before submitting the claim files to the Panels, the Secretariat, acting upon guidance from the Panels, could request a claimant to provide further information and documentation deemed necessary to complete the file. The claims were then submitted in “instalments” to the Panel of Commissioners appointed to review the group of claims in question. The main criteria for the selection of claims for inclusion in an instalment were: the date of filing of the claim; the compliance of the claim with the filing requirements of the Rules; the homogeneity of the instalment with respect to types of claims, losses claimed and issues raised; geographical balance among the countries represented in the instalment; manageability of the instalment during the review period available to the Panel; and the Commission’s consultants. In “unusually large or complex” claims, particularly where Iraq was a contracting party, the relevant Panel of Commissioners could decide to make claims files available to the Government of Iraq and to request additional written submissions

from Iraq. Both the claimants and Iraq could be invited by the Panels to participate in oral proceedings.

Upon completion of its review of a particular instalment of claims, each Panel of Commissioners submitted a written report through the Executive Secretary to the Governing Council on the claims received and, for each claim, the amount of compensation recommended. The amounts recommended by the Panels of Commissioners were subject to approval by the Governing Council.

6. The body responsible for enforcing or implementing decisions

The sole remedy that the UNCC awarded was the payment of compensation to successful claimants. These payments were carried out by the Claims Payment Section of the Secretariat. They were made for groups of claims to the respective governments who were responsible for paying out the amounts to the claimants.

7. External supervision/auditing on administrative or financial matters

The UNCC was a subsidiary organ of the UN Security Council and thus supervised by it. The Governing Council reported regularly to the UN Security Council on the type and progress of the Commission's work.

The Governing Council was responsible for approving the administrative budget of the Commission. The budgets were prepared and submitted to the Council by the Executive Secretary, and they were reviewed by the Council's Committee on Administrative Matters. From 1998, and in line with UN practice, the Commission worked with bi-annual budgets.

From 1997 onward, various aspects of the UNCC's management and operations, as well as its work on a number of claims instalments, were the subject of audits by the UN's Office of Internal Oversight Services (OIOS). The reports of the OIOS and the responses thereto were at the time available on the UNCC's website.

VI. GERMAN FORCED LABOUR COMPENSATION PROGRAMME

1. The organs/departments of the claims programme

The German Forced Labour Compensation Programme (GFLCP) had the following organs:

- the German Foundation “Remembrance, Responsibility and Future” (“German Foundation”);
- a programme secretariat at the International Organization for Migration (“GFLCP Secretariat”);
- a second instance decision-making body called the Appeals Body for Slave and Forced Labour Claims (“Appeals Body”).

2. Centralized/decentralized structures

The outreach to claimants and the collection of claims were decentralized. Twenty-two IOM field offices in countries where the majority of the claimants were expected to be found set up programme helplines, assisted claimants with the completion of claim forms and collected claims. After initial logging and registration of the claims by the IOM field offices, claims were sent to Geneva for centralized processing and decision-making.

3. The policy-making body

The GFLCP had two levels of policy-making. The first level was at the German Foundation whose Board of Trustees and Board of Directors were responsible for developing the policies for the overall compensation process and, as such, for achieving the tasks of the German Foundation.¹⁵³ In most cases, these policies concerned the work of all seven partner organizations that implemented the compensation programme on behalf of the German Foundation. A second level of policy-making existed at the GFLCP Secretariat at IOM in Geneva, Switzerland, where the Programme Directors established the policies for the day-to-day operations of the GFLCP process.

The Board of Trustees of the German Foundation was composed of 27 members reflecting most of the parties that had participated in the negotiations leading to the creation of the German Foundation.¹⁵⁴ The members of the Board of Trustees served four-year terms and the chairman was appointed by the German Chancellor. Key issues dealt with by the Board of Trustees included decisions on the eligibility of certain claimant groups, for example Italian Military Internees and Western European forced labourers, the determination of compensation awards for heirs of victims as well as the extension of the programme’s filing deadline.

The Board of Directors was appointed by the Board of Trustees¹⁵⁵ and was in charge of the every day work of the German Foundation, in particular the cooperation, communication and coordination with partner organizations to ensure consistency of the work of all seven partner organizations. During the first years of its existence,

the members were – although not always the same individuals – two Germans and an Israeli. After the completion of the large claims review and payment part of its operations, the Board of Directors was reduced to two members.

At the operational level of the GFLCP, the Programme Directors together with the respective team leaders of the GFLCP Secretariat decided policy questions concerning the day-to-day implementation of the claims programme within the borders of the German Foundation Act. Faced with an unexpected high number of claims, the GFLCP Secretariat was in particular tasked with the development of fair, efficient and transparent work processes in areas such as the determination of the eligibility, the assessment of evidence and the establishment of processing priorities for certain groups of claims.

4. The decision-making body or bodies

The GFLCP did not have one body that was solely responsible for the decision-making. Rather claims were decided in a two-tiered approach by the GFLCP Secretariat and the German Foundation.

Claims were reviewed and initial decisions were made by the GFLCP Secretariat at IOM. The staff in Geneva reviewed the substance of the claims, considered whether the information provided was sufficient to make a determination on the claim and made recommendations to the Foundation as appropriate.

Once the IOM staff had either recommended a claim for payment or for rejection, electronic lists of groups of claims were sent to the German Foundation for approval. Included in these electronic lists was the key personal data relating to the claimant such as name, date of birth, place of birth, etc. as well as the recommendation for the claim, the category in which it was recommended, or alternatively, the reason for its rejection. The German Foundation then reviewed samples of IOM's recommendations. Once a list had been approved by the German Foundation, the necessary funds for the groups of claims were transferred to IOM and the GFLCP Secretariat paid the compensation amounts to individual claimants.

In contrast to the two levels of decision-making on the first instance, appeal decisions were taken by the Appeals Body without an additional review by the German Foundation. The Appeals Body consisted of three independent members that had been nominated by IOM in consultation with both the German Foundation and a Steering Group of Victims' Associations. The members of the IOM Appeals Body had a legal background and had acquired considerable experience with compensation issues and sensitive historical matters in their various professional capacities.¹⁵⁶

As a non-permanent, quasi-judicial organ, the Appeals Body held several meetings per year at regular intervals at the IOM Headquarters in Geneva in order to review and decide the appeals that had been reviewed and prepared for decision by the GFLCP Secretariat. During those meetings, the Members concentrated mainly on precedent setting cases and a limited number of other individual appeals that were particularly difficult to resolve. Other routine appeals prepared by the GFLCP Secretariat were subject to spot-check by the Appeals Body during its sessions.

5. The support structures (Secretariat)

Since the GFLCP did not have an independent commission or panel to decide the claims, but the claims were approved in groups by the German Foundation, the role of the Secretariat in the decision-making process was larger than in most other mechanisms. In addition to the “typical” administrative and processing functions, the GFLCP Secretariat reviewed all the claims and made a decision on each of them which it then recommended to the German Foundation for its approval.

The core structure of the programme which was based at IOM’s Headquarters in Geneva comprised, in addition to the Claims Processing Team, the Registry, Hotline, Public Information, IT and Finance Teams. The registration of the claims was done in 22 of IOM’s field offices which took in claims from over 60 different countries. There, dedicated staff with the required language skills¹⁵⁷ entered the claims data into a database and performed an initial review of the claims to ensure that they met basic requirements and in particular also contained a signed waiver. Claims could also be submitted by post to the Registry in Geneva.

The substantive review of the claims was done centrally by the Forced Labour Team at Headquarters. Given the diverse background of the claims reviewers who between them had to be able to cover the 22 programme languages, it was particularly important to ensure consistency in the review and decision-making. This was done by the lawyers in the Team whose functions were primarily the training and supervision of the staff and the quality control of decision recommendations. Policy questions were decided by the Team Leader and, where necessary, by the Programme Directors.

The eligibility of the claims which were for fixed amounts in different categories was assessed through various methods. A number of claims could be verified based on the documents that the claimants had submitted. Over time, the GFLCP Secretariat established a collection of the different types of documents that were determined to be sufficient to support a claim, and this collection was distributed to and used by each claims reviewer. Claims that did not have sufficient evidence

were matched against a number of outside archives. This was done through specially developed computerized matching programmes. For claims that could not be matched their historic and factual context was examined, and a number of patterns could be established that allowed the use of presumptions in favour of the claimants. Finally, each of the claims that could not be verified by any of the above methods was reviewed individually.

The GFLCP Secretariat submitted claims it had reviewed and decided in groups (“instalments”) to the German Foundation for its approval. The Foundation performed spot-checks for each instalment on the premises of the programme, approved the instalment of claims, and transferred the necessary funds for their compensation to IOM. The Finance Team of the GFLCP Secretariat then arranged for the payment of the individual claims. This was done through cheques which were issued by a commercial bank based on electronic files from the Finance Team and which were mailed out by that bank to the beneficiaries world-wide.

For the review of appeals and the support of the Appeals Body, the GFLCP Secretariat had a separate Appeals Team. In exceptional instances in which a member of the Appeals Team had already been involved in the first instance decision, the recommendation provided by that staff member had to be endorsed by another member of the Appeals Team. All positive (reversal) decisions as well as certain types of rejection decisions were quality controlled and signed by the Appeals Team Leader.

6. The body responsible for enforcing or implementing decisions

The payment of compensation to individual beneficiaries was carried out by the GFLCP Secretariat’s Finance Team. Payments were made by cheque. Once the GFLCP Secretariat’s preliminary decisions on a group of claims had been approved by the German Foundation and the necessary funds had been transferred to IOM, the Finance Team sent an electronic payment order with detailed information for the group of claims to a bank that IOM had contracted to make the payments under GFLCP to individual claimants worldwide. The bank then mailed a cheque to each individual claimant.

7. External supervision/auditing on administrative or financial matters

There was substantial and regular supervision and auditing of the programme by the German Foundation.

At the inception of the programme, the Federal Administrative Office (“*Bundesverwaltungsamt*”) performed a management and feasibility study of the comprehensive workplan that the GFLCP Secretariat had developed for the programme, as a result of which this workplan was approved by the German Foundation.

The GFLCP Secretariat prepared detailed annual budgets that had to be reviewed and approved by the German Foundation. In addition, all financial aspects of the programme were audited on a bi-annual basis by a commercial auditing firm that the German Foundation had appointed for this purpose. Finally, the programme was subject to audits by IOM's external auditors.

VII. GFLCP PROPERTY LOSS PROGRAMME

1. The organs/departments of the claims programme

The Board of Trustees of the German Foundation “Remembrance, Responsibility and Future” (“German Foundation”), the main policy-making body of the German Forced Labour Compensation Programme, was also responsible for the policies for the GFLCP Property Loss Programme. Other organs of this programme were the Property Claims Commission that served as a second policy-making body as well as the first and second instance decision-making body, and the GFLCP Secretariat whose Property Team reviewed and processed claims and other support teams in areas such as financial administration, IT support and registry.

2. Centralized/Decentralized structures

The GFLCP Property Loss Programme had both centralized and decentralized structures.

In order to reach and serve as many potential claimants as possible, the Property Programme relied on the global structure of IOM Regional Offices. These offices were involved in the initial stages of the Property Programme's implementation, in particular in the outreach to claimants, the distribution of claim forms, assistance to claimants in filling out the forms and in collection of the claims.

All claim forms were then sent to Geneva where they were registered and processed centrally.

3. The policy-making body

The claims programme had two policy-making bodies: the German Foundation and the Property Claims Commission.

The Board of Trustees of the German Foundation took policy decisions concerning

the general framework of the Property Programme. These decisions concerned issues like programme languages, collaboration with partner organizations, payment systems and also initiating certain changes to the Foundation Act by the German Bundestag.

The Property Claims Commission decided all policy questions concerning the review of claims, in particular regarding the standard of evidence to be applied for the verification of claims and the valuation methodologies to be used for the calculation of compensation amounts for lost property. It also approved the format of the decisions on the claims and their notification. Many policy questions relating to these issues were decided as a result of the review of a statistical sample of about 1,000 claims at the early stages of the programme.

The Property Claims Commission had three members who were legal experts, one appointed by the United States of America, one by Germany, and the two together chose a Swiss national as chairman. The Commission met for sessions in Geneva every six to eight weeks.

4. The decision-making body or bodies

The Property Claims Commission served as the independent quasi-judicial decision-making body of the programme. It adopted decisions based on proposals that the GFLCP Secretariat prepared following the guidelines laid down in the Commission's decision index and the presumptions and the valuation matrix that the Commission had developed.

Before the total number of claims to be processed was known, it was foreseen that the Property Claims Commission would decide all claims based on an individual review of each claim and within one year of the filing deadline. However, when instead of the 5,000 claims expected over 35,000 claims were received in the seven languages of the programme, it became clear that an individual review by the three Commissioners of each claim would not allow for the resolution of the claims in an acceptable period of time. The Property Claims Commission therefore applied mass claims processing techniques and developed criteria which allowed a simplified, standardized and grouped review of all claims. The policy decisions of the Property Claims Commission were documented and incorporated into a decision index. This index which was constantly updated and shared with all staff working on the claims became an essential reference tool of the claims review process.

While it was initially not clear whether there would be an appeals process to another independent body, an amendment to the Foundation Act in 2002 established an internal reconsideration process in which requests for reconsideration by

claimants who disagreed with the initial decision on their claim by the Property Claims Commission were reviewed and decided by the Commission. The Property Claims Commission thus served both as the Property Programme's first and second instance decision-making body.

5. The support structures (Secretariat)

The GFLCP Secretariat, through a dedicated team, also served as the secretariat for the Property Programme.

The Property Team was responsible for the review and resolution of the claims, as well as the coordination of all matters necessary to arrive at and implement the decisions, in particular outreach to claimants and public information, IT support and the payment systems. At its peak, the Property Team comprised almost 40 staff members, mostly consisting of lawyers and claim assistants. For some time, it also worked with a full-time historian and with other researchers. This figure does not include support staff from other teams, such as IT, Finance, and Registry. Each staff member was required to speak English and at least one other programme language, i.e. Czech, German, Hebrew, Hungarian, Polish or Russian.

In reviewing the claims and preparing the decision proposals for the Property Claims Commission, the Secretariat was bound by the decision index and the valuation and other methodologies developed by the Commission. The Property Team consisted of the following five operative areas:

The internal administrative support was responsible for the registration of data, the scanning and tracking of claims and the handling and archiving of incoming and outgoing correspondence. Towards the end of the programme, the administrative support was also in charge of preparation of claims for final archiving and destruction of documents.

Claims reviewers carried out a thorough analysis of the cases, captured all claim data, drafted deficiency letters, and prepared a decision proposal for the Property Claims Commission on each case which included an evaluation of the compensable losses through a matrix of standardized values. Staff members who were native speakers of the programme's languages reviewed the claims in the language of submission.

The Property Team had a quality control unit that carried out a complete second round of review on each claim, ensuring that all data was captured correctly, all claimed losses had been included in the decision, the rules of the Property Claims Commission and its jurisprudence had been applied accurately, and the individual

decision including the amount of compensation was correct. The unit also ensured that claims were consistently decided across all language groups and problematic cases were reviewed by the whole unit. The unit identified issues to be decided by the Property Claims Commission, prepared the memoranda for submission to the Property Claims Commission and supported the Commission during its sessions.

In cooperation with the IT department, the Property Team developed a sophisticated computer application that generated individually reasoned decisions directly from the database which were as such printed and mailed to the claimants. The actual printing and mailing was done by an outside company, based on the electronic files generated by the programme's computer system.¹⁵⁸

Policy questions relating to legal and processing issues were dealt with by the Team Leader, and where necessary, by the Programme Director. These related, for instance, to research on valuation questions, specifications for the database, prioritization of work, collaboration with other teams and support to the Property Claims Commission.

6. The body responsible for enforcing or implementing decisions

The payment of compensation to individual beneficiaries was carried out by the GFLCP Secretariat's Finance Team. Payments were made by cheque. Once the GFLCP Secretariat's preliminary decisions on a group of claims had been approved by the German Foundation and the necessary funds had been transferred to IOM, the Finance Team sent an electronic payment order with detailed information for the group of claims to a bank that IOM had contracted to make the payments under GFLCP to individual claimants worldwide. The bank then mailed a cheque (or in the case of a higher amount made a bank transfer) to the individual claimant concerned.

7. External supervision/auditing on administrative or financial matters

The "Contract between the Foundation 'Remembrance, Responsibility and Future' and the International Organization for Migration concerning property losses and the procedure for the compensation of other personal injuries" determined that the Property Claims Commission was independent in its decision making and in so far not subject to supervision.¹⁵⁹ The Commission provided, however, reports on its activities to the Board of Directors and the Board of Trustees of the German Foundation.

The GFLCP Secretariat prepared detailed annual budgets that had to be reviewed and approved by the German Foundation. In addition, all financial aspects of the

programme were audited on a bi-annual basis by a commercial auditing firm that the German Foundation had appointed for this purpose. Finally, the programme was subject to audits by IOM's external auditors.

VIII. CLAIMS RESOLUTION TRIBUNAL FOR DORMANT ACCOUNTS IN SWITZERLAND

1. The organs/departments of the claims programme

The arbitral process at the Claims Resolution Tribunal ("CRT") was shaped and supported the following bodies:

- The Independent Claims Resolution Foundation which was governed by a Board of Trustees;
- The members of the CRT, a group of 17 arbitrators, who decided the claims acting either as Sole Arbitrator or as Claims Panel composed of three arbitrators;
- A Secretariat set up and housed by a Swiss law firm with international arbitration and banking practice that was managed by a full time Secretary General.

2. Centralized/decentralized structures

The claims resolution process was centralized at the offices of the CRT's Secretariat in Zurich, Switzerland. There were two exceptions to the generally centralized structure:

First, the collection of claims was decentralized. Claims could be filed at five contact offices worldwide. As the contact offices had to be open as soon as the lists of dormant accounts had been published, i.e. before the CRT Secretariat had been established, this task was outsourced to an international accounting and consultant firm who opened contact offices in Basel (Switzerland), Budapest (Hungary), New York (U.S.A.), Sydney (Australia) and Tel Aviv (Israel).

Second, for a certain period of time, the Secretariat also had an office in Geneva, Switzerland. While this initially facilitated the resolution of French language claims by Sole Arbitrators, as two of the French speaking arbitrators lived in Geneva, the coordination between the two offices turned out to be difficult for arbitrations with a number of claims joined together and those to be decided by a Claims Panel. The Geneva office was thus closed in mid 2000 and staff and pending cases were moved to Zurich.

3. The policy-making body

In order to sponsor the claims resolution process, the Independent Committee of Eminent Persons (“ICEP”) endorsed the establishment of an Independent Claims Resolution Foundation (“ICRF”) that was governed by a three member Board of Trustees.¹⁶⁰ The Foundation whose seat was in Zurich was to supervise the Tribunal and its Board of Trustees served as the main policy-making body of the CRT.

The Board of Trustees promulgated the Rules of Procedure for the CRT, selected the Tribunal’s chairman and appointed the arbitrators who were judicially independent and had international arbitration experience. Based on information received from ICEP that was still investigating the treatment of accounts of victims of Nazi persecution in Swiss banks, the Board of Trustees also adopted the Rules on Interest and Fees to determine the adjustment of account balances for bank fees and charges as well as for interest and investment returns.

In addition to the Board of Trustees, the Members of the Tribunal had a limited policy-making authority. According to Article 42, they had the right to enact guidelines and procedures, consistent with the Rules of Procedure, as required to fill gaps in the Rules and to deal with unforeseen circumstances. To establish a common practice and policy, the arbitrators held two plenary meetings in Zurich. Issues discussed and policies determined at these meetings included the determination of the Tribunal’s scope of jurisdiction, the determination of criteria for approval of settlement proposals, matters regarding multiparty proceedings and joinder of claims, and conflict-of-interest matters.¹⁶¹ The arbitrators also adopted Internal Rules regarding the proceedings and internal organization of the Tribunal in order to secure the uniform handling of claims.¹⁶²

Furthermore, Arbitrator Committees were established which were consulted whenever matters of general importance arose, for which the Tribunal needed to establish a uniform policy. The six Arbitrator Committees were the Committee on Rules, Policies and Templates dealing with the interpretation of the CRT Rules of Procedure, the Committee on Finances and Administration in charge of administrative matters, the Committee on Applicable Laws determining conflict of law issues, the Committee on Interest and Fees dealing with the implementation of Rules on Interest and Fees, the Information Committee overseeing the Tribunal’s website and contact to the press, and the Committee on Conflict of Interest establishing rules and procedures to avoid conflicts of interest of the Tribunal’s members. Each Committee consisted of three or four Arbitrators.

Finally, the Secretariat established a Policy Committee as a forum to discuss and determine procedural matters of general importance for the day-to-day operations of the Tribunal, such as the organization of the workflow and the prioritization of

claims. The Policy Committee was composed of the Vice-Chairman, the Secretariat's management and some of the senior staff members (in particular the team leaders of the legal review teams). The Committee met at least once a week and issued minutes recording the points of discussion, the Committee's decisions and the instruction of the staff. These minutes were sent to the Arbitrators and distributed to the staff. The weekly meetings of the Policy Committee also helped to identify issues that needed to be referred to the relevant Arbitrator Committees or the Board of Trustees for further clarification.

4. The decision-making body or bodies

The CRT's Chairman, Vice-Chairman and 15 arbitrators, every one of whom was appointed by the Board of Trustees, rendered all decisions of the CRT. They acted as Sole Arbitrators or as a Claims Panel composed of three arbitrators.¹⁶³ Based on the language requirement of a case and the availability of arbitrators, the Chairman appointed an arbitrator to a specific case as Sole Arbitrator or as a member of a Claims Panel.

The claims resolution process was divided into two stages, the initial screening stage and, for those claims that had passed the initial screening test, the actual arbitration stage.

The initial screening procedure served as a filter for unmeritorious claims, but also as a review of the Swiss Banks' determination as to whether its identity and information about the account, including the value of the account, should be disclosed to the claimant.¹⁶⁴ Due to Swiss bank secrecy laws, this information had not been included with the publication of the dormant account. All claims received by the contact offices were first reviewed by the bank holding the claimed account. The bank decided whether it considered the information submitted by the claimant sufficient to warrant disclosure. If the bank decided not to disclose the information, this decision was reviewed by a Sole Arbitrator in the initial screening procedure.¹⁶⁵ If the Sole Arbitrator confirmed the bank's decision, the claimant could resubmit his claim for decision by a Claims Panel within thirty days upon receipt of the Sole Arbitrator's decision.¹⁶⁶

For the arbitration stage, the CRT Rules of Procedure foresaw different proceedings and decision types for the resolution of claims, depending on the complexity of a case and the reported value of the dormant account claimed.

Straightforward and uncomplicated claims could be decided under a fast track procedure by a Sole Arbitrator,¹⁶⁷ for example in cases in which the bank had recognized the claimant's entitlement and offered a payment to the claimant. These

offers were reviewed by the Tribunal, and approved, if deemed to be fair. Only in a small number of cases, fast track claims were either dismissed because the Claimant was apparently not entitled, or closed because the Claimant withdrew the claim.

However, the Rule of Procedure stipulated that the claim should be referred to a Claims Panel for decision in the ordinary procedure, if the Sole Arbitrator had reasons to believe that the named account holder may have acted as an intermediary for a victim of Nazi persecution, or that the claimant may have submitted a fraudulent claim, or that the assets deposited in the account may have been looted from victims of Nazi persecution.¹⁶⁸

Sole Arbitrators also decided all claims that were not approved in the fast track procedure but related to dormant accounts with a current balance of 3,000 Swiss francs or less.¹⁶⁹

All other claims were decided in the ordinary procedure by a Claims Panel which involved a full review of the claims and all available evidence in an expedited procedure.¹⁷⁰

5. The support structures (Secretariat)

Pursuant to Article 30 of the CRT Rules of Procedure, the Board of Trustees appointed a Swiss law firm to set up the Secretariat of the Tribunal that was managed by a full time Secretary General. The Secretariat's staff reached at peak time a level of approximately 55 employees. It consisted of legal, technical and administrative staff from different countries.¹⁷¹

For all stages of the claims resolution process, i.e. the initial screening, resubmission requests and arbitration, the arbitrators were supported by the Secretariat. The Secretariat was in charge of assisting the arbitrators in the decision-making process, of coordinating their workflow and of adopting measures warranting a consistent judicial practice of the CRT.

To support the arbitrators in the review of claims, the Secretariat established legal teams, consisting of four to seven lawyers, plus paralegals and administrative personnel. Each team was led by an experienced lawyer and focused on cases in one or more of the Tribunal's five working languages, English, German, Hebrew, Italian and Spanish. Since a published dormant account was often claimed by several Claimants with different languages, close cooperation between the legal teams was required. A lawyer from the legal review teams conducted the initial legal review of the claim and drafted a decision or, at the arbitration stage, a procedural order, which served as the basis for the decisions and orders of the Sole Arbitrator or Claims Panel appointed to the case.

At the initial screening stage, which consisted of two instances, it was ensured that the lawyer who had worked on the claim in the initial screening process would not work on the resubmission request.

The Secretariat was also assigned to assist the Chairman in the performance of his functions, to attend and keep minutes of all hearings of the Sole Arbitrators and Claims Panels and of all meetings of the CRT with external actors.¹⁷²

6. The body responsible for enforcing or implementing decisions

An enforcement body or mechanism was not needed for the CRT. Decisions that awarded the claimed account to a claimant were implemented by the respondent Swiss Bank holding the account who paid the amount contained in the account directly to the claimant.

The CRT Secretariat assisted in the payment process, however, whenever it was approached by claimants or the banks, in particular in cases where the communication between claimants and banks was difficult due to the lack of a common language.

7. External supervision/auditing on administrative or financial matters

The Independent Claims Resolution Foundation supervised the CRT together with the Independent Committee of Eminent Persons.

The Chairman of the CRT submitted to the Board of Trustees a monthly written report on the activities and the conduct of the Claims Resolution Tribunal. He also prepared a quarterly financial statement on the cost and expenses of the CRT and submitted a quarterly budget to the Board of Trustees.

IX. 9/11 COMPENSATION FUND

1. The organs/departments of the claims programme

The 9/11 Compensation Fund was implemented by a Special Master who was the sole organ of this programme. Attorneys in the Special Master's Office assisted the Special Master in the policy- and decision-making process. The Special Master's Office was supported in different areas of the programme by an external consulting firm and by lawyers and administrative staff from different law firms and government offices.

There was no separate organ for appeals as the rules did not foresee the possibility for an independent second instance review. Claimants could request a review of their decision, however, and this review was also carried out by the Special Master.

2. Centralized/decentralized structures

The programme had a centralized structure. The Special Master's Office was based and his attorneys worked in Washington, D.C., United States of America. However, the Special Master also held meetings in other locations to provide updates on the progress of the Fund's work, to answer questions and to provide case-specific assistance to claimants.

In addition, at various points during its operation, the 9/11 Compensation Fund established claim assistance offices in 13 locations throughout the United States of America and in London, England. The staff of these offices provided information and assistance to claimants and their families in the claims submission process.

3. The policy-making body

Complementing the provisions on the 9/11 Compensation Fund contained in the Air Transportation Safety and System Stabilization Act as well as the Final Regulations issued at the outset of the programme, the Special Master set the policies for the programme. He was responsible for the administration of the Fund and the promulgation of all necessary rules and regulations.

In the policy-making, the Special Master was assisted by the senior attorneys in his Office who developed criteria and procedures to administer the claims.¹⁷³

4. The decision-making body or bodies

The Special Master, assisted by a dedicated group of attorneys working directly with him, was responsible for making the decisions on the claims. The attorneys reviewed each claim and notified claimants of any additional information needed to process the claim. Once sufficient information was received to make an initial evaluation of the claim, the Special Master determined whether the claimant was eligible to receive compensation from the Fund and the amount of compensation to which the claimant would be entitled.

The Special Master had to make a final determination on every claim within 120 days after the filing of the claim and, if an award was made, to authorize payment within 20 days thereafter. Once the Special Master made an award determination, the claimant was notified in writing. The claimant then had 21 days to either accept

the award determination or request a hearing and a review of the decision before the Special Master. The process also foresaw the opportunity to request a hearing before the presumed award had been calculated.¹⁷⁴

The determinations of the Special Master were final and not reviewable by any other court.¹⁷⁵

In November 2001, *Kenneth R. Feinberg* was appointed as Special Master by the US Attorney General. The number of attorneys assisting the Special Master varied throughout the lifespan of the programme, but went up to 29 during the last six months at the programme's peak. They included attorneys from the Feinberg Group, the Civil Division of the Department of Justice, Assistant United States Attorneys, and one attorney from the Department of Agriculture.

5. The support structures (Secretariat)

A comprehensive support system was necessary to support the attorneys responsible for the decision-making. The Special Master appointed a consultancy firm to manage the administrative and operational aspects of the programme. The consultancy firm operated a claims processing center for the intake and registration of claims, provided claims assistance services in a number of claims assistance sites and developed the IT system to support the claims processing. The consultancy firm began the project with 129 persons and increased staff to 474 at the peak of the 9/11 Compensation Fund's activities.

It became apparent early in the Programme that the Special Master's attorneys would not be able to conduct all the hearings. Therefore, the Department of Justice designated eleven Assistant United States Attorneys from offices throughout the country as hearing officers. In addition, nine federal agencies volunteered 47 administrative law judges. Finally, four attorneys from the private sector served as hearing officers on a pro bono basis. Hearing officers were trained by attorneys from the Special Master's Office. After each hearing the officers submitted a report to the Special Master's Office where every claim was reviewed by a senior attorney from the Office.

6. The body responsible for enforcing or implementing decisions

Compensation payments from the Fund were made directly by the United States Government, which in turn obtained the right of subrogation. As a result, no separate body needed to be created within the programme for the implementation of decisions.

7. External supervision/auditing on administrative or financial matters

The Act did not contain special rules concerning external supervision or auditing on administrative or financial matters. Due to the fact that it was a federal programme, the usual audit provisions applicable to government bodies according to United States Federal Law were also applicable to the programme.

X. ANNAN PLAN FOR CYPRUS

1. The organs/departments of the claims programme

The Comprehensive Settlement of the Cyprus Problem (“Annan Plan”) provided in its Annex VII for the establishment of a Cyprus Property Board responsible for the resolution of property issues.¹⁷⁶ The Cyprus Property Board was to be composed of the Governing Council and three separate divisions, each charged with special functions: The Claims Bureau, responsible for resolving property claims; the Housing Bureau dealing with arrangements for current users of claimed properties and for persons affected by the property regime; and the Compensation Bureau, dealing with compensation issues and the management of affected property.

In addition to the Claims Bureau at the Cyprus Property Board, the Annan Plan also provided for a second instance decision-making body, namely the Property Court.

2. Centralized/decentralized structures

The Annan Plan foresaw that most aspects of the claims programme were to be centralized within the organs of the Cyprus Property Board. Decision enforcement, however, was to be decentralized.

3. The policy-making body

The Governing Council at the Cyprus Property Board was to be the policy-making body of the programme,¹⁷⁷ composed of seven members – two members from each constituent state and three international members who could not be citizens of Cyprus, Greece, Turkey or the United Kingdom. Although Governing Council membership was to be part-time, members were not to hold any other federal or constituent state office during their membership of the Governing Council. Unlike the remuneration provisions for the other Property Board divisions, the Governing Council remuneration provision explicitly stated that the salary of its members “shall be on a pro-rata basis based on time actually served”.

To ensure continuity of the Governing Council, it was foreseen that two members were to be appointed for an initial term of five years, two for an initial term of four years and three for an initial term of three years. All subsequent appointments were to be for three-year terms. At the end of each term, each member was to be replaced or to be reappointed for a further three-year term.

The Annan Plan stipulated that the Governing Council should have supervisory and budgetary powers, the responsibility to recruit the senior management staff of the Property Board, and the power to conclude the work of the Property Board before the termination of its ten-year mandate or to ask the Supreme Court to extend the mandate of the Property Board. While giving the Governing Council the budgetary powers over the Claims Bureau, the Annan Plan specifically excluded the Governing Council from any authority over the decision-making process of the Claims Panel.

The Governing Council's supervisory powers stemmed from its appointment and supervision of the Director of the Cyprus Property Board. The Director, in turn, was to coordinate, administer and manage the overall work of the Property Board. In consultation with the Governing Council, the Director was to appoint and supervise the three deputy directors to administer and manage the Claims Bureau, the Cyprus Housing Bureau and the Compensation Bureau respectively. The Director and the deputy directors could employ staff in line with the overall responsibility of the office, including international experts as needed.

4. The decision-making body or bodies

The body responsible for deciding property claims was the Claims Bureau.¹⁷⁸ The Claims Bureau was to be headed by a Panel of seven members ("Claims Panel"). Members should be legally qualified, of high moral and professional standing and were to be prohibited from holding any other federal or constituent state office during their membership in the Claims Bureau.

The members of the Claims Panel should be appointed by consensus of the Governing Council within sixty days of entry into force of the Foundation Agreement. They were to elect from among them a presiding member, who was to perform this role for a period of three years or until the end of his or her term, whichever was the sooner.

Continuity of the Claims Panel was to be assured in a way similar to the one adopted for the Governing Council, i.e. two members should be initially appointed for a five year term, two for four years and three for three years. Any subsequent appointment was to be for three years.

The staffing provisions for the Claims Bureau attempted to create a demographic balance with limited presence of international staff, with two members of the Claims Panel coming from each constituent state and three international members who could not be nationals of Cyprus, Greece, Turkey or the United Kingdom.

Annex VII of the Annan Plan also stipulated that a Property Court was to be the second instance decision-making body of the claims programme. The Property Court was to be a permanent body composed of an uneven number of judges which had to include an equal number of judges from each of the constituent states and no less than three non-Cypriot judges who again could not be citizens of Cyprus, Greece, Turkey or the United Kingdom.

5. The support structures (Secretariat)

The support structure behind the Cyprus Property Board, i.e. the Governing Council and its divisions, was not described in any detail in the Annan Plan. The only provisions in the Annan Plan with regard to a Secretariat were certain staffing principles to be applied.¹⁷⁹

For the staff of the Claims Bureau (apart from the seven member Claims Panel), for example, the Annan plan directed the Director and deputy director of the Claims Bureau to employ persons from each constituent state in similar numbers. It also provided the flexibility to hire international experts as needed.

Similarly, the staffing provisions for the Housing Bureau attempted to create the same demographic balance and limited presence of international staff as was stipulated for the Claims Bureau. The Housing Bureau was also to encompass the Cyprus Mortgage Bureau responsible for the administration of a preferential loan scheme designed to facilitate the purchase of property by dispossessed owners, current users or owners of significant improvements.

Unlike for the staffing of the Claims Bureau and Housing Bureau, the Annan Plan did not require the same demographic balance in staffing for the Compensation Bureau. Instead, staffing was to be guided by the objective to maximize the shareholder value for the property under its management.

6. The body responsible for enforcing or implementing decisions

While the Cyprus Property Board was to issue decisions, it was not responsible for their enforcement. Instead, the Annan Plan conferred upon the Cyprus Property Board the power to issue legally binding orders to competent federal

or constituent state authorities in order to implement its decisions.¹⁸⁰ In turn, it was the responsibility of the courts and administrative bodies of the federal and constituent states to take the necessary steps to implement and enforce the decisions of the Cyprus Property Board. Furthermore, both federal and state governments were to enact legislation necessary to ensure the enforcement of the Property Board decisions. If they failed to do so within one year after the signing of the Foundation Agreement, the Annan Plan endowed the Property Board with the power to issue legally binding enforcement rules in either the federal or state jurisdictions.

7. External supervision/auditing on administrative or financial matters

The Annan Plan contained regulations regarding external financial supervision of the claims programme. The Property Board was to submit its running costs and other accounts to an independent audit each financial year, and the audit report was to be publicly available.¹⁸¹ The Cyprus Compensation Board was to be subject to financial auditing according to international standards for property companies, performed by a professional accounting firm of international repute.¹⁸²

While a solid funding arrangement is crucial to the success of any restitution and compensation programme, the information in this section shows that ensuring adequate funding is one of the central difficulties most claims programmes are confronted with.

Two areas have to be distinguished when looking at programme funding: The financial means available to cover the operational costs of the programme's implementation and administration, and, in case of compensation programmes, the funds needed for compensation payments to eligible claimants.

The funding structures of past and present claims programmes differ substantially, ranging from a finite sum that is known and available at the outset of the claims programme to an open arrangement where the financial needs are assessed at certain intervals (as the programme is being implemented) and funding has to be sought accordingly. Both options have advantages and disadvantages.

While an open funding source certainly allows for more flexibility in responding to unforeseen needs as they evolve throughout the programme, it is rare that a mechanism is in place providing for an "automatic" replenishment. Rather, the need to secure funding on a regular basis can place a heavy burden on the programme and its management. It is hard to measure in practice how much time and energy of programme staff is spent trying to secure new funds or to accommodate funding gaps by restructuring the programme and deciding about priorities, as has been repeatedly necessary, for example, in the Bosnia and Kosovo programmes. While these activities do not or only partially appear in any budget as out-of-pocket costs, the time and energy spent can be very costly. Even more important, staff turn-over is high because of short-term contracts and general uncertainty about contract extensions which is disruptive for the claims resolution process.

The property programmes both in Bosnia and Kosovo also illustrate that the option of open funding bears the risk of donor fatigue. While governments are usually willing to pledge money during the early stages of a programme, especially immediately after a conflict, the focus of the international community tends to move on quickly to other "emergencies", making it more and more difficult to motivate donors and to maintain the required level of funding.

While a finite sum known and available at the outset of the programme avoids future fundraising needs, its biggest disadvantage is illustrated by the German Forced Labour Compensation Programme and the GFLCP Property Loss Programme: the available funds were decided at a time when the number of claims the programme had to resolve was not known. While there were estimates regarding the number of compensable claims that could be expected, these did not account for the large number of claims that had no merits but still had to be registered, processed, reviewed and decided (both at first and second instance) as well as notified, thus drawing down funds available for payment of compensation.

Another aspect of funding structures that concerns compensation programmes is the question whether operational costs as well as compensation payments have to be paid from the same “pot” of money. Where that is the case, a careful balance is required between investing into and improving the efficiency of the claims resolution process (additional staff, language capabilities, IT support) on the one hand, and guarding against a depletion of the funds required for the compensation awards through high operational costs on the other. The fact that every amount spent on the operational budget means less money for the beneficiaries can put a strain on the programme management that is usually under high pressure to deliver results quickly. Also, such an arrangement may result in the need to apply pro-rata deductions or to delay payments until all claims have been resolved which will be extremely frustrating for claimants.

Experience has shown that programme budget estimates at the political level tend to be based on the number of expected eligible claimants and to ignore the costs for the processing of claims that have no merits. However, budgets need to take into account the costs associated with the collection and processing of claims resulting in negative decisions, as well. This is particularly important in programmes with a finite sum available for both operational costs and compensation awards, as the processing of negative claims will be financed at the expense of those who should be compensated.

To overcome funding challenges, certain claims programmes have foreseen income generating schemes, such as the renting out of property temporarily placed under the administration of the programme. However, the additional administrative tasks and logistical challenges posed by such schemes to finance programme activities, as foreseen for Bosnia and Kosovo and considered for Cyprus and Iraq, should not be underestimated. Experience in both Bosnia and Kosovo has shown that it cannot be seen as a reliable source of income and the funding of the programme should not be made dependent upon them.

I. CRPC IN BOSNIA AND HERZEGOVINA

1. The funding of the claims programme

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska agreed in Article 10 of Annex VII of the Dayton Peace Agreement to equally determine and bear the salaries and expenses of the Commission and its staff. As such, these entities were formally responsible for the financing of the CRPC. In practice, however, the Federation of Bosnia and Herzegovina and the Republika Srpska made no financial contribution to the CRPC's budget and the funding received by the Republic of Bosnia and Herzegovina was nominal.

Instead, the Peace Implementation Council assessed the financial needs of the CRPC each year and established how much each government should contribute.¹⁸³ Despite this determination by the Peace Implementation Council, the CRPC had to conclude funding agreements with individual governments and to negotiate voluntary contributions to cover its costs.¹⁸⁴ The CRPC management fought a yearly battle for donor contributions and still only received about 80 per cent of what the Peace Implementation Council had deemed necessary for the CRPC operations.

2. Information about compensation payments

The Dayton Peace Agreement foresaw the establishment of a compensation fund. Article 11 of Annex VII stipulated that claimants could choose between “return of the property or [...] just compensation in lieu of return”. Article 14 of Annex VII defined the details of a compensation fund.

These provisions indicate that it had initially been foreseen to cover compensation payments and administrative costs from different funds. While administrative costs were to be paid from an operational budget, Article 14 of Annex VII laid down that the compensation fund should be replenished through the purchase, sale, lease and mortgage of real property which is the subject of claims before the Commission or through direct payments from the Parties or from contributions by States or international or non-governmental organizations.

However, the compensation fund never became operational. The income-generating compensation scheme could never be set up due to a lack of funds to cover its operational costs. Furthermore, no direct voluntary contributions were received from the international donor community. It was generally feared that the option of compensation instead of a restitution of the property rights would hinder

the return of internally displaced persons and refugees to their pre-war places of residence and as such would undermine the fundamental goal of the Dayton Peace Agreement, i.e. undo the ethnic cleansing and a return to a multi-ethnic society.

II. HPD/HPCC IN KOSOVO

1. The funding of the claims programme

The Housing and Property Directorate and the Housing and Property Claims Commission were relying entirely on funds from international donors. The funding organizations and countries have changed throughout the project period and there has not been a stable supply of funds. Main supporters of the property restitution process were Canada, Finland, Germany, Ireland, Netherlands, Norway, Switzerland, United States, the European Union, OSCE, KFOR and UNMIK.¹⁸⁵

2. Information about compensation payments

The programme's main purpose was to restitute property rights in Kosovo. Accordingly, the payment of compensation for rights lost was not foreseen as a primary remedy of the programme. While Section 22.7 of UNMIK Regulation 2000/60 that listed the type of decisions the Commission could make under the programme contained a clause giving the Commission the authority to make "any other decision or order necessary to give effect to the present regulation", this clause has not been interpreted by the HPCC to include decisions awarding financial compensation.¹⁸⁶

The payment of compensation was, however, foreseen for a specific situation in the context of rights to socially owned apartments. Section 4 of UNMIK Regulation 2000/60 provided for the creation of a trust fund that was to pay compensation to so called First Owners who lost their ownership right to a property in the course of the restitution process. The trust fund was to be fed by payments from claimants who lost a right to a socially owned apartment which was cancelled as a result of discrimination and who now wished to purchase the apartment.

In case a claimant could not or did not wish to purchase a socially owned apartment he or she had a right in, the claimant was to be compensated from funds to be allocated in the Kosovo Consolidated Budget or any fund set up for this purpose under the regulation.

The HPCC has rendered approximately 50 decisions that award compensation pursuant to Section 4 of UNMIK Regulation 2000/60. However, the plans to allocate

funds from the Kosovo Consolidated Budget or any other funds set up pursuant to Section 4.5 have so far not materialized and further implementation of these decisions, i.e. transfer of ownership and payments, must remain on hold until relevant funds are established.

III. CRRPD IN IRAQ

1. The funding of the claims programme

According to Article 3 II of the CRRPD Statute, the Government of Iraq shall ensure that the Commission has all necessary funds to facilitate the implementation of its administrative duties and the performance of its function. As a result, the Iraqi Ministry of Finance is formally responsible for the funding of the CRRPD and administers its budget.

