



Amsterdam International Law Clinic

Monetary Payments for Civilian Harm in International and National Practice



Commissioned by:

**CENTER FOR
CIVILIANS IN CONFLICT**
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Cover photograph courtesy of Chris Hondros

At home with his new leg, Ahsan Hameed sits while aunt Hameeda Abbas and a cousin look it over. "I am so happy to see Ahsan whole again, after all he has suffered," aunt Hamedda said. Ahsan, a poor boy from Sadr City, lost his left leg above the knee to a stray American bullet on April 1, 2004, and has been trying to rebuild his young life ever since. July 17, 2004 in Baghdad, Iraq.

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Glossary

ACOs	United Kingdom Area Claims Officers
ARS	Argentine Pesos
CENTCOM	United States Military Central Command
CERP	United States Commanders Emergency Response Program
CJTF	Combined Joint Task Force-7 Command in Iraq
CLAMO	United States Center for Law and Military Operation
CLC&P	The Common Law Claims & Policy Division of the Ministry of Defence, United Kingdom
CLPEF	United States Civil Liberties Public Education Fund Board
CONADEP	Argentinian National Commission of the Disappearance of Persons
CRPC	Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina
CRR	South African Committee on Reparations and Rehabilitations
CWRIC	United States Commission on Wartime Relocation and Internment of Civilians
DRC	Democratic Republic of Congo
EE Agreement	Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia
EECC	Eritrea-Ethiopia Claims Commission
EUR	Euro
FARC	Revolutionary Armed Forces of Colombia
FCA	United States Foreign Claims Act 1956
FCC	United States Foreign Claims Commissions
FPR	Nepalese Financial Procedures Regulations
GBP	British Pounds
GFLCP	German Forced Labour Compensation Program
GON	Government of Nepal
HPCC	Kosovo Housing and Property Claims Commission Claims Process
HRA	United States Hostage Relief Act of 1980
HVAP	Holocaust Victim Assets Program
IACHR	Inter-American Court of Human Rights
ICC	International Criminal Court
IOM	International Organization for Migration
IQD	Iraqi dinars
ISAF	International Security Assistance Force
LEGAD DOPS	The Netherlands Claims Division and the Legal Advisor for Operations
MOD	United Kingdom Ministry of Defence
MOPR	Ministry of Peace and Reconstruction of Nepal
NATO	North Atlantic Treaty Organization
OCC-Ds	Canadian Operational Coordination Center Districts
O&M	United States Operations and Maintenance Fund
ORA	United States Office of Redress Administration
RECA	United States Radiation Exposure Compensation Act of 1990
R&R	South African CRR's final reparations and rehabilitation policy
RUB	Russian Rubles
TCNs	ISAF Troop Contributing Nations
TFU	Netherlands Task Force Unit
TRC	South African Truth and Reconciliation Commission
UIR	South African Urgent Interim Reparations program
UNCC	United Nations Compensation Commission for Kuwait
UNCITRAL	United Nations Commission on International Trade Law
UNMIK	United Nations Interim Administration Mission in Kosovo
USD	United State Dollars
VCF	United States Victim Compensation Fund
VTCA	United States Victims of Terrorism Compensation Act
ZAR	South African Rand
9-11	Referring to terrorist attacks in the US on September 11, 2001

Executive Summary

How much is a life worth? While it is impossible to put a price on life, there is an important conversation to be had around the various levels of payment offered to victims of violence in response to their losses. This report maps various programs and their implementation in settings of armed conflict and in response to serious crimes and terrorist attacks. The report's aim is not to "set a price" on civilian losses, but rather to evaluate the consistency of current practice in providing monetary payments—both the amounts and the methodology used by the entity offering the payment.

The programs analyzed in this report vary widely due to economic variables (i.e. currencies, living standards, inflation), external variables such as the amount of funding available, and immeasurable factors such as the political importance placed on redress for victims. The analysis of rationales for programs, valuation methodologies, and allocated payments are based on open source information.

Great disparities exist among the various monetary payment programs in this report, including the categories of harm for which monetary payments have been made, the amount of payments, and the manner in which these amounts are determined. We attempt to explain and account for some of these disparities and inconsistencies in our analysis. The challenge of categorizing different kinds of loss make any evaluation of current practices, at times, a comparison of the incomparable. Perhaps such challenges are to be expected when assessing attempts to put a value on items that have no strictly set monetary value.

Rationale for Monetary Payments

As one might expect, the rationale for making monetary payments for civilian harm differs among various programs around the world. These variations stem from cultural, legal, and political concerns. Based on our research, we distinguished five general rationales that states, international organizations, and international courts utilize when providing monetary payments for harm.

Ethical Obligation

An ethical obligation is often coupled with other rationales. Examples of programs based on ethical obligation include those created in the aftermath of the Holocaust such as the Mass Claims Processes administered by the International Organization for Migration (IOM), the German Forced Labour Compensation Program (GFLCP), the Holocaust Victim Assets Program (HVAP), and the program established by the American-Japanese Civil Liberties Act of 1988.

Strategic Advantage

Providing monetary payments can engender goodwill among the civilian population in situations of armed conflict. An example of monetary payments offered for strategic reasons is that of International Security Assistance Forces (ISAF) troop-contributing nations (TCNs) in Afghanistan. In this context, TCNs provide varying levels of monetary payment for harm caused to civilians during lawful combat operations, though they have no legal obligation to do so.

Legal Obligation

A legal obligation to make monetary payments is evident in the 1991 UN Compensation Commission on Kuwait (UNCC), the Inter-American Court of Human Rights (IACHR) for enforced disappearances cases, and the 1981 Claims Settlement Declaration preceding the Iran-US Claims Tribunal. Programs created as part of peace agreements include the 1996-2003 Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) in Bosnia and Herzegovina and the 2000 Eritrea-Ethiopia Claims Commission (EECC).

Solidarity

Creating solidarity is often the premise for programs assisting victims of terrorism. For example, the Israeli monetary payment program for terrorism and war victims rests on the idea that spreading the costs of general risks—such as war and terrorism—among the general population is fundamentally fair. This was also one rationale (among many) in creating the US Victims Compensation Fund (VCF) created after the September 11 attacks. In armed conflict situations, the Afghan and Iraqi governments created programs to financially assist civilians suffering the loss of a loved one or who are injured themselves irrespective of who caused the harm.

Transitional Justice

Monetary payment programs for unlawful harm are often considered part of comprehensive transitional justice. This is primarily true in situations of violations of international humanitarian or human rights law that qualify victims for formal reparations. Essentially, reparations are aimed at undoing the effects of violations and makes monetary payments a central element in many cases. Newly established governments in Argentina, Hungary, and Chile prioritized monetary payment programs as a way to move the country forward. The South African government also took steps to provide monetary payments for victims of gross human rights violations. Transitional justice also played a role in the establishment of the International Criminal Court Trust Fund for Victims, with its goal to help conflict survivors rebuild their lives. Reparations with monetary payments are seen to enable civilians to claim their dignity and status as full members of society after unlawful harm.

Methods for Deciding Payments

The value placed on types of harm and the amounts awarded varies widely. A major challenge facing each program is the provision of a monetary amount that is fair to both the victim or the surviving family and to others in the same program. Several approaches to the design of monetary payment programs have been used, each with strengths and weaknesses.

Payment method based on a calculus of losses

The extent of injuries or damages suffered by the victim can be determined through a mathematical calculus. This is often considered “full compensation.” The Marshall Islands Nuclear Claims Tribunal, established in 1988, was designed on scientific and medical research into the effects of radiation on human beings. This approach is also used in the September 11 VCF with respect to loss of earnings, and in the UK Criminal Injuries Compensation Scheme and the Northern Ireland Criminal Injuries Compensation Scheme. The VCF uses a tailored calculation for each individual, based on the lifetime earning potential of each victim in conjunction with several other considerations. In that particular case, this calculus resulted in different monetary payments for each eligible claimant, with the wealthiest victims receiving the highest amounts.

Payment method based on budget considerations

When programs have fiscal constraints, the amount of each monetary payment is often based on the total budget divided by the number of victims eligible to file a claim. Claims are then divided into categories, with each category assigned a maximum total payout and each type of claim assigned a cap in the amount that can be offered. No attempt at assessing the value of the loss is made. The United Nations Compensation Commission for Kuwait (UNCC) in Kuwait used this method. The organization divided the claims filed into six categories based on the amount of the claim submitted by governments, or based on the nature of the event for which the claim was submitted. The original intention was to provide full compensation (meaning based on a calculus of loss), however the annual budget was not enough to meet this goal. The German Forced Labour Compensation Program—a program for Holocaust survivors—set maximum amounts to be paid out through an agreement between the US and German governments.¹

Payment method determined on case-by-case basis

Some monetary payment programs do not have a fixed budget, but rather divide claims into various categories in which harm can be recompensed. This is a case-by-case approach, where consistency of the payment amount is preserved by categorization of claimants with comparable injuries to ensure they receive similar awards. Based on the calculus for different types of harm, fixed amounts are set for each category, and each claimant in that category is awarded an amount based on how they compare with other claimants in their category (usually based on harm’s severity and permanence). A system like this was chosen by the United Kingdom and Northern Ireland with respect to personal injury, and was used in Russia under the Anti-Terrorism Act. This approach was also chosen in Israel for loss of income under the Victims Hostilities Act.

Payment method set arbitrarily

Token payments are by definition made as an expression of recognition for loss and not meant to provide full compensation. They may also be bound by budget constraints, but that is not the key factor in program design. These payments are often made ex-gratia (meaning “out of kindness”) in recognition of harm suffered as the result of lawful combat operations. For example, token payments are made by the US and other ISAF nations in their amends programs in Afghanistan. The US divides payments into distinct categories, with each category capped at a certain amount that may be paid. The valuation of amounts is determined on an ad hoc basis with no clear valuation calculus.

¹ 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 the Future,” U.S.-Ger., Jul. 17, 2000, 1 U.S.C. 113.

Variation of Payment Disbursement

Programs vary in the way payments are disbursed. Lump sum payments were used for terror victims in Russia under the Anti-Terrorism Act and the September 11 VCF in the US. Alternatively, a monthly or annual allowance or stipend was used in Israel under the Victims of Hostilities Act. According to our research, the manner of payment chosen depends on the category and nature of the damage, or the longevity of the need for monetary payments. For example, the Israeli monetary payment program uses both lump sums and prolonged payments depending on the nature of the injury. If a victim is less than 20% disabled, a lump sum will be awarded to a victim, while a regular pension is provided when a victim is more than 20% disabled. We generally found that payments for personal injury and property damage are often paid in a lump sum, while payments for loss of income are more frequently paid on a monthly basis. There are many exceptions to these observations, so no final conclusions can be offered.

Payments According to Injury

Death & Personal Injury

For death and personal injury claims, no consistency exists for the amount of monetary payment awarded. Differences may be the result of economic, cultural, and social considerations.

Inconsistencies were most evident in the way in which monetary payments are awarded for personal injury. Some monetary payment programs, such as the 1988 US Civil Liberties Act, the 1995 South African Reparations Process and the 1991/1992 Hungarian National Compensation Laws offer lump sum payments in cases of injuries or death. Other monetary payment programs, such as the Agent Orange Central Payments Program for the Vietnamese, the Israeli Victims of Hostilities Act, and the Argentinean Reparations Policy for Grave Human Rights Violations offer monthly pensions or benefits. Under the Reparations Pension in Chile such monthly payments are also awarded for life.

Economic Damage

Property

According to our research, most programs offer monetary payments based on the principle of full compensation in the case of property damage or loss. This may be because, unlike the loss of life or limb, this harm can be expressed as an objective monetary value. Amounts are based on the current market value of the property, which is then extended to include the amount of rent paid during the period the property could not be used. This was the case with the Marshall Islands Nuclear Claims Tribunal, the Housing and Property Claims Commission for Kosovo (HPCC), and the Hungarian Property Law. In the Israeli Property Damage Compensation Program, monetary payments are limited to the “real damage,” defined as the difference between the value of the asset before the damage occurred and the market value of the asset after the damage occurred. For instance, if a home was worth USD 200,000 before damage occurred, but valued at only USD 150,000 afterward, the victims would receive the difference between these two values, or USD 50,000. The United Nations Claims Commission in Kuwait based the monetary payments for property damage on the same premise (market value), but had a ceiling due to budget constraints.

Loss of Earnings

Several of our research examples provide payments for the loss of earnings. The actual amounts offered, the methodology used to compute the amounts, and the circumstances under which monetary payments are awarded differ from program to program. However, two main methods can be distinguished. The first is a “general approach” using fixed amounts, while the second is a more individual valuation approach. The individual approach seems to be more prevalent, basing amounts on statistical data, such as life expectancy, and also on the victim’s own individual circumstances, such as the victim’s earnings. This method was used by the Inter-American Court of Human Rights (IACHR) in the Pueblo Bello Massacre and Mapiripán Massacre cases in Columbia and by the September 11 VCF.

Immaterial Damage

Monetary payments awarded for immaterial damage (excluding personal injury, such as loss of life or limb) varies widely. Immaterial damage in this report includes non-physical and non-economic type of damage, such as grief, suffering, loss of enjoyment of life, and harm to reputation or dignity. For example, awarded amounts for immaterial damage under the September 11 VCF (a uniform amount of USD 250,000 for deceased victims) provide sharp contrast to the monetary payments provided for bereaved relatives under the UK and Northern Ireland Compensation Schemes (approximately USD 17,000 per claim). Other inconsistencies can be found in the IACHR’s Pueblo Bello Massacre and Mapiripán

Massacre cases involving the death of 92 civilians in Colombia. In the Mapiripán Massacre judgment of 2005, USD 80,000 was awarded for each victim, while in the Pueblo Bello Massacre judgment in 2006 was USD 30,000.

The September 11 VCF, the US Civil Liberties Act of 1988, the Eritrea-Ethiopia Claims Commission, and the Iraqi Compensation Program all provided fixed sums of monetary payments for immaterial damage, paying the same amount to all claimants within their respective programs. The rationale behind the VCF's uniform amounts for immaterial damage is worth mentioning: awarding identical amounts was deemed the most rational and fair approach, since it was impossible to conclude that one victim's family suffered more than another. In contrast, in the Hungarian Compensation Program, as well as in the German Forced Labour Compensation Program and the Holocaust Victim Assets Program, amount of payment for immaterial damage was determined on a case-by-case basis, depending on the severity of damages.

Introduction

This report was commissioned by the Center for Civilians in Conflict (hereafter the Center). The Center works to make warring parties more responsible to civilians before, during, and after armed conflict. The Center champions a new concept called “amends,” in which a warring party recognizes and assists civilians harmed by its own lawful combat operations.² The practice of amends may include acts of recognition, dignifying gestures, in-kind aid and/or monetary payments, all of which must be culturally appropriate.

Due to this work to garner help for civilian war victims, the Center frequently receives questions about monetary payments for losses. The most frequent one is: How much is a life worth? The Center’s response to these questions is that no amount of money can ever bring back a loved one. Still civilians deserve to be recognized and they often depend on monetary payments to begin rebuilding their lives. In many cultures around the world, recognition of this particular type is traditional or expected. The amount is never truly sufficient, but should reflect cultural norms, civilian expectations, and due diligence on the party offering the payment.

While it is impossible to put a price on life, there is an important conversation to be had around the various levels of payment offered to victims of violence in response to their losses. States, international institutions, and courts often find themselves in positions of determining the value of a particular loss. They should do so with eyes wide open, understanding the various methods used around the world for determining losses that are immeasurable and keeping at the forefront what victims needs and wants are.

This report maps various programs and their implementation in armed conflict and in response to terrorism and serious human rights violations. The programs assess the practices of amends, victims assistance, and reparations for grave human rights violations, and in response to serious crimes and terrorist attacks. The report’s aim is not to “set a price” on civilian losses, but rather to evaluate the consistency of current practice in providing monetary payments—both the amounts and the methodology used. We note that the programs analyzed in this report are not all amends; rather, they cover a wide range of efforts to help civilians suffering losses due to violence and/or armed conflict.

Scope and Methodology

Scope

The report examines monetary payments to civilians harmed in international and non-international or internal armed conflict settings, as a result of lawful combat operations, war crimes, human rights violations and terrorist attacks. Other forms of assistance such as reconstruction projects, or formal humanitarian aid, are not analyzed in this report.

The research sets forth descriptions of current or recent practice through the mapping of a selection of monetary payment programs and their characteristics. An overview of monetary payment programs or duties relating to civilian harm caused in situations of armed conflict can be found in Section 1 of this report. Monetary payment programs enacted in response to human rights violations are set out in Section 2; and, programs that address civilian harm as a result of terrorist attacks are discussed in Section 3.

A schematic view of the results of the mapping exercise can be found in the annex.

Terminology and Definitions

For the purpose of this report we will use:

1. The term “amends” defines programs which serve to provide individualized or community-based monetary payments for harm caused in the course of lawful combat operations, and which are offered by the warring party that caused the harm.
2. The term “victims assistance” discusses sums offered to victims by a state that was not directly involved in causing harm, but that has an interest in the well-being of the civilian (i.e. the victims are citizens of the state providing the assistance).

² The practice of amends does not disqualify victims from pursuing any applicable legal claims against a warring party for alleged violations of domestic or international law. Center for Civilians in Conflict, <http://civiliansinconflict.org/our-work/amends/> (last visited Dec. 10, 2012).

3. The term “reparation” means restitution, compensation, rehabilitation, satisfaction, or guarantees of non-repetition for wrongful acts, as provided for under international humanitarian and human rights law.³
4. Compensation is an overarching legal term, referring to a form of monetary payment for harm that cannot be covered by restitution in kind.⁴ In the landmark *Factory at Chorzow* case, the Permanent Court of International Justice formulated “the principles which should serve to determine the amount of compensation due for an act contrary to international law.”⁵ The Court defined just compensation as “payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it.”⁶ The term compensation should only be used in the context of a legal process that delivers payments to a party for various forms of loss or detriment, categorized in (i) personal injury, (ii) economic damage, and (iii) immaterial damage. In this report, compensation is only employed when the program itself uses the word, or when compensation pertains to a legal term, such as the principle of “full compensation.”

This study uses three categories of loss to define the primary reasons monetary payments are made across a spectrum of conflicts and causes:

- Personal injury encompasses claims made for physical harm, including loss of life and limb;
- Economic damages covers loss or damage to property, loss of earnings, including loss of earning potential, loss of profit, and loss of economic opportunities;
- Immaterial damage is a non-physical and non-economic type of damage, such as pain, grief, suffering, loss of enjoyment of life, and harm to reputation or dignity.

There is no consensus in international law for how these different harms should be categorized, with different views and practices accorded to each around the world. In the course of our research, we observed divergences in what was understood and covered by these terms and note them where appropriate.

Methodology

An analysis of the current practice of valuating and compensating civilian loss is a complex undertaking, made more so when attempting to draw conclusions on disparities or consistencies of such practice. In order to undertake the systematic comparative analysis herein, the Amsterdam International Law Clinic first needed to make some generalizations and categorizations.

The essential elements in each monetary payment program were identified as:

1. **Legal aspects**, meaning the program’s legal basis and the valuation methodology used; and,
2. **Practical**, concrete aspects of the program, meaning funding, actual amounts paid, and the significance designated to the loss.

Second, the analysis of each program was organized by:

³ Universal Declaration of Human Rights, art. 8 and 17, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); International Covenant on Civil and Political Rights, art. 2(3), 9(5) and 14(6), Dec. 16, 1966, 999 U.N.T.S. 171; Convention of the Rights of the Child, art. 39, Nov. 20, 1989, 1577 U.N.T.S. 3; Convention against Torture and Other Forms of Cruel and Inhuman and Degrading Treatment, art. 14, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; Convention for the Protection of Human Rights and Fundamental Freedoms, art. 5(5), 13 and 41, Nov. 4, 1950, 213 U.N.T.S. 221; American Convention on Human Rights, art. 25, 68 and 63(1), Nov. 21, 1969, O.A.S. T.S. No. 36; 1144 U.N.T.S. 143; African Charter of Human and Peoples’ Rights, art. 21(2), June 27, 1981, 1520 U.N.T.S. 217, 245. A general rule on reparation is laid down in the *Factory at Chorzów* case: “reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed,” *Factory at Chorzów* (Ger. v Pol.) 1928 P.C.I.J. (ser. A) No 13, at 47 (Sep. 13). This rule is reiterated in the Articles on Responsibility of States for Internationally Wrongful Acts, art. 31, A/RES/56/83 (2002/01/28). In 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 Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/146, the term “reparation” refers to a wide range of measures that can be taken in response to forms of loss or detriment.

⁴ *Factory at Chorzów*, *supra* note 3 at 47. Articles on Responsibility of States for Internationally Wrongful Acts, art. 36, A/RES/56/83 (2002/01/28). See also James Crawford, *The International Law Commission’s Articles on State Responsibility: Introduction, Text and Commentaries* 219 (2002).

⁵ *Id.*
⁶ *Id.*

- Establishment of the program, founded on e.g. a treaty, agreement or policy;
- Governing law;
- Eligible claimants;
- Types of harm recognized such as personal injury, economic damage, and immaterial damage;
- Amounts paid out; and
- Valuation methodology.

We examined monetary payment programs that were available from open sources such as the program's website, articles and books critiquing the programs, legal agreements, laws, judgments, and government documents. Information on the US programs in Afghanistan and Iraq were obtained directly from the US military by Center for Civilians in Conflict. In order to keep the project and report manageable, the number of issues was limited only to those most relevant for the purposes of valuation and methodology. Each examination of the program also contains brief background about the legal, historical, and geographical context.

Third, the amounts in original currency were included when available, however for some programs these amounts were not available. In these cases the amounts recorded in secondary sources were used. For ease of comparison, all local currencies were converted to USD on September 5, 2012, using the web tool xe.com.

In many instances, there is just too little information available concerning the amounts awarded, or how these amounts are decided. Programs that do provide information on how amounts are decided often do not explain why amounts are set at the level they are. In particular, there is a dearth of information regarding the manner in which any given valuation methodology is decided. It is unclear whether scarcity of information is due to the confidential nature of such data, or to the arbitrary nature of the decision-making process. What is clear is the need for further transparency about the various programs enacted to assist civilians harmed.

Section 1. Programs Related to Armed Conflict Setting

This section of the report covers monetary payment programs established during or in the aftermath of armed conflict. International armed conflict is understood as a conflict between the armed forces of two or more states.⁷ Non-international armed conflicts, according to Common Article 3 of the Geneva Conventions, are conflicts between government armed forces and organized armed non-state groups or between such groups within the territory of one state.⁸

1.1 Afghanistan: ISAF Troop Contributing Nations Programs

Neither the North Atlantic Treaty Organization (NATO) nor the International Security Assistance Force (ISAF) as an entity provides monetary payments to victims of the armed conflict in Afghanistan. However, several ISAF Troop Contributing Nations (TCNs) have offered payments in Afghanistan for damage to civilian property or civilian injury or death in relation to combat operations.⁹ As TCNs have no legal obligation to provide monetary payment for damages caused by lawful conduct these payments are awarded ex gratia.

While some TCNs provide monetary payments to Afghan civilians for harm caused by their military operations, the valuation methods and amounts awarded vary significantly from nation to nation. This section focuses on the monetary payment programs of five major TCNs, including the United Kingdom, Canada, the Netherlands, Australia, and Poland. The monetary payment program of the United States in Iraq and Afghanistan is described in a separate section.

- United Kingdom: **The Common Law Claims & Policy Division of the Ministry of Defence of the UK (CLC&P)** bears responsibility for processing common-law, non-contractual monetary claims against, and on behalf of, the Ministry of Defence (MOD). These claims include those relating to service in Iraq and Afghanistan in which “it is open to MOD to plead a combat immunity defense where injury was sustained engaging the enemy in the course of hostilities.”¹⁰ Public liability claims, including personal injury, and property damage also fall within this division.¹¹
- Canada: **Local Operational Coordination Center Districts (OCC-Ds)** are responsible for receiving and filing claims from Afghan civilians.¹²
- The Netherlands: **The Netherlands Claims Division and the Legal Advisor for Operations (LEGAD DOPS)** regulates claims of the Dutch government relating to service in Afghanistan. These claims include personal injury and property damage claims, and are paid out based on extensive financial guidelines.¹³
- Australia: **The Tactical Payment Scheme of Australia** provides “honor” or “acts of grace” payments for conflict-related damage caused by Australian military forces.¹⁴
- Poland: **The Claims Commission of Poland** (Commission) provides ex gratia payments for harm caused by Polish military forces to civilians.¹⁵ The Commission regulates

⁷ 1949 Geneva Convention III Relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 2, 75 U.N.T.S. 135; 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in a Time of War, Aug. 12, 1949, art. 2, 75 U.N.T.S. 287. Common art. 2: “all cases of declared war or of any armed conflict that may arise between two or more high contracting parties, even if the state of war is not recognized, the convention shall also apply to all cases of partial or total occupation of the territory of a high contracting party even if the said occupation meets with no armed resistance.”

⁸ *Id.* Common art. 3.

⁹ Press Release, Spokesman NATO James Appathurai, Weekly press briefing (Jan. 28, 2009),

<http://www.nato.int/docu/speech/2009/s090128a.html>. Based on the Status of Forces Agreement between ISAF and Afghanistan, ISAF is not formally liable for damage in relation to the mission it is performing in Afghanistan.

¹⁰ *Common Law Claims & Policy Division*, Ministry of Defence, <https://www.gov.uk/common-law-claims-policy-division> (last visited Oct. 2, 2012).

¹¹ *Id.*

¹² Center for Civilians in Conflict, *Addressing Civilian Harm in Afghanistan: Policies & Practices of International Forces 10* (2010)

[hereinafter *Afghanistan Report*], available at <http://civiliansinconflict.org/resources/pub/addressing-civilian-harm-in-afghanistan>.

¹³ Task Force Uruzgan, *Financial Guidelines on Ex-Gratia Payments TFU* (cited in *Afghanistan Report*, *supra* note 12)

¹⁴ *Id.* at 12. No data are available on the exact amounts for personal injury or property damage.

¹⁵ Interview with MAJ Monika Janikowska, Polish Legal Advisor, Taskforce White Eagle, Ghazni, March 8, 2010, email (cited in *Afghanistan report*, *supra* note 12, at 12).

monetary payment claims within the Polish military contingent and also determines the amounts that should be awarded.¹⁶

A. Amounts:

- The United Kingdom implements standard monetary payment schemes for different types of harm. A total amount of more than USD 1.2 million has been paid by the MOD since 2007. Of this amount, less than USD 1 million was paid for property damage, USD 100,000 for personal injuries, and USD 150,000 for deaths.¹⁷
 - The amount paid in cases of death varies from USD 210 to USD 7,000.
 - UK Area Claims Officers (ACOs) are authorized to issue payments of up to USD 115,000 for cases of injury or property damage. However, records indicate payments are much lower than this limit, and usually range from USD 25 to USD 14,500, with most payments between several hundred to several thousand US dollars.¹⁸
- Canada: The Canadian government has not established standardized monetary payment amounts, but there are limits on the amount field officers are authorized to provide. Canadian forces rely on local monetary values to estimate appropriate amounts on a case-by-case basis. The Canadian Legal Adviser in Kandahar may only approve payments up to USD 1,960. Ottawa must approve any amount exceeding this upper limit.¹⁹ The complete ranges and upper limits of monetary payment amounts are not public.
- The Netherlands has extensive financial guidelines for ex gratia payments for property damage. From 2006 to 2009, the Dutch government provided a total amount of USD 475,000 in ex gratia payments to Afghan victims.²⁰
 - Within the established system, property damage claims up to USD 500 can be settled in the field. Claims that exceed this limit need the authorization of the Dutch Task Force Uruzgan Legal Advisor who acts as the claims officer and can approve payments of up to USD 1,500. For claims exceeding USD 1,500, the Task Force Unit (TFU) Commander's authorization is required.²¹
 - Personal injury and death claims are settled on a case-by-case basis.²²
- Australia:
 - From 2001 to 2009 Australia compensated a total amount of USD 120,000 to Afghan victims for incidents involving death and personal injury.²³ Since 2009 Australia passed legislation for a Tactical Payment Scheme, in which field commanders are authorized to distribute payments of up to USD 250,000 per case.²⁴
- Poland applies a system in which troops negotiate with affected families of harmed civilians. Troops may issue payments of up to USD 2,500 for death, injury or property loss mirroring the US limit.²⁵ (The US program in Afghanistan is discussed below).

B. Valuation Methodology:

¹⁶ Afghanistan Report, *supra* note 12, at 12.

