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Compensation under International Humanitarian Law: The Second Gulf War as a Model

Dr. Souheila Cheriet
Faculty of Law, University of Constantine, Algeria. Email: cheriet25.souheila@gmail.com

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Abstract:
Compensation is one of the most prominent mechanisms adopted in international humanitarian law to address the consequences of violations of the rules of this law, especially in situations of armed conflict. Compensation aims to redress the damages inflicted on persons or property resulting from violations of international humanitarian law. It also serves as a means of restoring the dignity of victims, whether through material or moral compensation. However, its implementation raises numerous legal and practical issues, particularly in the absence of an international court exclusively competent to adjudicate violations of international humanitarian law. This article focuses on analyzing the concept of compensation within this specific legal framework, highlighting its legal foundations and the challenges facing its implementation, especially with regard to determining damage and responsibility. It also sheds light on some relevant judicial experiences, most notably the compensation related to the Second Gulf War between Iraq and Kuwait.

Keywords: Compensation; International Humanitarian Law; International Responsibility; Armed Conflicts; Gulf War

Introduction:

As a result of the tragedies suffered by humanity during international and internal wars, thinkers, jurists, politicians, international and national bodies, and many states have called for efforts to limit the effects of war and prevent them from exceeding military necessity. This led to the establishment of many customary and conventional rules to protect victims of armed conflict and the property necessary for them. These rules involve the transfer of ideas and moral values—especially humanitarian ones—into the field of public international law. The rules that protect human rights during armed conflicts came to be known as international humanitarian law.

In this context, this law is defined as "a set of rules that protect, in situations of armed conflict, persons who do not participate in hostilities or who are no longer able to participate in them," and, in a broader sense, protect property (civilian objects) that has no direct relation to military operations.

According to the International Committee of the Red Cross, it is a set of international rules derived from treaties or custom and aimed at resolving humanitarian problems arising directly from international and non-international armed conflicts, which, for humanitarian reasons, limit the right of parties to a conflict to use methods and means of warfare of their choice, or protect objects and persons who have been harmed or may be harmed as a result of armed conflicts.

With regard to respect for the rules of this law, the obligation to respect it and ensure respect for it by others is a general rule included in Common Article 1 of the four Geneva Conventions, as well as Article 1 of the First Additional Protocol.

However, despite the existence of this rule, most conflicts have involved serious violations of the rules of this law, which had been anticipated by the drafters of the Hague and Geneva Conventions. Therefore, they included provisions related to compensation resulting from such breaches, in accordance with Article 3 of the Hague Convention respecting the

Laws and Customs of War on Land of 1907, as well as Article 91 of Additional Protocol I to the Geneva Conventions of 1977.

In this regard, we believe that the issue of compensation is of great importance, especially in light of what is occurring on the international scene today in terms of conflicts and massacres against humanity, particularly the Israeli conflict in Gaza and the resulting international crimes and violations of international humanitarian law. Due to the importance of this topic, it raises complex legal issues, namely: how international humanitarian law has addressed the issue of compensation for damages resulting from armed conflicts, and the extent of the effectiveness of its mechanisms in protecting victims and guaranteeing their rights. To answer this problem, we decided to divide this study into two main sections. In the first section, we addressed the legal elements of compensation by highlighting its content and various forms. In the second section, we addressed compensation through international practice, as well as the compensation for the Second Gulf War (the Iraq–Kuwait War) as a model.

Chapter One:

The Concept of Compensation and Its Legal Elements

Through this section, we will study the subject of compensation from several aspects, addressing its definition linguistically and terminologically, as well as its legal nature, and then its various forms.

Section One: The Concept of Compensation

Compensation in international humanitarian law constitutes redress for damage resulting from unlawful acts during armed conflicts, and it is a fundamental means of protecting the rights of victims and restoring their dignity. Below, we address its definition and legal nature in international humanitarian law.

Subsection One: Definition of Compensation Linguistically and Terminologically

The term compensation is derived from the verb "to compensate," meaning to give something in exchange, as a substitute or replacement. It is also said "to be compensated" meaning to take compensation, and "to seek compensation" meaning to ask for compensation. Compensation refers to providing a substitute for damage, and its plural is compensations. Compensation is the substitute or replacement in the future.

Terminologically, compensation is defined as the money awarded against a person who causes harm to another in body, property, or honor. It also refers to redressing the damage suffered by the injured party, and in this sense it differs from punishment, which aims at penalizing the offender for his actions and deterring others. This distinction is important, as compensation is assessed according to the extent of the damage, whereas punishment is assessed according to the offender's fault and degree of danger.

