FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579

In the Matter of the Claim of	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-I-003
	}	Decision No. IRQ-I-006
Against the Republic of Iraq	}	

Counsel for Claimant: Daniel Wolf, Esq.
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FINAL DECISION

The Commission's Proposed Decision in this Claim awarded the Claimant $500,000 for injuries he suffered while being held hostage in Iraq. Claimant objects to the amount awarded. He contends that the Commission erred in its interpretation of the State Department's letter authorizing the adjudication of claims in this program. Because we conclude that the Proposed Decision's interpretation of the letter was in fact correct and

[1] The original Claimant, 5 U.S.C. §552(b)(6) , was a hostage in Iraq in 1990 and the victim who suffered the injuries giving rise to this Claim. According to Claimant's counsel, 5 U S C §552(b)(6) died on August 6, 2014. Counsel then requested that the Commission substitute 5 U S C §552(b)(6) estate as the claimant. In support of this request, counsel provided letters testamentary issued on September 9, 2014, by the Chancery Court for Hamilton County, Tennessee, establishing 5 U S C §552(b)(6) as the executor of 5 U S C §552(b)(6) estate. Having reviewed the letters testamentary, we conclude that the ESTATE OF 5 U S C §552(b)(6) , has the legal right to pursue the objection filed in this claim and is now the proper claimant before this Commission. *See* Claim No. IRQ-I-007, Decision No. IRQ-I-013, at 6-8 (Proposed Decision) (2014) (concluding that estates may bring claims in this program). Since 5 U S C §552(b)(6) did not die until after submitting his claim to the Commission, the beneficiaries of his estate do not need to satisfy the U.S. nationality requirement. *See* Claim No. LIB-II-180, Decision No. LIB-II-079, at 5 (2011). Only the decedent needs to satisfy that requirement, and he does. *See* Proposed Decision at 5. In this decision, we refer interchangeably to both the estate's representative and the original claimant as "Claimant," except where distinctions are relevant.

because Claimant raises no other reason to change the amount awarded in the Proposed Decision, we affirm the Proposed Decision's conclusion that Claimant is entitled to $500,000 in this Claim.

BACKGROUND

Claimant brought a claim against the Republic of Iraq ("Iraq") based on injuries he suffered while being held hostage in Iraq and Kuwait between August and December 1990. Claimant sought an award of $1 million, in addition to the amount the United States Department of State had previously provided him for his experience as a hostage. In a Proposed Decision entered March 14, 2014, the Commission concluded that Claimant met his burden of proving that he had suffered a "serious personal injury" as contemplated in the State Department's letter to the Commission establishing this program.[2] *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006 (2014) (Proposed Decision). Based on an assessment of the injuries Claimant had suffered, the Commission awarded Claimant $500,000.00 in additional compensation. This was one-half of the $1 million he sought and one-third of the $1.5 million the State Department set as a recommended maximum for awards in this program.

Claimant filed a Notice of Objection to the Commission's Proposed Decision and Request for Oral Hearing dated April 2, 2014, and a Brief in Support of the Objection to the Proposed Decision dated May 27, 2014. The Commission held a hearing on the objection on July 24, 2014; the hearing consisted solely of argument by Claimant's counsel, and the Claimant presented no witnesses.

[2] *See Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission* ("2012 Referral" or "Referral").

Claimant argues that the Commission used an improper methodology in determining the amount of Claimant's award. The Commission, he says, improperly "based Claimant's award on where it determined his injuries fall along a continuum of severity in which the $1.5 million awards that lie at its top are reserved for, at most, a handful of claimants who sustained injuries that were measurably more severe than the injuries suffered by the other participants in this program." Although the Proposed Decision did not articulate its reasoning in exactly that way, Claimant has properly characterized the approach the Commission took. For ease of reference, we will refer to that approach as "the continuum approach."

Claimant argues that use of the continuum approach was legal error. According to Claimant, the proper methodology is to "determine the award to which each claimant would be entitled *in the absence of the cap* and then to reduce that award to the capped amount in the event it exceeds that threshold" (emphasis in original). We will refer to Claimant's preferred methodology as "the cut-off approach." Claimant says that, applying the cut-off approach, the Commission should have "measured [his] award . . . not against the artificial $1.5 million capped amount that [the Claimants with the most severe injuries in this program] were awarded, but rather against the amounts [those claimants] should and would have been awarded had there been no cap." Maintaining that the claimants with the most severe injuries in this program would have been entitled, in the absence of a cap, to awards of significantly greater than $1.5 million, Claimant requests that the Commission increase his award "to the maximum amount of $1.5 million or, in the alternative, to an award of not less than $1 million."

DISCUSSION

The Proposed Decision in this Claim discussed the difficulty of assessing the intangible, noneconomic damages in this program, where the injuries are both physical and mental and have arisen from a wide variety of individual circumstances. It noted that the 2012 Referral recommended the Commission award "up to but no more than $1.5 million." The Commission explained that, under international law, compensation for personal injuries varies greatly, but it identified certain factors that were important. *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006 (2014) (Proposed Decision), at 11-14. Analyzing Claimant's injuries in light of those factors, along with the State Department's $1.5 million recommended maximum and "the full range" of successful claims in this program, the Commission concluded that Claimant was entitled to $500,000. The Commission thus applied the relevant factors, but did so in a comparative manner in light of the State Department's recommended maximum, effectively treating that figure as a benchmarking ceiling for a continuum of awards ranging from zero to $1.5 million. It is this aspect of the Proposed Decision to which Claimant objects.

Claimant offers several arguments in support of his position. First, he relies on judicial decisions discussing U.S. federal statutes with language similar to that found in the 2012 Referral. Second, he argues that the State Department should have used language that clearly expressed the continuum approach if that is what it meant.

Third, Claimant argues that the State Department's treatment of pre-Referral claims covered by the Claims Settlement Agreement supports his position. For example, he asserts that the State Department took an approach similar to his proposed cut-off approach when paying some other claimants. The State Department allegedly paid those who had

final court judgments for economic loss in one of the lawsuits brought against Iraq, *Hill v. Republic of Iraq*, Case No. 99-3346 (D.D.C.), pursuant to a set formula, where judgments that exceeded $1 million were paid $1 million plus one-third of the amount above $1 million, while judgments below $1 million were paid in full. Claimant contends that this approach to paying these claims demonstrates that the State Department wanted to treat small and large claims differently, paying only the smaller claims (those up to $1 million) in full.