¹⁷ MOD Claims Database; Interview with Ben Wilkinson; Helen Pidd, *MOD Pays Out for Afghan Deaths*, The Guardian, July 2, 2009, <http://www.guardian.co.uk/politics/2009/jul/02/mod-afghan-compensation-british-army> (last visited Oct. 2, 2012), as cited in Afghanistan Report, *supra* note 12, at 9.

¹⁸ Afghanistan Report, *supra* note 12.

¹⁹ *Id.*

²⁰ Letter of the Dutch Ministry of Defence considering request on request for information under the Freedom of Information Act, Dec 18 2009, BS/2009021174. P. 1. The letter also states that a list of all awarded payments was made available to the requester.

²¹ Afghanistan Report, *supra* note 12.

²² *Id.* at 10.

²³ ABC News, *Defence Pays 120k Compensation to Afghan Civilians*, May 29, 2009, <http://www.abc.net.au/news/stories/2009/05/29/2583880.htm> (last visited Oct. 2, 2012), as cited in Afghanistan Report, *supra* note 12, at 12. There is no more information available on Australian compensation.

²⁴ Emily Bourke, *Troops Speed Up 'Acts of Grace' Payments to Afghan Civilians*, The World Today (July 2, 2009), <http://www.abc.net.au/worldtoday/content/2009/s2614822.htm>; Cynthia Banham, *Troops Give Cash to Afghan Victims*, Sydney Morning Herald (July 2, 2009), <http://www.smh.com.au/national/troops-give-cash-to-afghan-victims-20090701-d593.html>.

²⁵ Afghanistan Report, *supra* note 12, at 12.

- United Kingdom: Under the UK system, Area Claims Officers (ACOs) are authorized to distribute awards of up to USD 115,000 for personal injury or property damage. Amounts that exceed this limit are subject to higher authorization from CLC&P Headquarters.²⁶
 - The Ministry of Defence offers monetary payment only when it is “legally liable” under UK law for damage or harm caused to civilians, i.e., when harm is caused as a result of negligent or wrongful actions. However, the UK also provides monetary payment even when it is uncertain whether its troops caused the harm or acted negligently.²⁷
 - For several years the MOD has released a list and outcome of claims filed as well as a list of all monetary payments made. The UK MOD paid out GBP 1.3million (USD 1.97million), GBP 510,728 (USD 775,000) and GBP 537,684 (USD 815,000) in 2010, 2011 and 2012 (up to November) respectively. In 2012 they paid between USD 10 and USD 31,101 and in 2011 between USD 23 and USD 24,720 for damage to property, personal injury or death.²⁸
- Canada provides ex gratia payments for civilian property loss, injury or death caused by Canadian forces. Once civilians have filed their claim at the local Operational Coordination Center District (OCC-D), legal advisers will determine whether and how payment is made. In order for a claim to be successful, there must be evidence that Canadian forces were responsible for the damage or harm. The legal advisers depend on documents attesting to ownership signed by local elders, and supporting evidence from patrol reports and military records.²⁹
- The Netherlands provides ex gratia payments only as monetary payment for material damage, such as damage to vehicles. Also, where appropriate, an amount will be provided for loss of life. According to the Dutch government, this system of payment cannot be characterized as compensation because under the Dutch system, a human life cannot be financially valued. Moreover monetary payment is meant to provide for the livelihoods of the surviving relatives.³⁰ Most monetary payments are awarded in the field. In the case of an Afghan citizen who has suffered damage that did not occur due to the actions of ISAF or Dutch troops, monetary payments can be considered on the basis of sympathy for the family in order to build and improve the relationship between civilians and Dutch forces.³¹
- Australia: Under the Australian system, there is very little transparency regarding the valuation methodology for payments to civilians for harm caused by Australian forces. The Australian Ministry of Defence states that it does not make public the details of individual payments, or the methodology with which such sums are decided, due to operational sensitivity and privacy requirements, and also because disclosure could be dangerous to the safety of the participants.³²
- Poland consults other nations, especially US claims officers, in order to determine the amount of monetary payment awarded to civilians. In cases of property damage, Poland also bases its determination on damage estimates obtained by local community leaders.³³

1.2 Afghanistan/Iraq: United States Solatia & Condolence Programs

Offering monetary payments to foreign civilians harmed by US military operations is a long established practice. Many among the military leadership are beginning to understand that providing fair, just, and equitable monetary payments builds the good will of the local population and helps the military achieve its objectives in a timely manner.

Since the Korean War (1950-1953), the US has maintained the ability to pay for damages suffered by the civilian population, if deemed customary in the region. These payments are called “solatia” and are given

²⁶ *Id.* at 8.

²⁷ *Id.*

²⁸ Ben Quinn, *MoD Compensation Log Illustrates Human Cost of Afghan War*, The Guardian (Jan, 1, 2013), <http://www.guardian.co.uk/world/2013/jan/01/mod-compensation-log-afghan-war>.

²⁹ *Id.* at 11.

³⁰ Letter of the Dutch Ministry of Defence, *supra* note 20.

³¹ *Id.* at 2.

³² Department of Defence, Senate Estimates Brief: Civilian Casualties, Feb 4, 2012 (2012), *available at* http://www.defence.gov.au/foi/docs/disclosures/196_1112_Document.pdf.

³³ Afghanistan Report, *supra* note 12, at 12.

to a family as an expression of sympathy for the harm they suffered. A single paragraph in each service branch's claims regulation defines solatia. Army regulation 27-20, Paragraph 10-10, provides the authority for the use of solatia payments by the Army:

Payment of solatia in accordance with local custom as an expression of sympathy toward a victim or his or her family is common in some overseas commands. Such payments are not to be made from the Claims Expenditure Allowance. These payments are made from local operation and maintenance funds pursuant to directives established by the appropriate commander for the country concerned. This applies even where a command claims service is directed to administer the command's solatia program.³⁴

Each time the US goes to war, a decision is made as to whether solatia or condolences are customary or appropriate. At the beginning of both the Afghan and Iraq wars, US Central Command (CENTCOM) declined to authorize the payments, leaving no claims system for civilians suffering losses due to US combat operations.³⁵

In September 2003, the highest level of Command in Iraq (Combined Joint Task Force-7 or CJTF-7) authorized what it called "solatia-like" payments. To date, this remains the only authorization for condolence payments in Iraq.³⁶

In November 2005, condolence payments³⁷ were approved for use in Afghanistan. Condolences are ex gratia payments and are considered a gesture of sympathy only, which are intended to ease civilian suffering, and are in no way meant as formal reparation, legal compensation, or an admission of fault or negligence.³⁸

The main substantive difference between solatia and condolence payments is that solatia payments are funded by a unit's Operations and Maintenance (O&M) fund, while condolence payments come from the Commanders Emergency Response Program (CERP) fund.³⁹

CERP was established to help win the trust of the local people and promote civil infrastructures in Iraq and Afghanistan.⁴⁰ The program's objective is: "to enable commanders to respond to urgent humanitarian relief and reconstruction requirements within their area of responsibility by carrying out programs that will immediately assist the indigenous population."⁴¹ Funds are provided in order to assist the Iraqi and Afghan people in 19 representative areas.⁴² For the purpose of this report, the areas of particular interest are:

- Immaterial damage payments; included but not limited to healthcare, education or governance projects.
- Personal injury; meaning condolence payments to individual civilians for the death or physical injury caused by US coalition or supporting military operations that are not compensable under the Foreign Claims Act (FCA).⁴³ Condolence payments may include payments made to the surviving spouse or children of defense personnel, or of Afghan or Iraqi police personnel who are killed as a result of US coalition or supporting military operations (sometimes referred to as "martyr" payments). Condolence payments are carried out according to the CERP Standard Operating Procedure. This also means repair for damaged property including homes and businesses that is not compensable under the Foreign Claims Act.⁴⁴

³⁴ US Dep't of Army, Reg. 27-20, Claims, Jul. 1, 2003, ¶ 10-10.

³⁵ Center for Civilians in Conflict, Background: US "Condolence" Payments (2011), available at <http://civiliansinconflict.org/resources/pub/background-us-condolence-payments>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Jonathan Tracy, Carr Center for Human Rights Policy and the Campaign for Innocent Victims in Conflict, Compensating Civilian Casualties: "I am Sorry For Your Loss, and I Wish you Well in a Free Iraq", available at <http://www.hks.harvard.edu/cchrp/Tracy%20Report%20Nov%203%202008.pdf>.

⁴⁰ S. Mains, Center for Army Lessons Learned, Handbook Commander's Emergency Response Program (2008) [hereinafter Handbook].

⁴¹ Department of Defense Financial Management Regulation, DOD 7000.14-R, Volume 12, Chapter 27 Commander's Emergency Response Program (CERP) 27-3 (2005), available at http://comptroller.defense.gov/fmr/archive/12arch/12_27.pdf.

⁴² Under Secretary of Defense, Memorandum, Commander's Emergency Response Program (CERP) Guidance May 9 2007 (2007), available at <http://dod-executiveagent.osd.mil/agentListView.aspx?ID=100>.

⁴³ Foreign Claims Act, 10 U.S.C. § 2734-2736 (1982). This is a federal act that provides compensation to citizens of foreign countries for personal injury, death or property damage or loss caused by noncombat activities of the US overseas.

⁴⁴ CERP Guidance, *supra* note 42.

A. Amounts:

- Solatia Payments: Cases of death in Afghanistan have a cap of USD 2,000 for solatia payments, while payments for serious injury amount to USD 400. Non-serious injury is capped at USD 200.⁴⁵ Serious property damage does not have a defined monetary amount under the solatia program. Non-serious property damage is capped at USD 200.⁴⁶
- Condolence/Battle Damage payments: In Afghanistan, condolence/battle damage payments have a cap of USD 2,500. For serious harm or death, battle damage payments amount to USD 1,600. For non-serious injury, payments are capped at USD 600.⁴⁷ Condolence payments for serious property damage have a cap of USD 2,200. Non-serious property damage is capped at USD 200.⁴⁸
- Through conversations with the Center for Law and Military Operation (CLAMO) within the US Army JAG Corps, the Center has found that payments may be authorized up to USD 10,000 if approved by a higher command. There is, however, little evidence that many successful claims surpass USD 2,500.

B. Valuation Methodology:

- US forces may offer payment when they cause death, injury, or individual or community property loss as a result of regular combat operations in armed conflict, i.e., when such harm is not incurred by negligent or wrongful acts.⁴⁹ Monetary payments may also be provided in cases where it is unclear which party caused the harm.⁵⁰ Monetary payments can be divided into three main categories:
 - Solatia: Drawn from units' Operations and Maintenance funds.
 - Condolence payments: Drawn from the CERP.
 - Condolence payments are usually paid at the brigade level. While the condolence payment program does not require an adjudicative process, generally, judge advocates play a role by making official recommendations to the brigade commander and providing legal reviews for all expenditures made under this program.⁵¹
 - Battle damage payments: Also drawn from CERP.⁵²

1.3 Afghanistan: Code 99 Fund and MoLSAMD Funds for Martyrs and Disabled

The Afghan government has three programs that provide monetary payments to civilians suffering conflict-related harm. Since 2004, the Afghan president's office coordinates the Code 99 Fund which issues one-time payment on a discretionary basis to civilians harmed during the war irrespective who is responsible for the harm. Since the 1990s the Afghan Ministry of Labor, Social Affairs, and Disabled (MoLSAMD) has managed two funds that offer monthly financial support to affected victims.⁵³

Code 99 Fund

Based on interviews with government officials, it is estimated that 5-10 million USD have been allocated within the Code 99 fund for conflict-related losses.

⁴⁵ Afghanistan Report, *supra* note 12, at 5. No more substantive information is available.

⁴⁶ *Id.*

⁴⁷ *Id.* No more substantive information is available.

⁴⁸ *Id.*

⁴⁹ In cases of civilian harm caused by negligent or wrongful acts by US military forces, the Foreign Claims Act is used.

⁵⁰ Afghanistan Report, *supra* note 12, at 5.

⁵¹ Tracy, *supra* note 39.

⁵² Afghanistan Report, *supra* note 12, at 5.

⁵³ Center for Civilians in Conflict, *Caring for Their Own: A Stronger Response to Civilian Harm*, January 2013.

A. Amounts:

- Group A: Families of civilians killed as a result of the conflict are eligible to receive AFN 100,000 (USD 2,000) per person killed.⁵⁴
- Group B: Civilians suffering war-related injuries receive AFN 50,000 (USD 1,000).
- Group C: In some cases, the government may send a family member to Mecca to perform Haj and/or grant the affected family a plot of land or provide cattle.⁵⁵

B. Valuation Methodology:

- Under the Code 99 fund, civilians harmed by any warring party are eligible for a single monetary payments. These funds are provided to Afghans to help them cope with the financial consequences for the loss of breadwinners, pay for medical bills, or cover funeral costs. According to government officials, these payments are also an expression of sympathy to victims.⁵⁶ More information on valuation methodology was not available.

MoLSAMD

The MoLSAMD manages two funds that are structured similar disability benefits program and provides long-term monthly financial assistance to families of martyrs and civilians injured during the conflict. Civilians harmed by any warring party or their dependents are eligible for assistance from MoLSAMD.

A. Amounts for MoLSAMD

- Groups A: Dependents of martyrs receive AFN 1,500 per month (USD 30) for a total of AFN 18,000 (USD 350) per year. Families with another male over the age of 18 will not receive any assistance and a percentage of the monetary assistance is deducted for each make child that turns 18 and when girls are married.⁵⁷
- Group B: Civilians suffering serious conflict-related disabilities or injuries receive between AFN 1,500 (USD 30) per month. Civilians suffering less grave injuries receive AFN 750 (USD 15) per month.⁵⁸

1.4 Bosnia and Herzegovina: Commission for Real Property Claims of Displaced Persons and Refugees

The mandate of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), which finds its legal basis in the 1996 Dayton Peace Agreement, was to identify and return real property to claimants who had been forced to sell or abandon their homes during the 1992-1995 war in Bosnia and Herzegovina.⁵⁹

In principle, refugees, displaced persons, and other natural persons with legal interest in the property held the right to claim return of their property, compensation for property that could not be returned, or they could keep both possibilities open.⁶⁰ During its operation from 1996 to 2003, the CRPC dealt with approximately 300,000 claims in which it rendered final and binding decisions establishing property rights. It did not make use of its mandate to award monetary payments to claimants who could not or decided not to return to their homes.⁶¹ Based on Article

⁵⁴ *Id.* 21.

⁵⁵ *Id.*

⁵⁶ *Id.* at 21-25.

⁵⁷ *Id.* at 25-26

⁵⁸ *Id.*

⁵⁹ General Framework Agreement for Peace in Bosnia and Herzegovina, Paris Dec. 14 1995, Bosn. & Herz.–Croat.-Yugo., 35 ILM 75 (1996) [hereinafter Dayton Peace Agreement], Annex 7 art. I ¶ 1.

⁶⁰ *Id.* XI, XII ¶ 2 and 5. Commission for Real Property Claims of Displaced Persons and Refugees, Book of Regulations on the Conditions and Decision Making Procedure for Claims for Return of Real Property of Displaced Persons and Refugees (Consolidated version, Oct. 8 2002), art. 10 (2002) [hereinafter Book of Regulations].

⁶¹ Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) End of Mandate Report (1996-2003), Annex B-Annex 7 [hereinafter End of Mandate Report].

XV of Annex 7 to the Dayton Peace Agreement, the CRPC adopted a Book of Regulations, containing procedural rules and guidelines for the claims and decision process.⁶²

A. Amounts:

- Due to a lack of funds for monetary payments, the CRPC did not award any monetary payments to claimants whose pre-war property could not be restored to them.⁶³ The monetary payment program that was to be established in the Central Bank of Bosnia and Herzegovina, which was governed by the CRPC for this purpose, also failed due to lack of necessary funding by the parties to Annex 7 of Dayton Peace Agreement and international donors.⁶⁴

B. Valuation Methodology:

- In practice, the decisions of the CRPC served as confirmation of the claimants' pre-war property rights, and authorized them to return into possession of their property.⁶⁵
- Under the Dayton Peace Agreement, the CRPC was instructed to establish fixed rates that could be used to determine the value of all claimed real property in Bosnia and Herzegovina, based on property assessments or surveys initiated prior to 1 April 1992.⁶⁶ However, the CRPC never arrived at a valuation of the property.⁶⁷

1.5 Eritrea/Ethiopia: Eritrea-Ethiopia Claims Commission

The Eritrea-Ethiopia Claims Commission (the Commission) was an arbitral body administered under the auspices of the Permanent Court of Arbitration in The Hague, which was established in 2000 by an Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia (EE Agreement).⁶⁸ The Commission decided through binding arbitration the claims for loss of life, damage, or injury during the 1998-2000 war between Eritrea and Ethiopia.⁶⁹ Eligible claimants before the Commission were the governments party to the EE Agreement, acting either on behalf of themselves, on behalf of their natural or judicial nationals, or on behalf of non-nationals of Eritrean or Ethiopian origin.⁷⁰ The Commission rendered its Final Awards on Damages on August 17, 2009.

The Commission adopted its Rules of Procedure in 2001⁷¹ and made a distinction between two types of claims procedures available to the government parties in order to prevent the possibility of double recovery:⁷²

- Individual Consideration of Claims: Government parties could file claims on behalf of themselves, private individuals or eligible non-nationals to be individually arbitrated.⁷³
- Mass Claims Procedures: Government parties could also file a single claim on behalf of a large group of individuals or households, for whom the Commission authorized a system of fixed-amount remedies in different claims categories.⁷⁴ Cumulative filing of claims in more than one of the following categories was allowed for the government parties acting on behalf of a claimant.⁷⁵

⁶² Book of Regulations, *supra* note 60.

⁶³ End of Mandate Report, *supra* note 55.

⁶⁴ Parties to Annex 7 are the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska.

⁶⁵ H Holtzmann & E Kristjánssdóttir, International Mass Claims Processes: Legal and Practical Perspectives 76 (2007).

⁶⁶ Dayton Peace Agreement, *supra* note 59, Annex 7, Article XII, ¶ 4.

⁶⁷ Holtzmann & Kristjánssdóttir, *supra* note 65, at 75.

⁶⁸ Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea, Dec. 12 2000, 2138 U.N.T.S. 94 [hereinafter EE Agreement].

⁶⁹ *Id.* art. 5 ¶ 1; Holtzmann & Kristjánssdóttir, *supra* note 65, at 33.

⁷⁰ *Id.* art. 5 ¶ 8 & 9.

⁷¹ Eritrea – Ethiopia Claims Commission, Rules of Procedure [hereinafter EECC Rules of Procedure], available at <http://www.pca-cpa.org>.

⁷² Holtzmann & Kristjánssdóttir, *supra* note 65, at 68.

⁷³ EECC Rules of Procedure, *supra* note 71, art. 23.

⁷⁴ EECC Decision Number 2: Claims Categories, Forms and Procedures (Jul. 24, 2001), <http://www.pca-cpa.org>.

⁷⁵ EECC Decision Number 5: Multiple Claims in the Mass Claims Process, Fixed-Sum monetary payments at the at the USD500 and USD1500 Levels, Multiplier for Household Claims (Aug. 29, 2001), <http://www.pca-cpa.org>.

- o Category 1 - Claims of natural persons for unlawful expulsion from the country of their residence;
- o Category 2 - Claims of natural persons for unlawful displacement from their residence;
- o Category 3 - Claims of prisoners of war for injuries suffered from unlawful treatment;
- o Category 4 - Claims of civilians for unlawful detention and for injuries suffered from unlawful treatment during detention;
- o Category 5 - Claims of persons for loss, damage or injury other than those covered by the other categories;
- o Category 6 - Claims of governments for loss, damage or injury.⁷⁶

A. Amounts:

- Neither the Committee's constituting EE Agreement, nor its Rules of Procedure provide specific amounts for individual monetary payments.⁷⁷ The Commission itself determined the amounts, and in the early stage, the Commission issued several decisions to simplify mass claims collection and processing.⁷⁸
- The amounts awarded by the Commission pursuant to several decisions were set at the fixed sums of USD 500 and USD 1,500 per individual for each of the five categories in the Mass Claims Procedures.⁷⁹ The Commission also awarded claims presented on behalf of individual claimants for unlawful deprivation of property, ranging from USD 21,250 to USD 1.5 million.⁸⁰
- In total, the Commission awarded around USD 161 million to the government of Eritrea and approximately USD 2 million to individual Eritreans.⁸¹ The government of Ethiopia was awarded roughly USD 174 million by the Commission.⁸²

B. Valuation Methodology:

- There is no maximum amount to be awarded individually by the Commission, nor is there a maximum aggregate amount to be paid pursuant to the EECC Claims Process.⁸³
- The first five decisions established the liability of both countries and defined matters such as the scope of its jurisdiction, core issues in the claims categories and remedies, with the intention of establishing precedents that could be applied to cases in similar categories thereby constituting a mass claims processing method.
- In Decision Number 2, the Commission established two possible levels of fixed-sum monetary payments, depending on the type of evidence available to individual claimants in a Mass Claims Procedure.⁸⁴
- In Decision Number 5, the Commission set the sums for the two levels, taking into account the government parties' ability to file multiple claims on behalf of an individual in the Mass Claims Procedure, and the capacity of both countries in the light of their circumstances.⁸⁵
 - o USD 500 is given per individual in the case of simple evidence that proves the claimant belongs to one of the claims categories entitled to receive monetary payments under the Commission's rulings.

⁷⁶ EECC Rules of Procedure, *supra* note 71, art. 30 ¶ 1; EECC Decision Number 2, *supra* note 74.

⁷⁷ Holtzmann & Kristjánsdóttir, *supra* note 65, at 81.

⁷⁸ In total eight Decisions were taken by the Commission. Five Decisions (2001-2005) dealt with procedural issues, while three Decisions taken in 2007 dealt with cases related matters. The decisions are available at <http://www.pca-cpa.org> (last accessed Oct. 2, 2012).

⁷⁹ EECC Decision Number 5, *supra* note 75, at part B.

⁸⁰ Final Award: Eritrea's Damages Claims (Erit.-Eth.) ¶ IX (Aug. 17, 2009), <http://www.pca-cpa.org>.

⁸¹ *Id.*

⁸² *Id.* at ¶ XII.

⁸³ Holtzmann & Kristjánsdóttir, *supra* note 65, at 80.

⁸⁴ EECC Decision Number 2, *supra* note 74, at part B.

⁸⁵ EECC Decision Number 5, *supra* note 75, at part B.

- USD 1,500 is given to each individual who is able to present additional evidence sufficient (in the circumstances) to prove damages or injury of a higher amount.
- Also in Decision Number 5, the Commission established a framework for the collection of household claims, and decided that the amount of monetary payments for household claims under the first two claim categories (unlawful expulsion or unlawful displacement) should be three times the amount awarded to individual claimants.⁸⁶ The Commission did not allow for cumulative filing of household expulsion claims and individual expulsion claims for members of the same household.⁸⁷ The working definition of a household was: “a mother and/or father, their children under the age of eighteen and other individuals under the age of eighteen who reside with them and are considered their dependents.”⁸⁸

1.6 Germany/Switzerland/US: Holocaust Victim Assets Program (Swiss Banks Claims)

The Holocaust Victim Assets Program (HVAP) was established as a result of many lawsuits submitted in US courts in 1996/1997 against certain Swiss banks and other Swiss entities concerning World War II. These lawsuits alleged that the banks collaborated with and aided the Nazi Regime by retaining and concealing assets of Holocaust Victims, as well as by accepting illegally obtained Nazi loot and profits of slave labor.⁸⁹ International Organization for Migration (IOM) was appointed to administer the claims by non-Jewish members for which the HVAP was set up. Final payments were made in 2006.

The purpose of the HVAP was to settle claims of the victims, mainly in the form of monetary payments for forced and slave labor, but also for certain types of property loss. The constituting instruments of HVAP were the Settlement Agreement and the Plan of Allocation and Distribution in the Holocaust Victim Assets Litigation.⁹⁰

The Settlement Agreement contained two categories of claimants who were eligible for monetary payments: “victims or targets of Nazi persecution, consisting of 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”; and “any individual who performed slave labor for a Swiss entity”.⁹¹ Furthermore, the Settlement Agreement created five classes of claims: Deposited Assets Class, Looted Assets Class, Slave Labor Class I, Slave Labor Class II and Refugee Class. The Deposited Assets Class included claims to deposited assets in Swiss banks and was referred to the Claims Resolution Tribunal for Dormant Accounts in Switzerland by Judge Edward Korman of the United States District Court for the Eastern District of New York.⁹² The Looted Assets Class involved a Distribution Plan, consisting of a *cy pres* (“as near as”) remedy for “needy” class members.⁹³

Humanitarian aid programs providing food, medicine, shelter and similar assistance were and still are being administrated by the American Jewish Joint Distribution Committee and the Conference on Jewish Material Claims Against Germany, and by the IOM for Roma, Jehovah’s Witness, homosexual, and disabled “needy” Nazi victims.

Non-Jewish claims of the other three classes were also administered by the IOM under the HVAP. Slave Labor Class I included victims or targets of Nazi persecution forced to perform slave labor for entities

⁸⁶ *Id.* at part C.

⁸⁷ *Id.*

⁸⁸ EECC non-published internal guidelines, Holtzmann & Kristjánsdóttir, *supra* note 65, at 70.

⁸⁹ Overview, Holocaust Victim Assets Litigation (Swiss Banks) <http://www.swissbankclaims.com/Overview.aspx> (last visited Oct. 2, 2012).

⁹⁰ The two other organizations involved in the implementation of the Settlement Agreement are the Conference on Jewish Material Claims Against Germany (referred to in some contexts as the “Jewish Claims Conference” (JCC) and by the Court as the “Claims Conference”) responsible for slave labor and refugee claims submitted by Jewish claimants, and the Claims Resolution Tribunal (CRT-II), responsible for processing claims of owners of deposited bank assets.

⁹¹ Class Action Settlement Agreement 26 January 1999, Holocaust Victim Assets Litigation (Swiss Banks) http://www.swissbankclaims.com/Documents/Doc_9_Settlement.pdf (last accessed Oct. 2, 2012). Slave Labor Class II encompasses any individual, corporation, organization or other entity, thus regardless whether they were targets of Nazi persecution as defined by the Settlement Agreement. See also Holtzmann & Kristjánsdóttir, *supra* note 65, at 67.

⁹² See for an extensive overview: Deposited Assets Class, Holocaust Victim Assets Litigation (Swiss Banks) <http://www.swissbankclaims.com/DepositedAssets.aspx> (last accessed Oct. 2, 2012).

⁹³ *Cy pres* “as near as” is an equitable doctrine that written instruments should be construed as closely to the parties’ intention as possible. The Special Master assigned by Judge Korman concluded: “Therefore, the Special Master has had to make a decision for the ‘Looted Assets Class’ that recognizes the unprecedented scope of the Nazi theft, and the virtual impossibility of recreating or even symbolically compensating the material losses suffered by the Jewish, Roma, Jehovah’s Witness, homosexual and disabled communities plundered across wartime Europe” in Special Master’s Proposed Plan of Allocation and Distribution Holocaust Victim Assets Litigation (Swiss Banks), Sept. 11 2000, R&O-667236.1 G – 57-58 [hereinafter Special Master’s Proposal].

under Nazi control. Eligible claimants under the Slave Labor Class II comprised any individual who performed slave labor for Swiss companies or their subsidiaries (in Germany or elsewhere).⁹⁴ The Refugee Class included refugees who were either denied entry into Switzerland, or⁹⁵ who were granted entry and later detained and mistreated as refugees in Switzerland during the war.

A. Amounts:

- The remedy available under the HVAP is monetary payment.⁹⁶ A maximum amount of individual monetary payment for each category of claims is established in the Plan of Allocation and Distribution, also known as the Holocaust Assets Litigation. The plan addresses the different categories of claimants.
 - Slave Labor I claimants received equal payments of up to USD 1,450 and no less than USD 500 per claimant (increased from the original amount of USD 1,000).⁹⁷
 - Slave Labor II Claimants received monetary payments up to USD 1,450 and no less than USD 500 per claimant (increased from the original amount USD 1,000).⁹⁸
 - Refugee Claimants received equal payments of up to USD 3,625 but no less than USD 1,250 per claimant (increased from the original amount of USD 2,500).⁹⁹
 - Those who were admitted into Switzerland as refugees, but were detained, mistreated or abused there received equal payments of up to USD 725 but no less than USD 250 per claimant (increased from the original amount of USD 500).¹⁰⁰

B. Valuation Methodology:

- The guidelines for the valuation methodology of the HVAP Claims Process are provided in the Plan of Allocation and Distribution in the class action suit, known as the Holocaust Victim Assets Litigation.¹⁰¹
- The Plan contains provisions on: “who may be claimants, what claims can be brought, maximum amounts of monetary payments per claim in different categories, filing deadlines, functions of the supervising United States federal district court, rules for the review of the claims, appeals, and priority of payment to certain groups of claimants.”¹⁰² The Plan also contains proposed rules, which are to be elaborated by IOM in consultation with the district court, and which deal with the filing and acceptance of claims.¹⁰³
- The Plan was developed by Judah Gribetz, the appointed Special Master on September 11, 2000. Gribetz was appointed by the Settlement Agreement to devise a plan for the allocation and distribution of the Settlement Fund.¹⁰⁴ This plan set forth rules on monetary payments. After

⁹⁴ Slave Labor II, Holocaust Victim Assets Litigation (Swiss Banks) <http://www.swissbankclaims.com/SlaveLaborII.aspx> (last accessed Oct. 2, 2012); Holtzmann & Kristjánssdóttir, *supra* note 65, at 32.