During the start-up phase, the programme was funded by the US Government, in particular the Bureau of Population, Refugees and Migration (“PRM”) of the US Department of State. However, the claims programme is now entirely funded by the Iraqi Government.

2. Information about compensation payments

Article 6 of the CRRPD Statute gives the original owner the right to choose between the option to have the title to the property returned back to his name and the option of compensation for the value of the property. The party that (first) sold the property after confiscation or seizure is liable to pay compensation for the value of the property. In most cases, this will be the Iraqi Government through the Ministry of Finance.

By May 2008, the CRRPD had awarded compensation to over 1,800 beneficiaries amounting to almost USD 150 million.

IV. SOUTH AFRICA PROGRAMME

1. The funding of the claims programme

The programme was largely funded by the South African Government relying on the Government’s usual revenues. However, the Government has benefited from

assistance from various international donors, including Belgium and the United States.

2. Information about compensation payments

Compensation awards depended inter alia on the type of right which had been lost, e.g., tenancy or sharecropper right as opposed to ownership.

Policies regarding compensation underwent numerous changes as more claims were settled, particularly regarding the methodology for determining the monetary value of claims. The Commission initially applied the “under-compensation” methodology whereby historical evaluations determined the value of the property at the time of dispossession which were then adjusted to today’s value. As this methodology proved to be too time consuming, different models were developed in different regions and for different types of claims.¹⁸⁷

V. UNITED NATIONS COMPENSATION COMMISSION

1. The funding of the claims programme

While the United Nations Compensation Commission at first relied on reimbursable voluntary contributions from governments and on proceeds of Iraqi oil that was sold after the invasion of Kuwait that had been frozen by various governments, the regular financing of the Commission was made possible through proceeds of the “oil-for-food” mechanism established by Security Council Resolution 986 (1995) and subsequent resolutions.¹⁸⁸ The revenue derived from Iraq’s oil sales authorized by Resolution 986 (1995), which came into effect in December 1996, 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 coming into the Compensation Fund each month depended on the quantity of oil sold by Iraq and the price of oil.

Over time, ceilings were imposed on total revenues that Iraq was authorized to generate through the sale of oil. Funds to pay the awards of compensation are drawn from the United Nations Compensation Fund which initially received 30 per cent of the revenue generated from the export of Iraqi petroleum and petroleum products. This percentage was subsequently reduced and currently stands at 5 per cent.¹⁸⁹ With the end of the “oil-for-food” programme a Development Fund for Iraq was established, which holds the proceeds of petroleum export sales from Iraq as

well as the remaining balances from the UN Oil-for-Food Programme and other frozen Iraqi funds.

The expenses of the Commission, including those of the Governing Council, the Commissioners and the Secretariat were paid from the Compensation Fund. The overall administrative costs of the UNCC, while high in absolute figures, were comparatively low in relation to the number of claims as a result of the application of mass claims processing techniques.¹⁹⁰ The UNCC's administrative expenditure from 1991 to May 2005 totaled USD 362.6 million which corresponds to 0.69 per cent of the amount of compensation awarded.¹⁹¹

2. Information about compensation payments

Soon after the start of the programme, it became clear that the value of approved awards would exceed the resources available in the Compensation Fund for the foreseeable time. As a result, the Governing Council devised a mechanism for the allocation of funds to successful claimants that gave priority to the smaller claims filed by individuals¹⁹² in categories "A", "B" and "C", i.e. departure claims, personal injury claims and claims for damages of up to USD 100,000, over the claims by corporations and governments.

The Governing Council determined that payments for the larger claims by corporations and governments would commence only once each successful claimant in categories "A", "B" and "C" had been paid an initial amount up to USD 2,500. Accordingly, the first payment phase involved initial payments of USD 2,500 to each successful individual claimant in categories "A", "B" and "C" and amounted to a total of approximately USD 3.25 billion to almost 1.5 million successful individual claimants in these categories. During this first payment phase, the claims for personal injury in category "B" were paid in full.

In its Decision 73 of 25 June 1999,¹⁹³ the Governing Council adopted the mechanism for the second phase of payments. It determined that priority would continue to be provided to individual claimants, while meaningful compensation would also be provided to claimants in categories "D", "E" and "F". In accordance with this decision, payments of up to USD 100,000 were made available to approved claims in all these categories in two rounds of payment comprising amounts of USD 25,000 and USD 75,000, respectively. A total of over USD 4.8 billion was made available to over 870,000 claimants in all categories (except B which had been fully paid in the first phase).

In its decision 100 in 2002, the Governing Council adopted the mechanism for the third phase of payments. It determined that successful claimants in categories

“D”, “E” and “F” would receive an initial amount of up to USD 5 million, in the order in which the recommended amounts had been approved. Subsequent payments of USD 10 million would be made available for distribution to successful claimants in these categories. By its decision 197 in 2003 (extended by its decision 227 in 2004), the Governing Council decided to suspend the third phase payment mechanism and from then on to make an amount of USD 200 million available for payments every three months to successful claimants in categories “D”, “E” and “F”. Such payments were to be made in rounds of USD 100,000 to each claimant in the order in which the claims had been approved until the available fund would be exhausted.¹⁹⁴

The UNCC did not pay claimants directly but made funds available to the Governments that originally submitted the claims and Governments were then responsible for the distribution of compensation to successful claimants. In the absence of a Government willing or able to undertake this task, the claims of certain individuals (mainly Palestinians) were paid through international organizations. Governments and international organizations were required to make the payments to successful claimants within six months of receiving funds and to report on payments made to claimants not later than three months thereafter.¹⁹⁵

Pursuant to Governing Council Decision 48, money that was not distributed within twelve months (for example where a Government was unable to locate a claimant within twelve months of the receipt of award funds) had to be returned to the Commission.¹⁹⁶ Where Governments and international organizations failed to report on the distribution of funds or failed to return undistributed funds on time, further payments by the Commission to such Governments and international organizations were suspended.

Under Governing Council Decision 18, Governments and international organizations could offset their costs of the handling of claims by deducting a fee from payments made to claimants. In the case of awards in categories “A”, “B” and “C”, this processing fee should not exceed 1.5 per cent, in the case of awards in categories “D”, “E” and “F”, the processing fee should not exceed 3 per cent. The processing fee was to be commensurate with the actual expenditure incurred and explanations were required for any deductions made for such fees.

VI. GERMAN FORCED LABOUR COMPENSATION PROGRAMME

1. The funding of the claims programme

According to Section 3 Paragraph 2 of the Foundation Act, the German

Foundation was endowed with a capital fund consisting of five billion Deutschmarks (EUR 2.56 billion) that companies that were joined together in the Foundation Initiative of German Industry had agreed to make available, including the payments that German insurance companies had provided to the International Commission on Holocaust Era Insurance Claims or would provide in the future; and of five billion Deutschmarks (EUR 2.56 billion) that the German Federal Government made available in the year 2000. The contribution of the Federal Government included the contributions of enterprises of which the Federal Government was the sole owner or in which it had the majority interest.

EUR 4.14 billion of the fund were designated for compensation payments to former slave and forced labourers, and EUR 25.5 million were allocated for payments to victims of other personal injuries. As one of the seven partner organizations of the German Foundation, IOM initially received EUR 276 million from the fund to make compensation payments.

Together with donations and additional funds, IOM eventually had funds totalling EUR 430 million available from which both compensation awards and administrative costs had to be paid. This pre-determined amount put significant pressure on the IOM Secretariat to be cost-efficient. Nevertheless, with approximately EUR 44 million used for administrative expenditures, IOM had to spend a relatively high amount for administrative costs. This was mostly due to two factors. First, the claimants for whom IOM was responsible were spread all over the world, and IOM's efforts to find and verify them were labour- and cost intensive. Second, IOM received many more claims than had been anticipated by the German Foundation, and many more claims than expected had to be rejected for being outside the realm of the Foundation Act. The processing of these claims caused higher than expected costs, and in addition many of the claimants whose claims were rejected filed appeals the processing of which caused yet more costs.

2. Information about compensation payments

Under the German Foundation Act, slave labourers were entitled to receive up to DEM 15,000 (EUR 7,669); forced labourers in industry were entitled to receive up to DEM 5,000 (EUR 2,556); and forced labourers in agriculture could receive up to DEM 2,000 (EUR 1,022). The amounts were initially set as maximum amounts because it was unclear if sufficient funds would be available to pay all eligible claimants in full. In the end, the funds allocated to IOM sufficed to pay all surviving slave and forced labourers in full, but the amounts had to be reduced for legal successors where the victim had already died. According to the German Foundation Act, deductions had to be made from the award amount if the victim had previously received payments from a German company or the Austrian Reconciliation Fund

(“ARF”).¹⁹⁷ No deductions had to be made, however, for other payments received under previous federal compensation programmes.

Regarding the compensation payments to eligible victims, most claimants were paid the award in two instalments. The German Foundation initially transferred funds sufficient only for a first instalment payment. This first instalment amounted to between 50 to 75 per cent of the full award. As of 2005, after it had been established that there were sufficient funds to pay surviving victims in full, the Foundation transferred funds for a second instalment payment.

The situation was different for personal injury claims where whole categories of claims were subsequently excluded from the programme due to lack of funds. While claims for personal injury from victims of medical experiments and from persons who as children were separated from their parents and placed in foster homes, as well as from parents whose children died in such homes were considered eligible, the German Foundation’s Board of Trustees decided that other personal injury claims could not be compensated at all. This resulted in the rejection of all claims for severe health damage. All eligible personal injury claimants received a first instalment payment of EUR 4,243 and a second payment of EUR 2,450. Eligible legal successors of personal injury victims were entitled to the first instalment payment of EUR 4,243 only.

All the payments were made by cheque. In accordance with the decisions in each claim, IOM generated electronic payment files that it transmitted to an international bank, which in turn issued the cheques and mailed them to the beneficiaries worldwide. Challenges arose in the event of address changes or with respect to groups of beneficiaries, such as Roma and Sinti, who were lacking a permanent address of residence.

If a claimant died during the process and no eligible heirs could be found, the funds that would have been required to be paid to the claimant were forfeited. The German Foundation decided to make such “residual” funds available to the respective partner organizations for humanitarian projects within the general context of the German Foundation Act.

VII. GFLCP PROPERTY LOSS PROGRAMME

1. The funding of the claims programme

The Agreement between the Government of the United States of America and the

Government of the Federal Republic of Germany as well as the German Foundation Act specified that out of the overall funds of 10 billion Deutschmarks, 150 million Deutschmarks (EUR 76.7 million) should be available for compensation of property losses resulting from Nazi persecution and another 50 million Deutschmarks (EUR 25.6 million) for compensation of property losses due to other Nazi wrongs.

The amount of 200 million Deutschmarks was determined at a time when it was yet unclear how many claimants would file claims and hence, how much money would be needed to compensate the property losses. Despite this uncertainty, the Agreement specified that this was to be a finite sum, which the Property Claims Commission would have to allocate on a pro-rata basis if funds were insufficient.

As in the German Forced Labour Compensation Programme, both the compensation payments and the administrative costs for the Property Programme had to be covered from this fund.¹⁹⁸ And, as for the German Forced Labour Compensation Programme, a relatively high amount of EUR 13.17 million had to be spent on administrative costs, again largely due to the wide spread of the claimant population and in addition because of a more individualized review of the claims in seven languages and the involvement of the Property Claims Commission.

2. Information about compensation payments

The remaining funds of EUR 89 million covered the compensation payments for 10,654 fully or partially positive claims, which (before applying the pro-rata reduction) saw EUR 12 as the lowest, EUR 1.3 million as the highest and EUR 10,584 as the average award amount.

Anticipating that the funds would not suffice to pay out the full compensation amounts awarded, no payments were made until all claims had been resolved and the necessary pro-rata reduction per award could be calculated. The Commission had to apply a pro-rata reduction of 13.5 per cent for compensation for persecution related property loss and a reduction of 32.1 per cent for compensation of property loss related to other Nazi wrongs.

As in the German Forced Labour Compensation Programme, the majority of payments were made by cheque. In cases where the amount awarded exceeded EUR 10,000, payments were made by bank transfer.

Any residual funds from the GFLCP Property Loss Programme had to be returned to the German Foundation and, pursuant to the German Foundation Act, ultimately were transferred to the Conference on Jewish Material Claims Against Germany.

VIII. CLAIMS RESOLUTION TRIBUNAL FOR DORMANT ACCOUNTS IN SWITZERLAND

1. The funding of the claims programme

The operational costs of the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT”) amounted to approximately 32 million Swiss Francs, i.e. an average cost of 3,200 Swiss Francs per claim. All costs were born by the Swiss banking community.

Based on monthly budgets and payment requests made by the CRT through the Board of Trustees of the Independent Claims Resolution Foundation, the Swiss Banking Association advanced the costs until the final resolution of the entire claims process and then billed the costs to the participating banks.¹⁹⁹ Each participating bank had to bear the costs for the procedures relating to their dormant accounts.

2. Information about compensation payments

The claims resolution process before the CRT concerned the entitlement to a dormant account. As such, the CRT did not award compensation to a claimant. Rather it determined who was entitled to the assets contained in the account. The bank holding the account then paid these assets directly to the successful claimant.

However, in some cases, the bank records did not contain enough information that would have allowed for the clear identification of the original owner, and thus the determination of who should be entitled to the assets. In such cases, the banks, following the recommendations of the CRT, agreed to enter settlement agreements with all claimants who had submitted a plausible claim to the account. For the banks, this resulted in multiple payouts of the amount that was contained in the dormant account. In the majority of cases, these settlement agreements concerned accounts with a relatively low balance, so that the resolution through a settlement was more time and cost effective than a resolution through a full arbitration proceeding, despite the fact that these settlements resulted in multiple payouts.

The amounts reported by the banks for the dormant accounts had not been adjusted. Based on information received from the ongoing ICEP investigation into the treatment of accounts held by victims of Nazi persecution in Swiss Banks, the Board of Trustees of the Independent Claims Resolution Foundation issued Rules on Interest and Fees. These Rules determined that for accounts that had been held by a victim of Nazi persecution, the amounts reported by the banks had to

be adjusted to account for the interest and fees. The term “victim” was limited to persons (or entities) who were persecuted or targeted for persecution by the Nazi regime because they were or were believed to be Jewish, Roma, Jehovah’s Witness, homosexual, or physically or mentally disabled or handicapped. In cases in which there was a valid claim against the account, it thus had to determine whether the account holder was a victim according to the definition contained in the Rules on Interest and Fees. If so, all bank fees that had been deducted during the period of dormancy and that in many cases had depleted the assets in the account, were reimbursed and the interest rates provided in the Rules on Interest and Fees for the particular account type were added.

The Rules on Interest and Fees did not demand an adjustment for non-victim accounts irrespective of whether the facts of the case showed that the account holder did not have access to his account. For these cases, the Swiss Banks agreed to an adjustment for interest gained, but not to a reimbursement of the fees.

As the Board of Trustees issued the Rules on Interest and Fees in September 2000 only, the CRT adopted a practice of rendering Partial Awards which included the current unadjusted balance, to ensure that claimants benefited from an early, even though partial, payout. Once the Rules on Interest and Fees were available, final awards were rendered containing a decision regarding interest and fees.

IX. 9/11 COMPENSATION FUND

1. The funding of the claims programme

The costs of the 9/11 Compensation Fund were borne by the Government of the United States of America.

The total cost of operating the Fund was estimated at 1.2 per cent of the total amount of awards paid, i.e. USD 86.9 million. This included the amount of USD 76.5 million for the consulting firm employed as well as the costs for the administrative judges, government employees etc. One reason for the relatively low administrative costs of 1.2 per cent of the total costs was that many of the attorneys and administrative staff as well as the Special Master worked on a pro bono basis.

At the inception of the Fund, USD 12 billion was estimated as the total amount of awards to be distributed. In the end, the Fund actually distributed a total of just over USD 7.05 billion to survivors of 2,880 persons killed in the September 11th attacks and to 2,680 individuals who were injured in the attacks or in rescue efforts conducted thereafter.

2. Information about compensation payments

The Air Transportation Safety and System Stabilization Act (“the Act”) that set up the 9/11 Compensation Fund did not specify the amount to be awarded to individual claimants. Instead, the Act gave the Special Master the discretion to determine the award amounts “based on the harm to the claimant, the facts of the claim and the individual circumstances of the claimant”.²⁰⁰

The claimant had the right to choose between receiving an award in the form of periodic payments or in the form of a lump sum payment. The election to get periodic payments included to specify the period of time over which the payments were to be made, the frequency of such payments, and if the claimant so desired a periodic payment stream other than equal payments.

If a claimant chose to receive all or a portion of the award in periodic payments, and if the Special Mater determined that the claimant was entitled to an award, then the terms of the award were set forth in an Agreement. Each Agreement set forth the amount to be paid and the frequency and duration of the payments.

All awards from the Fund were free of federal taxation.²⁰¹

The average award for families of victims killed in the attacks exceeded USD 2 million. These awards for death claims ranged from USD 250,000 to over USD 7 million. The average award for injured victims was nearly USD 400,000. These awards ranged from a few hundred dollars to over USD 8 million.

X. ANNAN PLAN FOR CYPRUS

1. The funding of the claims programme

The Annan Plan required the federal government of a United Cyprus – with assistance from international donors if requested – to bear the costs of establishing and running the Property Programme for the first five years of operation. After the initial five-year period of funding by the federal government, the operational costs of the Compensation Bureau were to be met by the income resulting from sales and rental of properties, and the federal government would continue funding the Claims and Housing Bureaus only.

Regarding the funding of compensation payments, the Annan Plan laid down a complex scheme that envisioned the creation of a compensation fund in order to

pay compensation. The federal government was to provide the first contribution to this fund of 100 million Cyprus pounds, but could also seek contributions from international donors. In addition, the proceeds from the use or sale of property transferred to the Property Board were to contribute to the fund.

2. Information about compensation payments

According to Article 8 Paragraph 3 of Annex VII compensation was to take the form of either compensation bonds or property appreciation certificates. As the Annan Plan has never been implemented, no information about the experiences made with the compensation scheme foreseen exists.

D. INHERITANCE ISSUES

This section provides an introduction to the questions faced by international claims programmes in dealing with inheritance issues when deciding about the claimants' right to a remedy. The complexity of inheritance issues largely depends on two factors: First, whether the programme is a national one or it is set in an international context and thus faced with claims from claimants who reside in different countries with different legal systems; and, second, the timing of the programme, i.e. the period of time that has passed between the events giving rise to the claims and the claims programme's implementation.

This section examines the programmes in which inheritance issues posed a complex challenge: the United Nations Compensation Commission, the German Forced Labour Compensation Programme and the GFLCP Property Loss Programme, as well as the two claims programmes before the Claims Resolution Tribunal.

A common feature of these programmes was that they had claimant communities spread across many countries. However, their approaches to dealing with questions of inheritance differed widely. As such, the programmes provide an overview of the spectrum of options available for the treatment of inheritance issues. The programme reports also address the consequences each particular option had for the claims resolution process, i.e. the time and resources needed to resolve inheritance issues and process claims filed by heirs. Both GFLCP Programmes and CRT, where over 50 years had passed between the circumstances giving rise to the claims and the establishment of the claims programmes, received large numbers of claims from the heirs as many victims had already died and thus exposed in particular the difficulties arising from such situations.

In contrast to the programmes examined in this section, the programmes in Bosnia and Kosovo were placed in a national context and, as such, their legal frameworks provided for the application of the respective national laws to determine the inheritance rights of heirs in cases where the original property owner had died.²⁰²

As the programmes in Bosnia and Kosovo dealt with property losses that had occurred during the past decade, the majority of claims were filed by the original owners. Heirs were eligible to claim under the same formal requirements as the

original owner who lost the property had to fulfill. To prove their inheritance rights, heirs had to provide evidence required under the national law, such as court decisions on inheritance.

The CRRPD in Iraq is different, as its jurisdiction covers a longer period, i.e. property losses that occurred between 1968 and 2003. This increases the likelihood that claims are filed by heirs rather than the original owner. Under the current rules of procedure, any questions of inheritance have to be decided according to Iraqi civil law. However, the Iraq programme has not yet set up a process for claims from out-of-country claimants who left Iraq during the Ba'athist regime. Such claims could add a new level of complexity to the claims process, as inheritance rights of out-of-country claimants would at least partially be regulated by the inheritance laws of their countries of residence. It remains to be seen whether, should an out-of-country claims process be started, the CRRPD would attempt to streamline the claims resolution process by promulgating inheritance rules that would standardize the resolution of inheritance issues for out-of-country claimants.

The programme examples below show that inheritance issues and the processing of heirs claims may take a prominent role in the overall claims resolution process. This in particular when the claims mechanism is placed in an international context with the claimant community dispersed all over the world and where the mechanism deals with events that date back a long time, i.e. span over more than one generation.

While the CRT process was set against such a background and, as a result, was confronted with inheritance issues in the majority of the cases before it, its legal framework provided for the application of the national law applicable to the case. The experiences of the CRT illustrate that such an approach adds considerable complexity and processing time to the claims resolution process which was manageable in such a way only due to the relatively low number of claims received by CRT.

It is thus not surprising that programmes that faced larger numbers of claims have promulgated standardized inheritance rules in order to avoid the need for an individual determination in each case, first, as to which inheritance law should apply and, second, who would qualify as an heir under it. The German Forced Labour Compensation Programme and the GFLCP Property Loss Programme each included a self-contained regime of inheritance rules in their respective legal framework which aimed at streamlining the resolution of inheritance issues through a standardized approach.

The UNCC went even further and excluded the consideration of these issues fully from the claims resolution process. The UNCC Governing Council's determination

that claims would proceed in the name of the claimant as originally filed, regardless as to whether the claimant subsequently died during claims processing or before an award was paid, made the role of heirs virtually irrelevant for the UNCC and shifted inheritance issues to the national Governments who had to deal with them when they paid out the UNCC's compensation awards.

The promulgation of standardized inheritance rules allows for a more efficient determination of inheritance rights and thus speeds up the claims resolution process as a whole. However, it might at the same time present certain challenges from a public relations point of view, in particular when the programme's rules differ from the national law. The need for and benefits of a self-contained regime have to be explained carefully to the claimants to ensure that the process is perceived as transparent and fair. It must also be emphasized that payments of compensation to individuals under special purpose claims programmes are not governed by domestic inheritance law, and that the self-contained regimes of inheritance rules under such programmes do therefore not violate national law. This was confirmed by courts in several countries where the issue was brought, for instance, by heirs who were not eligible for payment under the German Foundation Act.

On a technical level, the design of the claim form and the subsequent creation and use of a database that allow for the capture and management of relevant heirs data is paramount in any large-scale claims programme that is faced with claims by heirs. Particularly the functionality of identifying and grouping together various family members who might have filed claims separately will be essential. In addition, the resolution and payment of multiple heir claims relating to a single victim increase the processing costs of a programme. If feasible, heir claims for the same victim loss should be consolidated into one single claim in order to streamline the procedure and make consistent decisions. It is thus essential that considerations on the determination of inheritance rights and issues relating to the processing of heir claims are included at the early stages of a programme's implementation to allow for the efficient and correct processing of heir claims.

I. UNITED NATIONS COMPENSATION COMMISSION

1. Legal framework regarding inheritance

In the UNCC, the issues of inheritance rules and the processing of heirs claims arose in category "A" claims (departure from Iraq or Kuwait), category "B" claims (serious personal injury or death claims), category "C" claims (individual losses up to USD 100,000), and in category "D" claims (individual losses above USD 100,000).²⁰³

Generally, in categories “A”, “B”, “C” and “D”, inheritance issues were considered by the UNCC’s Panels of Commissioners and, later, by the UNCC Governing Council in the following fact patterns:

- the victim had been killed (or totally incapacitated) during Iraq’s invasion and occupation of Kuwait and a claim in his or her name was put forward by a surviving family member;
- the victim survived Iraq’s invasion and occupation of Kuwait but died before he or she could fill out a UNCC claim form.²⁰⁴ In these situations, claims were filed in the deceased’s name by a surviving family member;
- the victim filled out a claim form and filed a claim in a timely manner with the UNCC but died before his or her claim was resolved by a Panel of Commissioners and an award had been issued;
- the final situation occurred when the victim filed a claim with the UNCC on time and received a positive award from a Panel of Commissioners but died before the award proceeds were forwarded by the UNCC to the victim’s Government.²⁰⁵

Pursuant to specific instructions from the UNCC Governing Council, awards could only be made by the Panels of Commissioners in the names of victims as they appeared in the claim forms. Accordingly, in the above-referenced circumstances, awards were issued in the names of the (recently) deceased victims and the award proceeds were sent to the various Governments in the names of the deceased for distribution pursuant to national laws of inheritance or the local laws of intestate succession.

With 97 claimant Governments participating in the UNCC’s programmes, the relevant inheritance laws were widely varied. Local inheritance laws became redundant, however, when the UNCC Governing Council issued its first decision on 2 August 1991.²⁰⁶ In this decision the Governing Council provided a definition of what constituted a “family” for UNCC award purposes. That definition came to be used by all Panels of Commissioners and the Council itself for purposes of inheritance issues. In Paragraph 13 of Decision 1, the Council stated that awards for death in category “B” and for departure in category “A” would be limited to any one family, which the Council defined as consisting of the victim and his or her spouse, children and parents. This definition of a “family” also came to be used as a delineation of the limitations within a deceased claimant’s family as to who could share in the distribution of UNCC award proceeds. Thus, in a situation where a claimant died prior to receiving payment for a successful claim, the proceeds of the award could only be distributed by the deceased claimant’s Government to his or her surviving parents, children and spouse.

The limitation on inheritance and succession rights found in the UNCC's definition of a "family" had a profound impact on the distribution of award proceeds in many claimant countries, including most especially Kuwait. Under Kuwaiti domestic laws and customs, female spouses do not officially join the families of their husbands and, instead, remain a part of their own parents' households. However, for UNCC award payment purposes, a female spouse shared equally in the distribution of a deceased husband's award proceeds along with their children and her husband's parents. In contrast to this, any brothers or sisters of the deceased claimant who may have been supported in part or totally by the claimant were not eligible to receive any portion of the UNCC award. Despite receiving numerous legal submissions from the Government of Kuwait and other affected countries with requests to expand the definition of "family" to include other individuals who could prove they had been receiving support from the deceased claimant prior to his or her death, all the Panels of Commissioners applied the Governing Council's definition of a "family" in their awards of compensation.

The only exception that expanded the eligibility of heirs to receive a portion of a UNCC award for a deceased claimant beyond the definition of a "family" found in Decision 1 occurred in March 2004. In its Decision 218,²⁰⁷ the Governing Council created a unique compensation award for the family members of 605 former detainees who had been held in Iraq from the time of Iraq's invasion and occupation of Kuwait and whose fate had been withheld from their family members until May 2003 when it was learned that all of the 605 claimants had been executed in October 1991 by the Iraqi authorities. In these circumstances, the Governing Council decided to create a special type of mental pain and anguish ("MPA") award to reflect the prolonged suffering endured by the detainees' family members during the 13 years of waiting for information about their loved ones. In creating this new MPA loss element in Decision 218, the Governing Council acknowledged that the real beneficiaries of the loss type would be the family members of the deceased detainees rather than the detainees themselves. The Council therefore decided that these awards should "[...] be distributed in accordance with the domestic laws applicable to the deceased." This language in Decision 218 permitted Kuwait and other affected Governments to divide the award proceeds among all family members, including brothers and sisters of the deceased. Although the Council recognized that the unique MPA in question was suffered not by the deceased claimant but by the family members themselves, in allowing the heirs of a deceased claimant to effectively bring their own claims for the MPA identified in Decision 218, the Governing Council still insisted that such MPA losses should be included within a single claim filed in the name of the deceased.

With the above-described rules, the UNCC's Governing Council effectively established a self-contained and narrowly-drawn regime on eligibility to receive payments, restricting it to a defined set of members of a family. Claims could be

filed for deceased claimants by any family member or even by an unrelated person. However, only the narrowly-defined “family” members listed in Decision 1 were eligible to receive award payments for the claim of a deceased claimant.

2. Requirements to file a claim

All UNCC claims proceeded through processing, awards and payments exclusively in the names of the victims. As such, inheritance rights could not be registered with the UNCC since all claims proceeded in the name of the claimant as originally filed. Notifications of death and proof of inheritance rights were not recorded by the UNCC and the name of a claimant was never changed by the UNCC. Heirs of claimants submitting such information and documentation to the UNCC were instructed to provide the materials to the national authorities handling their claims with the UNCC to support their entitlements to receive payment for their deceased relative’s claim, as their rights could only be pressed at a national level.

3. The processing of heir claims

Since all claims filed at the UNCC stayed in the name of the victim even after the victim’s death, heirs had no claims to be processed. Rather, their efforts were directed to their national claims authorities to support their payment entitlements with those. As such, it was the responsibility of the Governments to identify all relatives of a deceased claimant who might be eligible to participate in the distribution of the award. Portions of awards had to be set aside by Governments for unlocated but otherwise eligible heirs and, in case the heirs could not be located, had to be returned to the UNCC fund after the failure to locate the particular heirs within 12 months.

If an heir was located after the Government had returned the portion to the UNCC fund, the UNCC would resend the portion for distribution to the newly-located heir. However, if the Government distributed all of the victim’s award proceeds to other heirs previously, the claimant Government would be responsible for paying the newly located heir his or her share since the UNCC had no basis to subsequently increase award amounts in order to correct distribution errors of a Government.

4. Inheritance based on testaments

Surprisingly few deceased claimants from the 97 claimant countries passed on the rights to the proceeds of their awards by means of wills or other legal testaments. In situations where deceased claimants left behind wills or other testaments directing

how their assets, including the rights to their UNCC award, should be distributed, the UNCC respected such wills or testaments. Claims at the UNCC were considered to be the property of the claimant that could be passed along to others by means of a will or testament. Claimant Governments only had to provide the UNCC's Payment Section with a copy of the will or testament to demonstrate the proper distribution of the deceased claimant's award.

Most UNCC awards for deceased claimants passed to heirs through the application of local laws on intestate succession, rather than by means of wills or other testaments. In these situations, the UNCC did not interfere with local hierarchy-based, proportional distribution schemes. The only restriction on the distribution of award proceeds was the limitation on which family members were eligible to receive UNCC awards, i.e., the spouse, children and parents of the deceased claimants. The UNCC never encountered a dispute as to whether a will or testament should prevail if local intestate laws were not in agreement. The UNCC was not aware of any situation where a deceased claimant's will or testament was not accepted because the country in question did not permit such testamentary succession.

The UNCC did not encounter challenges to the authenticity of wills or testaments as the circumstances of the victims' claims did not generally give rise to such situations. If one family member challenged the terms of a deceased claimant's will, the effect would only be relevant to the local Government's ability to distribute the award proceeds. If a local dispute over the validity of a will or testament got tied up in the courts for an extended period of time, the affected Government would have had to return the award proceeds to the UNCC fund to await the resolution of the matter. Once the court had resolved the issue of the validity of the will, the Government would inform the UNCC that it was now in a position to distribute the award proceeds and the money would have been re-sent to the Government to permit the distribution to go forward.

5. Payment of heirs

The role of the heir was not a UNCC issue, but a payment issue for each of the claimant Governments. If the claimant had died before his or her Government received the award amount from the UNCC, payment would pass under national laws, with the strict caveat that payments to the heirs of a deceased claimant could only be made to a spouse, the children and the parents of the victim. Distribution of a deceased claimant's award proceeds was left to the application of local laws and, with 97 Governments filing claims, the UNCC did not interfere with local processes, including those that contained hierarchical distribution formula, if such systems

were the law and recognized custom of the respective claimant country. Similarly, the rights of adopted children and children born out of wedlock were left to national claimant Governments to resolve in the course of payment distribution.

In making payments to heirs of a deceased claimant, Governments had to produce a report for the UNCC listing the name of the deceased claimant's relative and the relative's status, and to produce documentation showing that the payee was a spouse, child or parent and, thus, eligible to receive a payment.

II. GERMAN FORCED LABOUR COMPENSATION PROGRAMME AND GFLCP PROPERTY LOSS PROGRAMME

1. Legal framework regarding inheritance

Given that more than 50 years had passed between the circumstances giving rise to the claims and the establishment of the German Forced Labour Compensation Programme and its property component, it was clear in the run-up of the creation of these programmes that they would have to deal with a significant number of claims submitted by heirs. To be able to resolve these heir claims in an efficient and transparent manner, the German Foundation Act laid down inheritance rules that defined who was considered to be an eligible heir for purposes of filing a claim and of receiving compensation under the programmes.

The eligibility of an heir was determined by two factors: 1) whether or not the claim of the original victim was compensable in principle under the GFLCP; and 2) the family relationship between the original victim and the heir. Under the German Foundation Act, spouses and children on the first level, grandchildren on the second or siblings on the third level were considered to be eligible heirs; if no family member on one of these three levels existed, heirs under a will were eligible.²⁰⁸ As long as one or more heirs existed at a higher level, they excluded heirs at the lower level.

This legal framework for the eligibility of heirs under the German Foundation Act constituted a "self-contained regime" and did not rely on domestic law for the determination of who was an heir and whether or not he or she was eligible for compensation. The choice of such a "self-contained regime" was made against the background of the negative experiences of other programmes which spent large amounts of time and money on the research and application of conflict of law rules and domestic inheritance laws, an experience that would have repeated itself in the German Forced Labour Compensation Programmes in many cases given that heirs resided in over 90 countries worldwide.

2. Requirements to file a claim

In both the German Forced Labour Compensation Programme and the GFLCP Property Loss Programme, heirs were in principle eligible to claim, but the eligibility requirements differed slightly between the two programmes.

Heirs claiming on behalf of victims of slave and forced labour could do so if the victim had died on or after 16 February 1999.²⁰⁹ Where the victim had died on or after 16 February 1999 but prior to filing a claim, the heir could submit a claim in his or her name on behalf of the deceased victim. Where the victim had died after filing a claim, the heir had to notify the death to IOM within six months indicating whether he or she was seeking compensation on behalf of the deceased victim.

The 1999 cut-off date did not apply in claims for property loss; there, heirs could submit a claim on behalf of a victim who had suffered such a loss and had subsequently deceased no matter when the death occurred. Where the victim died after filing a claim, the same six months deadline for the notice of death applied as in the case of slave and forced labour claims.

In both, the German Forced Labour Compensation Programme and the GFLCP Property Loss Programme, there were three formal requirements that heirs had to fulfill in order to claim under the programme. First, they had to notify IOM of the death of the victim on whose behalf they wanted to receive compensation within six months from the date of death. In practice, the application of this otherwise straightforward requirement raised several practical issues. To allow heirs a meaningful opportunity to participate in the programme, the notice period and its exclusive character had to be made public. This was difficult, in particular with respect to those persons who, at the beginning of the programme when the outreach was most intense, were not in contact with the programme as the original victim was still alive.

Second, heirs had to submit proof that the victim was deceased. Typical proof was a death certificate, but other comparable documents were also accepted. The assessment of their evidentiary value was not always easy, given that the documents originated from more than 90 countries. Where more than one heir was claiming, it was sufficient that one of them submitted the proof of death.

The third requirement for heirs was to submit proof of their relationship to the deceased victim. Here again the assessment of the evidentiary value of the many different types of documents proved difficult and required clear rules and intensive training of the reviewers to ensure consistency. And again, decisions of national authorities were accepted as proof of family relationship.

3. The processing of heir claims

The processing of heir claims turned out to be one of the most complex and resource-intensive parts of the German Forced Labour Compensation Programmes. This was due to a number of factors, in particular the distribution of heirs over many different countries in the world and the fact that heirs of the same victim often lived in different countries and sometimes did not even know of each other. Additionally, because of the length of time that had passed between the circumstances giving rise to the claims and the eventual establishment of the programmes, many heirs, in particular elderly spouses of deceased victims, died during the process. As a result, new heirs came forward and at least parts of the process had to be repeated.

One basic decision that needed to be taken at the beginning of the processing of the heir claims was whether the heirs related to a deceased victim would be requested to designate one representative to act for all of them during the proceedings, or whether the programme would deal directly with each of the heirs. This also concerned the question whether a compensation award would be paid to one representative or in the respective shares to all eligible victims. For the German Forced Labour Compensation Programme, it was decided to choose the second alternative. Most of the German Foundation's other partner organizations chose the first alternative because they expected that family groups of heirs all living in the same country could easier comply with the representation requirement.

After the claims involving heirs were decided on substance, a standard letter was sent to heirs of all claims that had been determined to be eligible in principle. In the letter, the heirs were requested to submit proof of the victim's death and proof of his or her relationship to the deceased victim. They were further requested to provide information on any other eligible heir that they were aware of or to confirm that they were not aware of other eligible heirs. Finally, they had to undertake to share the compensation payment that they would receive with any other eligible heir that would come forward after such payment, thereby indemnifying IOM from any further obligation after it had paid out the total compensation amount on a given claim.

Out of the 330,000 claims received under the German Forced Labour Compensation Programme, more than 20,000 claims were submitted by heirs. Of the approximately 90,000 claims found to be compensable, almost 11,000 claims were heir claims that involved over 20,000 eligible heirs.

The picture was quite different in the GFLCP Property Loss Programme. Almost 80 per cent of the claims were filed by heirs. The main reason for this was that there was no cut-off date for claims by heirs in this category, as was the case for slave and

forced labour claims where claims by heirs were not admissible if the victim had died prior to 16 February 1999.

4. Inheritance based on testaments

Under both the German Forced Labour Compensation Programme and the GFLCP Property Loss Programme, heirs under a will (or another testamentary instrument) were eligible to receive compensation only if no other heir existed at a higher level of the hierarchy established by the German Foundation Act.

In view of the large diversity of inheritance documents submitted to the programme, the Secretariat developed guidelines for the review of these documents in order to establish consistent criteria for the eligibility of heirs under a will.

5. Payment of heirs

Each eligible heir was paid his or her share of the total compensation awarded on a particular claim directly. All heirs at the same hierarchical level received an equal share of the award. The beneficiaries under a will or other testament also had to share at an equal ratio, independent of the testamentary provisions. In the event that an heir who had been awarded compensation died before receiving his or her payment, the unpaid amount was re-allocated amongst the remaining eligible heirs.

Under the German Forced Labour Compensation Programme, heirs were paid only after all surviving victims had been paid. The total funds that were available to IOM from the initial allocation pursuant to the German Foundation Act and from the subsequent distribution of interest that the German Federal Foundation had earned on the monies it held in the Fund were not sufficient to pay heirs the same maximum compensation that had been paid to surviving victims. In a first instalment, heirs were paid EUR 4,130 in the slave labour category, (compared to EUR 7,669 for victims), EUR 1,250 for forced labour in industry (compared to EUR 2,556 for victims), and EUR 510 for forced labour in agriculture (compared to EUR 1,022 for victims). After all the interest had been distributed by the German Federal Foundation, IOM was able to pay an additional EUR 1,600 to heirs of former slave labourers. However, the funds did not suffice to top up payments to heirs of former forced labourers in industry and agriculture.

Under the GFLCP Property Loss Programme, heirs and victims were paid at the same time.

III. CLAIMS RESOLUTION TRIBUNAL FOR DORMANT ACCOUNTS IN SWITZERLAND

1. Legal framework regarding inheritance

Given the international context of claims before the CRT and the fact that the original account holder and the claimant were usually two generations apart from each other, the majority of cases involved a complex determination of inheritance rights. The CRT Rules of Procedure provided that, for decisions on inheritance rights, the pertinent national law should be applied, i.e. the law with which the matter in dispute had the closest connection.²¹⁰

In many cases, questions of inheritance arose not only in relation to two or more branches of the family, each residing in different jurisdictions, but also in relation to up to three generations. Consequently, the application of one law instead of another could totally change the outcome. The following case exemplifies the resulting complexity: The deceased account holder had lived in France. He had three children, one of whom immigrated to the USA. The son of this immigrant moved to Argentina and claimed the dormant account. In such a case, the Tribunal had to determine which national law should be applied when deciding about the entitlement of the account holder's grandson by applying the closest connection test.

To ensure consistent practice in establishing the closest connection in all claims proceedings before the CRT, the Arbitrator Committee on Applicable Laws issued guidelines based on the Hague Convention of 1988 on the Law Applicable to Estate Successions. For claims not connected to the Second World War, the Tribunal applied, as a general rule, the law of the country in which the Account Holder had his or her last domicile. If the Account Holder was not a national of the country of his or her last domicile, then the law of the country of his or her citizenship was applied, unless the Account Holder had lived for more than five years immediately prior to his or her death in the country of his last domicile.

Exceptions were made in cases in which the Account Holder emigrated or fled as a consequence of the Second World War,²¹¹ and in cases in which the Account Holder was deported or killed during the War. In these cases the law of the time and place of the last known domicile was applied.

Once the applicable national law on inheritance had been determined, this law had to be applied to the fact of the individual case. As a consequence of the above rules, the Tribunal had to apply inheritance and estate laws of many different

countries which added considerable complexity to the process and delayed the resolution of claims. Generally, when determining who was an heir under the applicable national law, the CRT was bound by prior decisions on inheritance of national bodies because the CRT Rules of Procedure contained no substantive provisions concerning inheritance at all.

Due to the international composition of the Arbitrator panels and of the staff, the Tribunal could draw on its own resources to research some of these national laws. In the remaining cases, the Tribunal requested expert opinions from the Swiss Federal Institute of Comparative Law in Lausanne.

2. Requirements to file a claim

Family members of a deceased account owner could submit a claim and the same formal requirements applied to their claims as to claims that were submitted by the original account owner.

Claims had to be submitted on standard claim forms with supporting evidence attached. A claimant had to make it plausible through available documents or personal narrative statements about the family history that the account owner and their relative were the same person.

Relatives of account owners who filed a claim additionally had to make it plausible that they were entitled to the assets of the account owner under the applicable inheritance law, in particular that to the best of their knowledge no other relative with a superseding right existed.

In recognition of the fact that it was difficult for claimants to prove a claim following the destruction caused by the Second World War and the Holocaust and the long period of time that had lapsed since the opening of the dormant accounts, a relaxed standard of proof was applied in both claims processes.²¹² This meant that it was sufficient for a claimant to demonstrate that it was plausible in light of all circumstances that he or she was entitled, in whole or in part, to the claimed account.

3. The processing of heir claims

Due to the long period of time that had passed since the accounts had become dormant and the establishment of the claims processes, the vast majority of claims were filed by heirs of the original account owners. To the extent possible, the CRT tried to prioritize claims of elderly claimants. This also ensured that claims by

original account owners were generally processed before those of heirs.

A Sole Arbitrator or Claims Panel could invite third persons who had not filed a claim to participate in the proceedings if their participation was deemed appropriate.²¹³ This was regularly the case if information submitted by a claimant indicated that other persons (other heirs, intermediaries or beneficiaries of the account owner) also had a right in the account.

4. Inheritance based on testaments

Inheritance rights based on testaments and wills were decided according to the requirements stipulated by the applicable national laws.

5. Payment of heirs

Each heir who by filing a claim or upon invitation of the CRT participated in the proceedings was awarded the share of the account that was foreseen by the applicable national law.

Once the share had been awarded in the CRT decision, payments to heirs were executed directly by the respective bank, as the CRT did not have its own payment process.

E. LEGAL REMEDIES

The term “legal remedies” refers to the procedural rights foreseen in a programme in order to allow a party to challenge parts of or the full decision that was rendered by the decision-making body with regard to a claim.

