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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS  
CONCERNING THE SECOND INSTALMENT OF "F3" CLAIMS

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GLOSSARY

"claimant"	Any Ministry or other entity of the Government of Kuwait on whose behalf the Government of Kuwait has filed an "F3" claim
"Commission" or "UNCC"	United Nations Compensation Commission
"decision"	A decision of the Governing Council of the Commission
"emergency period"	The period from 27 February 1991 until 31 May 1991, as used by the Government of Kuwait to denote the period during which reconstruction and repair work commenced
"expert consultants"	The expert accounting and loss adjusting consultants to the Panel (see paragraph 8 of the annex)
"F1" Panel"	The Panel of Commissioners appointed to review the "F1" claims, being certain government claims predominantly for losses related to departure and evacuation costs or damage to physical property, and claims filed by international organizations
"F3" claims"	The claims filed with the Commission under the Commission's claim form entitled "Claim Form for Governments and International Organizations" by the Government of the State of Kuwait, except those reviewed by the "F1" Panel and those which the Commission has classified as environmental claims (see paragraphs 1 and 2)

"Farah report"	"Report to the Secretary-General on the scope and nature of damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation" (S/22535)
"First "F3" Report"	"Report and recommendations made by the Panel of Commissioners concerning the first instalment of "F3" claims" (S/AC.26/1999/24)
"first instalment claims"	Those claims considered by the Panel in the First "F3" Report
"Form F"	The Commission's claim form entitled "Claim Form for Governments and International Organizations"
"GCC" or "Gulf Cooperation Council"	Cooperation Council for the Arab States of the Gulf, comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates
"Government of Kuwait" or "Government"	The Government of the State of Kuwait
"Iraq"	The Government of the Republic of Iraq
"KERO"	Kuwait Emergency Reconstruction Office
"level of materiality"	See paragraphs 120 to 123 of the annex
"liberation"	The liberation on 26 February 1991 of the State of Kuwait from Iraq's invasion and occupation
"non-material items"	Those parts of the "F3" claims that fall below the level of materiality adopted by the Panel. See paragraph 120 of the annex

"occupation period"	The period from 2 August 1990 until 26 February 1991
"PAAC"	Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression
"pre-paid rent"	See paragraph 83 of the annex
"principal claim amount"	See paragraph 4
"relief paid to employees"	See paragraph 45 of this Report and paragraph 32 of the annex
"Rules"	The Commission's Provisional Rules for Claims Procedure, a text of which is annexed to Governing Council decision 10 (S/AC.26/1992/10)
"second instalment claims"	See paragraph 3
"secretariat"	The secretariat of the Commission
"Social Security Fund"	See paragraph 45
"US\$"	United States dollars



### Introduction

1. At its twenty-eighth and thirty-third sessions, held from 29 June to 1 July 1998 and 28 to 30 September 1999, respectively, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed a Panel of Commissioners comprising Messrs L. Yves Fortier (Chairman), Andrew Jacovides and Reiner Soll to review this second, and subsequent, instalments of those claims filed by the Government of the State of Kuwait (the "Government of Kuwait"), known as the "F3" claims.

2. The "F3" claims comprise all of the Government of Kuwait's claims, other than those reviewed by the "F1" Panel and those which the Commission has classified as environmental claims. The "F3" claims have been presented by the Government of Kuwait on behalf of its various Ministries and other entities. There are 62 such claims. Each claim seeks compensation for direct loss, damage or injury alleged to be a result of Iraq's invasion and occupation of Kuwait. 1/

3. The second instalment of the "F3" claims, comprising 21 claims (the "second instalment claims"), was submitted to the Panel on 14 September 1999, in accordance with article 32 of the Provisional Rules for Claims Procedure (the "Rules"). 2/ This report contains the Panel's recommendations to the Governing Council on these claims, and is issued under article 38(e) of the Rules. The Panel intends to review the remaining "F3" claims in one further instalment.

#### I. OVERVIEW OF THE SECOND INSTALMENT CLAIMS

4. The second instalment claims seek compensation for losses totalling US\$4,572,908,523 plus interest of US\$726,928,049. The amount claimed in each claim is set out in the table below. The Panel will refer to the total amount claimed in each claim, excluding interest, as the "principal claim amount". The Panel's findings in respect of the second instalment claims (in section IV below) include a tabular breakdown of each second instalment claim that sets out the amounts claimed, including interest, and the amounts recommended.

Table 1. Summary of the second instalment claims

<u>Claimant</u>	<u>Short name of claimant (if different)</u>	<u>UNCC claim number</u>	<u>Government claim number</u>	<u>Principal claim amount (US\$) a/</u>	<u>Interest (US\$)</u>	<u>Amount claimed including interest (US\$)</u>
Ministry of Finance - Kuwait Emergency and Recovery Program		5000018	1	533,472,120	84,770,912	618,243,032
Kuwait Institute for Scientific Research		5000039	3	390,343,692	62,027,217	452,370,909
Ministry of Public Works - Bayan Palace, Amiri Diwan, Telecommunications Tower, Audit Bureau, and MEW-MPW Headquarters construction and repair projects	Ministry of Public Works (Bayan Palace)	5000040	4	232,874,040	37,008,640	269,882,680
Ministry of Electricity and Water - Stores Department, Communications Systems, Emergency Electrical Department, Primary Substations, and Water Division	Ministry of Electricity and Water (Stores Department)	5000042	6	362,234,083	57,566,160	419,800,243
Ministry of Defense - Navy Fast Attack Craft	Ministry of Defense (Fast Attack)	5000110	12	483,440,514	76,827,960	560,268,474

<u>Claimant</u>	<u>Short name of claimant (if different)</u>	<u>UNCC claim number</u>	<u>Government claim number</u>	<u>Principal claim amount (US\$) a/</u>	<u>Interest (US\$)</u>	<u>Amount claimed including interest (US\$)</u>
Ministry of Electricity and Water - Power Plants, Underground Cables and Overhead Lines Maintenance Department, Electrical Network Projects Construction Department, Shuwaikh Distillation Facilities, Salaries, and Computer Center	Ministry of Electricity and Water (Power Plants)	5000111	13	606,672,157	96,412,240	703,084,397
Ministry of Information - Dar al-Athar al-Islamiyya Collection	Ministry of Information	5000114	16	61,036,607	9,699,920	70,736,527
Ministry of Public Works - Mishref Neighborhood Center, Kuwait University, Old Sief Palace, Government Testing Center, Computers, Stores, Equipment, Furniture, Salaries	Ministry of Public Works (Mishref Neighborhood Center)	5000115	17	79,446,364	12,625,440	92,071,804
Ministry of Defense - Reconstruction of Naval Base and Support Facilities	Ministry of Defense (Naval Base)	5000139	22	63,453,966	10,083,880	73,537,846
Kuwait University - Tangible Property Losses and Payment or Relief to Others	Kuwait University	5000140	23	264,379,603	42,015,200	306,394,803

<u>Claimant</u>	<u>Short name of claimant (if different)</u>	<u>UNCC claim number</u>	<u>Government claim number</u>	<u>Principal claim amount (US\$) a/</u>	<u>Interest (US\$)</u>	<u>Amount claimed including interest (US\$)</u>
Ministry of Oil		5000144	27	7,882,908	1,252,800	9,135,708
Kuwait Municipality		5000147	30	196,459,271	31,221,400	227,680,671
Ministry of Public Works - Buildings Construction Department, Local Roads Construction Department, Motorways Department, Sanitation Department, Buildings and Roads Maintenance, and Bubiyan Bridge	Ministry of Public Works (Buildings Construction Department)	5000159	31	177,026,963	28,133,480	205,160,443
Ministry of Health		5000164	36	422,193,464	67,095,560	489,289,024
Ministry of Planning		5000165	37	34,053,732	5,411,400	39,465,132
Environment Protection Council		5000166	38	4,136,255	657,720	4,793,975
Ministry of Communications - Real and Tangible Property, Contract Losses, Payment or Relief to Others	Ministry of Communications	5000173	45	229,638,928	36,710,520	266,349,448
Public Authority for Applied Education and Training		5000175	46	120,776,864	19,193,360	139,970,224
Public Authority for Agriculture Affairs and Fish Resources		5000187	55	46,921,883	7,456,480	54,378,363

<u>Claimant</u>	<u>Short name of claimant (if different)</u>	<u>UNCC claim number</u>	<u>Government claim number</u>	<u>Principal claim amount (US\$) a/</u>	<u>Interest (US\$)</u>	<u>Amount claimed including interest (US\$)</u>
Ministry of Interior - Buildings, Coast Guard, Communications Equipment, Criminal Evidence Equipment, Computer Equipment, Traffic Department, Office Furniture and Equipment, Warehouses, Currency, and Emergency Offices	Ministry of Interior	5000189	57	154,518,335	24,556,040	179,074,375
Directorate General of Civil Aviation - Terminal 1, Communications Center and Other Buildings, Communications Equipment and Meteorological Equipment	Directorate General of Civil Aviation	5000191	59	101,946,774	16,201,720	118,148,494
Total				4,572,908,523	726,928,049	5,299,836,572

a/ The figures in this column are the starting point of the Panel's review, before any of the adjustments described in this report. They do not include any claims preparation costs. PAAC has filed a separate claim for such costs (UNCC Claim No. 5000193).

5. Having regard to the complexity of the issues raised, the volume of documentation, and the amount of compensation sought, the Panel has classified all the second instalment claims as "unusually large or complex" within the meaning of article 38(d) of the Rules, thereby requiring the Panel to complete its review of these claims within a period of 12 months.

6. Given the nature of the second instalment claims, the Panel determined that due process would require the provision to Iraq of copies of all of the claim files submitted by claimants. These were forwarded to Iraq pursuant to Procedural Order 1 issued in respect of each claim on 14 September 1999. Iraq submitted a response to each of the second instalment claims except for that of the Directorate General of Civil Aviation.

## II. PROCEDURAL HISTORY

7. In undertaking its review of the second instalment claims, the Panel has followed the procedures and applied the principles and decisions set out in sections II, III, IV and V of the First "F3" Report (found at paragraphs 6 to 125 (inclusive) of that report). For the ease of reference of the reader, those sections are repeated as the annex to this Report, and the paragraph numbers follow those of the First "F3" Report.

## III. CONSIDERATION OF COMMON LEGAL ISSUES

8. In section IV of the First "F3" Report (repeated as section IV of the annex), the Panel considered issues that arose more than once in the first instalment claims. The second instalment claims raise certain further such issues and the Panel now turns to such common legal issues.

### A. Property losses - including losses of military assets, those caused by Allied Coalition Forces' 3/ bombing and those resulting from the breakdown of civil order

9. At paragraphs 29 and 30 of the First "F3" Report (repeated as paragraphs 29 and 30 of the annex, respectively), the Panel found that the evidence submitted in support of the property losses in the first instalment claims was sufficient to demonstrate that the losses were "direct losses" and hence compensable, subject to verification and valuation. The Panel finds that the evidence submitted in support of the property losses in the second instalment claims is also sufficient to demonstrate that the losses were "direct losses".

10. Iraq's responses to Procedural Order 1 frequently assert that it should not be held responsible for property losses caused by:

(a) the bombing of Kuwait carried out by the Allied Coalition Forces during Iraq's invasion and occupation of Kuwait; or

(b) the breakdown of civil order due to the absence of legal authority following Iraq's withdrawal from Kuwait.

11. The Panel notes that paragraph 34(a) of Governing Council decision 7 provides that Iraq is responsible for "any loss suffered as a result of [m]ilitary operations ... by either side during the period 2 August 1990 to 2 March 1991". 4/ The Panel finds that the Governing Council in decision 7 has determined that losses arising out of the bombing of Kuwait by the Allied Coalition Forces during the period cited are "direct losses".

12. In relation to property losses caused by the breakdown of civil order due to the absence of legal authority following Iraq's withdrawal from Kuwait, the Panel notes that paragraph 34(d) of Governing Council decision 7 provides that Iraq is responsible for "any loss suffered as a result of ... [t]he breakdown of civil order in Kuwait or Iraq during" the period 2 August 1990 to 2 March 1991. The Panel finds that the Governing Council in its decision has determined that losses arising out of the breakdown of civil order in Kuwait or Iraq during the period cited are "direct losses".

13. Some of the second instalment claims seek compensation for the loss of, or damage to, the Government of Kuwait's military facilities and assets ("military assets"). 5/ Prima facie, such losses of property are compensable for the reasons set out in the preceding paragraphs.

14. However, Governing Council decision 19 6/ provides that "[t]he Governing Council confirms that the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation". In light of this, the Panel now turns to consider whether the second instalment claims that seek compensation for the loss of, or damage to, military assets are compensable.

15. The Panel finds that the costs to the Government of its preparation for, participation in, or provision of support in relation to, the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait fall within Governing Council decision 19 and are accordingly not compensable. Having considered the nature and circumstances of the loss and damage to the Government of Kuwait's military assets referred to at paragraph 13 above, the Panel finds that such losses do not fall within the exclusion contemplated in Governing Council decision 19 and are accordingly compensable. An exception to this finding is discussed at paragraphs 265 to 268 below.

16. In light of the above, the Panel finds that the property losses claimed in the second instalment claims (including those in relation to military assets) are "direct losses" and hence compensable (an exception to

this finding is discussed at paragraphs 265 to 268 below), subject to verification and valuation. 7/

B. Accounting for depreciation in claims for property loss

17. The Government has presented a number of claims seeking compensation for loss or destruction of, or damage to, real and tangible property. As noted at paragraph 16 above, the Panel finds that such claims are, in principle, compensable.

18. Such claims are usually made for the cost of:

- (a) replacement, in the case of lost tangible property;
- (b) reconstruction, in the case of destroyed real property; or
- (c) repair, in the case of damaged property, whether real or tangible.

19. The Panel notes that claimants usually applied deductions for depreciation only in the first two cases mentioned at paragraph 18 above (to reflect the longer useful life of the new property compared with that lost or destroyed). Claims made for the costs of repairs generally make no equivalent adjustment for depreciation, because the Government asserts that repairs do not generally extend the useful life of the property repaired. The Panel finds, however, that there are cases of repairs that have extended the useful life of the property (or part thereof) repaired and has made adjustments for inadequate accounting for depreciation in such cases.

C. Buildings not repaired or rebuilt

20. The Government has presented a number of claims seeking compensation for destroyed or damaged buildings, for which the claimant has not yet commenced the necessary reconstruction or repair. 8/

21. The Panel, applying the principles set out at paragraphs 65 and 66 of the First "F3" Report (repeated as paragraphs 65 and 66 of the annex, respectively), finds that Iraq is liable for the loss of or damage caused to the buildings as a direct result of Iraq's invasion and occupation of Kuwait, even if the claimant has not rebuilt the building or repaired the damage so caused. Accordingly, the loss of or damage to such buildings is compensable, subject to verification and valuation, and the Panel has recommended as compensation the cost of reconstruction or repair measured at such time as it would be reasonable, in all the circumstances, to expect the reconstruction or repair to have taken place.



22. In appropriate cases, the Panel has made adjustments for inadequate accounting for depreciation and saved expenses. The latter adjustment is calculated as the maintenance and other expenses that were not incurred from the time of Iraq's invasion and occupation of Kuwait until such time as it would be reasonable, in all the circumstances, to expect the reconstruction or repair to have taken place.

D. Loss of research and information

23. The Government has presented a number of claims seeking compensation for the loss of research and information contained in records 9/ that were themselves lost as a direct result of Iraq's invasion and occupation of Kuwait ("lost information").

24. At paragraphs 474 to 476 of the First "F3" Report, the Panel recognised that there are two aspects to a claim for lost information - "the loss of materials such as paper and folders and ... the loss of ... the information contained [therein]". The Panel has verified and valued the loss of the materials in the manner described at paragraphs 109 to 115 of the First "F3" Report (repeated as paragraphs 109 to 115 of the annex) and now turns to the valuation of the information contained in those materials.

25. In most cases, the claimants seek the replacement cost of the lost information, itself measured as the costs of the initial creation of the information or the costs of re-creating the information after liberation. In each case, the loss was based on the historic labour and materials costs, save in a few instances in which post-liberation labour and materials costs were used. Adjustments were sometimes made to reflect the obsolescence of the lost information at the time of its loss and to account for inflation between the creation of the lost information and the date of loss.

26. The Panel notes that information is usually valued by reference to its market value - that is, a sale price or ascertainable future income stream. However, in most of the cases before it, the information does not have an ascertainable market value nor can it be replaced by purchase. Accordingly, the Panel finds that it is appropriate to value such losses of information by reference to labour and materials costs.

27. In each case, the Panel has considered whether adjustments to the amounts claimed should be made for obsolescence, inadequate accounting for depreciation and for the use that would have been made of the information if it had not been lost. Such adjustments are set out, in the standard manner, in the consideration of each of the second instalment claims below.

28. The Panel has also considered the extent to which the information lost can be recovered (such as from publications, patents and institutional knowledge), and any technological advancements, that allow the information lost to be re-created at a cost lower than that incurred for its initial creation. The Panel has used the shorthand expression "economies of re-creation", as further set out at paragraph 47 below, to denote adjustments made for such matters.

E. Work undertaken in the immediate post-liberation period

29. A number of second instalment claimants undertook repairs and procured items in the immediate post-liberation period when the prices of goods and services in Kuwait were, in general, higher than the norm. In accordance with the duty of mitigation, these repairs and procurements must be shown to have been carried out at a cost that was, in all the circumstances, the lowest reasonable cost. 10/

30. At paragraph 138 of the First "F3" Report, in discussing the claim of the Ministry of Finance in relation to the Kuwait Emergency Reconstruction Office ("KERO"), 11/ the Panel found that compensation would be recommended for the additional cost incurred by entering into a contract without recourse to competitive procurement procedures only if the contract was of such urgency that resort to competitive procurement procedures could not reasonably be required in the circumstances.

31. The Panel finds that the principles giving rise to that test should be applied to the repairs and procurements discussed in paragraph 29 above. That is, compensation should be recommended for the additional cost incurred by undertaking repairs or procuring items when prices of goods and services were, in general, higher than the norm to the extent that the repairs or procurements were of such urgency that the claimant could not reasonably be required to wait until prices had returned to normal patterns to undertake such repairs or procurements.

F. Use of existing materials and labour for repair and reconstruction

32. Two second instalment claimants 12/ seek compensation for:

(a) the replacement cost of materials located in storage at the time of liberation and used in the repair of equipment or facilities damaged as a direct result of Iraq's invasion and occupation of Kuwait; 13/ and

(b) the salaries paid to existing employees referable to the time spent by them on repairing damage that was a direct result of Iraq's invasion and occupation of Kuwait or in restoring operations disrupted as a direct result of Iraq's invasion and occupation of Kuwait. 14/

33. The Panel recommends that compensation be awarded for the materials and that the loss be valued by reference to their replacement cost.

34. The Panel finds that compensation should also be awarded in relation to the labour of the existing employees. The loss should be measured by reference to the value of the work that would have been performed by the employees had they been undertaking their normal duties instead of working on repair or restoring operations. The Panel has considered the valuation of each such loss in the context of the activities of the claimant concerned, the work normally performed by the employees, whether or not the claimant operated as a commercial entity, and whether or not the claimant has a loss of revenue claim or a loss of profits claim for all or part of the period covered by the claim for salaries. 15/

G. Contract interruption losses

35. There are a number of second instalment claims for contract interruption losses seeking compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses include the costs of site restoration and the additional costs of completing the contracts. 16/

36. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. In a number of claims, the site restoration costs include an amount for lost contractor's materials on site. Such materials had been delivered to the project site as at the date of Iraq's invasion and occupation of Kuwait, but had not yet been incorporated into the project concerned. The Panel, having considered the terms of the relevant contracts, finds that the Government was liable for such losses, and accordingly has recommended compensation for lost contractor's materials on site (subject to verification and valuation). 17/

37. In those cases in which the claimant has now entered into a post-liberation contract or intends to do so in the future, the Panel has valued the loss in accordance with the findings at paragraphs 63 and 64 of the First "F3" Report. 18/

38. In those cases in which the claimant has not entered into a post-liberation contract and does not demonstrate an intention to do so in the future, the Panel finds that the projects have been abandoned. In such cases, the Panel has considered the reasons why the projects were abandoned. The Panel has concluded that none of the projects under

consideration was abandoned as a direct result of Iraq's invasion and occupation of Kuwait.

39. The Panel has, however, applied the principles set out at paragraphs 65 and 66 of the First "F3" Report to such abandoned projects and finds that Iraq is liable for any damage caused to the project site as a direct result of its invasion and occupation of Kuwait, even if the claimant has decided not to repair the damage and resume the project. The Panel has valued the loss as the cost of repairing the damage measured at such time as it would be reasonable, in all the circumstances, to expect the repair to have taken place (with adjustments, in appropriate cases, for inadequate accounting for depreciation and saved expenses). 19/ The Panel finds that any other losses to Kuwait arise out of its independent decisions to abandon the projects concerned.

#### H. Uncollectible receivables

40. One claimant 20/ seeks compensation for uncollectible receivables, being sums owed to it at the time of Iraq's invasion and occupation of Kuwait that have not been repaid. These sums are owed by individuals, companies, businesses and Government departments and usually arose following the provision of services to those entities. 21/

41. The Panel recommends that no compensation be awarded in relation to sums owed:

(a) by Government departments, because there is no loss to the Government as a whole (the loss to the claimant is a saving for the debtor); 22/

(b) that would have been written off as irrecoverable under international accounting practice prior to Iraq's invasion and occupation of Kuwait; and

(c) in respect of work carried out, but lost or destroyed as a direct result of Iraq's invasion and occupation of Kuwait, the loss of which is claimed elsewhere. 23/

42. For the remaining uncollectible receivables, the Panel has recommended compensation only if the claimant has demonstrated that the receivable is uncollectible and that the debtor's inability to pay is a direct result of Iraq's invasion and occupation of Kuwait.

IV. THE SECOND INSTALMENT CLAIMS

A. Introduction

43. The Panel now turns to consider separately each of the second instalment claims. In this section the Panel sets out its consideration of the asserted losses and presents its recommendations for compensation in respect of them.

44. The Panel notes that a number of items of tangible property have been returned by Iraq to the Government pursuant to the United Nations Return of Property programme ("UNROP"). In a number of claims, the claimant has adjusted the amount claimed to account for the items returned. In making its recommendations, the Panel has considered the extent of any damage to such items, the value of such items and, if required, the cost to repair them, and has made further adjustment to the amounts claimed where necessary. The Panel's recommendations therefore account for the condition, value and repair costs (if any) of the items returned by Iraq to the Government pursuant to UNROP.

45. Some of the second instalment claims seek compensation for relief paid to Kuwaiti and/or GCC employees of the Government. The compensability of such claims is discussed at paragraphs 31 to 48 of the First "F3" Report (repeated as paragraphs 31 to 48 of the annex). The Panel noted, at paragraph 41 thereof, that the Government operates a social security system which confers pensions and similar benefits on employees, and which is funded by contributions from employers and employees (the "Social Security Fund"). Each employee contributes five per cent of his or her gross salary, which is deducted at source from the salary paid. The Panel has examined the evidence submitted and, where necessary, has requested the Government to confirm whether the amounts paid to the employees and claimed as relief paid to employees in the second instalment claims took into account the employees' contributions. In cases in which the Panel is not satisfied that the social security contributions have been adequately accounted for, the Panel has made suitable adjustments to the amounts claimed. Such adjustments are set out in the consideration of the individual claims below.

46. The Panel notes that, during its occupation of Kuwait, Iraq requested employees to exercise their normal functions and that certain employees did work during the occupation period. Iraq has asserted, in its response to Procedural Order 1 in respect of certain claims, that it paid employees for such work from its own resources. In calculating the 60 per cent deduction from all claims for relief paid to employees, that is discussed at paragraph 48 of the First "F3" Report, the Panel made allowance for a certain level of payments made by Iraq for work carried out during the

occupation period. The Panel finds that the payments that Iraq asserts were made fall within such allowance.

47. In reporting on the verification and valuation of the first instalment claims, the Panel noted at paragraph 125 of the First "F3" Report that it sometimes uses one or more shorthand expressions to explain in any given case why a claim or part thereof has been reduced or rejected. In reporting on the verification and valuation of the second instalment claims, the Panel has continued to use those shorthand expressions and has found it necessary to add two further such expressions, as follows:

(a) "incorrect valuation of KERP assets" means that the amount claimed has been reduced because the assessment of residual value applied by the claimant to assets received pursuant to the Kuwait Emergency and Recovery Program 24/ is incorrect; and

(b) "economies of re-creation" means that the amount claimed in respect of information losses has been reduced so as to account for information that can be recovered (such as from publications, patents and institutional knowledge), and technological advancements, that allow the information lost to be re-created at a cost lower than that incurred for its initial creation.