Fourth, Claimant's counsel represents that the State Department paid the American prisoners of war ("POWs") who sued Iraq in *Acree v. Republic of Iraq*, 271 F. Supp.2d 179 (D.D.C. 2003), fixed awards of an amount significantly greater than $1.5 million,[3] even though at least two of the claimants in this program suffered as much or more than many of the POWs. According to Claimant, this shows that the State Department's "recommended ceiling on awards [in the 2012 Referral] was unrelated to any view it might have about the severity of the injuries sustained by claimants who might qualify for awards under this Program."

Finally, Claimant argues that the State Department set a cap solely to "ensure that there would be enough money remaining in the settlement fund to pay claimants with smaller claims."

As explained further below, the problem with Claimant's various arguments is twofold. First, there is no uniform, universal test for measuring compensation for noneconomic personal injuries. All of his arguments are premised on the assumption that he would be entitled to an award of greater than $500,000 in the absence of the Referral's

[3] Because disclosure of the precise amount to which Claimant believes those claimants are entitled may raise confidentiality concerns we will not disclose it here. *See infra* note 4. To understand the nature of the argument, it is sufficient to note that the number is several times greater than the $1.5 million maximum.

recommended maximum. As discussed in greater detail below, there is no basis for this assumption.

Second, the operative phrase of the Referral's text ("up to but no more than") is better understood to establish a continuum from zero to $1.5 million based on the relative severity of a claimant's injuries than an approach based on the cut-off ceiling that Claimant advocates.

I. There Is No Uniform, Universal Test For Measuring Compensation For Noneconomic Personal Injuries

Claimant contends that the first step in the "proper methodology" is to "determine the award to which each claimant would be entitled *in the absence of the cap* . . . ." The problem with this argument is that he has offered no comprehensive and compelling way to do this. This is not surprising: as the Commission and other international-law authorities have noted numerous times, there is no consistent test for measuring compensation for the types of personal injuries at issue here. The amount of compensation awarded for noneconomic personal injuries has varied dramatically based on the institution making the awards and other contextual factors, and there is simply no true Archimedean point from which we can determine what Claimant refers to as his "actual damages."

When Claimant argues that the Commission should "simply cap[] the amount that can be awarded in any given case," he assumes that there is some specific amount to which a claimant would be entitled in the absence of the Referral's recommended maximum. But this is simply not the case. In a claim for compensation for noneconomic harm, there is no uniform, universal way to determine "actual damages." As we put it in another claim in this program, "Under international law, compensation for personal injuries varies greatly, and there is no consistent formula applied by international courts and tribunals in

determining the appropriate amount." *See* Claim No. IRQ-I-001, Decision No. IRQ-005, at 21 (Proposed Decision) (2014) (citing numerous international-law sources). As one of the leading scholars on this question put it in her treatise, there "are few developed principles for calculating awards of non-monetary injuries like pain and suffering, fright, nervousness, grief, anxiety, and indignity." Dinah Shelton, *Remedies In International Human Rights Law* § 9.6.2 (2nd ed. 2005); *see also* Claim No. LIB-II-044, Decision No. LIB-II-001, at 9-10 (2009) (Proposed Decision) (making this same point).

Claimant contends that the Commission should look to damage awards in U.S. courts as an external anchor against which to measure compensation in this program. We disagree. Our enabling statute, the International Claims Settlement Act of 1949 ("ICSA"), instructs us to apply, in the following order, "the provisions of the applicable claims agreement" and "the applicable principles of international law, justice and equity." 22 U.S.C. § 1623(a)(2) (2012). One important consequence of following the strictures of our enabling statute is that we have no mandate to base compensation amounts in this program on damage awards in U.S. courts based on violations of U.S. law—even if the nature and severity of the injuries are similar. We thus do not seek an anchor for determining concrete damage awards or, as Claimant would have it, "actual damages," in U.S. domestic cases.

Thus, the premise underlying Claimant's argument—that he would be entitled to an amount greater than $500,000 if there were no recommended maximum—is incorrect. So too is the assumption that numerous claimants in this program would be entitled to more than the $1.5 million recommended maximum. International law provides no objective, absolute award values for these kinds of injuries, and Claimant provides no international-

law support for the proposition that his proposed "cut-off" approach would lead to a higher award.

II. The Proposed Decision's "Continuum" Approach is the Best Interpretation of the 2012 Referral

Even if we were to assume that there is some abstract amount, presumably greater than $1.5 million, to which most or all of the Claimants in this program would be entitled in the absence of the Referral's recommended maximum, that does not mean that the 2012 Referral's language mandates a cut-off approach. It merely raises the question of how to interpret the Referral's language.

Having carefully examined the Referral's text and context, and relevant extrinsic evidence about its meaning, we are convinced that the continuum approach we implicitly adopted in the Proposed Decision better comports with the Referral's meaning than the cut-off approach Claimant proposes. While the text is ambiguous, both the context surrounding the State Department's use of the recommended-maximum language and all the extrinsic evidence we have suggest that we should award compensation in this program based on the relative severity of the injuries along a continuum from zero to $1.5 million.

Text. The Referral's language is ambiguous as to whether to adopt the Proposed Decision's continuum approach or Claimant's proposed cut-off approach. The relevant sentence reads in full as follows: "If the Commission decides to award compensation for claims that meet these criteria, we recommend that the Commission award *up to but no more than* $1.5 million per claim." 2012 Referral ¶4 (emphasis added). Claimant argues that the "up to but no more than" language favors the cut-off approach: "Nothing in the language of the Department's recommendation," Claimant writes, "suggests that the

Department wanted the Commission to reduce the amount of compensation to which an individual might be entitled in the absence of the $1.5 million ceiling to an amount below that ceiling." The problem with this argument, however, is that it can work the other way around too. That is, nothing in the language of the State Department's recommendation suggests the State Department wanted the Commission to adopt the Claimant's recommended "cut-off" approach. Linguistically, "up to but no more than" provides no real guidance as to how to determine awards within the range from zero and $1.5 million. To be sure, it does not preclude Claimant's reading. It just does not decide the question.

