

BOOK REVIEWS

The United Nations Compensation Commission A Handbook. Edited by MARCO FRIGESSI DI RATTALMA and TREVES TULLIO. [The Hague-London-Boston Kluwer International. 1999. x + 273 pp. ISBN 90-411-1199-9]

DESCRIBED as "un justice rapide pour des millions des demandeurs", the United Nations Compensation Commission (UNCC) has, up to January 2000, dealt with the majority of claims and made available 3.6 billion US dollars as compensation for losses arising out of the invasion and occupation of Kuwait by Iraq. Although many of the larger claims still remain to be assessed, the momentum of processing claims is now so efficient that a date, July 2003, has been set for the completion of the work. This is a formidable achievement; its value as a precedent and development of the general law of State responsibility now awaits determination.

This collection of documents relating to the establishment and operation of the UNCC, with a 37 page introduction by the authors, updates the position from that set out by Richard Lillich in *The United Nations Compensation Commission, Thirteenth Sokol Colloquium*, published in 1995 with an annex containing the United Nations Security Resolutions, the UN Secretary-General's reports and the Decisions of the Governing Council, Nos 1-26 (see my review in 46 I.C.L.Q. (1997) 478).

The introduction in the present volume provides an account of the main features of the Commission's procedure and the legal issues involved. Drawing on the views of both critics and supporters (listed in a three page bibliography) the editors provide an excellent summary of the arguments relating to the validity of controversial heads of claim, of "environmental loss", damages caused by military operation, "parallel cause loss", and "departure" (all allowed); and embargo loss which is excluded. They provide an explanation of how the "presumption of normalcy" is applied to smaller claims to achieve awards to compensate average rather than proved loss. On the whole, the balance of opinion both of governments and writers appears to regard the setting up of the Commission as a valid exercise of its peace-keeping powers, with the Commission true to its remit to provide fair reparation for Iraq's international responsibility for the use of force rather than the imposition of punitive penalties for an international crime. The extent to which Iraq may challenge the proceedings remains an issue but the judicial impartiality of the Panels (though very dependent on the Secretariat for information and analysis) seems established. Although the editors note that the Secretary General's proposal for a board of commissioners to deal with "disputed claims" was not adopted, they stress that the Council has systematically approved, without any change, the recommendations made by the Panels of Commissioners.

As a published work this collection supplies the six additional UN Security Council resolutions and 20 or more Governing Council Decisions issued from 1995 to October 1998 which were not available to the earlier collection. But questions cannot be avoided as to the practicality of a paper record ending in 1998 when, by the time the volume reaches the hands of its readers, access to the UNCC website (www.uncc.ch) informs them that as at January 2000 the Decisions of the Council now total 87, not the 56 set out. The vast majority of these from No.27 onwards relate to the Council's authorisation of the Panels' recommendations of payments in respect of claims in all five Categories A, B, C, D and E, together with subsequent corrections as to claimant and amount. Of the rest the most interesting are those relating to the distribution of payments and to standards of evidence. Ragazzi and Treves provide no information as to actual receipt by claimants of the awards nor how the Panels operate the evidence rules. In Decision No.48 general guidelines are provided for payment by which sums are to be distributed by governments within six months of receipt and a report

by them on such distribution to be made within three months thereafter; payment may still be made to claimants during a further 12 months, but after two years from the initial receipt payment is returned to the General Fund and any later payment to a subsequently discovered claimant is to be deferred to the requirements of the Commission's administrative budget, its operating reserve, or other scheduled awards. More details relating to priority of payment for the small claims is given on the website.

Decision No.46 requires claims over \$100,000 by individuals (Category D), and claims by corporations (Category E) and governments (Category F) to be supported by documentary or other appropriate evidence "sufficient to demonstrate the circumstances and amount of claimed loss" with "no loss to be compensated solely on the basis of an Explanatory Statement by the claimant". The Statement by the Chinese Delegate (pp.237-9) on how to interpret "direct loss" indicates that the Security Council's limitation of reparation to direct loss and the Council's original guidelines of 2 August 1991, elaborated in decisions Nos.7, 9 and 15, are still causing controversy, in particular the ruling adopted by the Panels that claims relating to debts due for payment by Iraq three months before the invasion of Kuwait on 2 August 1990 are not within the Commission's jurisdiction.

Neither this volume nor the website provide any material on the content of the reports and recommendations of the Panels. These are extensive, already more than two dozen relating to the five categories as well as those relating to the Egyptian Workers' claims and the Well Blow-Out Control Claim. No proper appraisal of the work and its contribution to the law of State responsibility of the Commission can be made without some review of their contents; an excerpted collection of these panel reports would seem now to be required.

HAZEL FOX

Le droit à l'autodétermination en dehors des situations de décolonisation. By THÉODORE CHRISTAKIS. [La Documentation française. 1999. 676 pp. ISBN 2-11-004314-8, 262, 38F]

AFTER the process of decolonisation had widely been completed, the law of self-determination has obtained new actuality surrounding the break-up of traditional State entities in Central and Eastern Europe.

Christakis, inspired by the recent events in the former Soviet Union and Yugoslavia but also by the smouldering conflicts in Northern Ireland, the Basque region, Kurdistan, Angola, Ethiopia, Sudan and Quebec, examines self-determination in its external and internal aspects. The result is admirable in that he manages to deliver a comprehensive analysis of the current state of the law of self-determination.

Briefly referring to self-determination within the colonial context, Christakis shows that in this regard people's right to self-determination is firmly established, but without practical relevance.

In recent years self-determination has obtained a new impact as numerous ethnic entities relied on that concept when claiming a right to autonomy or even secession.

Analyzing the legal situation, the author distinguishes between external and internal self-determination and accordingly structures the book. Christakis starts with external self-determination. In situations of external domination and occupation, similar to colonial subjugation, self-determination has obtained the force of *ius cogens*. This conclusion is derived from a careful analysis of international instruments, State practice and reactions of international organisations, e.g. United Nations resolutions condemning the Soviet invasion of Afghanistan and the occupation of Kuwait by Iraq. Apart from that a right to secession might be established in cases of particularly grave violations of human rights.

In general, however, examination of recent practice, especially in relation to the break-up of States in Central and Eastern Europe, confirms that international law supports existing States. External self-determination is not capable of giving rise to a right to unilateral