48. The Panel has considered, and made where appropriate, all adjustments that it considers necessary to the amounts claimed for one or more of the reasons set out in paragraph 125 of the First "F3" Report and in paragraph 47 above. However, in reporting on the verification and valuation of the second instalment claims, the Panel has reported only those adjustments that fall above a de minimis level, which the Panel has established as one per cent of the total adjustments made by the Panel (for each claim or part thereof).

49. The Panel has made adjustments for "saved expenses", being one of the shorthand expressions set out in paragraph 125 of the First "F3" Report, and notes that such adjustments arise most commonly in relation to revenue and property losses, in which cases the expenses saved usually comprise operating expenses and (in the case of property losses) maintenance expenses. The period in respect of which expenses were saved extends for the period of loss (in the case of revenue losses or claims for extraordinary costs incurred) or from the date of loss until the date of repair, reinstatement or renewal (in the case of property or contract losses), save as otherwise noted.

50. The Panel has continued to apply the level of materiality set out at paragraph 121 of the First "F3" Report. In reporting on the verification and valuation of the second instalment claims, the Panel has confirmed, in

some cases by way of note to the relevant claim or part thereof, whether some or all parts of the claims fall below the level of materiality adopted by the Panel. The treatment of such non-material items is set out at paragraphs 120 to 123 of the First "F3" Report.

51. The Panel has reviewed the second instalment claims using amounts rounded to the nearest US\$1,000. Therefore, all recommended compensation amounts are presented in multiples of US\$1,000, except where the Panel recommends payment in full of any claim or part thereof.

B. Ministry of Finance - Kuwait Emergency and Recovery ProgramGovernment Claim No. 1, UNCC Claim No. 5000018Table 2. Summary Table for Ministry of Finance - Kuwait Emergency and Recovery Program

<u>Loss type/Loss element</u>	<u>Amount</u>	<u>Amount</u>	<u>Paragraph</u> <u>references</u>
	<u>claimed</u>	<u>recommended</u>	
	<u>US\$</u>	<u>US\$</u>	
Public services expenditure			
a) Medical supplies	34,318,517	34,318,517	61-63
b) Food and water	84,885,652	81,321,000	64-68
c) Fire fighting equipment	24,382,887	23,851,000	69-71
d) Bomb disposal equipment	15,361,130	11,060,000	72-75
e) Clearing of roads, unsafe buildings and rubble	13,097,823	7,767,000	76-79
f) Electrical equipment and natural gas	82,577,853	49,116,000	80-85
g) Communications equipment	77,837,166	57,835,000	86-90
h) Transportation vehicles	30,626,227	14,552,000	91-95
i) Emergency border control	51,920,662	50,769,000	96-99
j) Emergency equipment to re-open airport	8,901,600	2,715,000	100-104
k) Law enforcement for peacekeeping and restoring security	49,175,285	40,094,000	105-110
l) Emergency sanitation equipment	1,167,879	486,000	111-114
m) Shipping expenditure	43,633,542	43,633,542	115-117
n) KERP office expenses	15,585,897	14,791,000	118-122
<u>Total</u>	<u>533,472,120</u>	<u>432,309,059</u>	
Interest	<u>84,770,912</u>		

1. Public service expenditures - US\$533,472,120(a) Introduction

52. This claim is made for the costs incurred by the Government in relation to the Kuwait Emergency and Recovery Program ("KERP"), a procurement programme set up in December 1990 and managed by the Council of Ministers. KERP was initially operated from an office in Washington, D.C., United States of America and later moved to Dammam, Saudi Arabia. The purpose of KERP was to procure supplies of medicine, food, water, fire-fighting equipment, bomb disposal equipment, transportation vehicles and other goods and related services that the Government anticipated would be required following the liberation of Kuwait. The repair of some damaged facilities was also undertaken pursuant to KERP. The contracts for the vast majority of KERP's procurements of goods and services were entered



into before liberation. The remainder was entered into during the emergency period or shortly thereafter.

53. Before liberation, the Government was not able to identify its precise post-liberation needs. It therefore anticipated those needs based on discussions with those agencies of the Government that were to receive the goods and services (the "Receiving Agencies") and also based on a number of assumptions about the closing stages of military operations against Iraq and the post-liberation situation in Kuwait. 25/

54. The Government asserts that KERP's procurements either:

(a) were consumed during the emergency period (for example, food) or otherwise retained no value thereafter. The Panel will refer to such goods as "Consumed Goods";

(b) retained a value beyond the emergency period and were transferred to Receiving Agencies which had lost assets of a similar nature as a direct result of Iraq's invasion and occupation of Kuwait (for example, medical supplies not consumed during the emergency period were transferred to the Ministry of Health). The Panel will refer to such goods as "Transferred Goods"; or

(c) were purchases that the Government would not ordinarily have made but which were necessitated by Iraq's invasion and occupation of Kuwait (for example, the border control system discussed at paragraph 97 below). The Panel will refer to such purchases as "Exceptional Purchases".

55. The claim is presented by reference to fourteen categories of purchase, each of which the Panel considers separately, commencing at paragraph 61 below.

56. The Panel finds that the Government acted reasonably in entering into procurement contracts, in advance of liberation, based on its anticipated needs, and that the assumptions made and the assessment of Kuwait's needs were reasonable in the circumstances. The Panel also finds that the Government's purchases were in accordance with its assumptions and that the purchases of all the items comprising Exceptional Purchases were required as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds, therefore, that the amounts claimed are compensable, subject to verification and valuation.

57. In light of the allocation of the purchases into Consumed Goods, Transferred Goods and Exceptional Purchases, the Panel has approached the verification and valuation of each of the fourteen categories of claim applying the principles set out in section V of the First "F3" Report (repeated as section V of the annex) and by asking:

(a) whether the Consumed Goods were in fact consumed and, if so, whether it was reasonable for them to be so consumed. If the Consumed Goods were not in fact consumed, the Panel has sought to ascertain the value (if any) they retained at the end of the emergency period; 26/

(b) whether the Transferred Goods are accounted for in the claims of the Receiving Agencies 27/ including the extent to which they replaced goods lost by the Receiving Agencies as a direct result of Iraq's invasion and occupation of Kuwait;

(c) whether the assertion that the Transferred Goods replaced goods of a similar nature lost by the Receiving Agencies as a direct result of Iraq's invasion and occupation of Kuwait is sufficiently supported by the evidence presented; 28/ and

(d) whether the items constituting the Exceptional Purchases retained any value at the end of the emergency period and, if so, what account is to be taken of such value.

58. In each case where a Receiving Agency has accounted for the Transferred Goods in its claim, the Panel has considered whether the claim of the Receiving Agency reflects the correct residual value of the Transferred Goods. If not, the Panel has made an adjustment for "incorrect valuation of KERP assets" in the Receiving Agency's claim. 29/

59. Where the Receiving Agency has not accounted for the Transferred Goods in its claim, the Panel has sometimes found it necessary to make adjustments for enhancement, inadequate accounting for depreciation, inadequate accounting for residual value, saved expenses and overstatement in the present claim. The Panel has calculated these adjustments by reference to its estimate of the age and type of goods that the Transferred Goods replaced. The Panel has also found it necessary in such cases to make adjustments for insufficient evidence in the present claim to reflect a lack of support for the assertions that the Transferred Goods replaced goods of a similar nature lost as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has set out its findings in this regard in its discussion of the fourteen claim categories commencing at paragraph 61 below.

60. The Panel has considered the method adopted for the selection of contractors and sub-contractors to provide the goods and services. In accordance with the duty of mitigation, the Government must show that the KERP procurements and works were carried out at the lowest reasonable cost in all the circumstances. The Panel finds that the contractors and sub-contractors were chosen using competitive procurement procedures, including the selection of the lowest acceptable bid, and therefore that the method adopted, and prices paid, were reasonable. 30/

(b) Medical supplies - US\$34,318,517

61. The Government procured medical supplies and equipment such as pharmaceuticals, ambulances, blood banks, dental surgery equipment and diagnostic imaging equipment.

62. The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items. The remaining purchases were Transferred Goods that were accounted for in the claim of the Ministry of Health.

63. In light of the above, the Panel recommends payment in full in the amount of US\$34,318,517.

(c) Food and water - US\$84,885,652

64. The Government procured food and water supplies such as bottled water, water delivery trucks, an emergency water treatment facility, potable water storage tanks, reverse osmosis units, office equipment to support the distribution of water, and food rations. It also contracted for the design and implementation of an emergency water treatment facility.

65. The Panel finds that the majority of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

66. Some of the items purchased were Transferred Goods that were accounted for in the Receiving Agencies' claims.

67. The potable water storage tanks, reverse osmosis units, office equipment to support the distribution of water, and the contract for the design and implementation of an emergency water treatment facility were Exceptional Purchases. The Panel finds that an adjustment should be made for inadequate accounting for residual value in relation to the reverse osmosis units and the office equipment.

68. In light of the above, the Panel recommends compensation in the amount of \$81,321,000 out of the US\$84,885,652 claimed.

(d) Fire-fighting equipment - US\$24,382,887

69. The Government procured fire-fighting equipment such as trucks, hoses and suits.

70. All of the purchases were Transferred Goods. While the vast majority of the purchases were accounted for in the Receiving Agencies' claims, some were not. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

71. In light of the above, the Panel recommends compensation in the amount of US\$23,851,000 out of the US\$24,382,887 claimed.

(e) Bomb disposal equipment - US\$15,361,130

72. The Government procured bomb disposal equipment such as metal detectors, protective clothing and vehicles equipped to withstand bomb blasts.

73. The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

74. The remaining purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

75. In light of the above, the Panel recommends compensation in the amount of US\$11,060,000 out of the US\$15,361,130 claimed.

(f) Procurements for emergency clearing of roads, unsafe buildings and rubble - US\$13,097,823

76. The Government procured heavy equipment such as trucks, tractors, graders and compactors, and also undertook some building repairs.

77. The Panel finds that the purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

78. In relation to the building repairs, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

79. In light of the above, the Panel recommends compensation in the amount of US\$7,767,000 out of the US\$13,097,823 claimed.

(g) Electrical equipment and natural gas - US\$82,577,853

80. The Government procured items for the generation of electricity such as equipment for power stations, 245 emergency power generators and 16 mobile floodlight towers. It also undertook some repairs to the electricity network (including to transmission lines) and procured an emergency supply of natural gas.

81. The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

82. The Panel finds that some of the remaining purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

83. The 245 emergency power generators and the 16 mobile floodlight towers were Exceptional Purchases. The Panel finds that an adjustment should be made for inadequate accounting for residual value in relation to them.

84. In relation to the repairs to the electricity network (including transmission lines), the Panel finds that adjustments should be made for depreciation, saved expenses and insufficient evidence.

85. In light of the above, the Panel recommends compensation in the amount of US\$49,116,000 out of the US\$82,577,853 claimed.

(h) Communications equipment - US\$77,837,166

86. The Government procured communications equipment such as transportable satellite communications equipment, generators and radios.

87. The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

88. The Panel finds that the majority of the remaining purchases were of Transferred Goods, not all of which were accounted for in the Receiving

Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

89. The Panel finds that some of the amounts claimed, which relate to the installation and servicing of emergency communications facilities, comprised Exceptional Purchases and recommends that compensation in full be awarded for such purchases.

90. In light of the above, the Panel recommends compensation in the amount of US\$57,835,000 out of the US\$77,837,166 claimed.

(i) Transportation vehicles - US\$30,626,227

91. The Government procured a variety of transportation vehicles, spare parts and tools, and traffic equipment such as barriers and signs.

92. The Panel notes that of the vehicles purchased, 85 are not accounted for in either the present claim or in a Receiving Agency claim, in that the Government has not submitted any evidence as to their use during the emergency period nor thereafter. The Government asserts that the vehicles were involved in traffic accidents but has provided no evidence to support that assertion. As a result, the Panel does not recommend any compensation for the amount claimed for the 85 vehicles.

93. In its response to Procedural Order 45 issued in March 2000, the Government stated that the Kuwait Public Transport Co. was the Receiving Agency for 285 of the vehicles and a quantity of spare parts and the Kuwait Ports Authority was the Receiving Agency for 17 of the vehicles. That portion of the claim referable to these 302 vehicles and the spare parts has therefore been severed and transferred to the "E4" Panel of Commissioners, which is considering the claims of these two Receiving Agencies. 31/

94. The Panel finds that the remaining purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

95. In light of the above, the Panel recommends compensation in the amount of US\$14,552,000 out of the US\$30,626,227 claimed.

(j) Emergency border control system - US\$51,920,662

96. The Government procured border control equipment such as hardware, software and photographic equipment. It also procured the services of consultants to design and implement border control systems.

97. Over US\$37 million of the amount claimed relates to the development, installation and operation of a new border control system which allowed the Government to ascertain whether those in Kuwait and those seeking to enter Kuwait after liberation were entitled to live in Kuwait. It also provided a single form of identification. The Panel recommends that compensation in full be awarded in respect of this Exceptional Purchase.

98. The Panel finds that the remaining purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

99. In light of the above, the Panel recommends compensation in the amount of US\$50,769,000 out of the US\$51,920,662 claimed.

(k) Emergency equipment to re-open the Kuwait Airport - US\$8,901,600

100. The Government procured emergency equipment to re-open the Kuwait Airport such as X-ray inspection equipment and a radar station. It also undertook emergency repairs to some of the Kuwait Airport facilities.

101. The Panel finds that some of the items purchased were Consumed Goods and recommends that compensation in full be awarded for such items.

102. The Panel finds that the majority of the remaining purchases were Transferred Goods, none of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

103. In relation to the repairs to some of the Kuwait Airport facilities, the Panel finds that adjustments should be made for insufficient evidence.

104. In light of the above, the Panel recommends compensation in the amount of US\$2,715,000 out of the US\$8,901,600 claimed.

(l) Law enforcement equipment for peace-keeping  
and restoring security - US\$49,175,285

105. The Government procured law enforcement equipment such as guns, ammunition, uniforms, boats and vehicles. It also undertook some emergency repairs to police stations and a prison.

106. The claim presented in respect of one of these procurement contracts exceeds the relevant contract price. In its response to Procedural Order 36 issued in January 2000, the Government stated that it did not have evidence to support this excess and the Panel has made the appropriate adjustment. In its response to Procedural Order 46 issued in May 2000, the Government stated that the amount claimed for the boats was, in fact, duplicated by the claim of the Ministry of Interior considered at paragraphs 711 to 715 below. The Panel has therefore excluded the amount claimed in respect of the boats.

107. The Panel finds that the vast majority of the purchases were Transferred Goods, not all of which were accounted for in the Receiving Agencies' claims. The Panel has therefore made adjustments in the present claim for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

108. In relation to the repairs to the police station and prison, the Panel finds that adjustments should be made for inadequate accounting for depreciation and insufficient evidence.

109. The Panel finds that some of the amounts claimed, which relate to the provision of temporary accommodation, were Exceptional Purchases and recommends that compensation in full be awarded for such purchases.

110. In light of the above, the Panel recommends compensation in the amount of US\$40,094,000 out of the US\$49,175,285 claimed.

(m) Emergency sanitation equipment - US\$1,167,879

111. The Government procured emergency sanitation equipment such as furniture, office equipment and cleaning agents.

112. The Panel finds that the cleaning agents were Consumed Goods and recommends that compensation in full be awarded for such items.

113. The Panel finds that the remaining purchases were Transferred Goods, none of which were accounted for in the Receiving Agency's claim. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation and insufficient evidence.



114. In light of the above, the Panel recommends compensation in the amount of US\$486,000 out of the US\$1,167,879 claimed.

(n) Shipping expenditures for the emergency equipment - US\$43,633,542

115. The Government claims the costs incurred in transporting the items procured to Kuwait.

116. The Government contracted with one contractor to undertake the logistical co-ordination of the Government's transportation requirements. The contractor then chose sub-contractors to undertake the transportation itself. As set out at paragraph 60 above, the Panel finds that the selection of the contractor and its selection of sub-contractors was undertaken using competitive procurement procedures with the selection of the lowest acceptable bid 32/ and therefore that the method adopted, and prices paid, were reasonable.

117. In light of the above, the Panel recommends payment in full in the amount of US\$43,633,542.

(o) KERP office support and logistics - US\$15,585,897

118. The Government seeks compensation for office and other costs incurred to administer KERP such as rent, salaries, legal and accounting costs, and the costs of administering and organising payment for the KERP procurements.

119. The Panel finds that the decision to operate the offices in Washington, D.C. and Dammam was reasonable in the circumstances and, applying the principles set out at paragraph 79 of the First "F3" Report, that the reasonable cost of operating the offices is compensable.

120. In addition, the Panel finds that the reasonable legal and accounting costs and costs of administering and organising payments are compensable, as such services were an integral part of the KERP procurements.

121. The Government also claims the cost of three buses that were used by high-ranking officials of the Government during the emergency period. They were fitted with conference, communications and command-control facilities, which enabled the officials to move around Kuwait and inspect damage and direct the recovery, while allowing contact to be maintained with the military, civil servants, diplomats and other Governments. In its response to Procedural Order 46 issued in May 2000, the Government asserted that the buses replaced buses of a similar value lost by the Government as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that the Government's assertion is insufficiently supported by the evidence

presented and that the buses are not accounted for in any other claim. The Panel has therefore made adjustments in the present claim for inadequate accounting for depreciation, saved expenses and insufficient evidence.

122. In light of the above, the Panel recommends compensation in the amount of US\$14,791,000 out of the US\$15,585,897 claimed.

C. Kuwait Institute for Scientific ResearchGovernment Claim No. 3, UNCC Claim No. 5000039Table 3. Summary Table for Kuwait Institute for Scientific Research

<u>Loss type/Loss element</u>	<u>Amount claimed</u> <u>US\$</u>	<u>Amount recommended</u> <u>US\$</u>	<u>Paragraph references</u>
Real property	<u>11,124,538</u>	<u>8,658,000</u>	123-128
Other tangible property			
a) Equipment	43,964,017	15,667,000	129-133
b) Doha Reverse Osmosis Plant	25,078,873	7,663,000	134-136
c) NSTIC library collection	9,175,889	3,333,000	137-140
d) Products of research and development	195,417,000	54,967,000	141-147
e) Unique scientific items	7,116,500	0	148-149
f) Staff housing furniture	<u>807,508</u>	<u>283,000</u>	150
Sub-total	<u>281,559,787</u>	<u>81,913,000</u>	
Contract			
a) Loss under the contract with Burgan Contracting Co	1,254,699	0	151-155
b) Loss under other contracts	<u>1,511,250</u>	<u>0</u>	156-164
Sub-total	<u>2,765,949</u>	<u>0</u>	
Business transaction or course of dealing			
a) Lost contract income (post-invasion)	<u>32,462,485</u>	<u>0</u>	165-169
Other losses			
a) Costs of rebuilding KISR organization	36,695,525	a/	170-176
b) Additional training costs due to loss of experienced personnel	9,746,894	a/	170-176
c) Additional business development costs	3,344,519	a/	170-176
d) Cost of additional computer training	339,825	a/	170-176
e) Cost of restoration of administrative software	<u>1,532,281</u>	a/	170-176
Sub-total	<u>51,659,044</u>	<u>9,900,000</u>	
Payment or relief to others	<u>10,771,889</u>	<u>4,228,000</u>	177-184
<u>Total</u>	<u>390,343,692</u>	<u>104,699,000</u>	
Interest	<u>62,027,217</u>		

a/ Loss elements subsumed into the method of valuation adopted by the Panel. Breakdown of amount recommended by loss element not possible.

1. Real property - US\$11,124,538

123. The Kuwait Institute for Scientific Research ("KISR") conducts scientific research in the fields of agriculture, fisheries, water resources, petroleum and other energy technology, and environmental science and economics. KISR claims that during Iraq's invasion and occupation of Kuwait, many of its facilities were destroyed and others severely damaged.  
33/

124. KISR seeks compensation for such damage and destruction. The claim is made for the costs of repair and reconstruction, including the costs incurred in retaining external consultants to conduct a comprehensive damage assessment survey.

125. In a technical mission to Kuwait undertaken in June 1999, certain KISR facilities were inspected on behalf of the Panel.

126. The amounts claimed in respect of the costs incurred for the damage assessment survey fall below the level of materiality adopted by the Panel. The Panel finds that an adjustment should be made to this part of the claim for insufficient evidence.

127. So far as the remainder of the claim is concerned, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

128. In light of the above, the Panel recommends compensation in the amount of US\$8,658,000 out of the US\$11,124,538 claimed.

2. Other tangible property - US\$281,559,787

(a) Equipment - US\$43,964,017

129. KISR claims for the loss of various types of equipment, comprising experimental equipment, machinery, boats, office furnishings and transportation equipment, all of which it claims was lost during Iraq's invasion and occupation of Kuwait.

130. KISR calculated the replacement cost of the items lost by using a price index, which estimated the percentage difference between asset prices in its ledger and replacement cost, using samples of purchases of replacement items traced through to pre-invasion records. KISR applied a measure of depreciation to the replacement costs thereby derived. The Panel finds that this method of calculation was a reasonable one in the circumstances, but that KISR underestimated the depreciation adjustments required, and has made an adjustment for such inadequate accounting for depreciation.

131. The Panel also finds that adjustments should be made for enhancement, overstatement, saved expenses and insufficient evidence.

132. The Panel has made a further adjustment of US\$5,185,000, being the amount of a post-liberation donation provided by the Government of Japan to be used by KISR for the replacement of scientific instruments lost as a direct result of Iraq's invasion and occupation of Kuwait. 34/

133. In light of the above, the Panel recommends compensation in the amount of US\$15,667,000 out of the US\$43,964,017 claimed.

(b) Doha Reverse Osmosis Plant - US\$25,078,873

134. KISR seeks compensation for the damage to and loss of elements of the reverse osmosis plant at the Doha water desalination facility. KISR claims that specialised osmosis equipment was damaged or dismantled and removed. After liberation only 10 per cent of the equipment was still usable.

135. The Panel finds that adjustments should be made for enhancement, overstatement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

136. In light of the above, the Panel recommends compensation in the amount of US\$7,663,000 out of the US\$25,078,873 claimed.

(c) NSTIC library collection - US\$9,175,889

137. KISR seeks compensation for the loss of its library collection. 35/

138. In its response to Procedural Order 1, Iraq asserted that it had returned various books to Kuwait. The Panel finds that Iraq's assertion is not substantiated.

139. The Panel finds that adjustments should be made for enhancement, inadequate procurement process, inadequate accounting for depreciation and insufficient evidence.

140. In light of the above, the Panel recommends compensation in the amount of US\$3,333,000 out of the US\$9,175,889 claimed.

(d) Products of research and development - US\$195,417,000

141. KISR seeks compensation for lost information, such as computer records, reports, specimens and the results of experiments. The claim is made for the loss of information compiled during the seven years prior to Iraq's invasion and occupation of Kuwait. <sup>36/</sup> The claim is based on the labour and materials costs (including the costs of technical support) invested in research and development, segregated according to KISR's six primary research and development divisions, namely, food resources, environmental resources, water resources, engineering, petroleum and petrochemicals, and technology and economics.

142. As set out at paragraphs 23 to 28 above, the Panel recommends that compensation be awarded for such lost information.

143. KISR has valued its claim as the loss of the investment it made in research and development in each of the divisions described above, as measured by the historic costs of that investment. KISR adjusted that value to account for information remaining after liberation and information that no longer retained significant value as at 2 August 1990. The Panel accepts this method of valuation, but finds that certain costs that were not associated with research and development projects should be excluded. The Panel has made the necessary adjustment, together with a further adjustment for arithmetical errors.

144. The Panel has also considered the extent to which the claim should be adjusted for economies of re-creation. KISR's premises were inspected on the Panel's behalf and the technical mission found that some pre-invasion publications and papers were available. The Panel has made adjustments to reflect the inadequate accounting for the availability of that pre-invasion information and of copies of applications (but not the underlying research data) for 29 patents, for technological advancements in computers, diagnostic equipment and scientific machinery, and for general institutional knowledge available to KISR.

145. The Panel has considered the level of support that KISR's central technical support section would have to provide to the research and development divisions. The value of such support is measured by KISR as the cost of providing technical support to these divisions, again adjusted to account for information remaining after liberation and information that no longer retained significant value as at 2 August 1990. The Panel accepts that methodology, but finds that a further adjustment to the amount claimed should be made to correct an overstatement in the value applied and to reflect the lower value of the investment in research and development after application of the adjustment for economies of re-creation.

146. The Panel finds that a further adjustment should be made for insufficient evidence.

147. In light of the above, the Panel recommends compensation in the amount of US\$54,967,000 out of the US\$195,417,000 claimed.