Context. Although the text is ambiguous, the background context surrounding the State Department's choice of the "up to but no more than" language strongly suggests that it intended that the Commission adopt a continuum approach. Before the 2012 Iraq Referral at issue here, the State Department used this exact same phrase ("up to but no more than") in a prior referral letter, and just before the 2012 Iraq Referral, the Commission had issued several decisions interpreting the phrase in that prior referral as establishing a continuum. The State Department then used the same phrase again in the 2012 Iraq Referral, undoubtedly knowing how the Commission had interpreted it. This suggests that the State Department was aware that the language *could* be read to mean a continuum approach and most likely intended the Commission to take such an approach in this program.

Specifically, in January 2009, the State Department referred several sets of claims to the Commission. This was the second set of claims referred pursuant to the Libya Claims Settlement Agreement, and we call that referral the "2009 Libya II Referral." One set of claims, Category D of that referral, was for additional compensation for physical

injuries, above an initial $3 million award that all successful physical-injury claimants had received under the first Libya program. Like this program, that category comprised claims for *additional* compensation for a subset of a predefined group of claimants who had already received some compensation. There, the group consisted of those who had already received $3 million for their physical injuries and the subset consisted of those whose injuries were severe enough to warrant additional compensation; here, the group consists of those to whom the State Department provided compensation for their hostage-taking claim and the subset consists of those who suffered "serious personal injuries." Also like here, it is safe to assume that, although the State Department may not have had detailed knowledge of all the injuries, it did know ahead of time that there would be a range of injuries.

In the 2009 Libya II Referral, the State Department used the same "up to but no more than" language as is used here. Category D provided that, "[i]f the Commission decides to award additional compensation for claims that meet these criteria, we recommend that the Commission award *up to but no more than* an additional $7 million per claim (offering the possibility that some injury cases will be compensated at the $10 million level of the wrongful death claims processed by the Department of State)." 2009 Libya II Referral at 2 (emphasis added).

After assessing the full range of injuries, the Commission awarded compensation in Category D claims using a continuum approach, ranging from zero to the recommended maximum, based on the severity of the injuries. *See, e.g.*, Claim No. LIB-II-109, Decision No. LIB-II-112 (2011) (Final Decision) (finding claim not compensable by, in part, considering "the nature of all of the injuries"); Claim No. LIB-II-118, Decision No. LIB-

II-152 (2012) (Final Decision) (making compensation determination based on an assessment of the relative severity of all the injuries in the program). The Commission decided the first Category D claim in November 2011, *see* Claim No. LIB-II-109, Decision No. LIB-II-112, *supra*, and issued Proposed Decisions in the rest of the claims (25 in total) before November 2012 when the State Department referred the present Iraqi claims to us. The State Department was almost certainly aware of the Commission's Category D decisions and, with that knowledge, used the exact same "up to but no more than" language here. Under the so-called Prior Construction Canon, we can presume both that the State Department knew about, and that it intended to adopt, the meaning we gave to the "up to but no more than" language in the Libya II Category D cases. *See, e.g.*, *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) ("When administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates as a general matter, the intent to incorporate the administrative and judicial interpretations as well."). Although the Prior Construction Canon may be premised on a fiction in some circumstances, *see* Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 324 (2012) (referring to it as "the fanciful presumption of legislative knowledge"), the premise seems valid here, where we have every reason to think the State Department has more than a passing familiarity with the Commission's jurisprudence.[4]

Our approach in the 2009 Libya II Category D program also provides a response to Claimant's argument that the State Department would have clearly directed the

[4] To be sure, awards in the Libya II Category D program were generally higher than the awards in this program, and none of them even reached the recommended maximum. Our interpretation of "up to but no more than" in those Category D claims is thus not inherently inconsistent with Claimant's proposed cut-off approach. It does, however, provide precedent for interpreting the "up to but no more than" language as a continuum.

Commission to use a continuum approach. See Claimant's Brief at 12 ("If the State Department had wished not merely to recommend a ceiling on the amount that could be awarded in any given case, but rather to establish a continuum in which that ceiling became the benchmark against which every other award would be measured, then the Department could and should have written its recommendation in a manner that would have clearly and unambiguously accomplished that result."). In view of the Libya II Category D decisions, Claimant's negative-implication argument cuts against his position. It makes more sense to say that, if the State Department had wanted Claimant's proposed cut-off approach, it would not have used the same "up to but no more than" phrasing that the Commission had previously interpreted as mandating a continuum approach. The State Department's choice of the same language thus counsels the same continuum approach we used in adjudicating Category D claims from the 2009 Libya II Referral.

Extrinsic Evidence. Claimant makes several arguments that evidence extrinsic to the Referral supports his proposed cut-off approach, but none of them undercuts our view that the continuum approach better comports with the text, context and State Department's likely intent.

Claimant argues that State Department awards to POWs who were held in Iraq in early 1991 indicate that the State Department believed many of the claimants in this program suffered "actual damages" of more than $1.5 million. The State Department allegedly provided the POWs with significantly more than the $1.5 million recommended maximum even though the POWs allegedly suffered injuries no more severe than (and in some cases, less severe than) two of the claimants in this program, the claimants in Claim

Nos. IRQ-I-001 and IRQ-I-002.[5] Thus, Claimant argues, the State Department must have recognized that the "actual damages" of those two claimants would, in the absence of the recommended maximum, necessitate awards of greater than $1.5 million. Measuring the "actual damages" of the rest of the claimants in this program by comparing with the amount the POWs received would then entitle numerous claimants in this program to more than $1.5 million (again, in the absence of the recommended maximum). Thus, Claimant argues, it makes no sense to create a zero to $1.5 million continuum for all of the claimants in this program when the State Department itself implicitly recognized that many of the claimants in this program would have deserved far more in the absence of the recommended maximum.

The fundamental problem with this argument is that we have no mandate to consider the POW award amount. This amount, to the Commission's knowledge, has not been made public, and the State Department never instructed the Commission to take it into account in making awards in this program. When the State Department wants the Commission to know and consider amounts it has previously awarded, it knows how to inform us accordingly. In fact, the State Department did just this in the 2009 Libya II Referral Category D language discussed above. *See* 2009 Libya II Referral ¶ 6 (noting that the $7 million recommended maximum was based on the $10 million the State Department had itself awarded for wrongful-death claims).