It also refers to the content of an obligation imposed on a state in the aftermath of a war to provide adequate compensation for damage inflicted on another state or its nationals as a result of the war. The term was used in this sense in the Treaty of Versailles of 1919.

War reparations also refer to financial sums intended to compensate for losses resulting from war or occurring during it, imposed by the victor on the defeated as a condition for returning to a state of peace.

As for compensation related to the right of return, it does not mean the price of a house, factory, or field, as homelands are not sold, have no price, and cannot be acquired by prescription regardless of the passage of time. Rather, it refers to the loss suffered by the people due to the inability to exploit resources and sources of life throughout the years of displacement. This compensation does not lapse by death, but remains a right for descendants thereafter.

Subsection Two: The Legal Nature of Compensation in International Humanitarian Law

International responsibility arises from the breach of one of the obligations contained in the Geneva Conventions of 12 August 1949 or in one of their Protocols, which entails an obligation of compensation, reparation, or restitution. This was affirmed by the Permanent Court of International Justice in the

Chorzow Factory case in 1927, where it ruled: "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form, and that reparation is the indispensable complement of the failure to apply a convention, without there being any necessity for this to be stated in the convention itself." In its decision of 13 September 1928, the Court stated: "The Court affirms, in accordance with the principles of international law, and indeed with the general concept of law, that any breach of an engagement gives rise to an obligation to make reparation."

This obligation was also affirmed by the arbitral award issued by Max Huber on 1 May 1925 in the case of British claims regarding damages that occurred in the Spanish zone of Morocco, which stated: "The consequence of responsibility is the obligation to grant compensation, if this obligation has not been fulfilled."

In the same context, international doctrine unanimously agrees that a state's failure to fulfill its international obligations places upon it a new obligation consisting of repairing the damage that has occurred.

All draft texts have affirmed the obligation of the state to repair damage when it breaches its international obligations. In this regard, Article 3 of the Draft on International Responsibility presented by the Third Committee to the Hague Codification Conference in 1930 states: "The international responsibility of a State involves an obligation to make reparation for the damage resulting from its failure to comply with its international obligation."

The four Geneva Conventions also stipulated international responsibility in case of violation of their provisions, as did Article 1 of the Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission in 2001.

The same applies to Principle 23 of the 2000 Draft concerning the basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights law and international humanitarian law, which stipulates the obligation to grant compensation for any damage that can be economically assessed. The Rome Statute of the International Criminal Court of 1998 also established principles regarding compensation for victims of violations of international humanitarian law.

Thus, from all the aforementioned texts and judgments, it can be said that compensation for damage resulting from violations of the rules of international humanitarian law is an obligation incumbent upon the violating state, and the same applies to individuals who commit acts constituting violations of the rules of this law.

In addition to the binding nature of compensation for damage, it should be noted that a fierce debate has arisen in international doctrine regarding whether such compensation has a punitive character. Some commentators argue that compensation constitutes a sanction, based on the idea that sanction is not limited to deterrence, coercion, or pain, but also includes a reformative aspect. Others argue against the punitive nature of compensation, on the grounds that compensation has a reparative character, which distances it from the essence of punishment, namely pain. In this context, international jurisprudence has unanimously held that compensation has a compensatory, not punitive, character. This is reflected in the decision of the Permanent Court of Arbitration of 6 May 1913 in the Carthage case, and the decision of the German–American Mixed Claims Commission of 1 November 1923 in the Lusitania case.

Section Two Forms of Compensation and the Persons Entitled to Claim It

Compensation is a legal means of repairing damage and takes multiple forms, whether material or moral. It may be claimed by states or individuals affected, depending on the nature of the damage and the responsible party, as explained below.

Subsection One: The Different Forms of Compensation

Compensation aimed at repairing damage resulting from violations of the rules of international humanitarian law is not singular but multiple. It may take the form of restitution in kind, meaning restoring the situation to what

it was before the commission of the unlawful act, which is the original form of reparation. When this is impossible, recourse is made to compensation by equivalent or monetary compensation. The final form of compensation is satisfaction.

These different forms of compensation can be inferred from the judgment issued by the Permanent Court of International Justice in the Chorzow Factory case of 1927, where it held that compensation must be fair, and that restoring the situation to what it was before the wrongful act may constitute fair compensation. If this is not possible, an alternative method may be adopted, consisting of paying a monetary equivalent for the losses and damages incurred, or resorting to satisfaction.

First Paragraph: Restitution in Kind

Restitution in kind refers to repairing damage by restoring rights to their holders by the responsible state pursuant to its international obligations under the rules of international law, such that it must, as far as possible, erase all the consequences of the wrongful act as if it had not been committed.