(e) Unique scientific items - US\$7,116,500

148. KISR seeks further compensation for the loss of "unique scientific items". Such items include seed banks, genetically selected animal herds, fish breeders and satellite photos, the costs of creation of which are claimed within the loss of "products of research and development" at paragraphs 141 to 147 above. KISR asserts that these items, being unique, have a value greater than the historic costs of creating them. KISR further asserts that the items by their nature are irreplaceable and has therefore made a claim for the excess of their value over the cost of their creation, as estimated by KISR's scientists.

149. The Panel does not accept that the estimates of additional value for the "unique scientific items" are sufficient to demonstrate that the items did in fact retain a value in excess of the cost of their creation. The Panel therefore does not recommend any compensation in respect of the amount claimed for the lost "unique scientific items".

(f) Staff housing furniture - US\$807,508

150. KISR seeks compensation for the loss of furniture purchased for the use of staff members at the accommodation provided to them. The Panel finds that adjustments should be made for method of valuation, inadequate accounting for depreciation, saved expenses and insufficient evidence and recommends compensation in the amount of US\$283,000 out of the US\$807,508 claimed.

3. Contract - US\$2,765,949

(a) Loss under the contract with Burgan Contracting Co - US\$1,254,699

151. KISR claims that, prior to Iraq's invasion and occupation of Kuwait, it had negotiated a price with the Burgan Contracting Company ("Burgan") to perform construction work at its marine and fishery facility in Salmiya, and that the contract had not been formally concluded at the time of Iraq's invasion and occupation of Kuwait.

152. KISR claims that, after liberation, Burgan refused to enter into a contract for the work at the price originally agreed. Following a

competitive procurement procedure, KISR concluded a contract for the relevant work with a different contractor, at a price higher than that originally agreed with Burgan, but lower than Burgan's post-liberation price. KISR claims the difference between the costs incurred under the post-liberation contract and the price originally agreed with Burgan.

153. The Panel finds, in accordance with the general principles set out in the First "F3" Report, that if no formal contract had been concluded at the time of Iraq's invasion and occupation of Kuwait, compensation for contract interruption losses should be awarded only where there is evidence of consensus at the time of Iraq's invasion as to the essential provisions of the contract, namely the identification of the parties, the principal undertakings and the price to be paid. 37/

154. The Panel sought to establish whether or not such consensus existed, by Procedural Orders Nos. 7 and 27 issued in September 1999 and November 1999, respectively. In its responses, KISR stated that no written agreement was concluded with Burgan, although Burgan had submitted a binding tender that KISR planned to accept subject to "the final concurrence of its engineering consultants". KISR also explained that the consultants had not yet submitted a final recommendation to KISR for the selection of the successful tender, nor had they prepared the final tender documents for signature.

155. The Panel accordingly finds that in this case no formal contract was in existence, nor was there sufficient evidence of consensus so as to satisfy the test set out above. Accordingly, the Panel does not recommend any compensation for the loss claimed.

(b) Loss under other contracts - US\$1,511,250

156. KISR seeks compensation for general contractual debts and staff debts. The losses sustained in respect of general contractual debts arise under various small contracts for laboratory tests carried out for companies, businesses and Government organizations as well as under a contract for research services. The amounts claimed are those outstanding under the contracts as at 2 August 1990, and comprise invoiced and uninvoiced progress payments for on-going research projects.

157. As set out at paragraph 41 above, the Panel does not recommend any compensation for those debts that are owed by Government organizations.

158. In accordance with the principles set out at paragraph 42 above, the Panel recommends that compensation be awarded for the remaining general contractual debts only to the extent that KISR has demonstrated that the



debts are uncollectible and that the debtors' inability to pay is a direct result of Iraq's invasion and occupation of Kuwait.

159. The Panel sought information in Procedural Orders Nos. 7 and 37, issued in September 1999 and January 2000, respectively, with respect to the attempts that were made to collect the outstanding debts and why those that remained uncollected had not been collected.

160. In its responses, KISR stated, inter alia, that it had only attempted to collect general contractual debts for which documentation was available and that in most cases non-Governmental parties did not respond to letters of demand. The main reasons advanced for non-payment were the following:

- (a) lack of documentation evidencing the debt;
- (b) that the payment had been made but no proof of payment had survived Iraq's invasion and occupation of Kuwait;
- (c) that the research had been started but not completed due to Iraq's invasion and occupation of Kuwait or had not been started at all;
- (d) that the customers' requirements had changed following liberation; or
- (e) that the debtors were unable to pay because their own activities had diminished as a result of Iraq's invasion and occupation of Kuwait.

161. As to those debts in respect of which the relevant research was interrupted or did not commence, the Panel finds that the losses are subsumed in KISR's claims for lost information and loss of revenue respectively, discussed at paragraphs 141 to 147 above and 165 to 169 below, respectively.

162. Having considered the information submitted by KISR, the Panel finds that KISR has not demonstrated that any of the remaining debts are uncollectible. 38/

163. KISR also seeks compensation for losses sustained in respect of debts owed by former members of staff. KISR submits that it did not take any steps to recover these debts because the collection costs would have exceeded the amounts at stake, and so claims the outstanding sums as a reasonable cost of mitigation. The Panel finds that KISR has not sufficiently mitigated its loss in failing to take any steps to recover the debts concerned.

164. In light of the above, the Panel does not recommend any compensation in respect of the amounts claimed.

4. Business transaction or course of dealing - US\$32,462,485

(a) Lost contract income (post-invasion) - US\$32,462,485

165. Prior to Iraq's invasion and occupation of Kuwait, KISR derived a portion of its income from providing research and development services to private companies and Government organizations. KISR claims that its contract revenues fell below what it would have received but for Iraq's invasion and occupation of Kuwait. The claim is made for the resultant loss of revenue, from 2 August 1990 until 30 June 1996. KISR asserts that such loss of revenue did not lead to a reduction in costs and therefore that loss of revenue is a net loss.

166. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government departments, and for saved expenses. <sup>39/</sup> The Panel finds that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait at least until 30 June 1996.

167. The Panel sought information in Procedural Order 7 issued in September 1999, inter alia, as to the contract income received for the years 1993 to 1999, and the proportion of the revenue generated from 1984 to 1999 that was derived from other Government departments. In its response, KISR stated that its contract income would have increased post-liberation (applying the pre-invasion trend) and gave details of the proportion of its income derived from other Government departments. The Panel finds that notwithstanding the possibility that KISR's contract income would have increased, the proportion thereof derived from other Government departments would have remained at pre-invasion levels, which the Panel finds exceed two thirds of all contract income. The Panel has made an adjustment to the amount claimed to reflect such intra-Government revenue.

168. Finally, the Panel sought information from KISR as to the costs involved in the generation of its revenue. The information provided by KISR disclosed that the expenses that would have been incurred in earning the remaining lost revenue for the period 2 August 1990 to 30 June 1996 exceeded that lost revenue.

169. In light of the above, the Panel does not recommend any award of compensation in respect of the amounts claimed.

5. Other losses - US\$51,659,044

- (a) Cost of rebuilding KISR organization - US\$36,695,525
- (b) Additional training costs due to loss of experienced personnel -  
US\$9,746,894
- (c) Additional business development costs - US\$3,344,519
- (d) Cost of additional computer training - US\$339,825 40/
- (e) Cost of restoration of administrative software - US\$1,532,281

170. KISR asserts that, as a direct result of Iraq's invasion and occupation of Kuwait, the organization was effectively destroyed.

171. For the first year following liberation, KISR claims that almost all activities of its staff were devoted to assessing the damage suffered by KISR and re-creating the organization and seeks compensation for its consequent losses. The claim is valued on the basis of the salaries paid to employees for its estimate of the man-hours that, absent Iraq's invasion and occupation of Kuwait, would have been devoted to research activities but which, in fact, were devoted to the above tasks, and of KISR's operating costs for the first year following liberation.

172. The Panel finds that the losses are compensable, subject to valuation and verification.

173. The Panel finds KISR's loss should be valued as the loss of productivity sustained by KISR during the first year following liberation, being the research which KISR staff would have produced had they not devoted their time to re-creation activities. Applying the principles set out at paragraph 34 above, the Panel has estimated the loss of productivity as a percentage of the employees' time and quantified it by reference to KISR's operating costs over that period.

174. KISR seeks further compensation for the costs incurred in providing additional training, additional business development costs, and for the costs of restoring its administrative software, some of which costs were incurred as many pre-invasion employees did not return after liberation. The Panel finds that the losses are compensable, but has made adjustments to exclude the costs consequent upon the failure of employees of certain nationalities to return. 41/ The Panel also finds that the compensable losses extended up to 30 June 1998, and has therefore assessed the losses for the items described above until that date, calculated as the loss of the man-hours that would have been devoted to research and development absent Iraq's invasion and occupation of Kuwait.

175. The Panel finds that adjustments should be made for method of valuation, overstatement and insufficient evidence.

176. In light of the above, the Panel recommends compensation in the amount of US\$9,900,000 out of the US\$51,659,044 claimed.

6. Payment or relief to others - US\$10,771,889

177. KISR seeks compensation in the amount of US\$10,771,889 for relief paid to its Kuwaiti employees, comprising salaries, incentive bonuses, 42/ holiday pay and rent paid on employees' accommodation, in each case for the seven-month occupation period.

178. In its response to the Panel's requests for information, KISR confirmed that incentive bonuses and holiday pay formed standard parts of all the Kuwaiti employees' annual salary packages.

179. The response of the Government to the Panel's questions regarding the Social Security Fund 43/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement. However, the Panel notes that KISR is further seeking compensation as a separate head of claim for such social security contributions. 44/ The Panel recommends, in accordance with paragraph 41 of the First "F3" Report (repeated as paragraph 41 of the annex), that no compensation be awarded for such sums.

180. As regards the salary packages, as set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

181. As regards that part of the claim seeking compensation for pre-paid rent on housing, the claim is made for the period during which the employees could not occupy the properties.

182. The Panel recommends, in accordance with paragraphs 83 to 85 of the First "F3" Report, that compensation be awarded for that portion of the pre-paid rent referable to the period that KISR was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that the period in this case is 2 August 1990 to 28 February 1991.

183. The Panel finds that adjustments should be made for overstatement and insufficient evidence.

184. In light of the above, the Panel recommends compensation in the amount of US\$4,228,000 out of the US\$10,771,889 claimed.

D. Ministry of Public Works (Bayan Palace)

Government Claim No. 4, UNCC Claim No. 5000040

Table 4. Summary Table for Ministry of Public Works (Bayan Palace)

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Contract			
a) Bayan Palace	24,206,337	8,720,000	188-190
b) Amiri Diwan	58,053,197	12,094,000	191-193
c) Telecommunications Tower	30,462,037	23,418,000	194-197
d) Audit Bureau	4,716,242	1,962,000	198
e) MPW/MEW headquarters	<u>19,796,513</u>	<u>5,333,000</u>	199-202
Sub-total	<u>137,234,326</u>	<u>51,527,000</u>	
Real property			
a) Bayan Palace residences	25,528,540	13,015,000	206-208
b) Bayan Palace conference building	51,496,679	30,235,000	209-211
c) Bayan Palace temporary conference facilities	<u>3,170,728</u>	<u>2,616,000</u>	212-213
Sub-total	<u>80,195,947</u>	<u>45,866,000</u>	
Other tangible property			
a) Bayan Palace residences	8,226,502	5,702,000	214-216
b) Bayan Palace conference building	5,994,716	1,605,000	217-219
c) Bayan Palace temporary conference facilities	<u>1,222,549</u>	<u>428,000</u>	220-224
Sub-total	<u>15,443,767</u>	<u>7,735,000</u>	
<u>Total</u>	<u>232,874,040</u>	<u>105,128,000</u>	
Interest	<u>37,008,640</u>		

1. Contract - US\$137,234,326

(a) Introduction

185. The Ministry of Public Works ("MPW") is responsible for the construction and maintenance of the Government's public assets such as roads, sewers and buildings.

186. In respect of the projects set out below, MPW claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. 45/ In the latter case, MPW asserts that the additional costs are to cover increased costs in the post-liberation period.

187. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

(b) Bayan Palace - US\$24,206,337

188. MPW asserts that eight contracts for the design and construction of buildings at the Bayan Palace were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above.

189. One contract, for the supply of furniture and finishes for the buildings, had not been formally concluded at the time of Iraq's invasion and occupation of Kuwait. In addition, at the time MPW submitted its claim, it had not entered into a post-liberation contract. MPW claims the difference between its estimate of what the contract price would have been had the contract been finalised and its estimate of the price of the anticipated post-liberation contract. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of this pre-invasion arrangement and so does not recommend any compensation in respect of it.

190. In light of the above, the Panel recommends compensation in the amount of US\$8,720,000 out of the US\$24,206,337 claimed.

(c) Amiri Diwan - US\$58,053,197

191. MPW asserts that fourteen contracts for the design and construction of five major buildings and several smaller ones for the Amiri Diwan were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above.

192. In addition, two contracts, for mechanical works and a conveying system, respectively, had not been formally concluded at the time of Iraq's invasion and occupation of Kuwait. MPW claims the difference between its estimate of what the contract prices would have been had the contracts been finalised and the price paid for the works after liberation. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of these pre-invasion arrangements and so does not recommend any compensation in respect of them.

193. In light of the above, the Panel recommends compensation in the amount of US\$12,094,000 out of the US\$58,053,197 claimed.

(d) Telecommunications tower - US\$30,462,037

194. MPW asserts that two contracts for the design and construction of a telecommunications tower and adjacent buildings were interrupted by Iraq's invasion and occupation of Kuwait.

195. One of the post-liberation contracts required the contractor to provide approximately thirty six more personnel than would have been required in the absence of Iraq's invasion and occupation of Kuwait. MPW asserts that some of these additional personnel were required to replace approximately 20 MPW employees who did not return after liberation. The Panel finds that the employment of these additional personnel was not a direct result of Iraq's invasion and occupation of Kuwait, particularly given that the post-liberation contract was not entered into until August 1993. It therefore does not recommend any compensation for their cost. However, the Panel recommends that compensation be awarded for the remaining additional personnel because they were required to supervise site restoration works that were necessary as a direct result of Iraq's invasion and occupation of Kuwait.

196. In addition, MPW and the construction contractor were negotiating variation orders to incorporate certain design changes into the project at the time of Iraq's invasion and occupation of Kuwait. MPW claims the difference between its estimate of what the price of the works pursuant to the variation orders would have been had the variation orders been finalised and the price paid for the works after liberation. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of these pre-invasion arrangements and so does not recommend any compensation in respect of them.

197. In light of the above, and incorporating the Panel's calculation of the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above, the Panel recommends compensation in the amount of US\$23,418,000 out of the US\$30,462,037 claimed.

(e) Audit Bureau - US\$4,716,242

198. MPW asserts that two contracts for the construction of headquarters for the State Audit Bureau were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above



and, accordingly, recommends compensation in the amount of US\$1,962,000 out of the US\$4,716,242 claimed.

(f) MEW-MPW headquarters - US\$19,796,513

199. MPW asserts that two contracts for the construction of adjacent headquarters for itself and the Ministry of Electricity and Water were interrupted by Iraq's invasion and occupation of Kuwait.

200. One of the post-liberation contracts was concluded with a design consultant who had been engaged before Iraq's invasion and occupation of Kuwait. Amongst other things, this contract purported to ensure that the consultant remained liable for any claims arising from defects in its original design and required the redesign of the headquarters' interiors. The Panel finds that a further contract was not required to ensure the contractor remained liable for claims arising from defects in its original design and so does not recommend any compensation for the costs so incurred. Further, the Panel finds that the redesign of the headquarters' interiors was not a direct result of Iraq's invasion and occupation of Kuwait.

201. The Panel also notes that the costs claimed for site restoration include the costs of producing a damage assessment report on the relevant project site. This damage assessment report incorporated findings regarding the destruction of temporary offices that were, in fact, the responsibility of the contractor. The Panel finds that an adjustment should, in principle, be made so as to reflect the cost of that portion of the damage assessment report referable to the temporary offices. However, the Panel finds that to require the contractor to undertake a damage assessment report on the temporary offices would, in the circumstances of the need for the Government to undertake an assessment of the damage at the project site, be too technical and rigid an approach. <sup>46/</sup> The Panel therefore recommends that compensation be awarded for the entire cost of the damage assessment report, including that part referable to the temporary offices, provided that the contractor has not made a duplicate claim. The Panel is satisfied that the sub-contractor has not made a duplicate claim.

202. In light of the above, and incorporating the Panel's calculation of the amount of the losses claimed that is attributable to the factors set out at paragraph 187 above, the Panel recommends compensation in the amount of US\$5,333,000 out of the US\$19,796,513 claimed.

2. Real property - US\$80,195,947

(a) Introduction

203. As further set out below, MPW asserts that loss and damage were occasioned to various buildings and their contents in the Bayan Palace, including three of the residences used as accommodation by visitors to the Bayan Palace. 47/ MPW further claims the cost of constructing and furnishing a temporary conference facility, which it asserts was required so that Kuwait could host the annual GCC summit in December 1991. The hosting of the summit by Kuwait had been planned before Iraq's invasion and occupation of Kuwait. The existing conference building at the Bayan Palace could not be used because it was damaged.

204. The Panel finds that the Government's decision to host the GCC summit as planned does not break the chain of causation between Iraq's invasion and occupation of Kuwait and the construction and furnishing of the temporary conference facility. Further, it was reasonable, given the nature of the activities carried on at the Bayan Palace, 48/ that a temporary facility be built in place of the damaged conference building. 49/ Compensation should therefore be awarded for the cost of constructing and furnishing the temporary conference facility. 50/

205. The Panel notes that the construction and furnishing of the temporary conference facility and the repair and re-furnishing of the residences were undertaken in the immediate post-liberation period when the prices of goods and services in Kuwait were, in general, higher than the norm. Applying the test set out at paragraph 31 above, the Panel finds that, in light of the Government's need for secure conference facilities and accommodation for the purposes of the GCC summit, the works were of such urgency that MPW could not reasonably be required to wait until prices had returned to normal patterns.

(b) Bayan Palace residences - US\$25,528,540

206. MPW seeks compensation for the cost of repairs to the residences discussed above.

207. The Panel finds that, although not all of the contracts for repair were awarded using competitive procurement procedures, the costs incurred were reasonable and the absence of such procedures did not lead to increased costs. However, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

208. In light of the above, the Panel recommends compensation in the amount of US\$13,015,000 out of the US\$25,528,540 claimed.

(c) Bayan Palace conference building - US\$51,496,679

209. MPW seeks compensation for the cost of repairs to the conference building in the Bayan Palace.

210. The Panel finds that, although a contract for supervision and damage assessment was not awarded using competitive procurement procedures, the cost incurred was reasonable and the absence of such procedures did not lead to increased costs. However, adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

211. In light of the above, the Panel recommends compensation in the amount of US\$30,235,000 out of the US\$51,496,679 claimed.

(d) Bayan Palace temporary conference facilities - US\$3,170,728

212. MPW claims the cost of constructing the temporary conference facility discussed above, adjusted to take account of its estimated residual value at the time the conference building was fully repaired. While the Panel agrees with this method of valuation, it finds that an adjustment should be made for insufficient evidence.

213. In light of the above, the Panel recommends compensation in the amount of US\$2,616,000 out of the US\$3,170,728 claimed.

3. Other tangible property - US\$15,443,767

(a) Bayan Palace residences - US\$8,226,502

214. MPW seeks compensation for the loss of, and damage to, tangible property such as furniture and interior decorating accessories and works of art from the Bayan Palace residences discussed above. 51/

215. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

216. In light of the above, the Panel recommends compensation in the amount of US\$5,702,000 out of the US\$8,226,502 claimed.

(b) Bayan Palace conference building - US\$5,994,716

217. MPW seeks compensation for the loss of tangible property such as furniture and interior decorating accessories from the Bayan Palace

conference building. The Panel finds that the cost of replacement was less than the amount claimed by MPW and therefore that an adjustment should be made for overstatement. Adjustments should also be made for saved expenses and insufficient evidence.

218. The Panel agrees with MPW's method of calculating depreciation. However, the Panel finds that as a result of the overstatement of the cost of replacing the tangible property, MPW has also overstated the deduction required for depreciation. The Panel has therefore re-calculated the deduction to be applied for depreciation.

219. In light of the above, the Panel recommends compensation in the amount of US\$1,605,000 out of the US\$5,994,716 claimed.

(c) Bayan Palace temporary conference facilities - US\$1,222,549

220. MPW seeks compensation for the cost of providing furniture for the temporary conference facilities.

221. The Panel finds that a deduction should be made equal to the value of those items of furniture that were suitable for use as replacements for the items of furniture lost from the Bayan Palace conference building. The Panel has, at paragraph 219 above, recommended compensation for the furniture lost from the Bayan Palace conference building.

222. MPW claims the cost of purchasing the furniture, adjusted to take account of its estimated residual value at the time the conference building was fully repaired. The Panel agrees with this method of valuation. However, as a result of the adjustment set out at paragraph 221 above, the deduction for the residual value of the furniture should be lower than that submitted by MPW. The Panel has therefore recalculated the deduction to be applied for residual value.

223. The Panel finds that an adjustment should also be made for insufficient evidence.

224. Accordingly, the Panel recommends compensation in the amount of US\$428,000 out of the US\$1,222,549 claimed.

E. Ministry of Electricity and Water (Stores Department)Government Claim No. 6, UNCC Claim No. 5000042Table 5. Summary Table for Ministry of Electricity and Water (Stores Department)

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Other tangible property	<u>270,116,078</u>	<u>172,992,000</u>	225-229
Real property			
a) Communication systems	12,213,250	2,820,000	230-233
b) Emergency electrical department	8,083,960	2,597,000	234-238
c) Primary substations	553,722	240,000	239-243
d) Water division	<u>44,392,319</u>	<u>29,605,000</u>	244-247
Sub-total	<u>65,243,251</u>	<u>35,262,000</u>	
Contract			
a) Communications systems	4,710,082	4,182,865	250-252
b) Water division	<u>22,164,672</u>	<u>3,266,000</u>	253-257
Sub-total	<u>26,874,754</u>	<u>7,448,865</u>	
<u>Total</u>	<u>362,234,083</u>	<u>215,702,865</u>	
Interest	<u>57,566,160</u>		

1. Other tangible property - US\$270,116,078(a) Stores department - US\$270,116,078

225. The Ministry of Electricity and Water ("MEW") is responsible for the provision of electricity and water in Kuwait.

226. MEW seeks compensation for the loss or destruction of spare parts, tools and other equipment from various storage areas in Kuwait.

227. MEW claims compensation for the entire pre-invasion contents of a number of storage areas notwithstanding that all such contents were not, in fact, completely lost or destroyed. MEW asserts that the items remaining after liberation were worthless because they consisted of incomplete or damaged parts. The Panel finds, however, that the contents remaining at store number 8 at Subhan Central Stores had some salvage value and that an appropriate adjustment should therefore be made.

228. The Panel also finds that adjustments should be made to reflect an error made by MEW in calculating its claim, for shrinkage (that is, pilferage or erroneous bookkeeping) that would have occurred in the absence of Iraq's invasion and occupation of Kuwait, and for insufficient evidence.

229. In light of the above, the Panel recommends compensation in the amount of US\$172,992,000 out of the US\$270,116,078 claimed.

2. Real property - US\$65,243,251

(a) Communications systems - US\$12,213,250 52/

230. MEW seeks compensation for the loss of, and damage to, the communications systems linking its control centres with its major electrical power stations and substations.

231. MEW states that it has decided not to replace some of the equipment that was lost because of budgetary constraints or because the equipment has been made obsolete by new technology. The Panel, consistent with the decision set out at paragraphs 65 to 66 of the First "F3" Report (repeated as paragraphs 65 to 66 of the annex), finds that the loss of such equipment is nonetheless compensable and has valued the loss as the cost of replacing the equipment at such time as it would be reasonable, in all the circumstances, to expect replacement to have taken place. However, the Panel finds that adjustments should be made for saved expenses, the fact that some of the equipment not replaced was obsolete, inadequate accounting for depreciation and insufficient evidence.

232. For the equipment that has been replaced or repaired, the Panel finds that adjustments should be made for saved expenses and insufficient evidence.

233. In light of the above, the Panel recommends compensation in the amount of US\$2,820,000 out of the US\$12,213,250 claimed.

(b) Emergency electrical department - US\$8,083,960 53/

234. MEW seeks compensation for the cost of repairing damage to its overhead lines and underground cables.

235. MEW's claim includes the estimated replacement cost of items that were taken from MEW's stores and used for the repairs. As set out at paragraph 33 above, the Panel recommends that compensation be awarded for such items.