[5] Counsel for claimants in Claim Nos. IRQ-I-001 and IRQ-I-002, who also represented the POWs, provided us with information consistent with Claimant's figure. Since the amount may be confidential and the exact number is not important here, it is enough for Claimant's argument to say that the amount is several times greater than $1.5 million. It is thus sufficiently above $1.5 million that, if one created a continuum with the POW award amount representing the "actual damages" the POWs suffered, several claimants in this program would be entitled to "actual damages" of much more than $1.5 million if the only factor for comparison were the severity of injuries.

Given that the State Department was fully aware of how much it awarded to the POWs, its silence here speaks volumes. It strongly suggests that the State Department did not intend for the Commission to look to that amount when determining compensation in this program. As the Commission stated in its Proposed Decision on Claim No. IRQ-I-001, "[s]ince we have neither an explicit indication in the Referral that the POW awards were to be considered, . . . we will not use the POW awards as a factor for assessing the appropriate level of compensation to be awarded in this Program." Claim No. IRQ-I-001, Decision No. IRQ-I-005, at 24 (Proposed Decision).

Even if we ignore the fact that the State Department has never disclosed the POW award amount to the Commission, one fact about those awards significantly undercuts Claimant's argument that they represent an assessment of "actual damages": the State Department awarded each of the POWs the exact same amount, despite huge disparities in the severity of their injuries and treatment by the Iraqi authorities. Indeed, based on an assessment of those injuries, a federal judge determined that the POWs' compensatory damage amounts ranged from $16 million to $35 million. *See Acree v. Republic of Iraq*, 271 F. Supp. 2d 179, 219-221 (D.D.C. 2003), *vacated* 370 F.3d 71 (D.C. Cir. 2004).[6] Therefore, when the State Department provided compensation to the POWs, the amount it provided was clearly not based on any assessment of the specific injuries the individual POWs suffered. Indeed, the State Department was surely aware that the injuries and treatment suffered by the claimants in Claim Nos. IRQ-I-001 and IRQ-I-002 were comparable to those suffered by the POWs, and yet still set the $1.5 million recommended maximum in this program. Moreover, it did so without disclosing the POW award amount

[6] These actual amounts were not based on international law and so have no bearing on us here. *See supra* p. 7. What is relevant, however, is how wide the range was, based as it was on an assessment of the different injuries and treatment each POW suffered.

to us. As we explained in the Proposed Decision in Claim No. IRQ-I-001, "We can thus infer that the State Department did not intend the POW awards (which, according to Claimant, were made by the State Department itself) to serve as a rationale for this Commission to make awards greater than $1.5 million in this Program."

Claimant argues that, even though the State Department knew that the claimants in Claim Nos. IRQ-I-001 and IRQ-I-002 had "actual damages" in excess of $1.5 million, it set the recommended maximum simply to "ensure that there would be enough money remaining in the settlement fund to pay claimants with smaller claims." The problem with this argument is that, even if true, it does not tell us whether the Commission should view the $1.5 million recommendation as a ceiling establishing a continuum or as a cut-off amount.

If anything, the goal of preserving the settlement fund would militate towards *lower* awards, and thus favor the continuum approach. Claimant's premise appears to be that the State Department believed there was enough in the settlement fund to pay $1.5 million to numerous claimants in this program but not enough to pay them more than that. That assumes, however, that the only possible "claimants with smaller claims" are those before us in this program *and* that the State Department knew how many there were. Neither assumption seems warranted.

For one, the State Department could not have been sure how many claims would be filed in this program.[7] Moreover, the State Department's putative concerns about "ensur[ing] that there would be enough money" might not have been limited to the claims adjudicated under this particular referral. Given the large number of Americans in Kuwait

[7] If there were insufficient money to fully pay all awards, a continuum approach might actually be fairer: that way, after all claims were adjudicated, all claimants in this program could get pro-rata awards that were, relative to each other, proportionate to the injury they suffered.

and Iraq after the Iraqi invasion of Kuwait,[8] the State Department may have preferred a continuum approach (with its concomitant lower awards) to preserve the money for other potential claimants not eligible under the terms of this program.[9] The fact that the State Department recently referred another set of claims under the Iraq Claims Settlement Agreement buttresses this point.[10] In short, Claimant's argument that the State Department wanted to "ensure that there would be enough money . . . to pay claimants with smaller claims" does not undermine our view that the State Department intended us to apply a continuum approach rather than Claimant's proposed cut-off approach.[11]

Finally, Claimant argues that "case law construing statutorily imposed caps on awards in similar contexts" informs the meaning of the "up to but no more than" language in the Referral. Claimant points to a Court of Federal Claims decision interpreting the National Childhood Injury Vaccine Act of 1986 ("Vaccine Act") and several federal district court cases interpreting the Civil Rights Act of 1991.

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[8] *See, e.g.*, Owen Ullmann, *U.S. to Pull its Staff Out of Kuwait Says Talks Will be Done When Hostages Freed*, Miami Herald, December 8, 1990 at 1A (reporting that the State Department revised downward its estimate of Americans still in Kuwait and Iraq to 750 from a previous estimate of more than 900, and also reporting that the United States had already evacuated "some 2,000 Americans" since the August 2, 1990 Iraqi invasion of Kuwait).

[9] The 2012 Referral noted that the State Department had undertaken to distribute payments for only certain claims covered by the Iraq Claims Settlement Agreement, including those of former prisoners of war and their spouses, of former hostages and humans shields with unpaid judgments against Iraq, and those with pending litigation against Iraq; as well as compensation for U.S. service members injured in the 1987 attack on the U.S.S. Stark. *See* 2012 Referral at 1. The language of the 2012 Referral suggests that other Americans who were in Iraq after the Iraqi invasion of Kuwait may not have received any payments under the Claims Settlement Agreement.

[10] *See Letter dated October 7, 2014, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Commissioners, Foreign Claims Settlement Commission*.

[11] If the State Department believes the awards we make under the continuum approach are too low, it can either provide claimants in this program more compensation or create a new program that requires we adopt the cut-off approach. On the other hand, if we adopt the cut-off approach and make awards that are higher than the State Department intended, there is no way for the State Department to correct that error.