The publication aims to provide an overview of these procedural rights as well as the processes established for such a second review. The following eight claims programmes are examined: CRPC, HPD/HPCC, CRRPD, UNCC, German Forced Labour Compensation Programme, GFLCP Property Loss Programme, CRT and the Annan Plan. These programmes differ greatly, not only regarding their legal frameworks and mandates, but also regarding the number of claims processed and the times taken for the completion of the claims resolution process. These differences also bear on the legal remedies that programmes have provided to parties wishing to challenge a decision.

Before reviewing the different legal remedies that were available to challenge a decision in individual programmes, it will be helpful to recall the general purposes of a second instance review. Claims programmes do not differ from national legal systems insofar as they see a second instance review primarily as a means to achieve individual justice and consistency of jurisprudence. This is particularly true for programmes with a decentralized structure and multiple decision-making bodies. The ability to challenge a decision through an appeal, a reconsideration request or another legal remedy is usually seen as an essential part of a claims programme in order to ensure legitimacy and fairness of the process and thus justice for the claimants. Additionally, the possibility to challenge a decision and have it reviewed a second time adds greatly to the acceptability of the programme’s ultimate decisions within the claimant community and thus contributes to the reconciliatory goals underlying a claims programme.

However, despite these obvious benefits of a second instance review, the reports on programmes show that in designing and implementing such a review, claims programmes are faced with a difficult balance between providing an effective legal remedy to parties and the demands of efficiency so that all claims can be processed in an acceptable timeframe.

The legal procedures traditionally applied in national court systems are not a viable option in view of the efficiency demands faced by large-scale claims programmes.

This is most apparent for programmes that face large numbers of claims, such as the UNCC with over 2.6 million claims as the most extreme example, or the CRPC in Bosnia and Herzegovina and the German Forced Labour Compensation Programme that faced hundreds of thousands of claims. However, factors other than the sheer number of claims can also play a role in creating the need for a speedy and efficient process: if the funding for the operational costs of a programme is limited, if the claimant community is elderly, or, as in the context of property restitution programmes, if the resolution of claims is an important prerequisite for the return of refugees and internally displaced persons or for sustaining a fragile peace agreement.

A number of parameters seem to impact where this balance is eventually struck in a programme. While not an exclusive list, these are the parameters that predominantly influenced the design of the second instance review in the claims programmes under review:

First, the question of whether it is a national or an international programme will influence the extent to which a programme will design its own legal framework and to which it will operate independently from or outside domestic legal systems. Understandably, national programmes will be more concerned about establishing legal standards different from their national laws and are thus more likely to provide for procedures and legal remedies that mirror more closely the legal system of the respective country.

Second, the organization of and processes established by the decision-making body at the first instance might impact the extent to which a second instance review should be granted. If the decisions of the first instance are based on an individual review of each claim and supporting documents by an independent panel or commission, then a limited second instance review might be warranted. If, on the other hand, claims are grouped and reviewed primarily by a Secretariat, then a fuller second instance review might be appropriate.

Third, the nature of the claims and the types of remedies provided might also be a factor. For claims that concern monetary compensation “only”, often with amounts that are of a symbolic nature, it might seem less important to ensure a correct decision in every single case than to bring overall justice and an overall fair solution to all claimants within a reasonable amount of time. The balance might be struck quite differently when it comes to claims that concern the restitution of property and with it the ability of an entire family to leave a refugee or IDP camp and to return home to start their lives again.

Fourth, as already mentioned, the magnitude of the programme, i.e. the number of claims, will impact to what extent a second instance review of claims is feasible.

For an evaluation of the legal remedies in claims programmes, the following three issues were particularly relevant: The particular type of legal remedy that was available to the parties; the standard of review applied by the second instance decision-making body; and the availability of legal remedies outside the claims programme.

The types of legal remedies available differed greatly between the programmes. They ranged from a limited possibility to seek clerical corrections, to a request for reconsideration by the same body that had rendered the initial decision, to an appeal to a second instance body which conducted a full substantive review of the claim.

Apart from the question of whether the challenge will lead to reconsideration by the same body or a new review by a different decision-making body, the legal standards applied by these bodies are of importance. Can the party request a full substantive review of the initial claim and its supporting documents plus any new information and documents, or is the party limited to the submission of new evidence that had not previously been available or to the allegation of a manifest error?

While some programmes granted claimants a full “second shot”, others were much more restrictive and limited the legal remedy to the narrow possibility to rectify manifest errors of the first instance. The largest programme in terms of numbers of claims received, the UNCC, foresaw no legal remedy at all and granted merely the possibility to have clerical and similar errors rectified. In this context, the prohibition of a *reformatio in peius*, as it existed in the German Forced Labour Compensation Programme, is of interest. The Appeals Body in this programme could only alter an initial decision in the claimant’s favour; the claimant could not be made worse off by filing an appeal against a first instance decision.

Finally, it needs to be considered whether the programme’s decisions are final and binding or whether they will be subject to another review outside the programme.²¹⁴ While one of the distinct attributes of international claims programmes is their self-contained nature, and while claims programmes generally strive for a final resolution of the legal matters within their mandate, in some cases programme decisions have been subject to additional reviews before national courts. Decisions of the CRT for example, given its nature as an arbitral tribunal and its seat in Switzerland, could be challenged before the Swiss Federal Supreme Court pursuant to Swiss private international law.

The options chosen for the second instance review seem to depend little on the character of the first instance decision-making body and process. Claims programmes that used a very standardized and computer supported review, where claims were grouped by a sophisticated database system and decided without an individual review by the decision-making body itself, did not necessarily “compensate” for this by implementing a full-fledged review at the second instance. The two GFLCP programmes can be seen as an example: While the GFLCP Property Loss Programme applied a very standardized process without checks by a supervisory body, the programme established a limited reconsideration procedure by the same decision-making body only. In contrast to this, the German Forced Labour Compensation Programme whose first instance decisions were subject to regular spot-checks by the German Foundation, allowed for a full substantive review by an independent Appeals Body which itself was subject to limited additional checks by the Foundation. These different solutions are particularly surprising when considering the fact that for the German Forced Labour Compensation Programme standard amounts could be awarded only, while the GFLCP Property Loss Programme decided individual amounts often much higher than those awarded to slave and forced labourers. On the other hand, what probably spoke in favour of a fuller second instance review in the case of the German Forced Labour Compensation Programme was the fact that its first instance decisions were taken in an administrative process by a Secretariat, whereas the first instance decisions in the GFLCP Property Loss Programme were taken by an independent Property Claims Commission.

One of the challenges faced during the implementation of a second instance review process is the initial uncertainty regarding the number of appeals to expect. This uncertainty has often resulted in insufficient resources (both staff and IT resources) at the beginning, which in turn led to delays and overall long processing times for the second instance review.

While all programmes use a standardized claim form for the filing of a claim, standardized appeal forms are less common. As a result, programme staff has spent considerable time reviewing correspondence and distinguishing between general complaint letters in which a claimant was stating frustration about a decision on the one hand, and submissions legally challenging the decision on the other. This is surprising, as the benefits of a standardized claim form are generally accepted and a similar standardized approach to collecting appeals would help the challenging party, just like a claim form does, through the procedures and would ensure that the necessary standards are met and that the information required is submitted.

Sometimes shortcuts at the first instance level lead to more complex proceedings on the second instance: The CRPC’s rules of procedure, for instance, did not provide

for an invitation of third parties who might have a legal interest in the claimed property. Instead, these third parties could request reconsideration of the first instance decision in order to protect their rights.

As pointed out above, the legal frameworks of national programmes tend to contain references to the national law rather than provide a self-contained set of rules. Such references bear the risk of being unclear, in particular within the context of programmes with a large out-of-country claimant community who lacks easy access to legal expertise about these rules. As such, claims programmes should alert parties who may not be familiar with the applicable national laws about the procedural rights and limitations these laws contain.

I. CRPC IN BOSNIA AND HERZEGOVINA

1. Legal remedies available against the first instance decision

Chapter IX of the Book of Regulations I²¹⁵ and Chapter X of the Book of Regulations II²¹⁶ provided every claimant with the possibility to request a reconsideration of the first instance decision. According to Article 76 of the Book of Regulations I, the Commission could reconsider a decision if the claimant or any other person with a legal interest in the real property designated in the original decision presented such evidence to the Commission within 60 days of learning of new evidence which could materially affect the decision.

A similar rule was included in the Book of Regulations II. According to Article 42 of the Book of Regulations II, the person to whom the decision on confirmation of an occupancy right applied, as well as the current user of an apartment and the allocation right holder, had the right to submit the request for reconsideration of the decision under the condition that they delivered new evidence or indication of new evidence that the Commission had not considered when deciding the claim and which could materially affect the decision.²¹⁷ Furthermore, the CRPC also provided for ex officio review of any of its decisions if the Commissioners deemed it justified.²¹⁸ This only occurred, however, for a small minority of decisions.²¹⁹

The request for reconsideration was the only legal remedy available for claimants under the CRPC procedure.²²⁰ It was included in the CRPC procedure at the end of 1999 when it became apparent that property relations on the ground did not always match the property records. Taking this into account, as well as the principles of the European Convention on Human Rights, the CRPC adopted a reconsideration procedure.²²¹

A request for reconsideration could be submitted by the claimant or any other person with a legal interest in the real property designated in the original decision.²²² The person to whom the decision on confirmation of an occupancy right applied, as well as the current user of an apartment and the allocation right holder, could also submit a request for reconsideration.²²³

During the reconsideration procedure the requesting person could be represented by an authorized representative. An authorized representative had to present a valid power of attorney when submitting the request.²²⁴

2. The second instance process

Every first instance decision contained the information about the legal remedy available, i.e. the request for reconsideration.²²⁵

The deadlines for filing a request for reconsideration differed slightly according to the type of claim. Persons requesting a reconsideration of a decision concerning the return of real property had to submit the request for reconsideration within 60 days of learning of new evidence which could materially affect the decision.²²⁶ Persons to whom the decision on confirmation of an occupancy right applied had to submit a request for reconsideration within 60 days of receiving the decision, whereas the current user and allocation right holder had to do so within 60 days of receiving a verified copy of the decision, which the competent administrative body was obliged to deliver together with the conclusion on permission of enforcement of the decision of the Commission.²²⁷

The Commission had designed a special form for the reconsideration request, but written letters from claimants without an official form were also accepted. The CRPD worked in four languages, namely Bosnian, Croatian, Serbian and English, and thus accepted reconsideration requests in these four languages. The request for reconsideration had to contain the details of the original decision, the reason for submitting a request for reconsideration, the new evidence or indications of new evidence which would materially affect the decision, the date on which the requesting person learned of the new evidence and the signature of the requestor.

The filing of a request for reconsideration had a suspending effect on the first instance decisions concerning real property claims. The Commission notified the competent administrative body responsible for the enforcement of the first instance decision of any pending reconsideration request. However, the competent administrative body was not allowed to suspend the enforcement of the decision unless it had received official notification from the Commission specifically requesting suspension pending the outcome of the reconsideration.

After a request for reconsideration had been decided, the requesting person and all other persons who had received the first instance decision, as well as the administrative body responsible for enforcement, received a copy of the decision.²²⁸

Furthermore, the Commission's determination to revoke a previous decision certificate could be published in the Official Gazette of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska. However, the failure to publish the decision did not have any effect on the final and binding nature of the decisions.

3. Review standards

The scope for a request for reconsideration was limited, as the process was only intended to allow for submission of new evidence or an indication of new evidence, which could materially affect the decision.

According to Article 85 of the Book of Regulations I, the Commission could

- a) refuse the request as inadmissible, not submitted within due time or as submitted by an unauthorized person;
- b) reject the request as unfounded;
- c) accept the request, revoke its previous decision and issue a new certificate.

Each reconsideration request was subject to an individual review by the reconsideration unit of the Legal Department. Immediately prior to each plenary session, Commission members of the Legal Working Group reviewed draft decisions and discussed individual claims or types of claims brought to their attention by the Director of the Legal Department. If necessary, individual draft decisions were discussed at the plenary sessions with the full Commission present. The Commissioners adopted decisions by majority at each plenary session. They were not legally bound by either the first instance decision or any decision of other organs.

4. Legal effect

The decisions of the CRPC were final and could not be further appealed in domestic courts, including the national constitutional court.²²⁹ However, Annex 7 of the Dayton Peace Agreement did not give the CRPC the power to implement its decisions. Implementation of CRPC decisions rested squarely with the domestic authorities. Between 1997 and 2000, the domestic authorities actively failed to implement CRPC decisions and found numerous ways to obstruct the process until

the end of 1999 when the High Representative imposed the Law on Implementation of CRPC Decisions.

5. Statistical information

The CRPC issued 311,757 decisions in total. The number of requests for reconsideration received by the CRPC was 2,494 (approximately 0.8 per cent of the decisions issued). Only 382 of the reconsideration requests were successful (approximately 15 per cent). Therefore, the Commission reversed only 0.12 per cent of all the decisions issued.²³⁰

II. HPD/HPCC IN KOSOVO

1. Legal remedies available against the first instance decision

Provisions for legal remedies against decisions of the HPCC were included at the outset of the programme in UNMIK Regulation 2000/60. According to Section 14 of this Regulation, a request could be submitted for reconsideration of a HPCC decision within 30 days of being notified of the decision. Such a request for reconsideration was the only legal remedy available for HPCC decisions.

The right to submit a request for reconsideration according to Section 14 of UNMIK Regulation 2000/60 was given to any person who had been a party to the claim²³¹ as well as to persons with an interest in the property. “Parties to the claim” were the claimant, the current occupant of the claimed property and any other natural person with a legal interest in the property who had informed the HPD of his or her intention to participate in the proceedings within 30 days of being notified of the initial claim by the HPD.²³² Other persons who had not been a party to the claim, but who had an interest in the property could also file a request for reconsideration if they could show a good cause why he or she had not participated in the first instance proceedings as a party to the claim.²³³

When requesting a reconsideration of the decision, the party to the claims had to present legally relevant evidence which had not been considered by the Commission in deciding the claim. Alternatively, the request had to be based on the grounds that there had been a material error in the application of the relevant rules, notably UNMIK Regulation 2000/60.

During the reconsideration process, the requesting person could be represented by a member of the family household or by an authorized person with a valid

and duly executed power of attorney.²³⁴ In exceptional cases, where the provision of a power of attorney was problematic, the HPD could accept an alternative document authorizing representation of a claimant. However, as representation was not required, the costs for using the services of an authorized person were not reimbursed by the programme.

2. The second instance process

After a first instance decision was made, all claimants were contacted by phone and an appointment was made with the claimant for the collection of the decision. If a claimant could not be reached by phone, a standard letter was sent to the claimant's address and the claimant was requested to contact the HPD regarding the collection. Each party to the claim received a certified copy of the HPCC decision.²³⁵

The first instance decision informed the claimant about the possibility to submit a request for reconsideration within 30 days. The deadline for any party to the claim to submit a request for reconsideration started from the date of notification of the decision.²³⁶ An interested person who was not a party to a claim was required to submit a reconsideration request within 30 days of learning of the decision, but no later than one year from the date of the HPCC decision. Furthermore, the claimant had to present legally relevant evidence which had not been considered by the HPCC in its decision, or to allege a material error in the application of UNMIK Regulation 2000/60.²³⁷

A standardized form for the submission of a request for reconsideration did not exist. However, for persons who had not been a party to a claim a special form was provided by the HPD in order to capture information about

- the person requesting reconsideration, other interested parties and the property concerned;
- the date when the person requesting reconsideration first learned of the original claim and the reasons why he or she did not participate in the proceedings relating to the original claim; and
- the grounds on which he or she sought the reconsideration of the Commission's decision.²³⁸

Requests for reconsideration could be submitted in the three working languages of the HPD/HPCC which were Albanian, English and Serbian.²³⁹

Upon receipt of a reconsideration request, the HPD acknowledged the receipt of the request in writing and notified the other parties of the reconsideration request, unless the request was determined by the Registrar to be manifestly without merit. Following this notification, any party wishing to oppose the reconsideration request

could lodge a reply within 15 days of being informed of the request on a form provided by the HPD.

Any document received by the HPD from a claimant who challenged an HPCC decision was forwarded to the Registry as a reconsideration request irrespective of whether it was formally named as such by the claimant. If the Registrar determined that a request forwarded by the HPD was manifestly without merit, a decision was drafted rejecting the request on this basis. These decisions were reviewed and signed by the Chairperson of the HPCC at or between Panel sessions. If the number of requests to be resolved by decision was high, the Chairperson signed a cover decision resolving all individual requests identified in the cover decision.

If the Registrar determined that a request was not manifestly without merit, the request was investigated by the HPD. Following this investigation, the HPD prepared a draft decision and referral report and submitted the case to the HPCC for decision.²⁴⁰

The filing of a reconsideration request had a suspending effect on the first instance decision. An execution of a pending eviction order had to be stayed from the time of the lodging of the reconsideration request until the HPCC decided on the request, unless the HPCC determined otherwise.²⁴¹

3. Review standards

Each reconsideration request was reviewed by the full Commission. When a claim was referred to the Commission, the international Commissioners received an English claim report prepared by a Legal Officer of the Secretariat for their review, while the local Commissioner received the complete case file.

When reconsidering a decision, the HPCC took into account the evidence and information submitted during the first instance procedure and any new information filed with the reconsideration request.²⁴²

The HPCC was not bound by any decisions at the first instance or decisions of any other organs. While the HPD/HPCC was under constant general supervision and auditing by the donor countries and organizations, in particular in connection with applications for new funding, this supervision concerned administrative and financial issues only and did not include a legal review of individual decisions.

4. Legal effect

According to Section 2.7 of UNMIK Regulation 1999/23, HPCC decisions

following a reconsideration request were final and binding and were not subject to review by any other judicial or administrative authority in Kosovo, including local courts. They were also directly enforceable and any eviction orders that had been suspended because of a reconsideration request were ready to be executed once the HPCC decision on the reconsideration request was made.

As the first instance and the second instance bodies were identical there was no formal obligation to follow the interpretation set forth in the reconsideration decisions. Nevertheless, after each Commission session the HPCC issued instructions, outlining guidelines for evidence, verification, and notification of claims etc. These instructions were distributed to all staff working on processing of claims.

5. Statistical information

Overall, the number of reconsideration requests filed was relatively low. The HPCC rendered approximately 26,700 decisions and received about 4,500 requests for reconsideration with regard to these decisions.²⁴³

III. CRRPD IN IRAQ

1. Legal remedies available against the first instance decision

Article 14 of the CRRPD Statute establishes a right of appeal for claimants and respondents.

Additionally, the CRRPD Statute mentions three other legal remedies known in Iraqi Procedural Law that are applicable in special circumstances:²⁴⁴ A respondent is entitled to object a decision if the Judicial Committee has issued a decision in absentia.²⁴⁵ Furthermore, decisions issued by a Judicial Committee can be objected either by reconsidering the trial or by the objection of another party pursuant to the provision set forth in the Iraqi Procedural Civil Law.²⁴⁶ The objection of another party means that a person who is not party to a claim or is not represented in it can object if the decision addresses him/her or affects his or her rights.²⁴⁷

This section will focus on the appeal pursuant to Article 14 of the CRRPD Statute, as this is the legal remedy established within the framework of the restitution programme.

Every party of the claim involved in the first instance has the right to appeal

under Article 14 of the CRRPD Statute. This includes the claimants, co-claimants, respondents, co-respondents and other parties with an interest in the property.

During the appeals process, the appellant has the possibility but not a duty to be represented by an attorney or a family member. The Appellate Commission established the following criteria for representation during the appeals process: a party can be represented by an attorney if the attorney has a certified power of attorney, and a party can be represented by a family member up to the fourth degree of relation.

2. The second instance process

Decisions of the first instance include a statement advising the parties to the proceedings that the decision can be appealed within 30 days from the notification of the first instance decision before the Appellate Commission.²⁴⁸ No further instructions are given to the parties, and while the development of such a form is envisaged, there is currently no special Appeal Form guiding the party wishing to appeal.

However, the CRRPD Statute refers to the Iraqi Civil Procedure Code in matters that are not regulated under it.²⁴⁹ Under Iraqi civil procedural law, an appeal or a request to the Court of Cassation has to include the names of the parties, the place of notification, the name of the issuing body, the date of notifying the decision and the reasons for the legal remedy.²⁵⁰ An appeal can be filed in either Arabic or Kurdish, as these are the official languages of Iraq and of the CRRPD.

The filing of an appeal has a suspending effect on the first instance decision. The CRRPD Statute does not include any rules concerning the legal effect of an appeal, but again the Statute refers to the Iraqi Civil Procedure Code. It is not clear if the national rules concerning an appeal or the ones concerning a cassation are applicable. But both, Article 194 (Appeal) and Article 208 (Cassation) of the Iraqi Civil Procedure Code, foresee a suspending effect.

The Appellate Commission Administrative Employee receives an appeal and notifies the Regional Secretariat accordingly. The Administrative Employee signs the relevant receipt to indicate that the file is with the Appellate Commission. Furthermore, an appeal number is assigned to the appeal. After that, the Archive Officer at the Appellate Commission submits the file to the Legal Counsellors Committee at the Appellate Commission.

The Legal Counsellors Committee, consisting of three lawyers, reviews the appeals in the order they have been submitted. If the appeals are similar in their fact

patterns or legal issues, they can be reviewed jointly to accelerate the process. The Legal Counsellors Committee ensures that the appeal was submitted in time and examines all documents. Following this review, the Legal Counsellors Committee submits an appeal report to the Appellate Commission recommending that the Appellate Commission either uphold or revoke (in whole or in part) the decision of the Judicial Committee.

The Appellate Commission reviews the appeal and decides the case by majority vote of its seven members. According to Article 21 of the CRRPD Statute, the Commission issues decisions either to uphold the appealed decision or to amend or substitute it.

The CRRPD is under no obligation to notify the parties that an appeal has been submitted. The parties will learn about an appeal once they are following up to check if their decision can be enforced. This practice is a direct result of the security situation in Iraq: without a functioning postal system, notifications have to be delivered in person and are kept to a minimum in light of the security risks associated with travel.

3. Review standards

The Appellate Commission is entitled to undertake a full and independent review of the first instance decision without any limitation. It is not bound by the first instance decision-making body or by any other organs. Furthermore, the Statute explicitly states that the Commission has to be independent in its jurisdiction from the Iraqi Court of Cassation.

Through its advisory opinions, the Appellate Commission establishes interpretations of the Statute and other legal policies which then form the basis for both the first instance and appeal instance decision-making.

Each appeal is subject to an individual review by the Appellate Commission. However, as stated above, appeals with similar fact patterns or legal issues might be reviewed and submitted jointly by the Legal Counsellors Committee to the Appellate Commission to accelerate the process and ensure consistency in the decision-making.

According to Article 21 of the CRRPD Statute, the Appellate Commission issues decisions either to uphold the appealed decision or to amend it or substitute it. In case of an amendment or substitution, the Appellate Commission remands the case to the first instance for reconsideration.

4. Legal effect

The decisions of the Appellate Commission are final and cannot be challenged further.

The enforcement of decisions is not included in the CRRPD mandate and there is no other legal procedure to follow. The current practice, as described by the CRRPD Secretariat, is that fifteen days after the end of the 30-day appeal period or after the claim is resolved on the grounds of an appeal, the Regional Secretariat ratifies the decision by noting the fact of ratification on the decision. Furthermore, the Regional Secretariat provides the parties with a copy of the ratified decision. If the decision involves a transfer of ownership or other right recorded in a property registry, the CRRPD prepares a letter to the property registry asking it to register the property in the appropriate party's name. This letter is given to that party.²⁵¹

With regard to decisions issued against the Government, the CRRPD Statute states that the Ministry of Finance is responsible for paying the compensation amounts that the Government is liable to pay.²⁵²

5. Statistical information

Until May 2008, approximately 9,900 appeals had been filed against first instance decisions and approximately 6,600 appeal decisions had been ratified.

IV. UNITED NATIONS COMPENSATION COMMISSION

1. Legal remedies available against the first instance decision

Article 40, Paragraph 4, of the UNCC Rules stated that “decisions of the Governing Council will be final and are not subject to appeal or review on procedural, substantive or other grounds.”

However, Article 41 of the UNCC Rules established a mechanism for the correction of “computational, clerical, typographical or other errors brought to the attention of the Executive Secretary within 60 days from the publication of the decisions and reports.” Article 41 was the only mechanism available under the UNCC Rules for changing awards of compensation recommended by Panels of Commissioners that had been approved by Governing Council decisions.

This mechanism was foreseen at the beginning of the programme. During the initial phase of setting up the Commission, there was discussion within the Governing Council about the scope that the legal remedy should take and the precise wording of Article 41 of the UNCC Rules. While the text of the Rules was approved by the Governing Council in June 1992, the Council confirmed a narrow interpretation of Article 41 during its March 1999 session and emphasised that the phrase “or other errors” should not be interpreted in such a way as to allow an appeal of the determination of a claim on procedural, substantive or other grounds.

The types of errors identified by the Secretariat and/or the Panels included: data entry errors (in particular, errors made by submitting entities in the information provided in electronic format, which became evident upon a comparison of the paper claim form with the electronic information); clerical and calculation errors resulting from the incorrect application of a Panel’s methodology; awards made in respect of overlapping claims and duplicate claims; and computational errors which came to light in the Secretariat/Panel review of previously awarded claims.

Article 41 does not define the entity entitled to initiate a request for correction. Requests were often initiated by Panels of Commissioners upon review of their earlier recommendations or by the Secretariat when errors came to light, as well as by governments and international organizations acting on behalf of claimants.

Representation was not required, but it was possible. Many requests for correction were prepared on behalf of claimants by lawyers or other representatives.

2. The second instance process

Following a decision at the first instance, no legal instructions were given to claimants. Claimants were not individually notified of the outcome of their claims. Instead, governments and international organizations were informed of the Governing Council’s decisions concerning the claims submitted through them and of the deadlines applicable to filing requests for correction.

While Article 41 provides that requests for correction must be made within 60 days of the publication of decisions and reports, the 60-day deadline was not strictly enforced by the Governing Council.

In response to a request by the Secretariat that final deadlines under Article 41 be established and enforced so that claims processing could be concluded by the end of 2005, the Governing Council set 31 December 2002 as the final deadline for the submission of requests for correction of claims in categories “A” and “C”. At its

June 2003 session, it set 31 December 2003 as the final deadline for the submission of requests for correction of claims in categories “D”, “E” and “F” that were approved by decisions taken on or prior to June 2003. For claims approved in decisions taken at sessions after June 2003, the Governing Council set a 180-day deadline from the date of the decision of the claim.

Furthermore, filing deadlines were set for correction requests in respect of late-filed claims, the last of which expired in December 2005.

These deadlines were only applied to requests from submitting entities seeking an increase in compensation awards. The Secretariat continued, even after the expiration of the deadlines, to review and propose corrections brought to its attention that resulted in a reduction in the amount of compensation, such as those resulting from the identification of duplicate claims that both received awards of compensation.

There was no standardized form to request a correction. A letter filed through the claimant’s government or international organization was sufficient. Even letters expressing the claimant’s dissatisfaction with the first instance decision were treated as requests for correction under Article 41 and were responded to accordingly by the Commission’s Secretariat, although, in line with the Secretariat’s procedures, a detailed review was not carried out in such cases. The request for correction had to be written in English as the working language of the Commission was English, and all documents filed by claimants were required to be in English or to be accompanied by an English translation.

When the Commission’s Registry received a request for correction it notified the appropriate internal divisions of the Secretariat of the request, but there were no notification procedures outside the Commission’s Secretariat.

Furthermore, there was no legal effect of filing a request for correction. The Secretariat continued to make payments to claimants through their governments and international organizations pending the Article 41 review process, and any action necessary to rectify errors was taken after the Governing Council’s decision to correct the claim.

3. Review standards

There was no “legal standard” for the second instance decision-making body *per se*, as the correction process was treated as an administrative procedure to correct errors of a computational, clerical, typographical or other similar nature.

The claimant had to show that a computational, clerical, typographical or other error had occurred. In the absence of this, a general expression of dissatisfaction with the award was not sufficient to give rise to a correction under Article 41. In such cases, the Secretariat sent a response to the submitting entity informing it that the request was outside the scope of Article 41.

At no time were claimants permitted to file additional information or evidence in support of a request for correction under Article 41. The Secretariat based its review and recommendation to the Governing Council on the documentation contained in the claim file at the time of the initial (first instance) review of the claim.

If a claimant had requested a correction because one of the mentioned errors had occurred, an individual review was carried out by the Secretariat's Article 41 Unit. The nature of the review varied according to the category of claim in question.

The review process for category "A" and "C" claims comprised the following:

- (a) A comparison of the paper claims forms with claim information contained in the Commission's database to ascertain whether the electronically held information corresponded to the information on the paper claim form signed by the claimant;
- (b) In the case of duplicate claims where no processing had taken place on the identified duplicate claim, a review of the paper claim form and the electronic database to ascertain whether the claims were in fact duplicative; and
- (c) In the case of compensation awards calculated according to compensation formulae adopted by the Panels of Commissioners, a review of the claim to ascertain whether the appropriate formulae were applied.

If any material error was identified in category "A" and "C" claims, the Article 41 Unit verified (i) whether the claimant had another claim through which the recalculated loss had been compensated, or (ii) whether the claimant was subject to any request for the return of funds due to a subsequent determination of a competing claim for the same loss.

The review of category "A" and "C" claims was conducted by the Article 41 Unit. In the case of category "C" claims, verification by the Commission's Verification and Valuation Services Branch ("VVSBS") was an integral part of the quality assurance review of corrections reported in Reports of the Executive Secretary pursuant to Article 41.

In contrast to the Category “A” and “C” claims, the procedures governing the review of category “E” and “F” claims are contained in the Secretariat’s internal “Provisional Procedures for Responding to Article 41 Requests in Categories D, E and F”, which came into effect in November 2003.

Although the Provisional Procedures were initially drafted to include category “D” claims, in view of the large number of requests received from category “D” claimants, it was decided to take these claims out of the scope of the Provisional Procedures and to develop fast track procedures in order to expedite their processing. Under these “fast track” procedures, a detailed review of the request only took place if there was an unusually low recovery rate for the loss element(s) or if a claimant alleged a specific computational, clerical, typographical or other error.

In categories “D”, “E” and “F”, a review of the relevant claim only took place where the request alleged a defect in the claims review process that was capable of being addressed under Article 41 or, in the case of category D, where the amount of compensation awarded was statistically below the amount of compensation usually awarded for such claims.

The process for review of category “D”, “E” and “F” claims was as follows:

- (a) For claimants who did not identify a specific error under Article 41 and who merely requested a reconsideration of the claim, a standard form note verbale was prepared by the Article 41 Unit, which incorporated wording about the scope of Article 41 and included the following paragraph: “The claimant has failed to identify any computational, clerical, typographical or other errors in its letter and, therefore, its request for correction is an appeal that is not permitted by the Rules.”

In an effort to assist claimants in understanding the relevant Panel’s recommendations, for category “E” and “F” claims the note verbale contained a brief summary of the methodologies applied by the Panel in its consideration of the claim in question, and for category D claims the relevant methodologies were attached.

- (b) For claimants who did identify a specific error under Article 41, the Article 41 Unit reviewed the relevant claim file to identify the type of error to be corrected by the Governing Council pursuant to Article 41 of the Rules.
 - Clerical error: For losses receiving nil awards due to insufficient evidence, verification that the claim file did not contain the evidence required by the Panel;

- Clerical error: For losses receiving nil awards due to the alleged losses being incurred outside of the jurisdiction of the Commission, verification of the basis of this determination according to the criteria established by the Panel;
- Computational error: For losses receiving an amount of compensation in category “D” that was statistically below the amount of compensation usually awarded for such claims, verification that the amount of compensation had been determined according to the criteria established by the Panel;
- Computational error: For losses receiving compensation the amount of which was specifically contested in the request for correction, verification that the amount of compensation had been determined according to the criteria established by the Panel.

The review was conducted by the Article 41 Unit and by the VVSB.

For all categories of claims, upon completion of the Secretariat’s review and relying on the recommendations of the Executive Secretary, the Governing Council decided on the requests for correction. The government through which the claim had been submitted was informed in writing of the decision. The decisions were not subject to any further review by another body or authority.

The Panels of Commissioners for Category “A” and “C” claims, which were disbanded in 1996 and 1997, respectively, were not involved in the review process.²⁵³

Although there was no formal decision of the Governing Council on point, the Secretariat, when reviewing requests for correction concerning Category “D”, “E” and “F” claims, adopted the practice of reverting to the relevant Panel of Commissioners, in appropriate cases, where the Panel was still sitting. Moreover, in particularly complex matters concerning category “D”, “E” and “F” claims, where it appeared to the Secretariat upon its initial review of the request that a correction under Article 41 was warranted, the Secretariat reverted to the Panels of Commissioners, even where the Panels had completed their mandate and were no longer sitting. The “Provisional Procedures for Responding to Article 41 Requests in Categories D, E and F” contain a provision for Panels of Commissioners to be informed of corrections, where appropriate, and for their views to be recorded in the minutes of the Panel meeting and in the claim file.

4. Legal effect

The Governing Council’s decision on the request was final. No further

correspondence was accepted by the Commission's Registry from the claimant or the respective submitting entity concerning the matter in question.

Decisions of the Governing Council on requests for correction resulted either in a change to the original award to the claimant or, alternatively, no change to the original award. A change to the original award could result in either an upward or downward correction of the amount of compensation awarded. In cases of increases to the award amount, this was straightforward and the amounts were paid to the submitting entities in question as soon as possible after the Governing Council session deciding the matter. Reductions of award amounts proved to be more difficult to enforce, as they involved requesting the return of funds from claimants through their submitting entities. Many governments informed the Commission that they were unable to obtain the return of funds from claimants, despite efforts to do so.

5. Statistical information

The number of correction requests and their success rate varied according to the claims category and the submitting entity in question.

Figures for the individual claims categories "A" and "C" are not readily available, as the majority of correspondence from the governments and submitting entities in question was in the nature of status enquiries, requests for explanation of amounts corrected under the "high to low" project,²⁵⁴ and correspondence accompanying the return of funds in respect of duplicate claims. These requests were grouped together with Article 41 requests and responded to by members of the Secretariat who initially formed part of the claims processing teams and who, later, were integrated into the Article 41 Unit.

The majority of corrections in categories "A", "B" and "C", which include Secretariat and/or Panel-initiated corrections, were made to correct data entry errors or pursuant to the "high to low" project. The figures, per category, are: Category "A": 3.5%; Category "B": less than 1%; Category "C": 1.5%. The number of successful correction requests filed by claimants was a very small percentage of these figures.²⁵⁵

The following figures are the approximate figures of correction requests in the larger categories of claims: Category "D": 20%; Category "E" (excluding Category "E4"): 3%; Category "E4" (corporate Kuwaiti claims): 30%; Category "F": 2.5%. The number of successful correction requests for these, excluding "self-initiated" corrections, i.e. corrections made as a result of errors found by the Secretariat and/or the Panels of Commissioners in the course of their review of claims, are:

Category “D”: 1.5%; Category “E” (excluding E4): 8%; Category “E4” (corporate Kuwaiti claims): nil; Category “F”: nil.

The processing time varied according to the period when the correction requests were filed. In mid-2003, the Article 41 Unit was established within the Secretariat’s Legal Services Branch to process requests for correction. Prior to this time, the Secretariat did not have adequate resources to respond to the large number of requests and reviews were carried out, and responses prepared, on an ad hoc basis by one or two legal officers who also had other responsibilities or by the claims processing teams themselves if resources permitted. Consequently, requests for correction filed before this time had to be left unanswered for a long time – in some cases, several years. Once the Article 41 Unit became operational, procedures for a swift review of requests filed in all categories were put in place. In view of the large backlog of requests in these categories, there was still a delay of between six to twelve months for category “A”, “C”, “D” and “E4” claims. Requests concerning Category “E” claims (other than “E4” claims) and category “F” claims were processed more quickly.

V. GERMAN FORCED LABOUR COMPENSATION PROGRAMME

1. Legal remedies available against the first instance decision

The German Foundation Act which established the compensation programme for slave and forced labourers during the Nazi regime, provided every claimant with the possibility to appeal against a first instance decision to an independent appeals organ that was “subject to no outside instructions.”²⁵⁶ The IOM Appeals Body that was created pursuant to this law adopted the “Principles and Rules of Appeals Procedure” (“Appeals Rules”)²⁵⁷ that governed the appeals process.

Every claimant who received a first instance decision had the right to appeal.²⁵⁸ This included persons who had timely submitted their claims to IOM as victims or eligible heirs of victims and whose claims for compensation were denied, in whole or in part, at the first instance. It also included those who had been awarded compensation but who felt that they were entitled to a higher compensation amount.

During the appeals process, the appellant could choose to be represented by a lawyer or by another third party, e.g. a family member or an NGO. However, such representation was not required, and if an appellant decided to use the services of a lawyer, all resulting costs had to be born by the appellant.²⁵⁹ Furthermore, the representatives had to provide proper written authorization from the appellant, or in case the appellant was deceased from the eligible heirs of the appellant. In the event that

a proper authorization was already submitted for the purpose of the initial claims procedure, such authorization was presumed to remain effective for the purpose of the appeals procedure, unless otherwise indicated by the appellant.

2. The second instance process

The first instance decisions included instructions to the claimants regarding the possibility to submit an appeal within a deadline of 100 days.²⁶⁰ In exceptional circumstances, such as prolonged sickness of the claimant, the IOM Appeals Body retained the discretion to accept appeals even after the expiry of the appeals deadline. Towards the end of the Programme, however, there was a mandatory “cut-off date” imposed by the German Foundation Act, by which all appeals had to be received regardless of the 100-day appeals deadline. Once the filing deadline had been met, appellants could supplement their appeal with additional information even after the deadline had passed, as long as the IOM Appeals Body had not yet rendered its decision on the appeal.

In the instructions, the claimants were advised that the appeal was free of charge, but it was also explained that any costs for legal representation would not be reimbursed. The claimant was asked to explain the reasons why he or she believed that the first instance decision was wrong and to submit any additional information available to him/her when filing an appeal. There was no special Appeal Form and appeals could be sent as simple letters, both typed or handwritten. Appeals that were sent by fax or electronic mail were also accepted, as long as there was no doubt of the identity of the appellant.

The working language of the IOM Appeals Body was English,²⁶¹ but appeals were accepted in all the twenty-five official languages recognized under the Programme. The decisions of the IOM Appeals Body were translated into a number of core languages that covered approximately 80-90 per cent of the appeals caseload. For other languages, a short cover letter in the appellant’s native language was provided, together with the decision of the IOM Appeals Body in a language that the appellant was most likely to understand.

The filing of an appeal did not have any suspending effect on the first instance decision. In the event of a compensation award in the first instance, claimants could accept and cash the cheque without harming their chances for a successful appeal aimed at a higher compensation amount.

Due to the very large number of appeals received (more than 30,000), appellants and third party representatives were not sent confirmations that their appeal had been received. Rather, once the appeal had been decided, both, the appellant and

co-appellants as well as any known authorized third party representative received a copy of the decision of the IOM Appeals Body. In line with the programme's practice, payment cheques for additional compensation as a result of an appeal decision were sent to the successful appellants only, and not to the third party representatives.

3. Review standards

The IOM Appeals Body operated within the framework of the German Foundation Act and the German Foundation which supervised IOM's implementation of the programme, including the functioning of the IOM Appeals Body. Under the Appeals Rules, the IOM Appeals Body undertook a full and independent review of the first instance decision. In accordance with those rules, the IOM Appeals Body applied the general principle of non-reformatio in peius, i.e. the interdiction to modify the first instance decision to the disadvantage of the appellant, even in case of a clear first instance error in favour of the appellant.²⁶²

In considering appeals, the IOM Appeals Body took into account

- the initial IOM decision and its rationale;
- the statements and all material submitted during the first instance procedure;
- the statements and all material submitted by the appellant during the appeals procedure;
- information obtained from archives or other sources on the circumstances and facts relevant to the claim; and
- historical background information available to the IOM Appeals Body regarding the circumstances prevailing during the National Socialist period.²⁶³

Where documentary evidence was lacking, the Appeals Body assessed the credibility of personal statements in light of known historical circumstances and available research.

In principle, each of the 32,000 appeals was subject to an individual review by the Appeals Team of the Secretariat. Depending on the profile of the appeal, appeals were subject either to an accelerated review (presumably manifestly unfounded appeals) or a more in-depth review. However, the distinction between "manifestly unfounded" rejections and "simple" rejections was made for internal processing purposes only and was not used when communicating the final decision to the appellant. In addition, certain appeals were considered as "inadmissible", for instance appeals that clearly addressed issues outside the jurisdiction of the IOM Appeals Body.

All appeals were decided and issued directly by the IOM Appeals Body covering all aspects of the claim. No decision was remanded to the first instance. However, if the appeals processing revealed a more systematic error at first instance for an entire group of claims, the Appeals Team informally notified the first instance about such errors to provide for the opportunity to rectify such errors on an *ex-officio* basis.

The decisions taken by the IOM Appeals Body were subject to a “spot-check” by the German Foundation as the supervisory institution. However, the German Foundation could “overrule” the IOM Appeals Body only in (very rare) instances in which it was demonstrated that the decision of the IOM Appeals Body had been “manifestly erroneous”. For the most part, the Foundation’s spot-checks would concentrate on issues of a general nature (i.e. the discussion of a particular appellant profile and related historical aspects) or issues of a mere technical nature (such as the exclusion of duplicate decisions).

4. Legal effect

According to Article 22 of the Appeals Rules, decisions by the IOM Appeals Body were final and could not be further appealed. Following the spot-checks by the German Foundation and its approval, such decisions were directly enforceable and the Programme’s Finance Team proceeded with issuing compensation cheques to appellants according to the amount awarded by the IOM Appeals Body.

In terms of any individual decision on a claim, the decision by the IOM Appeals Body was binding and had to be implemented by IOM. Beyond the circumstances of the individual case, there was no formal obligation for the first instance to follow the interpretation by the IOM Appeals Body, either as regards the factual findings or any legal interpretation. However, while the IOM Appeals Body could not direct the first instance to adopt certain patterns, over time the decisions of the IOM Appeals Body indirectly influenced first instance decision-making both by helping to detect systemic problems and by instilling greater flexibility in IOM’s claims review process.

5. Statistical information

Overall, the appeals rate was situated somewhere between 10 and 15 per cent, depending on the calculation method. The percentage rate of first instance decisions that were appealed varied considerably, however, according to a number of factors, such as the type of decision (decision for victims or decision for heirs) and the claimant profile. In addition, statistics could vary considerably depending on the number of first instance decisions taken into account for the purpose of calculating

the appeals rate (e.g. depending on whether duplicate decisions are counted or positive first instance decisions for the maximum amount are counted).

Depending on the statistical method employed and the type of first instance decision looked at, the rate of successful appeals varied between only 2.5 per cent for certain claimant groups and as much as 15 to 20 per cent for other groups.

The IOM Appeals Body diverted on a number of occasions from the first instance decision-making practice, both in terms of legal provisions and with regard to particular claimant groups. On the whole, those differences resulted largely from the fact that the IOM Appeals Body had the opportunity to undertake an individual review of the entire claim and any related individual statements submitted by appellants. This allowed for a differentiated approach that attributed greater importance to exceptional circumstances outside regular patterns as well as resolving appeals on issues of credibility. Comparatively, not least due to the large number of claims submitted (more than 300,000), the first instance process had to adopt a more standardized approach based on evidence and regular claimant patterns, leaving little room for individual considerations.

