



# Dialogue **on** Globalization

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## Odious Debts – Odious Creditors? International Claims on Iraq

## ***Dialogue on Globalization***

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## Preface

While memories of the last financial crash of global proportions have faded, reforming the international financial architecture can not be written off the global policy agenda. How to deal with countries that – due to their indebtedness – are in a situation of economic crisis is a key issue in this debate. With sovereign debtors in mind that have reached unsustainable levels of external liabilities, the IMF in 2001 took up the idea of establishing an international bankruptcy procedure. Later on, this idea was reformulated and tagged as the Sovereign Debt Restructuring Mechanism (SDRM) – and was critically reviewed in No. 1 of our Occasional Papers series.

Although the SDRM proposal initially drew much interest from different corners, it later was met with stiff resistance from private sector quarters as well as from the US Treasury Department. Subsequently this led to the rejection of the proposal at the Spring Meeting of the IMF in 2003. The failure of the SDRM proposal does not mean however that the reform debate has come to a permanent halt. To the contrary, the voices of those in the international financial community who see reforms as both necessary and feasible have become stronger.

In light of the developments in Iraq, the present paper applies a case study approach and refers to the concept of “odious debts”. Even though the objective remains very much the same as in the discussions about the SDRM, the proponents of the odious debt doctrine – most of them advocacy groups and NGOs – tackle the issue from a different angle. The starting point is not the sustainability of the debt level of a country at a particular point in time but the legitimacy of an individual claim.

There seems to be hardly any better way to illustrate the validity of the odious debt doctrine than the case of Iraq – where most outstanding loans were underwritten by the dictatorial regime of Saddam Hussein. It is worth mentioning however that the paper sheds light on a subject that is not only highly sensitive and complex but also of vital importance in today’s geopolitical context. The authors argue – quite contrary to commonly held assumptions – that despite the vast oil reserves of the country a prompt and substantial debt relief is a precondition for Iraq’s economic, social and not least political reconstruction.

It is against this background that we bring out the present publication which wants to further contribute to the global policy debate. The study is jointly published with the German network [erlassjahr.de](http://erlassjahr.de) and was written by two authors who are active advocates for a faster and broader debt relief for developing countries.

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# 1 Executive Summary

Relative to its economic capacities, Iraq is currently one of the most indebted countries in the world. Stemming from loans and credit-financed exports throughout the 1980s international creditors are currently claiming some 127 bn US\$ from Baghdad. The most substantial claims are on the part of Iraq's Arab neighbouring countries; the second most important group are the members of the Paris Club, i.e. the OECD countries plus Russia. Companies and individuals who have suffered losses through the invasion of Kuwait in 1991 are demanding even more extensive amounts. The authors do expect claims being awarded to a total of 76 bn US\$ by the United Nations Compensation Commission (UNCC).

Germany is demanding some 3.9 bn Euros from Iraq. This sum includes late interest resulting from the era of default during the 1990s. In part those claims result from officially insured German exports between 1980 and 1989. The smaller part is due to exports by the former GDR.

Under any criteria, which international creditors normally apply while dealing with sovereign over-indebtedness, Iraq would well qualify for extensive debt cancellation. If, for instance, the criteria of the multilateral HIPC initiative, which deals with debt problems of comparably poor and severely indebted countries, were applied, Iraq would qualify for a cancellation of at least two thirds of its existing debt stock.

However, in the particular case of Iraq it needs to be asked if the Iraqi people who only recently have been liberated from the dictatorship, should actually satisfy the claims of those international lenders who have smoothly collaborated with the regime – even if it could. Isn't Iraq a textbook example for the "odious debts" doctrine? According to this doctrine, which has been elaborated in the early 20<sup>th</sup> century, a loan to a sovereign will be declared "odious" and thus un-collectable, if it fulfils all of the following three conditions:

- it has been contracted against the will of the population, i.e. without the consent of a legitimate government, respecting all constitutionally due procedures, particularly those of parliamentary approval;
- it has not provided a discernible benefit to the population;
- creditors have been or could have been aware of the above two facts.

In the Iraq case there is strong evidence that no constitutional consent to any of the loans taken out by the Ba'ath regime has ever been established. Moreover the dictatorial character of the regime has never been questionable, so creditors were certainly aware of the lack of consent on the part of their business counterparts. What remains to be discussed, however, is whether individual loans, though taken out by the dictatorship, had provided real benefit to the population. This is a particularly relevant topic for the discussion in Germany, as the German industry,

different from loans provided by Russia, France or the US, is claiming that its engagement has been mostly in the realm of civilian infrastructure. Forensic audits to judge over the character of individual projects are therefore essential.

Two particularities of the debate around Iraq's foreign debt raise the question of the appropriateness of traditional debt management mechanisms in this case: first the high degree of politicisation, and second the fact that a large part of the claims against Iraq is not at the disposal of any creditors' forum, but remains to be judged about by the United Nations Claims Commission. If Iraq's debt is to be reduced to a truly sustainable level in a way which is acceptable to the debtor and all the diverse creditor groups, this can hardly come about via negotiations in the Paris Club, as the Club represents only a minority of Iraq's creditors. If, moreover, the historical opportunity to sanction loans to a regime which was eliminated even by a war, is not to be missed, then an impartial decision making, which would be neither in the hands of debtors nor creditors would be essential. Otherwise the next Saddam Hussein's would again be able to count on the support of international lenders for crimes against their own people.

## 2. The concept of “odious debt”

When a national judicial system is faced with a dispute on whether or not a debtor is obliged pay off his creditor, two issues will guide the court’s decision:

- Is the debtor in a position to pay? What is meant by this is that, in the case that a debtor’s means are insufficient both to satisfy his creditors and to ensure an existence in dignity for himself and those who are economically dependent on him, the creditor’s basic right to see his claims honored (“pacta sunt servanda”), may be restricted or entirely void.
- Are there any objections to the way in which the creditor’s claim came about? What is meant here is: should it be possible to prove that the creditor was guilty of immoral conduct such as usury, providing incomplete information to the debtor, or the like, the claim may also be declared partially or totally void.

As far as sovereign debtors are concerned, international debt management recognizes only the first of these two questions as relevant. The creditors, who determine the rules of international debt management, have only been prepared to defer payment of or remit part of their claims.

**None of the official debt management bodies created by the creditor countries have thus far accorded any attention to the question of the legitimacy of the claims on Iraq**

None of the official bodies created by the creditor countries – the Paris Club of creditor governments, the London Club of private-sector banks, or, in the case of the Debt Initiative for Heavily Indebted Poor Countries (HIPC), the boards of the World Bank and the IMF – have thus far accorded any attention to the question of the legitimacy of claims. True, there have again and again been isolated attempts to incorporate political assessments of claims in individual negotiations on debt restructuring<sup>1</sup>, but examination of the legitimacy of claims has never been established as a standard procedure. And there has in fact not been a single case where the existing negotiating forums have declared a claim invalid on grounds of its lack of legitimacy. This does not mean that, when this has been politically opportune, and particularly under pressure from the most powerful members of the Paris Club, solutions have not been found for some countries which were more generous than what would have been commensurate with the rules of equal treatment and economic logic. However, this has invariably been portrayed, in some cases

<sup>1</sup> Jürgen Warnke, a former development-policy expert for the German CSU, provided an example of this in 1996 when he attempted to secure a cancellation of the ex-GDR’s extensive claims on Nicaragua, claiming that these constituted odious support by the Communist GDR of Nicaragua under the Sandinista government, a government with which the GDR was politically closely associated, and that these claims could no longer be upheld by reunited Germany against the new conservative government of Nicaragua. The then conservative German government, however, could not see its way to follow the minister’s proposal, understandably fearing that this would create a precedent – and also because they completely misjudged Nicaragua’s economic capacity.

supported by substantial propaganda efforts, as an act of economic reason rather than as the result of an ethical or, in a wider sense, legal examination of the original claims involved.

This is not at all to say that there are no rules for an ethical or legal assessment of creditor claims on sovereign debtors. The issue of the legitimacy or illegitimacy of claims has been raised again and again by academics, international debt-relief organizations, nongovernmental organizations (NGOs) and churches. The concepts developed in this context are very wide in range: they extend from broad and fully impracticable approaches which see an exploitation of the countries in the South by their present creditors as grounds for automatically declaring these creditors' claims to be illegitimate – and indeed see grounds here not only for full debt cancellation but for claims to reparations as well – to the very narrow concept of “odious debt”<sup>2</sup>, which will constitute the basis of the following considerations.

“Odious debt” is a term used to describe a doctrine of international law which has, since the end of the 19<sup>th</sup> century, occasionally had some bearing on the discussion on international lending practices, but without ever have attained binding status in the framework of international conventions. This is the reason why no set of instruments has been defined for an internationally coherent and systematic implementation of the doctrine. Still, the authors<sup>3</sup> who have looked into the doctrine in the context of the present debt crisis facing the South, pointing to its potential as a means of overcoming the crisis and as a possible standard for international capital flows, rightly refer to ways in which it has been applied in the past.

Among the most frequently mentioned cases is that of Cuba, where the US government rejected creditor claims after having taken the island from Spain in the Spanish-American War of 1898. Previous to this, Spain had borrowed in the name of its colony in order, among other things, to finance and secure its rule over the Caribbean island. The US, Cuba's new de facto ruler, rejected Spain's claims, arguing that the loans in question had in essence constituted a hostile act toward Cuba. Spain has to this day not formally recognized the legal standpoint of the US. This position, based as it was on US economic and military power, in fact prevailed. Another case was the rejection of a claim by the Royal Bank of Canada on the Republic of Costa Rica. The two parties submitted the case to arbitration by US Federal Judge Taft, who rejected the Canadian bank's correctly documented claim to repayment of a multimillion dollar loan, noting that the bank had clearly been aware of the fact that this loan had not been used to further the legitimate interests of the Costa Rican state and its people and had instead served in essence to personally enrich the Costa Rican dictator Tinoco, who by this stage had been ousted from power. The loan, Taft concluded, was therefore not a debt of the Costa Rican people but a personal debt owed by the dictator, and thus one which could be legitimately claimed only from him.

**The Paris Club has in the past found solutions for some countries which were more generous than what would have been commensurate with the rules of equal treatment and economic logic**

**The concept “odious debt” refers to a doctrine of international law which has not yet attained binding status in the framework of international conventions**

<sup>2</sup> In the German version of this study we have used the terminology suggested by erlassjahr.de in their “Handbuch Illegitime Schulden” (Manual of Illegitimate Debts) (Düsseldorf 2003).

<sup>3</sup> Adams, P.: *Odious Debts*. London 1991. The most recent and most comprehensive study of the concept of odious debt is: King, J., A. Khalfan, Bryan Thomas: *Advancing the Odious Debts Doctrine*; McGill University, Center for International Sustainable Development Law; Montreal 2003.