Restoration may be material or legal. Material restitution involves the obligation of the offending state to return tangible material objects with actual existence, such as the recovery of property, release of persons unlawfully detained, or withdrawal from territories unlawfully occupied. Legal restitution involves the annulment by the state of all administrative decisions and judicial rulings that violate international law, as well as the annulment of any treaty provision whose implementation conflicts with an international treaty concluded by the state, such as the annulment of decisions annexing territories seized during wartime.

Restitution in kind is the primary form of reparation, but it may sometimes be impossible due to material or legal impossibility. Material impossibility arises from the nature of the event or its subject, making restitution impossible, such as the destruction of civilian aircraft, civilian homes, or the killing of unarmed civilians. Legal impossibility arises when restoring the situation would entail internal legal difficulties for the responsible state. In such cases, damage is repaired by another form of reparation. However, a state may not invoke its national legislation to justify violation of international law, as this does not constitute legal impossibility.

In this context, the International Law Commission addressed restitution in kind in Article 43 and set conditions for it, namely:

1. That it is not materially impossible.
2. That it does not involve a breach of an obligation arising from a peremptory norm of general international law.
3. That it does not impose a burden out of all proportion to the benefit derived by the injured state from restitution instead of monetary compensation.
4. That it does not seriously endanger the political or economic stability of the state that committed the internationally wrongful act, provided that the injured state would not be exposed to comparable risks if restitution were not obtained.

However, Article 52 of the Draft Articles on State Responsibility introduced an exception to conditions 3 and 4, whereby if the internationally wrongful act constitutes an international crime, the right of the injured state to obtain restitution is not subject to the restrictions set out in those two subparagraphs.

Second Paragraph: Monetary Compensation

Monetary compensation refers to the responsible state paying a sum of money as compensation for damages resulting from its unlawful acts that caused harm to others.

In addition to this common form of compensation in cash, there is another form of non-monetary compensation, such as providing goods or services.

Monetary compensation may be the sole form of compensation or may be additional or complementary to restitution in kind when the latter is insufficient to repair the existing damage.

In this sense, compensation by equivalent serves the same purpose as restitution in kind, namely repairing the damage. The difference lies in the fact that restitution in kind is limited to restoring the situation to what it was,

whereas compensation by equivalent aims to eliminate all effects of the harmful act, including both actual loss suffered and loss of expected profit.

Monetary compensation must be full, meaning that the amount paid by the responsible state must be equal in value to restitution in kind, whether it is a substitute for or complementary to it.

As for the assessment of the value of monetary compensation, the applicable rule is to restore the damaged object to its previous state or pay its value, ensuring that compensation equals the value of the damage. It must not be less than the required compensation so as not to impoverish the injured party, nor more than it so as not to unjustly enrich the injured party. The legal rules governing the determination of compensation are rules of international law, not the law governing the relationship between the state that caused the damage and the individual who suffered it, as clarified by the Permanent Court of International Justice in the Chorzow Factory case.

In determining the amount of compensation due to a state, consideration is given to the value of the property, rights, and interests of its nationals that have been damaged, as damage suffered by nationals is considered damage suffered by the state of their nationality.

Also taken into account are damages suffered by the state itself and its security, as well as expenses incurred in defending the interests of its affected nationals or lost profits that would otherwise have been obtained.

The damages covered by monetary compensation include material and moral damages, whether direct or indirect, provided they are proximate and a natural result of the wrongful act.

Interest should also be taken into account, determined in light of the prevailing global financial situation, as affirmed by the Permanent Court of International Justice in the Wimbledon case. It should be noted that compensation may be determined by agreement between the parties to the dispute, by treaty, or through arbitration, such as France's obligation under the Treaty of Frankfurt of 1871 to pay five billion French francs to Prussia following the Franco–Prussian War.

Third Paragraph: Satisfaction (Moral Compensation)

Satisfaction refers to the responsible state's disavowal of the acts committed by its officials and authorities. Forms of satisfaction include issuing a diplomatic apology, dismissing the responsible official, or bringing him to trial.

It should be noted that reparation through satisfaction may involve several combined measures, such as obliging the offending state to issue an apology, punish the perpetrator of the harmful act, and provide financial satisfaction. An example of this is the decision of the Permanent Court of International Justice in the Borchrave case between Belgium and Spain, where the Court considered that Belgium's claims were consistent with the principles of international law relating to international responsibility.

The draft law on State Responsibility addressed satisfaction in Article 45, and with the expectation that States would adhere to the third paragraph of Article 45 of the draft law on State Responsibility, Article 52 of the draft closed this matter, stating the following: "When an internationally wrongful act committed by a State constitutes an international crime... the injured State's right to obtain satisfaction is not subject to the limitation set forth in paragraph three of Article 45."