The processing time varied considerably throughout the duration of the appeal process, mainly depending on when the first instance decision had been taken. For some claimant groups in which a large number of appeals had been received within a short period of time, it could take several years until the IOM Appeals Body decision was taken and approved. Once the initially accumulated backlog had been reduced, appeals were decided within the space of a few weeks.

At the outset of the appeal process the uncertainty about the number of appeals to be expected against first instance decisions was the main problem and reason for delay. Since a large number of first instance rejections were issued within a very short time period, a large number of appeals were received for which the resources of the Appeals Team, both as regards registration and review of the appeals, initially were not sufficient. In addition, other elements of the appeals infrastructure, such as a functioning appeals database, were initially not available. Once those support structures had been put in place, the output of appeal reviews by the Appeals Team increased substantially, without any reduction in the quality of the decision-making.

VI. GFLCP PROPERTY LOSS PROGRAMME

1. Legal remedies available against the first instance decision

The German Foundation Act establishing the Property Claims Commission defined the internal structures, organs and the mandate of the Property Claims Commission, but did not contain provisions regarding its procedures. To provide a framework for itself and guidance to the claimants, the Property Claims Commission enacted its own Supplemental Principles and Rules of Procedure (“PCC Rules”), adopted at the beginning of its work in spring 2001.

Pursuant to Section 25.1 of the PCC Rules, claimants had the right to file a request for reconsideration of a claim by the Property Claims Commission on the grounds of manifest error or new evidence previously unavailable to the claimant. This limited possibility to challenge the decision was the only legal remedy available under the PCC Rules.

With the establishment of a right to request the reconsideration of a decision, the review procedure was adopted that had originally been foreseen in the Agreement between the Governments of the United States and Germany.²⁶⁴

A request for reconsideration could be filed by the claimant or by any co-claimant.²⁶⁵ The PCC Rules also allowed a claimant to file a request for reconsideration on behalf of all of the co-claimants. Representation in filing the request was not required but was possible.²⁶⁶ However, a representative had to submit specific authorization from the claimant, in which the claimant acknowledged that he or she was aware that the procedure before the IOM and the Property Claims Commission was free of charge, that neither the IOM nor the Commission would reimburse legal or any other fees, and that payment would not be made to the representative but only to the person entitled to payment.

2. The second instance process

Together with the first instance decision, the claimant was informed about his or her right to file a request for reconsideration and the conditions under which such a request could be filed. A request for reconsideration had to be received by IOM within three months of the date of the decision of the Property Claims Commission.²⁶⁷ This three-month deadline was strictly enforced and no extensions were granted.

The request for reconsideration had to be made in writing. The request had to contain the claim number, the names and addresses of all co-claimants as well as the grounds and reasons supporting the request. Furthermore, the request had to identify the parts of the decision that were being challenged. If the request for reconsideration was based on new evidence and not a manifest error, then the request had to include the new evidence and the claimant had to specify how the new evidence was relevant, why it was unavailable to the claimant at the time of submission of the claim or its supplements, and when the new evidence became available to the claimant. Finally, the statement had to contain the signature of the person submitting the request for reconsideration.

If the person filing the request was an individual without an authorized representative, the request could be filed in English, German, Czech, Hebrew, Hungarian, Polish or Russian. Persons represented by a lawyer or other representative, religious communities or religious organizations had to file the request in English or German.

The receipt of a request for reconsideration by the Property Claims Commission was neither notified to the claimant filing the request nor to any co-claimant. The reason for this was that all the requests for reconsideration were processed within a short time frame and therefore the claimants did not have to wait long to receive the Property Claims Commission's decision on their request. After the Commission had reconsidered and decided the case again, the claimant and all co-claimants were notified of the reconsideration decision as soon as the Commission had issued it.²⁶⁸

The funds available under the programme were not sufficient to pay the compensation awarded in full and a pro-rata reduction needed to be applied to the compensation awards in each case. Payments of compensation thus had to wait until all claims and all requests for reconsideration had been decided and the total amount awarded under the programme was known.

3. Review standards

The scope for a request for reconsideration was relatively limited as the process was only intended to correct manifest errors or to consider new evidence.²⁶⁹ Only evidence that the claimant showed was unavailable to the claimant at the time of the submission of the original claim or its supplements could be submitted during the reconsideration procedure.

The Property Claims Commission applied commonly used legal principles when deciding the requests for reconsideration. Claims were not reopened *ex officio*. This meant that if a manifest error was made in the application of facts or

law, and the decision would have been positive without the error, the decision could only be changed if the claimant filed a request for reconsideration. Nothing could be reconsidered unless it was specifically requested by the claimant. This meant that the claimant could not file a general complaint against the decision, but had to specifically assert what was manifestly wrong or to which point the new evidence was directed. And finally, the prohibition of *reformatio in peius* applied, which meant that the Property Claims Commission could not alter a decision of the first instance to the disadvantage of the claimant when deciding about his or her reconsideration request.

Each reconsideration request was subject to an individual review. Within this individual review the Property Claims Commission was not legally bound by any other organs. While the Property Claims Commission had to notify the German Foundation of its decisions for formal approval, this only served informational purposes and did not include any substantive review by the German Foundation.

4. Legal effect

Once the Property Claims Commission made a decision on the request for reconsideration, the matter became final and could not be challenged further.

There was no separate acceptance procedure after the reconsideration decision of the Property Claims Commission, and upon completion of the claims resolution process the awarded amount subject to the pro-rata reduction was paid directly by IOM to the claimants.

5. Statistical information

In total, the Commission received and decided 8,489 requests for reconsideration (24.3% of the first instance decisions). Only 224 requests, or 2.6 per cent, were decided positively and 8,265 requests were decided negatively. The reason for the high percentage of negative reconsideration decisions was, *inter alia*, that it was difficult for the claimants to satisfy the requirements of the limited reconsideration process, especially to show a manifest error or submit new, previously unavailable evidence. As a result, the Commission reversed only 0.64 per cent of all the decisions issued.

On average, requests for reconsideration were processed within six to eight months.

VII. CLAIMS RESOLUTION TRIBUNAL FOR DORMANT ACCOUNTS IN SWITZERLAND

1. Legal remedies available against the first instance decision

According to Article 10, Paragraph 4 of the CRT Rules of Procedure a party could resubmit a claim that had been denied by a Sole Arbitrator in the initial screening process to a Claims Panel.

The purpose of the initial screening process was to filter out unmeritorious claims before the actual arbitration process, in order to simplify and speed up the claims resolution process. If the Sole Arbitrator denied the disclosure of the bank's name and the value in the account, and with it the right to proceed to arbitration, the Claimant could challenge this decision through a resubmission request. This resubmission request was the only legal remedy inside the claims resolution process of the CRT which provided a second instance review.

The right to submit a resubmission request was given to the claimant only. If the Sole Arbitrator decided that the bank's name and the value of the dormant account should be disclosed to the claimant, this decision could not be challenged by the banks.

The CRT Rules did not foresee any challenge of decisions at the arbitration stage regarding the entitlement of a claimant to an account.. The only recourse available to a claimant was an appeal to the Swiss Federal Supreme Court based on Article 190 of the Swiss Private International Law Act ("SPILA"), which provides limited grounds on which an appeal may be founded.

Pursuant to Swiss law on international arbitration (Article 190 of the SPILA), a party may appeal a final decision of an arbitral tribunal to a Swiss court only in cases in which the party believes that his or her procedural rights were violated in the course of the arbitral proceedings. Such grounds for appeal include cases where a tribunal has wrongly accepted jurisdiction to decide a case; where there has been an improper appointment of an arbitrator, or an improper constitution of a claims panel; where a tribunal has decided matters beyond those submitted to it, or where it failed to resolve all of the matters before it; or where a party or parties believe that their right to be heard in an adversarial procedure has not been observed. Additionally, a party may challenge the substance of an arbitral decision only in cases in which he or she believes that the decision violates public policy; or in cases in which new relevant facts were discovered after the decision was rendered, provided that the challenging party was not responsible for the fact that the new facts were discovered only after the decision was rendered.

The proceedings before the CRT did not require legal representation, although representation was possible pursuant to Article 39 of the CRT Rules of Procedure. Each party had to bear the expenses incurred in connection with such representation, including fees and expenses of lawyers, accountants and other professionals.

2. The second instance process

Pursuant to Article 10, Paragraph 4 of the CRT Rules of Procedure, claimants could resubmit his or her claim to a Claims Panel without any new or additional information or documents. There was no standardized form for resubmission requests, and a written notice from the claimant stating that he or she wished to resubmit the claim sufficed.

Article 10, Paragraph 4 of the Rules of Procedure provided that negative initial screening decisions could be challenged by resubmitting a claim for decision by a Claims Panel within 30 days upon receipt of the Sole Arbitrator's decision. The claimant was informed of this right in the initial screening decision which, like all decisions of the tribunal, were sent out by special registered mail with delivery receipt. This delivery receipt was filed with the claim file and helped the Secretariat to determine whether the resubmission request had been filed timely.

While additional information was not a formal requirement for a resubmission, both in the decision text and the cover letter, the claimant was encouraged to clearly set out the reasons why he or she believed the rejection of the claim was incorrect when resubmitting the claim and to submit any additional information that might support the claim. Upon request claimants were granted an extension of the 30 day deadline if they needed more time to research additional information in support of their claim.

The resubmission requests could be submitted in any language. As a consequence, the CRT received claims in more than 15 languages. All claims were translated into one of the Tribunal's working languages, i.e. English, French, German, Italian or Spanish.

Decisions and cover letters were written and signed in one of the working languages of the Tribunal and then translated into the language of the Claimant. A standard disclaimer was added, indicating that the translation was provided for the Claimant's convenience only, and that where there was ambiguity between the original text and the translation, the wording signed by the Arbitrator would be authoritative.

Upon receipt at the Tribunal, the resubmission request was first submitted to the

bank to allow it to change its position regarding the disclosure of its name and the value of the account in light of the new information submitted by the claimant.

Many of the published accounts, in particular those where the account holder had a common family name, were claimed by many claimants. For the decision on the merits, i.e. the question of who was entitled to the account, the Tribunal joined all claims to the same account in one arbitral proceeding. This required that all initial screening decisions and resubmission requests had to be completed before the arbitration could be started. As such, a resubmission request delayed the beginning of the arbitral proceedings and claimants who had filed a “strong” claim and thus easily passed the initial screening process had to wait until the initial screening and resubmission requests for “weaker” claims had been resolved.

3. Review standards

When a claim denied in the initial screening by a Sole Arbitrator was resubmitted to a Claims Panel, the Claims Panel would look at all the information and documents provided by the claimant when filing the claim and those provided with the resubmission.

The Claims Panel would apply the same review standards as the Sole Arbitrator and order that the name of the bank and the amount held in the dormant account be disclosed to the claimant, unless it determined that the claimant had not submitted any information on his or her entitlement to the dormant account, or it was apparent that the claimant was not entitled to the dormant account.

There was an individual review of each case. Staff attorneys in the legal teams of the Secretariat reviewed the claim file and the information submitted, drafted a decision and submitted it together with the claim file to the Panel of Arbitrators.

Every draft decision was then reviewed by the Panel members, amended if needed and signed. The Claims Panel was independent and its decisions were not subject to any review or supervision.

If the Claims Panel decided that based on the information before it the name of the bank and the value of the account should be disclosed to the claimant, it ordered the disclosure and did not remand back to the Sole Arbitrator.

4. Legal effect

The decision of the Claims Panel was final. It was directly enforceable as there was no separate enforcement procedure. In case of a positive decision, the name of

the bank and the value of the account were provided to the claimant in the disclosure decision of the Claims Panel.

5. Statistical information

The Tribunal rendered a total of 6,039 initial screening decisions, out of which 5,444 were negative decisions. In 953 cases, the claimant resubmitted his or her claim to a Claims Panel. In 884 cases, the Sole Arbitrator's decision was confirmed, while in 69 cases (approximately 7%) it was reversed.

A number of factors influenced the processing time for resubmission decisions. The Tribunal reviewed and decided cases in English, French and German as well as a smaller number in Italian and Spanish. However, it received claims in more than 15 languages which then needed to be translated into one of the working languages of the arbitrators, a time-consuming task.

The Chairman then had to appoint a Claims Panel ensuring that all members had the required working language. While all arbitrators affiliated with the Tribunal could work in English, only a limited number could work in German, French or Hebrew and Panels had to be appointed with the right language combination. As arbitrators were not resident in Zurich, finding a meeting date which would accommodate everybody's busy schedule sometimes proved difficult and could cause delays. The Sole Arbitrator who had rendered the initial screening decision could not serve as a member of the Claims Panel.

The Secretariat addressed these issues by trying to minimize the translation work required and by organizing the workflow of the Legal Teams around the arbitrators' schedules. Towards the end of the initial screening and resubmission process, when there were only a few cases left, the Claims Panels decided not to meet in person in Zurich, but exchanged written comments and/or discussed cases during a telephone conference.

VIII. ANNAN PLAN FOR CYPRUS

1. Legal remedies available against the first instance decision

While certain aspects of the property claims mechanisms were described in the Annan Plan in great detail, the question of a review of first instance decisions, i.e. decisions of a Claims Panel of the Property Board, was not outlined in detail.

A second instance review was referred to only in Article 22 of Annex VII of the Annan Plan which provided that an application for a review of a Property Board decision could be made to the Property Court by any party with a legal interest in the decision or the property in question.

2. The second instance process

According to Article 22, Paragraph 5 of Annex VII of the Annan Plan, the parties had 60 days to file an application for a second instance review from the publication of the decision by the Claims Panel.

Although under Annex VII of the Annan Plan the languages of the Property Court were not mentioned, Article 9 indicated that claims could be filed in Greek and Turkish.²⁷⁰ Furthermore, because the Property Court was to be composed of at least three non-Cypriot judges, it was likely that claims could also be filed in English.

There are no provisions directly regulating the question of what legal effect an application for review to the Property Court would have, in particular whether it would have led to a suspension of the deadlines for vacating affected property.

3. Review standards

The party filing an application for judicial review would have to have a legal interest in the decision or the property in question.²⁷¹

Though it is not explicitly stated in the Annan Plan, the fact that the Property Court would be a permanent appeals body integrated into the national court system indicates that there would have been an individual review of each application.

4. Legal effect

According to Article 22, Paragraph 4 of Annex VII of the Annan Plan, the decisions of the Property Court were to be final. They were neither subject to any further review nor could they be appealed to the Supreme Court.

5. Statistical information

This is not applicable since the Annan Plan has not been implemented.

F. SECONDARY OCCUPANCY

Secondary occupancy refers to a situation in which real property that is claimed in a property restitution programme is being used or occupied by someone else, thus preventing the successful claimant from returning to and/or using the real property.

Typically, this scenario involves a right holder claimant who was dispossessed, displaced or had to abandon his or her property as a result of a conflict or authoritarian rule (the “Pre-conflict Occupant”), and a third party who occupied and started using the property during the course of or immediately after the conflict or authoritarian rule (the “Current Occupant”).²⁷² With regard to the latter, the motives and circumstances that led to the occupancy might differ widely. The Current Occupant might have been actively involved in the displacement of the Pre-conflict Occupant, or might have purchased the property in good faith from another person. Finally, the Current Occupant might live in the property only because he or she lost his or her own house and the family was in need of shelter.

The different circumstances behind secondary occupancy create the need to address this issue on different levels, both legal and humanitarian, in order to respond to both parties’ needs and to achieve a comprehensive and sustainable solution with respect to property rights. In the context of a property restitution programme, secondary occupancy raises a number of questions regarding the procedure for the resolution of claims as well as for the enforcement of the decision.

Depending on whether or to what extent the jurisdiction of a property claims programme includes the mandate to deal with secondary occupancy, the programme will have to establish processes allowing for the participation of the Current Occupant and the protection of both parties’ rights during the proceedings. Usually, if the Current Occupant disputes the right of the Pre-conflict Occupant and claims to have a right to the property, his or her counter-claim or response will need to be decided together with the claim of the Pre-conflict Occupant in order to determine who has the superseding right. The resolution of counter-claims might add considerable complexity and length to the proceedings. Additionally, even if the Current Occupant does not allege any legal rights in the property, his or her occupancy will make the enforcement of the decision more difficult, as his or her eviction will result in new displacement and may create the need for humanitarian assistance or other alternative measures.

The purpose of this section is to show whether and how past and current property restitution programmes have addressed the legal, procedural and humanitarian issues raised by secondary occupancy. For this, four programmes are examined in this section – the CRPC in Bosnia and Herzegovina, the HPD/HPCC in Kosovo, the CRRPD in Iraq and the Annan Plan proposed for a reunited island of Cyprus – which all faced or would have faced the problem of secondary occupancy, but foresaw very different ways of dealing with it.

The section addresses the following topics:

1. The occurrence of secondary occupancy
2. The mandate of the property restitution programme regarding secondary occupancy
3. The Current Occupant's right to participate in the claims resolution process
4. The procedures regarding the Current Occupant's participation
5. Obligations of and support for the Current Occupant
6. Provisional legal remedies to suspend the enforcement of a decision
7. The eviction process.

The first topic provides an overview of the different circumstances that led to the displacement of the Pre-conflict Occupant and the re-occupation of the property, in order to enable an evaluation of the measures taken by the respective programmes in dealing with secondary occupancy. While it is not possible to provide a comprehensive analysis of the historical facts underlying each conflict, this section gives a brief overview of the circumstances leading to the displacement of the population and resulting in the occurrence of secondary occupancy.

The information on the individual programmes confirms that the reasons for secondary occupancy are manifold and differ depending on the time that has passed since the initial loss of the property and on existing government policies. While in some cases the re-occupation of abandoned property was the result of proactive government policies in order to favour “preferred” population groups and to prevent the return of displaced and expelled minorities, in other cases abandoned property was taken by persons who had been displaced themselves and who were thus in need of shelter. The timing of the restitution process plays an important role. The more time that has passed between the Pre-conflict Occupant's loss of the property and the establishment of a restitution process, the more likely it is that the property has been occupied and has passed through a number of hands, possibly involving good-faith purchases of the land. Current Occupants whose families have lived on the property for many years or generations, may have developed a sense of legal entitlement, simply because of the length of time that they have enjoyed

the property without anyone else alleging a right. In certain cases, even formal or customary law might convey such a measure of entitlement.

Finally, both the situation in Cyprus and the one in Iraq indicate that the prevailing attitudes within a community towards the displacement will have an impact on the character of secondary occupancy following a conflict. If displacement and secondary occupancy are regarded as permanent, Current Occupants are more likely to invest in the property and build their lives around it rather than in cases where the displacement and secondary occupancy is regarded as temporary.

All these factors will make the return of property to Pre-conflict Occupants more difficult and complex and will require a comprehensive framework that addresses the needs and concerns of all parties.

The mandates of property restitution programmes regarding secondary occupancy mainly raise two questions. First, to what extent did the programme's legal framework include the treatment of secondary occupancy? And second, at what time during the claims resolution process did secondary occupancy become relevant?

Property restitution programmes share the common goal of determining the rightful owner or property right holder of a property and enabling his or her return to the property. However, while secondary occupancy was a common occurrence in all countries covered, the mandates of the programmes differ considerably regarding the treatment of secondary occupancy.

While the CRRPD in Iraq includes the right of a Current Occupant to initiate a claim before the CRRPD in order to have his or her rights to a property confirmed, the CRPC's mandate in Bosnia and Herzegovina was limited to establishing the legal right holder to a property without considering the humanitarian and legal issues that arose out of the occupancy of the property by another person. More precisely, the CRPC did not deal with this at the first instance at all, and shifted the consideration of these issues to the second instance by granting the Current Occupant a right to request a reconsideration of the first instance decision. To what extent a property programme should include the treatment of secondary occupancy will depend on the underlying circumstances, in particular the question of whether Current Occupants are likely to allege a legal right to the property or the need for humanitarian assistance or an alternative place to live.

However, it is safe to say that the complexity of the issue requires a comprehensive solution if the return of Pre-conflict Occupants is to be achieved. The broader the programme's mandate is in this respect, the more complex the organizational

structures of the programme's Secretariat will need to be. On the other hand, a narrow mandate will require less resources within the Secretariat but (often considerably) more cooperation and coordination with and between national authorities or international actors.

The third and fourth topics look at the point in the claims resolution process where participation of the Current Occupant was possible and the procedures for this participation. In this respect, the programmes have taken approaches which are at the opposite ends of the spectrum: while the CRPC took a restricted approach and only provided the Current Occupant with the possibility to request the reconsideration of a decision that concerned the property he or she was using, the Iraq programme has attempted to include the consideration of the Current Occupant's rights from the earliest point possible. When a claim is filed with respect to a property, the CRRPD Secretariat invites the Current Occupant to protect his or her rights to the property by taking part in the proceedings. For this purpose, the CRRPD has prepared an official Response Form that assists the Current Occupant in the preparation of his response.

Attention should be drawn to the fact that the early participation of the Current Occupant adds considerable certainty to a decision on the question of who is the holder of property rights and as such to a comprehensive resolution of property disputes. The price for this is a longer and more complex process during the first instance, but most likely less appeals or requests for reconsideration at the second instance.

Issues surrounding the obligations of and support for Current Occupants, the fifth topic which is addressed, are at the core of the complexity that secondary occupancy adds to a property restitution process.

One key issue is the Current Occupant's right to compensation for improvements that he or she made to the property during the time of occupancy. Obviously the question of compensation gains more importance the more time has passed since the Pre-conflict Occupant lost the property and the longer the Current Occupant has been using it, as it becomes more likely that improvements have been made to the property. Property claims programmes dealing with decades of displacement and secondary occupancy, such as in Iraq and Cyprus, have thus attempted to include comprehensive compensation schemes for Current Occupants in such situations.

The answer to the question of who will in fact be paying this compensation, however, is sometimes less straightforward. The legal principle seems clear – it should be the Pre-conflict Occupant who is returning, since he or she benefits from the improvements. What should be the solution, however, if he or she does not

have the financial means to do so? In that case, should the Current Occupant be compensated by the respective national Government, or by the international donor community supporting the restitution process? Should the restitution of the property to the Pre-conflict Occupant be made dependent on the payment of compensation by him or her?

Of similar importance is the question of alternative housing for Current Occupants who have to vacate a property so that the Pre-conflict Occupant can use it or return to it. Particularly in post-conflict situations, the provision of alternative housing will be an essential factor in sustaining peace and order. Otherwise, the property restitution programme, while enabling return on the one hand, will create a new wave of displacement on the other. Apart from the humanitarian problems this would create, such a policy would likely lead to resentments within large parts of the population and could thus seriously hamper the reconciliatory efforts of the programme.

However, the CRPC example shows that any system for the allocation of alternative housing needs to be closely monitored so it is not used to prevent or delay the return of the Pre-conflict Occupant and so the assistance benefits those truly in need. The local authorities in Bosnia at first used the Current Occupant's need for alternative housing to delay the return of Pre-conflict Occupants who usually belonged to the minority group. The international community had to intervene and impose strict and transparent schemes for the allocation of alternative housing in order to avoid that this support was abused and that Pre-conflict Occupants were prevented from returning to their property.

The last two topics address provisional legal remedies to suspend the enforcement of a decision and the description of the eviction process. Given the differences in the programmes' mandates, the measures taken during the implementation of the programmes differed the most in this area.

For the CRPC, the enforcement of its own decisions was not part of its mandate and successful claimants had to rely on national authorities for enforcement. The CRPC report illustrates that this was one of the major weaknesses of the programme and that close monitoring and interventions from the international community was required. The CRPC also shows that the success of a programme can be seriously hampered if additional legal remedies are provided outside the claims resolution process against the enforcement of decisions, as it allows Current Occupants to delay the return of the Pre-conflict Occupant. This is particularly the case where the national authorities are reluctant to support the programme's efforts and refuse to cooperate.

The CRPC in Bosnia and Herzegovina stands as an example that the passive resistance of local authorities should not be underestimated. But even if local authorities are willing to cooperate, it might be difficult for them to do so in practice, particularly in conflicts along ethnic lines. In such situations, the presence of an international authority that allows local administrations to “hide behind” the international authority when it comes to taking difficult and controversial decisions may help to ensure the success of the programme.

The timelines foreseen in the programmes’ legal frameworks for the enforcement of decisions and thus the potential eviction of Current Occupants are also noteworthy. They range from 30 days to three years and, as foreseen in the Annan Plan, might be made fully dependent on the provision of alternative housing.

I. CRPC IN BOSNIA AND HERZEGOVINA

1. The occurrence of secondary occupancy

There is no municipality in Bosnia and Herzegovina that did not witness the departure and the arrival of internally displaced persons or refugees. The pattern was, with very limited exceptions, that members of ethnic groups that represented a minority in a certain area were forced to leave and settled in areas where they belonged to the majority. In Serb dominated areas, it was the Croats and the Bosniaks who were forced to leave, while in Croat dominated areas, Bosniaks and Serbs left and the same applied also in Bosniak dominated areas. These departures affected the whole population of each area, without any particular distinction. Other minorities (Slovenes, Czechs, Ukrainians and Roma) were affected in a similar manner. In many cases, the displacement was caused by violence, killings and forced deportations, in some cases minorities “chose” to leave as the conflict was approaching.

Upon arrival in areas where they belonged to the majority, IDPs often settled with the encouragement and support of the local authorities into empty properties that had been left behind by refugees or IDPs that had belonged to the minority in that area.

The so-called “laws on use of abandoned property” served the purpose of dealing with property that had been abandoned by displaced persons and refugees and were the basis for the authorities to allocate those properties. The authorities did not grant ownership, but in most cases passed administrative decisions allowing for the occupancy of abandoned properties for an undetermined period of time. In the Republika Srpska those decisions had a temporary nature, but in reality they were

conceived in such a manner (tight reciprocity) to permanently dispossess the Pre-conflict Occupants from repossessing their properties. Similar provisions existed vis-à-vis private property and displaced persons were given temporary permits by the municipal authorities. For socially owned property, the authorities had *ex lege* cancelled the occupancy rights of the Pre-conflict Occupants and granted new occupancy rights to the Current Occupants on the basis of the Law on Housing Relations. Similar provisions existed in the parts under Croat control as provided for by the Decree on Use of Abandoned Apartments.

In the Federation of Bosnia and Herzegovina, two separate laws dealt with private property (Law on Temporary Abandoned Real Property Owned by Citizens) and socially owned property (Law on Abandoned Apartments), although the Croatian parts of the Federation had their own Decree on Abandoned Apartments. In the Republika Srpska, the Law on the Use of Abandoned Property covered both private and socially owned property.²⁷³

While in force, these laws cemented the displacement by granting temporary occupancy rights to displaced persons and refugees in abandoned properties and constituted a violation of the Pre-conflict Occupants' property rights as well as a very serious impediment to their return. These laws continued to be in force while the CRPC was already collecting claims for properties.

Following pressure from the international community, these laws had to be repealed and new legislation was passed at the entity level. The new legislation provided for the cessation of the laws on abandoned property and gave Pre-conflict Occupants the opportunity to repossess their pre-conflict properties. These new laws, which were the backbone of the enforcement of CRPC decisions, are usually referred to as "Laws on Cessation".

However, the initial version of the Laws on Cessation proved to be largely ineffective as the domestic authorities tried to use the inconsistencies of the laws and possible loopholes to slow down their implementation and the restitution process. In light of this, in 1999, the international community, represented through the Peace Implementation Council, vested new powers in the High Representative, which allowed him to effectively intervene by removing officials in case of obstruction of the implementation. Using this power, the High Representative removed several hundred obstructing officials from their offices, some also explicitly for non-compliance with the CRPC's work. Furthermore the international community, and in particular the agencies overseeing the property restitution process (Property Law Implementation Plan), prepared two major sets of amendments to the Laws on Cessation which were imposed by the Office of the High Representative in 1999 and 2001 (more amendments of minor relevance were imposed during those years

as well). The final text of the laws differed significantly from the original and created serious difficulties for the housing officials who were obliged to apply numerous laws to resolve the enforcement of decisions with regard to each claim.

2. The mandate of the property restitution programme regarding secondary occupancy

The CRPC did not consider secondary occupation. Its main role as stated in the Dayton Peace Agreement was in fact to confirm property rights of the displaced persons and refugees as of 1 April 1992. As such, secondary occupation was not an issue in the decision-making mechanism. The only relevance that secondary occupants had under the internal procedures of the CRPC, the Books of Regulations I and II, was under the reconsideration procedure foreseen in Chapters IX and X of the Books of Regulations for socially owned property and private property, respectively.

Secondary occupancy was mainly an issue when the claims were submitted to the domestic bodies for enforcement.

The CRPC had to cooperate with the domestic authorities responsible for the decision enforcements in the context of the reconsideration process. The Current Occupant could, within 60 days from the moment he or she was informed of the decision, submit a request for reconsideration to the CRPC on the basis of Article 77 of the Book of Regulations I²⁷⁴ and Article 42 of the Book of Regulations II.²⁷⁵ On receipt of a request for reconsideration the CRPC could notify the competent administrative body of the pending request for reconsideration and request that the enforcement of the decision be suspended. The competent administrative body could not suspend the enforcement unless it had been specifically requested to do so.²⁷⁶ In practice, it was not infrequent that the CRPC sent the request for suspension after the enforcement proceedings had already started.

3. The Current Occupant's right to participate in the claims resolution process

The Current Occupant was completely excluded from the first instance decision procedure. The Current Occupant in fact had no standing before the claims programme. Current Occupants were informed about the existence of a claim after the programme had issued a decision when the Pre-conflict Occupant addressed the domestic housing authorities seeking the enforcement of the decision. There were no public records that Current Occupants could check to verify whether a claim had been filed for the property they were occupying.

4. The procedures regarding the Current Occupant's participation

Although the Current Occupant was completely excluded from the first instance decision-making process, he or she could request the reconsideration of a decision once he or she had been notified of the first instance decision.

To request reconsideration of the decision, the Current Occupant had to present new evidence or indication of such evidence which could materially affect the decision. Following a request for reconsideration, the Commission could, if appropriate, invite any party to provide further submissions or additional information in writing, or undertake further investigations as it saw fit.²⁷⁷

At the domestic level, the laws on administrative procedure of the Republika Srpska and the Federation regulated the administrative aspects of the claims process. Such law foresaw the participation of the parties involved in the proceedings. This resulted in Current Occupants attending hearings before the housing authorities. No deadlines were prescribed, only that the hearing should not be held at night and that it should affect the working day as little as possible. The domestic authorities carried out field inspections during which they could also interview the Current Occupant should he have failed to attend the hearing or should additional information be required.

5. Obligations of and support for the Current Occupant

The claims programme foresaw no other legal remedies for the Current Occupant besides the described request for reconsideration. Under the national Law on Obligations, however, Current Occupants were entitled to compensation for their expenses for fixing the apartment if those expenses could be considered as necessary expenses. Such compensation had to be claimed in national civil courts. The payment of compensation was not a pre-condition for the eviction of the Current Occupant. In contrast, Current Occupants could only bring such a claim for compensation before national civil courts after they had vacated the property.

The CRPC process did not include an application or decision about alternative housing for Current Occupants. But under the national Laws on Cessation, the situation of the Current Occupant was screened in order to determine whether he or she had a right to alternative accommodation. The Law stated that local authorities were supposed to issue a 15 day decision (i.e. a decision without right to alternative housing) unless the occupant fulfilled a series of criteria. The most important of those criteria was for the Current Occupant not to be defined as a "multiple occupant", i.e. not to have his or her housing needs otherwise satisfied, for example having access to alternative housing. The intention was to limit such entitlement as much as possible.

Furthermore, a Current Occupant could only qualify for alternative housing if he or she was a “temporary user”. A “temporary user” was defined as a user to whom the real property has been allocated for temporary use on the basis of the Law on Temporary Abandoned Real Property Owned by Citizens. A temporary occupant was not entitled to alternative accommodation, if he or she either had other property to go to or the financial means to rent property (if he or she sold the private property after 1991 or refused reconstruction aid).

The local authorities (at municipal, cantonal or entity level) were obliged to provide alternative accommodation to persons who were entitled to it for a period of at least six months. Upon the expiration of such period, the authorities were obliged to review the entitlement to alternative accommodation.

The Current Occupant should have been provided with accommodation within the same canton by the competent service of the municipality on the territory of which he or she enjoyed the latest residence. In case that the administrative authority of this territory was unable to provide alternative accommodation, other competent bodies including other municipal organs, state-owned companies or firms, and cantonal and Federation authorities were obliged to make facilities at their disposal available for the purpose of providing alternative accommodation.

In the beginning of the process, the domestic authorities abused the right to alternative accommodation to avoid having to evict Current Occupants and reinstate right holders. This was true even in cases where Current Occupants had access to and used their own property and were thus lacking any humanitarian reason for occupying other people’s property. The laws stated specifically that, for example, the failure of the authorities to provide alternative accommodation should not have prevented the eviction of the Current Occupant. However, for a long time the authorities did not make full use of this provision and did not evict Current Occupants who were entitled to alternative accommodation. As a result, the authorities tended to grant alternative accommodation in many more cases than necessary, as they knew that Current Occupants would not be evicted. As the international community pushed for the final acceleration of the property law implementation in 2002 and started requesting the strict implementation of the property laws, the authorities became stricter and more rigorous in allocating alternative accommodation. In the end, it is estimated that approximately 1 out of 10 Current Occupants were entitled to alternative accommodation.

Besides the described rights, the national laws also foresaw some obligations of the Current Occupant. He or she was obliged to keep the property in good condition and not to remove any fixtures or damage it when vacating it. The authorities who witnessed the repossession of abandoned real property were obliged, pursuant to

their duties under the Criminal Code, to seek the prosecution of a Current Occupant who illegally damaged the real property or apartment.

Current Occupants who qualified as “multiple occupants” on the basis of specific provisions in the law and who failed to voluntarily vacate their properties were also subject to fines.

6. Provisional legal remedies to suspend the enforcement of a decision

When seeking enforcement of a decision, the successful Pre-conflict Occupant had to turn to the domestic authorities. The domestic authorities were obliged to obtain information about the identity of the Current Occupant together with details of the legal basis, if any, on which the Current Occupant inhabited the property. Furthermore they had to determine his or her rights in terms of alternative accommodation under the laws on implementation of the CRPC decisions. In the end, they had to issue a conclusion on the permission of enforcement within a period of 30 days from the date when the request for enforcement was submitted. This conclusion informed the Current Occupant of the CRPC’s decision, terminated his or her occupancy right, set a deadline to vacate the property and warned the occupant not to loot it. As Current Occupants were informed about the existence of a CRPC decision at the moment when they received an eviction notice, the Laws on Implementation of CRPC Decisions in both entities foresaw the possibility for Current Occupants to submit an appeal to the responsible national second instance body in accordance with the Law on General Administrative Proceedings, in addition to the request for reconsideration to the CRPC.²⁷⁸

However, this appeal concerned only the conclusion on permission of enforcement issued by the domestic authorities. The grounds for the appeal were limited to the following: the decision of the Commission upon which the conclusion on the permission of enforcement was based was not issued at all or was revoked by the Commission in its reconsideration proceedings; whether the enforcer was entitled to alternative accommodation or the time limit provided for the enforcer to vacate the property was in accordance with the applicable laws; or other reasons for appeal against conclusions on the permission of enforcement which were in accordance with the Law on General Administrative Proceedings. The deadline to file such an appeal was eight days from the date of delivery of the conclusion on the permission of enforcement.

The responsible administrative authority was obliged to direct the appellant to initiate proceedings before the local courts within 30 days to prove that the right holder named in the CRPC decision had willfully transferred his or her title to the appellant since the date referred to in the Commission’s decision. The competent

court could make a specific order to suspend the enforcement proceedings pending the court's decision in cases where the appellant could show evidence of a written contract on the transfer of rights in accordance with domestic law and irreparable damage if the enforcement proceedings continued.

7. The eviction process

The eviction process started after the occupancy right holder had filed a request for the enforcement of the decision of the Commission. This request had to be submitted within eighteen months from the date when the Commission decision was issued. The request had to include certified photocopies of the decision of the Commission.²⁷⁹

The administrative organ responsible for the enforcement of a decision of the Commission was obliged to issue a conclusion on the permission of enforcement within a period of 30 days from the date when the request for enforcement was submitted. According to the laws, the organ could not require any confirmation of the enforceability of the decision.²⁸⁰

The administrative body responsible for property legal affairs in the municipality where the property was located was required to enforce decisions of the Commission relating to real property owned by citizens. The administrative body responsible for housing affairs in the municipality where the apartment was located was required to enforce decisions of the Commission relating to an apartment for which there was an occupancy right.

Furthermore, the UN Mission to Bosnia and Herzegovina was involved in the eviction process. The eviction process, especially at the beginning, was not easy as the local police, organized along ethnic lines, tended to refuse to provide assistance to the housing authorities or they did not always show up at eviction sites. The UN Mission to Bosnia and Herzegovina intervened with the local police and issued guidelines for the local police on how to deal with evictions. It also threatened to decertify police officers who would not provide the necessary assistance at evictions. This concerted pressure bore results and in the end the cases where the local police failed to fulfill their tasks became less frequent. Towards the end of the process, in many cases Current Occupants would vacate the property spontaneously without the need for police intervention.

II. HPD/HPCC IN KOSOVO

1. The occurrence of secondary occupancy

Secondary occupancy mainly became an issue when Kosovo Albanians previously expelled returned to Kosovo. By the time the NATO bombing campaign commenced in March 1999 hundreds of thousands of Kosovo Albanians had either been expelled by Serb security forces or had fled from Kosovo and many of their homes had been destroyed. In contrast to this, the homes of Kosovo Serbs, Rom and Slavic Muslims, who stayed in Kosovo during the conflict, had remained intact.

When the NATO air campaign ended and the Serb security forces withdrew from Kosovo, the Kosovo Albanians who had been forced from their homes began to return. Fearing reprisals from the returning Kosovo Albanians, the Kosovo Serbs and other non-Kosovo Albanians fled their homes en masse. The Kosovo Albanians who, upon their return to Kosovo found their homes destroyed, occupied the flats that had been abandoned by Kosovo Serbs who had fled in fear of reprisal attacks.

In an attempt to bring some order to the housing situation, NATO forces issued persons temporary permits to occupy property solely on humanitarian grounds, i.e. to prevent homelessness and to provide shelter. Additionally, the municipal government structures issued temporary permits on humanitarian grounds. However, neither of these documents conferred any property rights and stated on their face that they were temporarily issued on humanitarian grounds. As such, these permits had no legal effect in the HPD/HPCC claims process.

2. The mandate of the property restitution programme regarding secondary occupancy

Among other things, the claims programme was established specifically to address and provide a remedy for secondary occupancy, and the vast majority of claims filed with the HPD/HPCC concerned this issue.

UNMIK Regulation 1999/23 foresaw three categories of claims. The first two categories of claims, the so-called A and B claims, were intended to provide remedies for persons who either lost the right to occupy socially owned residential property, or who lost the right to sell privately owned residential property due to discriminatory legislation introduced subsequent to the repeal of Kosovo's autonomous status in 1989. Such claims were typically filed by Kosovo Albanians and other non-Serb minorities.

The third category, referred to as category C claims, was intended to address the issue of secondary occupancy as it related to persons displaced as a result of the conflict. This category accounted for approximately 90 per cent of all the claims lodged with the HPCC/HPD. The typical category C claim was lodged by persons who lost possession of their residential property when the Serbian security forces left Kosovo in June 1999 and the Kosovo Albanians who had previously been forced from their homes began to return and take possession of vacant buildings and apartments.

Within the HPD/HPCC structure, it was the HPD that was tasked to deal with issues in connection with secondary occupancy, in particular in the context of temporary housing assistance and of the administration of property.

3. The Current Occupant's right to participate in the claims resolution process

The Current Occupant had a right to participate in the claims resolution process. He or she had the possibility to file a counter-claim upon notification that a claim had been filed for the property he or she was occupying.

In addition, the Current Occupant could file a request for reconsideration on the limited grounds provided for in Section 14.1 of UNMIK Regulation 2000/60, i.e. upon presentation of legally relevant evidence which had not been considered by the Commission in deciding the claim, or on the ground that there had been a material error in the application of the relevant legal rules.

4. The procedures regarding the Current Occupant's participation

Section 9.1 of UNMIK Regulation 2000/60 provided that after receipt of a claim, the HPD "will notify the Current Occupant of the claimed property [...]" Each regional office of the HPD had notification teams that delivered the notices of claim to the claimed properties.

If the Current Occupant was not at home when the notice was delivered, it was either left with a member of the family (at least 16 years old) or in a safe location at the property. The HPD staff who delivered the notice had to sign a form indicating whether the notice of claim had been delivered personally or had been left at the property. The form also listed the date of delivery. A copy of this form was inserted into the claim file and included in the referral reports prepared by the lawyers for the HPCC. The HPCC would not decide a claim without this proof of notice.

The notice informed the Current Occupant that a claim had been lodged for the property he or she was occupying and informed them that, if they had any documents demonstrating their right to occupy the property, they had to provide these to the HPD within 30 days as provided by Section 9.2 of UNMIK Regulation 2000/60. Included with the notice of claim was a participation form. This form included boxes to be ticked by the Current Occupant regarding his or her participation in the claim. The form was very simple and could be completed in the presence of the HPD staff who delivered the notice. If the Current Occupant stated that he or she had no legal right to the property and lived there only because his or her former home was not habitable, the box reflecting this fact was ticked, the Current Occupant signed the form, and the claim could be processed. No additional information was required from the Current Occupant because, as described above, the need for shelter was not a defense to the claim.

If the Current Occupant claimed a legal right to the property, this box was ticked and the Current Occupant was informed to proceed to the HPD office with documents demonstrating this right within 30 days. This information was provided verbally to the Current Occupant if at home when the notice was delivered, as well as in writing in the official languages of Kosovo on the forms themselves. If the Current Occupant came to the HPD office within 30 days to demonstrate a legal right to the claimed property, HPD staff would conduct a “reply interview”. The interview consisted of completing a uniform template used in all HPD offices to obtain relevant information from the Current Occupant, including the documents demonstrating the occupant’s right to the property and the opportunity for the Current Occupant to provide a written statement. In essence, if the Current Occupant provided such documents it became a counter-claim on the property. This information was then inserted into the claim file and reviewed by the legal staff who prepared the referral reports for the HPCC.

Under the HPCC Rules of Procedure, “the Commission shall [...] decide claims on the basis of written submissions, including documentary evidence.”²⁸¹ While Section 19.2 of UNMIK Regulation 2000/60 foresaw the possibility for a party to give oral evidence or argument upon invitation of the Commission, the Commission did not make use of this possibility. Rather, in claims where a decision could not be made based on the documents submitted, the Commission requested the HPD to contact the parties to obtain additional information or documents, or conduct field inspections.²⁸²

The procedure for the notification of a reconsideration request was identical to that of the first instance. If either party to the claim requested a reconsideration of the HPCC’s decision, this fact and the documents submitted in support of the

request had to be provided to the other party or parties to the claim. The deadlines to reply were the same as in the first instance process.

The HPCC took the view that the temporary housing permits issued by the NATO forces could not be considered as evidence to undermine the claimant's case. The reasoning was that by submitting these permits, the Current Occupant was not disputing the Pre-conflict Occupant's property right, but was only referring to his or her own personal circumstances and needs as the reason for occupying the property and as a defense to the claim. The HPCC consistently held that such permission orders were temporary permits only and that the right to occupy a property they conferred ceased upon the return of the property right holder.