⁹⁵ Refugee Class, Holocaust Victim Assets Litigation (Swiss Banks) <http://www.swissbankclaims.com/RefugeeClass.aspx> (last accessed Oct. 2, 2012). See also Holtzmann & Kristjánssdóttir, *supra* note 65, at 66-67.

⁹⁶ From the Swiss Banks Settlement Fund, an amount of USD 205 million has been allocated for two *cy pres* payments to compensate members of the Looted Assets Class; one to benefit the neediest survivors of Nazi persecution, and a second to benefit all members of the Looted Assets Class and all the other classes, Special Master's Proposal, *supra* note 93 at 23. USD 20.5 million of this amount is distributed by IOM to Roma, Jehovah's Witnesses, homosexuals, and handicapped; the rest by the Conference on Jewish Material Claims Against Germany and the American Jewish Joint Distribution Committee to Jewish survivors. This humanitarian assistance to the neediest survivors of Nazi persecution may be provided in cash or in kind, Special Master's Proposal, *supra* note 93, at 25, 118.

⁹⁷ Court Order Case No. CV 96A849 (ERK)(MDG) (Consolidated with CV 96-5161 and CV 97-461) Judge Korman, http://www.swissbankclaims.com/Documents/DOC_45_45pct_incr.pdf (last accessed Oct. 2, 2012) (Since that time, the \$1.25 billion Settlement Fund has benefited from unanticipated interest income).

⁹⁸ *Id.*

⁹⁹ Press Release Apr. 17, 2001, Holocaust Victim Assets Litigation (Swiss Banks) http://www.swissbankclaims.com/pdfs_eng/pressreleasefinal.pdf (last accessed Oct. 2, 2012).

¹⁰⁰ Press Release Apr. 17, 2001, Holocaust Victim Assets Litigation (Swiss Banks)

¹⁰¹ Special Master's Proposal, *supra* note 93.

¹⁰² Holtzmann & Kristjánssdóttir, *supra* note 65, at 44.

¹⁰³ Special Master's Proposal, *supra* note 93, at 164–167 (proposed rules for Slave Labour Class II) and pp.176–179 (proposed rules for Refugee Class). In addition to so-called “direct” (HVAP) claims submitted to IOM generally from countries outside IOM's GFLCP jurisdiction areas, Slave Labour Class I “overlap” claims relate to former slave or forced laborers who receive a payment from the German Fund and receive an additional payment from the “Swiss banks” Settlement Fund. These claims are handled by the distribution mechanisms of the IOM and Jewish Claims Conference used for German slave labor claims.

¹⁰⁴ Overview, Holocaust Victim Assets Litigation (Swiss Banks) <http://www.swissbankclaims.com/Overview.aspx> (last visited Oct. 2, 2012).

hearing objections and public comments on the first proposed plan, Judge Korman determined that the proposed settlement for the class action suit was fair, reasonable, and adequate and subsequently granted approval.¹⁰⁵

1.7 Germany: German Forced Labour Compensation Program

The German Forced Labour Compensation Program (GFLCP) was established as a result of many lawsuits that were submitted in US courts against the government of Germany, as well as German companies after World War II in order to obtain monetary payments for former slave and forced laborers, and other victims of the Nazi regime.¹⁰⁶ The GFLCP, a German government agency, was established as a result 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 the Future” (the Agreement) on July 17, 2000.¹⁰⁷ Following the Agreement, the German Parliament passed the Law on the Creation of the Foundation “Remembrance, Responsibility and Future” (German Foundation Law)¹⁰⁸. The law, which was initiated by an association of leading German companies that had exploited forced labor during World War II, called the “Foundation Initiative”, and entered into force on August 12, 2000.¹⁰⁹ International Organization for Migration was designated in August 2000 as one of seven partner organizations of the German Foundation Law to resolve claims of former Nazi victims of slave and forced labor, personal injury, and lost property.¹¹⁰ The GFLCP was implemented by IOM in cooperation with an independent claims program that acted within the framework of the German Foundation Law. The purpose of the GFLCP is to provide a monetary payment program for forced and slave labor, but also for certain types of property loss.¹¹¹

For the purpose of the Claims Process “slave laborers” are persons who were detained in a concentration camp, ghetto, or similar place of confinement during World War II. “Forced laborers” are persons who were deported to the German Reich and forced to work.¹¹² The German government, as well as certain German companies, agreed to fund a Foundation, support the basic tenets of a law establishing it, and create a plan of allocation.¹¹³ As of 2006, all claims had been resolved.¹¹⁴

Non-Jewish individuals, the so-called “rest of the world” victims of forced and slave labor, were also eligible to make claims. Western Europeans in general were not eligible for monetary payments under the GFLCP because most non-Jewish forced laborers of Western European origin were not specific targets of discriminatory official decrees or regulations of the Nazi regime.¹¹⁵ Legal successors of victims were eligible to be claimants. Judicial persons such as corporations, were not eligible.¹¹⁶

Under the GFLCP Claims Process three types of claims could be filed:

1. **Personal injury:** Personal injury claims, in particular by victims of medical experiments, persons who as children were separated from their parents and were lodged in a home for children of slave and forced laborers, and parents whose children died in these houses.
2. **Property Loss:** Claims for certain property losses as a consequence of persecution because of race, political or religious conviction of faith, with both direct and harm-causing participation of German companies.
3. **Slave and Forced Labor:** Claims by former slave laborers who were held in concentration camps, ghettos or other places of confinement, and claims by former forced laborers who were

¹⁰⁵ *Id.*

¹⁰⁶ Norbert Wühler & Heike Niebergall, International Organization for Migration Property Restitution and Compensation: Practices and Experiences of Claims Programmes 28 (2008).

¹⁰⁷ 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 the Future,” U.S.-Ger., Jul. 17, 2000, 1 U.S.C. 113, <http://www.state.gov/documents/organization/6531.doc>.

¹⁰⁸ Gesetz zur Errichtung einer Stiftung “Erinnerung, Verantwortung und Zukunft” [Law on the Creation of the Foundation “Remembrance, Responsibility and Future”], Aug. 12, 2000, BGBl. 2000 I 1263 [hereinafter Foundation Law], http://www.stiftung-eyz.de/eng/about-us/foundation_law/.

¹⁰⁹ Holtzmann & Kristjánsdóttir, *supra* note 65, at 30.

¹¹⁰ Wühler & Niebergall, *supra* note 106, at 29.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Holtzmann & Kristjánsdóttir, *supra* note 65, at 30.

¹¹⁴ *Id.* at 31.

¹¹⁵ Foundation Law, *supra* note 108, at § 9.

¹¹⁶ *Id.* at § 13 ¶ 2.

deported to German-occupied areas and were held in prisons or similar extremely harsh living conditions.¹¹⁷

A. Amounts:

- The remedy available under the GFLCP Claims Process was in the form of monetary payments.
- The German Foundation had a total budget of 10.1 billion Deutsche Marks (USD 6.3 billion).¹¹⁸ EUR 4.4 billion (USD 5.1 billion) of the fund was designated for monetary payments to former slaves and forced laborers, whereas EUR 25.5 million (USD 31.4 million) was allocated for monetary payments to victims of other personal injuries. IOM received EUR 276 million (USD 340 million) from the fund.¹¹⁹
- Under the GFLCP Claims Process the following amounts were subscribed to the victims:
 - Claims of forced labor in industry, the amount of monetary payments was EUR 1,278 (USD 1,574) per claimant;
 - Claims by former slave laborers in agriculture to an amount of EUR 2,560 (USD 3,148) per claimant;
 - Claims by former slave laborers who were held in concentration camps, ghettos or other places of confinement, and claims by former forced laborers, the amount of monetary payments was EUR 7,670 (USD 9,448) per claimant.
 - The amount paid out initially to successful personal injury claimants was EUR 4,240 (USD 5,223) per claimant. This was later increased by an additional payment of EUR 2,450 (USD 3,018).¹²⁰ Due to the monetary caps, explained below, IOM was not able to pay all claimants the full amount of payments claimed.

B. Valuation Methodology:

- An overall amount of EUR 4.1 billion (USD 5.4 billion) was allocated for the payment of claims. Each category of claims was provided with a specific maximum amount.¹²¹ These caps were applicable to all claims except property claims. Each category of claim was specified in the German Foundation Law.¹²²
- The German Foundation Law contains provisions for: “who may be claimants, what claims may be brought, maximum amounts of monetary payments per claim in different categories, allocation of funds for each of the claims categories, filing deadlines, organization and functions of the supervisory organs of the German Foundation, composition and appointment of a Property Claims Commission, the evidentiary standard for the review of the claims, appeals, priority of payment to certain groups of claimants, and relations to other related Claims Processes.”¹²³
- Slave, forced labor and personal injury claims under GFLCP were regulated by several guidelines. These included various provisions of the German Foundation Law, the contract between the German Foundation and IOM, decisions of the Foundation Board of Trustees, and legal circulars issued by the Board of Directors, a separate body appointed by and reporting to the Board of Trustees. These provisions set out general principles.¹²⁴

Due to the lack of program funds, not all personal injury claims were accepted in the program. Personal injury claims from victims of medical experiments and children separated from their parents to be placed in foster homes, were eligible for the program. Parents whose children had died in such foster homes could also submit under the program. Other personal injury claims, such as severe health damage claims were not compensated at all.¹²⁵

¹¹⁷ *Id.* at § 11 ¶ 1; Wühler & Niebergall, *supra* note 106, at § 18.

¹¹⁸ Foundation Law, *supra* note 108, at § 3 ¶ 2.

¹¹⁹ Wühler & Niebergall, *supra* note 106, at 95.

¹²⁰ *Id.*

¹²¹ Foundation Law, *supra* note 106, at § 9, ¶ 1 and 4.

¹²² *Id.* at ¶ 8.

¹²³ Holtzmann & Kristjánadóttir, *supra* note 65, at 43.

¹²⁴ *Id.*

¹²⁵ Wühler & Niebergall, *supra* note 106, at 96.

1.8 Iraq: National Compensation Law

On October 1, 2009, the Iraqi Parliament passed Law No. 20 “Compensating the Victims of Military Operations, Military Mistakes and Terrorist Actions” (the Compensation Law) to compensate victims that were killed or wounded by terrorist attacks and military errors and operations.¹²⁶ The Compensation Law foresees monetary payments for death, disability, temporary injuries, and damage affecting work, study or property.¹²⁷ Eligible claimants are the harmed victims and their beneficiaries, including parents, spouses, children and siblings.¹²⁸

The Compensation Law is administered by the Central Committee in Baghdad consisting of representatives from the judiciary and the line ministries, which must report to the Iraqi Prime Minister.¹²⁹ In addition, subcommittees are established in different regions on a need-basis.¹³⁰ The monetary payments are distributed to beneficiaries in the form of a grant for injury and death, a piece of land and a pension in accordance with Iraq’s retirement law.¹³¹ The Compensation Law applies retroactively from March 20, 2003.¹³²

In 2012, the Iraqi government assigned 500 billion Iraqi dinars (IQD) (USD 429 million) from the federal budget for the third round of the monetary payment programs.¹³³

A. Amounts:

- Monetary payments for members of the armed forces and security services, or their beneficiaries are awarded in the amount of:
 - IQD 5 million (USD 4,290) for death.
 - IQD 5 million (USD 4,290) for 75%-100% disability.
 - IQD 2.5 million to 4.5 million (USD 2,145 to USD 3,861) for 50%-74% disability.
 - IQD 2 million (USD 1,716) for less than 50% disability.¹³⁴
- Monetary payments for civilians or their beneficiaries are awarded in the amount of:
 - IQD 3.75 million (USD 3,217) for death.
 - IQD 3.75 million (USD 3,217) for 75%-100% disability.
 - IQD 2 million to IQD 3 million (USD 1,716 to USD 3,217) for 50%-74% disability.
 - IQD 1.75 million (USD 1,500) for less than 50% disability.¹³⁵
- Pensions are awarded in the amount of IQD 340,000 (USD 300) a month.¹³⁶

B. Valuation Methodology:

- Applications for monetary payments are directed to the subcommittees, which then assess the applications and determine the damage.¹³⁷ In cases of property damage and disappearances, the

¹²⁶ Law Compensating the Victims of Military Operations, Military Mistakes and Terrorist Actions No. 20 of 2009 (Iraq) [hereinafter Compensation Law].

¹²⁷ *Id.* art. 2.

¹²⁸ *Id.* art. 1, 10.

¹²⁹ *Id.* art. 3, 4, 5; There is one representative from the High Judicial Council, and one each from the Ministries of Defence, Interior, Finance, Justice, Health, Labour and Social Affairs, and Human Rights.

¹³⁰ *Id.* art. 3, 6.

¹³¹ *Id.* art. 9-13. Unified Retirement Law No. 27 of 2006 (Iraq).

¹³² *Id.*, art. 19.

¹³³ Mohammed al-Qaisi, *Iraqi government begins third round of compensation for terrorism victims*, Al-Shorfa.com (Jan. 23, 2012) http://www.mawtani.com/cocoon/iii/xhtml/en_GB/features/iii/features/iraqtoday/2012/01/23/feature-01.

¹³⁴ Compensation Law, *supra* note 126, art. 9 ¶ 1.

¹³⁵ Compensation Law, *supra* note 126, art. 9 ¶ 2.

¹³⁶ *Distribution of one and a half billion dinars compensation for victims of violence and errors in Babylon*, Shafaaq.com (Apr. 22, 2012) <http://shafaaq.com/sh2/news/economy-news/39889-2012-04-22-12-35-58.html>.

¹³⁷ Compensation Law, *supra* note 126, art. 6 ¶ 4.

sub-committees make recommendations on monetary payments to the Central Committee.¹³⁸ Cases of death and injury are decided directly by the sub-committee and referred to the Ministry of Finance for implementation upon ratification by the Central Committee.¹³⁹

- According to the Director of Information of the Central Committee, Jassim Al-Oraibi, to compensate victims of terrorism, the pension is calculated from the date of implementation of the law, January 1, 2010, in the amount of IQD 340,000 (USD 300) a month.¹⁴⁰
- According to a spokesperson of the Iraqi government, the monetary payments are determined on a case-by-case basis, depending on the severity of damages.¹⁴¹
- Within the monetary payment program, priority is given to surviving spouses and children, permanently disabled victims, and damage to houses and shops.¹⁴²
- A medical committee determines the percentage of disability.¹⁴³

More information on valuation methodology was not available.

1.9 Kosovo: Housing and Property Claims Commission

In 1999, a Regulation of the United Nations Interim Administration Mission in Kosovo (UNMIK) established the Housing and Property Claims Commission (HPCC) Claims Process to create an independent tribunal that would settle property disputes, and restore property rights to residential property.¹⁴⁴ The HPCC addressed claims that arose out of discriminatory measures taken by the government of Yugoslavia in Kosovo during the period of 1989 to 1999, as well as claims related to the NATO air campaign in Kosovo in 1999. UNMIK Regulation 1999/23¹⁴⁵ contained provisions for eligible claims and claimants, applicable law and several procedural aspects. UNMIK Regulation 1999/23 was followed by UNMIK regulation 2000/60, which contained a detailed description of the Claims Process with procedural rules that the HPCC was to follow.¹⁴⁶ The work of the HPCC was completed in 2007.

Only natural persons, thus not companies, were eligible to claim monetary payments. This was limited to individuals who could prove that ownership of a (lost) property was acquired through an informal transaction between March 23, 1989 and October 13, 1999. Legal persons, such as corporations or government entities, were not able to file a claim before the HPCC. Also, members of the household of the person who suffered the property loss were able to pursue a claim, however there was no possibility for double claims.¹⁴⁷

A. Amounts:

- The HPCC's mandate concerned disputes over residential property in Kosovo. Claims arising out of discriminatory measures affecting property rights taken by the government of Yugoslavia in Kosovo during the period of 1989 to 1999 were to be addressed by a Commission.¹⁴⁸ Any claimant with a right to monetary payments had the right to be compensated by an amount based on the "current market value of the house in its current condition, minus the amount which the claimant would have been required to pay for the purchase of the house under the Law on Housing."¹⁴⁹ Claims were divided into three categories.
 - Category A included claims by persons whose ownership, possession or occupancy right to residential property was revoked between March 23, 1989 and October 13, 1999.

¹³⁸ *Id.*

¹³⁹ *Id.* art. 5 ¶ 1, art. 6 ¶ 4, art. 15.

¹⁴⁰ Distribution of one and a half billion dinars compensation for victims of violence and errors in Babylon, Shafaaq.com *supra* note 130.

¹⁴¹ Mohammed al-Qaisi, *supra* note 133.

¹⁴² *Id.*

¹⁴³ Compensation Law, *supra* note 126, art. 2.

¹⁴⁴ UNMIK, On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission, U.N. Doc. UNMIK/REG/1999/23 (Nov 15 1999) [hereinafter UNMIK Regulation 1999/23].

¹⁴⁵ *Id.*

¹⁴⁶ UNMIK, On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, UNMIK O.G., p. 10, U.N. Doc. UNMIK/REG/2000/60 (Oct 31 2000) [hereinafter UNMIK Regulation 2000/60].

¹⁴⁷ *Id.* at § 7.2.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at § 4.4.

- Persons could file a claim under category B if they had entered into voluntary transactions, which turned out to be unlawful due to discriminatory laws between March 23, 1989 and October 13, 1999.
- Under category C, individuals who were owners, successors or occupancy right holders of residential property prior to March 24, 1999 could submit claims.¹⁵⁰ Monetary payments for damage or destroyed property did not fall under the scope of the HPCC.¹⁵¹

B. Valuation Methodology:

- The UNMIK Regulations govern the valuation methodology of the HPCC Claims Process.
- The remedy of the HPCC Claims Process is essentially property restitution. Monetary payment was thus not the primary remedy of the program. Monetary payment was available to individuals whose property rights were canceled as a result of discrimination found in Section 4 of Regulation 2000/60, and whose claimed property could not be restored because it had been sold in the interim period to a third party (category C claims).¹⁵² Monetary payments were also provided in cases where it was not possible for the HPCC to award restitution of the property loss to a category A claimant.¹⁵³ Section 4 created a trust fund that could pay monetary payments to so-called First Owners. The person who lost ownership would then be entitled to receive a monetary payment. For a valuation of monetary payments, the HPCC considered the claimant's nature of ownership. Based on the rights claimants had to properties, the restitution or monetary payments could be calculated. The HPCC rendered some 130 Orders for monetary payments pursuant to the requested monetary payment program in Section 4 of the UNMIK Regulation 2000/60. In such cases the HPCC issued Orders in the following terms:¹⁵⁴
 - The evidence for the claims was to be submitted in writing. Parties were required to submit originals or certified copies of documents supporting their claim.¹⁵⁵ The precise amounts of monetary payments under section 4 were calculated through formulae established by the Directorate.¹⁵⁶

1.10 Kuwait: United Nations Compensation Commission

The United Nations Compensation Commission for Kuwait (UNCC) finds its legal basis in the 1991 UN Security Council Resolution 687,¹⁵⁷ which states that Iraq was "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."¹⁵⁸ The guiding rules of the UNCC are outlined in the "Provisional Rules for Claims Procedure" (UNCC Rules).¹⁵⁹ In accordance with Resolution 687 and Article 5 of the UNCC Rules, only governments and international organizations were eligible to file claims for monetary payments under the UNCC.¹⁶⁰ A government could submit claims on behalf of its nationals who had suffered losses and damages as a direct result of Iraq's unlawful invasion of Kuwait, as well as corporations incorporated under the law of that state. The UNCC concluded the claims-processing exercise in 2005 and its payments to individuals in 2007.

A. Amounts:

- The UNCC Governing Council put forward six categories of claims, labeled A to F. Four were for individual claimants, one was for corporations, and one included claims by governments and

¹⁵⁰ HPCC, Glossary of Terms, <http://www.pca-cpa.org>.

¹⁵¹ UNMIK Regulation 2000/60, *supra* note 146, at § 2.6.

¹⁵² *Id.* at § 3.3, 4.4-4.5.

¹⁵³ *Id.* at § 2, 3 and 4.

¹⁵⁴ Margaret Cordial & Knut Røsandhaug, Post-Conflict Property Restitution: the Approach in Kosovo and Lessons Learned for Future International Practice 175 (2009).

¹⁵⁵ UNMIK Regulation 2000/60, *supra* note 146, at § 9.5.

¹⁵⁶ *Id.* at § 4.2, 4.4 and 4.5. The formulae established by the Directorate are not publically published.

¹⁵⁷ S.C. Res. 687, ¶ 18, U.N. Doc. S/RES/687 (Apr. 8, 1991). Section E of the Resolution covers provisions relating to compensation.

¹⁵⁸ *Id.* at ¶ 16.

¹⁵⁹ UNCC Decision 10 of the Governing Council, Provisional Rules for Claims Procedure, U.N. Doc. S/AC.26/1992/10 (Jun. 26, 1992).

¹⁶⁰ *Id.* at art. 5, ¶ 1(a).

international organizations.¹⁶¹

- Category A: Covered claims for persons who departed from Iraq or Kuwait between August 2, 1990 and March 2, 1991. Individuals in this category received a fixed sum of USD 2,500. Families received a maximum of USD 5,000 per family.¹⁶²
- Category B: Covered serious personal injury or loss of a spouse, child, or parent and set the monetary payment at a fixed sum of USD 2,500 to claimants for individual loss, and up to a maximum of USD 10,000 for families.¹⁶³
 - Cumulative awards under categories A and B were allowed up to a maximum of USD 10,000 for personal injury affecting one family.
- Category C: Claims for various types of individual losses, such as departure costs, real property losses, loss of income or support, or business losses. A maximum of USD 100,000 was awarded in this category for twenty-one different types of losses.¹⁶⁴
- Category D: Covered individual claims for damages above an amount of USD 100,000 for similar losses to those found under category C. Most frequently these were claims for loss of personal property, loss of real property, loss of income and business-related losses.¹⁶⁵
- Category E: Did not provide for fixed amounts. This category provided monetary payments for corporations, other private legal entities, and public sector enterprises, which included claims for construction or other contract losses, losses from non-payments for goods or services, losses relating to the destruction or seizure of business assets loss of profits, and oil sector losses.¹⁶⁶
- Category F: Encompassed claims filed by governments and international organizations for citizen losses which occurred when they fled Iraq or Kuwait, as well as environmental damage, damage to diplomatic premises or governmental property. No fixed amounts were established in this category. Rather, category F divided its claims into four sub-categories in which amounts were determined on a case-by-case basis.¹⁶⁷
- There were no fixed amounts, nor were fixed sums awarded in categories D, E or F. The panels of Commissioners made case-by-case determinations as to the value of the losses.¹⁶⁸

B. Valuation Methodology:

- The UNCC Rules covered valuation methodology, providing detailed rules on the submission and filing of claims, the appointment of the commissioners, the procedures governing the work of the panels, and the applicable law and evidentiary rules.¹⁶⁹
- The 269 Governing Council decisions constituted further detailed legal criteria, and guidance established by the Commission's Governing Council as to how to interpret and apply such criteria to the claims.¹⁷⁰

¹⁶¹ UNCC Decision 1 of the Governing Council, Criteria for Expedited Processing of Urgent Claims, U.N. Doc. S/AC.26/1991/1 (Aug. 2, 1991); UNCC Decision 7 of the Governing Council, Criteria for Additional Categories of Claims, UN Doc. S/AC.26/1991/7/Rev.1 (Mar. 17, 1992).

¹⁶² *Category "A" Claims*, UNCC, http://www.uncc.ch/claims/a_claims.htm (last accessed Oct. 2, 2012).

¹⁶³ *Category "B" Claims*, UNCC, http://www.uncc.ch/claims/b_claims.htm (last accessed Oct. 2, 2012).

¹⁶⁴ UNCC Decision 3 of the Governing Council, Personal Injury and Mental Pain and Anguish, U.N. Doc. S/AC.26/1991/3 (Oct. 18, 1991) and UNCC Decision 8 of the Governing Council, Determination of Ceilings for Compensation for Mental Pain and Anguish, U.N. Doc. S/AC.26/1992/8 (Jan. 24, 1992); see also *Category "C" Claims*, http://www.uncc.ch/claims/c_claims.htm (last accessed Oct. 2, 2012).

¹⁶⁵ *Category "D" Claims*, http://www.uncc.ch/claims/d_claims.htm (last accessed Oct. 2, 2012).

¹⁶⁶ *Category "E" Claims*, http://www.uncc.ch/claims/e_claims.htm (last accessed Oct. 2, 2012).

¹⁶⁷ *Category "F" Claims*, http://www.uncc.ch/claims/f_claims.htm (last accessed Oct. 2, 2012).

¹⁶⁸ Holtzmann & Kristjánsdóttir, *supra* note 65, at 75.

¹⁶⁹ UNCC Decision 10, *supra* note 159.

¹⁷⁰ The UNCC Governing Council took in total 269 Decisions, <http://www.uncc.ch/decision.htm> (last visited Oct. 2, 2012). See e.g., UNCC Decision 11 of the Governing Council, Eligibility for Compensation of Members of the Allied Coalition Armed Forces, U.N. Doc. S/AC.26/1992/11 (Jun. 26, 1992); UNCC Decision 15 of the Governing Council, 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, U.N. Doc. S/AC.26/1992/15 (Jan. 4, 1993); UNCC Decision 16 of the Governing Council, Awards of Interest, U.N. Doc. S/AC.26/1992/16 (Jan. 4, 1993); UNCC Decision 19 of the Governing Council, Military Costs, U.N. Doc. S/AC.26/ Dec.19 (Mar. 24, 1994); and UNCC Decision 23 of the Governing Council, Notification of the Governing Councils Intention Not to Accept Further Individual Claims After 1 January 1995, U.N. Doc. S/AC.26/Dec. 23 (Oct. 21, 1999).

- The intention of the UNCC was to provide full compensation. However, various valuation methodologies were used for different categories to determine the amounts for these categories, as is described above.
 - Decisions 1 and 7 of the Governing Council address the basic criteria for the six categories of claims.¹⁷¹ The objective of the procedures is to quickly grant relief either:
 - (i) by means of payment of fixed amounts in the cases of departure from Iraq or Kuwait, serious personal injury, or death of an immediate family member, or
 - (ii) by means of consideration of claims for up to USD 100,000 for actual losses resulting from death, personal injury, departure of “losses of income support, housing or personal property.”¹⁷²
 - Decisions 3, 8 and 9 covered specific questions that could be raised out of various claims.¹⁷³
 - Decision 3: Lists circumstances that could cause injury and pain and therefore defines “serious personal injury” and “mental pain and anguish.” This was important to categorize the claims.
 - Decision 8: Provides the adoption of the Governing Council of ceilings for monetary payments for mental pain and anguish.¹⁷⁴
 - Decision 9: Describes propositions and conclusions regarding monetary payments for business losses, types of damage and their valuation.
 - Decision 4 sets forth additional criteria concerning expedited processing of urgent claims addressing the valuation of business losses of individuals eligible for monetary payments under the claims process.¹⁷⁵
- An example of the valuation methodology applied at the UNCC is provided by an examination of the valuation of real property loss in accordance with category D claims in the “D7” methodology.¹⁷⁶ This methodology was used to value all Kuwaiti real property claims. Information was to be collected for the identification of property. The monetary payment amount was then calculated based on the age of the property with depreciation taken into account. Different assessment metrics with respect to loss elements were developed, namely: estimated repair, actual repair, and loss of rental income. For these categories, different documents were required in order to ensure evidence was submitted by the claimants themselves. The absence of evidence led to a 50 percent reduction in the amount claimed. Technical valuation principles were also applied to the adjusted value based on types of properties and their life span.¹⁷⁷

1.11 Nepal: Interim Relief Program

In 2008, Nepal created the Interim Relief Program (IRP) to address needs of those harmed during the armed conflict between the Maoists and state security forces from 1996-2006. During the ten-year conflict over 1,300 disappeared, 17,000 people died, hundreds of persons were displaced and were victims of torture and other human rights violations.¹⁷⁸ Funding for the IRP came from a \$50 million World Bank Emergency Peace Support Project for Nepal grant to facilitate the country’s recovery process. The

¹⁷¹ UNCC Decision 1, *supra* note 161; UNCC Decision 7, *supra* note 161.