Among the applications of satisfaction as a form of reparation, the Corfu case is notable, where the court issued a ruling in favor of Albania against the United Kingdom, considering that ruling sufficient satisfaction for the former State, which waived material compensation.

Finally, it should be noted that the obligation to provide compensation in any of the forms mentioned above, or in two or all forms, depends on the nature of the conflict, the severity of the resulting damage, and its types; compensation may be material and financial, or material, financial, and satisfaction-based.

Section Three: Persons Entitled to Claim Compensation

The right to claim compensation is not granted to anyone who alleges damage; the claimant must possess a certain legal standing. Therefore, the law distinguishes between two main categories of persons who can exercise this right: legal entities and natural persons, according to the nature and legal conditions of the damage.

Paragraph One: Legal Entities Entitled to Claim Compensation

In international law, legal entities are recognized as having the right to claim compensation once their eligibility is established and the necessary legal conditions are met, considering their legal nature and independence from individuals. These entities include:

1. **States:**
   Regarding damages affecting States, there is no issue in claiming compensation, as the State is the principal person under international law and can initiate responsibility claims or take any other diplomatic, legal, or political path to seek compensation for damages incurred, whether material or moral.
2. **International Organizations:**

The issue of claiming compensation arose in the case of the assassination of Count Bernadotte, United Nations mediator, while performing his duties in Palestine, raising the question of whether the organization could claim compensation from the Israeli government if the latter was found responsible for the incident. The International Court of Justice issued its advisory opinion on this matter on April 11, 1949, stating: "Although the United Nations is not a State or a supra-State entity, it is an international person and, as such, has the necessary capacity to preserve its rights by bringing international claims against Member and non-Member States of the Organization to obtain compensation for damages suffered by it or its officials. The United Nations may only bring such claims if the basis of its claim concerns a right established for it."

This opinion establishes the principle that an international organization has the capacity to be a party in matters of international responsibility, whether as claimant or defendant.

Paragraph Two: Natural Persons Entitled to Claim Compensation

For natural persons, international law recognizes that the States of their nationality have the right to adopt claims on behalf of their nationals internationally, a practice known as diplomatic protection, which involves the international person protecting its nationals against another international person to remedy the damage they suffered by means deemed appropriate according to international law.

In this context, the claimant and defendant in an international responsibility case are the State of the affected individual as the claimant, and the State that committed the harmful act as the defendant; the individual is the subject of the claim, as established by legal scholars.

Diplomatic protection encompasses the various measures an international person undertakes to safeguard the rights of its nationals and protect their interests, organizing claims for compensation if their rights are damaged due to acts attributable to another international person.

States typically establish special bodies or committees to assess the various damages suffered by the State and its nationals, and to adopt and organize international claims for compensation, such as Decree No. (6) of 1991 issued by the Emir of Kuwait, which established the General Authority for Compensation Assessment.

In the 1924 *Mavrommatis* case between Britain and Greece regarding concession contracts granted to Mavrommatis in Palestine, the Permanent Court of International Justice stated that it is a fundamental principle of international law that every State has the right to protect its nationals when they suffer damage due to acts of other States that violate international law.

Thus, when a State adopts claims on behalf of its nationals for damages suffered, it exercises its own right and retains absolute authority in determining when and to what extent this right is exercised, or even whether it is exercised at all, should it deem that its public interest

outweighs the private interest of the affected individuals.

Many national courts have considered claims by individuals victimized by violations of international humanitarian law. The outcomes have varied significantly, with few successes and many failures due to reasons such as settlement agreements, claims of sovereign immunity, or the non-subjective nature of exercising the right to reparations under international law.

It should be noted that all courts recognize the fundamental right of individuals to compensation, even if they reject claims for various reasons.

Despite this recognition, victims may still face obstacles, as in the case against Germany in 2000. Even though the Greek Supreme Court issued a default judgment against Germany finding damages, Greek law required government authorization to enforce such a judgment through the seizure of foreign state assets, which was refused. When claimants attempted enforcement in German courts under a bilateral enforcement agreement, the German Supreme Court refused recognition, as the act committed—reprisals against civilians during the Nazi occupation of Greece—was considered sovereign and thus protected by sovereign immunity.

In addition to these domestic enforcement attempts, individuals have succeeded in asserting and implementing their rights against States before international forums, particularly regarding violations of international law. These forums typically took the form of mixed claims commissions, special arbitration courts established by treaty, allowing individuals and institutions to bring claims. Although mixed claims commissions did not explicitly address violations of international humanitarian law, they were concerned with compensating individuals affected by such violations, including personal injuries, unlawful deaths, deprivation of liberty, and property losses due to looting or unlawful destruction of civilian property.