Section 15(a)(4) of the Vaccine Act provides that awards "[f]or actual and projected pain and suffering and emotional distress" from a vaccine-related injury are "*not to exceed* $250,000." 42 U.S.C. §300aa-15(a)(4) (emphasis added). In *Graves v. Secretary of the Department of Health and Human Services,* 109 Fed. Cl. 579 (2013), the United States Court of Federal Claims interpreted this provision to establish a cut-off approach of the sort Claimant advocates here, specifically rejecting a Special Master's use of a comparative-continuum approach like the one we used in the Proposed Decision.

For cases involving intentional discrimination in employment, the Civil Rights Act of 1991 provides that "the sum of the amount of compensatory . . . and the amount of punitive damages . . . *shall not exceed*" an amount ranging from $50,000 to $300,000 depending on the size of the employer. *See* 42 U.S.C. §1981a(b)(3) (emphasis added). Claimant cites federal district court cases holding that these caps too act as cut-offs, not as a ceiling creating a continuum from zero to the cap.

Decisions interpreting these statutes do not help decide the continuum versus cut-off question here. For one, in both statutes, the language is subtly different from the Referral. The Vaccine Act uses the language "not to exceed" and the Civil Rights Act of 1991 uses "shall not exceed." Neither uses the Referral's phrase "up to but not more than." In particular, the prepositional phrase "up to" admits more easily of awards being less than the recommended maximum than the phrases "not to exceed" and "does not exceed." By itself, this by no means decides the question, but it reminds us that our goal here is to interpret the specific language in the Referral, not to think about the recommended maximum as a cap in some abstract sense.

More important than the specific differences in the language, however, is the fact that we have no evidence that the State Department was aware of these federal trial court interpretations of completely unrelated statutes. Of course, if the language were clear on the continuum versus cut-off question, we might not need to look for further evidence about the Referral's meaning. But here, as Claimant's own case law shows, even the meaning of "not to exceed" and "does not exceed" was not uncontested—and, in any event, it is difficult to view federal trial court holdings as authoritative in interpreting referrals made to the Commission under the ICSA. In effect, Claimant's argument attempts to treat the Vaccine Act and Civil Rights Act of 1991 as *in pari materia* with the Referral here, extending interpretations of those statues well beyond their scope to the meaning of different language in a different legal instrument in a different institutional context. We are not persuaded that interpretations of those statutes are relevant here.

Ultimately, we must interpret the Referral, a document drafted by the State Department for this program, and we think it far more likely that the "up to but no more than" language in the Referral is premised on the Commission's earlier interpretation of that language in the Libya II program. In sum, therefore, the Referral's recommendation to award "up to but no more than $1.5 million per claim" is best understood to recommend the creation of a continuum from zero to $1.5 million, with amounts to be awarded within that range based on an assessment of claimant's injuries within this program.

III. Compensation Factors

In previous decisions in this program, including the Proposed Decision in this Claim, we have articulated a number of factors, in addition to the State Department's recommended maximum, to consider in determining the appropriate level of

compensation. *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006 (2014) (Proposed Decision), at 11-14. These factors are the severity of the initial injury or injuries; the number and type of injuries suffered; whether the claimant was hospitalized as a result of his or her injuries, and if so, how long (including all relevant periods of hospitalization in the years since the incident); the number and type of any subsequent surgical procedures; the degree of permanent impairment, taking into account any disability ratings, if available; the impact of the injury or injuries on claimant's daily activities; the nature and extent of any disfigurement to the claimant's outward appearance; whether the claimant witnessed the intentional infliction of serious harm on his or her spouse, child or parent, or close friends or colleagues; and the seriousness of the degree of misconduct on the part of Iraq. Thus, we consider all of these factors in determining where along the zero to $1.5 million continuum a successful Claimant's award is to be.

In the Proposed Decision in this Claim, we detailed the application of these factors to the injuries suffered by the Claimant and concluded that he was entitled to an award of $500,000. *Id.* at 8-11, 14-15. Claimant does not dispute any of these facts or, other than contesting our use of the comparative-continuum approach, dispute our application of those factors to the facts here. Nor do we see any reason to think that we erred in that analysis. The Commission thus affirms its award in the Proposed Decision: Claimant is entitled to an award of $500,000.00.

CONCLUSION

In sum, for the reasons discussed above and in the Proposed Decision, and based on the evidence and information submitted in this claim, the award entered in the Proposed Decision in this claim is restated below, and will be certified to the Secretary of the

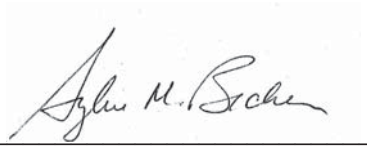
Treasury for payment under sections 7 and 8 of Title I of the International Claims Settlement Act (22 U.S.C. §§ 1626-27). This constitutes the Commission's final determination in this claim.

AWARD

Claimant is entitled to an award in the amount of Five Hundred Thousand Dollars ($500,000.00).

Dated at Washington, DC, December 9, 2014
and entered as the Final Decision
of the Commission.

Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579

In the Matter of the Claim of	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-I-003
	}	Decision No. IRQ-I-006
Against the Republic of Iraq	}	

Counsel for Claimant: Daniel Wolf, Esq.
Law Offices of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq ("Iraq") based on injuries he suffered while being held hostage in Iraq and Kuwait from August to December 1990. The United States Department of State has already provided him compensation for his experience as a hostage. He now seeks additional compensation based on a claim that Iraqi officials subjected him to several instances of coerced interrogation and that, as a result, he suffered mental and emotional injuries. We conclude that Iraqi officials did in fact inflict those injuries on Claimant and that he is entitled to $500,000.00 in additional compensation.

BACKGROUND AND BASIS OF CLAIM

Claimant alleges that, in the summer of 1990, he travelled to Kuwait on business. Following Iraq's attack on Kuwait in August 1990, he claims that Iraq effectively held him hostage until December 9th of that year, first for two weeks in his hotel in Kuwait,

then for more than three months in the U.S. Embassy in Kuwait, and then for approximately two weeks in a hotel in Baghdad. He also states that, on three occasions while he was held in the hotel in Baghdad, Iraqi soldiers interrogated him under the threat of violence and death. Claimant's experiences and injuries are detailed in the Merits section below.