¹⁷² *Id.* at ¶ 14.

¹⁷³ UNCC Decision 3 of the Governing Council, Personal Injury and Mental Pain and Anguish, U.N. Doc. S/AC.26/1991/3 (Oct. 23, 1991); UNCC Decision 9 of the Governing Council, Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation, U.N. Doc. S/AC.26/1992/9 (Mar. 6, 1992).

¹⁷⁴ UNCC Decision 8 of the Governing Council, Determination of Ceilings for Compensation for Mental Pain and Anguish, U.N. Doc. S/AC.26/1992/8 (Jan. 27, 1992).

¹⁷⁵ UNCC Decision 4 of the Governing Council, Business Losses of Individuals Eligible for Consideration under the Expedited Procedures, U.N. Doc. S/AC.26/1991/4 (Oct. 23, 1991).

¹⁷⁶ An example on claims concerning personal injury was not available.

¹⁷⁷ See for a more detailed explanation Wühler & Niebergall, *supra* note 106, at 185-186.

¹⁷⁸ See generally, Center for Civilians in Conflict and Harvard Law School International Human Rights Clinic, *Assistance Overdue: Ongoing Needs of Civilian Victims of Nepal’s Conflict*, September 2013. The conflict came to a formal end on November 21, 2006, with the signing of a Comprehensive Peace Accord between the government of Nepal and the Communist Party of Nepal Maoist. “Recording Nepal Conflict: Victims in Numbers,” *Nepal Monitor*, http://www.nepalmonitor.com/2011/07/recording_nepal_conf.html (accessed January 25, 2013).

government of Nepal allocated USD 23.30 million to the Interim Relief Program.¹⁷⁹ The Interim Relief Program was administered in the following categories:

A. Amounts:

- Group A: The nearest beneficiary of those who died during the conflict received monetary payments in a lump sum in the amount of NPR 100,000 (USD 1,570) paid in a lump sum per lost family member.¹⁸⁰ An additional NPR 200,000 (USD 2,300) was provided for this category of persons in 2011 for a total of NPR 300,000 (USD 3,450).¹⁸¹
- Group B: Next of kin of those who were disappeared by parties to the conflict originally were allocated NPR 25,000 (USD 281), but this was increased to NPR 100,000 (USD 1,570) by 2011.
- Group C: Widows of men who died during the conflict receive an additional NPR 25,000 to the amount allocated in Group A NPR 300,000 (USD 3,450).¹⁸²

The IRP also includes scholarship assistance for children of persons killed, disappeared, or seriously disabled during the conflict. The program also reimbursed medical bills for serious physical disabilities and not psychological effects, and only for treatment at a government hospital. The IRP excluded victims of torture and other human rights violations from assistance.¹⁸³

B. Valuation Methodology:

- The guidelines on the annual spending can be found in the Financial Procedures Regulations (FPR).¹⁸⁴ The budget is based on the work program of the Ministry of Peace and Reconstruction of Nepal (MOPR).¹⁸⁵ The Nepalese cabinet approved the amounts paid to the various groups.¹⁸⁶
- For Group A, the Chief District Officers identified families who were eligible to receive monetary payments. The budget could provide monetary payments for 14,000 families. Families were awarded a lump sum per lost family member according to the decision of the government of Nepal in March 2008. In 2011, families were provided an additional NRS 200,000 making this extra amount close to the average annual household income for Nepal at that time.¹⁸⁷ Monetary payments to families appear to be based on the total budget for this category.¹⁸⁸

The IRP stop taking any new applications in 2012 and the World Bank grant is expected to terminate by 2014. There have been reports of insufficient funds being disbursed to recipients, including for children's scholarship and to widows, resulting in victims not receiving the amount they are entitled to.¹⁸⁹ Some individuals who received the first round of assistance and were qualified for the supplementary aid of NRS 200,000 (USD 2,300) did not receive the aid.¹⁹⁰

¹⁷⁹ World Bank, Nepal – Peace Support Project (2008) No. AB3799, <http://documents.worldbank.org/curated/en/2008/04/9329917/nepal-peace-support-project>, Annex 3. The grant also includes payments to Maoists confined in cantonments at USD 18.55 million, and capacity building of key institutional structures to support the grant at USD 3.22 million. International donors have also contributed to the IRP through the Nepal Peace Trust Fund (NPTF) and the UN Peace Fund for Nepal (UNPFN). For a recent breakdown of the World Bank's budget for the Nepal Peace Support Project, see World Bank, "Implementation Status and Results, Nepal: Peace Support Project," report no. ISR8969, January 17, 2013, p. 1.

¹⁸⁰ Directives on Norms for Financial Support and Relief of Conflict Victims, as approved by the Recipients Council of Ministers in March 2008 and setting out, inter alia, policies and entitlements of conflict-affected populations, as cited in World Bank, Nepal – Emergency Peace Support Project (2008) No. 43172-NP 3, <http://documents.worldbank.org/curated/en/2008/04/9394157/nepal-emergency-peace-support-project>.

¹⁸¹ Center for Civilians in Conflict and Harvard Law School, *Assistance Overdue*, supra note 178, at 42.

¹⁸² See generally, International Center for Transitional Justice, *Relief, Reparations, and the Root Causes of Conflict in Nepal*, October 2012 and *From Relief to Reparations: Listening to the Voices of Victims*, January 2012.

¹⁸³ *Id.* and Center for Civilians in Conflict, *Assistance Overdue*, supra note 178.

¹⁸⁴ World Bank, Nepal – Peace Support Project, supra note 179, at 4. Official government documents are available at the website of the MOPR, <http://www.peace.gov.np/publication-15-en.html> (last visited Oct. 2, 2012).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* Progress reports of the Peace Fund specify the amounts paid.

¹⁸⁷ As mentioned above, the average household income in Nepal for 2010/11 was 202,374 NRS (US\$2,318). National Planning Commission of Nepal, "Nepal Status Paper for UN Conference on Sustainable Development 2012 (Rio+20): Synopsis," p. 19, <http://www.npc.gov.np/new/uploadedFiles/allFiles/2012021312345.pdf>

¹⁸⁸ World Bank, Nepal – Peace Support Project, supra note 184, at 6.

¹⁸⁹ ICTJ, *From Relief to Reparations: Listening to the Voices of Victims*, January 2012, <http://ictj.org/sites/default/files/ICTJ-NPL-Relief-to-Reparations-Report-2011-English.pdf>, p. 6.

¹⁹⁰ For critiques of the IRP see Center/Harvard report and ICTJ, *From Relief to Reparations: Listening to the Voices of Victims*.

1.12 United States: Foreign Claims Act (FCA)

Civilian claims for harm became a part of military operations when Congress passed legislation in 1918, known as the Indemnity Act (American Forces Abroad),¹⁹¹ which allowed US military forces to provide monetary payments to civilians harmed in France. Due to the geographical limitations of the 1918 Act, Congress passed the Armed Forces Damages Settlement Act in 1942 during World War II, which was later amended and adjusted to become the Foreign Claims Act in 1956.¹⁹²

The purpose of the FCA is to “promote and maintain friendly relations through the prompt payment of meritorious claims.”¹⁹³ However, the FCA only allows for monetary payments to civilians harmed by “negligent or wrongful act[s]”¹⁹⁴ committed by uniformed personnel or civilian employees of the Department of Defense, not including contract employees.¹⁹⁵ While the FCA is applicable all over the world, including in active combat zones, the FCA forbids monetary payments for harm resulting directly or indirectly from a combat act, known as “combat exclusion.”¹⁹⁶

The FCA is an ex gratia program, as the payments offered are not distributed based on obligations drawn from any legally binding document, but are rather given “out of kindness.”¹⁹⁷ Claims are evaluated by Foreign Claims Commissions (FCCs), composed of one to three officers, usually judge advocates. The Department of Defense designates one branch of the military to adjudicate claims for a particular location.¹⁹⁸

A. Amounts:

- Under the 1942 Foreign Claims Act offered a maximum of USD 1,000 could be awarded to a successful claim. However, when that amount proved too small to fulfill the law’s purpose, the War Department (which in 1947 split into the Department of the Army, Department of the Navy and Department of the Air Force) offered support for a change to the legislation, and successfully convinced Congress to amend the FCA.¹⁹⁹
- Claims up to USD 10,000 may be approved by an officer or employee appointed by the secretary concerned (i.e. either the Secretary of the Army, Navy, Air Force or Marines depending on who has single service responsibility in the theatre). All claims above that amount require a higher approval through the chain of command.²⁰⁰
- All claims are capped at USD 100,000.²⁰¹ However, if the secretary concerned considers that a claim in excess of USD 100,000 is meritorious, the claimant may be awarded USD 100,000, and he or she may report the amount exceeding USD 100,000 to the Secretary of the Treasury for payment.
- Iraq and Afghanistan:
 - According to available documents, since 2003 the average payment for loss of life under the FCA is slightly more than USD 4,200.²⁰²
 - In Iraq and Afghanistan, various sources indicate that approximately USD 30-35 million has been awarded under the Foreign Claims Act since 2002.²⁰³

¹⁹¹ Jordan Walerstein, “Coping with Combat Claims: An Analysis of the Foreign Claims Acts Combat” Exclusion, 11 *Cardozo Journal of Conflict Resolution* 319, 327 (2009).

¹⁹² *Id.* at 331.

¹⁹³ Military Claims Act, 10 USC § 2734 (2009).

¹⁹⁴ US Dep’t of Army, Reg. 27-20, Claims, Feb. 8, 2008, ¶ 10-3(a).

¹⁹⁵ Tracy, *supra* note 39.

¹⁹⁶ Center for Civilians in Conflict, US Military Claims System for Civilians (2008), <http://>

http://civiliansinconflict.org/uploads/files/publications/2008_Civilian_Casualties_White_Paper.pdf.

¹⁹⁷ Tracy, *supra* note 39.

¹⁹⁸ Military Claims Act, US Code 10 (2009), ¶ 2734.

¹⁹⁹ US Military Claims System for Civilians, *supra* note 196.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

B. Valuation Methodology:

- Claims may be filed for the following damages incurred by negligent or wrongful acts carried out by US military forces:²⁰⁴
 - Damage to, or loss of, real property;
 - Damage to, or loss of, personal property;
 - Personal injury or death.²⁰⁵
- In order for a claim to be successful, the claimant must not be an enemy of the US, or provide aid to an enemy, and the claim must be filed within two years of the date the harm was incurred.²⁰⁶
- Under the FCA, valuation of life, injury and property should be based on a calculus designed to include economic and non-economic loss.²⁰⁷
- Iraq and Afghanistan:
 - Until 2003 the Air Force processed claims under the FCA. In June 2003, the Army assumed responsibility for evaluating claims.²⁰⁸
 - In Iraq and Afghanistan, one of the major problems facing the FCA is the failure to uniformly apply the act. Each Foreign Claims Commission (FCC) relies on the training and personal judgment of its members. Therefore, each FCC takes a unique approach and may come to different conclusions from similar facts.²⁰⁹ As a result, monetary payments may appear to be determined arbitrarily.

1.13 Vietnam: Agent Orange Central Payments Program

There is little available information on Vietnam's assistance program for people exposed to Agent Orange, a chemical used by the US military during the Vietnam War, and the information that is available is often contradictory. However, there are three potential sources for monetary payments that can be gathered from this information, such as the central government's payments, non-governmental payments, and inter-governmental payments.

- The Vietnamese government's main monetary payments program is the Agent Orange Central Payments Program established in 2000.
- Victims eligible to file a claim in this program can be distinguished in three categories:²¹⁰
 - Those who have partially or totally lost the ability to work;
 - Children with deformities or who have lost the ability to work; and
 - Orphans with deformities or who are unable to work.²¹¹ These are only orphans of direct victims.
- Persons able to work or study, or those already receiving support are excluded from receiving monetary payments.²¹²
- The Vietnam Association of Victims of Agent Orange was founded in 2003 by the Vietnam Red Cross in order to provide assistance to families harmed by Agent Orange during the Vietnam

²⁰⁴ Each case denied under the FCA due to the "combat exclusion" may be considered for a condolence payment, discussed in the next section.

²⁰⁵ US Military Claims System for Civilians, *supra* note 196.

²⁰⁶ Tracy, *supra* note 39.

²⁰⁷ US Military Claims System for Civilians, *supra* note 196.

²⁰⁸ Tracy, *supra* note 39.

²⁰⁹ US Military Claims System for Civilians, *supra* note 196.

²¹⁰ M.G. Palmer, The Legacy of Agent Orange: Empirical Evidence from Central Vietnam, 60 Social Science and Medicine, 1067 (2005).

²¹¹ *Id.* at 1061-1070.

²¹² *Id.*

War.²¹³ On July 25, 2011, the bill for the Victims of Agent Orange Relief Act of 2011 was introduced to the US Congress, but not enacted.²¹⁴ The bill included support to Vietnamese institutions providing help and medical care to Vietnamese victims of the war.²¹⁵ However, the US government maintains that it has no legal liability to help Vietnamese Victims of Agent Orange.

A. Amounts:

- Those who suffered from exposure to Agent Orange, and are eligible to file a claim, receive monthly payments ranging from USD 3 up to USD 7.²¹⁶ Orphans receive a payment of USD 0.38 per month for humanitarian assistance and medical care.²¹⁷ It has also been reported that veterans receive a monthly allowance of USD 56, while non-veterans receive a disability stipend of USD 20 per month.²¹⁸
- Since 2000, more than 200,000 victims have received these monthly allowances. In addition, the program offers medical treatment, vocational training, improved living conditions, and employment opportunities.²¹⁹
- Reports on the actual payments to victims of Agent Orange implemented by the Vietnamese government are inconsistent.²²⁰ A governmental news agency reported that in 2000 the Vietnamese government set aside USD 41 million to supplement incomes of victims.²²¹ A 2012 Congressional Research report notes that the Vietnamese government is investing an annual amount of USD 76 million in income supplements to people with disabilities caused by Agent Orange/dioxin.²²² However, to supplement the income of all the Vietnamese victims of Agent Orange an average of USD 20 per month, the Vietnamese government would have to provide an amount ranging from USD 500 million to USD 1.2 billion.²²³

B. Valuation Methodology:

- The monthly monetary payment provided to victims is based on a calculation of monthly income lost.²²⁴ Persons who fall under categories 1 and 2 are awarded payments based on a percentage of the minimum state salary.²²⁵
- Although the US government has paid USD 180 million to US veterans who fought in Vietnam, the US has made no monetary payments to the Vietnamese victims of the war.²²⁶

²¹³ Vietnam Association of Victims of Agent Orange/Dioxin, <http://www.vava.org.vn> (last accessed Oct. 2, 2012).

²¹⁴ H.R. 2634; Victims of Agent Orange Relief Act of 2011, 12th Congress, 2011-2012. Text as of Jul 25, 2011 (Introduced), <http://www.govtrack.us/congress/bills/112/hr2634/text> (last accessed Oct. 2, 2012).

²¹⁵ *Id.* at § 3.

²¹⁶ Palmer, *supra* note 210, quoting Vietnam Investment Review, *Central Payments Approved for Victims of Agent Orange*, Issue 0438, see also *Vietnam government to give allowances to Agent Orange Victims*, Vietnam News Agency (6 March 2000). Minimum state salary was quoted USD 12.80 per month.

²¹⁷ Palmer, *supra* note 210, at 1061-1070.

²¹⁸ Michael F. Martin, Congressional Research Services, *Vietnamese Victims of Agent Orange and US-Vietnam Relations* 27 (2012).

²¹⁹ *Id.* at 28.

²²⁰ *Id.* at 27.

²²¹ Palmer, *supra* note 210, at 1061-1070.

²²² Martin, *supra* note 218 at 21.

²²³ *Id.*

²²⁴ Palmer, *supra* note 210.

²²⁵ *Id.* Minimum state salary was USD 12.80 per month in 2000.

²²⁶ *Vietnam Special Weapons*, Global Security.org, <http://www.globalsecurity.org/wmd/world/vietnam/index.html> (last accessed Oct. 2, 2012).

Section 2. Programs Responding to Violations of Law

This section sets forth information about monetary payment programs established in response to human rights violations, including those created within the framework of transitional justice, the ICC Trust Fund for Victims. This section also includes the Marshall Islands Nuclear Claims Tribunal as an example of how compensation was handled for the human rights impact of nuclear testing.

2.1 Argentina: Reparations Policy for Grave Human Rights Violations

To address the grave human rights violations of arbitrary detentions, torture, and enforced disappearances²²⁷ during the military dictatorship between 1976-1983, a civilian government under Raúl Alfonsín began a reparations program.²²⁸ The Argentinean reparations measures included monetary payments for individuals, as well as reparations for the Argentinean community as a whole. In 1983 Alfonsín established the National Commission of the Disappearance of Persons (hereafter CONADEP). CONADEP's mandate was to investigate the practice of enforced disappearances of thousands during the military dictatorship.²²⁹

In 1986 the Argentinean government passed a law that granted pensions to the spouses and children of persons who had been disappeared.²³⁰ Following urgent recommendations from the Inter-American Court of Human Rights (IACHR) to devise a reparations program for the victims of state terrorism and prosecute the perpetrators,²³¹ the Argentinean State adopted a decree in 1991 granting monetary payments for persons (or their heirs) detained during the dictatorship who had filed a lawsuit for damages before December 10, 1985.²³²

Since 1991, Argentina has adopted a series of domestic legislative policies creating monetary payments programs for victims of human rights violations during reign of the military junta.²³³

- Law No. 24043: Grants monetary payments to all victims of arbitrary detention, regardless of whether they filed suits for harms and damages.²³⁴
- Law No. 24411: Grants monetary payments to victims of enforced disappearances, and the heirs of persons assassinated by the military, members of security forces, or paramilitary groups.²³⁵
- Law No. 25914:²³⁶ Offers monetary payments to minors who were victims of state terrorism, including:
 - Minors who were the victim of identity substitution.²³⁷
 - Minors born to mothers detained as political prisoners by the military.

²²⁷ Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, G.A. res. A/61/177 (2006) defines an enforced disappearance as: "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."

²²⁸ Alfonsín was elected in the first democratic elections after the military dictatorship from 1983 to 1989. A. Gualde & N. Luterstein, *The Argentinean Reparations Programme for Grave Violations of Human Rights Perpetrated during the Last Military Dictatorship (1976-1983)*, in *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making* 415 (Carla Ferstman et al. eds., 2009).

²²⁹ *Id.* at 416-417; Exec. Decree No. 157, Dec. 15, 1983.

²³⁰ Law No. 23466, Oct. 30, 1986. Regulated by Decree No. 1228/87.

²³¹ See Cases 10.147, 10.181, 10.240, 10.262, 10.309, 10.311, IACHR, Report No. 28/92 (1992), <http://www.cidh.org/annualrep/92eng/Argentina10.147.htm> (last accessed Oct. 2, 2012).

²³² Decree No. 70/91, Jan. 10, 1991.

²³³ Gualde & Luterstein, *supra* note 228, at 417.

²³⁴ Law No. 24043, Nov. 27, 1991. Regulated by Decree No. 1023/92, modified by Decree No. 205/97, broadened by Decree No. 1313/94.

²³⁵ Law No. 24411, Dec. 7, 1994. Regulated by Decree No. 403/95.

²³⁶ Law No. 25914, Aug. 25, 2004.

²³⁷ Identity substitution refers to cases of children of disappeared parents who were then registered as the legitimate children of other families, often as the children of military and security personnel who stole them from their biological parents.

- o Minors who remained imprisoned due to the detention or disappearance of their parents for political reasons.²³⁸

A. Amounts:

- Beneficiaries under the 1986 pension law received a pension equivalent to the minimum ordinary amount received by a retired public servant, and state sponsored health care benefits.²³⁹
- Claimants under Decree 70/91 received 27 Argentine Pesos (USD 6) per victim, for each day of the detention.²⁴⁰ In case of death during detention, the beneficiary's successors received ARS 27 (USD 6) for each day of detention, plus ARS 49 (USD 11).²⁴¹ In case of severe injuries ARS 27 was paid for each day of the detention, plus ARS 35 (USD 8) in total.²⁴²
- The amount awarded by Argentina's Ministry of Justice and Human Rights²⁴³ under Law No. 24043 to victims of arbitrary detention was ARS 74 (USD 16) for each day of the detention.²⁴⁴ In case of death during detention, the beneficiary's successors received ARS 27 (USD 6) for each day of detention, plus ARS 136,255 (USD 29,500).²⁴⁵ In case of severe injuries ARS 27 (USD 6) was paid for each day of the detention, plus ARS 94,490 (USD 20,500).²⁴⁶ The economic reparations were paid out in the form of government bonds, but there are no statistics on the actual amounts disbursed under this program.²⁴⁷
- The amount awarded under Law No. 24411 for disappearance and assassination was ARS 224,000 (USD 48,500), payable in government bonds.²⁴⁸

Additionally, the children of those that disappeared received housing credits, and were entitled to a monthly pension of ARS 140 (USD 30) until they reached the age of twenty-one.²⁴⁹

- The amounts awarded to minors under Law No. 25914 were set at:
 - o ARS 224,000 (USD 48,500) for minors who were the victim of identity substitution.²⁵⁰
 - o ARS 71,288 (USD 15,400) for the victims of the other criminal acts of state terrorism covered by this law.
 - o In case of serious or severe injury suffered as a consequence of identity substitution, victims receive an amount of ARS 336,000 (USD 73,000). In case of serious or severe injury as a consequence of the other crimes covered by this law victims receive an amount of ARS 106,932 (USD 23,000).²⁵¹ If the said crimes lead to the victim's death, the victim's beneficiaries receive ARS 448,000 (USD 97,000) in case of identity substitution and ARS 142,576 (USD 31,000) for the other crimes.²⁵²

B. Valuation Methodology:

- The 1986 pension law provides fixed-sum payments to eligible claimants under this law.²⁵³
- The amount for monetary payments provided by Decree No. 70/91 for each day the claimant spent in detention equaled the amount earned on a daily basis by the highest category of national civil servants.²⁵⁴ In addition, the equivalent of five years in detention was paid in cases of death, and where severe injuries occurred during detention the victim was entitled to 70% of this

²³⁸ María José Guembe, Economic Reparations for Grave Human Rights Violations: The Argentine Experience in The Handbook of Reparations 42 (Pablo de Greiff ed., 2006).

²³⁹ *Id.* at 26.

²⁴⁰ *Id.* at 31.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Gualde & Luterstein, *supra* note 228, at 419.

²⁴⁴ Guembe, *supra* note 238, at 32.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.* The bonds had nominal values, paid interest, and could be exchanged at any time for their market value, or exchanged for their total value at the date of their expiration, in this case in 2010, 16 years after they were issued.

²⁴⁸ *Id.* at 40-41. In 1994, Argentina offered bonds in the national currency (pesos) or in US dollars. In 2002, all of the bonds that were issued in US dollars were converted to pesos, and the foreign currency option no longer exists for those who have not yet received benefits.

²⁴⁹ Law No. 23466, Oct. 30, 1986.

²⁵⁰ Guembe, *supra* note 238, at 42. Subject to the changed exchange rate since the day of parity between the dollar and the peso.

²⁵¹ *Id.* at 43.

²⁵² *Id.*

²⁵³ *Id.* at 26.

²⁵⁴ *Id.* at 30.

amount.²⁵⁵

- The amount awarded under Law No. 24043 equaled one-thirtieth of the monthly salary of highest category of national civil servants for each day of the detention, at the time the benefit was claimed.²⁵⁶ In cases of death while in detention, as under Decree No. 70/91, the law provided payment of the amount for five years in detention.²⁵⁷ In cases where severe injuries occurred the law paid the victim 70% of the previous amount.²⁵⁸
- The amount awarded under Law No. 24411 for cases both of disappearance and of assassination equaled the monthly amount paid to Level A civil employees of the National Public Administration, multiplied by a coefficient of 100.²⁵⁹ In 1997 Law No. 24823 was added to Law No. 24411, establishing the order in which benefits should be paid out to successors.²⁶⁰
- The amount awarded under Law No. 25914 to minor victims suffering from identity substitution equaled the monetary payments fixed by Law No. 24411.²⁶¹ Awarded amounts for crimes other than identity substitution consisted of a one-time payment equaling 20 times the monthly earnings of a Level A government employee, Grade 8, of the National System of the Administrative Profession.²⁶² These amounts were increased by 50% in case of serious or severe injuries suffered from the crimes and by 100% if the crimes caused the victim's death.²⁶³

2.2 Chile: Program of Reparations for the Families of Victims of Political Violence, Political Executions and Disappeared Detainees

Beginning in 1990, several reparations programs have been implemented in Chile to recognize and help the families of victims of political violence and victims of human rights violations committed during the military dictatorship under General August Pinochet from 1973 to 1990.²⁶⁴ Since then successive governments have focused on truth, justice, and reparations to political prisoners and other victims of human rights violations.²⁶⁵ The Program of Reparations and Comprehensive Health Care for Victims of Human Rights Violations (PRAIS) provided the widest coverage of free health care for victims of human rights violations.²⁶⁶ In 2003 more than 132,000 beneficiaries were registered in Chile. The program offers physical and psychological health care and is now incorporated into the public health system of Chile. In 1990, the National Truth and Reconciliation Commission (hereafter the Commission) was established with the primary task of establishing the truth about human rights violations resulting in death or disappearance under the Pinochet regime, gathering evidence to allow for victims to be identified, and to recommend reparations and legal and administrative measures to prevent a repetition of past abuses.²⁶⁷ The Commission investigated over 3,000 cases and attributed a substantial number of the crimes to the military.²⁶⁸ Following the Commission's official findings and recommendations, the Chilean government in 1992 adopted a law (hereafter the Reparations Law) that established a reparations pension for the families of victims of political violence, political executions, and disappeared persons, as well as for the creation of the National Corporation for Reparation and Reconciliation (hereafter the Corporation).²⁶⁹

A. Amounts:

- A monthly pension of 140,000 Chilean pesos (CLP) (USD 372 in 1992) was established for relatives of the victims of human rights violations or political violence.²⁷⁰ The amount is indexed yearly according to Decree Law 2.448. The surviving spouse of the victim receives 40% of the

²⁵⁵ *Id.*

²⁵⁶ Guembe, *supra* note 238, at 33.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ Decree No. 993/91.

²⁶⁰ Law No. 24823, May 7, 1997.

²⁶¹ Guembe, *supra* note 238, at 42.

²⁶² Decree No. 993/91; Guembe, *supra* note 232, at 42.

²⁶³ Guembe, *supra* note 238, at 43.

²⁶⁴ Elizabeth Lira, *The Reparations Policy For Human Rights Violations in The Handbook of Reparations* 55 (Pablo de Greiff ed., 2006).

²⁶⁵ *Id.* at 56.

²⁶⁶ Programa de Reparacion y Atencion Intergral de Salud a los Afectados por Violaciones a los Derechos Humanos (PRAIS) (Program of Reparations and Comprehensive Health Care for Victims of Human Rights Violations), Lira, *supra* note 264, at 69.

²⁶⁷ Lira, *supra* note 264, at 57.

²⁶⁸ *Id.*

²⁶⁹ Law 19.123, Feb. 8, 1992, Establishes the National Corporation for Reparation and Reconciliation and Grants other Benefits to Persons as Indicated, Article 1, 17, 20.