In terms of claims, besides governments and international organizations, individuals and institutions have the right to file claims directly and obtain compensation without relying on the diplomatic protection of their State. However, in practice, individuals submit their claims to their States, which then present them to the commission. Unlike diplomatic protection cases, States do not advocate for their nationals but assume an administrative role.

Thus, individuals have been able to assert and enforce their rights before international forums regarding violations of international humanitarian law, despite the challenges that arise in each claim.

The obligation of individuals in reparations has been addressed in the statutes of three international tribunals. Although the statutes of the International Criminal Tribunal for the former Yugoslavia mention only restitution in Article 24, procedural rules address reparations more broadly.

Procedural and evidentiary rules of the International Criminal Court provide detailed guidance on reparations. Victims of violations may submit compensation claims directly to the Court, which has the authority to initiate reparations proceedings and may assess reparations individually or collectively, considering the scope and extent of any damage, loss, or injury.

At the national level, there are two main ways for victims to obtain compensation: one is by establishing the victim as a civil party, dependent on the conviction of the violator of international humanitarian law; the other is through the adoption of suitable legislation, allowing victims to file civil claims based on violations of customary international law, such as the 1789 "Decree on Claims for Damages to Foreigners" and the 1991 "Decree on the Protection of Torture Victims."

Chapter Two: Legal Means for States to Claim Compensation and the Second Gulf War Reparations as a Model

Section One: Means of Claiming Compensation in International Humanitarian Law

Means of claiming compensation under international humanitarian law are legal mechanisms enabling those harmed by armed conflicts to recover their rights, varying

according to the nature of the damage and the responsible party.

Paragraph One: Political Means of Claiming Compensation in International Humanitarian Law

These are mechanisms outside of international courts, characterized by their speed in resolving disputes while considering the interests of the parties. The solutions reached are derived from the parties' will, facilitating implementation of resulting decisions.

1. **Negotiations:**
   A traditional method used by disputing parties to settle their disputes independently without third-party intervention, marked by flexibility and reliance on States' volition.
2. **Diplomatic Protest:**

The injured State submits an official request via its diplomatic envoy to the responsible State, protesting the conduct violating international law.

3. **Good Offices:**

If negotiations or diplomatic protest fail, this method is employed, such as resorting to a fact-finding committee tasked with ensuring compliance with agreements and protocols, facilitating friendly dispute resolution.

4. **Mediation:**
   Efforts by a third party, which may be a State or an international organization, to resolve disputes between two States, proposing suitable solutions, while the disputing State remains free to accept or reject mediation.
5. **Conciliation:**
   A peaceful dispute resolution mechanism conducted by a committee of 3 to 5 members appointed by the parties, as in investigation committees. Conciliation reports are not binding and may propose solutions. Conciliation often prepares the way for arbitration. For example, the United Nations sent conciliation committees to Palestine and Congo.

6 – Fact-Finding

The cause of a dispute between States may stem from unclear facts. Once clarified, the dispute can be easily resolved. Fact-finding is conducted by a neutral committee to investigate the facts of the dispute, which are then presented to the disputing parties, international arbitration, or an international court, with the possibility of providing recommendations.

7 – Settlement through International Organizations

In international humanitarian law, for example, Article 4 of the internal regulations of the International Committee of the Red Cross provides that the Committee may receive complaints regarding serious violations of international humanitarian law. It may initiate investigations at the request of the parties to the conflict, observe certain violations through its delegates, and send a delegation of the ICRC, provided it receives assurances that its mission will not be exploited for political purposes.

Subsection Two: Legal Means of Claiming Compensation under International Humanitarian Law

Settlement here takes the form of filing a claim with a temporary or permanent court to issue a binding judgment, including arbitration and judicial proceedings under international law.

First – Arbitration

Arbitration is a method of dispute resolution through a third-party body chosen by the States. It is a very old method; Christian States used to resort to the Pope to resolve disputes, and in 1907, this method was formalized in the Hague Convention.

An example is the Taba case between Israel (Occupied Palestine) and Egypt, in which Egypt prevailed after arbitration continued for 14 years.

Second – Judicial Proceedings

Since all States are sovereignly equal, domestic courts cannot adjudicate the acts of other States. Traditionally, national courts were reluctant to deviate from this principle, even in cases involving serious violations of human rights and international humanitarian law.