Claimant was part of a group of plaintiffs that sued Iraq in federal court in 2001 for, among other things, hostage-taking and wrongful conduct, seeking damages for a variety of injuries, including severe emotional distress. *See* 5 U.S.C. §552(b)(6)

. That case was pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement. *See Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement"). The Agreement, which came into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004. Exercising its authority to distribute money from the settlement funds, the State Department provided compensation to numerous individuals whose claims were covered by the Agreement, including some, like Claimant, whom Iraq had taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait. According to the State Department, this compensation "encompassed physical, mental, and emotional injuries generally associated with" being held hostage or subject to unlawful detention.[1] Claimant states that the amount of the payment he received was based on a formula, consistently applied to all of the hostages,

[1] A group of hostages, not including Claimant, received compensation for economic loss. The hostages that received compensation for economic loss are not before the Commission in this program.

of $150,000 plus $5,000 per day of detention. Pursuant to this formula, Claimant received $800,000.

The State Department's Legal Adviser then requested that the Commission commence a claims program for some of the hostages whom the State Department had already compensated. More specifically, the State Department authorized the Commission to award additional compensation to hostages who had suffered a "serious personal injury," when the severity of that injury is a "special circumstance warranting additional compensation." The State Department made its request in a letter dated November 14, 2012, which the Commission received pursuant to its discretionary statutory authority. *See* 22 U.S.C. § 1623(a)(1)(C) (2012) (granting the Commission jurisdiction to "receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or of any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State"). The letter sets forth the category of claims as follows:

> claims of U.S. nationals for compensation for serious personal injuries knowingly inflicted upon them by Iraq[1] in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking[2] provided that (1) the claimant has already received compensation under the Claims Settlement Agreement from the Department of State[3] for his or her claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq, and (2) the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation. For the purposes of this referral, "serious personal injury" may include instances of serious physical, mental, or emotional injury arising from sexual assault, coercive interrogation, mock execution, or aggravated physical assault.
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> _____

[1] For purposes of this referral, "Iraq" shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

[2] Hostage-taking, in this instance, would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

[3] The payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.

See Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission ("2012 Referral" or "Referral") at ¶ 3 & nn.1-3 (footnotes in original). The Commission then commenced the Iraq Claims Program to decide claims under the 2012 Referral. *Commencement of Iraq Claims Adjudication Program*, 78 Fed. Reg. 18,365 (Mar. 26, 2013).

Claimant submitted a timely Statement of Claim under the 2012 Referral, along with exhibits supporting the elements of his claim, including evidence of his U.S. nationality, his receipt of compensation from the Department of State for his claim of hostage-taking, and his alleged personal injuries.

DISCUSSION

Jurisdiction

The 2012 Referral's statement of the category of claims defines the Commission's jurisdiction. *See* 22 U.S.C. § 1623(a)(1)(C). Thus, the Commission has jurisdiction to entertain only claims of individuals who (1) are U.S. nationals; and (2) "already received compensation under the Claims Settlement Agreement from the Department of State[] for [their] claim of hostage-taking, and such compensation did not

include economic loss based on a judgment against Iraq[.]" 2012 Referral, *supra*, ¶ 3. Claimant satisfies both requirements, and the Commission thus has jurisdiction over this claim.

Nationality

This claims program is limited to "claims of U.S. nationals." Here, that means that a claimant must have been a national of the United States at the time the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force. *See* Claim No. IRQ-I-001, Decision No. IRQ-I-005, at 5 (2014) (Proposed Decision).

Claimant satisfies the nationality requirement. He has provided a copy of two U.S. passports: one from the time of the hostage-taking (valid from November 1983 to November 1993) and his current one (valid from October 2011 to October 2021).

Compensation from the Department of State

The Claimant also satisfies the second jurisdictional requirement. He has submitted a copy of a Release he signed on August 8, 2011, indicating his agreement to accept $800,000 from the Department of State in settlement of his claim against Iraq. He has also submitted a copy of an electronic notification from the Department of State that he received this sum on September 9, 2011. Claimant further stated under oath in his Statement of Claim, and the Commission has confirmed to its satisfaction, that this compensation did not include economic loss based on a judgment against Iraq.

In summary therefore, the Commission has jurisdiction over this claim under the 2012 Referral.

Merits

To receive compensation in this program, a claimant must satisfy three requirements: (1) claimant must have suffered a "serious personal injury" (which may be "physical, mental, or emotional"); (2) Iraq (as defined in footnote 1 of the Referral) must have "knowingly inflicted" the injury on claimant; and (3) the severity of the serious personal injury must constitute a "special circumstance warranting additional compensation." 2012 Referral, *supra*, ¶ 3.

The Claimant here has satisfied his burden of proof as to these three requirements. First, Claimant has met his burden to show that he suffered a "serious personal injury" within the meaning of the Referral. The 2012 Referral specifically provides that the phrase "serious personal injury" may include injuries arising from, *inter alia*, "coercive interrogation." Because neither the Claims Settlement Agreement nor the 2012 Referral defines the term "coercive interrogation," the Commission must look to the applicable principles of, in order, international law, justice, and equity. *See* 22 U.S.C. § 1623(a)(2).

The phrase "coercive interrogation" is not well-developed in international law generally, or in the specific context of civilian hostage-taking. The idea underlying the phrase has, however, arisen in the context of the international law of armed conflict. Both the Third Geneva Convention (covering civilians in time of armed conflict) and the Fourth Geneva Convention (covering prisoners of war) have provisions of relevance. While those treaties likely do not directly apply to Iraq's treatment of Claimant,[2] they can

[2] *See* Geneva III, Art. 4 (defining "prisoners of war"); Geneva IV, Art. 4 (defining "protected persons" to exclude "[n]ationals of a neutral State who find themselves in the territory of a belligerent State ... while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are"); *see generally Humanitarian Law and Iraq-Kuwait Crisis in* CONTEMPORARY INTERNATIONAL LAW ISSUES: SHARING PAN-EUROPEAN AND AMERICAN PERSPECTIVES 163, 166-167 (remarks of Theodor Meron) (discussing whether United States citizens in Iraq-occupied Kuwait prior to January 1991 were "protected persons" within the meaning of the Fourth Geneva Convention).

nonetheless be seen as relevant for understanding the meaning of "coercive interrogation" as it is used in the Referral.