²⁷⁰ Law 19.123, Feb. 8, 1992, Article 17-19.

pension.²⁷¹ The mother of the person holding the right to reparations pension, or the father in her absence receives 30% of the pension, while the mother or the father of the victim's biological children born out-of-wedlock receives 15% (in 2004 increased to 40%).²⁷² Each child of a disappeared person receives 15% of the reparations pension until he or she reaches the age of twenty-five.²⁷³

- In addition, the family of the victim received a lump sum payment equivalent to 12 months of pension.²⁷⁴

B. Valuation Methodology:

- Under the Qualifying Program the Corporation was charged with the qualification of victims through assessment of accusations and analysis of pending cases, including cases which came from the Commission with no decision.²⁷⁵ Based on legal definitions and the sufficiency of the records, cases were either accepted or rejected by the Corporation.²⁷⁶
- After the Corporation closed down in 1996, these activities continued through the collaboration between the judicial branch of government and the Human Rights Program of the Ministry of the Interior in determining the legal situation of the disappeared.²⁷⁷
- The responsibility for the monetary payments lies with the Institute of Pension Normalization.²⁷⁸ The valuation of the pension is based on legal percentages for each category of beneficiaries.²⁷⁹ By awarding the pensions in a pre-determined proportion, each beneficiary receives his or her percentage,²⁸⁰ even if the number of beneficiaries exceeds the amount of the reparations pension.
- The right to the reparations pension is compatible with and independent of other pensions or benefits.²⁸¹
- Reparations pensions are awarded for life, though children will receive payments till the age of 25, unless they are disabled.²⁸²

2.3 Hungary: National Compensation Laws

Following mass human rights violations during the Soviet occupation of Hungary (1945-1991), the new Hungarian Parliament passed two laws for reparations to be awarded to victims of gross human rights abuses.²⁸³ In 1991, the Hungarian Parliament passed the Act on Partial Compensation for Damages Unlawfully Caused by the State to Properties Owned by Citizens in the Interest of Settling Ownership Relations (Property Act)²⁸⁴ to partially compensate individuals whose property was wrongfully seized by the state, as well as settle "ownership relations", and provide incentives for investment.²⁸⁵ Claims had to be submitted within ninety days of the Property Act's enactment in order for beneficiaries to qualify for monetary payments.²⁸⁶ Claimants eligible for payments under the Property Act were individuals whose property was nationalized after 1939.²⁸⁷ The Act on Compensation to Persons Unlawfully Deprived of their Lives or Liberty for Political Reasons (Deprivation Act)²⁸⁸ of 1992 aimed to indemnify individuals who were unlawfully deprived of their rights to life or liberty for political reasons in the period between the beginning of World War II and the collapse of the Soviet regime in 1991.²⁸⁹ The deadline to submit claims

²⁷¹ *Id.* at art. 20.

²⁷² *Id.*

²⁷³ *Id.* In the case of handicapped children there is no age limit.

²⁷⁴ *Id.* at art. 23.

²⁷⁵ *Id.* at art. 8.

²⁷⁶ Lira, *supra* note 264, at 60.

²⁷⁷ Supreme Decree No. 1.005, Apr. 25, 1997; Lira, *supra* note 264, at 63-66.

²⁷⁸ Lira, *supra* note 264, at 59.

²⁷⁹ Law 19.123, Feb. 8, 1992, art. 20.

²⁸⁰ Lira, *supra* note 264, at 59.

²⁸¹ Law 19.123, Feb. 8, 1992, art. 24.

²⁸² *Id.* at art. 23.

²⁸³ Arturo J. Carrillo & Jason S. Palmer, *Transnational Mass Claim Processes (TMCPs) in International Law and Practice*, 28 *Berkeley Journal of International Law* 343, 372-373 (2010).

²⁸⁴ Act XXV of 1991, On Partial Compensation for Damages Unlawfully Caused by the State to Properties Owned by Citizens in the Interest of Settling Ownership Relations (1991) (Hung).

²⁸⁵ Dinah Shelton, *Remedies in international human rights law* 413-414 (2005).

²⁸⁶ *Id.*

²⁸⁷ Ruti G. Teitel, *Transitional justice* 136 (2000).

²⁸⁸ Act XXXII of 1992, On Compensation to Persons Unlawfully Deprived of their Lives or Liberty for Political Reasons (1992) (Hung).

²⁸⁹ Carrillo & Palmer, *supra* note 283, at 375.

under the Deprivation Act elapsed in 2006.²⁹⁰ Eligible claimants under the Deprivation Act were individuals subjected to political condemnations, preventive detention, forced medical treatment, internment in camps, forced labor, forced resettlement, deportation, and individuals who suffered serious restrictions on personal liberty of longer than thirty days.²⁹¹ A human rights violator is only eligible for monetary payment if it can be “proved that he has suffered serious prejudice in consequence of criminal procedure due to his activity displayed in the interest of democracy after the violation of basic rights.”²⁹²

A. Amounts:

- Monetary payment in case of property loss valued at 200,000 Hungarian Forints (HUF) or less is awarded in the entire valued amount. For losses over HUF 200,000 (USD 900), individuals were entitled to HUF 200,000 (USD 900), plus 50% of the excess up to HUF 300,000 (USD 1,350). For losses over HUF 300,000 (USD 1,350), individuals were entitled to HUF 250,000 (USD 1,120), plus 30% of the amount in excess of HUF 300,000 (USD 1,350). For losses over HUF 500,000 (USD 2,250), individuals were entitled to HUF 310,000 (USD 1,400), plus 10% of the amount in excess of HUF 500,000 (USD 2,250). The maximum awarded amount was HUF 5 million (USD 22,500) per property owned, per former owner.²⁹³
- The heirs of individuals who were killed for political reasons were to receive a lump sum payment of HUF 1 million (USD 4,500) under the Deprivation Act, but this amount was reduced in later years due to budgetary difficulties.²⁹⁴
- Individuals who were deprived of their personal liberty for more than thirty days but less than six months received a lump sum payment of HUF 11,000 (USD 50) for each two months of detention, up to a total of six months.²⁹⁵ In case of deprivation of liberty for longer than six months, individuals received an annuity that was calculated by dividing the duration of the detention by an official life expectancy figure and multiplying by the amount by HUF 11,000 (USD 50).²⁹⁶

B. Valuation Methodology:

- Monetary payment under the Property Act is based on the value of the forcibly seized property. The value of expropriated farmland is based on the gold crown value, a system expressing the quality of the land, which was inherited from the Habsburg Empire.²⁹⁷ Monetary payment for property loss is made in the form of interest-bearing coupons that could be used to purchase property sold during the privatization of state property, to buy farmland, or to receive a life annuity in the social security system.²⁹⁸
- Monetary payment under the Deprivation Act depends upon the nature of the human rights violations the individuals have suffered and the identities of their heirs.²⁹⁹ The monetary payment amount in case of deprivation of liberty increased depending upon the length of detention.³⁰⁰

2.4 Iran/United States: Iran-United States Claims Tribunal

The Iran-United States Claims Tribunal (the Tribunal) was established in 1981 by the Claims Settlement Declaration.³⁰¹ The Tribunal was established in order to help resolve the tension between the Islamic Republic of Iran and the United States of America, which arose out of the November 1979 hostage crisis at the United States Embassy in Tehran. Fifty-two Americans were held hostage for 444 days between November 4, 1979 and January 20, 1981. Economic sanctions imposed by the US and a decision to freeze all Iranian assets in the US followed.³⁰² Due to the Iranian revolution many Americans had left Iran and

²⁹⁰ Shelton, *supra* note 285, at 414.

²⁹¹ Shelton, *supra* note 285, at 415.

²⁹² *Id.*

²⁹³ *Id.* at 414.

²⁹⁴ See Lajos Szabo, Republic of Hungary Central Compensation Office Director-General, Letter to Claimants, May 5, 2005, http://www.kih.gov.hu/english_pages/Compensation/customer_information.html (last visited Oct. 2, 2012).

²⁹⁵ Shelton, *supra* note 285, at 415.

²⁹⁶ *Id.*

²⁹⁷ *Id.* at 414.

²⁹⁸ *Id.* at 414.

²⁹⁹ *Id.* at 414-415.

³⁰⁰ *Id.* at 415.

³⁰¹ Declaration of the Democratic and Popular Republic of Algeria concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (19 January 1981) [hereinafter Claims Settlement Declaration].

³⁰² Holtzmann & Kristjánsdóttir, *supra* note 65, at 19-20.

lost access to their assets in Iran as well. Aside from intergovernmental disputes, the Tribunal has jurisdiction to decide on claims of eligible claimants. These claims were filed by US nationals against Iran, as well as claims filed by Iranian nationals against the United States and included claims involving debts, contracts, expropriations or other measures affecting property rights.³⁰³ The Tribunal compensated no claims for personal injury.³⁰⁴ The Claims Settlement Declaration contains specific definitions concerning eligible claimants.³⁰⁵ It does not include procedural rules, but instead refers to United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules.³⁰⁶ The Tribunal later issued Tribunal Rules and Internal Guidelines and Procedural Orders.³⁰⁷ The possibility of filing a claim for private individuals closed on January 19, 1982.³⁰⁸

A. Amounts:

- The majority of claims of individuals for amounts less than USD 250,000 were filed by the US governments on behalf of its nationals. Of roughly 2,800 of those claims, 2,338 claims were dealt with by the Tribunal in lump sum settlement, awarding USD 105 million to the US government to be disbursed to its nationals.³⁰⁹
- The Tribunal has received approximately 1,000 claims for amounts of USD 250,000 or more.³¹⁰
- The Tribunal does not provide for fixed sums, but decides the actual amounts awarded to individuals, corporations and governments on a case-by-case basis.³¹¹ There is no limit to the amount that can be paid pursuant to this remedy regime.³¹²
- In total, the Tribunal has finalized 3,936 claims by award, decision, or order. More than USD 2.5 billion has been awarded to the United States and its nationals, and more than USD 900 million to Iran and Iranian nationals.³¹³

B. Valuation Methodology:

- The Tribunal made use of valuation methodology in singled out cases, which are resolved in a precedent-setting decision. Decisions are then applied in subsequent comparable cases.³¹⁴
- In many cases, the Tribunal relied on the standard of appropriate monetary payment, which was incorporated in the treaty of Amity between Iran and the United States;³¹⁵ however there have been other cases where full compensation was awarded.³¹⁶
- The Tribunal's decisions are not based on a single, generally applicable method of evaluation. The Tribunal has developed basic principles for the determination of monetary payment only in the case of expropriated or nationalized (previously privately owned) companies.³¹⁷ These principles are outlined below:
 - Going Concern Value: The award amount is based on the value of assets a business possesses as an ongoing entity, including its tangible assets, as well as the current value of its intangible assets.³¹⁸
 - Fair Market Value: The award amount is based on the price a prospective buyer and seller with reasonable knowledge about the asset would be willing to pay and receive

³⁰³ Claims Settlement Declaration, Article II.

³⁰⁴ Charles N. Brower, *The Iran United States Claims Tribunal* 59-60 (1998).

³⁰⁵ *Id.* at art. VIII.

³⁰⁶ *Id.* at art. III, ¶ 2.

³⁰⁷ Holtzmann & Kristjánsdóttir, *supra* note 65, at 206.

³⁰⁸ Iran-United States Claims Tribunal, <http://www.iusct.net/Pages/Public/A-About.aspx> (last accessed Oct. 2, 2012).

³⁰⁹ *The United States of America, on behalf of US nationals v. The Islamic Republic of Iran, Award on Agreed Terms for Claims of Less Than \$250,000*, IUSCT Case Nos. 86, B38, B76 and B77 (483-CLTDs/86/B38/B76/B77-FT), 22 June 1990 in 1991 Y.B. Comm. Arb. (Iran-U.S. Cl. Trib.) 282-85.

³¹⁰ *Id.*

³¹¹ Holtzmann & Kristjánsdóttir, *supra* note 65, at 74.

³¹² *Id.*

³¹³ Communiqué from the office of the Secretary-General, No. 09/2 (Apr. 22/2009).

³¹⁴ Holtzmann & Kristjánsdóttir, *supra* note 65, at 247.

³¹⁵ Homayoun Mafi, *Controversial Issues of Compensation in Cases of Expropriation and Nationalization: Awards of the Iran-United States Claims Tribunal* 18 *The Int. Journal of Humanities of the Islamic Republic of Iran*, 84 (2011); *Treaty of Amity, Economic Relations and Consular Rights between Iran and the United States* 284 U.N.T.S. 93 (Aug. 15, 1955), Article IV ¶ 2.

³¹⁶ *American International Group, Inc. v. Iran* (1991) 84 ILR 645, 654-656; *Tippets v. TAMS-AFFA Consulting engineers of Iran* (1984) 6 *Iran-U.S.C.T.R.*, p 225.

³¹⁷ *Iran-US Claims Procedure, Final Tribunal Rules of Procedure* (1983) 2 *Iran-US CTR* 403, Article 32; Mafi, *supra* note 315, at 94-95.

³¹⁸ *Amoco International Finance Corporation v. Iran* (1987) 15 *Iran-US CTR* 189, 27 *ILM* 1314, ¶ 264.

for the company, both behaving in their own best interests.³¹⁹

- Discounted Cash Value: The award amount is based on the outcome of the discounted cash flow method of valuation. This method is used to calculate the value of potential investment through an estimation of future earnings.³²⁰
- Replacement Value: The award amount is based on the cost to replace company assets, or a property of the same or equal value, subject to changes in market value.³²¹

2.5 Columbia: The Massacre Cases

As a consequence of the conflict in Colombia and its struggle with the FARC dating to the 1960s, the Inter-American Court of Human Rights (IACHR) exercised its jurisdiction in two cases concerning human rights violations. The cases concern the Colombian government's responsibility and liability for its agents' actions or omissions, who may or may not have directly supported or acquiesced to the illegal actions undertaken by paramilitary groups. The cases concern the disappearance of 43 civilians at Pueblo Bello in 1990 (the Pueblo Bello Massacre case),³²² and the massacre of 49 civilians at Mapiripán in 1997 (Mapiripán Massacre case), who were killed after being accused by a paramilitary group, affiliated with Colombian state agents, of being members of the FARC.³²³

In the Mapiripán Massacre case, the IACHR reiterated that any violation of an international obligation, which has caused harm, requires the perpetrator to make adequate reparations. The Court referred to Article 63(1) of the American Convention of Human Rights, in which this principle is enshrined and reflects customary law.³²⁴ The Inter-American Court held that reparations must consist of measures designed to undo the effects of the violations, and that their nature and amount would therefore depend on the injury inflicted, both material and immaterial.³²⁵ Reparations may neither enrich nor impoverish the victims or their surviving relatives.³²⁶

In both of these cases, the IACHR awarded monetary payments to the victims and their relatives for both pecuniary (material) damages, as well as non-pecuniary (immaterial) damages. According to the Court, pecuniary damages encompass "the property-related consequences of the violations,"³²⁷ as well as other "pecuniary consequences of the violations."³²⁸ According to the Court, non-pecuniary harm can refer both to "the suffering and the distress caused to the direct victims and their next of kin, as well as to detriment to the individuals' very significant values, and also to non-pecuniary changes in the conditions of the victims' existence."³²⁹

A. Amounts:

- Pecuniary damage
 - Loss of Income:
In the Mapiripán Massacre case, the Court ordered monetary payments for pecuniary damages of identified victims, which ranged from USD 35,000 to USD 350,000.³³⁰ The average amount awarded with respect to each person who died (or is presumed to have died, if no body was recovered) was USD 109,000.³³¹
In the Pueblo Bello Massacre case, the Inter-American Court also awarded damages for lost earnings to the families of individuals killed (or individuals presumed dead) in the massacre. The Court awarded amounts ranging between USD 32,300 and USD 84,800 for pecuniary damages to each disappeared person or killed victim.³³² The average

³¹⁹ *Starrett Housing Corporation, Starrett Systems Inc. and Starrett Housing International Inc. v. Iran, Bank Omran, Bank Mellat and Bank Markazi* (1991) 85 ILR 349, 49.

³²⁰ Mafi, *supra* note 315, at 98; *Amoco*, ¶ 227.

³²¹ *Oil Field of Texas, Inc. v. Government of Islamic Republic of Iran* (1986) Award No. 258-43-1, 12 Iran-US C.T.R. 308, ¶ 43-44.

³²² *The Pueblo Bello Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 140* (Jan. 31, 2006).

³²³ *The Mapiripán Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 134* (Sept. 15, 2005).

³²⁴ *Id.* at 242-244.

³²⁵ *Pueblo Bello Massacre, supra* note 322, at 228; *Mapiripán Massacre, supra* note 323, at 245.

³²⁶ *Id.*

³²⁷ *Mapiripán Massacre, supra* note 323, at 265.

³²⁸ *Pueblo Bello Massacre, supra* note 322, at 228.

³²⁹ *Mapiripán Massacre, supra* note 323, at 282; *Pueblo Bello Massacre, supra* note 317, at 254.

³³⁰ *Mapiripán Massacre, supra* note 323, at 278.

³³¹ Mark Richards, *El Centro de Recursos para Análisis de Conflictos, Quantification of the financial resources required to repair victims of the Colombian conflict in accordance with the Justice and Peace Law* (2006), 18-19.

³³² *Pueblo Bello Massacre, supra* note 322, at Appendix I.

amount awarded to each person was USD 64,000.³³³

- Displacement, loss of land and other assets:
In the Mapiripán Massacre case, the IACHR ordered monetary payments up to USD 20,000 to one individual for displacement, as well as the loss of land and other assets.³³⁴
- Expenses incurred:
In the Mapiripán Massacre case, the Court also ordered an amount of USD 5,000 be awarded to each of the five surviving relatives of one woman for expenses incurred in connection with her illness and death.³³⁵
In the Pueblo Bello Massacre case, the IACHR awarded a monetary payment in the amount of USD 5,000 for funeral expenses to the families of individuals killed in the massacre.³³⁶
- Non-pecuniary damage / Immaterial damage
 - In the Mapiripán Massacre the Pueblo Bello Massacre cases, the IACHR awarded damages for non-material costs to the families of persons killed.
 - In the Mapiripán Massacre case the damages awarded by the Court depended on the size of a family. The Court held that the amount must be paid in accordance with the following parameters:
 - For each victim, a payment of USD 80,000 and for each of the two minors that disappeared, an additional USD 10,000 was awarded.³³⁷
 - Furthermore, the Court deemed that to each next of kin the following amounts must be paid: USD 50,000 in the case of the mother, father, spouse, son or daughter; USD 8,500 in the case of sister or brother; and an additional USD 5,000 to those who were children at the time of the massacre and lost loved ones.³³⁸

The average amount awarded by the IACHR for each person who died (or who was presumed dead) was USD 305,750.³³⁹

- In the Pueblo Bello Massacre case, the IACHR also awarded damages for non-material costs to the families of persons killed in the massacre. The Court held that the amount must be paid in accordance with the following parameters: for each of the 37 victims disappeared, as well as the six victims killed, a payment of USD 30,000 would be awarded.³⁴⁰ For each of the three disappeared minors an additional USD 5,000 was to be awarded. Furthermore, for the next of kin of the victims, the Court held that the non-pecuniary damages had to be compensated in accordance with the following guidelines:
 - USD 10,000 in the case of the mother, father, wife or permanent companion and each child of the 37 victims disappeared;
 - USD 8,000 in the case of the mother, father, wife or permanent companion and each child of the six killed victims;
 - USD 5,000 in the case of each sibling of the disappeared and killed victims, and a payment of USD 2,000 to those who were pregnant when the victims were disappeared.
- In the Pueblo Bello Massacre case, the average amount awarded by the IACHR for each person who died (or who was presumed dead) was USD 53,700.³⁴¹

³³³ *Id.*

³³⁴ Mapiripán Massacre, *supra* note 323, at 274.

³³⁵ *Id.*

³³⁶ Pueblo Bello Massacre, *supra* note 323, at 249.

³³⁷ Mapiripán Massacre, *supra* note 323, at 288.

³³⁸ *Id.*

³³⁹ Richards, *supra* note 331, at 22.

³⁴⁰ Pueblo Bello Massacre, *supra* note 322, at 258.

³⁴¹ Richards, *supra* note 331, at 22.

B. Valuation Methodology:

- Pecuniary damage
 - In the Mapiripán Massacre case, the IACHR found that there was insufficient evidence available to establish the amount of income lost at the time of the massacre. Therefore the Court estimated the pecuniary losses caused by the deaths of the victims by taking into account, among others factors, “the minimum wage in force in Colombia, life expectancy in Colombia in 1997, the circumstances of the case and, in those cases in which it has been established, the ages of the victims and their activities.”³⁴²
 - In the Pueblo Bello case, the Court held that “pecuniary damage should be calculated on the basis of probative elements that allow the real damage to be ascertained.”³⁴³ The Court found it difficult to assess pecuniary damages because there was insufficient evidence to determine the amount of income lost by most of the victims.³⁴⁴ Also, in the case of the two minors, it was impossible to establish what kind of activity or profession they would have practiced in the future.³⁴⁵ Therefore, in establishing the payment amount to be awarded to the next of kin for the loss of earnings of the 43 victims, the Court took into account “the context and the circumstances of the case, life expectancy in Colombia in 1990, and that the agricultural activities carried out by most of the persons disappeared and deprived of life contributed to the subsistence of their families.”³⁴⁶
- Non-pecuniary damage
 - The IACHR did not specify how it assessed the amounts it awarded for non-pecuniary damage. The IACHR explained that, in order to assess non-pecuniary harm, it has taken into account the statements of the witnesses, statements before notary publics, and testimonies before the Court.³⁴⁷

2.6 International Criminal Court: Trust Fund for Victims

The ICC Trust Fund for Victims (Trust Fund) was established in 2002 by the Rome Statute of the International Criminal Court.³⁴⁸ It will work alongside the International Criminal Court (ICC), fulfilling both the reparations and the victims’ assistance mandates.³⁴⁹ The Trust Fund plays an important role in implementing Court-ordered monetary payments to victims (in the case of convicted individuals), and provides general assistance, funded by voluntary contributions, to victims (and their families) of crimes falling within the jurisdiction of the ICC. These crimes include genocide, war crimes, crimes against humanity, and aggression.³⁵⁰ The Trust Fund mandate of reparations is awarded only against a person convicted by the ICC.³⁵¹ ICC reparations and the resources of the Trust Fund are thus intended for victims and their families.

Since 2008 the Trust Fund has administered its victims’ assistance mandate in northern Uganda and the Democratic Republic of Congo (DRC) where the ICC is active. It has offered medical, psycho-social, and material support to over 80,000 victims. In contrast,³⁵² the reparations mandate has not yet been triggered since the ICC only issued its first conviction in 2012.

A. Amounts:

- The Board of Directors of the Trust Fund increased the Fund’s financial reserve to EUR 1.2 million in March 2012 in anticipation of the Fund’s role in administering payments to victims who suffered harm under the recently convicted Thomas Lubanga Dyilo. Lubanga was convicted of

³⁴² Mapiripán Massacre, *supra* note 323, at 277.

³⁴³ Pueblo Bello Massacre, *supra* note 322, at 247.

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ Mapiripán Massacre, *supra* note 323, at 286.

³⁴⁸ UN General Assembly, Rome Statute of the International Criminal Court, art. 79, Jul. 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

³⁴⁹ The Trust Fund for Victims, <http://www.trustfundforvictims.org> (last accessed Oct. 2, 2012).

³⁵⁰ International Criminal Court, Rules of Procedure and Evidence (adopted and entered into force 9 September 2002) [hereinafter ICC Rules of Procedure and Evidence] ICC-ASP/1/3 (Part II-A), Rule 98; *Supra* note 348, at art. 5.

³⁵¹ Regulations of the Trust Fund for Victims (3 December 2005), Resolution ICC-ASP/a/Res.3, ¶ 42 [hereinafter Trust Fund Regulations].

³⁵² Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06. <http://www.icc-cpi.int> (last visited Oct. 2, 2012).

conscripting children under the age of 15 to participate in hostilities.³⁵³ The proceedings relating to the reparation for victims in the context of the case of Lubanga have been started with a first decision determining the principles that will be applied. The Court ordered that proposals for reparations, as advanced by the victims themselves, are to be collected by the Trust Fund for Victims and presented to a newly-constituted Trial Chamber I for approval. Reparations will then be implemented through the resources of the Trust Fund for Victims that are available for this purpose.³⁵⁴

B. Valuation Methodology:

- The ICC can award restitution, monetary payments, and rehabilitation, either directly to victims, or through collective awards.³⁵⁵
- In addition to the funds collected from a convicted individual through a reparation order by the ICC, the Trust Fund may complement these resources with voluntary contributions from ICC members, as well as others, to fulfill its reparations mandate.³⁵⁶
- Upon the ICC's order for reparations through the Trust Fund, identifying individual beneficiaries or characterizing the class or classes of beneficiaries who are to receive reparation awards, the Trust Fund's Secretariat is to draft an implementation plan based upon the directions specified in the Court order, which must be approved by the Trust Fund's Board of Directors and the relevant Court Chamber.³⁵⁷
- In determining the size and/or nature of the monetary payments, the Trust Fund must take into account "the nature of the crimes, the particular injuries to the victims and the nature of the evidence to support such injuries, as well as the size and location of the beneficiary group."³⁵⁸
- After approval of the draft implementation plan by the relevant Chamber, the Trust Fund is to "verify claims' eligibility, determine the standard of proof, approve the final list of beneficiaries, prioritize certain categories, disburse the reparations awards, and verify their receipt by the intended beneficiaries."³⁵⁹

2.7 South Africa: Truth and Reconciliation Commission

During the transition from apartheid to a new democratic system in South Africa in the early 1990s, the focus was primarily on developing an amnesty program for individual perpetrators. The amnesty was conditioned upon an individual's full disclosure of actions during the apartheid regime.³⁶⁰ Reparations were only vaguely mentioned in the Interim Constitution, as well as the final Constitution of the Republic of South Africa.³⁶¹ In 1995, the South African government adopted the Promotion of National Unity and Reconciliation Act (the Act), which formed the Truth and Reconciliation Commission (TRC).³⁶² The Act created three committees within the TRC: the Human Rights Violations Committee, the Amnesty Committee and the Reparation and Rehabilitation Committee.³⁶³ Out of these three, the Reparation and Rehabilitation Committee (RRC) was charged with making recommendations for both an immediate and final reparations program, and determining which individuals qualified as victims for the purposes of such reparations.³⁶⁴ A President's Fund was also established to disburse all monetary payments.³⁶⁵

³⁵³ Press release 23 March 2012, ICC Trust Fund for Victims assists over 80,000 victims, raises reparations reserve, <http://www.trustfundforvictims.org/news> (last accessed Oct. 2, 2012).

³⁵⁴ See Press Release, ICC, Lubanga case: Trial Chamber I issues first ICC decision on reparations for victims ICC-CPI-20120807-PR831(Aug. 7, 2012) http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr831.aspx.

³⁵⁵ Rome Statute, *supra* note 348, at art. 75.2; *supra* note 345, at Rule 97, at ¶ 1.

³⁵⁶ *Id.* at art. 79; Trust Fund Regulations, *supra* note 352, at ¶ 56.

³⁵⁷ Trust Fund Regulations, *supra* note 351, at ¶ 54, 57, 59-60; ICC Rules of Procedure and Evidence, *supra* note 345, at Rule 98.

³⁵⁸ Trust Fund Regulations, *supra* note 351, at ¶ 55.

³⁵⁹ *Id.* at ¶ 62-68; Edda Kristjánsdóttir, *International Mass Claims Processes and the ICC Trust Fund for Victims in Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making* 188 (Carla Ferstman et al., eds., 2009).

³⁶⁰ Christopher J. Colvin, *Overview of the Reparations Program in South Africa* in *The Handbook of Reparations* 177 (Pablo de Greiff ed., 2006).

³⁶¹ *Id.* at 179; South African Interim Constitution, Preamble; South African Constitution, sch. 6, ¶ 22.

³⁶² Colvin, *supra* note 360, at 179; Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995).

³⁶³ Human Rights Violation Committee, Amnesty Committee and Reparation and Rehabilitation Committee.

³⁶⁴ Colvin, *supra* note 360, at 181.

³⁶⁵ Article 42 Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995).