236. MEW's claim also includes the estimated cost of undertaking repairs that had not been performed at the time the claim was submitted to the Commission. MEW has now provided information on the repairs that were subsequently undertaken and the Panel finds that an adjustment should be made to correct an overstatement in MEW's estimate.

237. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

238. In light of the above, the Panel recommends compensation in the amount of US\$2,597,000 out of the US\$8,083,960 claimed.

(c) Primary substations - US\$553,722 54/

239. MEW asserts that many of its primary substations were damaged or destroyed. This claim is made only for repairs overseen by the Primary Substation Maintenance Department. The other repairs to the primary substations are considered at paragraphs 284 to 289 below.

240. Some of the repairs required were performed by MEW's existing employees. The Panel has valued the loss as set out at paragraph 34 above, and finds that the value of the work that these particular employees would have performed if they had not worked on the repairs is equivalent to the amount of their salaries.

241. As set out at paragraph 33 above, the Panel recommends that compensation be provided for the items taken from MEW's stores and used for the repairs.

242. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

243. In light of the above, the Panel recommends compensation in the amount of US\$240,000 out of the US\$553,722 claimed.

(d) Water division - US\$44,392,319 55/

244. MEW seeks compensation for damage to its water supply facilities, including pipes, pumps and reservoirs.

245. At the time it submitted its claim, MEW had not commenced the replacement of five destroyed reservoirs. Its claim was based on the cost incurred in constructing similar reservoirs in 1979 with adjustments for inflation and depreciation. While the Panel accepts this method of valuation, it notes that MEW's claim asserts that three of the destroyed reservoirs will be replaced with one larger reservoir. The Panel finds that an adjustment should be made to reflect the lower overall costs of this approach.

246. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

247. In light of the above, the Panel recommends compensation in the amount of US\$29,605,000 out of the US\$44,392,319 claimed.

3. Contract - US\$26,874,754

(a) Introduction

248. In respect of the projects set out below, MEW claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. 56/ In the latter case, MEW asserts that the additional costs are to cover increased costs in the post-liberation period.

249. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report, finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

(b) Communications systems - US\$4,710,082 57/

250. MEW asserts that a contract for the construction of a district control centre at Jahra was interrupted by Iraq's invasion and occupation of Kuwait. There was no additional cost in completing the contract after liberation, so the Panel has calculated only the amount of the loss claimed attributable to site restoration costs. 58/

251. The Panel finds that the site restoration costs equal the amount claimed and therefore recommends payment in full in the amount of US\$4,182,865 for the interruption of this contract.

252. MEW also asserts that a contract for the maintenance of a district control centre in the "Town" section of Kuwait City was interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the loss claimed that is attributable to the factors set out at paragraph 249 above and finds that it is exceeded by the amount that MEW saved on maintenance of the district control centre for the period from the date of Iraq's invasion of Kuwait until the contract was restarted. Accordingly, the Panel does not recommend any compensation for the interruption of this contract.



(c) Water division - US\$22,164,672 59/

253. MEW asserts that 23 contracts in relation to the repair, maintenance, construction or upgrade of MEW's water network were interrupted by Iraq's invasion and occupation of Kuwait.

254. Work under seven of the contracts has not yet been resumed. 60/ However, the Panel finds that these contracts will all be resumed at some stage and therefore recommends compensation in accordance with paragraph 37 above.

255. For those contracts that have been restarted, the Panel has calculated the amount of the losses claimed attributable to the factors set out at paragraph 249 above.

256. Four of the interrupted contracts were for routine maintenance works on a number of facilities. The Panel finds that the amount that would have been spent on the routine maintenance of those facilities for the period from 2 August 1990 until the contracts were restarted exceeds the costs attributable to the factors set out at paragraph 249 above for the contracts. As a result, the Panel recommends that no compensation be awarded for the interruption of these contracts.

257. In light of the above, the Panel recommends compensation in the amount of US\$3,266,000 out of the US\$22,164,672 claimed.

F. Ministry of Defense (Fast Attack)

Government Claim No. 12, UNCC Claim No. 5000110

Table 6. Summary Table for Ministry of Defense (Fast Attack)

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Other tangible property			
a) The stolen ships	425,516,000	46,557,000	258-264
b) War related maintenance costs for the Al-Sanbouk and the Istiglal	52,709,162	14,271,000	265-271
c) Specialized spare parts purchases for the Al-Sanbouk and Istiglal long refit.	5,215,352	3,129,000	272-274
<u>Total</u>	<u>483,440,514</u>	<u>63,957,000</u>	
Interest	<u>76,827,960</u>		

1. Other tangible property - US\$483,440,514

(a) The stolen ships - US\$425,516,000

258. The Ministry of Defense ("MoD") seeks compensation for the loss of six ships of the Kuwait Navy that it asserts were seized by Iraq shortly after its invasion and occupation of Kuwait. MoD claims that the ships were taken to an Iraqi naval base where the Iraqi Navy used them as warships to patrol the Persian Gulf. MoD states that it believes that all the ships were destroyed during the course of the military operations against Iraq pursuant to Security Council resolution 678 (1990). The Panel accepts that the ships were lost, probably as a result of bombing by the Allied Coalition Forces.

259. In its original claim, MoD valued the loss of its ships on the basis of replacement cost as estimated by the original shipbuilder located in Germany. In a supplemental submission of claim filed in May 1998, MoD stated that the lost ships had been replaced with eight smaller ships supplied by a French manufacturer at a price in excess of the original estimated replacement cost, but no consequential amendment was made to the amount claimed. The Panel has therefore valued the loss on the basis of the original estimated replacement cost.

260. The Panel notes that the replacement cost estimate relied upon by MoD was obtained from the original shipbuilder, and without competitive procurement procedures. The Panel finds that the market for such ships is intensely competitive, and that it is normal practice for the purchase of

such ships to be put out to tender on a worldwide basis. The Panel is satisfied that there were more than 15 shipbuilders who were capable of supplying the ships at the relevant time, and therefore that the use of competitive procurement procedures would have led to substantially lower offer prices. The Panel has therefore made an adjustment, for an inadequate procurement process, to the amount claimed.

261. As a result of the adjustment made by the Panel in the preceding paragraph in respect of the inadequate procurement process, the Panel finds that the deduction MoD applied against the amount claimed in respect of depreciation exceeds the deduction warranted, in that the percentage deduction should be applied to a lower replacement cost. The Panel has therefore re-calculated the deduction to be applied for depreciation.

262. The Panel is satisfied that the ships would have required annual maintenance and at least two long refits over their life (estimated by MoD at 25 years). The costs of undertaking such maintenance are significant, as demonstrated by the amounts claimed for the long refits in respect of the 2 surviving ships considered at paragraphs 265 to 271 below. Accordingly, the Panel finds that an adjustment should be made for the maintenance expenses saved.

263. The Panel finds that a further adjustment should be made for insufficient evidence.

264. In light of the above, the Panel recommends compensation in the amount of US\$46,557,000 out of the US\$425,516,000 claimed.

(b) War related maintenance costs for the Al-Sanbouk  
and the Istiglal - US\$52,709,162

265. MoD seeks compensation for repair and overhaul costs for the Al-Sanbouk and Istiglal missile ships. The claim is based on the costs paid to the ships' manufacturer for the repair and overhaul work on the Al-Sanbouk and the estimated cost of such work for the Istiglal. MoD claims the proportion of the cost of the repair and overhaul work that it would have been able to accomplish internally, but for Iraq's destruction of the maintenance facilities at Kuwait's naval base (the "Base"). 61/

266. Each of these ships was on routine patrol when Iraq occupied the Base and was ordered by Kuwait Naval Command to Bahrain from where both were operated until liberation. As part of its verification and valuation of the claim, the Panel instructed the secretariat and the expert consultants to inspect the Al-Sanbouk and the Istiglal on the Panel's behalf. This inspection was carried out during a technical mission to Kuwait undertaken in June 1999.

267. The repair and overhaul work was required due to a lack of maintenance during the occupation period and accelerated wear rates arising from the additional usage while the ships were operating out of Bahrain. The Panel finds that any costs arising from the additional usage are military costs within Governing Council decision 19 and are therefore not compensable. 62/ The Panel finds, however, that the costs arising from the lack of maintenance are direct losses and are therefore compensable.

268. The repairs to, and overhaul of, the Al-Sanbouk were carried out as part of a long refit of the ship which was overdue. A long refit comprises the disassembly of the ship, the refurbishment of all major components and the overhaul of the ship's structure. The Panel has considered whether the additional usage increased the cost of the long refit and finds that, given the comprehensive nature of a long refit, any such increase was negligible. 63/ Accordingly, no adjustment under Governing Council decision 19 for military costs is required.

269. MoD asserts that prior to Iraq's invasion and occupation of Kuwait it had the facilities and personnel to carry out a significant part of the long refit of the Al-Sanbouk and identifies 60 per cent by value of the long refit contract as representing its pre-invasion maintenance capacity. However, the Panel notes that MoD had not previously carried out a long refit on the Al-Sanbouk, although the Panel accepts that MoD had undertaken at least one annual refit on each vessel prior to Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that although MoD may have been capable of doing some of the work involved in the long refit, 60 per cent by value overstates the capacity lost. Accordingly, the Panel finds that an adjustment should be made for overstatement to the amount claimed for repair and overhaul work in this regard.

270. In respect of the estimated cost claimed for the Istiglal, the Panel finds that given the lapse of time since its last annual refit, a long refit is overdue. However, since the majority of the repairs to the facilities at the Base have now been completed, MoD would be able to undertake all the work on a long refit that it would have been able to undertake prior to Iraq's invasion and occupation of Kuwait. Accordingly, the Panel does not recommend any compensation in respect of the amount claimed.

271. In light of the above, the Panel recommends compensation in the amount of US\$14,271,000 out of the US\$52,709,162 claimed.

(c) Specialized spare parts purchases for the Al-Sanbouk and Istiglal long  
refit - US\$5,215,352

272. MoD seeks compensation for the loss of its general store of spare parts as well as several electronic and armament components, which, it asserts, were being held for installation on the Al-Sanbouk and Istiglal. MoD asserts that the replacements for these components had to be specially purchased for the long refit of the Al-Sanbouk and in anticipation of similar work being performed on the Istiglal. The Panel has made investigations as to the type of spare parts lost and the parts supplied by the contractor in the long refit of the Al-Sanbouk and finds no evidence of duplication between the claims for the war-related maintenance costs discussed above and the claim for specialised spare parts relating to the Al-Sanbouk.

273. The Panel finds, however, that an adjustment should be made for insufficient evidence.

274. In light of the above, the Panel recommends compensation in the amount of US\$3,129,000 out of the US\$5,215,352 claimed.

G. Ministry of Electricity and Water (Power Plants)Government Claim No. 13, UNCC Claim No. 5000111Table 7. Summary Table for Ministry of Electricity and Water (Power Plants)

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Real property			
a) Power plants	107,852,784	53,601,000	275-278
b) Underground cables and overhead lines maintenance department	14,055,563	4,413,000	279-283
c) Electrical networks projects construction department	404,590,493	217,055,000	284-289
d) Shuwaikh distillation facilities	<u>41,837,834</u>	<u>31,541,000</u>	290-293
Sub-total	<u>568,336,674</u>	<u>306,610,000</u>	
Payment or relief to others	<u>36,221,863</u>	<u>14,230,000</u>	294-298
Other tangible property	<u>2,113,620</u>	<u>615,000</u>	299-311
<u>Total</u>	<u>606,672,157</u>	<u>321,455,000</u>	
Interest	<u>96,412,240</u>		

1. Real property - US\$568,336,674(a) Power plants - US\$107,852,784 64/

275. MEW seeks compensation in relation to five power stations. It asserts that four were damaged and one destroyed as a result of Iraq's invasion and occupation of Kuwait. 65/

276. The damage to one power station, at Doha West, included the destruction of its control centre. MEW's inspection of the turbines and generators of the power station did not reveal any damage. In order to provide some emergency power to the relevant region, MEW installed a temporary control system and re-started the generation facility at the power station. Damage to a turbine and generator was then caused by a failure of part of the oil system. This failure would have been detected by the destroyed control centre, but the temporary control system did not monitor the oil system. The Panel finds that MEW's actions before re-starting the generation facility at the power station were reasonable in the circumstances and recommends that compensation be awarded for all the damage to the Doha West power station, including that to the turbine and generator.

277. MEW's claim makes an allowance for depreciation only in the case of the repairs to the Shuaiba South power station. The Panel finds, however, that adjustments should be made for inadequate accounting for depreciation in relation to all of the repairs to the power stations. 66/ The Panel also finds that adjustments should be made for saved expenses and insufficient evidence.

278. In light of the above, the Panel recommends compensation in the amount of US\$53,601,000 out of the US\$107,852,784 claimed.

(b) Underground cables and overhead lines maintenance department -  
US\$14,055,563

279. MEW seeks compensation for the cost of the repairs to its overhead lines and underground cables that were undertaken by the above-captioned department.

280. MEW's claim includes the estimated replacement cost of items that were taken from MEW's stores and used for the repairs. As set out at paragraph 33 above, the Panel recommends that compensation be awarded for such items.

281. MEW's claim also includes the estimated cost of undertaking repairs that had not been performed at the time the claim was submitted to the Commission. MEW has now provided information on the repairs that were subsequently undertaken and the Panel finds that an adjustment should be made to correct an overstatement in MEW's initial estimate.

282. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

283. In light of the above, the Panel recommends compensation in the amount of US\$4,413,000 out of the US\$14,055,563 claimed.

(c) Electrical networks projects construction department - US\$404,590,493  
67/

284. MEW asserts that the above-captioned department managed 63 contracts for the inspection, repair, replacement and reconstruction of MEW's primary substations and other electrical network facilities.

285. Some of the repairs performed were to facilities on Failaka Island. The Panel finds that the repairs were undertaken before the Government decided to abandon Failaka Island and therefore recommends compensation based on the cost of the repairs undertaken. 68/

286. MEW's claim includes the replacement cost of items that were taken from MEW's stores and used for the repairs on Failaka Island. As set out at paragraph 33 above, the Panel recommends that compensation be awarded for such items.

287. Not all of the contracts were awarded using competitive procurement procedures and some were performed in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the tests set out at paragraph 138 of the First "F3" Report and paragraph 31 above, the Panel finds that, in light of Kuwait's need rapidly to restore its critical electrical supply and distribution systems, the works were of such urgency that MEW could not reasonably be required to resort to competitive procurement procedures nor wait until prices had returned to normal patterns.

288. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

289. In light of the above, the Panel recommends compensation in the amount of US\$217,055,000 out of the US\$404,590,493 claimed.

(d) Shuwaikh distillation facilities - US\$41,837,834

290. MEW asserts that a power station and a desalination complex (consisting of seven separate desalination plants) were damaged by bombing and lack of normal maintenance. However, due to their age at the time of Iraq's invasion and occupation of Kuwait, MEW decided not to repair the power station 69/ or four of the desalination plants. The claim is therefore submitted only in relation to the three remaining desalination plants.

291. The repair of the desalination plants was undertaken by the sole contractor who responded to the tender documents issued. The Panel finds that, given the importance of the provision of fresh drinking water to the people of Kuwait, it was reasonable for MEW to proceed without re-tendering the work.

292. However, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

293. In light of the above, the Panel recommends compensation in the amount of US\$31,541,000 out of the US\$41,837,834 claimed.



2. Payment or relief to others - US\$36,221,863

(a) Relief paid to employees - US\$36,221,863

294. MEW seeks compensation in the amount of US\$36,221,863 for relief paid to employees. 70/

295. The evidence shows that the amount claimed is based upon the employees' salaries after deduction of the social security contribution.

296. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof (repeated as paragraphs 36 and 48 of the annex, respectively), the Panel accepts the compensability of such relief paid to employees.

297. The Panel finds that an adjustment should also be made for insufficient evidence.

298. In light of the above, the Panel recommends compensation in the amount of US\$14,230,000 out of the US\$36,221,863 claimed.

3. Other tangible property - US\$2,113,620

(a) Computer centre - US\$2,113,620 71/

299. MEW asserts that computer equipment and peripherals, computer software, office equipment and furniture, and records were lost from its computer centre.

300. The largest element of MEW's claim for its computer centre relates to a lost Unisys A9 mainframe computer.

301. MEW asserts that it took time to assess the losses and plan for the restoration of the centre. As a result, MEW did not immediately replace the Unisys A9. Instead, it leased a Unisys A6 in March 1992.

302. In August 1993, MEW installed an IBM AS/400-F35 mainframe computer, which is less powerful than a Unisys A9. From early 1994 to early 1995, MEW undertook a first upgrade to the IBM AS/400-F35. During the rest of 1995, MEW undertook a second upgrade to the IBM AS/400-F35. Upon the completion of these two upgrades, the computer was the equivalent of an IBM AS/400-F60. The Panel finds that the functionality of an IBM AS/400-F60 is superior to the lost Unisys A9.

303. MEW claims the cost of leasing the Unisys A6 from March 1992 until August 1993, the cost of the IBM AS/400-F35 and the two upgrades to it, the

cost of consultants to install and configure the IBM AS/400-F35, and the cost of consultants to install and configure the two upgrades to the IBM AS/400-F35.

304. The Panel recommends that compensation be awarded for the cost of leasing the Unisys A6 because the decision to lease and then buy was a reasonable one in the circumstances. <sup>72/</sup> The Panel also finds that the cost of purchasing, installing and configuring a replacement Unisys A9 in August 1993 would have exceeded the costs incurred by purchasing, installing and configuring the IBM AS/400-F35 and the two upgrades to it. Furthermore, the work undertaken by the consultants could not have been performed by MEW's pre-invasion staff.

305. The Panel therefore recommends that compensation be awarded for the costs set out at paragraph 303 above, with adjustments for enhancement, saved expenses and insufficient evidence.

306. The Panel notes that MEW's claim makes an allowance for depreciation of the computer equipment and peripherals, based on its estimate of the expected useful life and age of each item. The Panel finds that such a depreciation adjustment is required, but MEW overestimated the expected useful life of the lost Unisys A9. Further, account should be taken of the benefit MEW received from the use of the temporary Unisys A6 pending the purchase of a permanent replacement for the lost Unisys A9. The cumulative effect of all the Panel's adjustments, including that referred to above for enhancement, is that there is a reduction in the depreciation adjustment applied by MEW.

307. Two further elements of the claim for the lost computer centre comprise the costs of consultants employed to:

- (a) restore the computer system that manages MEW's stock; and
- (b) undertake a post-liberation stock check.

308. The Panel recommends that compensation be awarded for the cost of restoring the computer system that manages MEW's stock because the destruction of the system was a direct result of Iraq's invasion and occupation of Kuwait and the restoration work could not have been performed by MEW's pre-invasion staff. However, an adjustment should be made for insufficient evidence.

309. The Panel recommends that no compensation be awarded for the cost of the post-liberation stock check because the work would have been necessary in the absence of Iraq's invasion and occupation of Kuwait and, in any event, could have been performed by MEW's existing staff.

310. The amounts claimed for the remainder of MEW's claim under this loss type, being for office equipment and furniture, fall below the level of materiality adopted by the Panel. The Panel finds that adjustments to the claim for office equipment and furniture should be made for inadequate accounting for depreciation and insufficient evidence.

311. In light of the above, the Panel recommends compensation in the amount of US\$615,000 out of the US\$2,113,620 claimed.

H. Ministry of Information

Government Claim No. 16, UNCC Claim No. 5000114

Table 8. Summary Table for Ministry of Information

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Tangible property			
a) Dar al-Athar al-Islamiyya collection	<u>60,206,952</u>	<u>20,235,000</u>	312-324
Other losses			
a) Costs to recover the Dar al-Athar collection from Iraq	656,862	439,000	325-327
b) Costs to value the Dar al-Athar collection	<u>172,793</u>	<u>96,000</u>	328-333
Sub-total	<u>829,655</u>	<u>535,000</u>	
<u>Total</u>	<u>61,036,607</u>	<u>20,770,000</u>	
Interest	<u>9,699,920</u>		

1. Other tangible property - US\$60,206,952

(a) Dar al-Athar al-Islamiyya collection - US\$60,206,952 73/

Emeralds - US\$53,500,000

Other works of art - US\$6,706,952

312. The Ministry of Information ("MoInf") is responsible, amongst other things, for the Kuwait National Museum.

313. At the time of Iraq's invasion and occupation of Kuwait, the Kuwait National Museum was exhibiting the Dar al-Athar al-Islamiyya collection (the "Collection") pursuant to a loan agreement with the private owners of the Collection. 74/ The majority of the Collection was moved to Iraq during Iraq's occupation of Kuwait. Some of the pieces that remained in Kuwait were destroyed by fire.

314. The majority of the Collection was returned after liberation to Kuwait pursuant to UNROP. 75/ However, a number of the pieces returned had been damaged during their transport to, and storage in, Iraq. Furthermore, some pieces in the Collection were never recovered and others were destroyed in the fire mentioned at paragraph 313 above.

315. The loan agreement between MoInf and the private owners of the Collection provided that MoInf was liable for damage to the Collection, including damage from looting, confiscation, fire and war. A court in

Kuwait has found MoInf liable under the loan agreement for the losses. 76/ The Panel therefore finds that, although MoInf is not the owner of the Collection, it has standing to bring this claim.

316. The claim comprises US\$53,500,000 for the loss of three emeralds and US\$6,706,952 for the loss of, and damage to, other works of art.

317. MoInf has calculated the value of those pieces of the Collection that were lost by reference to its estimate of the price that would be paid by a buyer at an auction (the "buyer's price"). While the Panel agrees that the value should be measured by reference to auction prices, it notes that the price paid by a buyer at such an auction is always in excess of the amount eventually received by the seller (the "seller's price"). 77/ The Panel finds that the valuation of the lost pieces should be by reference to the seller's, rather than the buyer's, price. 78/

318. MoInf supported its claim for the loss of the three emeralds with two expert opinions, each of which considered the buyer's price of the emeralds, by comparing them with other emeralds sold at public auction in recent years. The Panel commissioned its own expert opinion on the value of the emeralds, which applied a similar valuation methodology 79/ and which concluded that MoInf's claim significantly overstated their value. Having considered all of the opinions before it, the Panel finds that MoInf's claim is overstated. The Panel has therefore made adjustments to correct that overstatement and for insufficient evidence and recommends compensation in the amount of US\$16,700,000 out of the US\$53,500,000 claimed in respect of the lost emeralds.

319. MoInf claims the cost of the repair and the decrease in the value of the other works of art that were returned in a damaged condition. This decrease in value was measured as the estimated pre-invasion buyer's price minus the estimated buyer's price after repair.

320. While the Panel agrees that MoInf should be awarded compensation for both the costs of repair and the decrease in value, it notes that the pieces returned in a damaged condition are being repaired and will remain part of the Collection. As such, the Panel finds that the decrease in value should be measured by reference to the seller's, rather than the buyer's, price.

321. For each piece returned in a damaged condition, the Panel considered whether the repairs undertaken, or planned to be undertaken, were economic in the sense that they resulted, or would result, in an increase in the value of the piece (using the seller's price) at least equal to the repair costs. The Panel finds that uneconomic repairs are only justifiable where

the piece was so unique that it could not be replaced. The Panel finds that none of the items in the Collection was so unique.

322. In the case of uneconomic repairs to items that were not unique, the duty of mitigation would require MoInf to purchase a replacement item, provided that the cost of replacing the item (using the buyer's price) is less than the sum of the cost of repair and the decrease in value (using the seller's price). The Panel has therefore made adjustments where uneconomic repairs have been undertaken or are planned to be undertaken equal to the difference, if any, between the sum of the cost of repair and the decrease in value (using the seller's price) and the cost of replacing the item (using the buyer's price).

323. In its supplemental submission of claim, MoInf disclosed that a dagger included within the claim had been recovered when presented for sale at Sotheby's in 1997. The Panel has therefore made an adjustment equal to the amount claimed for this dagger. The Panel finds that an adjustment should also be made for an overstatement in the time MoInf estimated would be required to re-catalogue and re-arrange a large number of books that were returned by Iraq.

324. In light of the above, and an adjustment for insufficient evidence, the Panel recommends compensation in the amount of US\$3,535,000 out of the US\$6,706,952 claimed in respect of the other works of art.

2. Other losses - US\$829,655

(a) Costs to recover the Dar al-Athar collection from Iraq - US\$656,862

325. The Panel recommends that compensation be awarded for the reasonable cost of retrieving pieces of the Collection and other pieces removed from the Kuwait National Museum, because such retrieval was required as a direct result of the transfer of the pieces to Iraq. 80/ Furthermore, the retrieval acted to mitigate the losses from the Kuwait National Museum. 81/ The Panel finds that the time spent on the retrieval of the pieces was reasonable.

