

War Reparations Need Not Bleed Iraq's People Dry¹
By Jeffrey A. Jannuzzo

Much has been written about whether Iraq should pay war reparations, but little about how the reparations actually would be collected and the injured paid. Though a parallel is often drawn with the German people's burdens after World War I, Iraq should be considered differently. The allies imposed obligations on the Germans that could be met only by taxing their labor. But Iraq has a huge pool of literally liquid assets under its deserts that can be garnished to pay the injured.

Garnishing oil reserves is morally different from taxing the labor of a nation; it is more closely analogous to seizing money in bank accounts, and as a technical matter can be accomplished about as easily. The United Nations can garnish a percentage of each shipment of Iraqi oil by tanker or pipeline, for a term of years, making the purchaser's receipt of its shipment contingent on paying the garnishment into a U.N. account. The fixing of the percentage to be garnished and the term of years is for the Security Council to decide, under the authority of customary international law and recent resolutions.

The world community would debate and decide on a fair amount to set aside for damages, in light of the horror of Iraqi atrocities. For example, since Iraq is considered to have spent half or more of its oil wealth on its war machine for the past decade, assigning a similar percentage over a period of years to compensate the people injured by that war machine could hardly be thought unfair. Iraq would have the same percentage of oil wealth available for civilian uses that it had historically. Whatever percentage was decided, the world community could strike a rough balance between the needs of the injured and Iraq's need to rebuild.

Once the world community makes the decision that reparations must be paid and sets the percentage, the more important question arises of how to get the money to the people entitled to it.

There has been a tacit assumption in the international law community that the model would be the widely praised Iran-U.S. Claims Tribunal, but it is not a good model for Iraqi atrocity claims. In the Iran situation, there were complex legal issues raised by both sides, and real disputes over contract performance. An adversarial proceeding, with Iran represented on the arbitration panel, made sense.

The payment of claims for wartime atrocities is both morally and technically different from the settlement of transnational contract performance disputes. The legal issue of whether atrocity victims should get compensation has been decided. All that remains is to determine whether each individual claimant did in fact suffer and what is the fair amount that should be received, recognizing that the reparation fund is not unlimited. These are not the decisions for which an adversarial tribunal is needed.

Fixing the total sum to be taken by garnishment would have real advantages. First, the question of how to avoid excessive compensation would be settled at the outset. Second, with the total sum fixed, the priority would shift to hearing and determining the validity of claims as quickly as possible. The model would be not a court, but a claims settlement bureau.

The primary remaining considerations are how best to assure speed of determination and fairness to the claimants. Any claims commission should be required to hear and determine claims within one year, and apply whatever resources are needed to meet that deadline. Speed of determination is at least as important to helping heal the injuries as is the amount of compensation ultimately paid. A family that must spend years in claims hearings can't put the wounds behind it. Recipients will at least know that the matter is settled, and that they will receive their compensation from the garnishment process.

Fairness means that no fake claims must be paid, for that would diminish the amounts paid to the injured from the fixed fund. It also means agreeing on what a fair amount would be for particular injuries, since to award too much to some from the fixed fund would be to slight others.

While it is theoretically possible to convene an international panel of jurists and establish an international bureaucracy to wrestle with this problem, it would be far quicker and more likely to be accepted by the injured if these decisions were made by each of the countries principally concerned: Kuwait itself, and Saudi Arabia and Israel, whose people were under Scud attack. A national decision to fix the sums for particular injuries would greatly speed the process. The awarding of fixed sums has foundation in Islamic law, where the fixed "diya", or blood money, is assessed for wrongful death. Those countries are also the best ones to decide in what priority and by what percentage to pay their citizens' commercial claims, for the businesses looted or destroyed.

Claims settlement commissions set up by the principal countries are much more likely to be guided by pragmatic concerns than by abstract theories of recovery and fine points of procedure, and more likely to respond to citizen demands to get on with the job. An international bureaucracy would have less incentive to promptly respond to demands of the injured.

With national claims commissions, fake or inflated claims would not be vehicles to get back at the Iraqis or to compete against other nationalities, but would take money from the hands of fellow citizens. The national commissions would have a greater incentive to strike down fake claims than any international body would, and they would be in much better position to know who was telling the truth.

Thus, the U.N. could turn over to each of these three countries a determined percentage of the garnished revenues, for the countries themselves to award in their own national claims commissions. The U.N. could retain a determined percentage for claims of citizens of

other nations, being guided in its awards by the pragmatic choices made by the principal countries.

1. This op-ed essay appeared in the Wall Street Journal, Tuesday, March 12, 1991