This latter case is very close to the doctrine of odious debt that was formulated and developed into a coherent concept at approximately the same time by the Russian legal scholar Alexander Nahum Sack during his exile in Paris. According to this concept, claims on a sovereign debtor are “odious”, and thus unenforceable, if the three following conditions are given:

- *The debt is contracted without the consent of the population affected.*  
It can normally be assumed that this condition is given when a loan is granted to a regime which has not been legitimized by democratic or constitutional means. Obvious examples of this state of affairs would be dictators and military rulers. But a lack of popular consent need not necessarily be rooted in the illegitimate character of a regime as a whole. The condition may be given if a formally legitimate government makes use of an illegitimate procedure to acquire a loan. An example would be borrowing by a government without the constitutionally stipulated approval of a supervisory parliamentary body.
- *The credit did not benefit the population concerned.*  
While there are fairly clear formal rules governing the first condition, this second condition allows for far greater scope for interpretation due to the vague nature of the term “benefit.” Viewed in the sense of the cases mentioned above, popular benefit can be ruled out only if the loan in question has directly benefited the repressive apparatus of a dictatorship or served directly to augment the private assets of a ruler or those close to him. Loans not “odious” in the sense of this condition include credits which have been granted to a country and, despite dictatorial rule, benefited e.g. private companies and subsequently been used to bring about recognizable benefits.
- *At the time the loan was granted the creditors were aware of the illegitimate status of their partner as well as of the fact that the debt incurred would not be used to the benefit of the population of the recipient country.*  
In other words, loans granted to dictatorships which in turn use them to finance their repressive regimes may be seen as legitimate, provided the creditors have acted in good faith and been fraudulently deceived by the debtor. Playing naive won’t do either: according to Sack’s concept, a creditor who has closed his eyes to the obvious has not been deceived in the sense of the doctrine. Accordingly, this condition reverses the burden of proof. If debtors rejecting creditor claims are obliged to prove the absence of consent and of a benefit to the population, it is the creditor who is obliged to furnish proof of the fact that he was unable to have knowledge of the circumstances involved.

The doctrine of odious debt is, on the one hand, a very restrictive concept when compared with the broader concept of “illegitimate debt” referred to above. Substantial claims on countries of the South may be upheld by the doctrine, although there may be serious doubts as to their justification. On the other hand, the doctrine’s advantage for the present discussion on the case of Iraq lies in the question of its applicability, assuming of course that a competent body were in place to decide on the issue.

This presupposes, as Sack wrote in 1927, that the doctrine is not applied unilaterally and is strictly based on a multilateral agreement, i.e. a convention or international treaty, or on an ad hoc multilateral procedure. Any other case would throw the doctrine open to abuse by debtors unwilling to repay their debts; its application would in this case be just as arbitrary as today's creditor practice of simply ignoring it. This is why it is not possible to uncouple the question of a possible classification of creditors' claims in terms of their legitimacy from the question of the existence of an ultimate decision-making body<sup>4</sup>.

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<sup>4</sup> For further details see Kaiser, J.: Nicht nur recht haben, sondern Recht kriegen: in erlassjahr.de: Handbuch Illegitime Schulden; Düsseldorf 2003, pp. 48-50.

# 3. An overview of Iraq's foreign liabilities at the end of 2003 in the light of the odious debt doctrine

This section presents an overview of foreign claims on Iraq, that is, of those claims that have been reported by Iraq's creditors. Two provisos must be borne in mind here:

First, there is no international body with ultimate authority to make legally binding decisions regarding claims on a sovereign debtor. The following information is thus based on claims reported by the various bilateral and multilateral donors to forums they themselves have created and control. In the present case these are, in particular, the Paris Club and the International Monetary Fund. Since Iraq is not yet a member of the World Bank's *Debtor Reporting System*, the technocrats of both institutions face a difficult task in identifying Iraq's outstanding debts. This task is not made any easier by the fact that the discussion – characterized as it is by marked political interests – on the sustainability of Iraq's foreign debt and the possibility of its cancellation has erupted at the same time. The information in this section is therefore based largely on claims reported by the creditor side. And since there is, as yet, no legitimate and functioning Iraqi government, the Iraqi side has been unable to comment on any of claims reported.

**Since Iraq is not yet a member of the World Bank's Debtor Reporting System, the technocrats of both institutions face a difficult task in identifying Iraq's outstanding debts.**

Second: Even though the third section of this chapter is guided, in its more detailed consideration of these claims, on the Sackian doctrine of odious debt, the assessments made are in no way intended as judgments on the legitimacy or otherwise of a given claim. In the opinion of the authors this is a decision which can be made only by an international body set up for the express purpose. The intent of the present assessments is to qualify the decisions of such a body, not to preempt them.

## The historical development of Iraq's debt<sup>5</sup>

At the beginning of the 1980s Iraq, with its growing economic strength, appeared to be one of the pillars of hope in the Middle East. Indeed Iraq was a donor and owned an estimated US\$ 36 billion in foreign assets. Before Iraq's sovereign debt began to grow in the 1980s, it paid its debts at the latest three months after receiving an invoice.<sup>6</sup> But at the end of the 1980s, after the devastating eight-year war with Iran, Iraq was faced for the first time in its history with a serious liquidity problem caused by its foreign debt.

In 1982 Syria had closed an oil pipeline crossing its territory to the Iraqis. The direct result of this was a further slump in export production. In the further course of events the terms of trade further deteriorated due to a downwards trend in

<sup>5</sup> Ahmed Jiyad's „An Economy in a Debt Trap. Iraqi Debt 1980-2020“, in: Arab Studies Quarterly, Volume 23, No. 4, 2001, pp. 15 – 58, provides a good overview of the development of Iraq's foreign debt.

<sup>6</sup> UNCC S/AC.26/2003/21, p. 16.

both the US dollar and oil prices. External funding for nonmilitary projects was seen as a way out of these liquidity bottlenecks. In 1983, for example, Iraq's gross domestic product declined by 6.88%, while its external debts rose by 32.66%.<sup>7</sup> Most of the public- and private-sector debts owed to German creditors stem from this period.

Between 1983 and 1989 the majority of credits were extended on the basis of existing agreements. In 1987 and 1988 a good number of prolongation agreements were concluded to transform Iraq's short-term debts into medium-term liabilities. The invasion of Kuwait brought Iraq face to face with horrendous reparation claims as well as with economic sanctions that seek their match in history. A once prospering economy had hit rock bottom. In the 1990s the debt doubled due to the accumulation of interest. In the course of two decades Iraq's foreign debt alone rose from US\$ 2.5 billion (1980) to an estimated US\$ 120 billion (2003).

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## Iraq's foreign debt as of January 1, 2004

Iraq's foreign debt consists almost entirely of publicly or government-backed claims. In each and every case the debtor is the Iraqi state – the outcome of direct government borrowing, government-provided guarantees, or decisions made by the United Nations Compensation Commission (UNCC). Iraq's present debt can be broken down into three categories, each containing a number of subcategories:

The greatest share of Iraq's debts are due to actual borrowing during the 1980s: together with the interest on arrears which has accumulated since then, they are currently estimated at a total of US\$ 120 to 130 billion.

The second category consists of reparation claims from the second Gulf War filed with the United Nations Compensation Commission. These have in part already been paid; estimates of future liabilities are geared to predictions based on reparations already awarded by the Commission; they are likely to amount to some US\$ 50 billion.

The third category consists of valid but still outstanding commercial contracts with foreign business enterprises. Some sources quote a figure as high as US\$ 57 billion.<sup>8</sup> This is the least secure of the three categories.

A more detailed analysis of the categories:

Iraq's debts stemming from borrowing in the 1980s, quite atypical for a middle-income country (which Iraq was at that time), are held by the following types of claim holder: private-sector banks (US\$ 2.6 billion) and multilateral financial institutions (altogether less than US\$ 1 billion) are of no more than minor significance. The lion's share of the debts in this category are owed to governments which are members of the Paris Club, to neighboring governments in the Gulf region, and to

<sup>7</sup> Wajeeh Elali (2000): Dealing with Iraq's Foreign Indebtedness, in: Thunderbird International Business Review, January-February 2000, pp. 65 –83.

<sup>8</sup> A good example: New York Times Nov.7 2003: Q&A: Iraq's Debt.

other governments. All claims in this category are nonconcessional, since Iraq, with its oil wealth, was ineligible for concessional loans granted as bilateral or multilateral development aid. These claims, which result principally from the financing of exports, may vary in terms of their status: they may be genuine public-sector claims arising from the public financing of exports from a creditor country; they may be debts from private exports which were paid out and thus transformed by exporters into public debt; or, finally, they may be retained shares of publicly insured exports – i.e. the percentage of an insured sum for which no compensation is paid but which is nevertheless negotiated in debt restructuring talks conducted under a blanket authorization by official country delegations in the Paris Club – and which may also be remitted in this context.

For the reasons mentioned above, creditors and debtors have not yet published any coordinated figures for debts in this category. As far as the overall volume of bilateral claims is concerned, Jubileeiraq places the bottom limit at US\$ 94.6 billion and the upper limit at US\$ 154.2 billion. The figure most frequently cited in the literature, „around US\$ 120 billion“, appears realistic in this context.

This sum of US\$ 120 billion breaks down roughly as follows:

- Paris Club: US\$ 42 billion, which includes US\$ 21 billion in compound interest for the period in which Iraq was unable to service its debt.
- Gulf states: US\$ 69 billion, including Kuwait (US\$ 25 billion), Saudi Arabia (US\$ 27 billion), and UAE (US\$ 17 billion) (in each case including interest on arrears).
- Other countries: US\$ 13 billion; creditors holding claims of over US\$ 1 billion are: Bulgaria, the People’s Republic of China, India, Jordan, South Korea, Romania, Serbia, and Turkey<sup>9</sup> (in each case including interest on arrears).

**The United Nations Compensation Commission (UNCC) was set up in 1991 after the second Gulf War to deal with reparation claims on Iraq**

The United Nations Compensation Commission (UNCC) was set up in 1991 after the second Gulf War to deal with *reparation claims* on Iraq. Both natural persons and legal entities who suffered material damage as a result of the occupation of Kuwait are eligible to file claims for reparations through their respective governments. There is no comparable institution to deal with possible claims by victims of Iraq’s aggression against Iran.

By the beginning of December 2003, 2,648,602 reparation claims amounting to a total of roughly US\$ 348 billion had been filed with the UNCC. 2,600,404 of these claims have been processed thus far<sup>10</sup>; 48,198 still await processing. However, the remaining 2% of these cases involve a disproportionately large number of major claims. This is underlined by the fact that claims amounting to about US\$ 253 billion account for the 98% of claims already processed, whereas the remaining 2% account for over US\$ 95 billion. US\$ 46.6 billion of the 253 US\$ claimed in reparations have

<sup>9</sup> The source of all this information is the updated debt table in Jubileeiraq. See: [www.jubileeiraq.org/debt\\_today.htm](http://www.jubileeiraq.org/debt_today.htm)

<sup>10</sup> Date: December 1, 2003.

actually been awarded. US\$ 18 billion of this sum was paid from Iraqi oil revenues during the 1990s; 28.6 billion thus remains to be paid. If the award quota to date is used as a basis to calculate the level of the remaining claims, the result is a figure of somewhat more than US\$ 47 billion which will be awarded on the reparation claims still outstanding. This adds up to a foreseeable total burden on the Iraqi economy due to reparation payments amounting to something like US\$ 76 billion.<sup>11</sup>

The most difficult claims to estimate are those stemming from unsecured commercial transactions which are not part of the above-mentioned claims raised by a variety of creditor countries. These also include claims resulting from valid contracts which Saddam's government entered into with Russian companies in particular, but which have thus far not been honored by the exporters concerned.