326. The retrieval team was not selected by a competitive procurement procedure. The Panel has made an adjustment for the resultant excess costs incurred for the packing of the pieces and their transport to Kuwait. The Panel has also made an adjustment to reflect the fact that the claim includes a "contingency item" to which no expenditure is allocated.

327. In light of the above, the Panel recommends compensation in the amount of US\$439,000 out of the US\$656,862 claimed.

(b) Costs to value the Dar al-Athar collection - US\$172,793 82/

328. MoInf seeks compensation for the costs of preparing a report on the damage to the Collection, producing an inventory of the Collection for the purposes of the retrieval of the pieces from Iraq, and producing a report on the retrieval of the pieces from Iraq.

329. The report on the damage to the Collection appears to have been produced for the private owners of the Collection for the purpose of their claim against MoInf for the damage to the Collection. Further, the court decision discussed at paragraph 315 above awarded the amount claimed for this loss element against MoInf. The Panel therefore recommends that compensation be awarded for the cost of producing this report.

330. The Panel finds that an inventory for the purposes of the retrieval of the pieces from Iraq was required because the original records of the Collection were missing as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends that compensation be awarded for the costs of producing the inventory.

331. The Panel also finds that producing the report on the retrieval of the pieces from Iraq was an integral part of the mission to retrieve them, and therefore recommends that compensation be awarded for the costs of producing the report.

332. Under an agreement in force before Iraq's invasion and occupation of Kuwait and which continued after liberation, MoInf paid a monthly management fee to a company for services in relation to the Collection. Some of the costs claimed for the preparation of the report on the damage to the Collection and the report on the retrieval of the pieces from Iraq were amounts paid under this agreement and thus would have been incurred in the absence of Iraq's invasion and occupation of Kuwait. There is no indication that MoInf paid any additional fees to the company to compensate for the time spent by the company on the two reports. The Panel therefore finds that an adjustment should be made equal to the amount of the losses claimed that would have been incurred in any event.

333. In light of the above, the Panel recommends compensation in the amount of US\$96,000 out of the US\$172,793 claimed.

I. Ministry of Public Works (Mishref Neighborhood Center)Government Claim No. 17, UNCC Claim No. 5000115Table 9. Summary Table for Ministry of Public Works (Mishref Neighborhood Center)

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Contract			
a) Mishref neighborhood center	4,380,588	3,213,000	336-337
b) Kuwait University	<u>7,660,183</u>	<u>2,582,000</u>	338-339
Sub-total	<u>12,040,771</u>	<u>5,795,000</u>	
Real property			
a) Old Sief Palace	<u>5,952,505</u>	<u>2,321,000</u>	340-342
Other tangible property			
a) Government Testing Center	9,560,898	3,216,000	343-346
b) Computer department	8,115,250	1,074,000	347-350
c) General and technical stores	3,471,355	1,674,000	351-353
d) Office furniture and equipment	2,033,852	968,000	354-356
e) Heavy equipment	<u>3,765,173</u>	<u>1,339,000</u>	357-359
Sub-total	<u>26,946,528</u>	<u>8,271,000</u>	
Payment or relief to others			
a) Payment of salaries and bonuses	<u>23,609,806</u>	<u>8,670,000</u>	360-365
Business transaction or course of dealing			
a) Government Testing Center lost revenue	<u>7,005,500</u>	<u>0</u>	366-371
Other losses			
a) Government Testing Center lost research	<u>3,891,254</u>	<u>430,000</u>	372-373
<u>Total</u>	<u>79,446,364</u>	<u>25,487,000</u>	
Interest	<u>12,625,440</u>		

1. Contract - US\$12,040,771(a) Introduction

334. In respect of the projects set out below, MPW claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. 83/ In the latter case, MPW asserts that the additional costs are to cover increased costs in the post-liberation period.

335. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the



losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

(b) Mishref neighborhood center - US\$4,380,588

336. MPW asserts that two contracts, in relation to the construction of a number of buildings at Mishref, were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 335 above.

337. In light of the above, the Panel recommends compensation in the amount of US\$3,213,000 out of the US\$4,380,588 claimed.

(c) Kuwait University - US\$7,660,183

338. MPW asserts that five contracts, in relation to the construction of four buildings for Kuwait University, were interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 335 above.

339. In light of the above, the Panel recommends compensation in the amount of US\$2,582,000 out of the US\$7,660,183 claimed.

2. Real property - US\$5,952,505

(a) Old Sief Palace - US\$5,952,505

340. MPW seeks compensation for damage to Old Sief Palace, the oldest building in Kuwait. After liberation, KERO performed some emergency repairs to the palace. At the time it submitted its claim, MPW had not started the permanent repairs to the palace, and therefore claims its estimate of those repair costs.

341. The Panel finds that an adjustment for inadequate accounting for depreciation should be made to the costs of repair claimed and, recognising the building's great historical significance to Kuwait, has adopted a useful life of 350 years for the relevant calculation. The Panel finds that further adjustments should be made for saved expenses and insufficient evidence.

342. In light of the above, the Panel recommends compensation in the amount of US\$2,321,000 out of the US\$5,952,505 claimed.

3. Other tangible property - US\$26,946,528

(a) Government Testing Center - US\$9,560,898

343. MPW seeks compensation for the loss of laboratory supplies, glassware, chemicals and sophisticated technical equipment (including fourteen drilling rigs). Before Iraq's invasion and occupation of Kuwait, these items were used to test building materials and soil samples from construction sites.

344. At the time MPW filed its claim, it had replaced only two of the lost drilling rigs. It therefore valued its loss on the basis of the unit price paid for the two replacements. MPW replaced two more of the lost drilling rigs in 1995 and a further two in 1996. The Panel finds that a lower unit price would have been obtained had MPW placed a single order for the replacement drilling rigs and has made an appropriate adjustment. 84/

345. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

346. In light of the above, the Panel recommends compensation in the amount of US\$3,216,000 out of the US\$9,560,898 claimed.

(b) Computer department - US\$8,115,250

347. MPW seeks compensation for the loss of computer equipment and technical documents.

348. MPW asserts that the loss of the technical documents means that it will have to re-develop many of its computer systems. It therefore claims the historic cost of the labour used to initially develop those systems. As set out at paragraphs 23 to 28 above, the Panel recommends that compensation be awarded for such lost information. However, the Panel finds that an adjustment should be made for economies of re-creation.

349. The Panel finds that adjustments should also be made for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

350. In light of the above, the Panel recommends compensation in the amount of US\$1,074,000 out of the US\$8,115,250 claimed.

(c) General and technical stores - US\$3,471,355

351. MPW seeks compensation for the loss of spare parts, office supplies and construction materials from five storage locations.

352. The Panel finds that an adjustment should be made to reflect the shrinkage (that is, pilferage or erroneous bookkeeping) and obsolescence that would have occurred in the stores' contents in the absence of Iraq's invasion and occupation of Kuwait. Adjustments should also be made for saved expenses and insufficient evidence.

353. Accordingly, the Panel recommends compensation in the amount of US\$1,674,000 out of the US\$3,471,355 claimed.

(d) Office furniture and equipment - US\$2,033,852

354. MPW seeks compensation for the loss of its office furniture and equipment.

355. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

356. Accordingly, the Panel recommends compensation in the amount of US\$968,000 out of the US\$2,033,852 claimed.

(e) Heavy equipment - US\$3,765,173

357. MPW seeks compensation for the loss of cranes, bulldozers, trucks, graders, and other heavy equipment. 85/

358. MPW valued its loss by reference to its estimate of the replacement cost of each piece of heavy equipment that was lost. It then applied a depreciation factor to each of these values to reflect that the piece of heavy equipment in question was not new at the time of Iraq's invasion and occupation of Kuwait. While the Panel agrees with this method of valuation, it has made adjustments to reflect some errors in MPW's estimate of the replacement costs and the subsequent effect of these errors on MPW's depreciation adjustments. The Panel finds that further adjustments should be made for incorrect valuation of KERP assets, saved expenses and insufficient evidence.

359. In light of the above, the Panel recommends compensation in the amount of US\$1,339,000 out of the US\$3,765,173 claimed.

4. Payment or relief to others - US\$23,609,806

(a) Payment of salaries and bonuses - US\$23,609,806

360. MPW seeks compensation in the amount of US\$23,431,908 for relief paid to employees.

361. The evidence shows that the amount claimed is based upon the employees' salaries after deduction of the social security contribution.

362. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

363. MPW also seeks compensation in the amount of US\$177,898 for bonuses paid to 309 employees for their work on Kuwait's sewerage system during Iraq's occupation of Kuwait. The Panel finds that the decision to make the payments was made well after liberation pursuant to a general power granted by a 1977 Ministerial Order. The payments were therefore not a direct result of Iraq's invasion and occupation of Kuwait and the Panel recommends that no compensation be awarded for them.

364. The Panel also finds that an adjustment should be made for insufficient evidence.

365. In light of the above, the Panel recommends compensation in the amount of US\$8,670,000 out of the US\$23,609,806 claimed.

5. Business transaction or course of dealing - US\$7,005,500

(a) Government Testing Center lost revenue - US\$7,005,500

366. Prior to Iraq's invasion and occupation of Kuwait, the Government Testing Center earned revenue from companies which paid fees for the testing of building materials and soil samples. MPW claims the loss of this revenue for the period 1 June 1991 to 30 June 1998, 86/ calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq's invasion and occupation of Kuwait and the revenue in fact earned (although it should be noted that, for fiscal years 1994 to 1998 inclusive, MPW's claim relies on estimates of the revenue to be earned).

367. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to deductions for exceptional post-

liberation revenue, for revenue that would have been paid by other Government departments and for saved expenses. 87/

368. The Panel finds that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait until 30 June 1995 and has made an appropriate adjustment to the amount claimed. An adjustment is also required to reflect the difference between MPW's estimate of the revenue it would earn for fiscal years 1994 and 1995 and the revenue that was, in fact, earned.

369. The Panel has also made adjustments to reflect the revenue that would have been paid by other Government departments and the fact that some of the work lost by MPW after liberation was performed by Kuwait University, another Government department.

370. Finally, the Panel sought information from MPW as to the costs involved in the generation of the Government Testing Center revenue. This information disclosed that the expenses that would have been incurred in earning the lost revenue for the period 2 August 1990 until 30 June 1995 exceeded that lost revenue.

371. Accordingly, the Panel does not recommend any compensation for this loss type.

6. Other losses - US\$3,891,254

(a) Government Testing Center lost research - US\$3,891,254

372. MPW asserts that vandalism at the Government Testing Center resulted in the loss of ten years' worth of research into the effects of Kuwait's extreme climate on building materials. As set out at paragraphs 23 to 28 above, the Panel recommends that compensation be awarded for such lost information. However, the Panel finds that adjustments should be made to reflect the fact that a large percentage of the lost research was, at the time of Iraq's invasion and occupation of Kuwait, readily available in technical publications and has made an adjustment for economies of re-creation in this regard. The Panel finds that an adjustment should also be made for insufficient evidence.

373. In light of the above, the Panel recommends compensation in the amount of US\$430,000 out of the US\$3,891,254 claimed.

J. Ministry of Defense (Naval Base)

Government Claim No. 22, UNCC Claim No. 5000139

Table 10. Summary Table for Ministry of Defense (Naval Base)

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Real property	<u>63,453,966</u>	<u>39,946,000</u>	374-380
<u>Total</u>	<u>63,453,966</u>	<u>39,946,000</u>	
Interest	<u>10,083,880</u>		

1. Real property - US\$63,453,966 88/

374. The Ministry of Defense ("MoD") is, amongst other things, responsible for the Base 89/ and related naval facilities. MoD asserts that, prior to Iraq's invasion and occupation of Kuwait, the Base consisted of approximately 90 on-shore buildings, which included naval headquarters, marine works, warehouses and storage facilities. An ammunition and missile storage depot ("Ammunition Depot"), which included 31 "igloos" for the storage of ammunition and missiles, is located some five kilometres from the Base. The marine works consisted of vessel repair facilities and an artificial harbour. The vessel repair facilities included a ship lift for lifting vessels out of the water for repairs, a 10-ton capacity crane for transferring cargo to and from vessels, and a system of carriages on rails for transporting vessels to and from repair sites. The artificial harbour facilities included a fixed jetty and one floating jetty. In addition, MoD also maintained fixed jetties on various islands in the Persian Gulf.

375. MoD asserts that during the occupation period the Iraqi forces occupied the Base and Ammunition Depot. As a result, it claims, buildings were damaged, their contents removed 90/ and explosives were detonated around the 10-ton capacity crane, causing it to collapse onto a jetty. MoD further claims that direct missile strikes from the Allied Coalition Forces also seriously damaged or destroyed the Ammunition Depot, jetties, a ship lift and various on-shore buildings at the Base.

376. In a technical mission to Kuwait undertaken in June 1999, certain of the on-shore facilities at the Base were inspected on the Panel's behalf.

377. MOD entered into four contracts for the repair and replacement of the on-shore buildings and marine facilities at the Base, the Ammunition Depot and certain of the jetties, three of which were awarded using MoD's Military Engineering Projects Department's established contracting procedures. 91/ The Panel finds that the costs incurred in respect of the fourth contract were reasonable and the absence of such procedures did not

lead to increased costs. Accordingly, the Panel does not recommend that an adjustment be made in this regard.

378. The Panel finds that MoD has saved maintenance expenses from 2 August 1990 until the dates upon which the relevant repair or replacement was completed 92/ or the dates upon which it would be reasonable, in all the circumstances, to expect the relevant repair or replacement to have taken place.

379. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, overstatement and insufficient evidence.

380. In light of the above, the Panel recommends compensation in the amount of US\$39,946,000 out of the US\$63,453,966 claimed.

K. Kuwait University

Government Claim No. 23, UNCC Claim No. 5000140

Table 11. Summary Table for Kuwait University

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Other tangible property	<u>224,753,561</u>	<u>107,930,000</u>	381-386
Payment or relief to others			
(a) Relief paid to employees	36,272,151	12,616,000	387-390
(b) Advance lease payments	<u>3,353,891</u>	<u>3,270,000</u>	391-394
Sub-total	<u>39,626,042</u>	<u>15,886,000</u>	
<u>Total</u>	<u>264,379,603</u>	<u>123,816,000</u>	
Interest	<u>42,015,200</u>		

1. Other tangible property - US\$224,753,561

381. Kuwait University ("KU") is Kuwait's national university. KU claims that Iraqi troops occupied its properties, and that, as a result, its tangible assets were lost or destroyed together with the majority of its pre-invasion inventory records. <sup>93/</sup> KU claims that the assets lost include furniture, office equipment, office stationery, computers and accessories, laboratory equipment, its library collection, kitchen tools and various miscellaneous items.

382. In its response to Procedural Order 1, Iraq asserted that complete inventories and records did exist which show the extent of supplies and equipment at KU as at 2 August 1990. The Panel requested Iraq to produce the inventories, and Iraq produced part of an inventory of the College of Science at KU in response. KU used a variety of methods of valuation including estimated replacement cost, depending upon the availability of information, which methods the Panel finds were reasonable in the circumstances. However, the Panel finds that the measure of inflation applied in estimating replacement costs was overstated and has made an adjustment to correct the overstatement.

383. The Panel notes that although replacement purchases were not always made using competitive procurement procedures, the costs incurred were reasonable and the absence of such procedures did not lead to increased costs.

384. The Panel finds that adjustments should be made for enhancement in respect of the amounts claimed for computers and laboratory equipment, and for inadequate accounting for depreciation in respect of the amounts



claimed for office stationery, the library collection, computers and laboratory equipment.

385. The Panel finds that further adjustments should be made for saved expenses and for insufficient evidence.

386. In light of the above, the Panel recommends compensation in the amount of US\$107,930,000 out of the US\$224,753,561 claimed.

2. Payment or relief to others - US\$39,626,042

(a) Relief paid to employees and social security - US\$36,272,151

387. KU seeks compensation in the amount of US\$36,272,151 for relief paid to employees, to include social security contributions of US\$4,731,150 paid by KU in respect of its employees.

388. The Panel finds, in accordance with paragraph 41 of the First "F3" Report (repeated as paragraph 41 of the annex), that sums paid by way of social security contributions are not compensable.

389. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of relief paid to employees (excluding the sums paid by way of social security contributions).

390. In light of the above, the Panel recommends compensation in the amount of US\$12,616,000 out of the US\$36,272,151 claimed.

(b) Advance lease payments - US\$3,353,891

391. KU seeks compensation for pre-paid rent on housing that was rented for employees prior to Iraq's invasion and occupation of Kuwait. KU seeks compensation for the amount of pre-paid rent referable to the period 2 August 1990 to 31 December 1990, save for one short lease, for which it claims the pre-paid rent referable to the period 2 August 1990 to 30 September 1990.

392. The Panel recommends that, in accordance with the principles set out at paragraph 84 of the First "F3" Report, compensation be awarded for that portion of the pre-paid rent referable to the period that KU was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is 2 August 1990 to 31 December 1990, save for the short lease for which the period is 2 August 1990 to 30 September 1990.

393. The Panel finds that an adjustment should be made for insufficient evidence.

394. In light of the above, the Panel recommends compensation in the amount of US\$3,270,000 out of the US\$3,353,891 claimed.

L. Ministry of Oil

Government Claim No. 27, UNCC Claim No. 5000144

Table 12. Summary Table for Ministry of Oil

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Other tangible property	<u>970,814</u>	<u>530,000</u>	395-398
Payment or relief to others	<u>4,066,515</u>	<u>1,620,000</u>	399-402
Other losses			
a) Lost research data	2,515,531	510,000	403-409
b) Study regarding lost oil income	<u>330,048</u>	<u>330,048</u>	410-412
Sub-total	<u>2,845,579</u>	<u>840,048</u>	
<u>Total</u>	<u>7,882,908</u>	<u>2,990,048</u>	
Interest	<u>1,252,800</u>		

1. Other tangible property - US\$970,814 94/

395. The Ministry of Oil ("MoO"), on behalf of the State of Kuwait, supervises Kuwait's oil industry in its exploration, drilling, refining and production operations, its export of oil and petroleum products and its conservation of Kuwait's oil resources. MoO is also involved in setting Kuwait's oil production levels and approves the drilling of oil wells at particular sites.

396. MoO seeks compensation for the loss of office furniture and fixtures, office equipment, and reference and technical books and periodicals. The Panel notes, following Iraq's response to Procedural Order 1, that various items were returned through UNROP, but finds that MoO has not made a claim for any of the items concerned.

397. The Panel finds that adjustments should be made for inadequate accounting for depreciation, overstatement, saved expenses and insufficient evidence.

398. In light of the above, the Panel recommends compensation in the amount of US\$530,000 out of the US\$970,814 claimed.

2. Payment or relief to others - US\$4,066,515

(a) Relief paid to employees - US\$4,066,515

399. MoO seeks compensation in the amount of US\$4,066,515 for relief paid to employees.

400. The response of the Government to the Panel's questions regarding the Social Security Fund 95/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

401. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof (repeated as paragraphs 36 and 48 of the annex, respectively), the Panel accepts the compensability of such relief paid to employees. 96/

402. In light of the above, the Panel recommends compensation in the amount of US\$1,620,000 out of the US\$4,066,515 claimed.

3. Other losses

(a) Lost research data - US\$2,515,531

403. MoO claims that, starting in 1964, it began commissioning a series of oil reserve and geological studies to assist it in managing Kuwait's oil resources and that four such studies commissioned between 1974 and 1980 were lost or destroyed during Iraq's invasion and occupation of Kuwait. MoO asserts that it could not obtain copies of the studies after liberation from any other source. (The consultants who originally produced the studies were not allowed to retain copies after completion of their contract.) The Panel accepts MoO's assertions.

404. The Panel finds, in accordance with the principles set out at paragraphs 23 to 28 above, that the loss of the studies is compensable, subject to verification and valuation.

405. MoO claims that, despite the age of the studies, the information in them was nonetheless used on a regular basis, in monitoring Kuwait's oil production, setting oil production levels, and deciding whether to approve the drilling of oil wells at various sites. In addition, MoO claims that the studies provided an historical record of Kuwait's oil resources and geological formations.

406. In order to ascertain what would have been the continuing value of the lost reports to MoO beyond the date of Iraq's invasion and occupation of Kuwait, the Panel issued Procedural Order 11 in September 1999 seeking details, amongst other matters, of the purposes for which the studies had originally been commissioned and whether those purposes had been fulfilled by the date of Iraq's invasion and occupation of Kuwait. In light of the responses received, the Panel finds that MoO had received the main benefit of the studies prior to Iraq's invasion and occupation of Kuwait. However, the Panel finds that the studies still retained a secondary use for the monitoring and setting of production levels, and accordingly recommends that compensation be awarded for the loss of the corresponding benefit after Iraq's invasion and occupation of Kuwait and for their archival value.

407. The Panel finds that historic cost, adjusted for inflation, is an appropriate measure of loss sustained, as it is impossible to reproduce or replace the studies. However, the Panel has adjusted the amount claimed so as to reflect the benefits derived by MoO from the studies prior to Iraq's invasion and occupation of Kuwait.

408. The Panel finds that further adjustments should be made for overstatement and insufficient evidence.

409. In light of the above, the Panel recommends compensation in the amount of US\$510,000 out of the US\$2,515,531 claimed.

(b) Study regarding lost oil income - US\$330,048 97/

410. MoO also claims for the cost incurred in commissioning external consultants to conduct a post-liberation study to analyse Kuwait's loss of oil revenues resulting from Iraq's invasion and occupation of Kuwait.

411. The Panel finds that the study's primary purpose was loss or damage assessment (and not for claims preparation purposes), and therefore that the reasonable costs incurred in retaining the consultants are a direct loss.

412. In light of the above, the Panel recommends compensation in full in the amount of US\$330,048.

M. Kuwait Municipality

Government Claim No. 30, UNCC Claim No. 5000147

Table 13. Summary Table for Kuwait Municipality

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Public service expenditures			
a) Cleaning contracts	89,717,109	66,917,000	413-417
b) Removal of damaged vehicles	1,798,058	629,000	418-421
c) Repair and replacement of traffic signs	<u>1,490,539</u>	<u>364,000</u>	422-424
Sub-total	<u>93,005,706</u>	<u>67,910,000</u>	
Payment or relief to others	<u>81,173,333</u>	<u>30,034,000</u>	425-429
Real property	<u>6,427,598</u>	<u>831,000</u>	430-433
Other tangible property	<u>13,226,204</u>	<u>5,816,000</u>	434-438
Income producing property	<u>1,302,306</u>	<u>0</u>	439-441
Contract	<u>1,324,124</u>	<u>611,000</u>	444-448
<u>Total</u>	<u>196,459,271</u>	<u>105,202,000</u>	
Interest	<u>31,221,400</u>		

1. Public service expenditures - US\$93,005,706

(a) Cleaning contracts - US\$89,717,109

413. Kuwait Municipality (the "Municipality") provides municipal services to, and plans for the orderly growth of, Kuwait City. During 1991, the Municipality entered into thirteen contracts to clean Kuwait City and remove rubbish that had accumulated during Iraq's invasion and occupation of Kuwait.

414. The Panel finds that the accumulation of rubbish and the resultant need to engage cleaning contractors were a direct result of Iraq's invasion and occupation of Kuwait.

415. The Panel has considered the method adopted by the Municipality in awarding these contracts. It is not clear from the evidence and information before the Panel whether any of the contracts was awarded using competitive procurement procedures. The Municipality also incurred higher charges for the services provided pursuant to the thirteen contracts than it had paid for equivalent cleaning services before Iraq's invasion and occupation of Kuwait. This is because the contracts were generally negotiated and awarded before liberation, without precise knowledge of the services that would be required. Finally, based on estimates of the work required, and in order to justify the costs of bringing in personnel and

equipment, all of the contracts were awarded for a term of one year. The Panel finds that, given the risk to public health from the accumulated rubbish, the contracting procedure adopted was reasonable in all the circumstances. 98/

416. The Panel finds, however, that adjustments should be made for saved expenses (being the amount that the Municipality would have incurred on cleaning costs for the relevant period in the absence of Iraq's invasion and occupation of Kuwait) and insufficient evidence.

417. Accordingly, the Panel recommends compensation in the amount of US\$66,917,000 out of the US\$89,717,109 claimed.

(b) Removal of damaged vehicles - US\$1,798,058

418. After liberation, the Municipality engaged a contractor to collect the thousands of damaged and/or abandoned vehicles on the streets of Kuwait City and convert them into scrap metal. The Municipality claims the difference between what it paid the contractor and what it received for selling the scrap metal.

419. The Panel finds that the decision to engage a contractor for the removal of such vehicles was a direct result of Iraq's invasion and occupation of Kuwait.