5. Obligations of and support for the Current Occupant

The HPCC/HPD rules and regulations did not contain any provisions allowing the Current Occupant to request compensation for improvements made to the property during his or her occupancy.

Instead of compensation for improvements, the Current Occupant could request humanitarian housing under UNMIK Regulation 2000/60. However, this was a temporary solution only, as the HPD, part of UNMIK and thus an interim agency, was not in a position to provide permanent solutions to persons without shelter in Kosovo.

Section 12 of UNMIK Regulation 2000/60 provided the HPD with the legal authority to administer abandoned property for the purpose of providing for the housing needs of displaced persons. Abandoned housing was defined by the regulation as vacant or illegally occupied property. This included Current Occupants who had already been notified of an HPCC decision confirming the property rights of a Pre-conflict Occupant. The option of placing property under the administration of the HPD was one of the remedies available to successful claimants who did not wish to return to the property.

According to Section 9.6 of UNMIK Regulation 2000/60, the Current Occupant could "request that his or her housing needs be taken into consideration by the Directorate [...]" when he or she responded to a claim. In addition to this, the Current Occupant had 14 days from the receipt of the decision to request humanitarian housing from the HPD. However, UNMIK Regulation 2000/60 was silent on the issue what the Current Occupant had to show to qualify for alternative housing. The establishment of criteria for the allocation of property on a temporary humanitarian basis was thus left to the HPD.²⁸³ The HPD laid down the criteria that temporary shelter was to be provided to Current Occupants who were in genuine

need of accommodation. A genuine need was established when (1) the Current Occupant's home had been destroyed during the conflict, (2) he or she had not received any international assistance, and (3) he or she did not have any financial means to reconstruct the property. The decision whether these criteria were fulfilled was left to the Heads of the Region and the Executive Director of the HPD.

There was no legal remedy available against the HPD's decision as to whether or not a Current Occupant qualified for humanitarian housing and temporary shelter, as UNMIK Regulation 2000/60 did not provide for any appeal mechanism within this administrative procedure. The HPD made all decisions regarding the allocation of (temporary) humanitarian housing while the HPCC decided all legal issues underlying a dispute.

The Current Occupant was not entitled to any other remedy. However, Section 24.1 of UNMIK Regulation 2000/60 indirectly provided for provisional protection measures stating that "upon recommendation of the Directorate, whether at the request of the claimant or otherwise, the Commission may issue provisional measures of protection where it appears likely that, if provisional measures were not issued, a party would suffer harm, which cannot subsequently be remedied." But there is no information available as to whether the HPCC ever made use of this provision and, if so, what type of measures were issued.

The rights of the Current Occupant had an impact on the return of the Pre-conflict Occupant. If the Pre-conflict Occupant requested an eviction and the Current Occupant requested humanitarian housing within the 14 day deadline and qualified, the HPD had the option to offer the Current Occupant accommodation in another HPD administered property. If that was not available, the HPD had the power to delay the execution of the eviction at its discretion for up to six months "pending resolution of the housing needs of the Current Occupant, or under circumstances that the Directorate deems fit."²⁸⁴

6. Provisional legal remedies to suspend the enforcement of a decision

In order to suspend the enforcement of a decision, the Current Occupant could either request a reconsideration of the decision by the HPCC or seek humanitarian housing from the HPD as described above. According to Section 14.3 of UNMIK Regulation 2000/60, "the execution of a pending eviction order shall be stayed from the time of lodging of the reconsideration request until the Commission has decided on the reconsideration request, unless the Commission determines otherwise." Additionally, Section 13.2 gave the HPD discretionary power to delay execution of the eviction order for up to six months to provide for the resolution of the housing needs of the Current Occupant.

7. The eviction process

HPCC decisions always contained an eviction order for the Current Occupant, no matter what remedy the claimant (Pre-conflict Occupant) had desired.²⁸⁵ Thus, the Current Occupant received an eviction order when the HPCC decision was delivered to him or her at the claimed property. The eviction order had to be executed after 30 days.

In cases where the claimant (Pre-conflict Occupant) had indeed requested an eviction, because he or she wanted to return to the property, this was not a problem. However, the overwhelming majority of successful claimants requested HPD administration of the claimed property. In these cases, the staff had to explain to the Current Occupant that the property was under HPD administration and that in order for the Current Occupant to remain in the property, he or she would have to apply with the Directorate for humanitarian housing.

Additionally, it is important to note that the delivery of decision typically took place more than a year after the notice of claim was delivered to the claimed property. It was not infrequent that the Current Occupant changed one or more times since the original notice of claim had been delivered. This meant that the Current Occupant at the time of the delivery of the decision often was unaware of the claim on the property. In other cases, the Current Occupant may have subsequently purchased the property from the Pre-conflict Occupant and now had documents that had to be presented to the Directorate. In many ways, delivering notice of a claim and obtaining the HPCC's decision was the easiest part of the claims programme. An almost more difficult part of the work began only after the decision was delivered.

The HPD which was responsible for the eviction process had its own eviction team headed by an Eviction Officer. The Eviction Officer coordinated the execution of evictions with the local police authorities. Typically this meant that the HPD coordinated the eviction with the international UNMIK police officer responsible for operations in the area of the planned eviction. This officer would then ensure that the officers of the local police force, the KPS, were present at the location of the eviction. Under a memorandum of understanding signed between the UNMIK police and the HPD, it would be the HPD Eviction Officer who actually executed the eviction. The role of the KPS was to secure the area around the scene of the eviction to ensure no one threatened or interfered in the eviction process.

The Eviction Officer and his team were responsible for ordering the occupants to vacate the property and to physically remove their moveable property from the claimed property. The moveable property was typically left in the common area in a large apartment building or on the sidewalk in front of a single family home. It was

the responsibility of the evictee(s) to transport their possessions elsewhere. After the Current Occupants were removed from the property, the lock was changed and the property sealed and no one could enter without HPD permission. Section 13.6 of UNMIK Regulation 2000/60 provided that “any person who, without lawful excuse, enters a property by breaking a seal may be subject to removal from the property by the law enforcement authorities.”

Force was rarely needed to evict the Current Occupants. The HPD had enough properties under its administration to offer alternative accommodation to those who were in genuine need of housing and who had to vacate the property in order to provide the Pre-conflict Occupant (successful claimant) the remedy he or she requested. Those who had another place to live (their house was reconstructed or they had family who could provide them shelter) could be persuaded to leave voluntarily, in particular, when they were offered the opportunity to set a reasonable date within which to leave with dignity, i.e. without being subjected to the unpleasantness of a forced eviction.

There were, of course, others who refused to cooperate in the process. Some failed to participate in the post-decision process by not requesting humanitarian housing and/or a reconsideration of the decision. Some refused to accept alternative accommodation, and a smaller number just refused to leave the property as a matter of principle. In these cases, the HPD had the authority to execute forced evictions.

III. CRRPD IN IRAQ

1. The occurrence of secondary occupancy

In Iraq, different groups have been displaced over the past decades, with many different causes behind their displacement. The main reasons have been the punishment of populations such as the Kurds and Shiites during the Ba’athist regime, the obtainment of valuable land, e.g. in oil-rich areas like Kirkuk, and war.

Displacement in Iraq has also had distinctive regional patterns. In the north of the country, the Iraq authorities displaced non-Arabs resettling Arabs in their place as part of the so-called “Arabisation” campaign. While the Kurds constitute the majority of those displaced in the north, others, including Turkmen and Assyrians, were also expelled of their lands. This policy was conducted in order to consolidate government control over the valuable oil resources and arable lands located in northern Iraq.

After the end of the Iran-Iraq war in 1988 the Iraqi authorities suppressed the Kurds by using weapons of mass destruction on civilian targets, including mass chemical weapons attacks on entire villages that killed several thousand civilians. In the aftermath, Kurds were not allowed to return to their destroyed villages. Their property rights were invalidated and the Government nationalized the agricultural land, making it the property of the Iraqi state. Arabs were brought mostly from the less fertile south of the country to settle and farm on some of this land.

After the first Gulf war in 1990 and the UN sanctions that followed, including the enforcement of no-fly zones in southern and northern Iraq to protect Iraqi citizens from attacks by the regime, and a no-drive zone in southern Iraq to prevent the regime from massing forces to threaten or again invade Kuwait, a number of Kurds were able to return, although many continued to be displaced from their original homes.

In the south of the country, the “Marsh Arabs” constitute a main group of people forcibly displaced owing mainly to the former regime’s campaign to drain the marshland areas during the 1990s. Tens of thousands of people were also displaced from their homes on the border with Iran in the south as a result of the Iran-Iraq war in the 1980s. Expulsion has also been used to undermine the growth of political opposition as with the Shi’a in the South and with the Taba’iyya, those thought to be sympathetic to Iran, at the beginning of the war in 1980.

It is estimated that around 600,000 to 800,000 in the north of the country and up to 300,000 in the South were displaced before the United States-led invasion that brought about the overthrow of Saddam Hussein’s regime in March 2003. However, displacement continued since the military intervention in March 2003. Iraqis remained or became displaced because of the ongoing insecurity, escalating armed conflict, increasing ethnic and sectarian tension, new patterns of persecution and the lack of services and infrastructure, in particular housing and employment. Safety concerns forced people to move to areas where they constitute a majority and can count on the protection of their own community. Shiites fled mainly from the centre (Baghdad, Anbar and Salah al Din) and headed southwards (Najaf, Qadissya and Karabala). Conversely, Sunnis fled the southern provinces for central areas (Baghdad, Diyala and Anbar).

Secondary occupancy became a prominent issue in post-war Iraq as the Kurds started to return to their areas of origin. After the displacement of the Kurds and other non-Arabs in Northern Iraq, the former regime offered incentives to increase the number of Arabs in the Region, such as free land and houses, many belonging to the evicted Kurds. But many of the Arabs who settled in the North were not given a title to the land they farmed. Rather they worked under annual rental contracts.

Because of the time that has elapsed since the expropriations in some areas – nearly 30 years – many properties have changed hands a number of times, and the current occupants are often far removed from the original beneficiaries of the expropriation and Arabisation policies.

After the intervention of the United States and their allies in 2003, displaced Kurds and non-Arabs tried to reverse the “ethnic cleansing”. This led to the displacement of many Arabs who had been settled in these provinces by the former regime under the “Arabisation” policy. At the same time, returning Kurds, finding their homes and lands occupied by others, become displaced in their home area.

2. The mandate of the property restitution programme regarding secondary occupancy

Specifically with regard to secondary occupancy, the initial Statute of the Iraq Property Claims Commission included a provision on secondary occupancy in Article 10:

“A. Newly introduced inhabitants of residential property in areas that were subject to ethnic cleansing by the former governments of Iraq prior to April 9, 2003 may be (i) resettled (ii) may receive compensation from the state (iii) may receive new property from the state near their residence in the governorate or area from which they came, or (iv) may receive compensation for the cost of moving to such area. B. The Ministry of Displacement and Migration shall be responsible for administering this policy.”

The Ministry of Displacement and Migration (“MoDM”) has, *inter alia*, been developing a database of information on displaced populations and created monitoring teams to track their conditions and movements. However, the specific policy that was mentioned in Article 10 of the IPCC Statute was never established. An equivalent of Article 10 IPCC Statute does not exist in the new CRRPD Statute.

The treatment of secondary occupancy will become an issue for the domestic authorities, as soon as decisions on return are submitted to them for enforcement. The CRRPD itself is not responsible for the enforcement of its decisions.

3. The Current Occupant’s right to participate in the claims resolution process

The Current Occupant has two ways of participating in the claims resolution process: First, he or she can submit a claim to the CRRPD requesting that his or

her property rights be confirmed. Secondly, he or she may submit a response to a claim that is filed by somebody else in order to defend his or her rights to a property that is claimed by somebody else. The response must be filed at a branch of the Commission within 15 days from the date on which the person was notified that a claim against the property has been filed.

In addition, the current occupant has a right to appeal a decision of the Judicial Committee according to Section VI of the CRRPD Statute. There is also the right to objection against decisions in *absentia*. Finally, Article 23 of the CRRPD Statute states that the judgments issued by the Judicial Committees can be objected by reconsidering the trial or by the objection of another party pursuant to the provisions set forth in the procedural law.

4. The procedures regarding the Current Occupant's participation

If the Current Occupant wants to become a claimant to confirm his or her right, he or she has to file a claim within the filing deadline. The filing deadline has been extended and it is not yet clear when it will end. There are no special filing requirements for those who are currently using the property to become a claimant.

The other way for the Current Occupant to participate in the claims process is to become a respondent. According to the CRRPD rules of procedure, the relevant branch of the Commission shall notify other parties with an interest in the property of the claim to allow them to respond within a period of 15 days. The CRRPD will notify the relevant parties in accordance with the procedures stipulated in the Iraqi Civil Procedure Code, which include a) serving a written notice in person or by post; b) posting a notice on the residence of the concerned party; and c) publishing a notice in two local newspapers. The 15-day period allowed for filing a response will begin on the day following the date the party was notified or deemed notified. The party must fill in the official CRRPD Response Form which can be downloaded from the CRRPD website or obtained from any CRRPD office. The response must be filed in person at a CRRPD office.

The Judicial Committee considers the claims and responses brought before it, after holding a hearing session at least once. The Judicial Committee is entitled to conduct a site visit to the property within its jurisdiction to listen to the statements necessary for the resolution of the claim.²⁸⁶ If the claimant is present and the respondent is absent, even though he or she was notified, the Committee can issue a decision in *absentia*. Then the respondent is entitled to object to the decision within a period of ten days starting from the day following the day he or she is notified of the decision or considered as notified.²⁸⁷

If a decision in *absentia* is not appealed within this deadline or an appeal is filed but does not state the reason for appealing, the Judicial Committee shall reject the appeal as formally deficient. Otherwise the Committee shall consider the appeal pursuant to the Statute by upholding the decision, revoking it or amending it as the case may be.

Decisions of the Judicial Committees in the normal process (not in *absentia*) are final and binding, unless they are appealed before the Appellate Division within a period of 30 days.²⁸⁸

5. Obligations of and support for the Current Occupant

The CRRPD Statute contains rules whereupon the Current Occupant can request compensation for improvements that he or she made to the property during the occupancy. Article 6, Paragraph VI of the CRRPD Statute specifically states who is responsible for the payment of compensation to the Current Occupant. According to Article 6, Paragraph VI, if a property was confiscated or seized and subsequently adjuncts or improvements were made to it, the Pre-conflict Occupant can choose between compensation and the return of the property back to his or her name. If he or she chooses the latter, he or she has to pay to the Current Occupant the value of the existing adjuncts or improvements valued at the time the claim is lodged. In this case, the party that (first) sold the property after confiscation or seizure, which is the former Government of Iraq in most cases, shall be liable to compensate the Current Occupant for the equivalent value of the property at the time the claim is lodged less the value of such adjuncts or improvements.

Besides, the CRRPD Statute includes provisions allowing the Current Occupant to request compensation depending on the situation of the property. If a property was sold after it was confiscated or seized and subsequently an adjoining property was added to it and both properties were combined, then the Pre-conflict Occupant has different options. One of them is to have the original and adjoining property registered back in his or her name, if it is impossible to separate both properties. Then the Pre-conflict Occupant has to compensate the Current Occupant for the equivalent value of such adjoining property valued at the time the claim is lodged. Again the party that (first) sold the property after confiscation or seizure shall be liable to compensate the Current Occupant for the value of the original property at the time the claim is lodged.²⁸⁹

If the property was built prior to confiscation or seizure and it was sold and subsequently demolished and a new building was built on it, the Pre-conflict Occupant has the option to transfer the ownership of the property to his or her

name after he or she pays for the value of the constructions that were built less the value of the construction that was demolished. The party that sold the property shall be liable to compensate the Current Occupant for the value of the property before its demolition, valued at the time the claim is lodged.²⁹⁰

If the confiscated or seized property was an empty plot not built upon and subsequently constructions were made on such a plot and the value of these constructions is higher than that of the plot, the title to the property shall remain in the name of the Current Occupant and the party that (first) sold the plot shall compensate the Pre-conflict Occupant for its value at the time the claim is lodged. However, if the value of the plot is higher than that of the constructions, the property, land and building shall be returned to the Pre-conflict Occupant who shall be liable to compensate the current owner for the value of the constructions as they exist at the time the claim is lodged. The party that (first) sold the plot shall compensate the current owner for the value of such plot, to be valued at the time the claim is lodged.²⁹¹

The Judicial Committees, with the advice of valuation experts, specify the amount of compensation for improvements. The Ministry of Finance shall pay the compensation amounts that the Government is liable to pay. However, there are no rules in the Statute that foresee that the payment of compensation is a pre-condition for the eviction of the Current Occupant. In this respect, no information about an established practice of the Judicial Committees was available as of early 2008.

In contrast to the described detailed rules concerning compensation, the CRRPD's mandate does not include decisions on alternative housing for Current Occupants and the CRRPD Statute does not include any regulations that give the Current Occupant a right to alternative housing. The Ministry of Displacement and Migration, which is not formally connected with the CRRPD, is one of the main national bodies dealing with issues connected to secondary occupancy. But there is currently no information available as to what extent the MoDM can provide for alternative housing for Current Occupants.

Under the CRRPD Statute the Current Occupant is not entitled to remedies other than compensation for improvements according to Article 6 of the CRRPD Statute. The choice whether to return to the property is with the Pre-conflict Occupant, and the Current Occupant's options thus depend on the Pre-conflict Occupant's choice. However, if the Pre-conflict Occupant chooses to return to the property, the Current Occupant is not liable to the Pre-conflict Occupant for any damages made to the property during his or her occupancy.

6. Provisional legal remedies to suspend the enforcement of a decision

Enforcement of decisions is not part of the CRRPD's mandate. National authorities are responsible for the enforcement according to Iraqi enforcement law. At this point, no additional information is available as to whether there are possibilities in the national law to suspend the enforcement of a decision and what the conditions might be.

7. The eviction process

The eviction process is handled by national authorities according to the Iraqi enforcement law. The occupant of the property is given a period that does not exceed 90 days, starting from the date notification of the execution is served, to vacate and deliver the property free from any hindrance.²⁹²

The final decisions of the CRRPD are executed by the Enforcement Department and the Real Estate Registration Department of the Ministry of Justice, according to the competence of each department pursuant to the provisions of law.

IV. ANNAN PLAN FOR CYPRUS

1. The occurrence of secondary occupancy

The Annan Plan deals with the period beginning after the constitutional crisis in Cyprus in 1963 and the period following the Turkish invasion of the island in 1974. The nature of displacement and the secondary occupancy of property that followed differed during these two periods.

During the constitutional crisis in 1963, Turkish Cypriots withdrew their participation in the institutional structures of the state after a dispute over fiscal matters and Greek Cypriots attempted to remove the Turkish Cypriot veto. When the security situation deteriorated, violence erupted and both sides formed militias. The Turkish Cypriots began to abandon homes and to group themselves in enclaves.

In 1974, a coup, actively encouraged by the military regime in Athens, resulted in the forcible overthrow of Archbishop Makarios. The coup was followed by a short but bloody civil war. Within days, the Turkish military invaded in two stages and occupied about one third of the island. As a result, many Greek Cypriots in the North fled south and many Turkish Cypriots in the South fled north.

In 1975, the two sides reached an agreement entailing practical arrangements for a population exchange but did not legally recognize the exchange.²⁹³ The population movement took place under different conditions for Greek and Turkish Cypriots. While Greek Cypriots in the North had previously fled from the advancing Turkish army, the majority of the Turkish Cypriot population moved across the Green Line to the North following the agreement for the population exchange. Consequently, the move north was more organized and the availability of empty property meant that Turkish Cypriots did not face the overcrowding experienced by Greek Cypriot refugees who had fled to the South during the conflict.²⁹⁴

Greek Cypriots have been encouraged to believe that they would soon return home. Turkish Cypriots, on the other hand, have been encouraged to believe that the partition of the island in some form is permanent. As a result, Greek Cypriots tend to think more in terms of restitution and Turkish Cypriots in terms of compensation for what has been lost.²⁹⁵

The Turkish Cypriot authorities have adopted a unilateral policy on refugee property and have established a system of obtaining deeds for abandoned Greek Cypriot property. This system provides for the payment of a sum representing an equivalent value of Turkish Cypriot property that was lost in the South. In this process, Turkish Cypriots are required to forfeit their claim to what they left in the South.²⁹⁶ Because of this policy and because of the larger number of displaced Greek Cypriots, the question of secondary occupancy occurs with greater frequency in properties in the North of Cyprus once owned by Greek Cypriots and now occupied by Turkish Cypriots.

In the last few years, the number of foreigners buying property in the North has increased dramatically. These purchases add another level to the problem of secondary occupancy, as many of them involve property originally owned by Greek Cypriots.²⁹⁷

2. The mandate of the property restitution programme regarding secondary occupancy

The scope of the Property Board's mandate foreseen in the Annan Plan was very broad and specifically included issues of secondary occupancy. The Annan Plan specified that the Property Board was to take into account the rights of both, the dispossessed owners and the current users, i.e. Current Occupants, of affected property.²⁹⁸

The Annan Plan defined "current user" as a person who had been granted a

right to use the property (belonging to a dispossessed owner) by an administrative authority. As such, the definition of “current user” excluded any person who used or occupied a property without any legal, administrative or formal basis. The Annan Plan also excluded from the definition of “current user” any person using or occupying a property under a lease contract from a private person, any military forces occupying property, and any institutional bodies occupying property.

A “dispossessed owner” was defined as any natural or legal person who held a legal interest in the affected property, and who, for the reasons stated above, lost the use of the property. This definition also included any heirs, personal representatives or successors in title to the dispossessed owner.

The Property Board was the body tasked with dealing with secondary occupancy. It was to consist of a Governing Council and three separate divisions, one division dealing with the claims resolution process, another one dealing with compensation issues, and a third division, the Cyprus Housing Bureau, being responsible for arrangements for Current Occupants and persons affected by the property regime. As such, the Cyprus Housing Bureau would have been responsible for the implementation of solutions for Current Occupants.

3. The Current Occupant’s right to participate in the claims resolution process

The Annan Plan foresaw that Current Occupants could participate in the claims resolution process.²⁹⁹ Just as dispossessed owners could claim compensation or restitution of their property, Current Occupants who were themselves dispossessed owners could also lodge a claim before the Property Board.

4. The procedures regarding the Current Occupant’s participation

Under the rules of the Annan Plan, Current Occupants were to be notified of all decisions regarding the property, the occupancy, as well as the opportunity to participate in the claims resolution process.³⁰⁰

5. Obligations of and support for the Current Occupant

The Annan Plan stipulated a comprehensive scheme surrounding the restitution of property and the compensation of Current Occupants.³⁰¹

Most importantly, a Current Occupant who owned a significant improvement to an affected property, was to be given the right to apply for title to that property, in

exchange for payment of the current value of the property without the improvement. A significant improvement was defined as any improvement to an affected property made between the time of dispossession and 31 December 2002 with a market value that was greater than the market value of the affected property in its original state.

For improvements to property worth more than 10 per cent of the value of the property without the improvement or any improvement worth 3,000 Cyprus pounds, the dispossessed owner was required to pay the lower of the market value for the improvement or 3,000 Cyprus pounds. If the improvement was worth more than 3,000 Cyprus pounds, then the owner of the improvement was entitled to seek compensation from the Property Board. All compensation sums to be paid under that scheme were to be determined by the Property Board.

A Current Occupant of a property designated for reinstatement to the Pre-conflict Occupant could apply to the Property Board for alternative accommodation before being made to vacate the property, if he or she was without sufficient financial means, was a Cypriot citizen and was using the property for his or her own purposes.

The Comprehensive Settlement defined “sufficient financial means” as any income more than a certain amount (not yet defined) required to meet mortgage payments, or wealth more than a certain amount (also not yet defined) required to purchase the currently-used affected property or an alternative accommodation. Wealth, according to the definition, would also include any entitlements or interest in affected property. The distinction between current users with sufficient financial means and those without impacted upon the time required for the Current Occupant to vacate the affected property. In addition, Current Occupants without sufficient financial means were also provided with the opportunity to apply for further assistance.

Apart from compensation for improvements and alternative housing, the Annan Plan provided Current Occupants of properties that were to be reinstated with the right to apply for certain special remedies such as an extension of deadlines for vacating the affected property, special housing assistance, preferential loans, the right of first refusal and the possibility to recover proceeds, goods or crops produced on the affected property.

In order for the Current Occupant to exercise the right of first refusal, the following requirements were to apply:³⁰²

- A transitional period of 20 years after the date of the Foundation Agreement must not have ended;
- The proposed sale of the affected property is to a person who has not

- enjoyed permanent residence in the constituent state where the property is located for at least three years;
- The Current Occupant continues to use the property or has vacated the property no more than five years previously and vacated it to allow the reinstatement of the disposed owner;
 - The Current Occupant exercises the right of first refusal within 45 days of the signing of the potential sales contract.

In order for the Current Occupant to have the possibility to recover proceeds, goods or crops produced on the affected property, the following requirements were to apply:³⁰³

- The relevant production of proceeds, goods, or crops began one year before reinstatement began;
- The nature of these goods does not allow them to be handed over immediately prior to reinstatement.

In addition, the Annan Plan provided the Property Board with the power to collect damages from and to issue fines against any person responsible for damaging or destroying affected property.

The Annan Plan's provision dealing with the rights of Current Occupants would potentially have led to considerable delays in the return of property to Pre-Conflict Occupants. A Current Occupant with sufficient financial means could have applied for an extension to use the property for his or her own purposes for up to three years after the Claims Bureau reinstatement decision. The Property Board would have had to grant such an application as long as the Current Occupant continued using the property for his or her own purposes or as long as the Current Occupant had no immediate access to alternative accommodation.

For a Current Occupant without financial means the Annan Plan stipulated that he or she was not required to vacate the property until alternative accommodation was made available if he or she was a Cypriot citizen.³⁰⁴ For Current Occupants whose property was located in areas subject to territorial adjustment, however, reinstatement could have occurred sooner. In such cases, reinstatement was to take place as soon as the Current Occupant had been relocated, but no later than three years after entry into force of the Foundation Agreement.³⁰⁵

6. Provisional legal remedies to suspend the enforcement of a decision

The special remedies described above would have led to a suspension of the enforcement of a decision for a certain time.

7. The eviction process

The eviction process foreseen in the Annan Plan contained four sequential stages:³⁰⁶ the decision, notice to the parties, the possibility to apply to postpone enforcement and enforcement.

The first stage of the eviction process was to start after the Claims Bureau issued a final reinstatement decision. At that time, it had to inform the Current Occupant of his or her obligation to vacate the affected property and of his or her right to alternative accommodation. Reinstatement would then have occurred after the Current Occupant had been provided with alternative accommodation or when the timeframes had passed, whichever was sooner.

The authorities of the relevant constituent state were responsible for the enforcement and implementation of the decision.

G. VALUATION METHODOLOGIES

Despite their different backgrounds and institutional settings, all claims programmes shared a common goal: they were aimed at providing effective remedies for numerous individuals who suffered losses, damage or injuries as a result of an armed conflict or serious human rights violations. Moreover, the recent programmes were expected to accomplish this task in a shorter period of time and more efficiently than would otherwise be possible through case-by-case decisions in domestic courts.

Due to the large number of claims to be processed, most of the recent programmes have relied extensively on standardized valuation methodologies in order to speed up the review of claims and to ensure consistency and reliability throughout the process. Valuation methodologies affect several of the critical stages of the claims resolution process, in particular the categorization of losses, verification procedures, calculation of compensation, due diligence and transparency of the process.

This section reviews in particular valuation methodologies used in different programmes for property losses, as well as for losses from death and personal injury under the 9/11 Compensation Fund. It aims at identifying the main valuation components of the claims processes covered, and the standards under which they operated. Additionally, common key characteristics have been extracted in order to offer guidance for the development of valuation methodologies in future claims programmes.

The following claims programmes are examined in this section: the United Nations Compensation Commission (“UNCC”), the Property Loss Programme of the German Forced Labour Compensation Programme (“GFLCP Property Loss Programme”), and the 9/11 Compensation Fund. As the valuation of property would have played a prominent role in the property restitution and compensation programme foreseen in the Annan Plan for Cyprus, the provisions of the Annan Plan are examined as well, despite the fact that the Annan Plan never reached the implementation stage.

It is not the aim of this section to provide detailed guidelines, valuation notes and protocols concerning the valuation of real and personal property and other assets. Rather, it highlights concepts and principles in this area that may provide valuable food-for-thought for policymakers and others as they confront the challenge of designing and implementing mass claims procedures in the future.

International valuation standards

As a general rule, internationally-recognized principles of valuation serve as an important reference for the calculation of compensable losses. For instance, the UNCC relied heavily on such principles used in the loss adjusting and accounting professions, e.g. depreciation of assets. For valuing economic and non-economic losses related to the 9/11 Compensation Fund, for instance, the valuation methods were based on past earning levels which the Fund found to be standard practice in this field. Both the UNCC and the 9/11 Compensation Fund methodologies also made appropriate adjustments for the risk of overstatement and to avoid “double-counting”, again a generally recognized technique when assessing compensation levels.

Level of evidence

The availability and reliability of evidence is essential to the success of any valuation methodology. At the same time, the standards of evidence required to prove a damage or loss have differed substantially between the different programmes. The standard of evidence was particularly high for the 9/11 Compensation Fund and larger claims submitted to the UNCC. Valuation methodologies in these programmes were based on the general premise that all claims had to be supported by contemporaneous evidence, preferably third party information that could be easily verified such as salary slips, certified invoices supported by proof of payment, or audited accounts. If the evidence submitted fell short of such standards, the UNCC applied various discount factors to account for the risk of overstatement.

Interest and actualization

The issue of interest is a crucial one, in particular when the amount of compensation is determined many years after the date of the loss. An actualization of the amount to be compensated is done by adding interest to the value of the property at the date of loss. Interest is usually calculated as a percentage of the principal (i.e., the amount of compensation determined in historical values) and computed annually, in a simple manner or by compounding.

Audit trail and reporting

Internal control mechanisms are used in mass claims programmes to ensure that the computation and payment of awards is made in compliance with prescribed standard operating procedures, and that all programme resources are effectively and efficiently used. At the UNCC and the 9/11 Compensation Fund, significant resources were dedicated to the audit and verification functions. In the case of the UNCC, the verification of claims was done in-house by a unit comprised of accountants and loss adjusters. In the case of the 9/11 Compensation Fund, most of the verification work was outsourced to a large audit firm. The reliability of the reporting and audit system and its capacity for providing timely, comprehensive,

and accurate audit information is a basic prerequisite for the effective functioning of large-scale claims programmes.

IT support

The need to computerize the claims resolution process is a consequence of the sheer number of claims under review. Without extensive and robust IT support, none of the claims programmes looked at in this section would have been capable of completing the resolution of the claims within a reasonable period of time. This is why entering data about the claims and their characteristics into a database and the development of a computerized claims processing system are important early steps in setting up a mass claims process.

IT systems based on integrated computerized interfaces have become more and more familiar tools also in the valuation of claims. The design of these processes had to strike an appropriate balance between efficiency and fairness, and therefore rely extensively on innovative valuation methods and techniques on the one hand, while at the same time providing for the necessary independence of the decision-makers and for other safeguards in the process. While a detailed review of the IT systems used in the claims programmes examined could not be carried out in the context of this publication, it is clear that these systems have contributed significantly to achieving the above balance.

A review of the various valuation methodologies shows that these share certain features which can be summarized as follows:

- a) Simple and consistent, rather than subtle and arbitrary, to allow efficient processing, consistency and accuracy of the valuation work;
- b) Integration of generally-accepted valuation standards and procedures in order to maximize accuracy and reliability of awards;
- c) Rely, as much as possible, on third party and contemporaneous evidence in order to minimize areas of judgment in the valuation;
- d) Support the process with IT to allow the full monitoring and tracking of the claim resolution process, from the filing of the claim to the determination of the award and the payment of compensation.

I. UNITED NATIONS COMPENSATION COMMISSION

Over the course of 14 years the work of the UNCC involved the processing of over 2.6 million claims. While it was the Commission's aim to exert maximum objectivity, transparency and fairness in the review and resolution of the claims, the exigencies of processing such a large number of claims within a reasonable

time period imposed certain procedures. In particular, valuation methodologies were standardized in order to bring consistency and objectivity into the review and verification and to make the process effective and efficient.

For the purposes of this study, the examination of valuation methodologies applied at the UNCC is limited to the valuation of real property losses, mostly found in claims belonging to categories “D” and “E”.³⁰⁷ Category “D” claims consisted of individual claims for damages above USD 100,000 each. The most frequent types of loss were the ones related to personal and real property as well as income and business-related losses. The Commission received approximately 10,500 category “D” claims. Category “E” claims were claims of corporations, other private legal entities and public sector enterprises. They included claims for construction or other contract losses; losses from the non-payment for goods or services; losses relating to the destruction or seizure of business assets; loss of profits; and oil sector losses. The Commission received approximately 5,800 claims in category “E” submitted by seventy Governments seeking a total of approximately USD 80 billion in compensation. The category “E” claims ranged from asserted losses of a few thousand US dollars to those for several billion US dollars. In this study, only real property losses from the “E4” category claims are examined which consisted of claims submitted by Kuwaiti companies.

The fact that the UNCC heavily relied on standard valuation methodologies made the process easily auditable and also permitted to keep an electronic archive of all claims and valuation reports. Since most of these methodologies were computerized, documents and information could be easily exchanged via internet between the Secretariat staff and the outside valuation experts who were used in the large and complex category “D”, “E” and “F” claims. Finally, an in-house oversight service was established to conduct quality control and audit the verification and valuation of claims.

1. Standard of compensation

UN Security Council Resolution 687 reaffirmed (1) that the invasion and occupation of Kuwait was unlawful, and (2) that Iraq was liable under international law for direct loss, damage or injury from this invasion and occupation. Accordingly, full compensation was, in principle, the UNCC’s applicable standard of compensation. The different Panels of Commissioners applied this general standard to the particularities of the various claims categories and loss types.

2. Loss categories included in the methodology

For the “D” and “E” claims, the verification procedures required an individual review of each claim. However, each of the Panels of Commissioners reviewing large groups of homogenous claims within these categories had established verification and valuation methodologies to be applied across the board to the population of claims assigned to the specific Panel. Such methodologies were developed and applied with the assistance of the Secretariat and outside expert consultants.

The “D7” methodology was used to value loss elements such as the estimated cost of repairs not yet completed, actual cost of repair work completed and the loss of rental income. The “E4” methodology was used to value losses such as contract loss, real property loss, tangible property loss, loss of stock, profits, cash, vehicles and income-producing properties and the value of payment or relief to others.

3. Valuation basis

The similarity of loss types and issues across significant numbers of claims enabled the UNCC to employ comprehensive and consistent valuation procedures in order to ensure efficiency, fairness and equal treatment in the processing of the claims. To the extent that claims in a particular category or sub-category possessed similar characteristics, they could be decided with the help of standard valuation methods. Once relevant legal and factual precedents had been established, the Panels could apply the standardized valuation methodologies, thus limiting their work to the verification and valuation of the claims and the calculation of any allowable compensation.

a) Key functions of the valuation methodologies

Before the Secretariat and the expert consultants could use the various methodologies for the valuation of the losses claimed, the Panels of Commissioners had to agree on the methodologies’ objectives. Several goals shaped the development of the methodologies. First, all awards had to be calculated accurately and free of computational, clerical, or typographical errors. Therefore it was important that the awards conformed to generally accepted accounting principles. Second, the valuation methodologies had to be capable of being applied consistently to the claims population under review. This ensured that whatever award amount was calculated, the results were capable of being audited and reproduced.

Third, the valuation methodologies had to allow for the efficient review of the claims in a timely manner. The Governing Council had set strict deadlines for the Panels to complete the review of claims and the review process had to take this

into account. Standard Review Programmes (“SRPs”) were designed to facilitate and expedite the verification and valuation of claims. For instance, the “E4” methodology had some 18 SRPs, each covering a specific loss type and providing guidelines for its valuation.

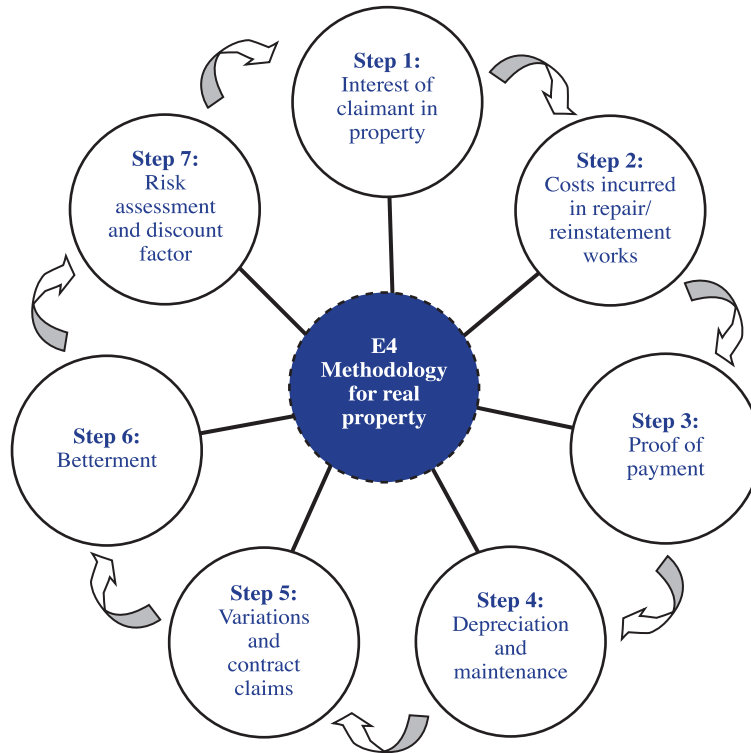
Fourth, the methodologies had to take into consideration the types of evidence capable of being provided by the claimants and civil authorities. In a post-invasion context and because of the looting and destruction of their premises, even those claimants who kept thorough records before the invasion were no longer able to provide such information to support the valuation of their claims. This destruction of records posed one of the most difficult problems for the verification and valuation of the claims. The valuation methodologies took these factors into account by applying various levels of discount factors when “best evidence” was not provided.

Fifth, the Panels developed a method to balance the claimants’ inability to provide the best evidence with the “risk of overstatement” created by such evidentiary shortcomings. In the case of the “E4” claims, the general availability of audited financial statements solved a large part of the evidentiary problems faced by the claimants. But a claimant’s inability to provide strong evidence in support of the value of a claimed loss increased the risk that a claim was overstated. The Panels of Commissioners and the valuation experts working with the Secretariat focused their attention where this risk was greatest. For instance, of the 2,750 claims filed in category “E4”, 172 claims were in excess of 10 million USD each, representing about 60 per cent of the total asserted value of “E4” claims. Of these claims, 53 required the most scrutiny, as they posed the greatest risk of overstatement. As a result, different levels of materiality were set in the valuation methodology, a standard practice in the auditing and accounting professions.

b) The “E4” methodology

The “E4” methodology for real property losses dealt with claims for damage to or destruction of buildings either owned by or in the care of the claimant, where the repair or replacement costs had actually been incurred by the claimant. In the “E4” methodology, such costs were defined as the reinstatement costs, and the claim was evaluated on a reinstatement basis.

A series of specific steps was followed during the valuation process.



Step 1: Interest of claimant in property

The claimant had to provide full evidence for the damage and ensure that it was possible to identify the nature of his or her interest in the damaged building(s). Where claims were based on incurred costs, there was a presumption that the claimant who paid for the damage had a direct interest in the property. This interest might have changed over time, however. For example, a tenant under a full repairing lease might have surrendered the lease and repudiated his obligations as a result of the damage suffered during the war. In such circumstances, the property's owner might have had to meet the cost of making good the damage suffered even though he was not obliged to do so under the contract. Any uncertainty as to the claimant's interest was reported in detail to the Panel of Commissioners. Where the title to or interest in the building was in the name of an individual (and not the claimant, e.g., the claimant's owner or an employee), the Secretariat carried out a duplicate claims check to ensure that the individual had not raised a claim for the same property in another category.

Step 2: Costs incurred in repair/reinstatement works

Here it was identified whether or not the claimant had incurred actual costs for repair/reinstatement works, or whether the claim was for the diminution in the value of the property or estimated repair costs.

Step 3: Proof of payment

Proof of payment could be offered in a number of different ways, ranging from certification in the case of a major construction repairs contract to a simple payment receipt in the case of a minor repairs contract. If evidence of payment only supported part of the amount claimed, then the excess amount was rejected.

Step 4: Depreciation and maintenance

Here it was determined whether the costs were incurred as repair or replacement costs. In order to establish the net cost of the actual repair works to a building, adjustments were made in respect of depreciation and maintenance. Ordinarily minor building repairs did not attract any depreciation since they did not extend the lifespan of the original asset. In the case of replacement of entire sections of buildings, such as a new roof or rebuilding an out-building, the replacement of new for old led to adjustment for depreciation. The calculation of depreciation was made on the basis of standard rates and life spans for asset types, and for this the UNCC developed a standard depreciation table. In the absence of information as to age, it was assumed that the asset was halfway through its usable life span at the date of the loss.

In the event of repair cost no depreciation was applied, but allowance was made for maintenance. However, only maintenance costs incurred in excess of the normal level of cost were compensated. In the absence of actual information as to the point reached in the maintenance cycle, the methodology assumed that maintenance would on average be halfway through the cycle. In that case, a standard adjustment of 50 per cent was made to all maintenance elements of repair costs. In the absence of information as to the maintenance component of the repair costs, a standard 20 per cent discount was applied, based on the assumption that approximately 40 per cent of repair works constitute maintenance, of which 50 per cent was to be disallowed.

Step 5: Variations and contract claims

Actual amounts of variations and contract claims were to be eliminated. If they could not be identified because the costs incurred were not supported by a contractor's estimate, an independent surveyor's report or by payment receipts, a risk of overstatement remained for which a discount factor was applied.

Where variations and contract claims could not be identified, the following considerations applied. It was assumed that at the time of placing a contract of repairs, the full scope of the repairs was evident to both parties and that therefore variations to the contract were to be regarded as afterthoughts and considered as likely betterment works. The cost of variations was rejected unless there was a good reason why these variations would not be regarded as betterment. For contract claims, which were essentially disputes between the contractor and employer, the general cause tended to lie with failures by the employer or his agents to give the contractor the opportunity to complete the works unhindered. As such, contract claims were regarded as resulting from the claimant's failure to mitigate the loss effectively and were not compensated.

Step 6: Betterment

Betterment became relevant in the event that it could clearly be ascertained that replacement items were installed to a higher specification than those lost or damaged. In the case of forced betterment, claimants, in the interest of restoring their business or premises as quickly as possible, purchased from the market whatever comparable items were available immediately after the date of loss. In such cases, claimants were acting swiftly in order to mitigate their loss and therefore their claim. Such apparent betterment did not result in a reduction in the claim.

Intended betterment, on the other hand, applied where a claimant had voluntarily decided to upgrade certain replacement items. Adjustments against this element were made by unit adjustment where the values were known, or else by consideration as an unquantified risk, with the result that a discount factor was applied to the claimed amount.

Step 7: Risk assessment and discount factor

An assessment of the level of risk of overstatement was performed in order to determine the risk assessment factor (or discount factor) that was applied to the claim. If after this assessment an unquantifiable risk of overstatement remained, then the risk level was increased by one level on the risk assessment scale for each risk remaining.