In April 2003 the Washington think tank "Center for Strategic and International Studies" (CSIS) cited a volume of US\$ 57 billion for this category. US\$ 52 billion, the largest share, involves Russia. At the beginning of December 2003 JubileeIraq quoted a much lower figure of US\$ 11 billion. This figure appears more realistic to the authors of this study, since the earlier study by the CSIS did not always clearly distinguish between claims for reparation and commercial claims. It is furthermore important to bear in mind here that this is likely to prove to be "softest" of the claims categories. Even in normal Paris Club procedures it is assumed that that unsecured commercial claims will be reduced at a ratio at least proportional to the concessions which the Club members grant, without the claim holders having any particular means to assert pressure to induce partners to honor their contracts. This is all the more the case when legally valid contracts have not yet been honored and when claim holders have a strong incentive to waive old claims with a view to coming to terms with a new government under altered circumstances.<sup>12</sup>

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11 [www.unog.ch/uncc/status.htm](http://www.unog.ch/uncc/status.htm).

12 An agreement of this kind in favor of the Russian oil company Lukoil must have been behind the surprising speed with which the Russian government came to an agreement with the American Special Envoy, James Baker, on December 24, 2003. See „Russia cancels 65% of Iraqi debt“, Financial Times Germany, December 23, 2003.

# 4. Can Iraq afford to pay its foreign debt?

**In the World Bank's submission to the Iraq Donor Conference in 2003, Iraq's GDP for 2003 was estimated at US\$ 12 billion to US\$ 16 billion**

**Even if Iraq swiftly managed to return to its pre-war level of oil production, its foreign debt would amount to between eight and thirteen times its annual economic output**

In the World Bank's submission to the Iraq Donor Conference in Madrid in October 2003, Iraq's gross domestic product (GDP) for 2003 was estimated at US\$ 12 billion to US\$ 16 billion, and, correspondingly, its per capita income is estimated to be US\$ 450 to US\$ 610. The World Bank expects to see a marked increase in GDP to somewhere between US\$ 15 billion and US\$ 20 billion in 2004. Before the start of combat operations, more optimistic estimates assumed an annual economic output of up to US\$ 32 billion, 15 billion of this coming from oil exports. The IMF expected the proceeds from crude oil exports to amount to approximately US\$ 9.2 billion in 2003. For 2004 the Fund predicts an increase in Iraq's income from oil exports to a good US\$ 12 billion, assuming a drop of about 25% in the average price of oil. Thus assumption is based on an anticipated production increase from the present 0.9 million barrels per day to 1.6 million for the coming year. However, even when this substantial increase in income is taken into consideration, Iraq's current accounts balance will for the first time be clearly negative (approximately US\$ 5.6 billion)<sup>13</sup> due to the inevitable increase in imports needed to reboot the economy. Other than crude oil Iraq has no appreciable exports.

What this means is that, even if the pre-war level of oil production is rapidly attained again – and this would be an optimistic prognosis – Iraq's foreign debt<sup>14</sup> would amount, depending on the basis of the calculation, to between eight and thirteen times the country's annual economic output (depending on whether or not reparation claims are included). By comparison: in Argentina, which is currently insolvent, the ratio is roughly 1:1. In order to achieve solvency again the Argentine government proposed debt reduction measures amounting to 75% to its largest group of creditors, private-sector bondholders. In the case of Iraq a basic consensus has been reached, at least following the extremely successful trip of US special envoy James Baker to the capitals of the other Paris Club creditors, on the issue of extensive debt reduction.<sup>15</sup> When, in October and November 2003, World Bank President Wolfensohn and IMF Managing Director Köhler called for debt reduction for Iraq "north of two thirds",<sup>16</sup> this seemed like an epoch making idea, but a short

<sup>13</sup> IMF: Iraq: Macroeconomic Assessment; Oct. 21<sup>st</sup> 2003.

<sup>14</sup> Payments on public bonds held in the country are not affected by the following considerations. The budget for 2004 provides for payments of approximately US\$1.5 billion on these bonds. In the interest of a boost to Iraq's economy there appears to be no dispute over the expediency of excluding domestic debt from the restructuring of foreign debt. See also IMF: Iraq: Macroeconomic Assessment: Oct 21<sup>st</sup> 2003; p.16.

<sup>15</sup> It is particularly impressive to see how rapidly Baker turned strict opponents into advocates of debt cancellation for Iraq. In November, during the Paris Club's Tour d'Horizon, even war allies such as Australia were still insisting on repayment of debts. The fact that Australia insisted, as late as December 12, on repayment was probably the reason for the country being the final domino on Baker's itinerary. On October 5, 2003 Russia's President had adroitly excluded the possibility of cancellation of Iraq's debt and alluded to the payment of ex-Soviet debts and Russia's prominent role in the cancellation of debt for the poorest countries. Putin did not, however, mention the fact that the latter was not entirely voluntary. See: New York Times October 5, 2003.

<sup>16</sup> Al Jazeera, October 30, 2003.

time later, in the light of the political consensus achieved by Baker, it can almost be termed conservative. The decisive question is now not *whether* a proportion of Iraq's debt will be cancelled, but how much of the debt will be forgiven.

To come up with an idea of the extent of the debt reduction the Paris Club, or as would be more appropriate in the circumstances, an Iraq debt conference would be called on to approve, it is useful to compare Iraq's debt with that of other countries in the HIPC multilateral debt initiative. HIPCs are, according to the eligibility criteria, countries which have IDA-only status<sup>17</sup> and lack access to the international credit markets. Even though Iraq does not have formal IDA-only status, it does fulfill the formal requirements for this status: its per capita income is below US\$ 895, its foreign debt is in every respect above that of almost all HIPC countries<sup>18</sup>, and there can be no talk of the country having access to the regular capital markets at the present time. The target variable required to qualify for debt relief under the HIPC Initiative is a debt service level amounting to 15% of annual export revenues. The IMF estimates that Iraq's export revenues for the years up to 2010 will amount to something like US\$ 12 to 20 billion. The following analysis assumes that the initial balance of trade deficit anticipated for 2004 will constitute a temporary burden resulting from immediate reconstruction needs in the aftermath of the war, and that Iraq will be in a position to return to a positive balance of payments within a short period of time. It is furthermore assumed that the current comprehensive standstill agreement will expire on January 1, 2005, but that it will be replaced by a redemption-free period covering the rest of the decade, which would mean Iraq would only be obliged to pay interest on its residual debt. Finally, the interest for this residual debt has been estimated at an extremely conservative rate of 7%.<sup>19</sup> And if its debt service should not exceed the 15% of annual export revenues required for the HIPC Initiative, Iraq would at most be able to pay US\$ 3 billion in interest (as mentioned above, there would be no redemption payments). At the interest rate mentioned this would amount to a residual debt of US\$ 45 billion. In other words, this would involve cancellation of approximately 80 billion of the original credit claims as well as a waiver of all remaining reparation claims. With respect to the debts themselves, then, Wolfensohn and Köhler's debt-reduction proposals are clearly at the lower end of what would be necessary if Iraq is again to achieve a sustainable level of debt, and even then only assuming that the most favorable conditions were given, which is by no means certain. If, however, the burden is to be divided less unjustly between those who supported Saddam's regime with loans and those who claim reparations for the war for which he was responsible, then the measure of relief granted for old debts would have to be correspondingly higher.

**The crucial question now is not whether a proportion of Iraq's debt will be cancelled, but how much of the debt will be forgiven**

**The debt-reduction proposals advanced by the IMF and the World Bank are clearly at the lower end of what would be necessary if Iraq is again to achieve a sustainable level of debt**

17 Countries eligible for World Bank financing only from IDA and not from IBRD or MIGA.

18 In the discussion on the issue of whether a highly indebted Iraq should not be formally qualified for the HIPC Initiative, it was pointed out that the country possesses oil resources. They did not, however, go on to explain why oil resources should disqualify a country for debt cancellation while in other cases it is precisely this concentration on a single export commodity which is considered an indicator of particular vulnerability and, thus, as a criterion for support. Nor was it made clear why a given income level based on oil exports should be worse than the same income level resulting from the export of copper, prunes, or sport footwear.

19 This was the average interest rate granted to Iran in the 1990s by its creditors; figures are available in the World Bank's Debtor Reporting System.

# 5. Questions regarding the legitimacy of the claims held by international creditors against Iraq

Section 1 identified three criteria which may be constitutive of an “odious” character of claims on Iraq. In the following discussion these provide the basis for a preliminary examination of the legitimacy of creditors’ claims. It should be perfectly clear that the present study cannot establish any final judgment, which rather must be the result of a fair and transparent process.

## Did the Iraqi people consent to the country’s borrowing?

Popular consent is seen as given when a legitimate government signs a legally valid credit agreement without sidelining the rights of a parliament or other public oversight bodies provided for under the country’s constitution.

**Popular consent is seen as given when a legitimate government signs a legally valid credit agreement without sidelining the rights of a parliament or other public oversight bodies**

In this connection it is neither useful nor necessary to analyze Iraq’s individual borrowing in the 1980s, since the basic question involved is bound up with Saddam Hussein’s government as a whole. The Ba’ath Party’s power dates back to two coups conducted in 1963 and 1968. On July 16, 1970, the version of the constitution which was to be valid until 2003 was adopted by the Revolutionary Command Council; this constitution was based on a “provisional constitution” drawn up by the Ba’ath Party. There is no reason to believe that the population was in any way involved in drawing up or implementing the constitution. On the contrary, the constitution sanctioned the power constellation which arose de facto as a result of the 1968 coup, and here the Ba’ath Party was the central actor. All serious human rights organizations agree in their reports that in the ensuing period the Iraq regime persistently violated both the individual and the economic, social, and cultural rights of large sections of the population<sup>20</sup>, although the regime was, thanks to its oil revenues, increasingly able to realize the latter groups of rights to a limited degree – at least for the sections of the population not opposed to the regime.

As far as the legitimacy of the agreements signed by the regime is concerned, the situation in Iraq can be compared with that of South Africa in the apartheid era: a regime representing a minority of the population and securing its power by means of massive violations of human rights signs agreements based on a constitution which it itself has created and which was never sanctioned by democratic means. Hence it is not possible to assume that the people of Iraq consented to the regime’s borrowing arrangements, whatever the intended purpose or actual use made of the individual loans concerned.

<sup>20</sup> For example, the United Nations Special Rapporteur on Human Rights in Iraq, Max van der Stoep, described the human rights violations in Iraq as among the worst in the world since the Second World War, comparable to the Khmer Rouge in Cambodia or Idi Amin in Uganda. Quoted in: Oxfam Briefing Paper 48: A fresh start for Iraq: The case for Debt Relief, p. 12.

An additional aspect which should be considered is the special case of compound interest claims. These amount – for the Paris Club alone – to some US\$ 21 billion or, in other words, almost exactly half all outstanding claims. This compound interest was incurred almost exclusively during the period of sanctions in which Iraq had no sovereign power over its export revenues. Even if Saddam Hussein had been prepared to settle Iraq's current liabilities from these revenues, this would have been impossible in both legal and technical terms. In other words, these claims held by the Paris Club amount to compulsory credit on which neither the Iraqi people nor, indeed, even the dictator himself was consulted.