420. Pursuant to an order of the Council of Ministers (made in 1988), the Government was authorised to negotiate with one company alone for the sale of salvage materials. Although the contract was therefore not awarded using competitive procurement procedures, the Panel finds that the cost incurred was reasonable and would not have been reduced had competitive procurement procedures been adopted. However, an adjustment should be made for insufficient evidence.

421. Accordingly, the Panel recommends compensation in the amount of US\$629,000 out of the US\$1,798,058 claimed.

(c) Repair and replacement of traffic signs - US\$1,490,539

422. The Municipality asserts that, after liberation, it entered into two contracts for the repair, replacement and cleaning of traffic signs that were damaged during Iraq's invasion and occupation of Kuwait.

423. The Panel finds that the damage to the signs and resultant need to engage a contractor to repair, replace or clean them were a direct result of Iraq's invasion and occupation of Kuwait. However, adjustments should be made for saved expenses and insufficient evidence.

424. Accordingly, the Panel recommends compensation in the amount of US\$364,000 out of the US\$1,490,539 claimed.

2. Payment or relief to others - US\$81,173,333

(a) Relief paid to employees - US\$81,173,333

425. The Municipality seeks compensation in the amount of US\$81,173,333 for relief paid to employees.

426. The response of the Government to the Panel's questions regarding the Social Security Fund 99/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

427. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof (repeated as paragraphs 36 and 48 of the annex, respectively), the Panel accepts the compensability of such relief paid to employees.

428. The Panel also finds that an adjustment should be made for insufficient evidence.

429. In light of the above, the Panel recommends compensation in the amount of US\$30,034,000 out of the US\$81,173,333 claimed.

3. Real property - US\$6,427,598

430. The real property losses of the Municipality arise out of damage to, and destruction of, three facilities on Failaka Island and various facilities on the mainland.

431. The facilities on Failaka Island will not be repaired or replaced. Nevertheless, on the basis set out at paragraph 66 of the First "F3" Report, the Panel recommends that compensation be awarded for the damage to them and that the compensation be measured by the cost of reconstruction or repair measured at such time as it would be reasonable, in all the circumstances, to expect the reconstruction or repair to have taken place. However, the Panel finds that an adjustment to the claim for the facilities on Failaka Island should be made for insufficient evidence.

432. As for the facilities on the mainland, the Panel finds that the Municipality's savings in maintenance expenditure during the occupation and emergency periods exceed its claim for the facilities. As a result, the Panel does not recommend any compensation for the facilities on the mainland.



433. Accordingly, the Panel recommends compensation in the amount of US\$831,000 out of the US\$6,427,598 claimed.

4. Other tangible property - US\$13,226,204

Heavy equipment - US\$8,957,283

Vehicles - (US\$39,461) 100/

Computers - US\$2,346,546

Office equipment and furniture - US\$1,961,836 101/

434. The Municipality seeks compensation for loss of the above items of tangible property.

435. Some of the lost heavy equipment, office equipment and furniture will not be replaced because outside contractors are now hired to undertake most of the work previously performed with the aid of the heavy equipment lost and because the Municipality has fewer employees than before Iraq's invasion and occupation of Kuwait. Nevertheless, on the basis set out at paragraph 66 of the First "F3" Report, the Panel recommends that compensation be awarded for the loss of these assets.

436. The claim for the lost computers includes an amount for training on, and technical support for, the post-liberation replacements. The Panel finds that only insignificant technical advancements had been made since the initial purchase of the computers and therefore does not recommend any compensation for the training and technical support.

437. The Panel also finds that adjustments should be made for enhancement, inadequate accounting for depreciation, saved expenses, incorrect valuation of KERP assets and insufficient evidence.

438. Accordingly, the Panel recommends compensation in the amount of US\$5,816,000 out of the US\$13,226,204 claimed.

5. Income producing property - US\$1,302,306

(a) Slaughterhouse rental income - US\$1,302,306

439. Prior to Iraq's invasion and occupation of Kuwait, the Municipality earned revenue from the rental of five slaughterhouses. The Municipality claims that it was unable to collect rent for the occupation and emergency periods because its tenants ceased doing business. 102/

440. The Panel finds that loss of revenue is, in principle, compensable, 103/ subject to deductions for exceptional post-liberation revenue, for

revenue that would have been paid by other Government departments and for saved expenses. 104/ The Panel sought information from the Municipality as to the number of employees involved in the generation of the slaughterhouse revenue. This disclosed that the salary expense not incurred by the Municipality over the occupation and emergency periods exceeded the loss of revenue claimed.

441. Accordingly, the Panel does not recommend any compensation for this loss type.

6. Contract - US\$1,324,124

(a) Introduction

442. The Municipality claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. In the latter case, the Municipality asserts that the additional costs are to cover increased costs in the post-liberation period.

443. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report, finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

(b) Contract interruption loss - US\$1,324,124 105/

444. At the time of Iraq's invasion and occupation of Kuwait, the Municipality was party to nine construction and maintenance contracts, all of which were interrupted by Iraq's invasion and occupation of Kuwait. Seven of these contracts were resumed after liberation. 106/ The Panel has calculated the amount of the losses claimed in relation to these seven contracts that is attributable to the factors set out at paragraph 443 above.

445. Accordingly, the Panel recommends US\$412,000 in respect of the contracts resumed after liberation.

446. The Panel finds that the remaining two contracts were not abandoned as a direct result of Iraq's invasion and occupation of Kuwait. 107/ As set out at paragraph 39 above, the Panel recommends that the appropriate compensation in such a case is the cost of repairing the damage that was a direct result of Iraq's invasion and occupation of Kuwait at such time as

it would be reasonable, in all the circumstances, to expect repair to have taken place (with adjustments, in appropriate cases, for inadequate accounting for depreciation and saved expenses). 108/

447. Accordingly, the Panel recommends US\$199,000 for the two contracts abandoned after liberation.

448. In light of the above, the Panel recommends a total of US\$611,000 out of the US\$1,324,124 claimed.

N. Ministry of Public Works (Buildings Construction Department)

Government Claim No. 31, UNCC Claim No. 5000159

Table 14. Summary Table for Ministry of Public Works (Buildings Construction Department)

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount Recommended US\$</u>	<u>Paragraph references</u>
<u>Contract</u>			
a) Buildings construction department	21,895,743	8,033,000	451-460
b) Local roads construction department	9,372,359	3,501,000	461-463
c) Motorways department	43,099,324	18,994,000	464-466
d) Sanitation department	<u>17,315,507</u>	<u>0</u>	467-469
Sub-total	<u>91,682,933</u>	<u>30,528,000</u>	
<u>Real property</u>			
a) Buildings construction department	12,430,834	5,918,000	470-474
b) Buildings maintenance department	11,092,052	5,095,000	475-477
c) Roads maintenance department	42,336,270	18,328,000	478-482
d) Bubiyan Bridge	<u>16,578,936</u>	<u>4,741,000</u>	483-489
Sub-total	<u>82,438,092</u>	<u>34,082,000</u>	
<u>Other losses</u>			
a) Sanitation department's lost business records	<u>2,905,938</u>	<u>239,000</u>	490-493
<u>Total</u>	<u>177,026,963</u>	<u>64,849,000</u>	
<u>Interest</u>	<u>28,133,480</u>		

1. Contract - US\$91,682,933

(a) Introduction

449. In respect of the projects set out below, MPW claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. 109/ In the latter case, MPW asserts that the additional costs are to cover increased costs in the post-liberation period.

450. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The

evidence shows that part only of the losses claimed is attributable to these factors.

(b) Buildings construction department - US\$21,895,743

451. MPW asserts that over thirty building construction contracts being supervised by the above-captioned department were interrupted by Iraq's invasion and occupation of Kuwait.

452. A contract for the construction of a fishing port had not been formally concluded at the time of Iraq's invasion and occupation of Kuwait. MPW claims the difference between its estimate of what the contract price would have been if the contract had been finalised and the price paid for the works after liberation. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of this pre-invasion arrangement. It therefore recommends compensation only for that portion of the cost of the post-liberation contract referable to repairing damage that was a direct result of Iraq's invasion and occupation of Kuwait (subject to verification and valuation).

453. Contracts for the following projects have not yet been resumed:

- (a) construction of a market;
- (b) construction of a fire fighting training school;
- (c) construction and maintenance of a musical and theatrical art college; and
- (d) expansion of two mosques.

454. The Panel considers these contracts at paragraphs 455 to 460 below.

455. The Panel notes that responsibility for the construction of the market was transferred to Kuwait Municipality and then to a private investor (who has now completed construction). The Panel recommends that no compensation be awarded for the interruption of this contract. MPW has, in fact, saved the cost of not completing the market.

456. The Panel notes that responsibility for the construction of the fire fighting training school has been transferred to Kuwait Municipality and that it is intended for the contract to resume at some stage. The Panel recognises that part of the loss from the interruption of this contract will thus be borne by MPW and part by Kuwait Municipality. However, to require MPW and Kuwait Municipality to each claim for its portion of the

loss would be too technical and rigid an approach, given that both parties are political subdivisions of the Government. 110/ The Panel therefore recommends that compensation be awarded to MPW as set out at paragraph 37 above.

457. In relation to the interrupted contract to construct and maintain the musical and theatrical art college, the Panel finds that MPW intends to resume the contract in the future. The Panel therefore recommends that compensation be awarded in accordance with paragraph 37 above.

458. In relation to the interrupted contract for the expansion of the two mosques, the Panel finds that, after liberation, the expansion of one of the mosques was completed by a private donor. The Panel recommends that no compensation be awarded for the interruption of that portion of the contract. MPW has, in fact, saved the cost of not completing the expansion of the mosque.

459. However, the Panel finds that MPW intends to complete the expansion of the second mosque in the future. The Panel therefore recommends that compensation be awarded as set out at paragraph 37 above for the interruption of that portion of the contract.

460. In light of the above, the Panel recommends compensation in the amount of US\$8,033,000 out of the US\$21,895,743 claimed.

(c) Local roads construction department - US\$9,372,359

461. MPW asserts that ten road construction contracts being supervised by the above-captioned department were interrupted by Iraq's invasion and occupation of Kuwait. For the nine contracts that have resumed, the Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 450 above.

462. A contract for the construction of roads on Bubiyan Island has been abandoned by MPW. The Panel finds that MPW has failed to show that the contract was abandoned as a direct result of Iraq's invasion and occupation of Kuwait. The use of the island by only a limited number of MoD employees has not altered as a result of Iraq's invasion and occupation of Kuwait. As set out at paragraph 39 above, the Panel recommends that the appropriate compensation in such a case is the cost of repairing the damage that was a direct result of Iraq's invasion and occupation of Kuwait at such time as it would be reasonable, in all the circumstances, to expect repair to have taken place (with adjustments, in appropriate cases, for inadequate accounting for depreciation and saved expenses). 111/ Any other loss arises from MPW's independent decision to abandon the project.

463. In light of the above, the Panel recommends compensation in the amount of US\$3,501,000 out of the US\$9,372,359 claimed.

(d) Motorways department - US\$43,099,324

464. MPW asserts that three projects being supervised by the above-captioned department were interrupted by Iraq's invasion and occupation of Kuwait. For two of the projects, the Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 450 above.

465. MPW had not formally concluded any contracts for the third project at the time of Iraq's invasion and occupation of Kuwait. MPW claims the difference between its estimate of what the contract prices would have been had the contracts been finalised and its estimate of the price of the anticipated post-liberation contracts. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of these pre-invasion arrangements and so does not recommend any compensation in respect of them.

466. In light of the above, the Panel recommends compensation in the amount of US\$18,994,000 out of the US\$43,099,324 claimed.

(e) Sanitation department - US\$17,315,507

467. MPW asserts that eight contracts being supervised by the sanitation department were interrupted by Iraq's invasion and occupation of Kuwait. The Panel notes that one of the interrupted contracts was resumed by the Public Authority for Agriculture Affairs and Fish Resources ("PAAF"). The Panel recognises that part of the loss from the interruption of this contract will thus be borne by MPW and part by PAAF. However, to require MPW and PAAF to each claim for its portion of the loss would be too technical and rigid an approach, given that both parties are political subdivisions of the Government. 112/ The Panel has thus calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 450 above.

468. The Panel finds that MPW saved expenses by not being party to five of the eight contracts for the period from 2 August 1990 until they were resumed. 113/ The amount of such savings exceeds the amount of the losses claimed that is attributable to the factors set out at paragraph 450 above for all eight contracts.

469. Accordingly, the Panel does not recommend any compensation for the interruption of the eight contracts being supervised by the sanitation department.

2. Real property - US\$82,438,092

(a) Buildings construction department - US\$12,430,834

470. MPW asserts that the above-captioned department supervised the repair of a number of Government owned buildings damaged as a direct result of Iraq's invasion and occupation of Kuwait.

471. The Panel notes that the contractor for the repairs to the VIP lounge at the Kuwait International Airport was chosen without recourse to the normal competitive procurement procedures. However, the Panel finds that the absence of such procedures did not lead to increased costs. Furthermore, the works were performed in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the test set out at paragraph 31 above, the Panel finds that, in light of the Government's need for a secure arrival point for visitors to the GCC summit discussed at paragraph 203 above, the works were of such urgency that MPW could not reasonably be required to wait until prices had returned to normal patterns.

472. MPW's claim in relation to the police station complex at Wafra includes the cost of replacing its foundations. The Panel has made an adjustment to reflect the fact that the foundations did not require replacement.

473. The Panel finds that adjustments should also be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

474. In light of the above, the Panel recommends compensation in the amount of US\$5,918,000 out of the US\$12,430,834 claimed.

(b) Buildings maintenance department - US\$11,092,052

475. MPW asserts that the above-captioned department supervised the repair of a number of Government owned buildings damaged as a direct result of Iraq's invasion and occupation of Kuwait.

476. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

477. In light of the above, the Panel recommends compensation in the amount of US\$5,095,000 out of the US\$11,092,052 claimed.



(c) Roads maintenance department - US\$42,336,270

478. MPW seeks compensation for the costs incurred by the above-captioned department in repairing damage to Kuwait's road network (including road signs and traffic signals). 114/

479. The Panel notes that one of the contracts for the repair of roads and squares was undertaken in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the test set out at paragraph 31 above, the Panel finds that, in light of the Government's need for secure access to the GCC summit discussed at paragraph 203 above, the works were of such urgency that MPW could not reasonably be required to wait until prices had returned to normal patterns.

480. MPW's claim does not make any allowance for depreciation. The Panel finds, however, that an adjustment for inadequate accounting for depreciation should be made because the repairs have resulted in an increase in the useful life of those sections of the road network that were repaired.

481. The Panel also finds that adjustments should be made for saved expenses and insufficient evidence.

482. In light of the above, the Panel recommends compensation in the amount of US\$18,328,000 out of the US\$42,336,270 claimed.

(d) Bubiyan Bridge - US\$16,578,936

483. MPW asserts that the bridge linking Bubiyan Island with Kuwait's mainland was damaged by explosive ordnance during Iraq's invasion and occupation of Kuwait.

484. The repairs to the bridge had not commenced when MPW submitted its claim. It therefore seeks its estimate of the costs of repairs described as "emergency" repairs, but which were not commenced until mid-1994, permanent repairs to be undertaken thereafter, and related consultant's services.

485. The Panel finds that the "emergency" repairs were undertaken at the cost estimated by MPW in its claim. However, the contract for the permanent repairs was entered into in September 1998 at a price less than the amount estimated by MPW in its claim. The Panel has made an adjustment to correct this overstatement.

486. The Panel finds that it would have been reasonable, in all the circumstances, to expect the permanent repairs to have taken place immediately after the "emergency" repairs. The Panel has made adjustments to reflect the increased costs that resulted from the delay between the "emergency" and the permanent repairs. These increased costs resulted from the effect of inflation during the delay and the fact that some of the "emergency" repairs were duplicated by the permanent repairs.

487. The Panel has considered MPW's estimate of the cost of the consultant's services as a percentage of the estimated repair costs. The Panel finds that an adjustment should be made to reflect an overstatement in this percentage and the reduction in repair costs resulting from the adjustments discussed at paragraphs 485 and 486 above.

488. Further, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

489. In light of the above, the Panel recommends compensation in the amount of US\$4,741,000 out of the US\$16,578,936 claimed.

3. Other losses - US\$2,905,938

(a) Sanitation department's lost business records - US\$2,905,938

490. This claim relates to a project to clean, survey and rehabilitate Kuwait's sewerage system. Prior to Iraq's invasion and occupation of Kuwait, the system had been divided into thirteen sectors. Contractors, under the supervision of consultants, would clean each sector and then draw a camera through the clean pipes. The resulting videotape would then be viewed in order to decide which parts of the sector required replacement. MPW's claim relates to the loss of the videotapes of the fifth and sixth sectors.

491. At the time of Iraq's invasion and occupation of Kuwait, almost one third of the fifth sector had been videotaped. MPW's engineers were able to recall from the videotapes viewed before Iraq's invasion and occupation of Kuwait that many of the pipes were heavily corroded and would require replacement in the near future. MPW directed its consultants to plan for immediate, rather than gradual, replacement of the pipes and claims the amount paid for the work undertaken on the fifth sector before Iraq's invasion and occupation of Kuwait. The Panel recommends that no compensation be awarded for the loss of the fifth sector videotapes because the plan for repairs was based on engineers' recollections of the contents of the videotapes and there is no evidence that immediate replacement of the pipes was more expensive than gradual replacement.

492. In relation to the sixth sector of the sewerage system, MPW claims the approximately 13 per cent of the contract prices that had been paid to the contractor and consultant up until the time of Iraq's invasion and occupation of Kuwait, less the amount saved by MPW because the post-liberation contract with the contractor was entered into at a lower price than the pre-invasion contract. 115/ The Panel recommends that compensation be awarded for the loss of the sixth sector videotapes because MPW did not have sufficient detail of the condition of the sixth sector to form any reliable opinion as to its condition. The Panel agrees with MPW's valuation of its loss. However, an adjustment should be made for insufficient evidence.

493. In light of the above, the Panel recommends compensation in the amount of US\$239,000 out of the US\$2,905,938 claimed.

O. Ministry of Health

Government Claim No. 36, UNCC Claim No. 5000164

Table 15. Summary Table for Ministry of Health

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Real property			
a) Basic repair contracts	766,046	618,000	494-498
b) Individual work orders	5,903,776	1,189,000	494-498
c) Estimated cost for repairs not yet done	<u>4,643,597</u>	<u>312,000</u>	494-498
Sub-total	<u>11,313,419</u>	<u>2,119,000</u>	
Other tangible property			
a) Medicine	38,206,743	31,191,000	499-502
b) Medical equipment and instruments	18,193,258	6,484,000	503-506
c) Ambulances	597,623	12,000	507-508
d) Ordinary transportation vehicles	440,338	-257,000 <u>a/</u>	509-511
e) Boats	5,445,281	4,351,000	512-514
f) Central stores	35,941,726	21,536,000	515-517
g) Other equipment	5,906,316	3,467,000	518-520
h) Furniture, fixtures and office equipment	<u>3,403,697</u>	<u>2,032,000</u>	521-523
Sub-total	<u>108,134,982</u>	<u>68,816,000</u>	
Bank accounts and securities			
a) Currency	<u>28,422</u>	<u>13,000</u>	524
Contract	<u>4,319,609</u>	<u>619,000</u>	525-528
Public service expenditures			
a) Additional transportation costs	3,789,668	0	529-535
b) Additional expenses of overseas treatment	136,856,934	66,000,000	529-535
c) Additional labour costs	<u>3,887,674</u>	<u>0</u>	529-535
Sub-total	<u>144,534,276</u>	<u>66,000,000</u>	
Payment or relief to others			
a) Relief paid to employees	<u>153,862,756</u>	<u>58,656,000</u>	536-539
<u>Total</u>	<u>422,193,464</u>	<u>196,223,000</u>	
Interest	<u>67,095,560</u>		

a/ Negative amount represents account taken of residual value of assets procured through KERP (see paragraph 511 below).

1. Real property - US\$11,313,419
  - (a) Basic repair contracts - US\$766,046 116/
  - (b) Individual work orders - US\$5,903,776
  - (c) Estimated cost for repairs not yet done - US\$4,643,597

494. The Ministry of Health ("MoH") provides Kuwait's public health facilities. The Iraqi invading forces occupied its public service facilities. MoH seeks compensation for the resultant damage to and destruction of its headquarters in Kuwait City, six general care hospitals, nine specialised hospitals and 74 polyclinics. 117/ The main repairs undertaken were to electrical and water lines, automation systems and to other parts of MoH's buildings. 118/ Other repairs had not been carried out when the claim was submitted.

495. The Panel notes that, in relation to the repairs carried out to the Al-Adan hospital, a substantial proportion of the total repair cost was incurred as consultants' charges. Having considered the nature of the repairs carried out to the hospital and the consultants' work, the Panel finds that use of consultants was unnecessary and that the claim is overstated to the extent of the amounts paid to the consultants. The Panel has therefore made an adjustment to the amount claimed to correct that overstatement.

496. The Panel finds that MoH made savings in maintenance expenditure from 2 August 1990 until resumption of maintenance services, which took place after replacement contracts were concluded in July 1993, and has made an adjustment in respect of such savings.

497. The Panel finds that further adjustments should be made for inadequate accounting for depreciation and insufficient evidence.

498. In light of the above, the Panel recommends compensation in the amount of US\$2,119,000 out of the US\$11,313,419 claimed.

2. Other tangible property - US\$108,134,982
  - (a) Medicine - US\$38,206,743 119/

499. MoH seeks compensation for loss of medicine from its central warehouse, and from the warehouse receiving area and the Kuwait Port. In addition, MoH claims for the losses occasioned when medicine in the warehouse, and which remained after liberation, passed its expiry date without being used. MOH submits its claim based on the price for each

relevant item shown on its pre-invasion computerised inventory system, which survived Iraq's invasion and occupation of Kuwait. 120/

500. In valuing the loss, the Panel has noted from the pre-invasion computerised inventories that the earliest dates upon which the relevant medicine expired fell in July 1991 and the expiry dates continued into 1992. The Panel accordingly finds that as the medicine expired after the occupation and emergency periods, its loss is not a direct result of Iraq's invasion and occupation of Kuwait and has made an adjustment to the amount claimed in this regard.

501. The Panel finds that a further adjustment should be made for insufficient evidence.

502. In light of the above, the Panel recommends compensation in the amount of US\$31,191,000 out of the US\$38,206,743 claimed.

(b) Medical equipment and instruments- US\$18,193,258 121/

503. MoH seeks compensation for the loss of and damage to a variety of sophisticated medical equipment and instruments, including supplies and medical assets, and the cost of repairs to damaged equipment. 122/

504. The Panel finds that MoH made savings in maintenance expenditures from 2 August 1990 until repairs were effected to the damaged equipment, and has made an adjustment to the amount claimed in this regard.

505. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, overstatement and insufficient evidence.

506. In light of the above, the Panel recommends compensation in the amount of US\$6,484,000 out of the US\$18,193,258 claimed.

(c) Ambulances - US\$597,623

507. MoH seeks compensation for the loss of 136 ambulances, some of which were replaced pursuant to KERP. The Panel finds that MoH underestimated the residual value of the replacement vehicles transferred pursuant to KERP and has therefore made an adjustment for incorrect valuation of KERP assets. The Panel finds that an adjustment should also be made for saved expenses.

508. In light of the above, the Panel recommends compensation in the amount of US\$12,000 out of the US\$597,623 claimed.

(d) Ordinary transportation vehicles - US\$440,338 123/

509. MoH seeks compensation for the loss of a variety of vehicles comprising diesel road tankers, construction cranes, automobiles, light and heavy trucks and buses. The Panel notes that a number of replacement vehicles were purchased for MoH pursuant to KERP, that the costs of those vehicles are being claimed separately, 124/ and that MoH adjusted its claim to take account of its estimate of the residual value of those vehicles.

510. The Panel finds that an adjustment should be made for saved expenses.

511. In addition, the Panel finds that MoH underestimated the residual value of the replacement vehicles transferred pursuant to KERP. As a result, the compensation that the Panel recommends in respect of this loss type (before taking account of the vehicles provided pursuant to KERP) is exceeded by the residual value, as adjusted by the Panel, of the vehicles so provided in the amount of US\$257,000. The Panel recommends that this adjustment be applied to the claim for other tangible property.

(e) Boats - US\$5,445,281 125/

512. MoH seeks compensation for loss of or damage to nine boats. The Panel finds that three boats were returned through UNROP and is satisfied that the repair costs of such boats, and not their loss, has been claimed by MoH. 126/

513. The Panel finds that adjustments should be made for overstatement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

514. In light of the above, the Panel recommends compensation in the amount of US\$4,351,000 out of the US\$5,445,281 claimed.