Regulations for urgent interim reparations were announced in 1998, benefiting victims in need of immediate assistance.³⁶⁶ The RRC was responsible for the implementation of the Urgent Interim Reparations (UIR) program.³⁶⁷ Eligible claimants were victims, or their families and dependents, who were in urgent need of medical, emotional, educational, material and/or symbolic support.³⁶⁸

In 1998 the TRC also delivered its first report to the South African government, which included the RRC's final reparations and rehabilitation (R&R) policy. The report emphasized the government's legal and ethical obligation to grant monetary payments to victims.³⁶⁹ Aside from UIR, the RRC recommended individual monetary reparation grants as acknowledgement for the victim's suffering, and monetary payments for daily living costs and access to services.³⁷⁰ Based on the median annual household income in 1997 for a family of five, the RRC recommended a benchmark account of 21,700 ZAR (USD 2,713 on April 1, 2001) per victim for each year over a six-year period.³⁷¹

However, the South African government did not follow the recommendations in the final TRC reports, claiming it could not take the RRC's policy into consideration as long as the other committees within the TRC had not finished their work.³⁷² Instead, in 2003 the South African government announced its decision to provide each of the approximately 18,000 victims identified by the TRC with a lump sum payment in the form of one-time government grants.³⁷³

A. Amounts:

- UIR payments were made up to the amount of 2000 ZAR (USD 250 on April 1, 2001)³⁷⁴ to applicants with no dependents.³⁷⁵ The ceiling for a victim with one dependent was 2900 ZAR (USD 363), for two dependents it was 3750 ZAR (USD 469), for three dependents the amount was 4530 ZAR (USD 566) and for four dependents victims received 5205 ZAR (USD 651).³⁷⁶ Five or more dependents received the maximum possible payment of 5705 ZAR (USD 713).³⁷⁷ From 1998 to 2001, approximately 44,000,000 ZAR (USD 5.5 million) was paid out to roughly 14,000 victims.³⁷⁸
- Individuals identified by the TRC as victims of gross human rights violations³⁷⁹ were granted a lump sum payment in the amount of 30,000 ZAR (USD 3,600) by the South African government.³⁸⁰

B. Valuation Methodology:

- The RRC was responsible for processing the applications for UIR payments, and determining the urgency of eligible applicants based upon information gathered and evidence received by the TRC as well as a detailed set of criteria.³⁸¹ Applicants found eligible for UIR payments included terminally ill victims, mentally or physically disabled,³⁸² and victims left homeless or orphaned as a result of human rights violations.
- Within the TRC, the RRC is responsible for identifying victims who are eligible to receive monetary payments.³⁸³ Based on information and evidence gathered by the Human Rights Violations Committee and the Amnesty Committee, the RRC established the victim's identity and determined whether the individual qualified as an official victim per the criteria in the Act.³⁸⁴ The Act defined a victim as someone who had "suffered harm in the form of physical or mental injury,

³⁶⁶ *Id.* at 182, 187-188.

³⁶⁷ *Id.* at 187.

³⁶⁸ Truth and Reconciliation Commission, Report of the Truth and Reconciliation Commission of South Africa (1998), vol. 5, Ch. 5, ¶

69.

³⁶⁹ *Id.*

³⁷⁰ Colvin, *supra* note 360, at 194.

³⁷¹ Truth and Reconciliation Commission, *supra* note 368, at ¶ 69.

³⁷² Colvin, *supra* note 360, at XXV.

³⁷³ Oupa Makhalemele, Still not Talking: The South African Government's Exclusive Reparations Policy and the Impact of the R30,000 Financial Reparations on Survivors, in Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making 541 (Carla Ferstman et al. eds., 2009).

³⁷⁴ Amounts in this section are calculated with the exchange rate on April 1, 2001.

³⁷⁵ Truth and Reconciliation Commission, *supra* note 368, at vol. 5, ch. 5, ¶ 58.

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ Colvin, *supra* note 360, at 189.

³⁷⁹ Gross human rights violations were defined by the TRC as "any abduction, torture, killing or severe ill treatment" with a 'political motive.'" Truth and Reconciliation Commission, *supra* note 368, vol. 1, ch. 4, ¶ 190-132.

³⁸⁰ Makhalemele, *supra* note 373, at 541.

³⁸¹ Colvin, *supra* note 360, at 182,188-189.

³⁸² *Id.* at 182,188.

³⁸³ Makhalemele, *supra* note 373, at 542.

³⁸⁴ Colvin, *supra* note 355, at 182.

emotional suffering, pecuniary loss or substantial impairment of human rights, (i) as a result of a gross violation of human rights; or (ii) as a result of an act associated with a political objective for which amnesty has been granted.”³⁸⁵

- The government’s monetary grant has drawn criticism from survivor groups because they were not consulted during the valuation process of the payment amount.³⁸⁶

2.8 United States: Civil Liberties Act of 1988

In 1988, the United States Congress enacted the federal Civil Liberties Act (hereafter the Act), which concerned redress for the internment of 120,000 Japanese Americans in 1942.³⁸⁷ The Act authorized a presidential apology to Japanese Americans, and granted monetary payments to Japanese Americans that had been interned in the US on the basis of their race without charges or trial, during a time of national stress.³⁸⁸ The Act was a response to redress efforts by Japanese Americans through lawsuits initiated against the government, official hearings,³⁸⁹ and a report from the Commission on Wartime Relocation and Internment of Civilians (CWRIC).³⁹⁰ Eligible claimants under the Act were former internees that were legally residing in the US at the time of internment, and heirs of former internees that were still alive at the time the Act was passed, but died before receiving monetary payments.³⁹¹ Aside from individual payments, the Act established a Civil Liberties Public Education Fund Board (CLPEF) aimed to educate the general public and distribute the findings of the CWRIC.³⁹¹ The Act also authorized monetary payments to the Aleut people of Alaska, who were relocated from their island homes after a Japanese invasion.³⁹²

A. Amounts:

- The Act authorized a trust fund of USD 1.25 billion, later increased to USD 1.6 billion³⁹³ for individual payments in the fixed amount of USD 20,000 for all surviving internees.³⁹⁴
- An amount of USD 50 million was authorized for CLPEF.³⁹⁵
- The Act also included individual payments in the fixed amount of USD 12,000 for Aleuts.³⁹⁶

B. Valuation Methodology:

- The Act created the Office of Redress Administration (ORA) with a mandate for its Attorney General to implement the Act through locating and identifying eligible claimants for redress.³⁹⁷ In this context the ORA adopted implementing regulations on August 10, 1989, which governed the identification procedure by the ORA, but also regulated the possibility for individual claimants to notify the ORA of their potential eligibility and submit evidence to support this assertion.³⁹⁸
- The determination of the fixed monetary payment amount is based on the recommendations in CWRIC’s report.³⁹⁹ This congressional commission was set up in 1980 with a mandate to investigate the internment of Japanese Americans during World War II and recommend appropriate remedies.⁴⁰⁰ After hearing over 750 witnesses and internees on the suffering during

³⁸⁵ Promotion of National Unity and Reconciliation Act, 1995 at xix (Act 34 of 1995).

³⁸⁶ Makhalemele, *supra* note 373, at 541.

³⁸⁷ Eric K. Yamamoto & Liann Ebesugawa, *Report on Redress: The Japanese American Internment*, in *The Handbook of Reparations* 258 (Pablo de Greiff ed., 2006).

³⁸⁸ *Id.* at 257.

³⁸⁹ *Korematsu v. United States*, 584 F.Supp. 1406 (n .D. Cal. 1984) and *Hohri v. United States*, 586 F.Supp. 769 (D.D.C. 1984).

Commission on Wartime Relocation and Internment of Civilians, *Personal Justice Denied* (1983) [hereinafter CWRIC Report].

³⁹⁰ Eric K. Yamamoto et al., *Race, Rights and Reparation: Law and the Japanese American Internment* 406 (2001); Yamamoto & Ebesugawa, *supra* note 387, at 272.

³⁹¹ Yamamoto & Ebesugawa, *supra* note 387, at 271.

³⁹² CWRIC Report, *supra* note 389, at 317-359.

³⁹³ Yamamoto, *supra* note 390, at 273.

³⁹⁴ *Id.* at 270.

³⁹⁵ *Id.* at 275.

³⁹⁶ *Id.* at 272.

³⁹⁷ *Id.* at 271-272.

³⁹⁸ *Id.* at 272; 50 App. U.S.C.A. § 1989b-4 Restitution explains the procedures for locating eligible individuals; 28 C.F.R. § 74.5

Subpart C deals with the verification of eligibility of individuals.

³⁹⁹ Yamamoto & Ebesugawa, *supra* note 387, at 270.

⁴⁰⁰ CWRIC Report, *supra* note 387, at 1.

incarceration, CWRIC released its report in 1983 finding that gross constitutional violations had been committed and that redress was necessary.⁴⁰¹ The Commission further recommended the Federal government to issue a national apology, compensate each surviving individual USD 20,000, and set up an educational foundation.⁴⁰² CWRIC's findings also laid the foundation for several court rulings on the internment of Japanese Americans.⁴⁰³

- The valuation of the reparation amount for Aleuts was also based on CWRIC's report.⁴⁰⁴ The Commission recommended a lower award because unlike the internment of Japanese Americans, there was insufficient evidence supporting the idea that the evacuation of the Aleuts was motivated by any reason other than a concern for their safety.⁴⁰⁵

2.9 United States: Marshall Islands Nuclear Claims Tribunal

From 1946 to 1958 the United States conducted 67 nuclear tests in the Marshall Islands, a United Nations Trust Territory administrated by the United States until self-government was established in 1979. In 1983, the formal Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association was entered into (Section 177 Agreement). In that agreement, the U.S. recognized the contributions and sacrifices made by the people of the Marshall Islands in regard to the Nuclear Testing Program and accepted the responsibility to citizens of the Marshall Islands for loss or damage to property and person resulting from that testing.

Under the Section 177 Agreement, the United States provided to the Marshall Islands the sum of 150 million USD as a financial settlement for the damages caused by the nuclear testing program. That money was used to create a fund intended to generate 270 million USD for distribution over a 15 year period with average annual proceeds of approximately 18 million USD per year through the year 2001. These funds were distributed among the peoples of Bikini, Enewetak, Rongelap, Utrik, for medical and radiological monitoring, and the payment of claims.

The Marshall Islands Nuclear Claims Tribunal was founded in 1988 to "render final determination upon all claims past, present and future, of the Government, citizens and nationals of the Marshall Islands which are based on, arise out of, or are in any way related to the Nuclear Testing Program."⁴⁰⁶ The constituting document of the Tribunal was the Marshall Islands Nuclear Claims Tribunal Act 1987. This act gives the Tribunal the duty and responsibility to "decide claims by and disburse compensation to the Government and citizens and nationals of the Marshall Islands under Section 123 for existing and prospective loss of damage to person or property which are based on, arise out of or are in any way related to the Nuclear Testing Program." The burden of proof for such claims followed the presumptive approach of the 1990 Radiation Exposure Compensation Act (RECA), commonly referred to as the "Downwinders Act," which stated US civilians could claim monetary payments if they had been physically present in any "affected area" during periods of atmospheric testing in Nevada, from 1945-1962.⁴⁰⁷ Therefore, residents of the Marshall Islands who had any manifestation of a radiogenic medical condition that could be presumed to be a result of the exposure to radiation due to the testing program were eligible to file a claim.⁴⁰⁸ Monetary payments could be claimed for personal injury as well as property damage. Many islands were severely contaminated by radiation due to the testing program. Claims for property damage on these islands were divided into four separate class action suits. The Tribunal gave priority to these class actions over individual land damage claims.

A. Amounts:

- **Personal injury:** the monetary payment amount depends on the various diseases resulting from the radiation damage. The minimum amount paid for cancer (for tumors that do not require surgery) is set at USD 12,500. The maximum amount (for leukemia) is set at USD 125,000. Other

⁴⁰¹ Yamamoto & Ebesugawa, *supra* note 390, at 270.

⁴⁰² CWRIC Report, *supra* note 389, at 8-9.

⁴⁰³ *Korematsu v. United States*, 584 F.Supp. 1406 (n .D. Cal. 1984) and *Hohri v. United States*, 586.

⁴⁰⁴ Yamamoto, *supra* note 390, at 272.

⁴⁰⁵ CWRIC Report, *supra* note 389, at 317-359, 463.

⁴⁰⁶ Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association, section 1(a); Nuclear Claims Tribunal, <http://www.nuclearclaimtribunal.com/> (last accessed Oct. 2, 2012).

⁴⁰⁷ The Radiation Exposure Compensation Act 1990.

⁴⁰⁸ Nuclear Claims Tribunal, <http://www.nuclearclaimtribunal.com/> (last visited Oct. 2, 2012).

illnesses such as hypothyroidism⁴⁰⁹ are compensated with an amount of USD 37,500.⁴¹⁰

- **Property damage, Enewetak Atoll**⁴¹¹
 - To calculate amounts for the loss of property use, the Tribunal referred to a US Supreme Court ruling, noting that the relevant annual rental value should be multiplied by the affected acreage, totaling the number of years the owners could not use the land. These values ranged, per acre, from USD 47 in 1987, to USD 4,105 in 1996. To this rate the US Treasury 30-year bond rate, with an amount of USD 304 million, was applied based on the annual rental rates, the affected acreage, the number of years the use was lost, and the rental values for past lost use, including interest.
 - People relocated from Enewetak to Ujelang were also compensated for the hardship they suffered during the 33 years of relocation. The Tribunal found that the “conditions suffered by those relocated go far beyond simple annoyance.”⁴¹² An individual received USD 4,500 for each year between 1956 and 1972, the period of greatest suffering, and USD 3,000 for the remaining years. In total an individual who was present at Ujelang for the full 33 years received USD 123,000.
 - The class action claim for Enewetak was awarded USD 341 million. This included USD 199.2 million for past and future lost usage of land of Enewetak Atoll, USD 107.8 million to restore the atoll to a safe and productive state and USD 34 million⁴¹³ for the hardships suffered by the people as a result of their relocation to Ujelang.
- **Property damage, Bikini Atoll**⁴¹⁴
 - The class action suit for Bikini was awarded USD 563.3 million. This included USD 278 million for the claimants’ past and future lost usage of the land of Bikini Atoll. It further included USD 251.5 million to restore Bikini to a safe and productive state. Finally, it included USD 33.8 million for the hardships suffered by the People of Bikini Atoll as a result of their relocation attendant to their loss of land use.
- **Property damage, Utrik**⁴¹⁵
 - The class action suit for Utrik was awarded USD 307.3 million. This included USD 257 million for the value of past loss of use of Utrik and Taka Atolls as a result of their contamination from the nuclear testing program. Also it included USD 5 million to restore Utrik to a safe condition. Finally, it included USD 45.3 million for the consequential damages resulting from living in a contaminated environment.
- **Property damage, Rongelap**⁴¹⁶
 - The class action suit for Rongelap was awarded USD 1 billion. This amount included USD 212 million for remediation and restoration of Rongelap and Rongerik Atolls. This award further included USD 784.5 million for past and future lost property value of Rongelap, Rongerik and Ailinginae Atolls as a result of the Nuclear Testing Program. Finally, it included USD 34.7 million to the claimants for consequential damages.

B. Valuation Methodology:

- **Personal Injury claims:** pursuant to paragraph 23(13) of the Marshall Islands Nuclear Claims Tribunal Act 1987, as amended, the first regulation on monetary payments for medical conditions established by the Tribunal was based on diseases identified in the US legislation RECA. The

⁴⁰⁹ A condition in which the thyroid gland does not make enough thyroid hormone.

⁴¹⁰ The complete list of amounts is available at Nuclear Claims Tribunal, <http://www.nuclearclaimstribunal.com/> (last accessed Oct. 2, 2012).

⁴¹¹ NCT No. 23-0902 In the Matter of the People of Enewetak, et al., Claimants for Compensation (2000) Memorandum of Decision and Order [hereinafter Enewetak Decision].

⁴¹² NCT No. 23-0902

⁴¹³ *Id.* at § Conclusion.

⁴¹⁴ NCT No. 23-04134, In the Matter of the People of Bikini, et al., Claimants for Compensation, Memorandum of Decision and Order [hereinafter Bikini Decision].

⁴¹⁵ NCT No. 23-06103, In the Matter of the People of The Alabs of Rongelap, NCT No. 23-05443-B, In the Matter of the People of Jabon on Rongelap Atoll, NCT No. 23-05445-B, In the Matter of the People of Rongerik Atoll, NCT No. 23-00501, In the Matter of the People of Iroj Imata Jabro Kabua et al., Claimants for Compensation, Memorandum of Decision and Order [hereinafter Rongelap Decision].

⁴¹⁶ NCT No. 23-02440, In the Matter of the People of The Alabs of Rongelap, NCT No. 23-05443-B et al., Claimants for Compensation (2000) Memorandum of Decision and Order.

ratio behind this was the Tribunal's determination that the citizens of the Marshall Islands should be awarded the same amount as US citizens under RECA.⁴¹⁷ This list was extended several times by later findings and now encompasses 36 medical conditions. Conditions were included based on accepted, and extensive, scientific and medical research findings regarding the effects of radiation on human beings. Research was conducted by a US program.⁴¹⁸

- **Property damage claims:** The Tribunal's Enewetak Decision laid the foundation to assess property damage claims. The Tribunal acknowledged that "Both the United States and Marshall Islands Constitutions prohibit the taking of private property for public use without just compensation" and noted that "Representatives of the US government committed that the relocated inhabitants of Enewetak would 'be accorded all rights which are normal constitutional rights of citizens under the (US) Constitution.'"⁴¹⁹
- The Tribunal held that:
 - "(1) If one is entitled to a judgment for harm to land resulting from a past invasion and not amounting to a total destruction of value, the damages include monetary payments for (a) the difference between the value of the land before the harm and after the harm, or at his election in an appropriate case, the cost of restoration that has been or may be reasonably incurred, (b) the loss of use of the land, and (c) the discomfort and annoyance to him as an occupant."⁴²⁰
 - The following methodology was used in the Enewetak ruling: "The value of the loss of use may be calculated by multiplying the relevant annual rental value times the affected acreage times the period of years use of the land was lost to the owners." The period of loss has two elements: 1) past loss, which began on December 12, 1947 and ran until the date of the valuation, and 2) future loss, which began on the date of valuation and continues until such time in the future as the affected property is returned to the people of Enewetak in usable condition, determined by the parties to be 30 years from the effective date of the valuation or May 17, 2026. Additionally, adjustment must be made for the deferred nature of the monetary payments for past loss and a discount for future loss.⁴²¹

⁴¹⁷ Nuclear Claims Tribunal, <http://www.nuclearclaimstribunal.com/appro.htm> (last accessed Oct. 2, 2012).

⁴¹⁸ Id.

⁴¹⁹ Enewetak Decision, *supra* note 411.

⁴²⁰ Restatement (Second) Torts 929, Harm to Land from Past Invasions, Enewetak Decision, *supra* note 411, at § II (f).

⁴²¹ Enewetak Decision, *supra* note 411, at § III (A).

Section 3. Programs Responding to Terrorist Attacks and Serious Crimes

This section discusses monetary payment programs established by governments in response to their definition of terrorist attacks. Defining terrorism has proved to be contentious, and there is neither academic nor international legal consensus regarding the definition of the term 'terrorism'.⁴²² Since 1994, the United Nations General Assembly has used the following description of terrorism:

Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.⁴²³

This report includes national programs based on their own definition of terrorism and those may not necessarily fall within the definition above.

3.1 Israel: Benefits for Victims of Hostilities Law

Israel has established comprehensive and permanent legislative programs to offer monetary remuneration to victims harmed by acts of terrorism or war.⁴²⁴ First, the Benefits for Victims of Hostilities Law, 5730 - 1970 (hereafter the Victims of Hostilities Law),⁴²⁵ provides monetary payments for bodily injuries suffered in terrorist attacks, as well as monetary payments to family members of deceased victims. Second, the Property Tax and Compensation Fund Law 1961⁴²⁶ provides monetary payments for property damage caused by terrorism. The latter program will be discussed in the next section.

The monetary payment program makes no distinction between civilians harmed by war and civilians harmed by terrorism.⁴²⁷ Both situations are covered by the definition of an "enemy-inflicted injury" or "hostilities-related injury", which are interchangeable terms central to the Victims of Hostilities Law.⁴²⁸ An enemy-inflicted injury encompasses not only harm inflicted by "hostile action" or terrorist acts, but also harm caused by defensive measures aimed against terrorist threats.⁴²⁹

According to the Israeli government, the rationale behind compensating victims of terrorism lies in the principle of solidarity, and the notion that spreading the costs and general risks of war and terrorism among the general population is fundamentally fair.

The Victims of Hostilities Law established a benefit program that provides monetary payments for "enemy-inflicted injury" and monetary payments to family members of deceased victims.⁴³⁰ Victims and their relatives are eligible to claim monetary payments under the program.⁴³¹ Furthermore, injury by Israeli residents, or foreign residents working for an Israeli employer, suffered outside of Israel is covered.⁴³²

The program covers a wide range of claims that can be divided into two main categories of claims: personal injury and economic damage. Non-economic loss or immaterial damages, such as pain and suffering, are not compensated.⁴³³

A. Amounts:

⁴²² Alex P. Schmid, *The Routledge Handbook of Terrorism Research* 39 (2011).

⁴²³ 1994 United Nations Declaration on Measures to Eliminate International Terrorism annex to UN General Assembly resolution 49/60, "Measures to Eliminate International Terrorism", UN Doc. A/Res/60/49, December 9, 1994.

⁴²⁴ Hillel Sommer, *Providing Compensation for Harm Caused by Terrorism: Lessons Learned in the Israeli Experience* 36 *Indiana Law Review* 2, 335 (2003).

⁴²⁵ 24 Laws of the State of Israel 131 (5730-1969/70).

⁴²⁶ 15 Laws of the State of Israel 101 (5721-1960/61).

⁴²⁷ Sommer, *supra* note 424, at 339.

⁴²⁸ Id.

⁴²⁹ Id.

⁴³⁰ Sommer, *supra* note 424, at 339.

⁴³¹ Robert Rabin, *September 11th Victim Compensation Fund: A Circumscribed Response or an Auspicious Model* 53 *DePaul L. Rev.* 793, 793 (2003-2004).

⁴³² Sommer, *supra* note 424, at 342-343.

⁴³³ Rabin, *supra* note 431.

- All benefits under the Victims of Hostilities Act are administered by the National Insurance Institute and consist of monetary payments and a range of supplementary benefits.
- Monetary payments for injured victims include costs incurred for widely-defined medical treatment, as well as an allowance while receiving medical care.⁴³⁴ The allowance is linked to another statute, the Disabled Persons (Benefits and Rehabilitation) Law and is based on pre-injury income, with a cap of five times the average salary in Israel.⁴³⁵ Unemployed victims receive an allowance based on government employee wages, depending on their age and family situation.⁴³⁶
- Those who remain permanently disabled are entitled to disability benefits. Disability is determined by a medical committee.
 - Victims who are less than 20% disabled receive a lump sum, and victims that are 20% or more disabled receive monthly disability benefits.⁴³⁷ The amount of monetary payments is calculated by multiplying the rate of disability by 105.1% of the salary of a low-level government employee.⁴³⁸
 - In addition, the law provides for numerous supplementary benefits, such as additional monetary benefits like financial assistance when purchasing a house. Immediate family members of the victim are entitled to reimbursements for their expenses and wages lost while caring for the victim.⁴³⁹
- In the case of death, benefits for families of deceased victims are identical to those of soldiers killed in the line of duty.⁴⁴⁰ Widowers, widows, bereaved children, and parents of deceased victims are entitled to a regular monthly benefit that is expressed as a percentage of the salary of a low-level government employee, and determined according to age and family situation.⁴⁴¹ The Act provides a range of additional benefits, from the funding of psychological assistance to telephone expenses.⁴⁴²

B. Valuation Methodology:

- The monthly benefits for injured or disabled victims and relatives of deceased victims are expressed as a percentage of the salary of a low-level government employee, and are determined according to the age and family situation.⁴⁴³ Because the amounts are linked to the wages of government employees, they are updated following labor agreements.⁴⁴⁴

3.2 Israel: Property Tax and Compensation Fund Law

In 1961, Israel adopted the Property Tax and Compensation Fund Law.⁴⁴⁵ This law is the legal basis for the monetary payments program and fund for property damage caused by terrorism in Israel.⁴⁴⁶ The program has the same rationale behind it as the Victims of Hostilities Act.

Eligible claimants are individuals whose property has been damaged as a consequence of activities, falling under “hostile actions against Israel.”⁴⁴⁷ In borderline situations, it will be difficult to assess whether an event is a “hostile action” or a crime. In such cases, the burden of proof lies with the claimant.⁴⁴⁸

The category of harm compensated by the program is economic damage.⁴⁴⁹ The law covers direct and indirect damages to property that are a result of terrorist acts.⁴⁵⁰ Direct damage is all damage “caused to

⁴³⁴ Sommer, *supra* note 424, at 343-344.

⁴³⁵ Rabin, *supra* note 431; Sommer, *supra* note 419, at 344.

⁴³⁶ Sommer, *supra* note 424, at 344.

⁴³⁷ Rabin, *supra* note 431, at 793.

⁴³⁸ Sommer, *supra* note 424, at 344.

⁴³⁹ Sommer, *supra* note 424, at 347.

⁴⁴⁰ Rianne M. Letschert, Ines Staiger & Antony Pemberton, *Assisting Victims of Terrorism: Towards a European Standard of Justice* 236 (2010).

⁴⁴¹ Sommer, *supra* note 424, at 348-349.

⁴⁴² *Id.* at 347-350.

⁴⁴³ *Id.* at 348.

⁴⁴⁴ *Id.*

⁴⁴⁵ 15 Laws of the State of Israel 101 (5721-1960/61).

⁴⁴⁶ Sommer, *supra* note 424, at 354.

⁴⁴⁷ *Id.* at 355.

⁴⁴⁸ *Id.* at 345-345.

assets from actions of war by the enemy's regular army, or from other hostile actions against Israel, or from actions of war by the Israeli Army."⁴⁵¹ Indirect Damage is defined as "a loss, or the loss of earnings, as a result of war damage in a border settlement or from the inability to use assets located in border settlements as a result of actions of war by the enemy's regular army, or from other hostile actions against Israel, or from actions of war by the Israeli Army."⁴⁵² Damages that are general consequences of terrorist attacks, such as a declining economy, are excluded.⁴⁵³

A. Amounts:

- Information on concrete amounts was not available. However, some conclusions and observations can be made by reference to the Valuation Methodology section below.

B. Valuation Methodology:

- The Property Tax and Compensation Fund Regulations (the Regulations),⁴⁵⁴ issued in 1973 under the Property Tax and Compensation Fund Law, act as guidelines for the monetary payment program and regulate the process.
- Under the Regulations, monetary payments for direct damage is limited to the real damage defined as the value of the asset before the damage occurred and the market value of the asset immediately after the damage occurred, or as the cost of restoring the asset to its prior condition.⁴⁵⁵ Additionally, reasonable expenses incurred during the occurrence of the damage will be rewarded.⁴⁵⁶
- Although the law prescribed monetary payments to be made in the form of reimbursement, in practice building contractors are sent to fix the damage incurred and are paid directly by the monetary payment program.⁴⁵⁷
- Indirect damage, such as loss of earnings, is only rewarded under certain conditions. The damage must have been caused by actions which the Minister of Defense declared as hostile actions, and the damage must have occurred in a location that has been declared as an area damaged by hostile actions.⁴⁵⁸ When these conditions are met, monetary payments can be made for damage to assets or loss of earnings.
- In general, the Regulations set certain caps with regard to quantity, value and total amount paid for the covered assets. The Regulations categorize items of personal belongings, and set forth a maximum amount to be paid for each of these categories.⁴⁵⁹

3.3 Russia: Federal Law on Counteraction against Terrorism

Monetary payments for victims of terrorism in Russia find their legal basis in the Federal Law on Counteraction against Terrorism of 2006 (the Federal Law), which provides general rules for rewarding damages.⁴⁶⁰ Further rules are set by Decree No. 6 on Rules adopted to Provide Rehabilitation for those affected by Terrorist Acts and those involved in Combating Terrorism.⁴⁶¹ The Federal Law only sets amounts for damages caused to persons participating in the fight against terrorism, and refers to social rehabilitation for victims of terrorism.

⁴⁴⁹ *Id.* at 354.

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.* at 355, note 126.

⁴⁵² *Id.*

⁴⁵³ *Id.* at 357-358.

⁴⁵⁴ The Property Tax and Compensation Fund Regulations (Payment of Compensation) (Household Items), 1973, K.T. 3045, 1757.

⁴⁵⁵ K.T. 3039, 1682, ¶ 1.

⁴⁵⁶ Sommer, *supra* note 424, at 356.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.* at 355, see note 125.

⁴⁶⁰ Federal Law on Counteraction against Terrorism of 6 March 2006.

⁴⁶¹ Council of Europe, Profiles on Counter-Terrorist Capacity: Russian Federation 2

(2008), http://www.coe.int/t/dlapil/codexter/Source/country_profiles/CODEXTER%20Profiles%20_2008_%20Russian%20Federation%20E.pdf.