## Did the Iraqi people benefit from this credit?

In contrast to the discussion on the first criterion, it is appropriate to distinguish here between the individual credits involved. Since the majority of bilateral loans were used to finance imports or construction work done by foreign companies, the question of popular benefit can indeed be answered if the criteria applied are sufficiently focused. The following questions are relevant here:

**Since the majority of bilateral loans to Iraq were used to finance imports or construction work done by foreign companies, the question of popular benefit can be answered if the criteria applied are sufficiently focused**

- Was a credit used directly or indirectly to maintain or extend the machinery of repression? This would include the army and the Republican Guards. Since Iraq was involved in a war of aggression against Iran starting at the beginning of the 1980s, there is no need to assume that this was a case of a “legitimate defense interest”, which would have justified at least limited military buildup. Not only did all loans used to finance the military and other instruments of repression not benefit the population, they also directly impaired its interests by paving the way for repression and a war of aggression. There are no reliable figures available on the share of military imports, but estimates for the 1980s lie between 90%<sup>21</sup> and 30%.<sup>22</sup>
- Was a loan used to maintain the lifestyle of the President and his personal entourage? This applies to a significant degree for the construction work conducted on the huge properties owned by the ruling clan. Here, too, it is clearly possible to negate any benefit to the population – even though the building complexes concerned have been used for other purposes after the war.
- In the case of infrastructure facilities, in particular roads and civil public buildings, it can be assumed that the debts incurred served the interests of the population and that the respective claims of the creditors must be regarded as legitimate. However, roads, and in a limited sense, civil public buildings also have a potential military value. In the course of a fair and transparent procedure the Iraqi side must, then, be given the opportunity to question the benefit to the population of certain loans, and to prove that the debt incurred ill served the public interest.

<sup>21</sup> Figure given by the former Polish Foreign Minister, Marek Belka, at the Annual Meeting of the IMF/WB in Dubai in 2003.

<sup>22</sup> Alexander, J. and C. Rowat: A clean slate in Mesopotamia: tackling Iraq's external debt; *www.jubileeiraq.org*; in a reference to: Al-Shabibi, S.: Prospects for Iraq's Economy. In: The Middle East Institute: The future of Iraq; 1997, p. 58. The former Iraqi Finance Ministry Director General, Fayek Abdel Rasul, estimates a figure between the two, of 65%. See: Queck, A.: Die illegitimen Schulden des Irak, in: *erlassjahr.de: Handbuch Illegitime Schulden*; Düsseldorf 2003, pp.26-27.

- Budget aid which benefited the naturally fungible Iraq state budget should be regarded both on principle and in view of the character of the regime as funds that served to support an illegitimate and odious regime, and must thus be viewed as basically illegitimate, without detriment to any individual appeals from the creditor side. This probably only applies for multilateral claims.

These criteria clearly paint a highly differentiated picture of the claims held by the various creditor countries. While France, Russia, and the US were involved on a large scale in equipping the Iraqi army, both private- and public-sector creditors in Germany insist that neither West Germany nor the GDR delivered arms to Iraq.<sup>23</sup> As Chapter 6 shows, it is also appropriate to take a closer look into these matters. It was not only in the case of Germany that “civil” deliveries frequently consisted of “dual use” goods, the ultimate employment of which cannot always be clearly determined.

In the case of Iraq’s debts to its neighboring Arab countries it can basically be assumed that budget aid was granted to support the war against Iran and its Islamic regime, which was equally feared by other Arab nations. Saddam variously insisted that these funds were donations. Even if the major creditors, Saudi Arabia, Kuwait, and the UAE, were able to present clear-cut explicit credit agreements, there can be no doubt that the population, which accounted for the major casualties of this war, derived no “benefit” from these arrangements.

*Were the creditors aware that the population neither consented to nor received any benefits from the credit in question?*

**In 1988 the US Senate passed the “Prevention of Genocide Act”, which would have officially cut Iraq off from all US financial resources, had it not been invalidated by President Reagan’s veto**

First, it must be recalled that with respect to this issue the onus of proof is reversed. It is the task of a democratic and legitimate Iraqi government to prove, first, that the Iraqi people received no benefit from the debts incurred from loans granted to Saddam in the 1980s and, second, that they did not consent to them. Given the case that both of these criteria are met, the creditors – inasmuch as they still wish to uphold their claims – are required to give evidence that they were unable to have any knowledge of either of these circumstances. With regard to the first point this would appear extraordinarily difficult, since the character of Saddam’s regime was the subject of broad public discussion. In 1988, for example, the US Senate passed the “Prevention of Genocide Act”, which would have officially cut Iraq off from all US financial resources, had it not been invalidated by President Reagan’s veto. Irrespective of the American legal situation, however, the debate has shown beyond doubt that, in contravention of international law, the Iraqis used poison gas against the Iranian army. The question of blame for the first Gulf War is another issue that was never really contentious.

The only uncertainty factor which might corroborate the legitimacy of claims lies in the limited field of import and project financing, if creditors can provide evidence that they were deceived by Iraq’s government as to the use to which the loans were to be put, and that they themselves in effect used all possible means to obtain a realistic picture of their business partner.<sup>24</sup>

<sup>23</sup> Data compiled internally by the German Federal Ministry of Finance (BMF) Ref. VII A4, December 30, 2003.

<sup>24</sup> It should be recalled that claims concerning loans which recognizably benefited the population must in any case to be regarded as legitimate.

# 6. German claims on Iraq

Germany's current public claims on Iraq are claims filed by the Federal Government with respect to indemnified Hermes<sup>25</sup> guarantees and claims held by the former GDR which were taken over by the German Federal Government after the reunification of Germany. The German side is demanding substantial late interest on these two claims categories for the protracted standstill period during the 1990s. As shown in the table below, public claims currently amount to EUR 3.9 billion.

## Germany's public-sector claims on Iraq

€ million

	Hermes	Former GDR
Original credit	1100	700
Interest on arrears	1700	400
<b>Total</b>	<b>2800</b>	<b>1100</b>

In addition to this, there are claims by private German exporters resulting from so-called retained shares bound up with Hermes guarantees as well as from exports not covered by government guarantees. The figures relating to these claims vary from EUR 500 million to 1400 million. Besides these German claims, which are part of the original claims on loans, there are also reparation claims from the second Gulf War in 1991. There is no information on any remaining contracts that German companies may have with Iraq.

The critical point in an assessment of claims on Iraq is whether or not the funds were used to the benefit of the Iraqi population. The Iraqi side has provided only very limited information on individual projects. Thus the publications of the United Nations Compensation Commission (UNCC)<sup>26</sup> represent the main source of information which can be used to assess individual German claims in the sense of the doctrine of odious debt. The UNCC, a subsidiary organ of the UN Security Council, was created in 1991 by the Security Council and is headquartered in Geneva. Its mandate is to process reparation claims made on Iraq as a result of Iraq's unlawful invasion and occupation of Kuwait. Resolution 687, which sets out the duties and function of the Commission, was recognized in writing by Iraq. Iraq thus accepted legal responsibility for damage resulting from the invasion of Kuwait; this gave binding force to the decisions made by the UNCC.

<sup>25</sup> Euler-Hermes is the official German Export Credit Agency (ECA).

<sup>26</sup> The UNCC can be found on the Internet under [www.unog.ch/uncc](http://www.unog.ch/uncc).

**UNCC's goal was to come to decisions on a large number of claims in a relatively short period of time; but reparation claims on Iraq may also be brought before national courts of justice**

Reparations are paid by the UN Compensation Fund, which was established specifically for this purpose. Between 1995 and 2000 the fund was financed from 30 percent of the revenue from the „oil-for-food“ program. In 2000 this share was reduced to 25 percent. With the adoption on May 23, 2003 of Resolution 1483, which lifted the sanctions on Iraq, the UN Security Council reduced the share of revenues from oil sales to be paid into the Fund to five percent.

The Commission's function is described as follows: “The Commission is not a court or an arbitration tribunal before which the parties appear to plead their own cases; it is a political organ that performs the essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments, and resolving disputes; it is only in this last respect that the commission may be said to have a quasi-judicial function.”<sup>27</sup> The goal of the UNCC was to come to decisions on a large number of claims in a relatively short period of time. The UNCC does not, however, have any sole rights of representation, and reparation claims on Iraq may also be brought before national courts of justice.

The Governing Council, the principal organ of the UNCC, is made up of current members of the Security Council. 19 panels, each with three commissioners, were set up to process applications and formulate recommendations for the Governing Council. The decisions of the Governing Council are binding; no appeals procedure is provided for.

Claims filed with the UNCC include not only claims of individuals, governments, and international organizations for compensation for personal or financial damage but also claims made by business enterprises for unpaid invoices.<sup>28</sup> Thus the Commission deals not only with information on claims relating “purely” to compensation for matters such as damage to property or additional financial burdens on companies caused by the evacuation of employees, it is also concerned with a large stock of open commercial claims, in other words commercial debts in the actual sense of the term.

The UNCC data do not, however, permit any calculation of the total level of Iraq's debt. It must instead be assumed that considerably more claims on Iraq exist – even in the segment of debts which are eligible for compensation – than have been filed with the UNCC. It is not likely that claims arising from dubious arms deals or other similar transactions will have been filed with the Commission.

However, as the UNCC data are the only publicly accessible source of information, these are the only figures that can be used for the purposes of the present study. Companies interviewed by us declined to divulge any information their internal business procedures.

<sup>27</sup> Security Council Resolution 687 (April 3, 1991), paragraph 20.

<sup>28</sup> At the first session, held from July 23, 1991 to August 2, 1991 the different types of claim were analyzed and later broken down into six claims categories:

- a) claims by individuals who had to leave Kuwait or Iraq as a result of the Iraqi invasion;
- b) claims by individuals who suffered serious injury or whose family members lost their lives;
- c) claims by individuals who suffered personal loss up to a value of US\$ 100,000;
- d) claims by individuals above US\$100,000;
- e) claims by corporations or other enterprises;
- f) claims by governments and international organizations.

In the majority of cases both public and private claims came about as follows:

A German export company agrees on a certain export transaction with an Iraqi institution. This is financed through the Ausfuhr-Kredit-Anstalt (Export Finance Bank, AKA)<sup>29</sup>. AKA is an institute created by the large German banks to finance exports. AKA's financing projects are, in turn, covered by the Hermes Kreditversicherungs AG, which insures German exports by order and for account of the German government. If an Iraqi importer or client failed to pay for construction services provided, Hermes paid out the agreed amount to AKA. As a rule this was 75% of value of the contract in question. The company carrying out the contract was then required to guarantee the remaining 25%; this was done either by signing a contract to this effect with AKA, or, alternatively, the company could claim from AKA only the share of the contract value covered by Hermes. In other words, in the event of loss it was up to the company concerned to claim back from Iraq the amount paid to AKA or to demand the residual share of value of goods delivered. This mode of financing through the AKA has had the effect of transforming Iraq's short-term liabilities into medium-term obligations. These were incurred largely during the 1970s and early 1980s, were variously restructured in bilateral agreements with German Federal Ministry of the Economics and Labour (BMWi),<sup>30</sup> and have not been serviced by Iraq since this time.

Reparation claims for incurred losses of export insurance were filed with the UNCC by the companies affected, by AKA and by the German economics ministry. The total sum of German claims – and it should be noted here that the total value of claims made by individuals are not indicated by UNCC documents – amounts to over US\$ 6 billion. As mentioned above, this figure is often made up of reparation claims made simultaneously by a number of involved parties. The total sum claimed with the UNCC by the Federal Ministry of Economics for losses from export insurance amounts to close to US\$ 1.4 billion, and coverage for AKA loans alone amounts to a little more than US\$ 1 billion. No more than US\$ 15 million has been awarded in compensation.