The following risk assessment or discount factors were used:

Risk category	Risk/discount %
Insignificant	0
Marginal	15
Significant	35
Substantial	60
Fundamental	100

c) The “D7” methodology

For “D7” claims, which constituted the real property part of the category “D” claims, a standard methodology was developed for all Kuwaiti real property claims, which accounted for 95 per cent of the “D7” claims population. The remaining 5 per cent were subject to a more individualized review by the Commissioners.

The “D7” methodology was used to value four loss elements, namely estimated cost of repair work not yet completed (“Estimated Repair”); actual cost of repair work already completed (“Actual Repair”); loss of rental income, including loss of anticipated rental income; and other related losses.

The “D7” valuation was conducted in five stages:

- Stage 1: Identification process
- Stage 2: Adjustment process
- Stage 3: Assessment process
- Stage 4: Valuation process
- Stage 5: Calculation of the recommended compensation.

After the first stage, which included the identification of the claimant and the respective property, the second stage in the methodology was to identify errors and omissions in the claim. Adjustments were made when it was found that there were classification errors concerning the category of loss, exchange rate variances, arithmetical errors, reconciliation of amounts, or duplicate claims. The following information was collected for the identification of the property: type of property, area and location, age of the building, estimated value as of 1 August 1990, original cost, and total floor area in square meters. Based on the age of the property, depreciation was calculated. If the age of the property was not known, an age equal to half the useful life was applied.

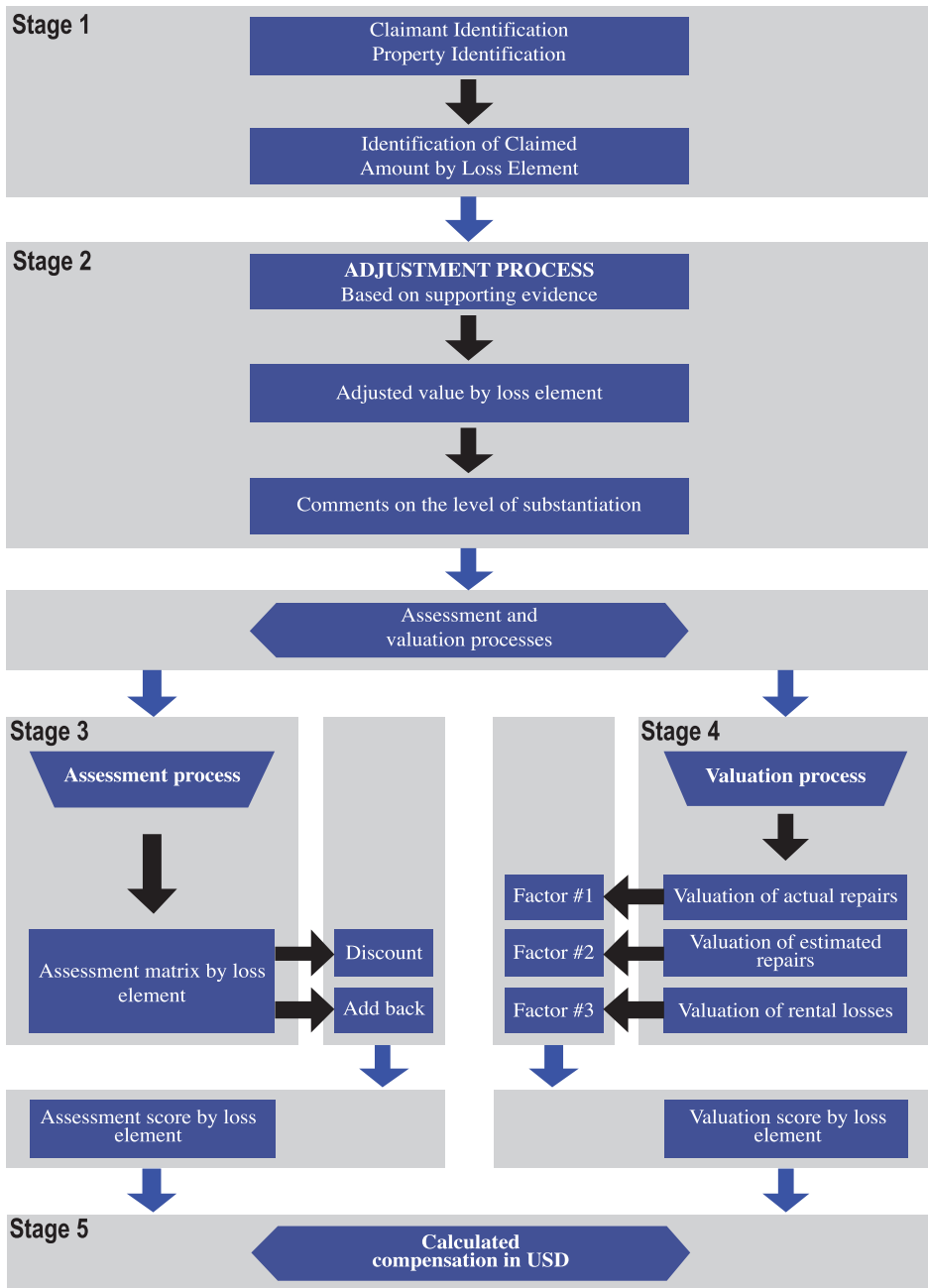
The third stage, the assessment process, reviewed the existence and validity of all evidence provided in support of the claim. An assessment matrix was developed for each loss element to ensure that all relevant aspects of the claim documentation were considered. Different assessment matrices were developed with respect to the three “D7” loss elements: estimated repair, actual repair, and loss of rental income. For estimated repair costs, the required documents consisted of estimates and quotations and a description of the damage. For actual repair costs, the required documents were a description of work and costs as well as evidence of work completion. Here again, the programme worked with discount and add back factors. For instance, in the case of estimated cost of repair work not yet completed, in the absence of documents such as a quotation or description of damage, a 50 per cent discount factor was applied to the amount claimed. On the other hand, when claimants filed

optional documents that had not been required upfront but which could serve to substantiate the claim, this would result in an add back to the adjusted value. The total of all deductions and add backs would result in an assessment score expressed as a percentage and applied to the adjusted value. The assessment score could not be higher than 100 per cent or lower than 0 per cent.

At the fourth stage of the “D7” valuation process, technical valuation principles were applied to the adjusted value. The claim amounts were broken down according to the three status categories repairs, reconstruction and improvement, and the adjusted values were restated for depreciation, deduction for improvements and restatement of costs to 1 August 1990 prices. A table was developed that listed many types of properties and their useful life, and from this table the depreciation rates were drawn. Absent information regarding improvements, a 10 per cent deduction to the adjusted value was applied.

All of the stages of the valuation were summarized to arrive at the calculated compensation (Stage 5), showing the adjusted value, the assessment and the valuation scores by loss element and the final amount of compensation for each of the properties claimed.

The logical framework of the “D7” valuation methodology is shown in the following table:



4. Level of evidence required

a) Evidence under the “E4” valuation methodology

The specific evidence required for a claim to succeed depended on the type of loss and the related valuation methodology. In the case of the “E4” category, the Panel of Commissioners decided to focus on the elements that would pose the greatest risk of overstatement of the claim, i.e. the cases where the accounts were unaudited or materially qualified. In other words, the level of evidence that the Panel required was determined by its goal to minimize the risk of overstatement.

For the evaluation of Kuwaiti real property claims, the Panel could rely on pre-invasion accounting information. The financial statements, containing detailed information on a claimant’s business and assets, proved critical. Even if they were destroyed at the claimant’s place of business, it was assumed that the claimant’s auditors retained a copy. As a result, all “E4” claimants were asked to provide audited accounts for the three years preceding and following the invasion.

If the claimant was not required under Kuwaiti law to prepare audited accounts, then it could submit unaudited accounts. However, most Kuwaiti businesses maintained a level of transaction recording and document maintenance that was to be considered as acceptable under international business practice. Although Kuwaiti law did not require all businesses, pre-invasion, to maintain audited accounts, the majority of companies in Kuwait did maintain audited financial records from which it was possible to extract real property values. When audited accounts were not available, the Panel of Commissioners relied on invoices and other third party information, such as quotations for repair and proof of payment.

In the following table, the type of evidence used in the “E4” methodologies is summarized.

EVIDENCE LEVEL	AREA	EXISTENCE	OWNERSHIP	VALUE
Circumstantial (sufficient to draw strong inference)	Asset	<ul style="list-style-type: none"> • Original construction invoices • Building permit • Accounts • Insurance records • Mortgage documents • Survey report • Photographs 	<ul style="list-style-type: none"> • Original construction invoices • Building permit • Management or publicly lodged accounts • Insurance records • Mortgage documents 	<ul style="list-style-type: none"> • Sales invoices • Insurance records • Supplier's invoices • Photographs • Construction cost records
	Damage	<ul style="list-style-type: none"> • Photographs • Survey report/schedule of damage independent witness statement 		<ul style="list-style-type: none"> • Builder's repair estimate
Sufficient evidence to verify and value claim with reasonable certainty		<ul style="list-style-type: none"> • Repair invoice • Deed/lease/licence/title document • Independent survey report • Audited accounts 	<ul style="list-style-type: none"> • Repair invoice • Deed/lease/licence/title document • Audited accounts 	<ul style="list-style-type: none"> • Repair invoice and payment records • Independent surveyor's report • Independent valuer's report • Multiple contract tenders • Audited accounts

b) Evidence under the “D7” valuation methodology

The real property claims in the “D” category were primarily for repair costs and for loss of rental income. Since the claims in this category were brought by individuals, the valuation methodology could not rely on business records such as audited accounts, but rather had to work with other information.

For each loss type, discount factors were applied to the amount claimed to the extent required documents were missing, and add back factors were applied when optional documents were provided that had not been required upfront. For instance, optional documents for estimated repair costs were witness statements, an identification of the damaged area in square meters, and loss adjuster/civil engineer reports, resulting in an add back factor of 10, 15, and 50 per cent respectively. In the case of actual cost of repair, a contract with suppliers would result in an add back factor of 40 per cent.

The evidence required for loss of rental income included rental contracts, receipts for the July 1990 rent, certificates from the tenant to attest pre-invasion occupancy, or utility bills. Optional documents were witness statements (10 per cent add back factor), evidence of rent payments, such as bank statements or copies of cheques (20 per cent add back factor), and tenant identification, i.e. copy of the tenant’s ID card or a letter signed by the tenant (10 per cent add back factor).

5. Lack of best evidence

As in the other valuation methodologies, the review focused on the elements where the risk of overstatement of the claims was greatest. Where a claim lacked best evidence in these areas, pursuant to a provision to this effect in the UNCC Rules, the Secretariat invited the claimants to submit additional information or documentation. These so-called “Article 34 notifications” were used to a greater extent the larger and more complex the claims were.

When gaps in the evidence supporting the value of the claims remained, the risk of overstatement was dealt with by the application of standard discount factors to the amounts claimed. These factors were based on an assessment of the various levels of risk for each of the different loss types.

6. Audit trail

In the area of claims valuation, audit functions were implemented for two main purposes. The first was in respect of the work that was done by the outside expert

consultants whom the UNCC used particularly to perform valuations of the losses claimed in the larger and more complex claims. The exchange of data with and the reports submitted by these accounting, loss adjusting and other specialized firms were all recorded electronically by the UNCC. They allowed the UNCC's Verification and Valuation Support Branch (VVS) both the continuous monitoring and the additional quality control of the valuation work it had outsourced.

The UNCC also kept electronic records of all the programmes and data that were used in the assessment of the losses in those claims where the valuation was done by its VVS in-house.

Together, these sets of valuation and verification programmes and data were then available for audit purposes, both to the UNCC's management as well as to the UN's Office of Internal Oversight Services (OIOS) which audited a number of Panel of Commissioner and valuation reports in the large and complex claim categories.

7. IT support

At the time, the UNCC probably had the largest and most comprehensive IT support system of any claims programme. The database and the software applications were particularly complex and elaborate in the areas of claims verification and valuation, which is not surprising given the large numbers of claims and the diversity of the losses claimed.

Information technology played an important role in the categorization and grouping of similar claims and losses which facilitated the use of standardized verification and valuation methods and introduced a significant measure of objectivity and consistency in this part of the process. Discount and add back factors, depreciation rates and other adjustment parameters, for instance, were all built into computer applications which made it possible to use the same set of data over a population of similar claims. Data and reports were exchanged via email and through standard protocols between the UNCC's Secretariat and the outside valuation consultants, not only speeding up the process but also creating an elaborate audit trail.

II. GFLCP PROPERTY LOSS PROGRAMME

The German Foundation Act provided for compensation to persons who suffered loss of or damage to property during the National Socialist era that happened as a result of racial persecution or other Nazi-wrong and was directly caused by German businesses.

The two most important, and at the same time most complex sets of issues that the GFLCP Property Loss Programme had to resolve were (1) how to determine the causal relationship between the loss or damage to the property and the involvement of German companies, and (2) how to value losses that had occurred more than 60 years ago and with respect to whose values the claimants generally had very little or no evidence. For both sets of issues, the Secretariat and the Property Claims Commission developed methodologies that allowed consistent and standardized determinations for similarly placed groups of claims. For the valuation of losses and damages, these consisted mostly of matrices that were based on pre-war property classifications for tax purposes to which adjustment factors were applied to reflect current value.

1. Standard of compensation

The German Foundation Act did not define the standard to be applied to the property losses for which it provided compensation. It only specified that losses were compensable to the extent they were caused with the essential, direct and harm-causing collaboration of German businesses. While much of the Property Claims Commission's jurisprudence concentrated on what constituted a German enterprise and an involvement of such an enterprise in the loss according to the above criteria, the Secretariat elaborated the valuation methodology pursuant to the instructions of the Commission in order to operationalize the very general standard set out in the German Foundation Act.

2. Loss categories included in the methodology

The compensable losses for which a methodology had to be developed included all types of property, i.e. personal belongings, jewelry, bank accounts, houses, farms, shops as well as medium- and large-sized factories and enterprises.

3. Valuation basis

a) Sampling and standardization

The Property Claims Commission decided to use a simple and standardized approach to the valuation of losses. The Commission developed the valuation criteria, and the Secretariat then applied these criteria to the individual claims and made decision proposals to the Commission who then resolved the claims in batches. The Commission chose this approach in light of the high number of claims (35,000), the short deadline for its work initially foreseen in the German Foundation Act, the constraint that all administrative expenses had to be paid from the funds

available for compensation, and the fact that no successful claimant could be paid until all claims were finally resolved.

In order to have an overview of the claims and the issues they presented as early as possible, the Commission instructed the Secretariat to review a random sample of claims for which it should identify patterns, problems and specific needs. One of the main purposes of this exercise was for the Commission to be able to make informed choices about the valuation of losses and damages. The Secretariat chose a statistical sample of approximately five per cent of the claims that represented as many patterns and issues as possible. It presented the findings from the review of those claims to the Commission who used these, *inter alia*, to develop its valuation methodology.

b) The valuation matrix

The sample review showed that due to the lack of the necessary information in the claims it would not have been possible to provide a unique valuation specific to every loss in question. The vast majority of claimants could not provide the accurate and reliable valuations that had been asked for in the claim form, as many decades had passed and the claimants had difficulty in providing supporting evidence.

The Commission therefore decided not to value lost property on the basis of the claimant's valuation, even in the rare cases where claimants had provided an expert contemporary appraisal for the property. Instead, the Commission created nearly 70 property classifications and used the claimant's information to categorize his or her loss within a table of standardized values (e.g., a certain amount for a small farm, a certain amount for a medium farm, and a certain amount for a big farm). Most of the losses found to be compensable related to farms as well as small businesses (e.g., shops, restaurants, hotels, and workshops), medium-sized businesses (e.g., small factories and large department stores), large businesses (e.g., large factories),³⁰⁸ professional practices (of doctors, lawyers, accountants, etc.), and bank accounts.

The Commission then adjusted the award depending upon several factors. One was the extent to which the claimant had owned the lost property. Second, the award was adjusted based on the location of the loss. As a general matter, the Commission recognized the disparity between property values in one location versus another (e.g., in rural areas versus urban areas and in Western Europe versus Eastern Europe). However, the Commission's approach, while recognizing to some extent that geographical location affected property values, largely eliminated the geographical and historical changes in property values that took place over the intervening sixty years, long after the Nazi acts occurred.³⁰⁹

The Commission chose the amounts of the standardized values based on many factors, including: (i) the values used in prior German compensation programs; (ii) historical research; (iii) information found in the claims as a whole, particularly those in the random sample of claims that had high-quality evidence; and (iv) other sources. The first factor was the most influential one. Prior German compensation programs (e.g., those under the *Bundesentschädigungsgesetz*, *Bundesrückerstattungsgesetz* and *Vermögensgesetz*) applied the rule that the amount of compensation was that which would allow the claimant to repurchase the lost property at the time of the decision, in German “*Wiederbeschaffungswert*.”³¹⁰ After analyzing modern prices, these programmes decided to calculate their awards by taking the pre-war tax value,³¹¹ and then multiplying that by four to obtain the final compensation award, as of 1994.³¹²

Using that approach presented two problems for the Commission: The Property Programme covered many more countries than just the German Reich around 1935, and it would have been practically impossible to research all the pre-war or wartime tax values. In addition, if the Commission had awarded the repurchase values, then the sum total of the awards would have by far exceeded the available fund of DEM 200 million and would have led to an immense pro rata reduction.

The Commission thus decided to use the pre-established, fixed tax or repurchase values of the *Bundesentschädigungsgesetz* as a guide only. Those values were considered (i) in the Commission’s creation of standardized compensation amounts; (ii) in determining the ratios of amounts from one type of property to another; and (iii) in adjusting the amounts per location and time/duration of loss. The matrix that the Commission developed used a point system for each category, in order to weigh the categories in relation to each other. A value of EUR145 was assigned to each point, after the Commission had reviewed the sample of claims.

In sum, the valuation method adopted by the Property Claims Commission classified each compensable item according to a system of standardized amounts based on the nature and size of the property lost and the location of the loss. The Commission chose this matrix approach to eliminate arbitrary or temporary differences in values from one region and time period to another, and in order to take into account the difficulty in making case-by-case valuations given the often scarce, subjective or inconsistent valuation information available to claimants because of the passage of time and the circumstances in which the losses occurred.

c) Real property

The Property Claims Commission chose an alternative method for calculating the award for lost real property. The Commission decided that immovable property

differed from movable property, in that the former was still identifiable and available for restitution after the war. The fact that it was not returned to the victim or his/her heirs constituted a separate injury attributable not to the Nazi regime but to the post-war government. The Commission therefore decided to value immovable property not for its full market value, but only at a percentage representing the loss of use of that property during World War II. Thus, immovable properties were compensated at a rate of 8 per cent per year of the property's value, with 4 per cent being awarded for the years 1939 and 1945. A slightly different formula was used for losses in Germany and Austria, which could have occurred as early as 1933.

d) Bank accounts and securities

The Property Claims Commission also chose a different system for compensating bank accounts and securities. Instead of using a matrix of values, the Commission used a two-fold calculation method. First, if the value of the bank account or securities was not in *Reichsmark*, then it was converted from the local currency to *Reichsmark* at the exchange rates valid as of 1935. Second, the *Reichsmark* amount was divided by two to convert from Reichsmark to present-day Euro.

In some cases, bank accounts or securities were found compensable despite the fact that the amounts in question at the time of the loss were unknown. The Commission decided that compensable bank accounts and securities with an unknown amount would receive a value of EUR 1,000. If one claim had multiple accounts or securities with an unknown amount, then the claimant would only receive the EUR 1,000 amount once per claim.

4. Level of evidence required

As a general rule, the German Foundation Act required that claims should be supported by written evidence.³¹³ In recognition of the obstacles faced by claimants to fulfil this requirement because of the passage of time and the circumstances in which they had suffered the losses, the Property Claims Commission adopted a relaxed standard of proof. Section 22.1 of the PCC Rules states:

The Commission's decision on compensability shall be based on relaxed standards of proof taking into account the lapse of time between the date the loss occurred and the date the claims was made; the circumstances in which the specific loss or types of losses occurred; the information available from other cases; and the background information available to the Commission regarding the circumstances prevailing during the National Socialist era and the Second World War and the participation of German enterprises in the commitment of National Socialist wrongs.

While the claims had to have, at a minimum, proof that the lost property existed and was owned by the victim, a number of presumptions applied for other requirements a claim had to fulfil, in particular with regard to the causal relationship between the loss of the property and the involvement of German businesses.

5. Lack of best evidence

Specifically with respect to valuation, for the reasons set out above in the description of the valuation methodology, the Property Claims Commission did not value the lost property on the basis of the claimant's valuation even where the claimant provided an expert appraisal for the property. All that claimants had to provide was information that allowed a categorization of the property within the matrix which was then used to assign a value to the property.

6. Audit trail

All the data relating to the claims, as well as those relating to their assessment and resolution were recorded in the programme's database. This included the parameters of the valuation matrix and the values for each loss item, as well as all the decisions. It was thus possible to track and review every decision and its components, including the valuation of the losses, through an electronic audit trail.

While the German Foundation did not have the authority to review or approve the decisions of the independent Property Claims Commission, it was able, pursuant to an understanding with the Commission, to spot-check the results for a limited sample of claims.

7. IT support

The processing of claims was significantly assisted by information technology during all stages of the programme, i.e. from the registration of claims to their resolution and payment. The recording of key data about the claims in a database, such as the factual background of the claims, the types of losses claimed and the circumstances in which the losses were incurred, allowed the categorization of the claims and the selection of the sample on which the Property Claims Commission based the development of its review and valuation methodologies. Together with the parameters of the valuation matrix, the claims data in the database also enabled the calculation of the compensation amount for each loss element of a claim.

A specially developed computer programme generated the individually reasoned decisions in each case directly from the database, including the amount of

compensation for each loss element. This programme also produced an electronic file from which the decision was printed in English and the language in which the claim was filed. Finally, electronic files were generated from the database that contained the necessary data for the payment of the claims.

III. 9/11 COMPENSATION FUND

The 9/11 Compensation Fund accorded significant discretionary power to the Special Master in the adjudication of the claims. The Final Report also confirmed that the Special Master had “discretion under the Regulations to select the most appropriate measure of the victim’s historical earnings based on the victim’s own circumstances.” The Special Master used this discretion to develop detailed guidelines concerning the computation methodologies and assumptions incorporated into the calculation of the different categories of compensation.

1. Standard of compensation

The Air Transportation Safety and System Stabilization Act (the “Act”)³¹⁴ mandated not only that each award be determined based on the individual circumstances of the claimant, but also that each award be determined promptly within very short time deadlines. Given these two potentially conflicting mandates, the US Department of Justice and the Special Master established policies and guidelines that should apply uniformly to the evaluation of all claims, taking into account certain individual factors, in order to ensure fairness and consistency among claimants, both with respect to the process for submitting and evaluating claims and the methodology for determining the compensation. The methodology was also designed to assure that families and injured victims were given adequate financial support to provide a safety net from which to rebuild their lives. Claimants were kept fully informed about the methodology for the computation of the compensation and other factors that would be evaluated so that they could make an informed decision about whether to submit a claim to the Fund or to pursue litigation.

2. Loss categories included in the methodology

The losses included were death and physical injury. Various categories of claimants were created and different assumptions were applied for each of them. For instance, for victims in the uniformed services (military, fire, and police departments), the Fund’s economic loss model incorporated all forms of compensation to which the victim was entitled. For military personnel, such compensation included basic pay,

basic allowance for housing, basic allowance for subsistence, federal income tax advantages, overtime, bonuses, differential pay, and longevity pay. For New York Fire Department personnel, retroactive pay increases authorized after September 11 were included as part of the victim's earnings basis.

3. Valuation basis

a) Economic and non-economic losses

The Regulations set forth guidelines for the determination of economic and non-economic loss and directed the Special Master to develop a methodology for computing presumed economic and non-economic losses for claims on behalf of deceased victims based on objectively verifiable factors. The Special Master published detailed guidelines explaining the computation methodology and assumptions that would be incorporated into the calculations as well as charts showing computation examples.

In summary, the valuation methodology established a three-part formula for computing individual awards:

1. Economic loss suffered by the death or physical injury;
2. Calculation of non-economic loss, i.e. the pain and suffering of a 9/11 victim and the resulting emotional distress inflicted on surviving family members;
3. Deduction of all collateral sources of income available to a claimant (life insurance, pension payments, social security death payments, public victim assistance, benefit paid to surviving families by the victim's employer, etc.).

b) Computing economic losses

The economic loss methodology computed the victim's future earnings by starting with the victim's earnings history. The Special Master had discretion under the Regulations to select the most appropriate measure of the victim's historical earnings based on the victim's own circumstances. The components of the economic loss calculation included compensation history, fringe benefits, work life, growth rates, consumption, adjustments for taxes and risk of unemployment and present value factors. Presumed economic loss was calculated using standardized assumptions for these components. In order to minimize, as much as possible, the speculative nature of computing future economic loss, the methodology relied on a combination of the victim's own objectively verifiable historical experience with assumptions about likely future events based on publicly available national data. Once the selected compensation level had been determined, the provisional award

was reduced by applicable state and federal taxes. The formula accounted for the fact that some portion of the victim's income is self-consumed, and therefore not a measure of the economic loss to the survivors, by incorporating a consumption deduction derived from available national data.

The starting point in valuing economic loss was to ascertain the most appropriate measure of the victim's historical income. The Fund counted all sources of income including salaries and bonuses; stock options; partnership or equity distributions; self-employment earnings; capital gains; deferred compensation; overtime pay; and part-time income. In general, the Fund relied on pay stubs and employer statements as the most accurate depiction of actual income.

Most of the time, the valuation methodology sought to apply average income for the three years prior to 2001. The Special Master had the discretion to select other years, or to rely on published pay scales. The Special Master's Office evaluated the income history of each victim and any information provided by the employer regarding the victim's status (including planned promotions) as well as the family circumstances in selecting the appropriate base for the calculation of compensation.

c) Major assumptions for valuing economic losses

The following assumptions were considered: the fact that the victim's income would grow over time at an average growth rate and would continue through an average work life; and the potential for periods of future unemployment, leading to an unemployment risk factor based on national average data.

The computation methodology adopted a number of assumptions to facilitate analysis on a large scale. When viewed together, these assumptions were designed to benefit the claimants and were more favorable than the standard assumptions typically applied in litigation. For example, the Special Master considered that over the course of their projected careers, younger victims could expect to cross into higher income brackets, and be subject to corresponding higher income tax rates, on account of experience-based real lifetime earnings growth in excess of economy-wide national wage increases. To calculate presumed economic losses, however, whatever income tax rate corresponded to the victim's determined compensable income bracket as of the date of death was assumed to apply for the remainder of the victim's career, without increase.

The Regulations also provided that the presumed award methodology would be applied only to income levels up to the 98th percentile of individual income in the United States. As such, the Special Master and the Department of Justice understood

that the presumed award methodology might be inadequate for claimants with extraordinary needs or circumstances. Accordingly, the Regulations provided that claimants who believed that the presumed methodology would not address their individual circumstances could request that the Special Master depart from that methodology. If a claimant established extraordinary circumstances, the Fund had the obligation to evaluate all the individual circumstances of the claim, including the claimant's particular needs and resources, and to determine the appropriate award based on factors that might not be reflected in the presumed methodology.

d) Details of the valuation steps for economic losses

The calculation of presumed economic loss used the following procedures and assumptions for death claims:³¹⁵

1. Establish the victim's age and compensable income. Income was determined based on the claimant's submissions for the past three years of income data.
2. Determine after-tax compensable income by applying the average effective combined federal, state and local income tax rate for the victim's income bracket currently applicable in the state of the victim's domicile for tax purposes, state and locality. The Special Master considered the victim's tax returns as well as effective income tax rates derived from published Internal Revenue Service data on selected income and tax items for Individual Income Tax Returns by state.³¹⁶
3. Add the value of employer provided benefits. These benefits were set at actual levels if data were provided. If the claimant did not provide data, the pension was assumed at 4 per cent of pension-eligible compensable income and medical benefits were assumed to be USD 2,400 per year in current year dollars and were adjusted for applicable inflation.
4. Determine a measure of the victim's expected remaining years of workforce participation. To do so, the Fund used the tabulated work-life expectancies for the victim's age on actual experiences and behavior of the general population, and measured the estimated remaining time in years an individual of a given age would be in the labor force (either employed or actively seeking work), allowing for age-specific mortality risks and rates of workforce transitions. Because published estimated work-life expectancies by gender are lower for women than men, this specification increases the duration of estimated foregone earnings, and thus presumed economic losses, for female victims and was implemented by the Special Master to accommodate for potential increases in labor force participation rates of women.³¹⁷
5. Project compensable income and benefits through the victim's expected

work-life using growth rates which incorporate an annual inflationary or cost-of-living component. The growth component also considered an annual real overall productivity or scale adjustment in excess of inflation, and an annual real life-cycle or age-specific increase derived using data on average full-time year round earnings by age bracket. Independent of life-cycle increases, inflation and real overall productivity increases of 2 and 1 per cent, respectively, were applied each year.³¹⁸

6. Reflect risk of unemployment. To better reflect contingencies that the victims would have faced, all future earnings amounts were adjusted for a factor to account for the risk of unemployment because lifetime jobs are not representative of the modern economy. This adjustment is made because work-life expectancies are based on years of expected workforce participation, which, as defined by the Bureau of Labor Statistics, include periods an individual is either working or seeking work. Historical unemployment rates were examined and a reduction factor of 3 per cent was applied to presumed earnings to account for this risk.
7. Subtract from annual projected compensable income and benefits, the victim's share of household expenditures or consumption as a percentage of income, using expenditure data by income level obtained from "Table 2. Income before taxes: Average annual expenditures and characteristics, Consumer Expenditure Survey, 1999," published by the Bureau of Labor Statistics. This subtraction is a standard adjustment in evaluating loss of earnings in wrongful death claims because a part of the income that the victim would have contributed to the household would have been consumed personally by the deceased and would not have been available to other household members. A victim's expenditures were calculated as a share, based on household size, of certain expenditure categories. In determining household size, children were assumed to remain in the household through age 18.
8. Calculate the present value of projected compensable income and benefits. This was done using discount rates based on current yields on mid- to long-term U.S. Treasury securities, adjusted for income taxes using a mid-range effective tax rate. Because the period of presumed economic losses is either longer or shorter, depending on the victim's age, the present value calculations are performed using yields on a blend of securities with longer or shorter times to maturity.

e) Non-economic losses

Non-economic losses were defined as losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other

than loss of domestic service), and hedonic damages. The Regulations established uniform figures for presumed non-economic loss for decedents and dependents because it was deemed that no deceased victim or victim's family suffered more than another.

This system was simple to administer. Each claim received a uniform non-economic award of USD 250,000 for the death of the victim, and an additional non-economic award of USD 100,000 for the spouse and each dependent of the victim. As such, the USD 250,000 could be seen as a guaranteed payment or minimum compensation for participating in the Fund. The USD 250,000 figure was derived from precedents in long-established US federal law governing death benefit payments to police officers and fire-fighters, as well as subsidized life insurance payments made to survivors of the military personal killed in action.

The Regulations allowed to depart from the presumed non-economic loss in extraordinary circumstances. The Fund did, in fact, award extraordinary non-economic loss in some instances. For example, the Fund increased the presumed USD 250,000 non-economic loss award in situations where a victim ultimately died after surviving for days, weeks or even months after the tragedy.

f) The deduction of collateral source compensation

One of the most controversial aspects of the Fund was the requirement that collateral offsets be deducted from the award. The Act defined collateral sources to include a variety of types of payments but did not give detailed definitions or guidance. In general, the Fund adopted the policy that collateral source payments would not be deducted if the payment was contingent, was payable to someone who was neither a beneficiary nor a close family member of a beneficiary, or had been funded by defined contributions made by the victim (to the extent of such funding). These guidelines were intended to avoid reducing an award for funds that the claimant either would not or might not receive and to avoid deducting benefits that the victim had effectively "earned" prior to death.

While the Regulations provided some additional guidelines for claimants, the Special Master recognized that it would be difficult for an individual claimant to understand precisely how the collateral source provisions might affect his or her claim. Accordingly, the Fund provided the opportunity for claimants to meet with the staff of the Fund or the Special Master for specific guidance.

The deduction of collateral offsets had a significant effect on the amounts paid to victims and their families: collateral source compensation reduced overall payments by approximately 29 per cent, or more than USD 2.9 billion.

g) Economic and non-economic loss for physical injury victims

The Regulations did not include a specific methodology for the calculation of awards for surviving victims who suffered physical injury. Economic loss for physical injury victims was computed using the same methodology that was applied for deceased victims adjusting for the duration of economic loss on a case-by-case basis. However, the Department of Justice and the Special Master did not believe that it was either possible or appropriate to determine in advance, through schedules or formulae, non-economic loss for physical injury victims. Because the physical injuries were so vastly different and had significantly different long-term effects, the Regulations directed the Fund to evaluate each individual physical injury claim to determine the extent, nature and permanence of the injury, and establish non-economic loss accordingly.

Economic loss for physical injury victims was comprised of two main components: actual lost income or expenses incurred as a direct result of the injury, and future lost income and costs caused by the future effects of the injury. The computation of economic loss for claimants, who suffered relatively minor injuries, resulting in either short-term loss of work or out-of-pocket expenses, was straightforward. The award in such cases was comprised of the documented losses, plus an award for non-economic loss, less any collateral offsets received. Many victims suffered more extensive, long-lasting injuries. In each case, the Fund evaluated the injury to determine whether the injury was permanent or temporary, and if temporary, how long the effects of the injury would remain and whether the claimant had a total or partial disability.

The answer to each of these questions affected the computation of economic loss. If a claimant suffered from a temporary disability, the Fund computed economic loss for the period of disability. If a claimant suffered from a permanent total disability, the Fund computed the economic loss through the end of the ordinary work life of the individual. If the claimant suffered from a permanent partial disability, the Fund computed economic loss based on the diminution of earning capacity resulting from the qualifying injury. In each case, economic loss was computed using the same standards applied to the computation for deceased victims, except that the consumption reduction was eliminated from the calculation.

On a case-by-case basis, the Fund also provided an award for the value of replacement services for physical injury victims. In general, the replacement services computations addressed the value of services lost to the victim's family as a result of the injury as well as the cost of obtaining services that the victim could no longer perform for him or herself. For example, if a physical injury victim required nursing assistance in order to perform activities of daily living (and that assistance

was not provided through health care coverage or other programmes for which the victim was eligible), the Fund computed the present value of the reasonable cost of obtaining such services for the duration of the disability or incapacity. As with claims for deceased victims, the value of the services was based either on average costs for the New York metropolitan area or actual out-of-pocket costs if sufficient documentation was provided.

4. Level of evidence required

The presumed methodology was designed to provide generous awards to the families and to be simple to administer. Claimants did not need to present detailed computations or analyses. Instead, they needed only to supply the Fund with easily obtained data: the victim's historical earnings, the victim's age, the age and status of members of the victim's household, the victim's employment benefits, and collateral offset data. The presumed methodology assured that the economic loss calculation for similarly situated victims produced similar results.

One of the key functions of the 9/11 Compensation Fund was to assist claimants. The Fund took a proactive role, advising each claimant of information that would assist in the evaluation of the claim and undertaking to obtain information from third parties. It took measures to ensure that claimants were not treated differently merely because one claimant was represented by an effective representative and another was not.

The Fund scrutinized every claim to ensure that information that could affect the outcome of the claim was considered and in certain circumstances gathered information that the claimant might not have presented. To foster the claimant assistance and information process, the Fund collected all questions from claimants and continuously published guidance in the form of answers to Frequently Asked Questions to update claimants on new issues, policy decisions and the Fund's treatment of various issues.

5. Lack of best evidence

Case managers of the 9/11 Compensation Fund contacted claimants or their representatives to discuss what documents were necessary and provided assistance to claimants in obtaining their documents. While this practice added to the administrative costs, it effectively helped to reassure claimants while also ensuring that the Fund received the information necessary to properly evaluate the claims.

The Fund's staff also met extensively with key employers of victims of the attacks. These meetings proved to be very useful; the Fund advised employers of

the type of information that they could provide the families in order to facilitate the claims process, and at the same time the Fund developed extensive data about the compensation and benefits policies of specific companies. Through this process, the Fund was able to tailor its evaluation guidelines to account for employer-specific issues.

After sufficient documentation was obtained for evaluation, the claim was sent to an adjudicator who would prepare the initial presumed award calculations using the standard model, if necessary adjusted for specific employers. After a quality control process, the claim was sent to an attorney in the Special Master's Office for review. If the claim was designated as a Track A claim, the attorney reviewed the claim, determined whether the claimant was eligible, decided whether the claim was substantially complete and if it was, determined the appropriate inputs for the presumed award calculation so that an award letter could be issued. If the award or eligibility denial was appealed, the claim was reviewed again, along with the transcript of the hearing by a managing attorney in the Special Master's Office who then determined and issued the final award.

If the claim was designated as Track B, the attorney reviewed the claim to determine eligibility, whether the claim was substantially complete, and made the appropriate presumed award calculation. If the claim was found to be substantially complete, the claimant was sent a letter advising of the substantially complete determination and the timing of a hearing. After the Track B hearing, each claim was reviewed again, along with the transcript of the hearing, by the supervising attorney in the Special Master's Office who then determined and issued the final award.

6. Audit trail

A detailed audit trail was maintained for the 9/11 Compensation Fund. Coordination of the payment process, including gathering information necessary for the Special Master's Office to review and render distribution plan decisions, as well as gathering information from claimants and coordination with the Special Master's Office and the Department of Justice to authorize and complete the payment of final awards, was under the responsibility of the retained consulting firm.

7. IT support

Computer models were constructed that incorporated the presumed award assumptions and allowed each claim to be evaluated through a uniform process.

The 9/11 Compensation Fund developed 12 different computer models to

calculate presumed awards for death claims and 16 models to calculate presumed awards for physical injury claims. The models varied based on employer-specific issues (such as pensions or other employer benefits) or other issues related to the data supporting the economic loss. Fairness and consistency were assured by establishing standard presumptions and assumptions embodied in the computer models used for every claim.

Computer technology and matching capabilities were also used to detect fraud. Twenty-six suspicious claims were spotted and sent to the Department of Justice Fraud Division for investigation. As a result, six individuals were prosecuted and convicted of fraudulent claims.

Web-content technology was used to create the internet site that allowed the collection and dissemination of information. To gather, for instance, comments from the public on the legislation and how it was to be implemented, help to disseminate information about the Fund and develop procedures for applying to the Fund the US Department's of Justice Office of Litigation Support was charged with developing and launching the project website. A government contractor that had supported other high-profile, information-processing-oriented projects of the Department, was recruited for this purpose and more than USD 4.6 million was spent on the web-site project.

Document imaging was used to process the claim applications daily under rigorous requirements for accuracy and fast turnaround. Information technology was employed at other stages of the process, as well. The website and the PDF documents allowed consistency in the printed copies of the documents. The documents distributed online, through the Call Center and at the Claims Assistance Centers, were all identical. Uniform and consistent information was made available to all interested parties.

IV. ANNAN PLAN FOR CYPRUS

The Annan Plan is very comprehensive in respect of the legal and political framework for dealing with property claims. However, the details of the valuation methodology are not provided and it is therefore difficult to comment on the procedures in this respect. For example, it is not clear how the envisaged bond and certificate mechanism would work, or how the current value would be calculated.

Setting up a "bond" or "certificate" mechanism could be a straightforward exercise for land losses involving a limited number of claimants and loss types. It is

less clear how the payment of awards would be made once bonds and certificates are “sold”, and to what extent it would be feasible to have current users provide income (proceeds from selling and/or leasing of land) to the fund and ultimately to the claimants (“certificate holders”).

1. Standard of compensation

Under the Annan Plan, it is envisaged that compensation be paid in the form of both compensation bonds and property appreciation certificates drawn on a compensation fund.

Dispossessed owners, who opt for compensation, as well as institutions, shall receive full and effective compensation for their property on the basis of the value at the time of dispossession adjusted to reflect appreciation of property values in comparable locations. Compensation shall be paid in the form of guaranteed bonds and appreciation certificates. As stated above for the reinstatement of property, all other dispossessed owners have the right to reinstatement of one third of the value and one-third of the area of their total property ownership, and to receive full and effective compensation for the remaining two-thirds.

Current users, being persons who have possession of properties of dispossessed owners, may apply for and shall receive title, if they agree in exchange to renounce their title to a property, of similar value and in the other constituent state, of which they were dispossessed.

A dispossessed owner whose property cannot be reinstated, or who voluntarily defers to a current user, has the right to another property of equal size and value in the same municipality or village. He or she may also sell his or her entitlement to another dispossessed owner from the same place, who may aggregate it with his or her own entitlement.

2. Loss categories included in the methodology

The various loss types considered in the Annan Plan are: real property; affected property and improvements; rent, sale and purchase amounts; entitlements to alternative accommodation and other amounts under the provisions; and loss of use.

Compensation is under the appropriate conditions available to both individuals and institutions. However, it is not further specified what institutions would be included in the compensation scheme. It would need to be clarified, for instance, whether properties of private family corporations or properties related to other

unincorporated associations and shareholders are covered by the compensation mechanism.

3. Valuation basis

a) General principles

Two different valuation bases are mentioned in the Annan Plan. The first one is current value, i.e. the value of a property at the time of dispossession, plus an adjustment to reflect appreciation, based among other things on an increase in the average sale prices of properties in Cyprus in comparable locations in the intervening period up to the date of entry into force of the Foundation Agreement. Furthermore, this value is to bear interest at the same rate as interest on medium-term government bonds, from the date of entry into force of the Foundation Agreement until compensation bonds and property appreciation certificates are issued.

The second valuation basis is market value. According to its standard definition from an accounting point of view, this is the amount for which a property could be sold on the open market, based on an assessment of purchase prices or amounts paid for comparable properties in comparable locations at the time of assessment.

In disposing of properties, the Property Board would apply the following valuation bases, in the following sequence: First, offer the property for sale to the current user at current value. Second, offer the property for sale to persons hailing from the constituent state in which the property is located, at market value, including in exchange for compensation bonds and property appreciation certificates at their market value. Third, use it as alternative accommodation. Or fourth, dispose of it in a prudent manner, at market value, to generate funds for compensation purposes.

To determine true market value, evidence of land transfer deals struck between willing buyers and willing sellers at an historical date would be needed. Obtaining such true market values would be a difficult task due to the fact that the market at the time of the implementation of the Annan Plan would not necessarily be “liquid”. This is probably why the Annan Plan considered current value as a basis for sale of property to current users.

b) Reinstatement of properties

Under the Annan Plan, the reinstatement entitlement covers one third of the land area and one third of the current value of the land (whichever first applies) of the aggregated affected property of a dispossessed owner who is not an institution.

The general elements of the methodology can be summarized as follows. Any dispossessed owner (other than an institution) is entitled to reinstatement of his or her affected property within the limits of his or her reinstatement entitlement. To this effect, he or she may elect any of his or her affected property which is eligible for reinstatement. If the reinstatement entitlement is not sufficient to permit the dispossessed owner to be reinstated in a dwelling which he or she owned when it was built or in which he or she lived for at least ten years, the dispossessed owner will be entitled to reinstatement of the dwelling and up to one donum of the adjacent land area of which he or she was dispossessed.

If the affected property of a dispossessed owner has been distributed or subdivided since dispossession, this special rule only applies to the aggregated reinstatement entitlements of all the successors in title as though a single claim was being made by the original dispossessed owner.