(f) Central stores - US\$35,941,726

515. MoH seeks compensation for the loss of the contents of its central stores during Iraq's invasion and occupation of Kuwait. MoH valued its loss based upon the historic cost of each item lost by reference to a comparison made between a surviving pre-invasion inventory and a subsequent inventory carried out after liberation. The Panel notes that the pre-invasion inventory listed few of the items asserted to have been lost, and that supporting documentation was not produced. 127/

516. Accordingly, the Panel finds that an adjustment should be made for insufficient evidence.

517. In light of the above, the Panel recommends compensation in the amount of US\$21,536,000 out of the US\$35,941,726 claimed.

(g) Other equipment- US\$5,906,316 128/

518. MoH seeks compensation for the loss of computers, and of communications, printing and electrical equipment.

519. The Panel finds that adjustments should be made for overstatement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

520. In light of the above, the Panel recommends compensation in the amount of US\$3,467,000 out of the US\$5,906,316 claimed.

(h) Furniture, fixtures and office equipment - US\$3,403,697

521. MoH seeks compensation for the loss of a variety of furniture, fixtures, and office equipment.

522. The Panel finds that adjustments should be made for overstatement and insufficient evidence.

523. In light of the above, the Panel recommends compensation in the amount of US\$2,032,000 out of the US\$3,403,697 claimed.

3. Bank account and securities - US\$28,422 129/

(a) Currency - US\$28,422

524. MoH seeks compensation for the loss of petty cash from its various offices and facilities. Applying the principles set out at paragraph 406 of the First "F3" Report, the Panel finds the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held by MoH. The Panel finds that an adjustment should be made for insufficient evidence. Accordingly, the Panel recommends compensation in the amount of US\$13,000 out of the US\$28,422 claimed.

4. Contract - US\$4,319,609 130/

525. MoH seeks compensation for losses sustained due to the interruption of 14 contracts for construction, mechanical and electrical work, that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional cost of completing the contracts. In the



latter case, MoH asserts that the additional costs are to cover increased costs in the post-liberation period.

526. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed in respect of thirteen of the fourteen contracts claimed for is attributable to these factors.

527. The Panel notes from the evidence submitted that the remaining contract was for the provision of labour for the operation and maintenance of MoH facilities at hospitals, health centres and other areas. The Panel finds that the price increase claimed is not compensable, as it was not attributable to any of the three factors set out at paragraph 63 of the First "F3" Report.

528. In light of the above, the Panel recommends compensation in the amount of US\$619,000 out of the amount of US\$4,319,609 claimed.

5. Public service expenditures - US\$144,534,276

(a) Additional transportation costs - US\$3,789,668

(b) Additional expenses of overseas treatment - US\$136,856,934

(c) Additional labour costs - US\$3,887,674

529. MoH claims that, prior to Iraq's invasion and occupation of Kuwait, the Government employed nearly 3,200 physicians (80 per cent of whom were non-Kuwaitis) and 10,000 nurses (90 per cent of whom were non-Kuwaitis). MoH asserts that Iraq's invasion and occupation of Kuwait resulted in a mass exodus of those employees, the majority of whom did not return after liberation. Upon investigation, the Panel accepts MoH's assertions. 131/

530. MoH claims that, as a result of the above, it incurred the following costs:

(a) additional transportation costs, being the costs of returning employees to Kuwait after liberation to enable them to resume work and the costs of bringing new employees to Kuwait to replace those employees who did not return after liberation;

(b) additional expenses of overseas treatment, being the costs incurred in the two years to 30 June 1993 in sending patients to other countries for medical treatment (in the absence of Iraq's invasion and

occupation of Kuwait, those patients would have been treated in Kuwait);  
and

(c) additional labour costs, being the increase in the salaries of cleaning, catering, laundry and technical services staff in the months immediately following liberation.

531. The Panel now turns to consider the compensability of each of these claims.

532. The Panel finds, in accordance with paragraphs 80 to 82 of the First "F3" Report, that the additional transportation costs are compensable, in so far as the amounts incurred are reasonable. However, the Panel also finds that MoH saved the costs of providing passages home to expatriate employees during the occupation and subsequent periods and that the costs so saved exceed the additional costs incurred. Accordingly, the Panel does not recommend any compensation for the additional transportation costs claimed.

533. The Panel also finds that the reasonable costs of additional overseas treatment are compensable, but has made an adjustment to reflect the fact that during the occupation period and up to 30 June 1991, MoH did not incur costs of providing treatment in Kuwait that it would have incurred absent Iraq's invasion and occupation of Kuwait. 132/

534. The Panel recommends that no compensation be awarded for the additional labour costs claimed because such increased costs were not attributable to any of the factors set out at paragraph 63 of the First "F3" Report.

535. In light of the above, the Panel recommends compensation in the amount of US\$66,000,000 out of the US\$144,534,276 claimed.

6. Payment or relief to others - US\$153,862,756

(a) Relief paid to employees - US\$153,862,756

536. MoH seeks compensation in the amount of US\$153,862,756 for relief paid to employees.

537. The response of the Government to the Panel's questions regarding the Social Security Fund 133/ states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement and finds, in accordance with paragraph 41 of the First "F3" Report, that sums claimed in respect of social security

contributions are not compensable. The Panel has made an appropriate adjustment to the amount claimed in this regard.

538. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

539. In light of the above, the Panel recommends compensation in the amount of US\$58,656,000 out of the US\$153,862,756 claimed.

P. Ministry of Planning

Government Claim No. 37, UNCC Claim No. 5000165

Table 16. Summary Table for Ministry of Planning

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Other tangible property			
a) Computers and peripheral equipment tangible property loss	20,389,861	7,679,000	540-543
b) Office furniture equipment tangible property loss	<u>1,173,201</u>	<u>233,000</u>	544-546
Sub-total	<u>21,563,062</u>	<u>7,912,000</u>	
Payment or relief to others			
a) Temporary Bahrain office	1,399,296	1,081,000	547-552
b) Relief paid to employees	<u>8,386,168</u>	<u>3,354,000</u>	553-556
Sub-total	<u>9,785,464</u>	<u>4,435,000</u>	
Other losses			
a) Loss of information systems	2,484,065	1,181,000	557-560
b) Loss of field research data	<u>221,141</u>	<u>171,000</u>	561
Sub-total	<u>2,705,206</u>	<u>1,352,000</u>	
<u>Total</u>	<u>34,053,732</u>	<u>13,699,000</u>	
Interest	<u>5,411,400</u>		

1. Other tangible property - US\$21,563,062

- (a) Computers and peripheral equipment tangible property loss - US\$20,389,861 134/

540. The Ministry of Planning ("MoP") acts as information technology consultant to other Government Ministries and organizations and provides social and economic statistical information for Kuwait. MoP seeks compensation for the cost of temporary operations in Bahrain after liberation, and for a variety of lost assets, including mainframe computers, printers and other peripheral equipment, and the costs of restoring its computer room. 135/

541. The Panel notes that, although MoP states that it lost three mainframe computers, MoP claims the costs of purchasing two replacement mainframes. The Panel finds that the replacement mainframes have a superior capacity and functionality than those lost and therefore that an adjustment should be made for enhancement.

542. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

543. In light of the above, the Panel recommends compensation in the amount of US\$7,679,000 out of the US\$20,389,861 claimed.

(b) Office furniture equipment tangible property loss -  
US\$1,173,201 136/

544. MoP claims compensation for the loss of a variety of office furniture and fixtures.

545. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

546. In light of the above, the Panel recommends compensation in the amount of US\$233,000 out of the US\$1,173,201 claimed.

2. Payment or relief to others - US\$9,785,464

(a) Temporary Bahrain office - US\$1,399,296

547. MoP asserts that it incurred a variety of expenses in establishing and operating an office in Bahrain from March 1991 to October 1991, while its own facilities in Kuwait were being restored. Such facilities were required to redevelop the computer systems for the payroll of all State employees, the personnel records for Government employees, the records for all Kuwaiti students and real estate records for the whole of Kuwait.

548. MoP seeks compensation for nine main categories of expenditure: communications fees, computer equipment, consultant services, employees' living allowances and bonuses, office and apartment rental, office equipment and supplies, petty cash, travel and transportation, and miscellaneous expenses.

549. Applying the principles set out at paragraph 79 of the First "F3" Report (repeated as paragraph 79 of the annex), the Panel, noting that the office was set up after liberation, finds that MoP's decision to establish and operate the office in Bahrain was reasonable in the circumstances, that the office was operated for a reasonable period, and therefore that the reasonable costs of so doing are compensable.

550. The Panel notes that, upon closure of the Bahrain office in October 1991, MoP scrapped computer and office equipment on the basis that such

equipment would have been incompatible with the new computer equipment installed at its restored facilities in Kuwait. The Panel finds that MOP did not take steps sufficient to mitigate its losses in that it failed to attempt to dispose of the scrapped equipment for value.

551. The Panel finds that adjustments should be made for inadequate accounting for residual value and insufficient evidence.

552. In light of the above, the Panel recommends compensation in the amount of US\$1,081,000 out of the US\$1,399,296 claimed.

(b) Relief paid to employees - US\$8,386,168

553. MoP seeks compensation in the amount of US\$8,386,168 for relief paid to employees.

554. The evidence shows that the amount claimed is based upon the employees' salaries after deduction of the social security contribution.

555. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

556. In light of the above, the Panel recommends compensation in the amount of US\$3,354,000 out of the US\$8,386,168 claimed.

3. Other losses - US\$2,705,206

(a) Loss of information systems - US\$2,484,065

557. MoP seeks compensation for lost information, being application systems which it asserts were being developed by its systems development department at the date of Iraq's invasion and occupation of Kuwait, the development of which was interrupted as a result of Iraq's invasion and occupation of Kuwait. The systems were being developed for the use of other Ministries, namely, the Directorate General of Civil Aviation, the General Administration of Customs, the Ministry of Electricity and Water and the Shuaiba Port Authority. Included in MoP's claim is the cost of modifying billing software required to implement a decision taken by the Ministry of Electricity and Water after liberation to forgive utility charges to customers until 14 February 1992. Some of the systems were able to be re-created or completed after liberation but others were lost. The claim is based on the salary costs of the personnel employed to work on the various projects over their duration.

558. The Panel finds that the lost information is compensable in accordance with the principles set out at paragraphs 23 to 28 above, save for the costs of developing the new billing software referred to above. The Panel finds that the decision to forgive electricity and water charges was not a direct result of Iraq's invasion and occupation of Kuwait.

559. The Panel finds that adjustments should be made for economies of recreation and insufficient evidence.

560. In light of the above, the Panel recommends compensation in the amount of US\$1,181,000 out of the US\$2,484,065 claimed.

(b) Loss of field research data - US\$221,141 137/

561. MoP also claims for lost field research data compiled manually by way of consumer questionnaires immediately before Iraq's invasion and occupation of Kuwait and destroyed by fire during Iraq's invasion and occupation of Kuwait. The claim is based on the salary costs of the personnel employed to work on the project for its duration. The Panel finds that the loss of the field research data is compensable in accordance with the principles set out at paragraphs 23 to 28 above, but that an adjustment should be made for insufficient evidence. The Panel therefore recommends compensation in the amount of US\$171,000 out of the US\$221,141 claimed.

Q. Environment Protection Council

Government Claim No. 38, UNCC Claim No. 5000166

Table 17. Summary Table for Environment Protection Council

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Other tangible property			
a) Stolen and damaged boats	2,034,809	860,000	562-567
b) Oil spill clean up equipment	1,795,289	1,387,000	568-570
c) Medical research equipment, computers and related peripherals	71,575	58,000	571
d) Marine biology research equipment and lost goods in transit	<u>173,566</u>	<u>111,000</u>	572
Sub-total	<u>4,075,239</u>	<u>2,416,000</u>	
Real property	<u>61,016</u>	<u>51,000</u>	573
<u>Total</u>	<u>4,136,255</u>	<u>2,467,000</u>	
Interest	<u>657,720</u>		

1. Other tangible property - US\$4,075,239

(a) Stolen and damaged boats - US\$2,034,809 138/

562. The Environment Protection Council ("EPC") is responsible for the protection of the environment in Kuwait, whose membership comprises representatives of Ministries and other government organizations.

563. EPC seeks compensation for the loss of and damage to its fleet of pollution boats, which consisted of three work boats, two control boats and one surveillance boat. 139/

564. EPC claims that all six boats were lost or destroyed during Iraq's invasion and occupation of Kuwait. After liberation, the three work boats were recovered through UNROP and the surveillance boat was recovered from another source. EPC claims that the work boats were damaged beyond repair 140/ and the surveillance boat was damaged and its equipment removed but capable of repair.

565. The Panel finds that further adjustments should be made for overstatement, saved expenses and insufficient evidence.

566. The Panel finds that as a result of EPC's overstatement of the amount claimed (for which the Panel has made an adjustment in the preceding



paragraph), the deduction EPC applied in respect of depreciation exceeds the deduction warranted, in that the percentage deduction should be applied to a lower initial cost. The Panel has therefore re-calculated the deduction to be applied for depreciation.

567. In light of the above, the Panel recommends compensation in the amount of US\$860,000 out of the US\$2,034,809 claimed.

(b) Oil spill clean up equipment - US\$1,795,289

568. EPC seeks compensation for the loss of oil spill clean-up equipment, including oil barriers, oil scrapers and shore cleaning vehicles.

569. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

570. In light of the above, the Panel recommends compensation in the amount of US\$1,387,000 out of the US\$1,795,289 claimed.

(c) Medical research equipment, computers and related peripherals -  
US\$71,575 141/

571. EPC seeks compensation for the loss of medical research equipment together with losses of computers and related peripherals. The Panel finds that adjustments should be made for saved expenses, enhancement, inadequate accounting for depreciation and insufficient evidence. In light of the above, the Panel recommends compensation in the amount of US\$58,000 out of the US\$71,575 claimed.

(d) Marine biology research equipment, lost goods in transit - US\$173,566  
142/

572. EPC seeks compensation for the loss of marine biology equipment and a gas chromatograph lost in transit. The Panel finds that, having paid for the goods in June 1990, EPC is the proper claimant for the chromatograph. 143/ The Panel finds that adjustments should be made for saved expenses and insufficient evidence. The Panel therefore recommends compensation in the amount of US\$111,000 out of the US\$173,566 claimed.

2. Real property - US\$61,016 144/

573. The real property losses claimed by EPC are for damage to its nature reserves situated in the northern part of Kuwait at Jahra and Doha, comprising the costs of repairs to the reserves and the cost of a consultant nature conservationist. The Panel finds that the consultant was not required for the repairs, given the limited nature and extent of the

damage to the reserves, and has made an adjustment for the consequent overstatement to the amount claimed. The Panel also finds that adjustments should be made for inadequate accounting for depreciation and insufficient evidence, and accordingly recommends compensation in the amount of US\$51,000 out of the US\$61,016 claimed.

R. Ministry of Communications

Government Claim No. 45, UNCC Claim No. 5000173

Table 18. Summary Table for Ministry of Communications

<u>Loss type/Loss element</u>	<u>Amount claimed</u> <u>US\$</u>	<u>Amount recommended</u> <u>US\$</u>	<u>Paragraph references</u>
Real property	<u>38,959,208</u>	<u>20,018,000</u>	574-583
Other tangible property			
a) Switches	40,265,195	25,527,000	584-588
b) Other equipment	24,221,209	16,504,000	589-592
c) Stores inventories	39,601,861	29,606,000	593-596
d) Furniture and fixtures	612,947	429,000	597-599
e) Transportation department assets	<u>598,368</u>	<u>493,000</u>	600-603
Sub-total	<u>105,299,580</u>	<u>72,559,000</u>	
Contract			
a) Construction of extension of exchange and construction of new post offices	112,866	55,000	604-608
b) Buildings maintenance	<u>719,014</u>	<u>0</u>	609-611
Sub-total	<u>831,880</u>	<u>55,000</u>	
Payment or relief to others			
(a) Relief paid to employees	<u>84,548,260</u>	<u>31,283,000</u>	612-616
<u>Total</u>	<u>229,638,928</u>	<u>123,915,000</u>	
Interest	<u>36,710,520</u>		

1. Real property - US\$38,959,208 145/

574. The Ministry of Communications ("MoC") is responsible for providing all telecommunication and postal services in Kuwait.

575. MoC seeks compensation for damage to its buildings, being exchanges and relay and receiving and transmission stations (of which six were destroyed) and for damage to its local and international transmission network. In a technical mission to Kuwait undertaken in November 1999, certain MoC facilities and equipment were inspected on behalf of the Panel.

576. MoC's claim for its building losses includes the cost of a damage assessment report regarding the South Subahiya exchange, one of Kuwait's main switching centres, and the subsequent cost of demolition of the site. The Panel notes that the report advised that the site did not require total demolition, but finds that the costs of partial demolition and repair would have exceeded those incurred in demolishing and rebuilding the site. It therefore finds that the costs of demolition and reconstruction are compensable. 146/

577. Amounts claimed in respect of other buildings have been calculated on the basis of standard construction costs per square metre. The Panel finds that this is a reasonable method of valuing the loss in the circumstances, but that such unit costs were overstated, and has made an adjustment to the amount claimed in this regard.

578. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, inadequate accounting for residual value, saved expenses and insufficient evidence.

579. MoC's transmission network comprised cables and fibres, including coaxial cables, and microwave links. MoC seeks compensation for loss and damage to its coaxial cables and microwave links. 147/ Prior to Iraq's invasion and occupation of Kuwait, the network equipment was largely analogue. The Panel is satisfied that MoC was, prior to Iraq's invasion and occupation of Kuwait, committed to a programme of conversion from analogue to digital technology, and that MoC has continued this programme in the post-liberation period. 148/

580. MoC undertook its repair work to the coaxial cables in accordance with a repair and replacement strategy, pursuant to which it carried out repairs to the network where possible, but replaced parts of it where necessary. Most of the replacement parts purchased were digital parts. Having regard to the world-wide conversion to digital telecommunications, the Panel finds that the repair and replacement strategy was reasonable in the circumstances. 149/

581. As a result of the replacements and repairs to the network, MoC has operated a part analogue, part digital network in the post-liberation period. MoC's claim includes the costs of certain interface equipment 150/ required to enable a part analogue, part digital system to operate until the entire system is upgraded to operate using digital technology. The Panel finds that such equipment and its installation would have been required in any event. Accordingly, the Panel does not recommend any compensation for the costs of the interface equipment.

582. The Panel finds that adjustments should be made for inadequate accounting for depreciation and for insufficient evidence.

583. In light of the above, the Panel recommends compensation in the amount of US\$20,018,000 out of the US\$38,959,208 claimed.

2. Other tangible property - US\$105,299,580

(a) Switches - US\$40,265,195

584. MoC seeks compensation for losses of switches, which are items of equipment used to route and connect communications. The items lost included local switches, an international exchange, a mobile exchange, public automatic branch exchanges, remote switching units and remote control equipment ("RSU/RCE equipment") and packet switches. MoC also seeks compensation for switch repairs.

585. The Panel notes that MoC replaced more switches than were destroyed and adjusted the amount claimed so as to exclude purchases made to replace switches that were not destroyed as a result of Iraq's invasion and occupation of Kuwait. The Panel finds that MoC's adjustment understated the cost of the purchases to be deducted and has made an adjustment for overstatement in this regard. The Panel notes that, although many of the switches destroyed were analogue switches, all replacements purchased were digital switches. The Panel finds that the purchase of digital switches was reasonable in the circumstances, but that MoC overestimated the useful life of the destroyed switches given the conversion from analogue to digital technology. It has therefore made an adjustment to the amount claimed for inadequate accounting for depreciation.

586. The Panel finds that the amounts claimed in respect of the mobile exchange and the RSU/RCE equipment overstate the measure of inflation to be applied so as to derive the replacement cost claimed and has made a further adjustment in this regard.

587. The Panel finds that further adjustments should be made for saved expenses and for insufficient evidence.

588. In light of the above, the Panel recommends compensation in the amount of US\$25,527,000 out of the US\$40,265,195 claimed.

(b) Other equipment - US\$24,221,209 151/

589. MoC seeks compensation for losses of other equipment, which include technical services equipment, a coastal station, maintenance equipment for the international network, international telephone booths, a computer system, a frequency and wireless control system, and videotext and facsimile machines.

590. The Panel finds that, in its claim for the computer system, MoC overestimated some of the useful lives of the equipment lost, and has made an adjustment for inadequate accounting for depreciation to take account of

the overestimate, and further adjustments for enhancement, saved expenses and insufficient evidence.

591. For the remaining equipment, the Panel finds that adjustments should be made for overstatement, enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

592. In light of the above, the Panel recommends compensation in the amount of US\$16,504,000 out of the US\$24,221,209 claimed.

(c) Stores inventories - US\$39,601,861 152/

593. MoC seeks compensation for loss of its stores inventories, which comprise spare parts and other technical equipment for use in repairs, system back-ups or maintenance, and furniture and office equipment, stored in its warehouses. MoC based its claim on its 1989 records, updated using the estimates of MoC personnel, its later records having been destroyed, with deductions for the estimated percentage of the stores that remained after liberation.

594. MoC's main warehouse was visited in November 1999 on the Panel's behalf, in order to inspect the damaged stock that remained after liberation.

595. The Panel finds that adjustments should be made for overstatement, inadequate accounting for depreciation and insufficient evidence.

596. In light of the above, the Panel recommends compensation in the amount of US\$29,606,000 out of the US\$39,601,861 claimed.

(d) Furniture and fixtures - US\$612,947 153/

597. MoC seeks compensation for lost furniture and fixtures, basing its claim on the total purchases of furniture and fixtures from liberation until 30 June 1993. 154/

598. The Panel finds that an adjustment should be made for insufficient evidence.

599. In light of the above, the Panel recommends compensation in the amount to US\$429,000 out of the US\$612,947 claimed.

(e) Transportation department assets - US\$598,368

600. In addition to the main activities set out in paragraph 574 above, MoC's transportation department supplies MoC with vehicles and regulates the navigation of shipping traffic.

601. MoC seeks compensation for loss of, and damage to, the transportation department's assets, being navigational aids, and for the cost of clearing underwater debris. 155/

602. The Panel finds that an adjustment should be made for insufficient evidence.

603. In light of the above, the Panel recommends compensation in the amount of US\$493,000 out of the US\$598,368 claimed.

3. Contract - US\$831,880 156/

(a) Construction of extension of exchange and construction of new post offices - US\$112,866

604. MoC seeks compensation for the losses sustained due to the interruption of two projects, including the costs of site restoration and the additional costs of completing one of the projects.

605. After liberation, MoC negotiated a contract to complete the first project with a new contractor, as the original contractor's completion price was considered too expensive.

606. The Panel, continuing in its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs.. The evidence shows that part only of the amount claimed is so attributable.

607. The second project was abandoned after liberation. MoC valued its loss as 10 per cent of the original contract price, being its estimate of the value of the work at the date of Iraq's invasion and occupation of Kuwait. The Panel finds that the decision to abandon the project was not a direct result of Iraq's invasion and occupation of Kuwait 157/ and accordingly recommends compensation for the cost of repairing the damage that was a direct result of Iraq's invasion and occupation of Kuwait. 158/ (see paragraph 39 above). Any other loss arises from MoC's independent decision to abandon the project.

608. In light of the above, the Panel recommends compensation in the amount of US\$55,000 out of the US\$112,866 claimed.

(b) Buildings maintenance - US\$719,014

609. MoC claims that, prior to Iraq's invasion and occupation of Kuwait, it routinely entered into contracts to clean and maintain MoC buildings, including various exchanges and stations. In January and October of 1992, respectively, MoC entered into two contracts at a price that it claims was much higher than it had paid for equivalent pre-invasion maintenance contracts, due to the severe damage to MoC's buildings occasioned during Iraq's invasion and occupation of Kuwait.

610. The Panel finds that MoC will have made savings in maintenance expenditure which exceed the amount referable to the three factors set out at paragraph 63 of the First "F3" Report.

611. Accordingly, the Panel does not recommend any compensation in respect of this claim.

4. Payment or relief to others - US\$84,548,260

(a) Relief paid to employees - US\$84,548,260

612. MoC seeks compensation in the amount of US\$84,548,260 for relief paid to employees.

613. The response of the Government to the Panel's questions regarding the Social Security Fund 159/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

614. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

615. The Panel also finds that an adjustment should be made for insufficient evidence.

616. In light of the above, the Panel recommends compensation in the amount of US\$31,283,000 out of the US\$84,548,260 claimed.