In three cases information is available to us which indicates that loans granted did not serve to benefit the public in the sense of the doctrine of odious debt. These includes two payments made to Karl Kolb GmbH und Co. KG amounting in total to almost US\$ 1 million. This well-known defense contractor was in the headlines as early as 1984 for having delivered to Iraq laboratory equipment intended for the development of pesticides but which was allegedly used by Iraq to produce poison gas. Although no further export licenses were granted to the company after 1984, this did not prevent it from continuing to export to Iraq.<sup>31</sup> Export insurance to was also granted to Asea Brown Boveri<sup>32</sup> (US\$ 11 million) and Siemens<sup>33</sup> (US\$ 7.7 million). Both of these companies were allegedly involved in supplying arms to Iraq.

29 AKA was founded in 1952 in order to provide support for German and European export business by means of (re-)financing, assumption of risk and services connected with medium- and long-term export financing.  
27 German banks are currently shareholders in this private limited company. For more detailed information, see [www.akabank.de](http://www.akabank.de)

30 In the 1980s Iraq refused to negotiate with its creditors in the Paris Club. It is interesting to note that the creditor governments then signed bilateral agreements with Saddam Hussein's government. After the attack on Iran, however, the Iraqi government also stopped servicing these debts.

31 Hans Branscheidt (2002): Der deutsche Exportweltmeister als Todeshändler, in: Thomas von der Osten-Sacken, Arras Fatah: Saddam Husseins letztes Gefecht? Der lange Weg in den III. Golfkrieg – KVV konkret: Hamburg, pp 217-231

32 [http://www.iraqwatch.org/search/view\\_record.asp?sc=suppliers&id=57](http://www.iraqwatch.org/search/view_record.asp?sc=suppliers&id=57).

33 [http://www.nti.org/e\\_research/profiles/Iraq/Nuclear/2124\\_3312.html](http://www.nti.org/e_research/profiles/Iraq/Nuclear/2124_3312.html).

The reparation claims filed by the German government are made up on the one hand of the above-mentioned losses incurred through export guarantees and on the other hand of expenses incurred by various public agencies at the national (federal) and state (Länder) level amounting to almost US\$ 200 million.

Claims were filed by: the German Federal Foreign Office (US\$ 131 million dollars claimed, US\$ 4.9 million awarded), the German Federal Ministry of Defense (US\$ 66.5 million claimed, US\$ 63,000 awarded), the German Federal Ministry of Research and Technology (US\$ 1.9 million US dollars claimed, US\$ 2,700 awarded), the Federal Office of Administrative Affairs (US\$ 178,000 claimed, compensation rejected), the North Rhine-Westphalia Ministry of Labor, Health and Social Affairs (US\$ 180,000 US claimed, US\$ 5,900 US awarded), the Hesse State Ministry for Women, Labor, and Social Affairs (US\$ 8,000 claimed, US\$ 3,000 awarded), and the State Government of Bavaria (US\$ 15,500 claimed, US\$ 14,400 US awarded).

### Private-sector claims

248 German category “E” claims (business claims) amounting to a total of some US\$ 1.9 billion have been processed by the UNCC. The majority of these claims by German corporations were rejected by the UNCC because they were not within the jurisdiction of the Commission. This applies, among other things, for debts and liabilities incurred before May 2, 1990, and includes, for instance, debts from the period of the Iraq-Iran War. All cases of claims for damages resulting from the economic sanctions imposed on Iraq after its invasion of Kuwait have also generally been rejected. Some applicants were unable to provide sufficient proof of their claims before the Commission, were unable demonstrate any direct connection between the Iraqi invasion of Kuwait and their own damages or loss, or failed to comply with formal criteria such as the requirement that documents be submitted in translation.

The majority of these claims rejected by the UNCC continue to exist and are still being asserted. The reports of the UNCC thus provide indications as to which German companies will be entitled to bring claims to bear against a new Iraqi government.

**German construction and engineering companies still have major outstanding claims on Iraq stemming from their involvement in large-scale projects. They have filed total claims of more than US\$ 1.4 billion with UNCC**

German construction and engineering companies, in particular, still have large outstanding claims on Iraq stemming from their involvement in large-scale projects. Total claims of more than US\$ 1.4 billion have been filed by 37 companies with the UNCC. This sum does, however, also include the payments to AKA mentioned above. Excluding these “subsidiary motions”, these claims amount to US\$ 769 million.

211 German companies which do not belong to the building sector (category „E2“) filed claims amounting to a total of US\$ 485 million. 112 claims were rejected. The remaining approved claims involve sums ranging from 0.1 to 100 percent of the claim actually made. In total, a sum of almost US\$ 37 million was awarded, whereas a total of US\$ 448 million in claims was rejected.<sup>34</sup>

<sup>34</sup> For detailed information on individual German claims raised with the UNCC see the tables in the appendix.

# 7 Treatment of international claims on Iraq in the light of the doctrine of odious debt

The diplomatic offensive of the US government, which took the form of a number of official visits by special envoy James Baker, was successful in achieving a general consensus among Iraq's most important creditor governments on a partial reduction of the country's foreign debt. The call for cancellation of these debts on the grounds of their odious character, which originally came from the neo-conservative wing of the US government, was no longer much in evidence during this trip. On the contrary, the political agreement reached on a procedure in the framework of the Paris Club indicates that the creditors wish to proceed exclusively on the basis of the (sustainability) criteria in force in this forum.

However, a procedure of this kind – irrespective of whether the resulting debt reduction would be sufficient to give the country's economy a real chance of starting anew – has two fundamental weaknesses:

- Paris Club procedures involve only a limited number of creditors and some of the most weighty creditors, viz. the Gulf States are not regular members of the Club. It is not possible to find a solution in this forum which would spread the burden in a way which would be acceptable to all creditors as well as to the debtor. In view of the complexity of a situation in which major claims from the Arab nations are being transacted by the UNCC, it is important in this connection, not to underestimate the problem of coherence. Individual court rulings in favor of creditors unwilling to cancel debt – and potentially provide these creditors access to foreign assets of a debtor state – can potentially cause a great deal of trouble,<sup>35</sup> even as far as the poorest countries within the HIPC Initiative are concerned. This disruptive potential would be many times higher in the case of an oil-based economy like Iraq's, if an agreement is not reached which is acceptable to all involved.
- If the legitimacy issue is not addressed in this particularly blatant case, this would mean that a major chance would be missed to work for more responsible lending practices. Should the international community today be of the opinion that it would have been better not to have supported Saddam Hussein's regime with large-scale credits during the 1970s and 1980s, then it ought now to be prepared to sanction this action by accepting a loss of its outstanding claims<sup>36</sup> if it wishes to retain its credibility. This alone would serve as a preventive measure in that it would induce creditors, in the future, to be less cooperative in their dealings with dictators.

**It is important not to underestimate the problem of coherence. Individual court rulings in favor of creditors unwilling to cancel debt can potentially cause a great deal of trouble, even for the poorest countries within the HIPC Initiative**

35 IMF/World Bank: HIPC Initiative: Status of Implementation; Washington Sept. 21<sup>st</sup> 2002; pp.31/32. The countries concerned were (number of cases pending): Uganda (4), Sierra Leone (5), Nicaragua (3), Ethiopia (2), Niger (2), Honduras (1), Guyana (1), Cameroon (1), DR Congo (1). At the time of writing this paper the plaintiffs had already received enforceable securities of US \$416 million on original claims amounting to US\$ 345,8 million.

36 Harvard economists Kremer and Jayachandran recently went even a step further and called for the possibility for appropriate international bodies to be authorized declare regimes ex ante as odious and, hence, to declare loans to these regimes potentially unclaimable. See: Kremer, M and S. Jayachandran: Odious Debt. In: Finance and Development Vol.39/2 (June 2002); and for a critical opinion of this view: Kaiser, J.: Auch beim IWF angekommen? In: erlassjahr.de: Handbuch Illegitime Schulden; Düsseldorf 2003, pp. 50/51.

**International NGOs which have dealt with the issue of Iraq's foreign debt have proposed a fair and transparent arbitration procedure which would operate in a way similar to the model of the US-Iran Claims Commission**

Even if some individual members of the Paris Club were prepared to take into account the quality of the claims on the debtor Iraq, this would not be workable in the framework of the Club, since not all creditors are represented in it. Moreover, it is not possible to apply the odious debts doctrine unilaterally, as was demonstrated above. In other words, a restructuring or reduction of Iraq's debt calls for a comprehensive process involving all relevant parties, one in which neutral bodies are called to impartially assess the legitimacy and sustainability of Iraq's foreign debt. International nongovernmental organizations which have dealt with the issue of Iraq's foreign debt have proposed a fair and transparent arbitration procedure which would operate in a way similar to the model of the US-Iran Claims Commission.<sup>37</sup> Other conceivable models for ad hoc procedures would involve calling in a generally respected institution, group, or person to decide on payment or non-payment.<sup>38</sup>

The next steps leading to a comprehensive resolution could be as follows:

The Iraqi people must be represented by a legitimate government in any kind of fair procedure. The earliest date<sup>39</sup> at which a representative interim administration may assume full sovereignty is considered to be July 2004. Up until this time debtors, creditors, and international financial institutions will have time to bring their records up to date. Loans proved to Iraq in the meantime would be immunized by setting a cut-off date of January 1, 2003.

As soon as an interim government assumes power, there will be three possible ways of starting out with a debt restructuring procedure: (a) the Iraqi government and its creditors agree to transfer decision-making powers concerning existing claims to a UN organization such as the Permanent Court of Arbitration in The Hague; (b) The parties set up, with the help of the Secretary General of the United Nations, a decision-making structure along the lines of the Iran-US Claims Commission; (c) The various parties agree to set up an ad hoc arbitration court, with each party appointing the same number of representatives to it. The members appointed would then name one further member, and thus the court would be able to come to decisions based on a simple majority. The arbitration court would operate on the basis of the UNCITRAL Arbitration Rules. The decisions of such a court of arbitration would be binding on all signatory states in accordance with Security Council Resolution 1483 and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Each arbitration court would designate a consultation period during which it would reach a decision regarding a sustainable and legitimate level of debt for Iraq. This decision would bear in mind Iraq's economic performance, the necessities of reconstruction, as well as the above-mentioned criteria pertaining to the odious debts doctrine.

<sup>37</sup> <http://www.JubileeIraq.org/tribunal.htm>.

<sup>38</sup> Orrego Vicuña, F., presents a wider view of the options in: Arbitration in a new alternative dispute resolution system; ICSID News Vol. 18, No.2.

<sup>39</sup> The procedure suggested here does not presume to assess the legitimacy of an interim administration. The authors wish to stress that serious observers of the situation in Iraq are willing to speak of a legitimate Iraq government only after a constitution has come into force and free elections have been held. If this interpretation becomes the predominant one, the proposed procedure will be accordingly pushed forward in time.