For civilians in time of war, Article 31 of the Fourth Geneva Convention states that "[n]o physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties." Geneva Convention, Relative to the Protection of Civilian Persons in Time of War, Art. 31, August 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. While not limited to attempts to extract information through coercion, this provision obviously covers such circumstances. The Commentary to Art. 31 further elaborates on the idea of "coercion," noting that "[t]he prohibition . . . covers all cases, whether the pressure is direct or indirect, obvious or hidden (as for example a threat to subject other persons to severe measures, deprival of ration cards or of work)." Oscar Uhler & Henri Coursier, International Committee of the Red Cross, Commentary to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, p. 219-20 (1958).

Similarly, in the context of prisoners of war, Article 17 of the Third Geneva Convention, while also not using the precise term "coercive interrogation," evokes a similar notion. It states that "[n]o physical or mental torture or any other form of coercion may be inflicted on prisoners of war to secure from them information of any kind." Geneva Convention Relative to the Treatment of Prisoners of War, Art. 17, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135. The next sentence of that provision further elaborates, stating that "[p]risoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind." *Id.* Tribunals applying this provision have used the term "coercive interrogation" and made

clear that the threatening or beating of POWs in order to extract information from them constitutes "coercive interrogation" in violation of this provision of the Third Geneva Convention. *See, e.g.,* Eritrea Ethiopia Claims Commission, Ethiopia's Claim 4, at Para.75-76 (Partial Award 2003); Eritrea Ethiopia Claims Commission, Eritrea's Claim 17, at Para.70-71 (Partial Award 2003).

While the claim of "coercive interrogation" here is premised on Claimant having been a hostage, not a subject of either the Third or Fourth Geneva Conventions, those treaties can provide useful guidance. It leads us to conclude that "coercive interrogation" in the context of the 2012 Referral includes, at least, circumstances in which the hostage taker credibly threatens the hostage and/or a member of the hostage's family with violence in order to secure information from the hostage.

The Claimant here has established that Iraqi officials tried to extract information from him by threats of violence; Iraq thus subjected him to "coercive interrogation" within the Referral's meaning of that term and thus "knowingly inflicted" a "serious personal injury" upon him. His evidence consists of two declarations (one from his federal court litigation against Iraq and another prepared specifically for this Commission) describing the time he spent in Kuwait and Iraq, including specific details about Iraqi officials interrogating him by means of threats of violence, and a declaration from the Claimant's ex-wife stating that the Claimant told her about the interrogation, including the threats of violence, shortly after his return from Iraq.[3]

We find Claimant's declarations to be credible. They describe not only his time in Kuwait and Iraq but also the interrogations in some detail. Claimant arrived in Kuwait

[3] In addition, Claimant states in his declaration that during his captivity he "was choked on one occasion for several seconds by a guard just for using the bathroom without permission."

on July 31, 1990 for a short business trip. After the Iraqi invasion began a few days later, Iraqi troops surrounded his hotel and he was forbidden from leaving the country. After two weeks in the hotel, he took refuge in the U.S. Embassy in Kuwait. He remained trapped there for three months, serving the Embassy community the whole time. Indeed, during this time (known as the Siege of Embassy Kuwait), Claimant acted with "courage, determination, and commitment," according to a Meritorious Honor Award that the U.S. Department of State awarded him upon his return. Claimant avers that after about three months, in late November 1990, Iraqi officials induced him to leave the U.S. Embassy in Kuwait with the promise that he would be allowed to return home to the U.S. They flew him to Baghdad, reneged on their promise and confined him to a hotel in Baghdad.

It is there that Iraqi officials coercively interrogated him. They interrogated him three times. Because he had spent the past three months in the U.S. Embassy in Kuwait, they believed that Claimant had information about the situation there, including not only who was there but details about the Embassy's food, water, evacuation plans, etc. Nonetheless, he resolved that no matter what the Iraqis might do to him, he would not provide them with any information they might use against his friends and fellow hostages, and that, if need be, he would "die for [his] country." Because he is a naturalized U.S. citizen of Moroccan descent, the Iraqis also singled him out as a "traitor to the Arab cause." The Iraqi soldiers at first threatened to revoke his daily walks and make him eat his meals alone if he did not cooperate.

The most serious of Claimant's factual allegations of coercive interrogation, though, arise from the third interrogation, when the Iraqis threats went well beyond revoking walking privileges and shared meals. The interrogation was long, "two to three

hours," and during it, the Iraqis "repeatedly threatened [him] with physical violence and death." It began with "[a]rmed guards [shaking him] awake and yank[ing him] to his feet in the middle of the night before shoving [him] onto a sofa." The officials then told him he "had been judged a spy and traitor to the Arab cause and that [he] would be shot to death as soon as the order could be signed." At one point, "the senior Iraqi official unholstered his pistol, cocked the hammer, placed the muzzle against [Claimant's] forehead between [his] eyes" and insisted that he would shoot if Claimant didn't tell him what he wanted to know. Claimant was so frightened that he urinated right then and there. At another point, he threw up.

The threats went further though, when the Iraqi officials warned him "that they [knew] where to find [his] wife, children and family in Morocco" and that he was putting them in peril by not cooperating. At the end of the interrogation, the senior officer warned that "they would be coming back soon" and hoped Claimant "would be more cooperative when they did." Claimant feared that, "when the Iraqis come back, [he] would be arrested and tortured to death." The thought was so unbearable that he "seriously contemplated committing suicide." Fortunately, the next day, December 7, 1990, Iraq released a large number of the hostages, including Claimant, and he flew home.

Claimant says his time in captivity and the interrogations have caused him mental and emotional injuries that persist to this day: he has suffered alcohol problems, insomnia, depression, crying episodes, feelings of helplessness, poor concentration, sexual dysfunction, uncontrollable outbursts of anger, and the end of his marriage.

The sworn declaration of Claimant's ex-wife corroborates both the facts about the coercive interrogation and the injuries he alleges. She states that, after the Claimant returned to the United States, he told her about his time in Iraq, including the coercive interrogations: "A few weeks after his release, [Claimant] told [her] that during interrogation his Iraqi captors held a gun to his head and said they were going to kill him. [Claimant] thought he was going to be killed." She also confirms his emotional injuries, noting that the Claimant suffers as a result of his experiences in Iraq and Kuwait from alcohol problems, insomnia, marital intimacy problems, rage and lethargy. She further states that his work and finances suffered, and that their children "have learned to dislike and fear their own father." Claimant's allegations are also consistent with other coercive interrogations by Iraqi officials credibly reported to the United Nations by other individuals. *See* United Nations, *Report on the Situation of Human Rights in Kuwait Under Iraqi Occupation*, E/CN.4/1992/26 at 23 (January 16, 1992).