This restrictive approach to directly enforcing compensation before national courts contrasts with the approach adopted by the German Court of Appeals in 1952 and the Greek courts in 2000, where jurisdiction was upheld, and individual claims were considered.

Regarding international courts, there has been significant development, from the establishment of temporary international criminal tribunals to the creation of the permanent International Criminal Court, as outlined in Article 75 of its Statute. This article provides the foundation for financial, legal, and moral compensation to victims.

Victims include natural persons harmed by the commission of a crime, and organizations or institutions dedicated to education, religion, arts, science, or charitable work whose property is damaged, including historical artifacts, hospitals, and other humanitarian sites and objects.

However, the application of this article by the Court requires a claim, either by the State of nationality of the affected persons under diplomatic protection or by the affected individuals themselves. Claims allow the Court to assess the value of reparations, the items looted or taken, and the demands for their return. International Criminal Court procedural and evidentiary rules permit victims to submit claims directly to the Court.

Sesction Two Two: United Nations Compensation Commission (UNCC) for the Second Gulf War

The Second Gulf War, resulting from Iraq's invasion of Kuwait in 1990, required the establishment of a comprehensive international mechanism for compensation for damages resulting from armed conflict. The UN Compensation Commission was established by Security Council Resolution 692 of 1991 to review and adjudicate claims according to specified rules.

Subsection One: Entities Entitled to Claim Compensation in the Gulf War

After Iraq's occupation of Kuwait on August 2, 1990, the UN Security Council issued several resolutions requiring Iraq to pay compensation for all damages, including Resolution 674 (October 29, 1990), which in paragraph 8 stated: "The Security Council reminds Iraq of its responsibility under international law for any loss, damage, or injury arising in connection with Kuwait and other States, their nationals, and their partners as a result of Iraq's invasion and illegal occupation of Kuwait."

This establishes a compensation standard based on loss directly resulting from Iraq's invasion and occupation, implicitly encompassing violations of the law of war.

Paragraph 9 of the same resolution called on States to gather information regarding their claims and those of their nationals for reparations or financial compensation against Iraq to prepare arrangements under international law.

Subsequently, Security Council Resolution 686 (March 2, 1991) established the conditions for ceasefire, including Article 2(b), obliging Iraq to accept responsibility in principle for any loss or damage related to Kuwait and third States, their nationals, and partners resulting from Iraq's invasion and illegal occupation.

After Iraq accepted Resolution 686, Resolution 687 (April 5, 1991) established a permanent ceasefire, including provisions regarding compensation. Paragraph 16 reaffirmed Iraq's international responsibility for direct losses or damage, including environmental harm, depletion of natural resources, and damage to governments, nationals, or foreign institutions due to the illegal invasion and occupation.

To claim compensation, a fund was established to pay claims under paragraph 16, with a committee to manage it. Following the Secretary-General's report on compensation to the Security Council (May 2, 1991), Resolution 692 (May 20, 1991) created the fund and committee, referred to as the UNCC. The UNCC consists of three bodies: the Governing Council, the Secretariat, and the panels of Commissioners.

Subsection Two: Scope of Damages Covered by the Compensation Mechanism

Violations of international humanitarian law generally result in numerous, successive, and interconnected damages, difficult to quantify precisely. The primary task of the UNCC

Governing Council was to define the damages Iraq would be liable to compensate.

Resolution No. 1 (August 1991) established Iraq's liability on five grounds:

A. Military operations or threats of military action by either party between August 2, 1990, and March 2, 1991.

B. Evacuation from Iraq or Kuwait, inability to leave, or decision not to return during that period.

C. Acts by officials, employees, or entities controlled by the Iraqi government during that period related to the invasion or occupation.

D. Collapse of civil systems in Kuwait or Iraq during that period.

E. Hostage-taking or other forms of unlawful detention.

The UNCC does not determine whether losses resulted from violations of international humanitarian law; however, given the circumstances, many claims awarding compensation for death, torture, personal injury, mental anguish, stress, hostage-taking, or loss/damage of property are based on violations of international humanitarian law.

Paragraph 6 of Resolution No. 7 of the Governing Council stated that compensation would also cover direct environmental damage and depletion of natural resources due to Iraq's invasion and illegal occupation of Kuwait.

The 1949 Geneva Conventions did not explicitly address environmental damage, which was later addressed by Additional Protocol I. Article 35(3) prohibits methods of warfare that may cause excessive injury, unnecessary suffering, or "widespread, long-term, and severe damage to the environment." Article 55 prohibits methods of warfare harmful to the environment in ways that endanger civilian health or life and forbids retaliatory actions against the environment. Article 35 protects the natural environment itself, while Article 55 protects civilians from the use of the environment as a weapon.