The decision would be announced to the public in a single announcement. It would set out the target variable for sustainable debt level for Iraq and define the need for debt reduction implied by this figure; this would then be binding in principle for all creditors. It would identify illegitimate claims of individual creditors, which would in consequence be dropped in full. All remaining legitimate claims would be reduced proportionately to bring them into line with the goal sustainability. Based on the court's decision, Iraq would then present a payment schedule and resume payments to its creditors in accordance with this schedule. In the course of the procedure the arbitration court would have the opportunity to solicit opinions, as it deems necessary, on the individual claims being made on Iraq. The proceedings would, in principle, be public. Nongovernmental organizations and institutions that are in any way affected by a settlement or reduction of claims would have the right to be heard during the course of the procedure.

# 8 Appendix

## German claims in category E/F (export guarantee and insurance claims)

Claimant	No. of Claims	Compensation recommended	remaining obligations
AKA	20		2.973.299.795,00
Federal Minister for Economic Affairs for AKA	18		1.066.305.475,00
ABB Asea Brown Boveri AG	2		10.987.171,00
Accumulatorenwerke Hoppeke, Carl Zollner & Sohn	2		60.319,00
Alfred Teves GmbH	2		6.884.198,00
Allianz AG Holding		3.938.127,00	3.062.432,00
Alpan GmbH			39.861,00
APM Alloy Pipe and Metal GmbH			2.693.663,00
Appollinaris Brunnen AG		10.230,00	3.826,00
Argecon GmbH			143.912,00
BASF AG	4		1.642.222,00
BAWI GmbH	3		18.361,00
Bayer AG		23.152	36.929,00
BBC Brown Boveri AG			52.267,00
Betrix Cosmetic GmbH			18.753,00
Boehringer Ingelheim International GmbH		0,00	1.075,00
Bornemann GmbH & Co. KG		0,00	362.462,00
Brennet AG		0,00	20.382,00
Brückner Grundbau GmbH	2		1.968.557,00
Car-Autobedarf Karl-Heinz Engels	2	5.574,00	13.060,00
Carl Aug. Picard & Co. KG			not quantified
CBV Blumhardt Fahrzeuge GmbH & Co. KG	2		3.461.725,00
Claas OHG Harsewinkel			4.569.234,00
Coutinho, Caro & Co. Remscheid GmbH		30.741,00	13.835,00

Daimler-Benz AG	2	6.263.045,00
Degussa AG		108.916,00
DETA Akkumulatorenwerk GmbH		5.831,00 1.700,00
Deutsche Bank AG		2.601.842,00
Deutscher Luftpool		726.979,00 6.273.580,00
Diwi Consult GmbH		475.380,00
Dr. August Oetker Nahrungsmittel KG		56.931,00 21.977,00
DT Diesel Technic GmbH	2	71.310,00
E. Merck oHG		1.265,00
E. SIRAL Kunststoff und Metallwerk, Siebauer GmbH & Co. KG		9.498,00
Ed. Zublin AG	3	14.340.760,00
EMR Industrieanlagen, Planungs- und Montage GmbH		130.679,00
Euro-REINZ Vertriebs- GmbH		10.788,00
Exporttronic Betriebs GmbH		(80,00)
F. Undutsch GmbH	2	103.577,00
Fa. Albrecht Jung GmbH & Co. KG		11.523,00
Fa. Friedrich Wilhelm Schwig GmbH		13.113,00 1.942,00
Fa. Hochbach GmbH		13.442,00
Fa. Regiolux Frankische Leuchten GmbH		7.080,00
Felten & Guillaume Energietechnik AG		withdrawn
Fresenius AG		1.454.513,00
Fuchs Interoil GmbH		35.398,00 8.037,00
Gail AG		1.392,00 554,00
Gasti-Verpackungs-maschinen GmbH		570.261,00
Gebhardt Ventilatoren GmbH		not quantified
Gerling Konzern Allgemeine Versicherung		60.281,00
Gerling Konzern Globale		86.409,00
Haendler & Natermann GmbH	2	3.059,00
Heilit & Woerner Bau AG		117.612,00
Henkel KGaA		6.531,00 4.915,00

Herberts GmbH		99.943,00
Herion-Werke KG	139,00	(55,00)
Herlitz International Trading AG		54.190,00
Hochtief AG		15.452.459,00
Hoechst AG	2	529.878,00
Industrieanlagen Auerbach-Foro GmbH		169.591,00
Insel GmbH		137.353,00
Jacob Maul GmbH	299,00	815,00
KAG Kugelfischer Georg Schafer AG		123.152,00
Karl Kolb GmbH & Co. KG	2	954.083,00
KBC Manufaktur Koechlin, Baumgartner & Cie	2	35.572,00
KHD Humboldt-Wedag AG		785.136,00
Kindermann & Co. GmbH		not quantified
Kockner & Co. AG	639.237,00	228.487,00
Kohler Interconsult GmbH		890.847,00
Kolbenschmidt AG		81.491,00
Krupp Industrietechnik GmbH		1.022.748,00
KSB AG		23.387,00
LABSCO Laboratory Supply Company GmbH & Co. KG		715.704,00
Lohmann GmbH & Co. KG		46.964,00
Lucks & Co. GmbH		14.636.409,00
Lurgi AG		327.436,00
Manfred Hommert GmbH	827,00	159,00
Mannesmann-Handel AG		59.392,00
Maschinenfabrik Reinhausen GmbH		2.485.852,00
Masterhand Bekleidungswerke GmbH		2.832,00
MCK Maschinenbau GmbH & Co. KG		168.023,00
Meridien Handel GmbH		3.585,00
Metall- und Oberflächenchemie Sperzel GmbH & Co.	16.314,00	3.611,00
Metra Außenhandels GmbH		9.190,00
Meyle Products Leon Meyer GmbH		159.996,00

Muepro GmbH		88.981,00
Münchener Rückversicherungsgesellschaft	9.451.504,00	7.294.834,00
Noell GmbH		841.690,00
Nordische Ölwerke Walter Carroux GmbH & Co. KG		72.873,00
Optische Werke GmbH	2	6.792,00
Österreichische Kontrollbank AG		68.495.462,00
Oswald F. Gregor	11	26.580,00
Philipp Holzmann AG		210.933,00
Rieth & Co. GmbH		105.643,00
Ritz Pumpenfabrik GmbH & Co. KG		342.666,00
Robert Bosch GmbH	2	2.882.319,00
Rovema Verpackungsmaschinen GmbH		198.780,00
Scheu & Wirth AG		250.898,00
Schwäbische Hüttenwerke GmbH		525.134,00
Siemens AG - Power Transmission and Distribution Group	9	7.737.340,00
Société Générale Elsässische Bank		24.790.985,00
Storck International GmbH		5.358,00
Strabag Bau AG	2	48.784.476,00
Terramar GmbH		2.373.880,00
Total Walther Feuerschutz GmbH		164.807,00
Trilux-Lenze GmbH & Co. KG		2.499,00
TWT Peter Maddock GmbH		4.088,00
Tyssen Guss AG		231.581,00
Universal Maschinenfabrik Dr. Rudolf Schieber GmbH & Co. KG		5.448.538,00
VARTA Batterie AG		11.524,00
Voss & Umlauf GmbH & Co. KG		696,00
Walter Bau AG		1.093.771,00
Wayss & Freitag AG		211.383,00
Weidleplan Consulting GmbH		169.759,00
Werner Rudnik Export GmbH		3.961,00

Westdeutsche Landesbank	2	15.975.091,00
WIMEX Agrarprodukte Import und Export GmbH		298.081,00
Wolf & Müller GmbH & Co. KG		566.631,00
Ed. Zublin AG		1.678.939,00
Philipp Holzmann AG		116.192.442,00

## German claims in category E (business enterprises)

Claimant	Amount claimed in US\$	Compensation recommended in US\$	Outstanding obligations	Compensation claimed for	Involvement in „odious“ projects
1 Hochtief AG vorm. Gebr. Helfmann	569.812.167,00	569.812.167,00	569.812.167,00	Construction of the Mosul (Saddam) Dam	Taji construction assistance (NTI) <sup>40</sup> see I. 158
2 Strabag AG	333.945.287,00	0,00	333.945.287,00	Construction of the Basrah International Airport	Planning work for Al Furat pilot hall for 100-unit centrifuge cascade (NTI)
3 Strabag AG	122.118.584,00	0,00	122.118.584,00	Construction of Expressway No. 1, Lot 11 (137 km freeway from Tuhala to Rutba)	
4 Société Générale – Elsässische Bank & Co. (Frankfurt)	88.389.049,10	0,00	88.389.049,10	Loans to Iraqi parties	
5 Heilit & Woerner Bau AG	79.898.401,00	0,00	79.898.401,00	Construction of the Haifa Street Development Project, Abi Navas Development Project	
6 Wayss & Freytag AG	71.248.946,00	0,00	71.248.946,00	Construction of the Salah Al-Deen Al-Ayubi Expressway in Iraq	
7 Mannesmann Demag Krauss-Maffei GmbH	69.687.357,00	4.442.917,00	65.244.440,00	Main contractor on the Saddam Oil Field Development Project	
8 Lohmann Export GmbH	46.090.944,00	0,00	46.090.944,00	Loans to Iraqi party	
9 Siemens AG	42.564.668,00	24.596,00	42.540.072,00	Supply of telecommunication equipment, equipment for a photovoltaic production plants	By several sources, Siemens is made responsible for the supply of witchgears and transformers for rocket engines and some other doubtful projects
10 Westdeutsche Landesbank Girozentrale	37.369.574,96	0,00	37.369.574,96	Loans to Iraqi parties	

<sup>40</sup> Nuclear Threat Initiative: eine von Ted Turner und Senator Sam Nunn gegründete Stiftung, nähere Informationen siehe: [www.nti.org](http://www.nti.org)

11	Asea Brown Boveri AG	28.645.079,00	27.916,00	28.617.163,00	Loan agreement with AKA
12	Walter Bau AG	26.068.924,00	0,00	26.068.924,00	Construction of the Baghdad University Athletic College and a guesthouse in Baghdad
13	Hapag-Lloyd Flug Ltd.	24.890.525,00	180.888,00	24.709.637,00	
14	Siemens AG	25.132.846,00	1.918.022,00	23.214.824,00	See N° 9
15	Wolff & Müller GmbH & Co. KG	22.824.761,00	0,00	22.824.761,00	Haifa Street Development
16	Lufthansa German Airlines	24.344.593,00	1.689.057,00	22.655.536,00	
17	Bayerische Vereinsbank AG	19.563.958,25	0,00	19.563.958,25	Loans to Iraqi parties
18	Frack Royal Pfuhl	24.328,00	0,00	19.563.958,25	
19	KHD Humboldt Wedag AG (daughter company of Deutz AG)	17.802.263,00	0,00	17.802.263,00	Construction of cement factory: Southern Cement Plant in Muthanna (Samawa)
20	ABB Kraftwerke AG (Alstom Power Generation AG)	17.276.425,00	290.429,00	16.985.996,00	
21	Lematic Thermotechnik Handels-GmbH	30.215.906,00	17.409.378,00	12.806.528,00	
22	Société Générale – Elsässische Bank & Co. (Frankfurt)	11.653.164,14	0,00	11.653.164,14	Loans to Iraqi parties
23	Weco Industrial Products Export GmbH	5.796.302,00	165.406,00	11.653.164,14	Loans to Iraqi parties
24	ABB Schaltanlagen GmbH / ABB Calor Emag Schaltanlagen AG	11.253.167,00	155.049,00	11.098.118,00	Construction of a 132 Kv substation in Shargat, Iraq, construction of the Mosul (Saddam) Dam
25	ABB Schaltanlagen GmbH	11.050.125,00	0,00	11.050.125,00	Power supplies and aviation ground lighting for the Al Ain International Airport in Abu Dhabi, U.A.E.
26	Universal Maschinenfabrik Dr. Rudolf Schieber GmbH & Co. KG	9.113.843,00	90.378,00	9.023.465,00	