We thus conclude that Claimant has satisfied all three requirements of the 2012 Referral: (1) he suffered a "serious personal injury" (2) inflicted upon him by Iraq, and (3) given the nature of the injury, which was caused by an immediate and credible threat of violence and death, the severity of the injury constitutes a "special circumstance warranting additional compensation."

COMPENSATION

Assessing the value of intangible, non-economic damages is particularly difficult and cannot be done using a precise, mathematical formula. Claim No. LIB-II-002, Decision No. LIB-II-002, at 4-5 (2011) (Final Decision) (citing Claim No. LIB-II-002, Decision No. LIB-II-002, at 9-10 (2009) (Proposed Decision)); *see also* 2 Dan B. Dobbs,

Dobbs' Law of Remedies ¶ 8.3(6) (2nd ed. 1993); I Marjorie M. Whiteman, *Damages in International Law* 777-78 (1937)). Furthermore, assessing the relative value of personal injury claims is especially challenging in this program, where the claimants have alleged both physical and mental injuries, of varying number and degree, arising from highly individual circumstances.

The Claims Settlement Agreement itself says nothing about the appropriate level of compensation. The Referral sets a recommended maximum of $1.5 million per claim (2012 Referral, *supra*, ¶ 4), but offers no further guidance other than making clear that this compensation is not to include compensation for any injuries generally associated with the hostage experience, for which the State Department has already paid the claimant.

Under international law, compensation for personal injuries varies greatly, and there is no consistent formula applied by international courts and tribunals in determining the appropriate amount. Chester Brown, *A Common Law of International Adjudication* 206 (2007). Claimant seeks $1 million in additional compensation. He bases that number on a comparison of his situation with that of hostages who received $1 million in the Commission's second Libya program. However, although the Commission does take into account the injuries suffered by other Claimants in *this* program, *see infra*, we will not make direct comparisons to *other* programs to determine the dollar amounts to award. In particular, because the circumstances surrounding the establishment of this Iraqi claims program differ from those surrounding the Libya programs, we cannot make determinations of the specific amounts to award based on comparisons between the two programs. In any event, the Libya awards Claimant cites were different from the claim

here: those awards were for injuries suffered due to the hostage-taking itself, whereas here the State Department has already provided Claimant $800,000 for injuries associated with the hostage-taking itself.

Though the Commission's Libya program cannot directly guide the determination of the award here, international law authorities frequently cite certain specific factors in assessing the value of such claims. For instance, Whiteman mentions, *inter alia*, "the nature and seriousness of the injury to the claimant [and] the extent of impairment of the health and earning capacity of the claimant . . . ." I Marjorie M. Whiteman, *Damages in International Law* 628 (1937). Awards have generally been higher when the claimant's suffering was permanent or persisted for many years. *See id.* at 588-92. Tribunals have also considered the seriousness and the manner of the wrong committed by the offending state. *See* Dinah Shelton, *Remedies in International Human Rights Law* 295 (2006); A.H. Feller, *The Mexican Claims Commissions* 296 (1935); *M/V Saiga (No. 2) (St. Vincent v. Guinea)*, Case No. 2, Judgment of July 1, 1999, 3 ITLOS Rep. 10, ¶¶ 171-172. Tribunals have also considered the existence of multiple causes of action in a single claim. *See, e.g.*, J.G. de Beus, *The Jurisprudence of the General Claims Commission, United States and Mexico* 271 (1938).

In determining the appropriate level of compensation under the 2012 Referral, the Commission will thus consider, in addition to the State Department's recommendation, such factors as the severity of the initial injury or injuries; the number and type of injuries suffered; whether the claimant was hospitalized as a result of his or her injuries, and if so, how long (including all relevant periods of hospitalization in the years since the incident); the number and type of any subsequent surgical procedures; the degree of permanent

impairment, taking into account any disability ratings, if available; the impact of the injury or injuries on claimant's daily activities; the nature and extent of any disfigurement to the claimant's outward appearance; whether the claimant witnessed the intentional infliction of serious harm on his or her spouse, child or parent, or close friends or colleagues; and the seriousness of the degree of misconduct on the part of Iraq.

Here, Iraqi officials interrogated Claimant three times, and during the third interrogation, he was told that he would be shot to death "as soon as the order could be signed"; a pistol was cocked and aimed at him; and the Iraqi officials also threatened his wife and children, as well as other family members in Morocco. As a result of his treatment by Iraq, Claimant suffered emotional injuries, including alcohol problems, insomnia, depression, crying episodes, feelings of helplessness, poor concentration, marital intimacy problems, uncontrollable rage, and the demise of his marriage.

On the other hand, Claimant has not shown that Iraq inflicted any lasting physical injuries on him, nor does he assert any disfigurements. Nor has he provided any medical evidence of his mental and emotional injuries. Moreover, his professional life continued in some manner: he continues to be the president and sole owner of his own business. Furthermore, his claim must be viewed in light of the State Department's $1.5 million recommended maximum and the full range of claims before the Commission under this Referral, some of which are based on extremely severe injuries. *See* Claim No. LIB-II-109, Decision No. LIB-II-112 at 5-6 (2012) (in determining what injuries are a special circumstance, the Commission considers, among other things, the nature of all of the injuries that fall under the referred category of claims). Accordingly, the Commission determines that Claimant is entitled to an award of $500,000.00, and this amount (which

is in addition to the amount already received from the Department of State) constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

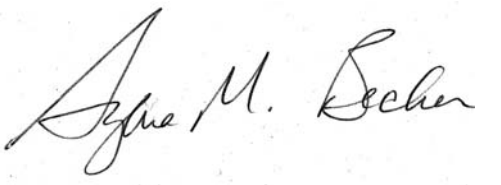
The Commission enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-27 (2006).

AWARD

Claimant is entitled to an award in the amount of Five Hundred Thousand Dollars ($500,000.00).

Dated at Washington, DC, March 14, 2014
and entered as the Proposed Decision
of the Commission.

Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2013).