As of January 26, 2004, claims submitted to the Commission exceeded $264 billion, of which more than $18 billion has been paid from Iraqi funds.

Paragraph 19 of Security Council Resolution 687 provided that the fund would be primarily financed by deductions from Iraqi oil exports, with the Secretary-General determining the percentage, considering Iraq's domestic needs, ability to pay, external debt, and economic requirements, ensuring repayment to the fund.

The Secretary-General recommended, in a memorandum to the Security Council on May 30, 1991, allocating 30% of Iraqi oil revenues to the fund, approved in Resolution 705 (August 15, 1991). The Council later reduced this to 25% (September 28, 2000), with the 5% reduction for humanitarian needs of Iraqi civilians. Since 2003, 5% of Iraqi oil revenues have been allocated for these payments under Resolution 1483 following the U.S. occupation of Iraq.

The UNCC Governing Council identified the entities eligible to claim compensation:

A. **Governments:** on their behalf, their nationals, residents, or companies/entities registered under their law; in the case of former federal states, any government may submit claims on behalf of nationals, companies, or entities of another government if agreed.

B. **International Organizations:** may only submit claims on their own behalf.

C. **Legal entities or designated bodies:** appointed by the Governing Council to submit claims on behalf of individuals unable to do so, primarily Palestinians, with UNRWA submitting claims for those in Syria, Egypt, Lebanon, and Jordan without Jordanian passports. The UNDP handles Palestinians in the occupied territories, and UNHCR and ICRC organize claims for other refugees.

D. **Companies and joint ventures:** may submit claims directly to the Commission within three months if their government did not organize them, providing reasons.

E. **Allied Armed Forces personnel:** Iraq objected, citing unprecedented claims. Resolution 11 limited claims to specific categories, such as prisoners of war and those harmed due to mistreatment contrary to international humanitarian law.

Finally, the UNCC faced criticism, particularly from Iraq, claiming that the Security Council exceeded its authority and that responsibility should be determined according to international law rules and procedures, not the

general policy established by the Governing Council of the Compensation Fund.

In this context, paragraph three of Article 33 of the Charter obliges the Security Council to consider submitting disputes between parties to the International Court of Justice in accordance with the provisions of the Statute of that Court. Paragraph two of Article 36 of the same Statute provides that the type of compensation arising from a breach of an international obligation, as well as its extent, constitutes a legal dispute.

Regarding the Compensation Commission, its decisions extended beyond the concept of direct damage or loss defined in Security Council Resolution 674. An example is contracts in which Iraq was a party and which became impossible to perform due to the imposed embargo. Additionally, in certain cases, the Commission approved compensation amounts exceeding those stated in the claims, and paid some countries funds they were not entitled to, totaling $77 million over the years.

It is thus clear that the legal framework for compensation imposed on Iraq differs from the rules established by international humanitarian law and diverges in many respects from traditional international liability rules. In this regard, a fundamental principle of international humanitarian law is the principle of equality of treatment, which also includes equality in compensation for violations of relevant international provisions, regardless of the party to which the victim belongs.

Conclusion:

At the conclusion of this study, after examining the topic of compensation, we found it to be both important and complex. Several conclusions were reached: compensation is obligatory, not optional, and compensatory, not punitive. This obligation may take one form of the various types of compensation, two forms, or all forms, depending on the circumstances of the dispute and the severity and nature of the damages.

Regarding the beneficiaries of compensation, we concluded that the State has full right to claim as the primary subject of international law. Individuals have an unrestricted right to claim compensation, as referenced in the Fourth Hague Convention (Article 3) and the First Additional Protocol (Article 91). The same applies to international organizations, which are entitled to claim compensation when harmed or when one of their personnel is affected.

Finally, concerning the means of claiming compensation, we concluded that there are two: the political means and the legal means.

Based on the model studied in this research, particularly the Gulf War case, and similar ongoing conflict situations such as in Gaza, we propose the following recommendations to enhance victim protection and ensure redress:

- Enhance the effectiveness of international mechanisms for enforcing compensation provisions under international humanitarian law.
- Include clear and direct rules on compensation within the core of international humanitarian law conventions, with codified enforcement mechanisms.
- Strengthen the role of international courts, particularly the International Court of Justice, in adjudicating humanitarian compensation claims.
- Launch international initiatives to assess damages and compensate affected persons in areas experiencing serious violations, giving priority to Gaza as an open humanitarian conflict zone requiring urgent legal and humanitarian intervention.