27	ITT-Automotive Europe GmbH (vorm. Alfred Taves GmbH)	7.809.408,00	0,00	7.809.408,00		
28	Deutsche Bank AG	7.170.123,65	0,00	7.170.123,65		
29	KBC Manufaktur Koechlin, Baumgartner & Cie AG	1.640.153,00	0,00	7.170.123,65		
31	CBV-BLUMHARDT Fahrzeuge GmbH & Co. KG	6.210.914,00	0,00	6.210.914,00		
32	Claas OHG	5.750.990,00	0,00	5.750.990,00		
33	Ingenieur Technischer Außenhandel GmbH i. L.	5.653.557,00	0,00	5.653.557,00		
34	Hapag-Lloyd Cruises Ltd.	5.281.050,00	0,00	5.281.050,00		
35	Deutz Service International GmbH	5.203.158,00	0,00	5.203.158,00	Muthanna-Samawa Cement Project in Iraq	
36	Thyssen Rhein Stahl Technik GmbH	4.648.563,00	0,00	4.648.563,00	Supply of a rotary forging line for billets and bars production	Investigated for supplying a munitions plant for Taji
37	APM Alloy Pipe & Metal GmbH	4.574.177,00	0,00	4.574.177,00		
38	Brückner Grundbau GmbH	3.961.045,00	0,00	3.961.045,00	Construction of motorways in Kuwait	
39	Maschinenfabrik Reinhausen GmbH	3.791.390,00	0,00	3.791.390,00		
40	Alcatel SEL AG	5.050.742,00	1.289.565,00	3.761.177,00		
41	Salzgitter Anlagenbau	3.424.117,00	0,00	3.424.117,00		
42	Robert Bosch GmbH	3.301.508,00	34.417,00	3.267.091,00		
43	Kabi Pharmacia GmbH	2.999.324,00	0,00	2.999.324,00		
44	J. M. Voith	2.927.646,00	0,00	2.927.646,00		
45	Wanzke GmbH (AG)	2.841.454,00	0,00	2.841.454,00		
46	Westinghouse-Controlmatic GmbH	2.812.312,00	0,00	2.812.312,00	Sub-contractor of Haifa Wolff & Müller for Street Development (electrical works)	
47	Krupp Industrietechnik GmbH	2.800.503,00	0,00	2.800.503,00	Water and Sewerage Project of Iraq	
48	Tafesa (Helmut Summann)	3.277.640,00	791.831,00	2.485.809,00		

49	Condor Flugdienst GmbH	2.295.512,00	0,00	2.295.512,00	
50	Noell GmbH	3.841.229,00	1.576.880,00	2.264.349,00	
51	Robert Bosch GmbH Geschäftsbereich Verpackungsmaschinen	2.227.008,00	0,00	2.227.008,00	
52	DIWI Consult GmbH	2.144.630,00	0,00	2.144.630,00	Supervision of the construction of the International Airport in Basrah, Iraq
53	Kufner Textiles Indonesia P.T.	2.137.290,00	0,00	2.137.290,00	
54	Leybold Durferri GmbH	5.773.738,00	3.666.334,00	2.107.404,00	
55	BASF AG	1.829.216,00	5.066,00	1.824.150,00	
56	Karl Doelitzsch GmbH & Co	1.686.190,00	0,00	1.686.190,00	
57	Helios Reisen GmbH	1.587.452,00	0,00	1.587.452,00	Cancellation of pre-arranged trips to Egypt
58	OFT Reisen GmbH	1.568.502,00	0,00	1.568.502,00	
59	LTU Lufttransport Unter- nehmen GmbH & Co. KG	1.446.266,00	0,00	1.446.266,00	
60	DECO LITE International Beleuchtungs-GmbH	1.426.293,00	0,00	1.426.293,00	
61	Hochst AG	1.425.113,00	0,00	1.425.113,00	
62	Dacotrans-Grosskopf GmbH & Co. KG	1.572.757,00	209.004,00	1.363.753,00	
63	Dorsch Consult Ingenieur- gesellschaft mbH	1.459.577,00	000	1.459.577,00	Engineering consultancy service
64	Schwäbische Hüttenwerke GmbH	1.830.294,00	601.128,00	1.229.166,00	Milling machines, of which at least one was capable of being used to develop nuclear weapons (iraqwatch) <sup>41</sup>
65	TAD Pharmazeutisches Werk GmbH	1.232.473,00	5.701,00	1.226.772,00	
66	Walter NEFF GmbH	1.527.285,00	310.130,00	1.217.155,00	

<sup>41</sup> Die Seite [www.iraqwatch.org](http://www.iraqwatch.org) wird von dem Wisconsin Project an der Universität Wisconsin betreut. In einer Datenbank finden sich 119 deutsche Firmen, die an der Versorgung des Irak mit Massenvernichtungswaffen beteiligt gewesen sein sollen. Ihre Erkenntnisse stützen sich auf die Berichte der UN-Inspektoren.

67	Neue Jade Werft GmbH	1.257.152,00	57.536,00	1.199.616,00	Fire fighting and rescue tug for Kuwait
68	Lohmann Export GmbH	1.185.907,00	0,00	1.185.907,00	
69	Maschinenbau Scholz GmbH & Co. KG	1.510.649,00	347.618,00	1.163.031,00	
70	Rickmers-Linie GmbH Hamburg	1.138.175,00	0,00	1.138.175,00	
71	Felten & Guillaume Kabelwerke GmbH	1.207.765,00	120.777,00	1.086.988,00	
72	Thyssen Guss AG	1.083.345,00	0,00	1.083.345,00	
73	Thyssen Industries AG	1.083.345,00	0,00	1.083.345,00	
74	Klöckner & Co. AG	1.066.194,00	0,00	1.066.194,00	Contractor to Nassr State Establishment <sup>42</sup> (NTI)
75	Detecon Al Saudia Co. Ltd	1.463.818,00	433.188,00	1.030.630,00	
76	Insel GmbH	1.025.191,00	0,00	1.025.191,00	
77	Bayer AG	1.048.820,00	47.664,00	1.001.156,00	
78	Neuberger Schaltanlagen GmbH	995.088,00	0,00	995.088,00	
79	Köhler Interconsult GmbH	989.849,00	0,00	989.849,00	
80	Lohmann Tierzucht GmbH	1.227.056,00	288.938,00	938.118,00	
81	Ed. Zublin AG	925.529,00	0,00	925.529,00	Al-Thawra City Main-Sewer Contract
82	Lufthansa Cargo Airlines GmbH	867.949,00	0,00	867.949,00	
83	K. Behringer GmbH	856.767,00	0,00	856.767,00	
84	E. Merck OHG	869.839,00	125.398,00	744.441,00	
85	Quelle Schickedanz AG & Co.	746.470,00	5.406,00	741.064,00	
86	Häckel Reisen GmbH	879.999,00	151.837,00	728.162,00	
87	El Dar Deutsch – Arabisches Reisebüro GmbH und Co KG	672.215,00	0,00	672.215,00	
88	Hoechst AG	630.358,00	0,00	630.358,00	

<sup>42</sup> The Nassr State Enterprise for Mechanical Industries was the initial location of the SCUD modification and range extension program.

89	Schwing GmbH Baumaschinen	619.341,00	818,00	618.523,00	
90	Hoechst Ceram Tec AG	632.053,00	0,00	632.053,00	Overhead transmission line project
91	Sinalco AG	580.576,00	0,00	580.576,00	
92	MCK Maschinenbau GmbH & Co. KG	561.478,00	0,00	561.478,00	
93	Deutsche Controls GmbH	538.739,00	0,00	538.739,00	
94	AD. Strüver KG (GmbH & Co.)	515.015,00	0,00	515.015,00	
95	Hans Zuschlag KG	783.050,00	272.255,00	510.795,00	
96	O & K Rolltreppen GmbH	621.895,00	176.510,00	445.385,00	
97	Ing. A. Schmidt GmbH	630.121,00	187.970,00	442.151,00	
98	Senator Linie GmbH & Co. KG	819.670,00	388.612,00	431.058,00	
99	Bremer Pharma GmbH	423.625,00	5.828,00	417.797,00	
100	Extraktionstechnik Gesell- schaft für Anlagenbau mbH	407.170,00	0,00	407.170,00	Acid degumming, bleaching and physical refinery plant in Kuwait
101	Roell & Korthaus MFL GmbH und Co. KG	403.558,00	0,00	403.558,00	
102	Lucky Tours Reisebüro GmbH	399.150,00	0,00	399.150,00	
103	Scheu & Wirth AG	369.000,00	0,00	369.000,00	Delivery and installation of two boilers
104	Soiltec GmbH	363.630,00	0,00	363.630,00	
105	Gebrüder Schmeing GmbH und Co. KG	348.118,00	0,00	348.118,00	
106	Didier-Werke AG	346.569,00	6.014,00	340.555,00	
107	Lindner AG	330.428,00	0,00	330.428,00	Interior decoration to Meeting Hall No. 114 in Project 25 in Baghdad
108	Minimax GmbH	328.630,00	0,00	328.630,00	Fire fighting equipment to Kuwait
109	Weidleplan Consulting GmbH	305.993,00	0,00	305.993,00	
110	EMR Industrieanlagen Pla- nungs- und Montage GmbH	395.556,00	94.970,00	300.586,00	

111	Dorrenberg Edelstahl GmbH	260.584,00	0,00	260.584,00
112	Continental Joint Stock Company	253.480,00	0,00	253.480,00
113	Kolbenschmidt AG (MSI Motorservice International GmbH)	453.682,00	204.955,00	248.727,00
114	Rovema Verpackungsmaschinen GmbH	243.835,00	0,00	243.835,00
115	IAF Industrieanlagen Auerbach Föro GmbH & Co. KG	242.273,00	0,00	242.273,00
116	M+K Trading Handelsgesellschaft	224.370,68	0,00	224.370,68
117	Baste & Lange GmbH	437.056,00	222.509,00	214.547,00
118	Lubing Maschinenfabrik GmbH & Co. KG	210.711,00	0,00	210.711,00
119	Gerhard Gaber	206.247,18	720,13	205.527,05
120	Alvetra	203.817,00	0,00	203.817,00
121	Autohaus Gürke GmbH	201.996,48	0,00	201.996,48
122	Alcatel SEL AG	343.406,00	143.497,00	199.909,00
123	Herlitz International Trading AG	199.653,00	0,00	199.653,00
124	Isola Bauchemie GmbH	186.616,00	0,00	186.616,00
125	Autosolar – Lieferung von Industrie- und Fahrzeug-ausrüstungen GmbH	194.789,00	20.038,00	174.751,00
126	Connex Werbekonzept GmbH	160.634,00	0,00	160.634,00
127	Meyle Products, Leon Meyer GmbH	159.823,00	0,00	159.823,00
128	DT Dieseltechnik GmbH	162.078,00	2.622,00	159.456,00
129	R. C. P. GmbH de Roode & Partner	156.850,00	0,00	156.850,00
130	Wimex Agrarprodukte Import & Export GmbH	155.795,00	0,00	155.795,00
131	BTS Braodcast Television Systems GmbH	153.950,00	0,00	153.950,00
132	Walter H. Täte GmbH und Co. KG	143.294,00	5.072,00	138.222,00