Following lawsuits after the siege during the musical performance “Nord-Ost” in Moscow in 2002, the Russian Supreme Court held that the state was not liable for moral damages, since only terrorists themselves could be liable for such damages.⁴⁶² This decision was made under the previous Law on the Fight Against Terrorism of 1998, but the Federal Law of 2006 also includes a reference to the same rule that moral damages should be paid by the persons having committed the act of terrorism.⁴⁶³

A. Amounts:

- For victims of terrorism the Federal Law offers social rehabilitation in the form of psychological, medical and professional rehabilitation, legal aid, assistance in job placement and provision of living premises.⁴⁶⁴ Further damages are regulated in Federal Decrees but not published in English.
- Damages caused to persons participating in the struggle against terrorism are accorded in lump sums and according fixed tariffs.⁴⁶⁵
 - In case of death family members of the deceased receive an amount of 600,000 Russian Rubles (RUB) (18,585 USD).
 - Persons who become disabled receive an amount of 300,000 RUB (9,292 USD) as well as a pension according to the legislation of the Russian Federation.⁴⁶⁶
 - Persons who are wounded but disabled receive 100,000 RUB (3,097 USD).⁴⁶⁷
- Concrete examples of amounts can be drawn from several cases that came to public attention in recent years.
 - Families of the victims of the two passenger jet crashes in 2004 received RUB 100,000 (USD 3,150) from the Federal government.
 - Victims injured by a terrorist bombing in Moscow in 2004 received RUB 50,000 (USD 1,575) (serious injuries) and RUB 3,000 (USD 95) (light injuries) on the basis of a decree signed by the Moscow mayor.
 - Survivors of the Nord-Ost theater siege received around USD 2,700 while families or relatives of deceased victims received approximately USD 9,500.⁴⁶⁸

B. Valuation Methodology:

- As mentioned above, monetary payments are awarded according to a fixed-tariff system, expressed in and based on minimum wages. Further information about valuation methodology was unavailable in open sources.

3.4 Spain: Victims of Terrorism Solidarity Act

A monetary payment program for victims of terrorism was first adopted in Spain in 1979.⁴⁶⁹ The Victims of Terrorism Solidarity Act No. 32/1999 of October 8, 1999 (amended in 2000 and 2003)⁴⁷⁰ and Royal Decree No. 288/2003 of March 7, 2003⁴⁷¹ are the legal basis of the Spanish government’s monetary payments program and assistance to victims of terrorism.

⁴⁶² OSCE ODIHR, Final Report, Technical Workshop on Solidarity with Victims of Terrorism 10 (2006), at 236.

⁴⁶³ Federal Law on Counteraction against Terrorism of 6 March 2006, Article 18 (1).

⁴⁶⁴ *Id.* Art. 19.

⁴⁶⁵ *Id.* Art. 21.

⁴⁶⁶ *Id.* Art. 21 (3).

⁴⁶⁷ Federal Law on Counteraction against Terrorism of 6 March 2006, Art. 21 (4).

⁴⁶⁸ Council of Europe, *supra* note 461, at 236.

⁴⁶⁹ OSCE ODIHR, *supra* note 462.

⁴⁷⁰ Ley 2/2003, de 12 de marzo, de modificación de la Ley 32/1999, de 8 de octubre, de solidaridad con la víctimas del terrorismo.

⁴⁷¹ José Luis de la Cuesta, Anti-Terrorist Penal Legislation and the Rule of Law: Spanish Experience (2007), <http://www.penal.org/IMG/JLDLCTerrorism.pdf>.

Spain created a special fund for the victims of the terrorist attack in Madrid on March 11, 2004, which is known as the Fondo de Ayuda de 11-M. The Ministry for Labour and Social Affairs issued a Decree which established a special Administration Unit and Monitoring Commission for the management and registration of the payments.⁴⁷² In the course of the legal proceedings following the Madrid Bombings, the Court awarded monetary payments to the victims of amounts ranging from EUR 30,000 (USD 37,550) to EUR 1.5 million (USD 1.9 million). These awards included payments made to relatives of deceased victims, as well as surviving victims.⁴⁷³

Direct victims and surviving relatives of deceased victims are eligible beneficiaries of the fund.⁴⁷⁴ Payments of damages require proof of a causal link between the damage or loss, and a terrorist act. Evidence is usually provided by a government report or, depending on the situation, a judicial report.⁴⁷⁵

Losses covered by the monetary payment program are: personal injury (physical and psychological), medical expenses, and material damage to property and vehicles resulting from acts by terrorists or armed gangs.⁴⁷⁶ There are no awards for "pain and suffering."⁴⁷⁷

A. Amounts:

- In cases of death, EUR 138,233 (USD 173,088) is granted to the surviving relatives of the deceased.
- In cases of total invalidity, the victim receives EUR 390,658 (USD 489,197).
- In cases of total incapacity to work, the victim receives EUR 96,162 (USD 120,422).
- The victim is awarded EUR 48,081 (USD 60,211) for partial incapacitation or EUR 36,061 (USD 45,160) for temporary incapacitation.⁴⁷⁸
- These are so-called solidarity payments, that are granted once. In addition, in the case of permanent disability or death,⁴⁷⁹ victims or surviving relatives are entitled to a special pension from the social security system. Victims and their families are exempted from fees within the educational systems as well as some tax exemptions.⁴⁸⁰
- Victims of Terrorism can also obtain additional monetary payments from the State for personal injury, based on what the tortfeasors are obliged to pay under tort law. The State will pay as long as the tortfeasors have not paid under tort law.⁴⁸¹
- Victims of hijacking or kidnapping are entitled to an award that is based on a fixed tariff system as well. A basic award of EUR 12,020 (USD 15,050) for the victimization itself is granted, plus an extra EUR 180 (USD 225) per day of duration of the crime, with a cap of EUR 36,061 (USD 45,150).⁴⁸²

B. Valuation Methodology:

- The monetary payments for financial loss as a result of a victim's incapacity to work are based on a fixed-tariffs program that reflects the duration and severity of the disability.⁴⁸³

⁴⁷² Orden TAS/475/2005, de 28 de febrero, por la que se crean la Unidad Administradora para la gestión del fondo de ayuda a las víctimas y afectados del atentado terrorista de 11 de marzo de 2004 y la Comisión de seguimiento de la misma y se regulan las prestaciones y servicios con cargo a dicho fondo.

⁴⁷³ Ilaria Bottigliero, *Realizing the Right to Redress for Victims of Terrorist Attacks, in Counter-Terrorism: International Law and Practice* 908, 912 (Ana Salinas De Frías, Katja L.H. Samuel & Nigel D. White eds., 2012).

⁴⁷⁴ Letschert, Staiger & Pemberton, *supra* note 440, at 233.

⁴⁷⁵ De la Cuesta, *supra* note 471.

⁴⁷⁶ Letschert, Staiger & Pemberton, *supra* note 440, at 233; DE LA CUESTA, *supra* note 471.

⁴⁷⁷ Jo Goodey, Vienna National Center for Victims of Crime, *Compensating Victims of Violent Crime in the European Union with a Special Focus on Victims of Terrorism* 8 (2003).

⁴⁷⁸ Letschert, Staiger & Pemberton, *supra* note 440, at 233-234.

⁴⁷⁹ *Id.*, at 234; OSCE ODIHR, *supra* note 462, at 10.

⁴⁸⁰ Letschert, Staiger & Pemberton, *supra* note 440, at 234.

⁴⁸¹ *Id.*

⁴⁸² Hans Jörg Albrecht & Michael Kilchling, *Victims of Terrorism Policies: Should Victims of Terrorism be Treated Differently?* 13 Eur J Crim Policy Res 4 (2007).

⁴⁸³ OSCE ODIHR, *supra* note 462, at 10; Letschert, Staiger & Pemberton, *supra* note 440, at 233; Goodey, *supra* note 472, at 14.

3.5 United Kingdom: Criminal Injuries Compensation Scheme

The Criminal Injuries Compensation Act of 1995 is the legal basis for the Criminal Injuries Compensation Scheme of 2012, which offers monetary payments to victims of violent crime and terrorism on British territory.⁴⁸⁴ The British system of compensating victims of criminal violence has been in place since 1964; it was changed in 1996 by introducing the Tariff of Injuries. The schemes, including the amounts, are updated regularly; since 1996 the system underwent updates in 2001, 2008 and 2012. In Northern Ireland the Northern Ireland Criminal Injuries Compensation Scheme applies and has slightly different arrangements, as discussed below. The Criminal Injuries Compensation Scheme also provided monetary payments for the victims of the London bombings of July 7, 2005.⁴⁸⁵ The program's premise is not to repay in the sense of restoring what has been lost, but instead to express public sympathy and provide tangible support in the form of a monetary award.⁴⁸⁶ The scheme is intended to be one of last resort: victims should first try to claim compensation from those directly or indirectly responsible for the injury.⁴⁸⁷

For Northern Ireland a slightly different program is in place. The Northern Ireland Criminal Injuries Compensation Scheme 2009 described below is based on the previous scheme of 2008, but contains the same amounts. Since November 2012 victims of overseas terrorism are eligible for payments based on the Victims of Overseas Terrorism Compensation Scheme 2012, which includes the same amounts and conditions as the 2012 Scheme described in this section.⁴⁸⁸

Eligible claimants under the program are direct victims and qualifying relatives of a deceased victim.⁴⁸⁹ A qualifying relative is someone who, at the time of death, was the deceased's spouse or partner or former spouse or partner who was financially dependent on the deceased, and parent or child of the deceased.⁴⁹⁰ Those injured while trying to apprehend criminals, prevent a crime, or help in some other way (so-called Good Samaritans) are also eligible for monetary payments.⁴⁹¹

With regard to the types of claims or injuries that are rewarded under the fund, victims must have sustained a criminal injury, which includes physical injury, mental injury, fatal injury and injury resulting from sexual and physical abuse.⁴⁹² Other payments include loss of earnings, special expenses, bereavement payments, child and dependency payments, and funeral payments.⁴⁹³

A. Amounts:

Personal injury

- The program pays a standard amount, determined in reference to the nature of the injuries, and is set out in the tariff system.⁴⁹⁴ The tariff system ranges from Level A1 or B1, representing the minimum award under the Scheme (GBP 1,000, or USD 1,600), to Level A20, representing the maximum award for a single description of injury (GBP 250,000, USD 397,000).⁴⁹⁵ Multiple injuries will be calculated as: the tariff amount of the highest-rated description of injury, plus 30 % of the second highest-rated description of injury; plus, where there are three or more injuries, 15 % of the tariff amount for the third highest-rated description of injury.⁴⁹⁶ The maximum amount that may be paid for the same injury is GBP 500,000 (USD 793,000).⁴⁹⁷

⁴⁸⁴ Letschert, Staiger & Pemberton, *supra* note 440, at 227-228.

⁴⁸⁵ *Id.*

⁴⁸⁶ BBC News, How 7 July compensation works, http://news.bbc.co.uk/2/hi/uk_news/4307810.stm, 4 October 2005 (last accessed Oct. 2, 2012).

⁴⁸⁷ Criminal Injuries Compensation Authority, A guide to the Criminal Injuries Compensation Scheme 2012 2, <http://www.justice.gov.uk/downloads/victims-and-witnesses/cic-a/how-to-apply/cica-guide.pdf>.

⁴⁸⁸ Victims of Overseas Terrorism Compensation Scheme 2012, <http://www.justice.gov.uk/victims-and-witnesses/cica/victims-of-overseas-terrorism> (last visited Apr. 16, 2013).

⁴⁸⁹ Criminal Injuries Compensation Scheme 2012 ¶ 4 and 57, <http://www.justice.gov.uk/victims-and-witnesses/cica> (last accessed Apr. 16, 2013).

⁴⁹⁰ *Id.* at ¶ 59.

⁴⁹¹ *Id.* at ¶ 5.

⁴⁹² *Id.* at ¶ 33.

⁴⁹³ *Id.* at ¶ 30.

⁴⁹⁴ *Id.* at Annex E.

⁴⁹⁵ Examples of Level A1 and B1 injuries are perforation of both ear drums, fracture of cheek bone with substantial recovery, partial loss of finger other than thumb or index finger, fractured knee with substantial recovery, minor physical child abuse and minor sexual abuse/assault over clothing. Examples of Level A20 are complete paralysis of upper and lower body and very serious brain injury resulting in non-responsive coma (A20), *id.* at Annex E.

⁴⁹⁶ *Id.* at ¶ 37.

⁴⁹⁷ *Id.* at ¶ 24.

- Where the victim suffers loss of earnings or earning capacity for longer than 28 weeks as a direct consequence of the injury, an additional amount may be awarded, as well as monetary payments for special expenses.⁴⁹⁸
- The calculation of monetary payments for loss of earnings or earnings capacity is based on the victim's statutory sick pay under the Social Security Contribution and Benefits Act 1992. Future loss of earnings is discounted according to the tables in Annex F, which set out multipliers for accelerated payments, discount factors for lump sum payments and assumptions in relation to life expectancy.⁴⁹⁹

Loss of life

- Where the victim has died in consequence of the injury, a qualifying relative is eligible for a bereavement payment, child's payment and/or dependency payment.⁵⁰⁰
- Bereavement payments depend on how many persons qualify for the bereavement award. If only one person qualifies for a bereavement award, the amount is GBP 11,000 (USD 17,450) (level B9 of the tariff). If more than one person qualifies for a bereavement award, the amount for each claimant is GBP 5,500 (USD 8,725) (level B6 of the Tariff).⁵⁰¹
- A child's payment is made in cases where the qualifying relative was under 18 at the time of the deceased's death and dependent on the deceased for parental services. The additional child's payment, paid in lump sum, is GBP 2,000 (USD 3,175) a year and shall be awarded until the claimant reaches the age of 18.⁵⁰²
- A dependency payment is made when the qualifying claimant is financially or physically dependent on the deceased. This payment is also paid in lump sum and the amount is calculated on a basis similar to the calculation of loss of earnings, as mentioned above.⁵⁰³ Dependency payments shall be divided in equal shares between qualifying relatives.⁵⁰⁴
- The maximum amount payable to a victim or qualifying relatives is GBP 500,000 (USD 793,000).⁵⁰⁵

B. Valuation Methodology:

- From 1964 to 1996, the claims processing methodology used in the Compensation Program was an individual assessment – the same way personal injury claims were dealt with in civil courts.⁵⁰⁶ In 1996, the system changed with the introduction of the tariff system, when a list of fixed monetary payments for each injury was established.⁵⁰⁷ The tariff system groups together injuries of comparable severity, and allocates a financial value to them.⁵⁰⁸ The financial value is based on an analysis of awards made under the old program.
- Other payments received for the same incident, such as a damages order of a civil or criminal court or a settlement agreement, will be deducted from the amount awarded under the scheme.⁵⁰⁹

⁴⁹⁸ *Id.* at ¶ 42-49, 50-56.

⁴⁹⁹ Criminal Injuries Compensation Scheme 2012 at ¶ 49 and Annex F.

⁵⁰⁰ *Id.* at ¶ 57.

⁵⁰¹ *Id.* at ¶ 62 and Annex E.

⁵⁰² *Id.* at ¶ 63-66.

⁵⁰³ *Id.* at ¶ 67-74 and Annex F.

⁵⁰⁴ *Id.* at ¶ 71.

⁵⁰⁵ *Id.* at ¶ 31 and 84.

⁵⁰⁶ Criminal Injuries Compensation Authority, Guide to the 2001 Compensation Program, 6.

⁵⁰⁷ *Id.*

⁵⁰⁸ UK Ministry of Justice, Reform of the Criminal Injuries Compensation Program, Equality Impact Assessment 8 (2011).

⁵⁰⁹ Criminal Injuries Compensation Scheme 2012, *supra* note 499, at ¶ 45.

3.6 United Kingdom: Northern Ireland Criminal Injuries Compensation Scheme

The Northern Ireland Criminal Injuries Compensation Scheme 2009 provides monetary payments to victims of violence in Northern Ireland who have been physically and/or mentally injured or who are dependents or relatives of a deceased victim.⁵¹⁰ The governing legislation is the Criminal Injuries Compensation (Northern Ireland) Order 2002. The Program superseded an earlier program, the Northern Ireland Criminal Injuries Compensation Scheme 2002, in order to bring Northern Ireland's system more in line with the UK's Criminal Injuries Compensation Scheme 2008 and ensure more uniformity in monetary payments for criminal injury in Great Britain.⁵¹¹ The change was proposed to reflect the improvement of the political and security situation in Northern Ireland.

With the adoption of the 2009 Scheme many disparities that previously existed between the UK Scheme and the Northern Ireland Scheme were removed. This mostly meant that the tariff levels were brought into parity, since they were generally higher in the Northern Ireland Scheme of 2002.⁵¹² The 2009 Scheme is very similar to the UK's Criminal Injuries Compensation Scheme 2012 in design, structure and concept.⁵¹³ However, some features particular to Northern Ireland are retained and therefore differences remain.

A. Amounts:

- The Tariff System in the Northern Ireland Scheme employs the same levels of monetary payments as the UK Scheme. However, there are some differences between the two programs.
- In the UK Scheme there is a maximum of GBP 500,000 (USD 793,000) on monetary payments, whereas in the equivalent Northern Ireland Scheme such a cap does not exist.⁵¹⁴
- The Northern Ireland Scheme also differs with regard to the calculation of monetary payments for multiple injuries. Both programs calculate awards on the basis of adding the tariff value of the first injury (highest rated injury), 30% of the tariff for the second injury and 15% for the third injury.⁵¹⁵ However, in the UK there are no extra payments for subsequent injuries, while the Northern Ireland Scheme provides that an extra 10% of the tariff rate is paid for each further injury.⁵¹⁶

B. Valuation Methodology:

- The Tariff System in the Northern Ireland Scheme employs the same levels of monetary payments as the UK Scheme, as well as similar valuation methodology and techniques.

3.7 United Kingdom: The British Red Cross Relief Fund for Victims of Terrorism Abroad

The British Red Cross, at the request of the British government, set up The British Red Cross Relief Fund for UK Victims of Terrorism Abroad.⁵¹⁷ The British Red Cross Relief Fund closed in November 2012, being replaced by the Victims of Overseas Terrorism Compensation Scheme 2012.⁵¹⁸

The British Red Cross Relief Fund provided financial assistance to residents of the UK (or for whom the UK is their primary residence) who were victims of terrorist acts committed outside British territory, as well

⁵¹⁰ The Northern Ireland Criminal Injuries Compensation Scheme 2009, Preamble, <http://www.dojni.gov.uk/compensation-agency/> (last visited Oct. 2, 2012).

⁵¹¹ Criminal Justice Service Division, Northern Ireland Office, Consultation Document, Proposed Northern Ireland Criminal Injuries Compensation Scheme 2009 5 (2008).

⁵¹² *Id.* at 5-7.

⁵¹³ *Id.* at 5.

⁵¹⁴ The Northern Ireland Criminal Injuries Compensation Scheme 2009, *supra* note 510, at ¶ 26.

⁵¹⁵ UK Criminal Injuries Compensation Program (2008), ¶ 27; The Northern Ireland Criminal Injuries Compensation Scheme 2009, *supra* note 510, at ¶ 28.

⁵¹⁶ The Northern Ireland Criminal Injuries Compensation Scheme 2009, *supra* note 510, at ¶ 28; Criminal Justice Service Division, *supra* note 511, at 7.

⁵¹⁷ British Red Cross, Relief fund for UK victims of terrorism abroad, <http://www.redcross.org.uk/What-we-do/Emergency-response/Relief-fund-for-UK-victims-of-terrorism-abroad> (last accessed Oct. 2, 2012).

⁵¹⁸ Victims of Overseas Terrorism Compensation Scheme 2012, *supra* note 483. See also UK Ministry of Justice, Getting it right for victims and witnesses, Consultation Paper CP3/2012, p. 80-81.

as to relatives of deceased victims.⁵¹⁹ The payments awarded by the Fund were not intended as compensation for victims' suffering, but were rather intended to mitigate victims' and survivors' financial difficulties.⁵²⁰

A. Amounts:

- The grants were paid in two stages.
- A first payment of GBP 3,000 (USD 4,760) was made to people who had been seriously injured or bereaved as the result of terrorism abroad in order to assist with immediate costs.⁵²¹
- A second payment of GBP 12,000 (USD 19,000) could be made to individuals hospitalized for five days or more, and bereaved relatives of deceased victims in order to help with on-going needs.⁵²²

B. Valuation Methodology:

- More information regarding how or why the amounts (GBP 3,000 or USD 4,760 and GBP 12,000 or USD 19,000) were determined could not be found.

3.8 United States: Tehran Hostages Compensation Fund

After the embassy hostage crisis in Tehran, Iran, the US Congress passed two Statutes to compensate the hostages; the Hostage Relief Act (HRA) of 1980,⁵²³ and the Omnibus Diplomatic Security and Anti-terrorism Act of 1986.⁵²⁴ The HRA was also enacted in response to the Algiers treaty concluded between the US and Iran, which contained a provision that barred victims of the Hostage Crisis from seeking tort damages in US courts against Iran.⁵²⁵

Under the HRA, eligible claimants are American hostages and their family members. The program covered the victim's loss of income, medical expenses due to captivity, tax exemption for monetary payments, and payments for educational expenses for a partner or a child.

The Omnibus Diplomatic Security and Anti-terrorism Act of 1986 also attempted to provide monetary payments for victims of terrorism.⁵²⁶ The section dealing with monetary payments is Title VIII, the Victims of Terrorism Compensation Act (VTCA). The VTCA applies to government employees only and provides benefits only for "captives" and "family members." Unlike the HRA, the VTCA is not restricted to the Hostage Crisis.

A. Amounts:

- The VTCA specifically included a provision that awards each victim of the Hostage Crisis USD 50 for each day of captivity.⁵²⁷

B. Valuation Methodology:

- No information could be found regarding the valuation methodology.

⁵¹⁹ British Red Cross, *supra* note 517.

⁵²⁰ *Id.*

⁵²¹ British Red Cross, Red Cross Relief Fund For UK Victims of Terrorism Abroad, Information to Seriously Injured Applicants, <http://www.redcross.org.uk/What-we-do/Emergency-response//media/BritishRedCross/Documents/What%20we%20do/Emergency%20response/16%20May%202007%20-Seriously%20Injured%20Applicatin%20Form%20-%20PDF%20Version1.ashx> (last accessed Oct. 2, 2012); BRITISH RED CROSS, RED CROSS RELIEF FUND FOR UK VICTIMS OF TERRORISM ABROAD, INFORMATION TO BEREAVED APPLICANTS, <http://www.redcross.org.uk/What-we-do/Emergency-response//media/BritishRedCross/Documents/What%20we%20do/Emergency%20response/16%20May%202007%20-%20Bereaved%20Application%20Form%20-%20PDF%20Version1.ashx> (last accessed Oct. 2, 2012).

⁵²² British Red Cross, Red Cross Relief Fund For UK Victims of Terrorism Abroad, Information to Bereaved Applicants

⁵²³ Sections 101-103, 5 U.S.C. § 5561(1982).

⁵²⁴ Pub. L. No. 99-399, 1986, Code Cong. & Admin. News 1865.

⁵²⁵ Albrecht & Kilchling, *supra* note 482, at 13-31, 22.

⁵²⁶ Pub. L. No. 99-399, 1986, Code Cong. & Admin. News 1865.

⁵²⁷ Victims of Terrorism Compensation Act, 5 U.S.C. § 5569(d)(2) 1986; Albrecht and Kilchling, *supra* note 482.

3.9 United States: Victim Compensation Fund of September 11, 2001

The Victim Compensation Fund of September 11, 2001 (VCF) finds its legal basis in the Air Transportation Safety and System Stabilization Act of 2001 (Transportation Safety Act).⁵²⁸ With the Act, the US Congress established the VCF “to provide compensation to any individual (or relatives of a deceased individual) who was physically injured or killed” as a result of the September 11 attacks in the United States.⁵²⁹

The Transportation Safety Act provided that award amounts should be based on “the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant”, establishing a broad principle of compensation. The Special Master administering the fund, Kenneth Feinberg, had wide-ranging discretion to take individual circumstances into consideration and adjust awards.⁵³⁰

The Air Transportation Safety Act defines eligible claimants as those individuals who suffered physical harm or were killed as a result of the terrorist-related aircraft crashes as a result of their presence aboard the flights, and at the World Trade Center, the Pentagon, or the site of the aircraft crash in Shanksville, Pennsylvania.⁵³¹ Representatives of deceased individuals who would have been eligible were also considered. Formulations such as “physical harm” were clarified in further guidelines. This phrase was to be read in a narrow way, meaning “a physical injury to the body”, excluding psychological injuries.

With regard to the types of harm compensated under the VCF, both economic and non-economic harm, such as pain and suffering, were compensable, when related to physical injuries or death.⁵³² However, as stated above, psychological trauma without accompanying physical injury was not compensated. Neither did the VCF provide non-economic awards for the dependents of physical injury victims.⁵³³ Property losses were also not compensated under the Fund.⁵³⁴

The Air Transportation Safety Act defines economic loss as “any pecuniary loss resulting from harm, including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities.”⁵³⁵ Economic loss for physical injury victims can be divided in two parts: 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.⁵³⁶

Non-economic losses are 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 (...) injury to reputation, and all other non-pecuniary losses of any kind or nature.”⁵³⁷

A. Amounts:

- The amounts were awarded by the VCF pursuant to set categories and guidelines (discussed in section B) and totaled over USD 7 billion, which was distributed to approximately 5,300 eligible claimants.⁵³⁸
- The payment for non-economic loss for deceased victims was set at USD 250,000, with an additional USD 100,000 for the spouse and each dependent of the deceased. The average award for the families of victims killed in the attacks exceeded USD 2 million, and ranged from USD 250,000 to USD 7.1 million.⁵³⁹

⁵²⁸ Air Transportation Safety and System Stabilization Act, 49 U.S.C. §40101 (2001).

⁵²⁹ *Id.* at § 403.

⁵³⁰ Kenneth Feinberg, *Compensating The Victims of Catastrophe: The Virginia Tech Victims Assistance Program* 93 Va. L. Rev. In Brief 181(2007).

⁵³¹ Air Transportation Safety Act, *supra* note 528, at § 405 (c).

⁵³² *Id.*, at § 405(b)(1)(B).

⁵³³ Kenneth Feinberg, Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001 Volume 1, 43 (Department of Justice, 2004).

⁵³⁴ Wühler & Niebergall, *supra* note 106, at 37.

⁵³⁵ Air Transportation Safety Act, *supra* note 528, at § 402(5).

⁵³⁶ Feinberg, *supra* note 530, at 39.

⁵³⁷ Air Transportation Safety Act, *supra* note 528, at ¶ 402(7).

⁵³⁸ Feinberg, *supra* note 533, at 1.

⁵³⁹ *Id.* at 110.

- The monetary payments for non-economic loss for physical injury victims ranged from USD 500 to USD 6 million.⁵⁴⁰ The average award for injured victims was nearly USD 400,000.⁵⁴¹

B. Valuation Methodology:

- Administrative Regulations (hereafter the Regulations) were issued that contained detailed information and guidelines on determining and calculating economic and non-economic losses, and procedures for submitting claims.⁵⁴²
 - In order to curtail the speculative nature of calculating future (“presumed”) economic loss, the methodology relied on a combination of assumptions about likely future events based on statistical data, and data from the victims’ own objectively verifiable individual circumstances, such as income.⁵⁴³ This means that the computing methodology for award amounts was tailored to individual needs and expectations.⁵⁴⁴ However, if claimants believed that the methodology used would not address their individual circumstances, a request could be made to depart from the methodology used to value the losses.⁵⁴⁵
 - With respect to “presumed” non-economic loss for deceased victims and their dependents, uniform figures were established. This was deemed the most fair and rational approach, as it was impossible to conclude that one deceased or one victim’s family suffered more than another.⁵⁴⁶ Non-economic loss for the decedents was intended to address such intangible factors as pain and suffering, and loss of enjoyment of life. A uniform award for “non-economic loss” (immaterial loss) of USD 250,000 for the death of the victim, and an additional USD 100,000 for the spouse and each dependent of the victim was established. In special circumstances, the Regulations allowed for a departure of these uniform award amounts.
 - With regard to the calculation of awards for surviving victims who sustained physical injury, the Regulations did not contain a specific methodology. Economic loss for physically injured victims was computed using the same methodology that was utilized for deceased victims, adjusting for the duration of economic loss on a case-by-case basis.⁵⁴⁷
 - In order to evaluate non-economic loss for physically injured victims, the uniform approach was rejected. Due to the vastly differing extent, severity, nature, and permanence between injuries, it was deemed neither possible nor appropriate to determine in advance, through schedules or formulas, non-economic loss for physically injured victims. Instead, each injury and the corresponding non-economic loss were to be evaluated on a case-by-case basis. The non-economic loss was determined utilizing the methodology employed for deceased victims (i.e. USD 250,000) and adjusting the losses in accordance with the extent of the victims’ physical injury.⁵⁴⁸ Categorizing injuries so that claimants with comparable injuries, in terms of severity and permanence, would receive similar non-economic awards ensured consistency.
- The Transportation Safety Act states that other payments and sources of monetary payments, such as life insurance and pension funds, were deducted from the monetary amount awarded to claimants under the VCF.⁵⁴⁹

⁵⁴⁰ *Id.* at 43.