If the dispossessed owner elects to be reinstated to a dwelling which he or she has not built and in which he or she did not live for a period of at least ten years and which has been used by the same current user for the last ten years, the Property Board shall use its discretion, taking into account all relevant factors, in deciding whether to grant reinstatement. Should the Property Board not grant reinstatement of such a dwelling, the dispossessed owner shall choose another of his or her affected properties eligible for reinstatement.

If the reinstatement entitlement is larger than the area or the value of a dispossessed owner's affected property which is eligible for reinstatement, such owner may:

1. sell his or her reinstatement entitlement to another dispossessed owner from the same municipality or village;
2. exchange his or her reinstatement entitlement for a property in the same village or municipality of his or her choosing from among the holdings of the Property Board, or if no equivalent land is available, in a neighbouring village or municipality; or
3. receive compensation and buy property of equivalent size and value in the same village or municipality provided he or she was displaced after his or her 10th birthday.

If the reinstatement entitlement does not allow the reinstatement of a dwelling or the minimum size of agricultural plots, the dispossessed owner may sell his or her reinstatement entitlement to another dispossessed owner from the same municipality or village or may elect to receive compensation for it. Purchased reinstatement entitlements can be aggregated with other reinstatement entitlements from the same municipality or village and used to obtain property in that municipality or village.

c) Reinstatement basis and improvement of properties

It should be noted that the reinstatement basis in the case of the Annan Plan differs with what is commonly applied. For instance, in the case of UNCC, the valuation under “reinstatement” deals with claims relating to damage to or destruction of buildings either owned by or in the care of the claimant, where the repair or replacement costs have actually been incurred by the claimant. Such costs are defined as the reinstatement costs, and the claim is said to be stated on a reinstatement basis.

Still, the Annan Plan discusses a provision considered for improvement of properties. It is said that the dispossessed owner of any improved property shall pay the market value of any improvement worth more than 10 per cent of the value of the property in its original state, or any improvement worth 3,000 Cyprus pounds. The methodology envisaged can be summarized as follows:

1. The owner of the improvement is entitled to seek compensation from the Property Board for its market value or actual cost (if worth more than 3,000 Cyprus pounds). If the dispossessed owner satisfies the Property Board that an improvement worth less than the value of the property in its original state is inappropriate for his or her intended use of the property which is similar to the use prior to dispossession, the dispossessed owner shall not be required to pay for the improvement.
2. Where the market value of the improvement is greater than the value of the property in its original state and the dispossessed owner is not prepared to pay for it, the owner of the improvement may apply to receive title to the property in exchange for payment of the value of the property in its original state. The dispossessed owner shall retain a right of first refusal for a period of 20 years after entry into force of the Foundation Agreement, for any contract for sale, exchange or long-term lease of the property, at the proposed contract price.

In the case of the Annan Plan, it is not clear what is the mechanism envisaged to identify whether or not the claimant has incurred actual reinstatement costs, i.e. is the claim for costs incurred in repair/reinstatement works. It is not clear either what has been envisaged in terms of valuation principles for claims for the diminution in value of property or estimated repair costs only. It is not stated how the valuation methodology would deal with “unforced betterment” included in the reinstatement cost.

d) Loss of use

Loss of use is included in the Annan Plan. It is argued that any claims for compensation for loss of use of an affected property for any period commencing with dispossession would be considered by the constituent state from which the claimant hails, taking into account:

1. Benefits previously enjoyed by the dispossessed owner on the grounds of his or her displacement;
2. Any entitlements received by or payable to the dispossessed owner, whether before or after the Foundation Agreement, for the period of lost use.

e) Compensation under the bond mechanism

A rather complex bond certificate mechanism has been envisaged as a means of providing compensation to claimants for loss of property. In finance, a bond is a debt security, in which the issuer owes the holders a debt and is obliged to repay the principal and interest (or the coupon) at a later date, termed maturity.

According to the Annan Plan, successful claimants for compensation would first receive claim receipts, indicating the current value of their holding in the Property Board's portfolio. Claim receipts may then be exchanged for compensation bonds and property appreciation certificates, five years after entry into force of the Foundation Agreement.

In terms of valuation procedure, the following principles are envisaged:

- Nominal value of bonds: The ratio of the nominal value of bonds to total current value of all properties in the portfolio of the Compensation Trust would be fixed at 33.3 per cent as of the date of entry into force of the Foundation Agreement. It should be noted that the price of the bonds when originally issued would therefore bear no relation to the market price.
- Interest bearing mechanism: Compensation bonds would be interest-bearing from the date of issue at a rate per annum equal to or greater than that applying to federal government bonds of equal maturation periods at the time of issuance of the bonds. Certificates shall be entitled to dividend if payable. For claims still pending five years after entry into force of the Foundation Agreement, interest on one third of the current value and dividend (if payable) on the remaining two thirds of the current value of the affected property will start accruing from year six.

Compensation bonds and property appreciation certificates may be used at their market value on the day of the transaction by holders for the following purposes:

1. To purchase affected property from the holdings of the Property Board at market value; or

2. To procure the payment by the Property Board of a deposit for purchase of alternative accommodation on the open market; or
3. For sale to any person or institution, who thereby acquires all entitlements of the initial holder, provided that this person or institution or any representative thereof does not own a combined total of more than 10 per cent of the outstanding bonds and property appreciation certificates.

The nominal value of compensation bonds at maturity would be guaranteed by the Federal Government. Compensation bonds would mature 25 years after issuance and would be redeemable for cash from the Compensation Trust. The bonds shall become callable at the discretion of the Compensation Trust at nominal value five years after they are issued. After the final maturity date on issued bonds, the certificate holders would receive all proceeds of any subsequent sale or lease of affected property from the holdings of the Compensation Trust.

4. Level of evidence required

The level of evidence required under the reinstatement and compensation scheme is not specifically discussed in the Annan Plan. Claims should be filed together with certified copies of any available evidence of the claimant's or applicant's interest in or title to the affected property. Holders of a part interest in or title to an affected property should, wherever possible, file joint claims. Upon receipt of any application with respect to affected property, the Claims Bureau would, following any necessary investigation and verification, determine whether the applicant has a sufficient interest in the property under these provisions.

5. Lack of best evidence

Since the Annan Plan has not been implemented, there is no practice that would have been developed to address situations where best evidence is missing.

The Plan foresees one situation where the Claims Bureau, if it determines that the claimant or applicant is not the sole dispossessed owner or person with an interest in the affected property, would make reasonable efforts to contact the other interested parties, including the current user, before deciding the claim or application. If the Claims Bureau decided that a claimant or applicant had no legal interest in the claimed affected property, it would reject the claim or application. At the same time, it could decide on the interests of the other parties to the proceedings and issue orders with respect to the property as appropriate.

6. Audit trail

The only provision dealing with audit matters concerns the Compensation Trust. Beginning five years after entry into force of the Foundation Agreement, the Compensation Trust would have financial reporting obligations in line with international standards for property companies. The Compensation Trust would also publish an annual report containing a financial report in line with international standards for property companies and would present it to the annual certificate and bondholders meeting.

The Compensation Trust would be subject to an annual assessment of the market value of the properties in its portfolio in line with international standards for property companies. The assessment would be performed by a property valuation firm of international reputation.

7. IT support

This is not applicable since the Annan Plan has not been implemented.

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VII. GFLCP Property Loss Programme

See VI. German Forced Labour Compensation Programme.

VIII. Claims Resolution Tribunal for Dormant Accounts in Switzerland

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- Appeal** Appeal means the procedure undertaken to review a first instance decision by bringing it to a higher authority (the next/the second instance).
- The German Forced Labour Compensation Programme (GFLCP) is an example of a claims programme that provided every claimant with the possibility to appeal against a first instance decision to an independent appeals organ that was subject to no outside instructions.
(→Legal remedies)
- Appellant** *Appellant* refers to the person who submits an appeal to the Appeals Body.
(→Appeal)
- Arbitrator** Arbitrator refers to the decision-maker in an arbitral proceeding. The CRT that resolved claims through an arbitral proceeding accordingly called the decision-makers *Sole Arbitrators*. If three arbitrators decided in a panel, this body was called “Claims Panel”.
(→ Decision-making body)
- Award** In international arbitration practice, decisions rendered by the Arbitrator or Arbitrators Panel are called *awards*.
- CRT, given the arbitral nature of its proceedings, called the decisions rendered by *Sole Arbitrators* or *Claims Panels awards*, including negative decisions that rejected

the claimant's claims. However, claimant feedback led to concerns that such terminology might lead to confusions and frustrations among the legal lay claimant community and the Tribunal adjusted its terminology calling only positive decisions Awards, while negative decisions were called Final Decision.

Birth certificate The birth certificate is an original document, usually issued under governmental or religious authority, stating inter alia, when and where a person was born.

Challenge *Challenge* refers to a particular legal remedy available under Swiss law on international arbitration. While the CRT did not foresee that the decisions on the merits of a claim by a Sole Arbitrator or a Claims Panel could be appealed within the Tribunal, these decisions could be challenged before the Swiss Federal Supreme Court. This recourse was based on Swiss law on international arbitration rather than the Tribunal's own rules of procedure and extremely limited: Claimants had to show violation of procedural rights or a violation of public policy or that new relevant facts were discovered after the decision was rendered and the challenging party was not responsible for the late discovery of these facts.
(→ Legal remedies)

Child In general, according to Art. 1 of the UN Convention on the Rights of the Child, a child means every human being below the age of eighteen, unless under the law applicable to the child, majority is attained earlier.

In the context of resolving inheritance issues within claims programmes, where often claimants come from different legal and cultural backgrounds, the above definition does not suffice to establish family relations in order to determine who may claim as an heir of a right holder.

The GFLCP Property Loss Programme recognized illegitimate children as well as adopted children if the adoption status was clear at the time of the loss. Similarly, stepsiblings qualified as brothers or sisters of a deceased victim and could thus claim

as legal successors. In contrast to this, children of a spouse of a deceased victim who had not been adopted by the victim were not recognized as potential legal successors.

Claim form

Claim Forms are standardized forms that claimants have to use in order to file a claim with the programme.

While Claim Forms differ considerably regarding their length and complexity, a common feature is that they are designed to (1) assist claimants in providing all relevant information and evidence when submitting their claim in order to avoid the need for time consuming and expensive follow-up, and (2) ensure that the forms are IT compatible, i.e. the information can be captured in a database system that supports the claim resolution process.

Claim

In the general legal context, the term claim refers to the demand for money or property as a matter of right.

In the context of a claims programme, the term *claim* can have different meanings. First, a claim is the necessary tool for persons to realize their rights by initiating the process that has been set up within the claims programme. This realization of a right usually means the individual confirmation of a right that previously or at least temporarily was not recognized, so that the claimant can make use of it. As such, the term claim represents the claimant's application for relief in which he or she can identify and substantiate the remedy sought. (→ Remedy)

For processing purposes, the term claim also has a more technical meaning, usually referring not only to the statement and information submitted by the claimant, but to the entire claim file, thus including documentation gathered from research by the programme's secretariat and any external sources such as archives, property registries etc.

Claimant

While the meaning of the term *claimant* may seem self-evident as referring to the person filing a claim, various claims programmes define the term in their Rules of Procedure.

The CRPC distinguished between *claimants* and right

holders. While a right holder was the person with the legal interest in a property, the term claimant referred to a person, who had approached CRPC to request confirmation of his or her property rights as of 01.04.1992 and for whom a claim form had been filled out. A claim could be submitted by a claimant, who was not the right holder provided the claimant met the CRPC's test for legal interest, such as the widow of a right holder. The decision certificate was always in the name of the right holder.

Closure

The understanding of the concept of closure in the context of claims programmes differs considerably reflecting the wide range of legal as well as sociological and psychological aspects that closure entails.

On the legal side, closure means that the claims programme provides an exclusive and final forum for claims and thus precludes possible lawsuits or other legal remedies in domestic or international fora.

Closure can also refer to an endpoint or ultimate goal of a reconciliation process to which a claims programme is meant to contribute.

Commission

The CRPC, HPCC, CRRPD and UNCC, refer to their decision-making bodies as the *Commission*. The Commission members are called Commissioners. Despite the fact that these programmes use the same name for their decision-making body, there are considerable differences regarding the number of commissions that exist in each programme, the composition of the commissions, the majority requirements for the decision-making process and regarding the selection and appointment process of the Commissioners.

While the CRPC and the HPCC have one Commission only that decides all claims, the UNCC has multiple Commissions (called Panels of Commissioners) that deal with different categories of claims. Similarly, the CRRPD has at least one Regional Commission per Iraqi Governorate with responsibilities divided between the Regional Commissions according to geographical boundaries.

The different character of the Commissions is most evident when looking at their composition, in particular the ratio of

national and international members within one Commission. The HPCC Commission consists of one local judge and two international lawyers who are all appointed by the Special Representative of the UN Secretary General. The Special Representative also designates the Chairperson from among these members.

In contrast to this, the CRPC Commission consisted of three international and six national members. Four of the national members were appointed by the Federation of Bosnia and Herzegovina, the two other nationals were appointed by the Republika Srpska. The international members were appointed by the President of the European Court of Human Rights, who designated one of them as the Chairman of the Commission.

The Commission in the GFLCP Property Loss Programme consisted of three members. One Commissioner was appointed by the German Ministry of Finance, a second Commissioner by the US State Department. The two candidates then chose a third Commissioner who also acted as their Chairman.

Among the three members of the CRRPD Regional Commissions there are no international ones.
(→ Decision-making body)

Compensation

In international law *compensation* is generally understood as to cover only a monetary payment in cases where a restitution ad integrum is not possible. Art. 36 ILC-Draft Articles of State Responsibility states that the State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

Such compensation is also referred to as damages.
(→ Damage)

Competing claim

If more than one or numerous claims are filed by different persons regarding the same issue or factual situation, for example for the same piece of land in a property restitution programme, these claims are called *competing claims*. Competing claims might either arise when claimants, for example family members, do not know about each others'

claims. They might also arise when one person wishes to dispute the entitlement of another who has filed a claim with a programme. The CRRPD as well as the HPCC refer to these statements filed by persons who wish to dispute the claimant's claim and to secure their rights as responses.

For the purpose of processing and decision-making, competing claims are usually joined and decided together, as the decision regarding one claim affects the outcome of the other claims.

(→ Response)

Correction of errors

Correction of errors refers to the possibility of requesting the correction of mistakes of a purely clerical nature (calculation errors or typos). Such a possibility existed under the UNCC process which did not provide claimants with an opportunity to contest the decision on the merits.

(→ Legal remedies)

Current occupant/user

Property restitution programmes often face the situation of secondary occupancy which involves a dispossessed right holder as a claimant on the one hand, and a third party who occupied and started using the property during the course of or immediately after the conflict on the other. The latter is usually referred to as the *current occupant* or *current user*. With regard to the latter, the motives and circumstances that lead to the occupancy might differ widely. The current occupant might have been actively involved in the displacement of the pre-conflict occupant, or might have purchased the property in good faith from another person. Finally, the current occupant might live in the property only because he or she lost his or her own house and the family was in need of shelter.

In the context of a property restitution programme, the situation of current occupants raises a number of questions regarding the procedure for the resolution of claims as well as for the enforcement of the decision.

While the CRRPD in Iraq provides the *current occupant* with

the right to initiate a claim before the CRRPD in order to have his or her rights to a property confirmed, the CRPC's mandate was limited to establishing the legal right holder to a property without considering the humanitarian and legal issues that arose out of the occupancy of the property by another person. More precisely, the CRPC did not deal with this at the first instance at all, and shifted the consideration of these issues to the second instance by granting the current occupant a right to request a reconsideration of the first instance decision.

The Annan Plan, for example, defined *current user* as “a person who has been granted a form of right to use or occupy property by an authority under a legal or administrative process established to deal with property belonging to dispossessed owners, or any member of his or her family who has a derivative right to use or occupy such property, or his or her heir or successor in title. The definition does not include any person who occupies or uses a property without any legal, administrative or formal basis, nor any person using or occupying property under a lease contract from a private person, nor any military force, body or authority.”
(→ Secondary occupancy)

Damage The term damage refers to the payment for actual loss sustained or injury inflicted upon persons or property.

Decision Claims programmes have used different terminology to describe the final determination on the matters submitted to them for resolution depending on, among other things, whether and to what extent the claims resolution process resembled judicial, administrative or arbitral proceedings.

The CRPC, HPCC and GFLCP used the term *decision*. For the CRPC, a Decision represented the outcome of the legal evaluation of at least one property unit and one Claimant. Although one Decision may also relate to more Property Units, each decision covers a maximum of one property.
(→ Award)

Decision-making
body The Decision-Making Body is the organ that is responsible

for the determination of the substantive issues submitted with a claim. The type of Decision-Making Body depends on the organizational structure of the different claims programmes.

(→ Arbitrator, Commission)

Deficiency letter *Deficiency letters* are letters sent by a programme's secretariat to claimants following an initial review of the claim submitted in order to clarify information submitted or to request additional information or documentation.

Duplicate claim In cases where a claimant files the same claim more than once, her/his submissions are referred to as *duplicate claims*.

Duplicate claims might consist of multiple identical copies of the claim form that the claimant submits at different times and possibly different places, often out of fear that the claim has not been received. They might also consist of different claim forms that although they all refer to the same issue, i.e. the same piece of property or the same factual situation, they differ as to the amount and type of information submitted.

In all cases, duplicate claims pose a considerable challenge to the programme as they have to be identified and “joined” as early as possible so that all information and evidence that might have been provided by the claimant in different claim forms is taken into account for the review and decision-making process and that the claimant receives one decision and/or payment only.

Eligibility The term *eligibility* refers to the criteria and requirements laid down by the legal framework of a claims programme that claimants have to meet in order to receive the programme's benefits. As such, the eligibility criteria define the group of potential successful claimants.

Heir The term heir usually applies to the person who succeeds to the real or personal property of a decedent.

In claims programmes with an international context, i.e. with a claimant community dispersed throughout the world, the determination of who is the rightful legal heir to an initial

right holder (or to a claimant who dies in the course of the proceedings) can be a daunting task.

While some programmes, such as the CRPC, based the determination of who qualified as an heir on the applicable national laws, the legal framework of other programmes, such as GFLCP, contained a self-contained system of standardized inheritance rules.

(→ Legal successor)

Indemnification clause

Indemnification is the act of holding someone harmless by protecting someone against or compensating somebody for a loss or damages.

The GFLCP required claimants to sign a waiver form before any compensation amount was paid out. In those cases where the compensation was paid to legal successors of a victim, this waiver form also contained an indemnification clause by which the claimants agreed to hold IOM harmless against any claim for payment under the German Foundation Law that had been or might be filed in the future by any person claiming to be an eligible legal successor of the victim identified in the claim.

(→ Waiver)

The CRT made use of an indemnification clause in those cases where the claim was resolved through a Settlement Agreement between the Swiss Bank and the claimant. Such an expedited procedure was mainly applied for dormant bank accounts with a balance of less than 100 Swiss Francs where the banks, in the interest of efficiency, were willing to offer the reported account value multiplied by a factor 10 in full and final settlement of the claim. As the Tribunal did not invite other interested parties, in particular other possibly entitled heirs, to join the proceedings before suggesting a settlement in these expedited procedures, the Settlement Agreement contained a clause by which the claimant agreed to indemnify the banks against claims from any other heirs that were not part of the settlement and to share the amount with them.

Internally displaced persons	While there is no official definition of the term “internally displaced persons”, the Guiding Principles on Internal Displacement describe internally displaced persons as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effect of armed conflict, situations of generalized violence, violation of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border” (UN Doc. E/CN.4/1998/53/Add.2).
Jurisdiction	Related to the concept of eligibility is the term <i>jurisdiction</i> , which refers to the authority of the decision-making body to resolve claims and as such determines which type of claims can be filed with and resolved by the programme.
Legal remedies	<i>Legal remedies</i> means the possibilities claimants have in a claims programme to challenge the first instance decision. There are different types of legal remedies used in claims programmes from a full right to appeal, a right to request a reconsideration of the claim, a right to resubmit to the limited remedy of requesting the correction of clerical errors. (→ Appeal, request for reconsideration, resubmission, challenge, correction of errors)
Legal successor	The German Foundation Act used the term <i>legal successors</i> (in German: “ <i>Sonderrechtsnachfolger</i> ”) for those heirs who it defined to be eligible to file a claim and receive compensation under this programme. The eligibility of a legal successor to file a claim and receive compensation under GFLCP was determined by two factors: 1) whether or not the claim of the original victim or sufferer was deemed to be eligible for payment; and 2) the family relationship that existed between the original victim and the legal successor. The German Foundation Act established a hierarchy among such eligible legal successors, and only spouses, children, grandchildren and siblings, in descending order, were considered to be eligible legal successors; if no such family relationship existed, heirs under a will were eligible. (→ Heir)

Fixed sum	The term fixed sum in a claims programme means that there is a pre-determined amount of compensation for a certain category of loss. If the claimants fulfil the criteria for this category than they will get this fixed sum and no separate valuation of their individual loss is carried out.
Personal property	Personal Property means property other than land and buildings attached to land (see Real Property).
Pinheiro Principles	<p>The term “Pinheiro Principles” refers to the Principles on Housing and Property Restitution for Refugees and Displaced Persons, which were approved by the United Nations Sub-Commission on the Promotion and Protection of Human Rights on 11 August 2005.</p> <p>The endorsement of the Principles are the result of a seven-year process which initially began with the adoption of Sub-Commission Resolution 1998/26 on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons in 1998. This was followed from 2002-2005 by a study by the Special Rapporteur on Housing and Property Restitution, Paulo Sérgio Pinheiro, which culminated in the preparation, discussion and eventual approval of the Principles in August 2005.</p> <p>The Pinheiro Principles, for the first time, provide restitution practitioners, as well as States and UN and other agencies, with a consolidated text elaborating concrete standards relating to the legal, policy, procedural, institutional and technical implementation mechanisms on housing and property restitution. As such, the Principles provide specific policy guidance regarding how best to ensure the right to housing and property restitution in practice. The Principles are universally applicable, and provide a definitive standard – based on existing international human rights, humanitarian, refugee and national law – for the implementation of restitution laws, programmes and policies.</p>
Plausibility	<i>Plausibility</i> was the standard of proof applied in most of the Holocaust-related claims programmes, yet no general definition seems to exist as to what constitutes a plausibility finding.

According to the CRT Rules of Procedure, a claimant had to show that was plausible, in light of all the circumstances that he is entitled to the account. The CRT rules further filled the term by identifying three requirements for a finding of plausibility:

1) production of all documents and information that can be reasonably expected;

2) no reasonable basis to conclude that fraud or forgery affect the claims;

3) no reasonable basis to conclude that other persons may have an identical or better claim.

(→ Standard of proof)

Presumption

Presumptions are conclusions drawn from known facts about unknown facts. Claims processes have developed and applied presumptions to fill gaps in the evidence provided by claimants.

For large-scale claims programmes individual research to substantiate individual claims would have been too time-consuming and too expensive. Instead programmes conducted research with regard to frequently-occurring claim scenarios and developed presumptions that then allowed for a relaxation of the claimants' burden of proof.

Property

The exact meaning of the term *property* varies significantly between different claims programmes. Section 1 of the Supplemental Principles and Rules of Procedure of the GFLCP Property Loss Programme defined property as "any and all immoveable, moveable, tangible and intangible assets". In contrast to this broad definition, other property claims programmes, such as the CRRPD, CRPC and HPCC, limited property for their purposes to real property.

Property rights

The types of *property rights* that can be claimed under a programme depends on the jurisdiction of the claims programme, which in turn depends largely on the property law regime that is or was applicable in the respective country. For example, in view of the fact that the former Republic of Yugoslavia primarily had a socialist approach to property rights, the CRPC's jurisdiction not only extended to ownership rights, but also included lawful and legal

possession (co-possession), occupancy rights and possession rights to apartments.

Reformatio
in peius

Reformatio in peius means the interdiction to modify the first instance decision to the disadvantage of the appellant, even in case of a clear first instance error in favour of the appellant.

Registration

Given the large number of claims faced by most claims programmes, the *registration* of claims is one of the most important first steps in the claims resolution process. The registration usually involves the assignment of a unique identification number to each claim, the creation of a copy of the claim, usually an electronic image through the scanning of the claim form and supporting documents, and the entering of certain claim-related information into a claims database.

Reinstatement

Reinstatement of property is a remedy which was foreseen in the Annan Plan. It meant the “restitution through the award of legal and physical possession to the dispossessed owner, so as to enable him/her to exercise effective control over such property including use for his or her own purposes”. It is important to note that according to the Annan Plan, the reinstatement of an affected property back to its dispossessed owner did not necessarily mean that the dispossessed would be able to establish permanent residence in the constituent state where the property is located, as residency rights were subject to limitations.

Remedy

The term remedy circumscribes the means by which a right is enforced or a wrong is redressed. The two main remedies provided in claims programmes are restitution of the right violated or compensation for the violation or loss of the right.

Reparation

Under international law, reparation is an international obligation resulting from the commission of an internationally wrongful act (Article 31 of the International Law Commission’s Draft Articles of State Responsibility). The primary purpose of reparation is to re-establish the situation, which would have prevailed if no breach of an

international obligation had occurred. Reparations can take three forms: (1) re-establishment of the right injured or lost; (2) compensation for damage suffered in the past; and (3) assurance against future breaches of the obligation.

Reparation programmes are a tool for providing the first two forms of reparation to a large group of people in a standardized way.

(→ Restitution, compensation)

Request for reconsideration

A *request for reconsideration* is a legal remedy that provides for a second review of the claim by the same organ that rendered the first decision, i.e. the first instance decision-making body.

The CRPC for instance, provided for a reconsideration of decisions by the Commission only. If the claimant or any other person with a legal interest in the real property designated in the original decision presented substantial new material evidence or information of new evidence, which the CRPC had not considered at the time of making the initial decision, the Commission would review the claim again.

Similarly, the rules of procedure for the HPCC process provided that “any party to a claim may submit to the Directorate a request to the Commission for the reconsideration of a Commission decision.” The Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission differentiate between a party to a claim and interested person who were not a party to the claim: “Any party to a claim may submit to the Directorate a request to the Commission of the reconsideration of a Commission decision within 30 days of being notified of the decision: (a) upon the presentation of legally relevant evidence, which was not considered by the Commission in deciding the claim; or (b) on the ground that there was a material error in the application of the present regulation.

Any interested person who was not a party to the claim, and who can show good cause why s/he did not participate as a party to the claim, may request reconsideration of

Commission decision within 30 days of learning of the Commission's decision but not later than one (1) year from the date of the Commission's decision."

(→Legal remedies)

Resettlement

The term resettlement refers to the relocation and integration of people (refugees, internally displaced persons, etc.) into another geographical area and environment, often in a third country. This process normally starts with the selection of the refugees or internally displaced persons for resettlement and ends with their placement in another community or country.

Respondent

The term *respondent* refers to a person who upon notification that a claim has been filed regarding an issue, in which he or she might have a legal interest, joins the proceedings by filing a counter-claim or response in order to secure his or her rights.

(→ Claimant, response, third party)

Response

Related to the concept of competing claims is the question of how the rights of third parties may be protected in the process. Particularly, in programmes where the decision of a claim might directly affect the rights of other persons, due process requires that these persons are provided with the opportunity to comment on the claimant's allegation. Claims programmes have implemented different procedural steps to ensure that third party rights are adequately protected.

The CRRPD and the HPCC set up an elaborate notification process by which persons who might have an interest in the property claimed are invited to file a "response" to the claim. For the identification of interested third parties, the CRRPD Secretariat does not only rely on statements made by the claimant, but conducts independent research in property registries.

The CRRPD and the HPCC have developed a standardized Response Form that persons have to fill out and submit to the CRRPD in order to comment on a claim and secure their own rights in the process. If invited parties decide to file a response, they become a party to the proceedings and are called Respondents.

Without using the term “response”, the CRT Rules of Procedure provided for a similar process. The Rules provided that “if the Sole Arbitrator or the Claims Panels deem the participation of third persons, such as other heirs of the account holder, intermediaries or beneficiaries, appropriate, they may invite such third persons to participate in the proceedings.” Based on this provision, it became standard procedure to invite any other possible heirs or interested parties that the Tribunal learned about to join the proceedings as an independent claimant (rather than respondent) and to compete against the original claimant. If the third party wished to join the original claimant’s claim, the person was called co-claimant. (→ Respondent, third party)

Restitution The term *restitution* means the return or restoration of some specific thing or right to its rightful owner.

Under international law restitution means that a state which is responsible for an internationally wrongful act is under an obligation to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution is not materially impossible and does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation (Art. 35 of the ILC Draft Articles on State Responsibility).

Resubmission Resubmission is a legal remedy used in the CRT process. A claimant could resubmit his claims following a decision of a Sole Arbitrator denying the claimant disclosure of bank account information. A resubmitted claim was reviewed by a Claims Panel of three Arbitrators. The CRT’s Rules of Procedure did not limit the request to cases where the claimant could provide new evidence. (→ Legal remedies)

Right of return The right of return is one aspect of the right to freedom of movement.
According to Art. 13(2) of the Universal Declaration of Human Rights of 1948: “Everyone has the right to [...] return to his country.”
Art. 12(2) of the International Covenant on Civil and

Political Right of 1966 states that: “No one shall be arbitrarily deprived of the right to enter his own country.” Nevertheless, paragraph 3 of the Covenant provides for certain restrictions; “The above-mentioned rights [in Article 12(2)] shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the right and freedoms of others, and are consistent with the other rights recognized in the present Covenant.”

Secondary
occupancy

The term *Secondary Occupancy* refers to the situation in which real property that is claimed in a property restitution programme is used or occupied by somebody else, thus preventing the successful claimant from returning to and using the real property.

Secretariat

The organizational unit that performs the processing of the claims and supports the decision-making process of a claims programme is usually called the *Secretariat*. A Secretariat performs various administrative tasks such as the claim intake and the registration as well as the IT support. The Secretariat also carries out key substantive tasks by conducting an initial claims review and preparing draft decisions for review and approval by the respective decision-making bodies. In addition to this, the Secretariat is usually responsible for all claim related communications with claimants providing hotline services, sending out information requests and notifications. As such, the Secretariat comprises variety of different staff including lawyers, IT specialists, historians, public information officers, as well as administrative clerks and, in some cases, translators.

Spouse

In the context of resolving inheritance issues within claims programmes, the determination of who qualifies as a *spouse* of a right holder can be a time-consuming and complex task. In order to avoid having to determine this on an individual basis, some programmes have included a definition of the term “spouse” in their self-contained system of standardized inheritance rules. (→ Heir)

Standard of proof

In general, standard of proof means the degree or level of persuasiveness of the evidence that is required in a specific case.

Claims programmes that are implemented in the aftermath of a destructive war or a long time after the loss or violations occurred, are faced with scarce evidentiary support, as most claimants are unable to present official documents and other written evidence in support of their claim.

Claims programmes have therefore applied a standard of proof that is substantially lower than the traditional evidentiary requirements of domestic court proceedings.

The CRT applied the standard of plausibility, under which each claimant had to demonstrate that it was plausible in light of all the circumstances that he or she was entitled, in whole or in part, to the claimed account.

The Supplemental Principles and Rules of Procedure for the GFLCP Property Loss Programme provided in Section 11 that “claims should be supported by written evidence. If a claimant is unable to provide written evidence in support of the claim, the claimant must explain why written evidence cannot be submitted.” The Rules further specify that “the Commission’s decisions on compensability shall be based on relaxed standards of proof taking into account the lapse of time between the date the loss occurred and the date the claim was made; the circumstances in which the specific loss or types of losses occurred; the information available from other cases; and the background information available to the Commission regarding the circumstances prevailing during the national Socialist era and the Second World War and the participation of German enterprises in the commitment of National Socialist wrongs.” The relaxed standard of proof means that the claimants only had to “credibly demonstrate” what was asserted.

The evidentiary rules of the UNCC distinguish between so called small claims and large claims. Article 35 of the Provisional Rules of Claims Procedure establishes that for claims for a fixed amount, such as in the case of departure

or serious personal injury, claimants are required to provide “simple documentation” of the fact and date of departure or the fact and the date of the injury only. Documentation of the actual amount of loss is not required. The evidentiary standard is somewhat stricter for claims for losses of up to USD 100,000. These claims must be documented by appropriate evidence of the circumstances and amount of the claimed loss. Finally, the rules establish the highest standard for the so-called large claims, as these claims must be supported by “documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss”.

Testament

In most international claims programmes, the term “testament” is understood broadly and referred to every form of will which the decedent made to establish who should become his or her heir in order to change the legal successors provided otherwise by the applicable national law.

Third party

In a claims programme, the term “third party” refers to persons who have neither filed a claim nor a response, but who might have a legal interest in the object of the claim.

The rules concerning the protection of third party interests differ considerably between claims programmes. Mere compensation programmes usually provide for a limited protection of third party rights only and rely on information submitted by claimants or respondents without or with only a limited obligation for the decision-makers to investigate and research third party interests. (→ Indemnification clauses).

In contrast to this, the rules of procedure of claims programmes dealing with real property, such as CRPC, CRRPD and HPCC, require independent research and investigations by the Secretariat into the property rights situation regarding the property that is being claimed.

(→ Response)

Valuation

Valuation refers to the assignment of a certain monetary amount to a certain loss.

Due to the large number of claims to be processed, most of the recent claims programmes have extensively relied on various, often standardized, valuation methodologies in order to speed up the verification and valuation of claims and to ensure consistency and reliability throughout the process.

Victim

In international law “a person is ‘a victim’ where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person’s fundamental legal rights”.

In contrast to this rather broad definition, claims programmes have adopted a more limited definition of the term according to the particular injustice they were addressing. The Holocaust-related Swiss Banks programme, for example, defined victim 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.” As such, for the purposes of this claims programme, the term victim was limited to members of certain groups, while other persons who were persecuted and victimized by the Nazi regime were not eligible to take part in the process (for example, persons who were persecuted for their political beliefs, but who did not belong to any of the groups listed in the victim definition).

The term victim might also be used in a more technical sense to describe those claimants who themselves have suffered injustices or a loss, in order to differentiate them from descendants of deceased victims who as heirs or legal successors might be able to claim on their relative’s behalf. Such a distinction had particular importance in the GFLCP process, in which surviving victims received higher compensation payments than legal successors of deceased victims.

(→ Heir, legal successor)

Waiver

A *waiver* constitutes the intentional relinquishment or renouncing of rights, claims or privileges. Claimants' waivers have been an essential part of claims programmes that attempt to bring closure to issues that the programme is supposed to address. A waiver of rights has either been a precondition for taking part in the claims process or for receiving compensation payments.

In CRT, claimants had to sign a so-called Claims Resolution Agreement, to be able to take part in the arbitration process before the Tribunal. In this arbitration agreement, they submitted themselves to the jurisdiction of the CRT and waived their rights to seek redress in any other forum.

In the GFLCP, claimants were required to sign a waiver on the claim form on which they submitted the claim. This waiver became effective when they received compensation payments.

(→ Closure)

1. See Art. 8 of the Universal Declaration of Human Rights, Art. 2(3), 9(5) and 14(6) of the International Covenant on Civil and Political Rights, Art. 39 of the Convention of the Rights of the Child, Art. 14 of the Convention against Torture and Other Forms of Cruel and Inhuman and Degrading Treatment, Art. 5(5), 13 and 41 of the European Convention on Human Rights and Art. 25, 68 and 63(1) of the Inter-American Convention on Human Rights as well as Art. 21(2) of the African Charter of Human and Peoples' Rights.
2. The so-called van Boven/Bassiouni Principles: Adopted by the Commission on Human Rights in its resolution 2005/35 of 19 April 2005, by the Economic and Social Council in its resolution 2005/30 of 25 July 2005, and adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, UN Doc A/RES/60/147.
3. The so-called Pinheiro Principles: UN, ECOSOC Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 56th Session, Final Report of the Special Rapporteur, Paulo Sergio Pinheiro, Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Doc E/CN.4/Sub.2/2005/17 (28 June 2005).
4. For a list of the situations and countries for which the establishment of reparation programmes has been discussed or called for in addition to existing property restitution programmes, see N. Wühler, "Claims for Restitution and Compensation," in: R. Cholewinski, R. Perruchoud and E. MacDonald (eds.): *International Migration Law: Developing Paradigms and Key Challenges*, 2007, p.203 at 215.
5. In some cases, reparation processes also involve non-material remedies for victim communities, such as memorials or the organization of reburial ceremonies.
6. The 10,000 claims processed by the Claims Resolution Tribunal for Dormant Accounts in Switzerland (CRT) and the 2.6 million claims processed by the United Nations Compensation Commission (UNCC) represent the two ends of the spectrum.
7. See Report of the UN Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, S/2004/616.
8. Neither the Commission for Real Property Claims of Refugees and Displaced Persons in Bosnia and Herzegovina nor the Housing and Property Claims Commission in Kosovo included in their legal rules a relaxation of evidentiary standards. In their practice, however, they took into account the difficulties that claimants faced.

9. See for example Article 22 of the Rules of Procedure for the Claims Resolution Process, 15 October 1997, in: World Trade and Arbitration Materials, vol. 11, 1999, p. 165.
10. In programmes with a fixed compensation fund where claimants "compete" for and share the limited funds available, the costs of error are borne by the worthy victims.
11. V. Heiskanen, "New Uses of Information Technology," in: Permanent Court of Arbitration (ed.), *Redressing Injustices Through Mass Claims Processes: Innovative Responses to Unique Challenges*, Oxford University Press, 2006, at p.27; H. Das, "The Concept of Mass Claims and the Specificity of Mass Claims Resolution," in: Permanent Court of Arbitration (ed.), *Redressing Injustices Through Mass Claims Processes: Innovative Responses to Unique Challenges*, Oxford University Press, 2006, at p.6.
12. V. Heiskanen, "New Uses of Information Technology," in: Permanent Court of Arbitration (ed.), *Redressing Injustices Through Mass Claims Processes: Innovative Responses to Unique Challenges*, Oxford University Press, 2006, at p.32.
13. The General Framework Agreement for Peace in Bosnia and Herzegovina ("Dayton Peace Agreement"), 21 November 1995, 35 ILM 75, is available at: http://www.ohr.int/dpa/default.asp?content_id=380.
14. The central sovereign state that was created according to Article 1 of Annex IV of the Dayton Peace Agreement.
15. The central sovereign state of Bosnia and Herzegovina has two entities, the Muslim-Croat Federation of Bosnia and Herzegovina (mainly in the South and the West of the country with its capital Sarajevo) and the Serb Republic/ Republika Srpska (mainly in the North and the East of the country with its capital Banja Luka). See Article III of the Dayton Peace Agreement and its Annex 2, "Agreement on Inter-Entity Boundary Line and Related Issues", for details.
16. Bosnia and Herzegovina has three major ethnic groups, Bosniaks, Croats and Serbs (Bosniaks 48%, Serbs 37.1%, Croats 14.3%, other 0.6% (2000)). The term Bosniak has commonly been used since 1995 for Bosnian people who are not of Serb or Croat ethnic origin, and who include many people of the Muslim faith (while Serbs are usually (Serb-)Orthodox Christians and Croats usually Catholics).
17. According to Article 9, the CRPC was to be composed of nine members, with the Federation of Bosnia and Herzegovina appointing four members, the Republika Srpska appointing two members, and the President of the European Court of Human Rights appointing three international members, who were not to be citizens of Bosnia and Herzegovina and one of whom served as the Commission's chairperson.

18. Article 11 of Annex VII of the Dayton Peace Agreement.
19. In the course of its existence, the CRPC issued almost 18,000 decisions confirming occupancy rights.
20. Copy of the Book of Regulations II on file with the editors.
21. See Article 10 and Article 13 of the CRPC's Book of Regulations on the Conditions and Decision-making Procedure for Claims for Return of Real Property of Displaced Persons and Refugees ("Book of Regulations I"). Copy of the Book of Regulations I on file with the editors.
22. Article 11 and 12 of the Book of Regulations I.
23. The Peace Implementation Council comprised of 55 countries and agencies, which supported the peace process either financially or by providing troops or directly running operations in Bosnia and Herzegovina.
24. UN Security Council Resolution 1244 (1999) of 10 June 1999, UN Doc. S/RES/1244 available at: <http://www.un.org/Docs/scres/1999/sc99.htm>.
25. UN Security Council Resolution 1244 (1999) and UNMIK Regulation 1999/23 of 15 November 1999, On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission, UN Doc. UNMIK/REG/1999/23. All UNMIK Regulations are available at: <http://www.unmikonline.org/regulations/unmikgazette/index.htm>.
26. UNMIK Regulation 1999/23 Section 1, 2.1, 2.5 and 2.7.
27. UNMIK Regulation 1999/23 Section 2.2.
28. UNMIK Regulation 1999/23 Section 6.
29. UNMIK Regulation 2000/60 of 31 October 2000, On the Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, UN Doc. UNMIK/REG/2000/60, from Section 2 to Section 6.
30. UNMIK Regulation 2000/60 from Section 7 to Section 16.
31. UNMIK Regulation 2000/60 from Section 17 to Section 26.
32. UNMIK Regulation 2000/60 Section 16 and Section 26.
33. UNMIK Regulation 2000/60 Section 27.
34. UNMIK Regulation 2006/50.
35. UNMIK Regulation 2006/19 of 4 March 2006.
36. See in particular Section 1.1, 1.2 and 2.1 of UNMIK Regulation 1999/23.
37. UNMIK Regulation 1999/23.
38. UNMIK Regulation 2000/60 Section 12.
39. UNMIK Regulation 2000/60 of 12 April 2001 confirms that, "Claims must ... be brought by natural persons (not by legal persons or institutions, etc.)."
40. CPA Regulation Number 8 of January 2004 and CPA Regulation Number 12 of 24 June 2004 are available at: <http://www.crrpd.org>.
41. The Statute of the Commission for the Resolution of Real Property Disputes ("CRRPD Statute") is available at: <http://www.crrpd.org>.
42. Article 4 of the CRRPD Statute.

43. For a detailed analysis of the history of dispossession of property and land rights in South Africa, see Tong, *Lest We Forget: Restitution Digest on Administrative Decisions*, 2002.
44. According to the website of the Department of Land Affairs, <http://land.pwv.gov.za>, "It is estimated that more than 3.5 million people and their descendants have been victims of racially based dispossessions and forced removals during the years of segregation and apartheid."
45. Constitution of the Republic of South Africa Act 200 of 1993, available at: <http://www.info.gov.za/documents/constitution/93cons.htm> .
46. Constitution of the Republic of South Africa Act 108 of 1996. The Constitution was approved by the Constitutional Court on 4 December 1996 and took effect on 4 February 1997, available at: <http://www.info.gov.za/documents/constitution/index.htm> .
47. The Constitution of the Republic of South Africa Act 200 of 1993 ("Interim Constitution") Sections 121 through 123, available at: <http://www.info.gov.za/documents/constitution/93cons.htm>.
48. "Alternative Relief" was never legally defined, but in practice consisted of access to land development grants as well as housing grants.
49. Under Chapter 40 of the Act, the Minister of Land Affairs had the authority to promulgate regulations regarding any matter required or permitted to be prescribed under the Act and generally, all matters which in his or her opinion were necessary or expedient to be prescribed in order to achieve the objects of this Act.
50. For budget and administrative purposes, the Commission always fell under the DLA.
51. The rationale behind this integration was primarily to simplify the process by reducing the number of active participants, as well as reducing competition for resources between the DLA and the Commission. This, coupled with the legislative amendments allowing the Minister (or his or her delegate) to resolve claims by agreement with the claimant, is regarded as having streamlined the process and increased the rate of claims resolution. According to the Commission's website, in the document entitled 'Achievements and Challenges', a total of 41 claims had been settled between 1995 and March 1999. This prompted two legislative amendments to allow for administrative settlement of claims.
52. The Act was amended in 1995, 1996, 1997, 1998, 1999, 2000 and 2003.
53. Textcopies of this Act can be requested from: resourceCentre@dla.gov.79.
54. See <http://land.pwv.gov.za/restitution/>.
55. United Nations Security Council Resolution 687 of 3 April 1991, UN Doc. S/RES/687 (1991). All Resolutions are available at: <http://www2.unog.ch/uncc/resoluti.htm>. The provisions relating to compensation are in Section E of the Resolution, wherein the Security Council created a fund to pay

compensation and directed the Secretary General to develop and present to the Security Council recommendations for setting up the fund as well as a commission to administer it and to recommend mechanisms for determining the appropriate level of Iraq's contribution to the fund. On 2 May 1991, the Secretary General presented his report to the Security Council: Report of the United Nations Secretary-General of 2 May 1991 pursuant to paragraph 19 of Security Council Resolution 687, UN Doc. S/22559, available at: <http://www2.unog.ch/uncc/resolutio/res22559.pdf>.