133	Haake Mess-Technik GmbH & Co	138.130,00	0,00	138.130,00	
134	DT Dieseltechnik GmbH	133.320,00	1.939,00	131.381,00	
135	Mübro GmbH	129.758,00	0,00	129.758,00	
136	Oswald Felix Gregor	125.175,00	0,00	125.175,00	
137	Jost & Braitsch GmbH & Co. KG Papiergroßhandlung	124.404,00	0,00	124.404,00	
138	Kriegel Personalberatung	122.084,00	0,00	122.084,00	
139	Degussa AG	120.960,00	0,00	120.960,00	Furnaces, magnets, vacuum chambers; established AL Furat centrifuge factory (NTI)
140	ABB Kabel- und Draht GmbH	117.323,00	0,00	117.323,00	
141	MTU Motoren- und Turbinenunion Friedrichshafen GmbH	264.847,00	151.926,00	112.921,00	
142	IBG Industrie-Beratungsgesellschaft mbH	225.364,00	112.629,00	112.735,00	
143	Spies Hecker GmbH	111.049,00	0,00	111.049,00	
144	Alvetra GmbH	190.362,00	80.622,00	109.740,00	
145	Pumpen- und Verdichteranlagenbau GmbH	99.245,00	2.918,00	96.327,00	
146	Adam Folk GmbH (Folk Services)	141.449,00	47.325,00	94.124,00	
147	Krupp Industrietechnik	92.771,00	27.916,00	64.855,00	
148	Nordische Ölwerke Walther Carroux GmbH & Co. KG	88.558,00	4.924,00	83.634,00	
149	Dibona Markenvertrieb KG	87.676,00	8.581,00	79.095,00	
150	Insel GmbH	75.574,00	0,00	75.574,00	
151	Joh. Heinrich Bornemann GmbH und Co. KG	73.697,00	0,00	73.697,00	
152	Lernförder Metallwaren International GmbH	94.239,00	21.201,00	73.038,00	
153	Konkursantragsverfahren in Sachen Technical Engineering Trading GmbH (TET)	70.562,00	0,00	70.562,00	

154	Lurgi AG	69.174,00	0,00	69.174,00	Execution of a Purge Gas Hydrogen Recovery Unit	
155	Gudrun Schweers Handelsvertretungen Import/Export	99.877,60	32.398,47	67.479,13		
156	Haendler & Natermann GmbH	66.420,00	0,00	66.420,00		
157	Mobilar Export-Import GmbH	52.370,00	0,00	52.370,00		
158	Mannesmann DEMAG Hüttentechnik	51.445,00	0,00	51.445,00	Supervision of the construction of steelworks at Taji (subcontract with Klöckner)	Taji was a chemical weapon and industrial arms complex which also produced components for uranium enrichment
159	Gasti – Verpackungsmaschinen GmbH	50.189,00	0,00	50.189,00		
160	Westfalia Fleisch- und Wurstwaren Export GmbH	49.156,00	0,00	49.156,00		
161	Coutinho Caro & Co Remscheidt GmbH	53.615,00	4.847,00	48.768,00		
162	Teso Ten Elsen GmbH & Co. KG	48.745,00	0,00	48.745,00		
163	Betrix Cosmetic GmbH & Co. KG (Procter & Gamble Holding GmbH)	46.759,00	0,00	46.759,00		
164	Concert-Office Pascal Music c/o Hans-Joachim Stiegmann	44.380,00	0,00	44.380,00		
165	Trucktec Automobile Parts Co. Ltd.	47.192,00	6.404,00	40.788,00		
166	Bawi Bekleidungswerke	37.389,00	0,00	37.389,00		
167	Intersparex	32.646,00	0,00	32.646,00		
168	SMA Schaut GmbH	32.460,00	0,00	32.460,00		
169	Anschütz & Co. GmbH (Raytheon Marine GmbH)	32.070,00	0,00	32.070,00		
170	ABC Orient Teppich Import GmbH	65.202,00	33.167,00	32.035,00		
171	Car Autobedarf Karl-Heinz Engels	32.492,00	835,00	31.657,00		
172	Textilmaschinenbau Aue GmbH	29.422,00	0,00	29.422,00		

173	Storck International	29.113,00	0,00	29.113,00	
174	GHT Gesellschaft für Hochdrucktechnik GmbH	28.141,00	0,00	28.141,00	
175	Preussag Stahl AG	27.940,00	0,00	27.940,00	Involvement with Iraqi chemical weapons program (Samarra) (iraqwatch)
176	Adolf Sontag (Druck & Papierverarbeitung GmbH & Co. KG)	51.940,00	25.029,00	26.911,00	
177	Raster Bau International Engineering GmbH	26.576,00	0,00	26.576,00	
178	Rieth & Co. GmbH	25.818,00	0,00	25.818,00	
179	Vauth & Sohn GmbH und Co. KG	41.744,00	17.419,00	24.325,00	
180	Benz & Hilgers GmbH	787.928,00	764.062,00	23.866,00	
181	Jaegertool Helmut Jaeger GmbH	48.288,84	26.322,27	21.966,57	
182	Metall & Oberflächenchemie Sperzel GmbH & Co. KG	22.139,00	541,00	21.598,00	
183	Condoris Überseehandel GmbH	21.513,00	0,00	21.513,00	
184	Stadler & Schaaf OHG	20.055,00	0,00	20.055,00	
185	Brennet AG	22.647,00	2.644,00	20.003,00	
186	TWT GmbH (Transworld Technology)	19.740,00	1.613,00	18.127,00	
187	Girmes GmbH	161.044,00	143.256,00	17.788,00	
188	Hochbach GmbH	18.366,00	1.798,00	16.568,00	
189	Liquidator of F.W. Assmann & Söhne GmbH und Co. KG	16.058,00	0,00	16.058,00	
190	S.C. Handels GmbH	16.058,00	0,00	16.058,00	
191	Varta Batterie AG	15.342,00	0,00	15.342,00	
192	Deutsche Aerospace Airbus GmbH	712.514,00	697.335,00	15.179,00	
193	Accumulatorenwerke Hoppecke Carl Zoellner & Sohn GmbH	16.855,00	2.201,00	14.654,00	
194	Apollinaris & Schweppes GmbH & Co.	18.659,00	4.504,00	14.155,00	

195	Metra Außenhandels GmbH	12.889,00	0,00	12.889,00
196	Reinz-Dichtungs GmbH	11.987,00	0,00	11.987,00
197	Henkel KGaA	12.717,00	1.244,00	11.473,00
198	Modernohtik GmbH	10.622,00	0,00	10.622,00
199	B&S Vertriebs GmbH	25.230,00	15.557,00	9.673,00
200	Acora Hotel Apartments	9.138,00	0,00	9.138,00
201	Trilux-Lenze GmbH & Co. KG	9.766,00	956,00	8.810,00
202	Jebsen & Jessen GmbH & Co. KG	8.593,00	0,00	8.593,00
203	Adolf Lony KG	16.140,00	7.558,00	8.582,00
204	Chemische Fabrik Stockhausen	394.203,00	385.805,00	8.398,00
205	KOBOLD-Messring GmbH	61.460,00	53.251,00	8.209,00
206	Fränkische Leuchten GmbH (Regiolux)	7.868,00	0,00	7.868,00
207	Albrecht Jung GmbH und Co. KG	7.865,00	0,00	7.865,00
208	Deta Akkumulatorenwerk GmbH	8.368,00	559,00	7.809,00
209	Uniroyal Engelbert Tyre Trading GmbH	102.270,00	94.909,00	7.361,00
210	DZ Licht Aussenleuchten GmbH & Co. KG	7.313,00	0,00	7.313,00
211	Franz Sachs & Co. GmbH	7.072,00	0,00	7.072,00
212	Fa. Egon Hillebrand GmbH & Co.	6.961,00	0,00	6.961,00
213	Krupp Mak Maschinenbau GmbH	86.072,00	80.044,00	6.028,00
214	AEG Hausgeräte AG	5.521,00	0,00	5.521,00
215	Alpan GmbH Baubeschlagproduktion	4.429,00	0,00	4.429,00
216	Leder Synthecs Import- Export GmbH	4.400,00	0,00	4.400,00
217	Meridien Handel GmbH	4.258,00	0,00	4.258,00
218	E. Merck OHG	4.405,00	216,00	4.189,00

219	Analytische Laboratorien Prof. Dr. H. Melissa & G. Reuter GmbH	3.503,00	0,00	3.503,00
220	Bawi Masterhand GmbH	3.357,00	0,00	3.357,00
221	Hans Holland GmbH	103.224,00	100.306,00	2.918,00
222	Kanex, Krohne Anlagen Export GmbH	127.433,00	124.718,00	2.715,00
223	Porzellanfabrik Schönwald (Branch of Hutschenreuther AG)	21.612,00	19.246,00	2.366,00
224	E. Merck OHG	4.104,00	2.437,00	1.667,00
225	Carl Aug. Picard GmbH & Co. KG	1.655,00	0,00	1.655,00
226	Deltron GmbH Export-Import	17.452,00	15.915,00	1.537,00
227	Manfred Hommert GmbH	1.480,00	107,00	1.373,00
228	Jakob Maul GmbH	1.329,00	44,00	1.285,00
229	Optische Werke GmbH	755,00	0,00	755,00
230	Seifert GmbH	28.325,00	27.722,00	603,00
231	Sachtler AG Kommunikationstechnik	25.316,00	24.777,00	539,00
232	Fichtel & Sachs AG	11.831,00	11.388,00	443,00
233	Voss & Umlauf GmbH & Co	679,00	258,00	421,00
234	Herion Werke KG	284,00	0,00	284,00
235	Messrs. Friedhelm Leymann GmbH & Co. KG	271,00	0,00	271,00
236	Walter Krebs Import-Export GmbH und Co. KG	10.883,00	10.652,00	231,00
237	Marion Ramm GmbH	10.619,00	10.393,00	226,00
238	Countinho Caro & Co. Remscheidt GmbH	2.819,00	2.733,00	86,00
239	FUBA Hans Kolbe & Co.	2.754,00	2.695,00	59,00
240	Deltron GmbH Export-Import	1.190,00	1.151,00	39,00
241	Siral A. Siebauer (vorm. Siral-Kunststoff & Metallwerk Siebauer GmbH & Co KG)	1.055,00	1.033,00	22,00

242	Trepel GmbH Hebe- und Fördertechnik	10.087,71	10.073,32	14,39
243	Total Feuerschutz GmbH (vorm. Total Walther Feuerschutz GmbH)	196.727,00	0,00	0,00
244	Interport Stoob	6.662,00	6.662,00	0,00
245	Orient Office Export-Import GmbH	104.088,00	104.088,00	0,00
246	Alstom Schorch Transformatoren GmbH (vorm. Schorch GmbH)	withdrawn		
247	Gardeur Dieter Jansen	withdrawn		
248	Schulz & Rackow Gastechnik GmbH	withdrawn		



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