⁵⁴¹ *Id.* at 110.

⁵⁴² Final Regulations, September 11th Victim Compensation Fund of 2001, 28 C.F.R. Part 104 (2002)

⁵⁴³ Feinberg, *supra* note 533, at 7.

⁵⁴⁴ *Id.* at 7-8.

⁵⁴⁵ Final Regulations, September 11th Victim Compensation Fund of 2001, 28 C.F.R. Part 104 (2002);

Feinberg, *supra* note 533, at 8.

⁵⁴⁶ *Id.* at 9.

⁵⁴⁷ *Id.* at 9.

⁵⁴⁸ *Id.*

⁵⁴⁹ Air Transportation Safety Act, *supra* note 528, at ¶ 405(b)(6), 402(4).

Country	Program period	Conflict period	Region	Situation	Legal basis	Funded by	Parties involved	Who can submit a claim?			Types of harm remedied	
								A. Individual	B. Family	C. Community	1. Personal injury	2. Economic damage
1.1 Afghanistan: ISAF Troop Contributing Nations	2001-present	2001-present	Middle East	Ex gratia compensation payments from ISAF contributing nations to civilians for harm caused by their military operations.	N/A (ex gratia payments)	UK, Canada, Netherlands, Australia, Poland programs discussed in the report.	Afghanistan and ISAF	Yes	Yes	No	Yes	Yes
1.2 Afghanistan/Iraq: United States Solatia & Condolence Programs	2004-present	2003-present	Middle East	The Commander's Emergency Response Program is established to help to win trust and promote civil infrastructures in Iraq and Afghanistan.	Foreign Assistance Act of 1961, 22 U.S.C. paragraph 2151	United States	Iraq, Afghanistan, United States	Yes	Yes	Yes	Yes	Yes
1.3 Afghanistan: Code 99 Fund and MoLSAMD Funds for Martyrs and Disabled	Code 99 since 2004 MoLSAMD since 1990s	1990s-present	Asia	Code 99 provides one time monetary payments to all victims of conflict. MoLSAMD provides monthly payments to families of martyrs and to the disabled.	Code 99, discretionary presidential fund. Government assistance program.	Afghanistan and assistance from international community	Afghanistan	Yes	Yes	No	Yes	No
1.4 Bosnia and Herzegovina: Commission for Real Property Claims of Displaced Persons and Refugees	1996-2003	1992-1995	Eastern-Europe	Addresses claims relating to the 1992-1995 war in Bosnia and Herzegovina.	Dayton Peace Agreement	Bosnia and Herzegovina, the European Union, the United States, and, among others, Austria, Belgium, Canada, Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and Switzerland.	Bosnia and Herzegovina, Croatia, Yugoslavia	Yes	No	No	No	Yes
1.5 Eritrea/Ethiopia: Eritrea-Ethiopia Claims Commission	2000-present	1998-2000	Africa	Addresses claims relating to the 1998-2000 war between Eritrea and Ethiopia.	The December 12, 2000 Agreement	Eritrea, Ethiopia	Eritrea, Ethiopia	Yes	No	No	Yes	Yes
1.6 Germany/Switzerland/US: Holocaust Victim Assets Program (Swiss Banks Claims)	2000-2006	1939-1945	Europe	Compensation to victims of slave labor in several categories or for refugees who were either denied entry into Switzerland or were granted entry only to be detained and mistreated as refugees in Switzerland during the war.	Settlement Agreement and the Plan of Allocation and Distribution in the Holocaust Victim Assets Litigation	Germany, German Companies	Western Europe, Australia, United States, Israel	Yes	Yes	No	No	Yes
1.7 Germany: German Forced Labour Compensation Program	2000-2006	1939-1945	Europe	To resolve claims of former Nazi victims for slave and forced labor, personal injury, and lost property.	Law on the Creation of the Foundation "Remembrance, Responsibility and Future"	Germany, German Companies	Western Europe, Australia, United States, Israel	Yes	Yes	No	Yes	Yes
1.8 Iraq: National Compensation Law	2009-present	2003-present	Middle East	To compensate victims that were killed or wounded by terrorist attacks and military errors and operations.	Law No. 20 Compensating the Victims of Military Operations, Military Mistakes and Terrorist Actions	Iraq	Iraq	Yes	Yes	No	Yes	Yes
1.9 Kosovo: Housing and Property Claims Commission	1999-2007	1989-1999	Eastern-Europe	Addresses claims arising out of discriminatory measures affecting property rights taken by the Government of Yugoslavia in Kosovo. Established to settle disputes concerning non-commercial residential property.	UNMIK Regulation No. 1999/23 of 15 November 1999, On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission, U.N. Doc. UNMIK/REG/1999/23 (15 November 1999)	Donor: Governments of, Finland, Norway, Canada, Ireland, Switzerland, Germany, OSCE, KFOR, UNMIK and the European Agency for Reconstruction (EAR)	Kosovo	Yes	Yes	No	No	Yes
1.10 Kuwait: United Nations Compensation Commission	1991-2007	1991	Middle East	Mandate is to process claims and pay compensation for losses and damage suffered as a direct result of Iraq's unlawful invasion and occupation of Kuwait.	UN Security Council Resolution 674 (1990). "reminds Iraq that under international law it is liable for any loss, damage or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq".	Voluntary contributions from governments, Iraq	Iraq, Kuwait, Egypt, India, Bangladesh, Jordan, Iran, Pakistan, Philippines, Sri Lanka, Sudan, Syria, Vietnam, Yemen, China, Other UN Member states.	Yes	Yes	Yes	Yes	Yes
1.11 Nepal: Interim Relief Program	2008-present	1996 - 2006	Asia	Support for the Government to meet commitments to people affected by the Nepal conflict, including families of the deceased, orphans, widows and disabled people, and Maoists in cantonments.	World Bank's Articles of Agreement and IDA Financing Agreement	International Development Association of the World Bank	Nepal	No	Yes	Yes	Yes	Yes
1.12 United States: Foreign Claims Act (FCA)	1918-present	N/A	Global	Allows for (ex gratia) monetary payments to civilians harmed by "negligent or wrongful act(s)" committed by uniformed personnel or civilian employees of the Department of Defense, except for harm resulting directly or indirectly from a combat act.	Foreign Claims Act	United States	United States	Yes	Yes	No	Yes	Yes
1.13 Vietnam: Agent Orange Central Payments Program	2000-present	1955-1975	Asia	The Vietnam War was a Cold War-era military conflict that occurred in Vietnam, Laos and Cambodia and involved the US. One of the most controversial aspects of the US military effort was the use of chemical defoliants, Agent Orange, causing serious damage to Vietnam and its citizens.	Vietnam Investment Review, 'Central Payments Approved for Victims of Agent Orange' Issue 0438	Vietnam, donations from societies in Denmark, the US, Switzerland and other international organizations	Vietnam	Yes	Yes	No	Yes	Yes

What amount is paid to whom for what type of harm?										Applicable Law	Guidelines	Methodology
3. Immaterial damage	A.1	A.2	A.3	B.1	B.2	B.3	C.1	C.2	C.3			
No	UK: In cases of death, amounts awarded range from USD 210 to USD 7,000, in cases of injury payment usually ranges from USD 25 to USD 14,500; Canada: max. in field award USD 1,960; Australia: unknown; Poland: max. USD 2,500.	No fixed amount	UK: payments for property damage usually range from USD 25 to USD 14,500; Netherlands: Property damage claims range from USD 500 to USD 1,500.	No fixed amount	No fixed amount	No fixed amount	N/A	N/A	N/A	National law of ISAF TCNs.	National guidelines of ISAF TCNs.	Case-by-case review
Yes	For solatia payments - Cap of USD 2,000 in case of death, USD 400 for serious injury, USD 200 for non-serious injury; For condolence payments - cap USD 2,500; for battle damage - serious harm or death cap at USD 1,600, non-serious injury USD 600.	N/A	Solatia payments: Serious property damage does not have a defined monetary payment amount under the solatia program. Cap of USD 200 for non-serious property damage. Condolence payments: serious property damage cap of USD 2,200, non-serious damage cap of USD 200.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	CERP Standard Operating Procedure, The Department of Defense policy	Case-by-case review
No	Code 99: AFN 50,000 (USD 1,000) injuries MoLSAMD; Serious Injury AFN 1,500 (90 USD) per month	Code 99: AFN 100,000 (USD 2,000) per death MoLSAMD; Death: AFN 1,500 (USD 30) per month	Solatia payments: Serious property damage does not have a defined monetary payment amount under the solatia program. Cap of USD 200 for non-serious property damage. Condolence payments: serious property damage cap of USD 2,200, non-serious damage cap of USD 200.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	CERP Standard Operating Procedure, The Department of Defense policy	Case-by-case review
No	N/A	No monetary payments due to insufficient funds	N/A	N/A	N/A	N/A	N/A	N/A	N/A	National Law Bosnia and Herzegovina	Book of Regulations	Case-by-case review
Yes	fixed-sums of USD 500 and USD 1500.	fixed-sums of USD 500 and USD 1500 in MCP	fixed-sums of USD500 and USD1500.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Rules of Procedure	Categorization, case-by-case review
Yes	N/A	No fixed amount	3 categories. Slave labour I: USD 500 - 1,450; Slave labour II: USD 500 - 1,450; Refugees: USD 1,250 - 3,625. Refugees detained in Switzerland: USD 250-725.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Plan of Allocation and Distribution	Categorization
Yes	up to EUR 6,690 (USD 8,241)	No fixed amount	Claims of forced labor in industry were awarded EUR 1,278 (USD 1,574) ; Claims by former slave laborers in agriculture were awarded up to EUR 2,560 (USD 3,148); Claims by former slave laborers held in concentration camps, ghettos or other places of confinement, and claims by former forced laborers were awarded up to EUR 7,670 (USD 9,448).	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Contract between the German Foundation and IOM, decisions of the Foundation Board of Trustees, and in legal circulars issued by the Board of Directors, a separate body appointed by and reporting to the Board of Trustees.	Categorization
Yes	Security service men receive IQD 5 million for death (USD 4,310), IQD 5 million (USD 4,310) for 75%-100% incapacitation, IQD 2.5 million to IQD 4.5 million (USD 2,155 to USD 3,879) for 50%-74%, IQD 2 million (USD 1,724) for less than 50% incapacitation. Civilians receive IQD 3.75 million (USD 3,223) for death, IQD 3.75 million (USD 3,223) for 75%-100% incapacitation, IQD 2 to 3 million (USD 1,724 to USD 2,577) for 50%-74%, and IQD 1.75 million (USD 1,505) for less than 50% incapacitation.	N/A		Heirs of secret service men and civilians receive similar amounts.	N/A	Heirs of secret service men and civilians receive similar amounts.	N/A	N/A	N/A	Iraq Law	N/A	Case-by-case review
Yes	N/A	Market value	N/A	N/A	Market value	N/A	N/A	N/A	N/A	Law applicable and in force in Kosovo on 22 March 1989	HPCC decisions	Case-by-case review
Yes	Category A+B: USD 2,500 Category C: up to USD 100,000	No fixed amount, category C claim.	Category C claim: up to USD 10,000. Damages over USD 100,000: No fixed sum, category D, E, F claim.	USD 5,000	No fixed amount, category C claim.	No fixed amount, category C claim.	USD 10,000	No fixed amount	No fixed amount	UNCC Provisional Rules, UN Security Council Resolution 687 (1991), U.N. Doc. S/RES/687 (1991) (8 April 1991), paragraph 16.	Governing Council decisions.	Categorization case-by-case-review
Yes	N/A	N/A	NPS 3,000 (USD 48) per month for confinement in cantonments	NPS 100,000 (USD 1,570) for death	N/A	N/A	N/A	USD 3.22 million for capacity building of institutional structures	N/A	Nepalese	The Financial Procedures Regulations	Categorization and amount based on budget.
Yes	Average payment for loss of life is slightly more than USD 4,200. Cap USD 100,000.		Cap USD 100,000.	Cap USD 100,000.	Cap USD 100,000.	?	?	?	N/A	US	Foreign Claims Act	Case-by-case review.
Yes	From USD 3 up to USD 7 per month.	From USD 3 up to USD 7	N/A	USD 0.38 per month for orphans.	USD 0.38 per month for orphans.	N/A	N/A	N/A	N/A	Vietnamese	Not available	Categorization and amount based on available budget.

Country or Organization	Program Period	Conflict Period	Region	Situation	Legal basis	Funded by	Parties involved	Who can submit a claim?			Types of harm remedied		
								A. Individual	B. Family	C. Community	1. Personal injury	2. Economic damage	3. Immaterial damage
2.1 Argentina: Reparations Policy for Grave Human Rights Violations	1983-present	1975-1983	South-America	Addressing claims relating to the grave human rights violations perpetrated between 1975 and 1983, during the last military dictatorship in Argentina	Decree 70/91 / Law No. 24043, Law No. 24411, Law No. 25994	Argentina	Argentina	Yes	Yes	No	Yes	No	Yes
2.2 Chile: Program of Reparations for the Families of Victims of Political Violence	1990-2003	1973-1990	South-America	Redress for families of disappeared detainees and victims of human rights violations committed during the military dictatorship in Chile.	Law 19.123, Feb 8, 1992 (Reparations Law)	Chile	Chile	Yes	Yes	No	Yes	No	No
2.3 Hungary: National Compensation Laws	1991-2006	1939-1991	Eastern Europe	Addressing the mass human rights violations during the Soviet occupation of Hungary	Act on Partial Compensation for Damages Unlawfully Caused by the State to Properties Owned by Citizens in the Interest of Settling Ownership Relations, Act on Compensation to Persons Unlawfully Deprived of their Lives or Liberty for Political Reasons	Hungary	Hungary	Yes	Yes	No	Yes	Yes	Yes
2.4 Iran/United States: Iran-United States Claims Tribunal	1981-present	1979	North-America, Middle East	Addresses claims relating to the 1979 Islamic Revolution in Iran	Claims Settlement Declaration established in the Algiers Accords	Iran, United States	Iran, United States	Yes	No	No	No	Yes	No
2.5 Colombia: The Massacre Cases	2005/2006	1990 (Pueblo Bello Massacre case), 1997 (Mapiripán Massacre case)	South America	In two cases before the Inter-American Court of Human Rights compensation was awarded to victims of the conflict in Colombia and their relatives.	The Court reiterated that any violation of an international obligation that has caused harm entails the duty to make adequate reparations. The Court also referred to Article 63(f) of the American Convention in which this principle is enshrined.	Colombia was ordered to pay reparation to the victims and their relatives.	Colombia	Yes	Yes	No	No	Yes, lost earnings, loss of land and other assets.	Yes
2.6 International Criminal Court: Trust Fund for Victims	2002-present	N/A	Global	Court-ordered reparations for victims.	Rome Statute of the International Criminal Court, 2002	Convicted person before the ICC and ICC members, ICC Trust Fund	Global, ICC members	Yes	Yes	No	Yes	No	Yes
2.7 South Africa: Truth and Reconciliation Commission	2003-present	1948-1994	Africa	Addressing claims of victims or their families and dependents, of gross human rights violations during the Apartheid regime.	Promotion of National Unity and Reconciliation Act	South-Africa	South-Africa	Yes	No	No	Yes	No	No
2.8 United States: Civil Liberties Act of 1988	1988-1999	1942-1945	North-America	Redress for the internment of 120,000 innocent Japanese Americans by the US government, as well as monetary payments for the Aleut people of Alaska who were relocated from their homes after the Japanese invasion.	Civil Liberties Act	United States	United States	Yes	Yes	No	No	No	Yes
2.9 United States: Marshall Islands Nuclear Claims Tribunal	1988	1946-1958	Pacific Ocean	Render final determination upon all claims past, present and future, of the Government, citizens and nationals of the Marshall Islands which are based on, arise out of, or are in any way related to the Nuclear Testing Program.	Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association; the Marshall Islands Nuclear Claims Tribunal Act 1987	United States	United States and the Republic of the Marshall Islands	Yes	No	Yes	Yes	Yes	No

What amount is paid to whom for what type of harm?									Applicable Law	Guidelines	Methodology
A.1	A.2	A.3	B.1	B.2	B.3	C.1	C.2	C.3			
N/A	N/A	ARS 27 (USD 6) per victim for each day of detention; in case of severe injury ARS 27 (USD 6) plus ARS 35 (USD 8); in case of arbitrary detention ARS 74 (USD 16) for each day of detention plus ARS 136, 255 (USD 29,500); in case of severe injury ARS 27 (USD 6) each day of detention, plus additional ARS 94,490 (USD 20,500) ; ARS 224,000 (USD 48,500) in case of forced disappearance or assassination; ARS 224,400 (USD 48,500) for minors victim of identity substitution; ARS 71,288 (USD 15,400) for victims of other criminal acts of state terrorism.	Beneficiary's successors received ARS 224,000 (USD 48,500) for forced disappearance and assassination; in case of victim's death, beneficiaries receive ARS 448,000 (USD 97,000) if caused by identity substitution, and ARS 142,576 (USD 31,000) for other crimes.	N/A	N/A	N/A	N/A	N/A	Argentinean Law	N/A	Categorization case-by-case-review
Monthly reparations pension of 140,000 Chilean pesos (CLP) USD 372)	N/A	N/A	Surviving spouse receives 40 % of the pension; Parent of the victim or the victim's children receive 15 % of the pension; additional one-time lump sum payment equivalent to 12 months of pension.	N/A	N/A	N/A	N/A	N/A	Chilean Law	N/A	Fixed-sum, categorization.
N/A	Depending on valuation of property, individuals received HUF 200,000 (USD 900) plus 50% of the excess up to HUF 300,000 (USD 1,350); HUF 250,000 (USD 1,120) plus 30% of the excess up to HUF 300,000 (USD1,350); For losses over HUF 310,000 (USD 1,400) plus 10% of amount in excess of HUF 500,000 (USD 2,250); Maximum award was HUF 5 million (USD 22,500).	Lump sum payment of HUF 11,000 (USD 50) per two months detention, up to a total of six months. In case of deprivation of liberty for longer than six month, an amount was calculated by dividing the duration of the detention by an official life expectancy schedule and multiplying by HUF 11,000 (USD 50).	Heirs of killed victims for political reasons were initially to receive a lump sum payment of HUF 1 million (USD 4,500).	N/A	N/A	N/A	N/A	N/A	Hungarian Law	N/A	Fixed-sums, case-by-case review
N/A	No fixed amount	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Tribunal Rules and Internal Guidelines and Procedural Orders	Case-by-case review
N/A	Maparipan case: between USD 35,000 and 350,000. Pueblo Bello case: between USD 32,300 and 84,800.	Maparipan case: between USD 80,000-90,000. Pueblo Bello case: between USD 30,000 and 35,000	N/A	Maparipan case: USD 20,000 for displacement and loss of land. Pueblo Bello case: USD 5,000 funeral expenses. NB: in both cases the compensation awarded to the killed individuals was divided among the relatives.	N/A	Maparipan: USD 8,500 for siblings and 50,000 for partners, parents or children. Pueblo Bello case: USD 8,000-10,000 for partners, parents or children and USD 5,000 for siblings.	N/A	N/A	N/A	The American Convention of Human Rights	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Regulations of the Trust Fund for Victims	N/A
One-time reparation payment in the amount of ZAR 30,000 (USD 3,600); interim payments of USD 250 to applicants with no dependents, USD 463 for two dependents, USD 566 for three dependents, USD 651 for four dependents, USD 715 for five or more dependants.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	South-African Law	N/A	Categorization, victims get paid according to the budget available.
N/A	N/A	Fixed amount of USD 20,000 for all surviving internees; USD 12,000 for surviving Aleuts.	N/A	N/A	N/A	Fixed amount of USD 20,000 for heirs of former internees; USD 12,000 for heirs of interned Aleuts.	N/A	N/A	US Law	N/A	Case-by-case review.
USD 12,500 up to USD 125,000	USD 12,000	N/A	N/A	N/A	N/A	N/A	N/A	Enewatak Atoll received USD 341 million, Bikini Atoll received USD 563.3 million, Uluk received USD 307.3 million, Rongelap Atoll received USD 1 billion	N/A	Regulations of Marshall Islands Nuclear Claims Tribunal	Class actions, case-by-case review.

Country	Program Period	Conflict Period	Region	Situation	Legal basis	Funded by	Parties involved	Who can submit a claim?			Types of harm remedied		
								A. Individual	B. Family	C. Community	1. Personal injury	2. Economic damage	3. Immaterial damage
3.1 Israel: Benefits for Victims of Hostilities Law	1970-present	N/A	Middle East	The Victims of Hostile Action (Pensions) Law, 1970 provides compensation for bodily injuries suffered in terrorist attacks, as well as compensating family members of deceased victims.	Compensation for Those Injured by Hostilities Act	Israel	Israel	Yes	Yes	No	Yes	Yes	No
3.2 Israel: Property Tax and Compensation Fund Law	1961-present	N/A	Middle East	The Property Tax and Compensation Fund Law of 1961 provides compensation for property damage caused by terrorism.	The Property Tax and Compensation Fund Law	Israel	Israel	Yes	No	No	No	Yes	No
3.3 Russia: Federal Law on Counteraction against Terrorism	1998-present	N/A	Eastern Europe, Asia	Compensation for victims of terrorism in Russia finds its legal basis in the Federal Law on Counteraction against Terrorism, which provides general rules for compensation.	Anti-Terrorism Act, 1998	Russia	Russia	Yes	Yes	Yes	Yes	No	No
3.4 Spain: Victims of Terrorism Solidarity Act	1999-present	N/A	Europe	Government funded compensation and assistance for the victims of terrorism, among others for victims of ETA Terrorism.	Victims of Terrorism Solidarity Act No. 32/1999 of October 8, 1999, amended in 2000 and 2003, and Royal Decree No. 288/2003 of March 7, 2003	Spain	Spain	Yes	Yes	No	Yes	Yes	No
3.5 United Kingdom: Criminal Injuries Compensation Scheme	2012-present	N/A	Europe	The Criminal Injuries Compensation Scheme provides compensation for victims of violent crimes, including terrorist attacks. Predecessor of 2008 provided compensation for the London bombings of 7/7.	Criminal Injuries Compensation Act 1995	UK	UK	Yes	Yes	No	Yes	Yes	Yes
3.6 United Kingdom: Northern Ireland Criminal Compensation Scheme 2009	2009-present	N/A	Europe	The Criminal Injuries Compensation Scheme 2009 provides compensation to victims of violence, including terrorism, in Northern Ireland who have been physically and/or mentally injured or who are a dependant or relative of a deceased victim.	The Criminal Injuries Compensation (Northern Ireland) Order, N. Ir. Stat. Instruments, 2002 No. 796 (superseding an earlier act)	Northern Ireland	Northern Ireland	Yes	Yes	No	Yes	Yes	Yes
3.7 United Kingdom: The British Red Cross Relief Fund for Victims of Terrorism Abroad	2006-2012	N/A	Europe	Since 2006 the British Red Cross has administered a relief fund for UK victims of terrorism abroad. This fund was set up as an interim measure in 2006 at the request of the government to assist victims of terrorist attacks overseas. The grants are not meant as compensation for what victims have suffered.	None	British Red Cross, UK government,	UK	Yes	Yes	No	Yes	Yes	No
3.8 United States: Teheran Hostages Compensation Fund	1980-1980	1980	North America, Middle East	After the Embassy Hostage Crisis in Teheran, the US government passed two statutes to provide compensation for the victims of the crisis.	The Hostage Relief Act (HRA) of 1980, the Omnibus Diplomatic Security and Anti-terrorism Act of 1986	Iran	USA, (Iran)	Yes	Yes	No	Yes	Yes	Yes
3.9 United States: Victim Compensation Fund of September 11, 2001	2001-2004	9/11/01	North America	The Victim Compensation Fund was established to provide compensation to any individual (or relatives of a deceased individual) who was physically injured or killed as a result of the 9/11 attacks in the United States in 2001.	Air Transportation Safety and System Stabilization Act, 24 September 2001	USA	USA	Yes	Yes	No	Yes	Yes	No

What amount is paid to whom for what type of harm?									Applicable Law	Guidelines	Methodology
A.1	A.2	A.3	B.1	B.2	B.3	C.1	C.2	C.3			
Less than 20% disabled: a lump sum; 20% or more disabled: monthly disability benefits. The amount of compensation calculated by multiplying the rate of disability by 105.1% of the salary of a government employee.	see A1	N/A	Partners, parents and children of deceased victims: regular monthly benefit expressed as a percentage of the salary of a government employee, determined according to age and family situation.	See B2	N/A	N/A	N/A	N/A	Israel Law	N/A	Compensation is based on and expressed in the salaries of low-level government employees, taking into account age and family situation.
N/A	Amounts unknown. The 'real damage' is compensated: the value of the asset before the damage occurred and the market value of the asset after the damage occurred, or: the cost of restoring the asset to its prior condition	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Israel Law	The Property Tax and Compensation Fund Regulations	Compensation is based on 'real damage': the value of the asset before the damage occurred and the market value of the asset after the damage occurred, or: the cost of restoring the asset to its prior condition.
People who become disabled: USD 9,292. People who are wounded but not disabled: USD 3,097	N/A	N/A	Relatives of a deceased victim: USD 18,585	N/A	N/A	N/A	N/A	N/A	Russian Law	Information not available	Fixed-tariff system, expressed and based on a certain amount of minimum wages.
Total invalidity: EUR 390,658 (USD 516,267). Total incapacity to work: EUR 96,62 (USD 127,07). For partial incapacity: EUR 48,081 (USD 63,542). For temporal incapacity: EUR 36,061 (USD 47,656).	In case of permanent disability or death, victims or surviving relatives are entitled to a special pension.	N/A	N/A	In case of permanent disability or death, victims or surviving relatives are entitled to a special pension.	In case of death, EUR 138,233 (USD 182,679) is granted to the surviving relatives of the deceased	N/A	N/A	N/A	Spanish Law	Information not available	Information not available
Ranging between GBP 1,000 (USD 1,545) and GBP 250,000 (USD 386,428). Maximum amount (in case of multiple injuries) is GBP 500,000 (USD 772,857).	No fixed amounts. Calculation is based on victim's earnings, likely future earnings and statistical data such as life expectancy. Maximum amount for loss of earnings is GBP 31,000 (USD 47,791) yearly.	No fixed amounts.	N/A	Funeral expenses are compensated	Bereavement award, ranging from from GBP 5,500 (USD 8,503) to GBP 11,000 (USD 17,006).	N/A	N/A	N/A	Law of the United Kingdom	Criminal Injuries Compensation Scheme, 3 November 2008	Tariff-based system (a list of fixed compensation payments for each injury)
Ranging between GBP 1,000 (USD 1,545) and GBP 250,000 (USD 386,428). No maximum amount in case of multiple injuries.	No fixed amounts. Calculation is based on victim's earnings, likely future earnings and statistical data such as life expectancy.	No fixed amounts.	N/A	Funeral expenses are compensated	Bereavement award, ranging from from GBP 5,500 (USD 8,503) to GBP 11,000 (USD 17,006).	N/A	N/A	N/A	Northern Ireland	Criminal Injuries Compensation Scheme 2009, and a guide for applicants, the 'Guide to the Northern Ireland Criminal Injuries Compensation Scheme 2009'	Tariff-based system (a list of fixed compensation payments for each injury)
First payment of GBP 3,000 (USD 4,639); second payment of GBP 12,000 (USD 18,552).	First payment of GBP 3,000 (USD 4,639); second payment of GBP 12,000 (USD 18,552).	N/A	First payment of GBP 3,000 (USD 4,639); second payment of GBP 12,000 (USD 18,552).	First payment of GBP 3,000 (USD 4,639); second payment of GBP 12,000 (USD 18,552).	N/A	N/A	N/A	N/A	N/A	Information not available	Information not available
amounts unknown	amounts unknown	USD 50 for each day of captivity	amounts unknown	amounts unknown	amounts unknown	N/A	N/A	N/A	US Law	Information not available	Information not available
No fixed amounts, case-by-case basis	No fixed amounts, case-by-case basis	Compensation for non-economic loss for physical injury victims ranged from USD 500 to USD 6 mio. Average award: USD 400,000.	No fixed amounts, case-by-case basis	No fixed amounts, case-by-case basis	USD 250,000 for the death of the victim and USD 100,000 for each surviving spouse and dependent	N/A	N/A	N/A	US Law	The Transportation Safety Act: amounts shall be based on "the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant." The Administrator of the fund, had discretion to adjust awards. The Administrative Regulations contained guidelines on the calculation of economic and non-economic losses.	Case-by-case review of claims