56. Resolution 687, para. 16.
57. Resolution 687, para. 19.
58. Report of the Secretary General of 2 May 1991, UN Doc. S/22559, Part I.
59. United Nations Security Council Resolution 692 of 20 May 1991, UN Doc S/RES/692 (1991), para. 5.
60. UNCC Provisional Rules for Claims Procedure of 26 June 1992, UN Doc. S/AC.26/1992/10, available at: http://www2.unog.ch/uncc/decision/dec_10.pdf.
61. See also the recommendation of the Secretary General in his Report of 2 May 1991 pursuant to paragraph 19 of Security Council Resolution 687, UN Doc. S/22559: "The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims; it is only in this last respect that a quasi-judicial function may be involved."
62. See Report of the Secretary General pursuant to paragraph 19 of Security Council Resolution 687 (1991), UN Doc. S/22559, Part II. C, para. 22.
63. See Decision 13 of the Governing Council "Further Measures to Avoid Multiple Recovery of Compensation by Claimants", S/AC.26/1992/13, 25 September 1992. The sanction for Claimants who failed to notify the UNCC was to move their claims to the end of its processing queue and give priority to other claims.
64. See Governing Council Decision 1 for the smaller claims categories A, B and C (UN Doc. S/A.26/1991/1, 2 August 1991), and Governing Council Decision 7 for the larger claims categories D, E and F (UN Doc. S/AC.26/1991/7/Rev.1, 17 March 1992).
65. See the Criteria for Expedited Processing of Urgent Claims, UN Doc. S/AC.26/1991/1, available at: <http://www2.unog.ch/uncc/decision.htm>.
66. See Article 5, para. 3 of the Provisional Rules for Claims Procedure, UN Doc. S/AC.26/1992/10.
67. Decision 1, "Criteria for Expedited Processing of Urgent Claims", UN Doc. S/AC.26/1991/1 of 2 August 1991.
68. The complete text of the Agreement is available at: <http://www.compensation-for-forced-labour.org>.

69. The complete text of the German Foundation Act is available at: <http://www.compensation-for-forced-labour.org>.
70. The Foundation Act in its original version of 12 August 2000 was amended twice.
71. The Partner Organizations include foundations in Belarus, the Czech Republic, Poland, Russia and Ukraine, the Jewish Conference for Material Claims Against Germany (the “Claims Conference”) and the International Organization for Migration.
72. For Forced and Slave Labour claims the competence of the partner organization depended on the domicile of the victim on 16 February 1999, unless he or she was Jewish, in which case the claim fell into the competence of the Claims Conference. The date of 16 February 1999 was based on an “announcement by the Federal Chancellor and German companies, in which the companies stated their intention to establish a foundation to compensate forced laborers and others who suffered at the hands of German companies during the Nationalist Socialist era and World War II”, see Preamble of the Agreement.
73. See also *Holtzmann/Kristjánsdóttir*, *International Mass Claims Processes: Legal and Practical Perspectives*, 2007, p. 43.
74. Agreement, Annex A No. 1.
75. Section 9, para. 2 (6) of the German Foundation Act.
76. *Bundestagsdrucksache* 14/3206.
77. Prisoners of war were excluded from the jurisdiction. This was especially a problem in cases of the Italian Military Internees (“IMIs”). Italian troops, who at first were allied with the German military but who refused to continue fighting voluntarily on the side of Germans after the overthrow of *Benito Mussolini* and Italy’s declaration of war against the Third Reich in 1943, were deported to the Reich. They were considered traitors by Germany and were called “Badoglios” after the new Italian Prime Minister *Pietro Badoglio* who had abandoned the alliance with Germany in favour of the Allies. While IMIs were officially treated as all other Western prisoners of war, they were de facto forced to take on the most hazardous and abhorrent tasks. When IOM began the GFLCP, it was unclear whether IMIs would be eligible for compensation or not. In July 2001, on the basis of an expert opinion that the German Government followed, the Foundation determined that IMIs were to be considered prisoners of war and were therefore generally excluded from compensation payments under the GFLCP. The opinion stated that under public international law, IMIs continued to hold prisoner of war status after their transfer into a civilian status as ordered by Nazi authorities in 1944, because this status could not be taken away unilaterally. The only exception applied to those IMIs who were removed from prisoner of war camps and

- thereafter detained in concentration camps. These IMIs were eligible for payment under the programme.
78. See the Preamble of the Agreement.
 79. Section 13, para. 1 of the Foundation Act.
 80. Section 13, para. 2 of the Foundation Act.
 81. Article 1 Section 11 of Annex A to the Agreement signed by the Governments of the United States and the Federal Republic of Germany, available at: <http://www.compensation-for-forced-labour.org>.
 82. IOM Property Claims Commission, Supplemental Principles and Rules of Procedure, available at: <http://www.compensation-for-forced-labour.org>.
 83. See Section 11, para.1, item 3 of the Foundation Act. The two federal laws mentioned are available at: Federal Indemnification Law (*Bundesentschädigungsgesetz*), BGBl. 1956-I, p. 556, or: http://www.rechtliches.de/info_BEG.html; Federal Restitution Law (*Bundesrückerstattungsgesetz*), BGBl. 1957-I, p. 734, as last amended 26 March 2007, BGBl. I, p.356, available at: http://www.rechtliches.de/info_BRueG.html.
 84. Memorandum of Understanding between the World Jewish Restitution Organization and the World Jewish Congress representing also the Jewish Agency and Allied Organizations and the Swiss Bankers Association, attached at the ICEP Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks, Appendix A, p. 1, available at: http://www.crt-ii.org/icep_report.phtm.
 85. The Claims Resolution Tribunal for Dormant Accounts in Switzerland – Rules of Procedure for the Claims Resolution Process (“CRT Rules of Procedure”), 15 October 1997, in: World Trade and Arbitration Materials, vol. 11, 1999, p. 165 or available at: http://www.crt-ii.org/_crt-i/frame.html.
 86. Out of the 17 arbitrators, five were from Switzerland, four from the United States, four from Israel and one each from Belgium, Canada, Cyprus and the United Kingdom.
 87. For information about the CRT II process, see <http://www.crt-ii.org>.
 88. The term bank account included all kinds of accounts, including current, savings and securities accounts, passbooks, safety deposit boxes, and any other form of dormant bank liability, including, without limitation, bank cheques, bonds and bank-issued medium-term notes (“*Kassenobligationen*”).
 89. Article 17 (i) of the CRT Rules of Procedure.
 90. While claimants had to sign the Claims Resolution Agreement in each individual case, the participating Swiss Banks had agreed to the CRT’s jurisdiction by signing a “Master Arbitration Declaration”.
 91. Air Transportation Safety and System Stabilization Act, 115 STAT. 230, Public Law 107-42, 22 September, 2001, available at: <http://www.usdoj.gov/archive/victimcompensation/hr2926.pdf>.

92. The Special Master and attorneys working with the Special Master met personally with victims' advocacy groups, individual members of the victims' families, lawyers, employers, government agencies, members of Congress, members of the judiciary, associations, charities, representatives of the military, fire and police departments, and individuals in state governments to solicit views, concerns and comments about the nature of the Programme and its administration. See the Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001 ("Final Report"), Volume 1, Department of Justice, *Kenneth R. Feinberg*, Special Master, available at: http://www.usdoj.gov/final_report.pdf, p. 10.
93. Final Regulations, September 11th Victim Compensation Fund of 2001, 28 CFR § 104, Exhibit B of Volume II of the Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001, available at: http://www.usdoj.gov/final_report_vol2.pdf.
94. The presumed methodology relied on a combination of the victim's own objectively verifiable historical experience with assumptions about likely future events based on publicly available national data. For more details see the Special Master's Final Report, p. 13.
95. For detailed information see the Special Master's Final Report, p. 7.
96. The site included the buildings or portions of buildings that were destroyed as a result of the airplane crashes and any area contiguous to the crash sites that the Special Master determined was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions or building collapses (generally, the immediate area in which the impact occurred, fire occurred, portions of building fell or debris fell upon and injured persons). See 28 CFR Paragraph 104.2(e).
97. The "immediate aftermath" is defined in the Regulations as "12 hours after the crashes", 28 CFR Paragraph 104.2(b). For rescue workers the regulations foresaw a special rule. For them the regulations defined immediate aftermath to include the period from the crashes until 96 hours after the crashes, 28 CFR Paragraph 104.2(b).
98. Paragraph 405 (c) (3) (A).
99. Criteria for the determination of a personal representative were a will, and if a will did not exist then the first person in the line of succession which was established by the applicable inheritance law. For more detailed information, especially for the problems encountered in the State of New York, see the Special Master's Final Report, p. 24.
100. 28 CFR Paragraph 104.4(b).
101. The Regulations provided that an objection could be filed up to 30 days following the filing of a claim. However, in practice, the Fund considered objections even if it received them after 30 days.

102. Comprehensive Settlement of the Cyprus Problem of 31 March 2004, available at: <http://www.cyprus.gov.cy/>.
103. *Hannay*, Cyprus: The Search for a Solution, 2005, p. 245.
104. When citing to specific paragraphs of the Annan plan, the convention employed is as follows: Paragraph number (if applicable), Article number, Attachment number (if applicable), Annex number. When referring to one of the fourteen articles of the Foundation Agreement, the following convention will be employed: Paragraph number, Article number, Foundation Agreement.
105. Article 22, Annex VII.
106. Paragraph 2, Article 5, Annex VII.
107. Paragraph 1, Article 1, Part 2, Annex VII. The administrative nature of the Property Board is illustrated in Article II, Section II of Annex VII describing the Property Board's operation.
108. Article 2, Attachment 2, Annex VII.
109. Paragraph 1, Article 8, Attachment 2, Annex 7.
110. A detailed definition of "affected property" is provided in Paragraph 1, Article 1, Attachment 1, Annex VII.
111. *Hannay*, Cyprus: The Search for a Solution, 2005, p. 150.
112. Paragraph 3, Article 1, Attachment 1, Annex VII.
113. Paragraph 5, Article 1, Attachment 1, Annex VII.
114. Paragraph 15, Article 1, Attachment 1, Annex VII.
115. See Part I A of this study for details.
116. Banja Luka, Bihać, Brčko, the Central Regional Office, Lukavica, Mostar, Sarajevo, Tuzla and Vitez.
117. Slavonski Brod and Zagreb.
118. Belgrade, Herceg-Novi, Novi Sad, Podgorica and Požega.
119. Copenhagen (Denmark), Berlin, Duisburg and Freiburg (Germany), Utrecht (The Netherlands), Oslo (Norway) and Malmö (Sweden).
120. Across all teams it was ensured that team leader positions were distributed equally among the different ethnicities.
121. Article 32 of the Book of Regulations I determined that the claimant should present any available, relevant evidence to the Commission. However, according to Article 33 the Commission was responsible to initiate evidence collection or evidence verification procedures, if no relevant evidence was available to the claimant or if the credibility of the evidence presented was doubtful.
122. The special safety paper was similar to the paper used for banknotes.
123. See Articles 74-84 of the Book of Regulation I.
124. As opposed to general information given out by the claimant info hotline.
125. The CRPC conducted over 81,000 property checks for reconstruction agencies and the Property Law Implementation Plan ("PLIP"), determining

- whether or not a person held the right to a real estate and therefore was to receive reconstruction or enforcement support.
126. The CRPC assisted approximately 16,600 of its certificate holders in implementing their decision and repossessing their pre-war property.
 127. Salary payments were a particularly heavy burden, since in post-war Bosnia and Herzegovina, bank accounts were not commonly held and any payments, including salary payments had to be made in cash (which for over 200 staff members in Sarajevo alone was a significant monthly task).
 128. Specific questions regarding the status of individual claims were dealt with by the Legal Department.
 129. The organizational structures were changed at the end of March 2005. The information provided in this section is based on the structures as they existed up until March 2005.
 130. See UNMIK Regulation 1999/23 Section 3.
 131. Administrative Instruction No. 2004/5 of 25 March 2004 on Implementing UNMIK Regulation No. 1999/23 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission, UNMIK/DIR/2004/5, available at: http://www.unmikonline.org/regulations/index_reg_2004.htm.
 132. These were (1) claims withdrawn by the claimant prior to HPCC decision; (2) claims rejected pursuant to UNMIK Regulation 2000/60 Section 10.3; and (3) uncontested category B claims decided pursuant to UNMIK Regulation 2000/60 Section 11.1.
 133. Following structural changes to the HPD, the enforcement of decisions was divided between the department of Field Operations and the Office of the Registrar/Implementation.
 134. UNMIK Regulation 2000/60 Section 17.8.
 135. UNMIK Regulation 1999/23 Section 2.2.
 136. UNMIK Regulation 2000/60 Section 25.1.
 137. UNMIK Regulation 2000/60 Section 17.13.
 138. Information about the status of claims could also be searched on the programme's website, <http://www.hpdkosovo.org>.
 139. The translations from Arabic into English vary between the "Cassation Commission" and "Appellate Commission" for the same body. In the following, "Appellate Commission" and "right of appeal" will be used.
 140. Article 9 of the CRRPD Statute.
 141. Also referred to as the "Cassation Commission".
 142. Article 19 of the CRRPD Statute.
 143. See Chapter III A direct access provisions, inserted in 1997.
 144. See Section 42E(3). Section 25(3) of the Constitution reads as follows:
"The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public

- interest and the interests of those affected, having regard to all relevant circumstances, including (a) the current use of the property; (b) the history of the acquisition and use of the property; (c) the market value of the property; (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and (e) the purpose of the expropriation.”
145. Article 16 of the UNCC Rules.
 146. Report of the Secretary-General pursuant to paragraph 19 of Security Council Resolution 687 (1991), UN Doc. S/22559, Part I. G., para. 10.
 147. Decision 1, “Criteria for Expedited Processing of Urgent Claims“, UN Doc. S/AC.26/1991/1 of 2 August 1991. All decisions are available at: <http://www.unog.ch/uncc/decision.htm>.
 148. Decision 3, “Personal Injury and Mental Pain and Anguish“, UN Doc. S/AC.26/1991/3 of 23 October 1991; Decision 4, “Business Losses of Individuals Eligible for Consideration under the Expedited Procedures“, UN Doc. S/AC.26/1991/4 of 23 October 1991; Decision 8, “Determination of Ceilings for Compensation for Mental Pain and Anguish“, UN Doc. S/AC.26/1992/8 of 27 January 1992; Decision 9, “Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation“, UN Doc. S/AC.26/1992/9 of 6 March 1992; Decision 11, “Eligibility for Compensation of Members of the Allied Coalition Armed Forces“, UN Doc. S/AC.26/1992/11 of 26 June 1992; Decision 13, “Further Measures to Avoid Multiple Recovery of Compensation by Claimants“, UN Doc. S/AC.26/1992/13 of 25 September 1992; Decision 15, “Compensation for Business Losses Resulting from Iraq’s Unlawful Invasion and Occupation of Kuwait Where the Trade Embargo and Related Measures Were also a Cause“, UN Doc. S/AC.26/1992/15 of 4 January 1993; Decision 16, “Awards of Interest“, UN Doc. S/AC.26/1992/16 of 4 January 1993; Decision 19, “Military Costs“, UN Doc. S/AC.26/Dec.19 (1994) of 24 March 1994; Decision 21, “Multi-Category Claims“, UN Doc. S/AC.26/Dec.21 (1994) of 21 October 1994; Decision 24, “Multi-Category Departure Claims“, UN Doc. S/AC.26/Dec.24 (1994) of 15 December 1994.
 149. Panels were established for specific categories or sub-categories of claims.
 150. Article 33 of the UNCC Rules.
 151. Article 40, para. 4 of the UNCC Rules.
 152. The so-called “Article 41 – Unit“, as the correction process was regulated in Art. 41 of the UNCC Rules.
 153. Section 5 (5) of the German Foundation Act: “The Board of Trustees has the right to decide on all fundamental matters that have to do with the tasks of the Foundation, specifically with regard to budgetary plans, the annual report, and the existence of the specific characteristics referred to in Section 12, Paragraph 1. It monitors the performance of the Board of Directors.”

154. In detail and according to Section 5 of the Foundation Act, the Board of Trustees consisted of: four members named by the companies joined together in the Foundation Initiative of German Industry; five members named by the German Bundestag and two by the Bundesrat; one representative of the Federal Ministry of Finance; one representative of the Ministry of Foreign Affairs; one member named by the Conference on Jewish Material Claims against Germany; one member each named by the Government of the State of Israel, the Government of the United States of America, the Government of the Republic of Poland, the Government of the Russian Federation, the Government of Ukraine, the Government of the Republic of Belarus, the Government of the Czech Republic; one member named by the International Organization for Migration; one lawyer named by the Government of the United States of America; one member named by the UNHCR; and one member named by the Federal Information and Counseling Association for Victims of National Socialism e. V. A member to represent Sinti and Roma was never appointed absent agreement of relevant organizations.
155. Section 6 of the Foundation Act.
156. Article 9 of the Principles and Rules of Appeals Procedure (“Appeals Rules”) required that “[t]he Members of the Appeals Body shall be persons of high moral character impartiality and integrity. They shall not be Members of the German Foundation’s Board of Directors or of IOM’s Executive Committee, or be involved in the processing of claims.”
157. English was the working language of the Programme. The claims could be filed in 22 languages, the main ones of which were Croatian, Dutch, French, German, Greek, Hungarian, Italian, Romanian, Spanish, Serbian and Slovenian.
158. A Property Claims Database held all information on the claimants, losses, decisions, valuation, heirs, requests for reconsideration, etc. A Notification Database generated decisions which combined the claims data from the Property Claims Database with the relevant templates and standard texts relevant for the particular decision, both on admissibility and substance.
159. See Paragraph 5, Section 2, and Paragraph 9 of the Contract: “The Commission shall, on its own responsibility and insofar as these are not already established under the German Foundation Act or the By-laws, determine supplementary principles on substance and procedure for its decisions on the compensation for property losses.”
160. Two members of the Board of Trustees were United States citizen, one member was Swiss.
161. See the Final Report on the Work of the Claims Resolution Tribunal for Dormant Accounts in Switzerland (CRT-I), p. 9-10. Copy of the Report on file with the editors.
162. These Rules were not made public.

163. Article 3 of the CRT Rules of Procedure.
164. For further information on the CRT's initial screening process, see: *Wade, Mass Claims Arbitration: The Experience of the Claims Resolution Tribunal for Dormant Accounts in Switzerland*, in: *Mealey's International Arbitration Report*, Vol. 14, No. 11.
165. The banks decided not to disclose bank information to the claimant in approximately two thirds of the claims submitted (6,039 claims out of the 9,811 claims filed in total). Out of these 6,039 non-disclosure decisions, 5,444 were confirmed and 595 were overturned during the CRT's initial screening process. *Final Report on the Work of the Claims Resolution Tribunal for Dormant Accounts in Switzerland*, p. 20.
166. Article 10 Paragraph 3 of the CRT Rules of Procedure.
167. Article 11 and 12 of the CRT Rules of Procedure.
168. Article 13 of the CRT Rules of Procedure.
169. Article 4 (ii) of the CRT Rules of Procedure.
170. Article 14 of the CRT Rules of Procedure.
171. During the term of the CRT, 125 persons have worked as staff members of the Secretariat, representing 25 nationalities.
172. Article 30 of the CRT Rules of Procedure.
173. The competences of the Special Master were described in Section 404 of the Act:
 - “(a) In General. – The Attorney General, acting through a Special Master appointed by the Attorney General, shall –
 - (1) administer the compensation programme established under this title;
 - (2) promulgate all procedural and substantive rules for the administration of this title; and
 - (3) employ and supervise hearing officers and other administrative personnel to perform the duties of the Special Master under this title.”
174. The claimant had to choose whether his or her claims should be processed under the so called Track A or Track B. Under Track A, the Fund evaluated the claim submission first to determine whether the claim was substantially complete. The Fund then issued a determination on eligibility and a presumed award. Upon receipt of this determination, the claimant could request a review. On the basis of this request, the claimant had the right to an in-person hearing and to request that the Fund make a determination of extraordinary circumstances that might justify a departure from the presumed award calculation. After review of the presumed award, a final award was issued. There was no further right to appeal. Under Track B, the Fund initially reviewed the claim submission to determine whether it could be deemed substantially complete. Once a claim was found to be complete, the claimant was notified and a hearing was scheduled. The Fund only issued

a decision after the hearing had been held. The decision issued after the hearing was final and there was no right of appeal.

175. Section 405 (b)(3) of the Act.
176. Article 2, Attachment 2, Annex VII.
177. The powers and responsibilities of the Governing Council were laid out in Paragraph 4 of Article 2; Paragraph 1 of Article 6; and Paragraph 1 of Article 8 of Attachment 2 of Annex VII to the Annan Plan.
178. The responsibilities and powers of the Claims Bureau were laid out in Paragraph 3 of Article 2; Paragraph 1 of Article 3; Paragraphs 1 and 2 of Article 4 of Attachment 2, Annex VII to the Annan Plan.
179. See Article 6 of Attachment 2, Annex VII to the Annan Plan.
180. For provisions relating to the enforcement and implementation of decisions, see Article 3, 4 and 5 of Attachment 2, Annex VII to the Annan Plan.
181. Paragraph 3, Article 7, Attachment 2, Annex VII.
182. Paragraph 3-d, Article 7, Attachment 2, Annex VII.
183. The financial needs determined by the Peace Implementation Council were as follows:

	1998	1999	2000	2001	2002	2003	Total
Financial needs in million USD	7.2	7.5	7.5	6.4	5.2	4	37.8
Amounts received in million USD	4.9	6.5	5.9	5.1	4.2	3.4	30

184. This was particularly delicate, as it often meant certain adjustments had to be made to the way of working depending on whether the contributions were earmarked for particular areas (e.g. budgets for development, human rights or geodesy). It would have been easier, if all contributions had been paid into a central fund.
185. Donors as listed on HPD website on 10 April 2005, see <http://www.hpdkosovo.org>.
186. Section 22.7 of UNMIK Regulation 2000/60 reads: “In its decision, the Commission may decide such property rights as are necessary to resolve the claim; make an order for possession of the property in favor of any party; order the registration of any property right in the appropriate public record; where necessary, to resolve a claim, vary the terms of any contract made for the purpose of avoiding a discriminatory law, so as to reflect the actual intention of the parties to the contract; cancel any lease agreement in respect of a property which is subject to an order in terms of the present regulation and make ancillary orders to give effect to the cancellation; refuse a claim; and make any other decision or order necessary to give effect to the present regulation.”

187. For a more detailed discussion, see *Tong*, *Lest We Forget: Restitution Digest on Administrative Decisions*, 2002, pp. 77 and 78.
188. United Nations Security Council Resolution 986 of 14 April 1995, UN Doc. S/RES/986 (1995), available at: <http://www2.unog.ch/uncc/resoluti.htm>.
189. United Nations Security Council Resolution 1483 of 22 May 2003, UN Doc. S/RES/1483, para. 21, available at: <http://www2.unog.ch/uncc/resoluti.htm>.
190. *Holtzmann/Kristjánsdóttir*, *International Mass Claims Processes: Legal and Practical Perspectives*, 2007, p. 349.
191. *Holtzmann/Kristjánsdóttir*, *International Mass Claims Processes: Legal and Practical Perspectives*, 2007, p. 349.
192. Category “A” claims were claims filed by individuals who had to depart from Kuwait or Iraq between the date of Iraq’s invasion of Kuwait on 2 August 1990 and the date of the ceasefire on 2 March 1991; category “B” claims were claims filed by individuals who suffered serious personal injury or whose spouse, child or parent died as a result of Iraq’s invasion and occupation of Kuwait; category “C” claims were claims from individuals for damages of up to USD 100,000 each.
193. Decision 73, “Priority of Payment and Payment Mechanism”, UN Doc. S/AC.26/Dec. 73 (1999) of 25 June 1999. As mentioned above, all decisions are available at: <http://www2.unog.ch/uncc/decision.htm>.
194. Governing Council Decision 100, UN Doc.S/AC.26/Dec.100 (2000)/Rev.1, 15 March 2002; Governing Council Decision 197, UN Doc. S/AC.26/Dec.197 (2003), 26 June 2003; Governing Council Decision 227, UN Doc. S/AC.26/Dec.227 (2004), 2 July 2004.
195. Governing Council Decision 18, “Distribution of Payments and Transparency”, UN Doc. S/AC.26/Dec. 18 (1994) of 24 March 1994.
196. Decision 48, “Return of Undistributed Funds”, UN Doc. S/AC.26/Dec.48 (1998) of 3 February 1998.
197. The ARF was established by an Austrian Federal Law. The programme was completed in 2005 and EUR 352 million provided by the Austrian Government, Austrian industry and other bodies were disbursed to almost 132,000 former slave and forced labourers. More information is available at: <http://www.reconciliationfund.at>.
198. Article 1 Section 11 of Annex A of the Agreement: “All of the Committee’s expenses will be funded from the amount allocated for property claims [...]”.
199. Final Report on the Work of the Claims Resolution Tribunal for Dormant Accounts in Switzerland (CRT-I), p. 64.
200. Section 405 (b)(1)(B)(ii) of the Act.

201. See 26 CRF § 104(a)(2) stating that damages received “on account of personal physical injuries or physical sickness” are excludable from gross income for purposes of federal income taxation.
202. See for example the rules in Bosnia. According to Article 10 of the Book of Regulations I, persons with a legal interest in the claimed real property were authorized to submit a claim. Article 13 of the Book of Regulations I states that it is considered that the claimant has a legal interest to submit the claim if he or she is in a family or civil law relationship with the person who was the right holder to the claimed real property at the time of the loss and had since deceased.
203. In a small way, inheritance issues also occasionally arose in category “E4” (Kuwaiti business) claims when “overlapping” or “stand alone” claims from individual category “C” or category “D” claimants were linked to a Kuwaiti corporate claim, reflecting the fact that the ownership of the Kuwaiti business entity included a non-Kuwaiti partner (usually a Palestinian resident in Kuwait at the time of Iraq’s invasion and occupation).
204. The UNCC distributed Category “A”, “B” and “C” claim forms to all UN member states on 23 December 1991 and began to receive the completed claim forms from claimant countries in April 1992.
205. The UNCC began issuing awards in Category “A”, “B” and “C” claims in mid-1994, but Category “A” and “C” claimants did not start receiving award payments until March 1997. Category “B” serious personal injury and death claims were all resolved by December 1995 and were paid in full in June 1996.
206. Decision 1, “Criteria for Expedited Processing of Urgent Claims”, UN Doc. S/AC.26/1991/1 of 2 August 1991.
207. Decision 218, “Compensation for Family Members of Deceased Detainees (Mental Pain and Anguish)”, UN Doc. S/AC.26/Dec.218 (2004) of 11 March 2004.
208. Section 13 of the German Foundation Act.
209. On 16 February 1999, the then German Chancellor *Schröder* announced that the German Government was committed to a solution that would provide compensation for slave and forced labour under the Nazi regime. It was therefore determined that from that time on a legally relevant expectation for such compensation could be deemed to have existed that could be “inherited”.
210. See Article 16 of the CRT Rules of Procedure. This Article further stated that at the request of all involved parties other than the Swiss bank, inheritance matters could be resolved according to Talmudic law. However, during the entire claims procedure there was only one Claimant who submitted such a request.

211. If the Account Holder was more closely related to another country than the country of his last five year domicile or the country of his nationality, then the law of this other country was applied. This was usually the law of the country of emigration.
212. Article 22 of the CRT Rules of Procedure.
213. See Article 21 of the CRT Rules of Procedure.
214. The recent decision by the European Court of Human Rights in the case of *Woś v. Poland* might have a considerable impact on the finality of future claims programmes decisions, at least within the range of the European Convention on Human Rights. See: ECHR, Case of *Woś v Poland*, 8 June 2006, Appl. No. 22860/02, available at: <http://cmiskp.echr.coe.int/>.
215. Book of Regulations I refers to the Book of Regulations on the Conditions and Decision Making Procedure for Claims for Return of Real Property of Displaced Persons and Refugees.
216. Book of Regulations II refers to the Book of Regulations on Confirmation of Occupancy Rights of Displaced Persons and Refugees.
217. According to the End of Mandate Report the majority of reconsideration requests were against occupancy right decisions, attesting to the controversial nature of such claims. They were mostly lodged by the current user on the following grounds: a) the right holders in the CRPC decision lost their occupancy right before 1 April 1992 in accordance with the Law on Housing Relations; b) the right holders in the decision did not have refugee status; or c) a claimant did not have the status of family household member.
Reconsideration requests against private property decisions were made mostly by current users, generally alleging that they acquired the claimed property through exchange or purchase after 1 April 1992 (most common) or before 1 April 1992 (very few). Right holders named in CRPC decisions also requested reconsideration, representing far fewer cases because they were unsatisfied with the type of confirmed right or because the decision did not confirm rights to all the claimed properties. In these cases, the problem was often due to their past failure to properly register their ownership rights.
218. Article 82 of the Book of Regulations I and Article 43 of the Book of Regulations II.
219. According to the End of Mandate Report, less than 50 decisions were reviewed *ex officio*.
220. Besides the request for reconsideration, the claimant could also request the correction of errors in the decision. However, this request only included correction of errors in names and numbers and any other obvious mistakes in the decision certificate, as well as discrepancies between a transcript of the certificate and the original certificate.
221. End of Mandate Report, Annex E, p. 9.

222. Article 80 of the Book of Regulations I.
223. Article 44 of the Book of Regulations II.
224. A valid power of attorney is defined as “one given by a person who is entitled to submit a claim and which is verified by the authorized bodies of the Entities, or diplomatic/consular offices of Bosnia and Herzegovina, or by the authorized bodies of the countries where a claimant has temporary or permanent residence.” See Article 14-16 of the Book of Regulations I and Article 6 of the Book of Regulations II.
225. Article 61 f) of the Book of Regulations I and Article 36 h) of the Book of Regulations II.
226. Article 77 of the Book of Regulations I.
227. Article 42 of the Book of Regulations II.
228. Article 87 of the Book of Regulations I and Article 45 of the Book of Regulations II.
229. The Dayton Peace Agreement declared in Annex 7 that the CRPC decisions were final and binding and was completely silent on the issue of appeals. See also Article 68 of the Book of Regulations I and Article 34 of the Book of Regulations II.
230. End of Mandate Report, Annex E, p. 11.
231. UNMIK Regulation 2000/60 Section 14.1.
232. UNMIK Regulation 2000/60 Section 9.2.
233. UNMIK Regulation 2000/60 Section 14.2.
234. UNMIK Regulation 2000/60 Section 7.3.
235. UNMIK Regulation 2000/60 Section 13.1.
236. UNMIK Regulation 2000/60 Section 14.1.
237. See also Rule 5.1 of the Additional Rules of the Housing and Property Claims Commission, Annex III of the Final Report of the Housing and Property Claims Commission 2007, available at: <http://www.pca-cpa.org/upload/files/HPCCFinalReport.pdf>, which clarified the requirements.
238. See Rule 5.1 (b) of the Additional Rules of the Housing and Property Claims Commission.
239. UNMIK Regulation 2000/60 Section 9.9. and Section 17.15.
240. See Rules 5.2. – 5.10 of the Additional Rules of the Housing and Property Claims Commission.
241. UNMIK Regulation 2000/60 Section 14.3.
242. UNMIK Regulation 2000/60 Section 25.2.
243. For further general statistical data see <http://www.hpdkosovo.org>.
244. Besides the four types of legal remedies that are included in the CRRPD Statute, there is another possible legal remedy named “correction of the cassation decision”. But until now it is not yet clear if this remedy is permissible in the CRRPD as it is not explicitly provided for under the Statute. As Article 25 of the CRRPD Statute refers to the Iraqi Civil Procedure Code, Article

- 168 of this law could be included which means that another way to object a decision could be the correction of a cassation decision. This will depend on how Articles 23 and 25 of the CRRPD Statute will be interpreted.
245. See Article 12 of the CRRPD Statute: “I. If the claimant is present and the respondent is absent, even though he was notified, the Committee issues a decision within a period of (ten days) starting from the day following the day he is notified of the decision or considered as notified. II. If a decision in absentia is not appealed within the deadline specified under (I) above, or an appeal was made but does not state the reasons for the appeal, the Judicial Committee shall reject the appeal as formally deficient, otherwise the Committee shall consider the appeal pursuant to the Statute by upholding the decision, revoking it or amending it as the case may be.”
246. According to Article 23 of the CRRPD Statute “[t]he judgments issued by the Judicial Committees can be objected by reconsidering the trial or by the objection of another party pursuant to the provisions set forth in the procedural law.” In this context, Article 25 of the CRRPD Statute substantiates which procedural law is applicable.
247. Articles 224-230 of the Iraqi Civil Procedure Code.
248. The 30 days deadline was newly introduced with the CRRPD Statute (Article 14). Before that, i.e. under the IPCC statute, claimants had 60 days to file an appeal.
249. Article 25 of the CRRPD Statute.
250. See Article 188 of the Iraqi Civil Procedure Code, which includes the formal requirements to submit an appeal, or Article 205 of the Iraqi Civil Procedure Code, in which the requirements for a cassation are stated.
251. Article 24 of the CRRPD Statute: “(I) The final judgments and decisions are executed in the Execution and Real Estate Registration Departments according to the competence of each department pursuant to the provisions of the law. (II) The occupant of the property is given a period that does not exceed 90 days starting from the date notification of execution is served, to vacate and deliver the property free from any hindrance.”
252. Article 3 of the CRRPD Statute.
253. With the exception of a small number of corrections that were made by the panels themselves to their earlier reports and recommendations while those panels were still sitting. In the case of category “B”, the only corrections made affected a small number of claims and were made by the “B” Panel itself. These corrections related to computational errors reported in that Panel’s early reports and recommendations and were reported in later reports.
254. Decision 21, “Multi-Category Claims”, UN Doc. S/AC.26/Dec.21 (1994) of 21 October 1994, of the Governing Council states that “any claimant who has selected a higher amount under category A (USD 4,000 or USD 8,000) and has also filed a Category B, C or D claim will be deemed to have selected the corresponding lower amount under Category A.” An enhanced cross-

- category matching programme enabled the Commission to check claims data across several claims categories. The Commission applied the "high A" matching programme to all claims data in Categories "B", "C" and "D" in order to determine those claims that were filed for the higher amount in Category "A" and that also had claims in those other categories. Claimants with claims that were filed for the higher amount in Category "A" that were found to have filed claims in other categories had their amount in Category "A" adjusted downward in accordance with Decision 21.
255. In the case of Category "B", there were no requests for correction filed by claimants through their governments. Therefore, the percentage given refers to panel-initiated corrections only.
256. Section 19 of the German Foundation Act. At the same time, the German Foundation itself had certain supervisory rights with regard to IOM's implementation of the compensation programme which entailed a "spot-check" of all programme decisions including a limited review of the second instance decisions.
257. The text of the Appeals Rules, is available at: http://www.compensation-forced-labour.org/english_home.html.
258. Article 4 of the Appeals Rules.
259. Article 6 of the Appeals Rules.
260. Article 5 D of the Appeals Rules.
261. Article 15 of the Appeals Rules.
262. Article 21 C of the Appeals Rules.
263. Article 19 B of the Appeals Rules.
264. In contrast to the Agreement between the Governments of the United States and Germany, the German Foundation Act initially foresaw a full second instance review like the one for the German Forced Labour Compensation Programme. After subsequent negotiations, the German Government agreed to the reconsideration procedure.
265. Section 25.4 of the PCC Rules.
266. Section 4 of the PCC Rules, which is applicable to requests for reconsideration according to Section 25.7 of the PCC Rules.
267. Section 25.5 of the PCC Rules.
268. According to Section 25.7 the general rules for first instance notification of decisions were applicable.
269. Section 25.2 of the PCC Rules.
270. According to Paragraph 1, Article 9, Annex I of the Annan Plan, the official languages of the United Cyprus Republic were to be Greek and Turkish.
271. Paragraph 5, Article 22, Annex VII of the Annan Plan.
272. While the legal frameworks of some of the programmes use different terminology such as "current user" or "original owner", the terms "Current

- Occupant” and “Pre-conflict Occupant” are used consistently throughout this section.
273. In the Republica Srpska immediately after the conflict, the authorities had passed the “Law on the Use of Abandoned Property” (Official Gazette Republika Srpska, 3/96, 21/96 and 31/99) which replaced regulations in force during the war that contained more or less the same provisions. In the Federation instead, the Law on Temporarily Abandoned Real Property Owned by Citizens (Official Gazette Federation RBiH 11/93, 13/94) and the Law on Abandoned Apartments (Official Gazette of RBiH 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95) were the laws that legalized the Current Occupant’s position. Such laws were put out of force on 4 April 1998 in the Federation and on 19 December 1998 in the Republika Srpska.
274. According to Article 77 of the Book of Regulations I “the Commission may reconsider a decision if the claimant or any other person with a legal interest in real property designated in the original decision, within 60 days of learning of new evidence which could materially affect the decisions, presents such evidence to the Commission, or gives indications of the new evidence.”
275. According to Article 42 of the Book of Regulations II “the person to whom the decision on confirmation of the occupancy right applies, as well as the current user of the apartment and the allocation right holder, under the condition that they deliver new evidence or indications of the new evidence which the Commission has not considered when the Decision was made and which could materially affect the decision, shall have the right to submit a request for reconsideration.”
276. See Article 11 of the Law on the Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees – Federation of Bosnia and Herzegovina (“LOI CRPC FBIH”) and Article 11 of the Law on the Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees – Republika Srpska (“LOI CRPC RS”).
277. Article 84 of the Book of Regulations I.
278. Article 10, Paragraph 2 of the Laws on Implementation of CRPC Decisions.
279. The number of photocopies depended on the right, see Article 6 of the FBIH Law of Implementation.
280. See for example Article 7 LOI FBIH.
281. Section 19.1 of UNMIK Regulation 2000/60.
282. Section 21.2 of UNMIK Regulation 2000/60.
283. Section 12.5 of UNMIK Regulation 2000/60.
284. Section 13.2 of UNMIK Regulation 2000/60.
285. Claimants had the option to seek an order (a) restoring possession of the property for the purposes of returning to the property or for disposing of it in accordance with the law; or (b) placing the property under the administration

- of the Directorate until such time as the claimant elected to return to the property or dispose of it. See Section 8.3 of UNMIK Regulation 2000/60.
286. Article 10 of the CRRPD Statute.
 287. Article 12, Paragraph I of the CRRPD Statute.
 288. Article 14 of the CRRPD Statute.
 289. Article 6, Paragraph VII of the CRRPD Statute.
 290. Article 6, Paragraph XII of the CRRPD Statute.
 291. Article 6, Paragraph XIII of the CRRPD Statute.
 292. Article 24 of the CRRPD Statute.
 293. *Hannay*, Cyprus: The Search for a Solution, 2005, p. 6.
 294. *Scott*, Property Values: Ownership, Legitimacy and Land Market in Northern Cyprus, in: *Hann* (ed.), Property Relations: Renewing the Anthropological Tradition, 1998, p. 147.
 295. *Scott*, Property Values: Ownership, Legitimacy and Land Market in Northern Cyprus, in: *Hann* (ed.), Property Relations: Renewing the Anthropological Tradition, 1998, p. 142-143.
 296. *Scott*, Property Values: Ownership, Legitimacy and Land Market in Northern Cyprus, in: *Hann* (ed.), Property Relations: Renewing the Anthropological Tradition, 1998, p. 143.
 297. See, for example, the Orams case described in *The Independent*, 19 July 2006, "Land dispute casts new shadow over North Cyprus"; for detailed news articles on the case, see for example the *Cyprus Mail*, 3 February 2006, "Closing cases heard for Orams case", and 13 August 2006, "Linda Orams' day in court".
 298. Paragraph 1, Article 10, Foundation Agreement.
 299. See Article 6 of Annex VII to the Annan Plan.
 300. Paragraph 3, Article 6, Annex VII and Section A, Attachment 3, Annex VII.
 301. See in particular the provisions in Attachment 2, 3 and 4 of Annex VII to the Annan Plan.
 302. See Article 5 of Attachment 3 of Annex VII to the Annan Plan.
 303. See Article 6 of Attachment 3 of Annex VII to the Annan Plan.
 304. Paragraph 1, Article 2, Attachment 3, Annex VII. Current Occupants without sufficient financial means who were not Cypriot citizens could have applied for social housing or other assistance if they were permanent residents and they were using the property for their own purposes. Paragraph 3, Article 2, Attachment 3, Annex VII.
 305. Paragraph 2, Article 2, Attachment 4, Annex VII.
 306. See Article 13 of Attachment 2 of Annex VII to the Annan Plan.
 307. Real property losses were also claimed in category "C" claims. Their number was, however, very small and no special valuation methodology was developed for them.
 308. A loss was assigned to one of the categories of small, medium, and large

- businesses based on one of several factors, including the number of employees, annual turnover, annual profit, or market-value purchase price at the time of the loss.
309. The place of loss was only deemed irrelevant for unique types of property, such as gold and jewelry, the price of which was basically uniform across borders.
 310. For example, if the victim lost a shoe-making business with 20 employees in 1939, then the compensation award would be that which would enable him to purchase a comparable enterprise, containing roughly the same number of employees, at the time of the setting of the award. See Section 51II, BEG; Section 16 II, BrüG; Section 2 I, NS-VEntschG.
 311. The Nazi Administration had established tax values in 1935 for all businesses and immovable properties throughout the German Reich. These values were recorded at tax offices and in business and property records.
 312. Section 2 I 2, NS-VEntschG.
 313. Section 11 of the German Foundation Act.
 314. Air Transportation Safety and System Stabilization Act, 115 STAT. 230, Public Law 107-42, 22 September, 2001, available at: <http://www.usdoj.gov/archive/victimcompensation/hr2926.pdf>.
 315. Some of these procedures were slightly amended for some categories such as fire fighters.
 316. See Table No. 1 in the Final Report, p. 96.
 317. See also Table No. 2 in the Final Report, p. 97.
 318. A schedule containing age-specific earnings growth rates reflecting the combined inflation, overall productivity and life-cycle increases is attached as Table No. 3 in the Final Report, p. 98.

PROPERTY, RESTITUTION AND COMPENSATION
Practices and Experiences of Claims Programmes
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