References:

A. Books

Arabic:

1. Al-Darraji, Ibrahim, 2005, *The Crime of Aggression and the Extent of International Legal Responsibility*, 1st edition, Al-Halabi Legal Publications, Beirut.
2. Al-Sayyid Abu Aita, 2000, *International Penalties: Theory and Practice*, University Culture Foundation, Egypt.
3. Dr. Amer Al-Zamali, 1997, *Introduction to International Humanitarian Law*, 2nd edition,

Printing and Artistic Production Unit, Arab Institute for Human Rights, Tunisia.
4. Dr. Saad Allah Omar, 2005, *Dictionary of Contemporary International Law*, 1st edition, University Publications Office, Algeria.
5. Charles Rousseau, 1987, *Public International Law*, translated by Shukrallah Khalifa and Abdul Rahman Saad, Al-Ahlia Publishing and Distribution, Beirut.
6. Dr. Fawzi O. Sadiq, 1999, *The Principle of Intervention and Sovereignty: Why? And How?*, Dar Al-Kitab Al-Hadith, Algeria.
7. Dr. Omar Sadiq, 2003, *Lectures on Public International Law*, 2nd edition, University Publications Office, Algeria.
8. Dr. Haider Abdul Razzaq Hamid, 2008, *Development of International Criminal Justice: From Temporary Tribunals to the Permanent International Criminal Court*, Dar Al-Kutub Al-Qanuniya, Egypt.
9. Counselor Sharif Atlam, 2006, *International Criminal Court: Constitutional and Legislative Adjustments*, 4th edition, International Committee of the Red Cross.
10. Dr. Hamed Sultan, *Public International Law in Peacetime*, 6th edition, Dar Al-Nahda Al-Arabiya, Cairo, 1976.
11. Dr. Abdul Aziz Al-Ashawi, 2007, *Lectures on International Responsibility*, Dar Houma, Algeria.
12. Dr. Ali Abdul Qadir Al-Qahouji, *International Criminal Law: Major International Crimes, International Criminal Courts*, 1st edition, Al-Halabi Legal Publications, Beirut, 2001.
13. Qayda Najib Hamad, *International Criminal Court: Towards International Justice*, 1st edition, Al-Halabi Legal Publications, Beirut, 2006.
14. Dr. Omar Sadiq, *Law of the Contemporary Global Society*, 2nd edition, University Publications Office, Algeria, 2003.
15. Al-Munjid Al-Abjadi, 8th edition, Dar Al-Mashriq, Beirut, 1986.
16. Al-Munjid fi Al-Lugha wa Al-I'lam, 26th edition, Dar Al-Mashriq, Beirut, 1986.

Foreign Languages:

1. Herve Ascensio, Emmanuel Decaux, and Alain Pellet, *Droit International Pénal*, Editions A Pedone, Paris, 2000.

B. Theses:

1. O. Sadiq Fawzi, 1995/1996, *Application of International Humanitarian Law and its Impact on the Principle of Sovereignty*, PhD, Institute of Law and Administrative Sciences, University of Oran.
2. Bougrara Malika, 2005, *May 8, 1945 Events in Light of International Humanitarian Law*, Master's Thesis, Faculty of Law, University of Algiers.
3. Laila Ben Hammouda, 1977, *International Responsibility in the Case of Damage to Foreigners*, Master's Thesis, Institute of Law and Political Science, University of Algiers.
4. Messaidi Ammar, 1986, *International Responsibility of European Colonialism*, Master's in International Law and Relations, Institute of Legal and Administrative Sciences, Algeria.

C. Articles and Research:

1. Emanuela Chiara Gillard, 2003, *Reparation for Violations of International Humanitarian Law*, International Review of the Red Cross, Vol. 85, No. 851, pp. 529-553.
2. Dr. Abdul Aziz Makhimer Abdul Hadi, 1991, *Iraqi Aggression on the Environment of Kuwait in Light of International Law*, Kuwait University Law Journal, No. 1, pp. 237-265.
3. Dr. Waleed Mahmoud Abdel Nasser, 1991, *War Reparations within the United Nations Framework*, International Politics Journal, No. 103, pp. 54-62.

4. Dr. Abdul Wahid Jassani, 2007, *How and When Iraq Can Claim Compensation for the U.S. Invasion and Occupation*, Political Thought Journal, No. 28, Vol. 8, pp. 101-113.

D. Websites:

1. Al-Riyadh Newspaper, 2005, Official Website, accessed at: http://www.alriyadh.com/2005 on 05/11/2024.
2. CHEMILLIER_GENDREAU, M. (2003, October), *Dommages de guerre à géométrie variable*, Le Monde Diplomatique, retrieved May 5, 2025, from: https://www.monde-diplomatique.fr/2003/10/CHEMILLIER_GENDREAU/10618