S. Public Authority for Applied Education and Training

Government Claim No. 46, UNCC Claim No. 5000175

Table 19. Summary Table for Public Authority for Applied Education and Training

<u>Loss type/Loss element</u>	<u>Amount claimed US\$</u>	<u>Amount recommended US\$</u>	<u>Paragraph references</u>
Real property			
a) Construction administration contract	4,706,875	3,295,000	617-620
b) Service contracts	30,061,834	19,315,000	621-625
c) Maintenance contracts	368,242	241,000	626-628
d) Repair estimates	<u>1,010,023</u>	<u>628,000</u>	629-632
Sub-total	<u>36,146,974</u>	<u>23,479,000</u>	
Contract	<u>111,699</u>	<u>19,000</u>	633-634
Other tangible property	<u>55,579,725</u>	<u>31,848,000</u>	635-638
Public service expenditures			
a) Cost of recruiting new staff	38,725	15,000	639
b) Crash course	<u>225,660</u>	<u>124,000</u>	640-643
Sub-total	<u>264,385</u>	<u>139,000</u>	
Business transaction or course of dealing	<u>1,990,031</u>	<u>0</u>	644-649
Bank accounts and securities	<u>32,613</u>	<u>18,000</u>	650
Payment or relief to others			
a) Relief paid to employees	26,013,674	10,406,000	651-654
b) Three months post liberation bonuses	<u>578,326</u>	<u>578,326</u>	655-657
Sub-total	<u>26,592,000</u>	<u>10,984,326</u>	
Evacuation costs (of citizens or other nationals)	<u>59,437</u>	<u>32,000</u>	658
<u>Total</u>	<u>120,776,864</u>	<u>66,519,326</u>	
Interest	<u>19,193,360</u>		

1. Real property - US\$36,146,974

(a) Construction administration contract - US\$4,706,875

617. The Public Authority for Applied Education and Training ("PAAET") provides technical applied education and training in Kuwait. It seeks compensation for damage to, and losses from, its facilities and buildings.

618. In June 1991, PAAET engaged a contractor to supervise and manage the repairs to its colleges and training centres. The Panel finds that the reasonable costs of so doing are compensable, in that such work was an

integral part of the required repairs and could not have been performed by PAAET's existing engineering staff.

619. The Panel finds that, although the contractor was not chosen using normal competitive procurement procedures, the cost incurred was reasonable and would not have been reduced had competitive procurement procedures been adopted. However, the Panel finds that an adjustment should be made for insufficient evidence.

620. In light of the above, the Panel recommends compensation in the amount of US\$3,295,000 out of the US\$4,706,875 claimed.

(b) Service contracts - US\$30,061,834

621. During June and July of 1991, the contractor referred to at paragraph 618 above negotiated, on behalf of PAAET, five contracts for the repair of damaged colleges and training centres.

622. The Panel finds that, although these contracts were not awarded pursuant to competitive procurement procedures, the costs incurred were reasonable and would not have been reduced if competitive procurement procedures had been adopted.

623. PAAET's claim does not make any allowance for depreciation. The Panel finds, however, that an adjustment should be made for inadequate accounting for depreciation in relation to repairs to decorative and electrical items because those repairs resulted in an increase in the useful life of those items. 160/

624. The Panel also finds that adjustments should be made for saved expenses and insufficient evidence.

625. In light of the above, the Panel recommends compensation in the amount of US\$19,315,000 out of the US\$30,061,834 claimed.

(c) Maintenance contracts - US\$368,242

626. In March 1992 and January 1993, PAAET signed two contracts for repair and regular maintenance work at its colleges and training centres. PAAET claims that portion of the cost of the contracts referable to repairing some of the damage not covered by the contracts discussed at paragraphs 621 to 625 above.

627. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

628. In light of the above, the Panel recommends compensation in the amount of US\$241,000 out of the US\$368,242 claimed.

(d) Repair estimates - US\$1,010,023

629. PAAET claims the estimated cost of repairs to three facilities that had not been commenced at the time it submitted its claim.

630. The Panel finds that repairs to one of the facilities are now complete and that PAAET intends eventually to repair the other two facilities. In accordance with paragraph 21 above, the Panel finds the losses compensable.

631. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

632. In light of the above, the Panel recommends compensation in the amount of US\$628,000 out of the US\$1,010,023 claimed.

2. Contract - US\$111,699 161/

633. PAAET asserts that a contract for the construction of lecture halls was interrupted by Iraq's invasion and occupation of Kuwait.

634. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph and has calculated the amount of the loss claimed that is so attributable. The Panel recommends compensation in the amount of US\$19,000 out of the US\$111,699 claimed.

3. Other tangible property - US\$55,579,725 162/

635. PAAET seeks compensation for the loss of, or damage to, all of its furniture, office equipment, scientific equipment, kitchen supplies, library materials and other tangible property from its classrooms, laboratories, workshops and other facilities. PAAET was able only to estimate its losses because of the destruction of many of its pre-invasion documents. The Panel has therefore made an adjustment for insufficient evidence.

636. PAAET valued its loss by reference to the book value of its inventory of tangible property as at 30 June 1990, as summarised in a listing which survived Iraq's invasion and occupation of Kuwait. To this value it applied two inflation factors (one for the period from the initial purchase of the items until 2 August 1990 and one for the period from liberation until replacement) and a depreciation factor (to reflect that the tangible

property was not new at the time of Iraq's invasion and occupation of Kuwait). While the Panel agrees with this method of valuation, it has made adjustments to reflect an overstatement by PAAET in the inflation factor for the period from liberation until replacement and to reflect that the depreciation factor was understated for each type of tangible property lost.

637. The Panel finds that an adjustment should also be made for saved expenses.

638. In light of the above, the Panel recommends compensation in the amount of US\$31,848,000 out of the US\$55,579,725 claimed.

4. Public service expenditures - US\$264,385 163/

(a) Cost of recruiting new staff - US\$38,725

639. PAAET asserts that it incurred a variety of expenses in locating and attracting teachers and professors to replace 275 of its employees who left Kuwait as a result of Iraq's invasion and occupation of Kuwait and did not return. The Panel finds that the cost of replacing only some of these employees is compensable 164/ and that an adjustment should be made for insufficient evidence. Accordingly, the Panel recommends compensation in the amount of US\$15,000 out of the US\$38,725 claimed.

(b) Crash course - US\$225,660

640. PAAET claims the costs of providing a course to allow its students to undertake the studies that, in the absence of Iraq's invasion and occupation of Kuwait, would have been undertaken in the academic year 1991/92. 165/

641. The Panel finds that the loss of the 1990/91 academic year was a direct result of Iraq's invasion and occupation of Kuwait and therefore recommends that compensation be awarded for that portion of the costs of the course that are above and beyond those that would have been incurred in the absence of Iraq's invasion and occupation of Kuwait (for example, on standard summer courses).

642. The Panel finds that an adjustment should be made for insufficient evidence.

643. Accordingly, the Panel recommends compensation in the amount of US\$124,000 out of the US\$225,660 claimed.

5. Business transaction or course of dealing - US\$1,990,031

(a) Revenue loss - US\$1,990,031

644. Prior to Iraq's invasion and occupation of Kuwait, PAAET earned revenue from renting housing to its employees, selling food to its employees and students, charging fees for tuition and registration, and providing training programmes to Government departments and private companies. PAAET claims the loss in this revenue for the period 2 August 1990 to 30 June 1993, calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq's invasion and occupation of Kuwait and the revenue in fact earned.

645. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government departments and for saved expenses. 166/

646. The Panel finds that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait until 30 June 1993, except for the revenue from renting housing to employees, which was only so affected until 30 June 1992. 167/ The Panel has made the appropriate adjustment.

647. The Panel has also made an adjustment to reflect that portion of PAAET's revenue which would have been derived from other Government departments.

648. Finally, the Panel sought information from PAAET as to the costs involved in the generation of its revenue. This disclosed that the expenses that would have been incurred in earning the lost revenue for the relevant periods exceeded that lost revenue.

649. Accordingly, the Panel does not recommend any compensation for this loss type.

6. Bank accounts and securities - US\$32,613

(a) Loss of petty cash - US\$32,613 168/

650. PAAET seeks compensation for the loss of cash from its various offices and facilities. Applying the principles set out at paragraph 406 of the First "F3" Report, the Panel finds the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held by PAAET. The Panel finds that an adjustment should be made for insufficient evidence. Accordingly, the Panel

recommends compensation in the amount of US\$18,000 out of the US\$32,613 claimed.

7. Payment or relief to others - US\$26,592,000

(a) Relief paid to employees - US\$26,013,674

651. PAAET seeks compensation in the amount of US\$26,013,674 for relief paid to employees.

652. The response of the Government to the Panel's questions regarding the Social Security Fund 169/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

653. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

654. In light of the above, the Panel recommends compensation in the amount of US\$10,406,000 out of the US\$26,013,674 claimed.

(b) Three months post liberation bonuses - US\$578,326

655. PAAET seeks compensation for payments made to its employees for work undertaken during the emergency period in cleaning and preparing PAAET's facilities for the start of the academic year in September 1991. Shortly after liberation, PAAET contacted the employees and promised them the payments in order to induce them to undertake the cleaning and preparation work.

656. The Panel finds that the existence of a promise to pay before the work was undertaken, together with the fact that the work was required as a direct result of Iraq's invasion and occupation of Kuwait, differentiates this claim from that discussed at paragraph 363 above and therefore recommends that compensation be awarded for the payments. The Panel also finds that the amount paid was reasonable and that there is no duplication between the work performed by the employees who received the bonus payments and the work in relation to the real and other tangible property losses discussed above.

657. PAAET provided evidence that it had, in fact, paid more than it had claimed for the bonus payments. However, the Panel cannot recommend the award of more than the sum claimed and therefore recommends payment in full in the amount of US\$578,326.

8. Evacuation costs (of citizens or other nationals) - US\$59,437

(a) Costs of repatriation of staff - US\$59,437 170/

658. PAAET seeks compensation for the cost of bringing 192 of its teachers and instructors back to Kuwait after liberation. The Panel finds, as set out at paragraph 81 of the First "F3" Report, that such costs are compensable. The Panel finds that adjustments should be made for insufficient evidence. 171/ In light of the above, the Panel recommends compensation of US\$32,000 out of the US\$59,437 claimed.

T. Public Authority for Agriculture Affairs and Fish ResourcesGovernment Claim No. 55, UNCC Claim No. 5000187Table 20. Summary Table for Public Authority for Agriculture Affairs and Fish Resources

Loss type/Loss element	Amount claimed US\$	Amount recommended US\$	Paragraph references
Real property	<u>24,508,382</u>	<u>8,596,000</u>	659-665
Public service expenditures			
a) Chicken vaccine	<u>1,672,576</u>	<u>1,672,576</u>	666-671
Other tangible property			
a) Pure Arabian horses and Zoo animals	2,865,697	1,417,000	672-677
b) Medical instruments and equipment	396,917	230,000	678
c) Medicine and animal feed	1,103,857	520,000	679-681
d) Vehicles and heavy equipment	2,703,615	2,215,000	682-684
e) Office furniture and equipment	1,078,262	703,000	685-687
f) Inventory in store	<u>693,160</u>	<u>584,000</u>	688-690
Sub-total	<u>8,841,508</u>	<u>5,669,000</u>	
Payment or relief to others			
a) Relief paid to employees	<u>8,917,081</u>	<u>3,325,000</u>	691-695
Other losses	<u>2,163,838</u>	<u>29,000</u>	696-699
Business transaction or course of dealing			
a) Zoo entry and quarantine fees	<u>436,859</u>	<u>0</u>	700-703
Contract			
a) Forestation and preservation areas contract loss	<u>381,639</u>	<u>363,000</u>	704-706
Total	<u>46,921,883</u>	<u>19,654,576</u>	
Interest	<u>7,456,480</u>		



1. Real property - US\$24,508,382
  - (a) Landscape areas property loss - US\$8,342,211
  - (b) Gardens real property loss - US\$2,861,290
  - (c) Buildings and reservoirs real property loss - US\$5,744,596 172/
  - (d) Forestation and Foliage preservation areas real property loss -  
US\$7,560,285 173/

659. The Public Authority for Agriculture and Fish Resources ("PAAF") is responsible for administering programmes and regulations relating both to plants and live animals in Kuwait, including landscaping of public areas, forestation projects and animal health, and regulates the importation of live animals and plants into Kuwait.

660. The real property losses of PAAF comprise damage to PAAF's buildings (of which one, the finance department, was totally destroyed) and other facilities. Such facilities comprised irrigation reservoirs, forestation and foliage preservation areas (including plants), facilities of the Kuwait Zoological Gardens Department (the "Zoo") and Kuwait's roadside landscaping and public gardens, including 11 public gardens that were under construction at the date of Iraq's invasion and occupation of Kuwait.

661. In addition, PAAF claims the costs incurred in retaining external consultants to perform damage assessments for nine of the eleven gardens that were under construction when damaged.

662. As to those parts of the claim in respect of landscape areas and gardens, PAAF based its claim on the estimated cost of repairing and replacing lost and damaged plants and seedlings. The Panel finds that repair and replacement were carried out as part of general maintenance contracts, and finds that it is not possible to ascertain from those contracts the amount pertaining to the repairs and replacements. Accordingly, the Panel has considered the claim on the basis of the estimates initially submitted. The Panel notes that the estimates allow for maintenance and husbandry of the new plants and seedlings for a five year period. The Panel finds that such maintenance and husbandry is necessary to enable the plants and seedlings to become established, but for a period of one year only. PAAF would have been required to undertake regular replanting of its landscape areas and gardens, and to carry out regular care and maintenance, in any event, and the Panel has made an adjustment for overstatement in this regard.

663. The Panel is satisfied that it is a generally accepted horticultural practice periodically to regenerate and restock trees, plants and shrubs under a managed programme so as to maintain a sustainable environment. The Panel therefore finds that the forestation and foliage preservation areas

concerned would have required regeneration and restocking every four years. The Panel also finds that repairs to certain buildings would have extended their useful life and that the estimates of useful life for some buildings should be adjusted. As a result, the Panel finds that adjustments should be made for inadequate accounting for depreciation.

664. The Panel also finds that further adjustments should be made for overstatement, saved expenses and insufficient evidence.

665. In light of the above, the Panel recommends compensation in the amount of US\$8,596,000 out of the US\$24,508,382 claimed.

2. Public service expenditures - US\$1,672,576

(a) Chicken vaccine - US\$1,672,576

666. PAAF claims for the costs incurred from June 1992 to June 1997 in a programme undertaken by PAAF, the aim of which was to eradicate Gumboro disease from Kuwait's poultry stock. Under the programme, chickens imported into and bred within Kuwait were vaccinated against Gumboro disease. The Panel notes that although PAAF asserts that Gumboro disease was not totally eradicated from its poultry stock as at the date of submission of its claim, the claim is limited to costs incurred to June 1997.

667. Gumboro disease is a highly contagious disease that affects the immunity of chickens, and results in retarded growth and eventual death in approximately 40 per cent of cases. PAAF claims that, prior to Iraq's invasion and occupation of Kuwait, the poultry stock in Kuwait was kept free of Gumboro disease as a result of Government regulations, which prevented the importation of live chickens greater than one day old and permitted imports only from countries known to be free of the disease.

668. PAAF claims that, during the occupation period, and for nine months after liberation, it was unable to enforce the above regulations and that during the occupation period Iraq imported chickens into Kuwait. After liberation, Kuwait imported live chickens from sources other than in accordance with the above regulations, in order to alleviate food shortages. The Panel finds that the Government's actions were to be expected in the circumstances.

669. By Procedural Order 38 issued in January 2000, the Panel sought information, inter alia, regarding the pre-invasion incidence of Gumboro disease in Kuwait. The Panel accepts that there was no proven incidence of Gumboro disease in Kuwait prior to Iraq's invasion and occupation.

670. The Panel therefore finds that the introduction of Gumboro disease occurred as a direct result of Iraq's invasion and occupation of Kuwait, and the reasonable costs of eradication of the disease are accordingly compensable. The Panel further finds that the duration of the programme was reasonable.

671. In light of the above, the Panel recommends payment in full of the US\$1,672,576 claimed.

3. Other tangible property - US\$8,841,508

(a) Pure Arabian horses and Zoo animals - US\$2,865,697

672. PAAF seeks compensation for the loss of 30 pure Arabian horses, 191 Zoo animal exhibits, and assorted birds and reptiles.

673. PAAF valued its loss on the basis of estimated replacement cost. The Panel notes that 10 horses were pregnant when lost and that PAAF valued each unborn foal at a value equal to an adult horse. The Panel finds that the claim is overstated in that it fails to take into account the statistical rate of failure of pregnancy and in that the market value of a foal is generally lower than that of an adult horse. The Panel has therefore made an adjustment for overstatement.

674. In addition, the Panel notes that 72 animals were received in the post-liberation period as donations from governments and private individuals. The Panel finds that these animals replaced some of the lost animals at no expense to Kuwait and a consequent adjustment should be made to the amount claimed for the animals lost.

675. The Panel further finds that PAAF made savings in operating expenditure until the Zoo was reopened in 1993, and for a period of 12 months as regards the Arabian horses, and has therefore made an adjustment for saved expenses. 174/

676. The Panel finds that adjustments should also be made for insufficient evidence.

677. In light of the above, the Panel recommends compensation in the amount of US\$1,417,000 out of the US\$2,865,697 claimed.

(b) Medical instruments and equipment - US\$396,917 175/

678. PAAF seeks compensation for the loss of a variety of medical instruments and equipment, including incubators, microscopes, refrigerators, freezers, an X-ray machine and other veterinary, medical and surgical equipment. The Panel finds that an adjustment should be made for inadequate accounting for depreciation. In light of the above, the Panel recommends compensation in the amount of US\$230,000 out of the US\$396,917 claimed.

(c) Medicine and animal feed - US\$1,103,857 176/

679. PAAF seeks compensation for the loss of medicine and animal feed.

680. The Panel finds that adjustments should be made for saved expenses (since re-stocking of lost animals did not commence until 1991) and insufficient evidence.

681. In light of the above, the Panel recommends compensation in the amount of US\$520,000 out of the US\$1,103,857 claimed.

(d) Vehicles and heavy equipment - US\$2,703,615 177/

682. PAAF seeks compensation for vehicles and heavy equipment that it claims were lost, damaged or destroyed. After liberation, 38 vehicles and pieces of heavy equipment were found, and of them, 12 were damaged beyond repair.

683. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

684. In light of the above, the Panel recommends compensation in the amount of US\$2,215,000 out of the US\$2,703,615 claimed.

(e) Office furniture and equipment - US\$1,078,262 178/

685. PAAF seeks compensation for the loss of a variety of office furniture and equipment, including desks, chairs, shelves, audiovisual equipment, microfilm equipment and personal computers.

686. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses, enhancement and insufficient evidence.

687. In light of the above, the Panel recommends compensation in the amount of US\$703,000 out of the US\$1,078,262 claimed.

(f) Inventory in store - US\$693,160

688. PAAF seeks compensation for the loss of a variety of inventory in store, including office supplies, spare parts, agricultural chemicals and small tools.

689. The Panel finds that adjustments should be made for overstatement and insufficient evidence.

690. In light of the above, the Panel recommends compensation in the amount of US\$584,000 out of the US\$693,160 claimed.

4. Payment or relief to others - US\$8,917,081

(a) Relief paid to employees - US\$8,917,081

691. PAAF seeks compensation in the amount of US\$8,917,081 for relief paid to employees.

692. The response of the Government to the Panel's questions regarding the Social Security Fund 179/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

693. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof (repeated as paragraphs 36 and 48 of the annex, respectively), the Panel accepts the compensability of such relief paid to employees.

694. The Panel finds that the relief claimed exceeds the amount paid by PAAF to its employees for salaries the employees would have earned, but did not receive, in respect of the occupation and emergency periods and has made an adjustment for overstatement in this regard.

695. In light of the above, the Panel recommends compensation in the amount of US\$3,325,000 out of the US\$8,917,081 claimed.

5. Other losses - US\$2,163,838
  - (a) Research studies - US\$119,016
  - (b) Study for new Zoo - US\$2,044,822

696. PAAF seeks compensation for the loss of two research studies completed prior to Iraq's invasion and occupation of Kuwait, based on the salaries paid to the staff who carried out the research.

697. As set out at paragraphs 23 to 28 above, the Panel recommends that compensation be awarded for the loss of the two research studies. However, adjustments should be made for economies of re-creation and insufficient evidence.

698. PAAF also seeks compensation for costs incurred in commissioning a study for the building of a new Zoo. The proposed site could not be used for the Zoo after liberation as the area was redesignated by the Government for oil development. The Panel finds that the decision taken to redesignate the proposed site for the new Zoo to oil development was not a direct result of Iraq's invasion and occupation of Kuwait and accordingly does not recommend any compensation for the loss of that study.

699. In light of the above, the Panel recommends compensation in the amount of US\$29,000 out of the US\$2,163,838 claimed.

6. Business transaction or course of dealing - US\$436,859
  - (a) Zoo entry and quarantine fees - US\$436,859 180/

700. Prior to Iraq's invasion and occupation of Kuwait, PAAF generated revenue from Zoo entry admissions and quarantine fees. PAAF claims that between 2 August 1990 and February 1993, the Zoo was closed for repairs and the restocking of animals and that it therefore lost revenue derived from entry admissions until June 1993. In addition, PAAF claims that it lost quarantine fees between 2 August 1990 and July 1991. PAAF valued both elements of this loss based on the estimated revenue it would have earned for the above period, measured by reference to the revenue earned prior to Iraq's invasion and occupation of Kuwait, less any revenue earned over the period claimed.

701. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government departments and for saved expenses. 181/ The Panel finds that

the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait until July 1991 in the case of quarantine fees and to June 1993 in the case of admission fees.

702. The Panel sought information from PAAF as to the costs involved in the generation of its revenue. This disclosed that the expenses that would have been incurred in earning the lost revenue for the relevant periods exceeded that lost revenue.

703. In light of the above, the Panel does not recommend any compensation for the loss of revenue claimed.

7. Contract - US\$381,639 182/

(a) Forestation and preservation areas contract loss - US\$381,639

704. After liberation PAAF entered into a contract with a pre-invasion contractor to repair and complete construction of the central nursery. PAAF valued its loss as the difference between the cost PAAF incurred to complete the project and the amount it would have paid under the original contract.

705. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report, finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph. The evidence shows that part only of the losses claimed is attributable to the relevant factors.

706. In light of the above, the Panel recommends compensation in the amount of US\$363,000 out of the US\$381,639 claimed.

U. Ministry of Interior

Government Claim No. 57, UNCC Claim No. 5000189

Table 21. Summary Table for Ministry of Interior

Loss type/Loss element	Amount claimed US\$	Amount recommended US\$	Paragraph references
Real property	<u>24,518,148</u>	<u>18,552,000</u>	707-710
Other tangible property			
a) Coast Guard boats	35,721,844	17,609,000	711-715
b) Communications equipment	29,925,915	21,742,000	716-718
c) Criminal evidence equipment	6,061,148	4,202,000	719-721
d) Computer equipment	4,946,813	1,614,000	722-727
e) Traffic department equipment and supplies	1,791,622	1,241,000	728-730
f) Office furniture and equipment	9,372,748	6,715,000	731-733
g) Warehouse equipment and supplies	<u>39,649,782</u>	<u>26,484,000</u>	734-736
Sub-total	<u>127,469,872</u>	<u>79,607,000</u>	
Bank accounts and securities	<u>1,701,496</u>	<u>1,282,000</u>	737-740
Public service expenditures	<u>828,819</u>	<u>610,000</u>	741-744
Total	<u>154,518,335</u>	<u>100,051,000</u>	
Interest	<u>24,556,040</u>		

1. Real property - US\$24,518,148 183/

707. The Ministry of Interior ("MoI") is responsible for policing and law enforcement, including border and immigration controls and Kuwait's Coast Guard, and for the operation of Kuwait's prison system. MoI seeks compensation for real property losses relating to approximately 200 buildings that it claims were damaged or destroyed, and for damage arising due to a lack of maintenance of MoI's buildings during the occupation period.

708. MoI claims the costs incurred in effecting temporary and limited permanent repairs and the costs to be incurred in further replacement and repairs. 184/ The Panel finds that, although nine of the 11 contracts for repair were not awarded using competitive procurement procedures, the costs incurred were reasonable and the absence of such procedures did not lead to increased costs.

709. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.



710. In light of the above, the Panel recommends compensation in the amount of US\$18,552,000 out of the US\$24,518,148 claimed.

2. Other tangible property - US\$127,469,872

(a) Coast Guard boats - US\$35,721,844 185/

711. MoI seeks compensation for 48 Coast Guard boats that it claims were lost, damaged or destroyed, including landing craft, border control craft, rescue boats and speed boats. MoI asserts that 28 boats were damaged and that 20 boats were lost, destroyed or damaged beyond repair. 186/ In addition, MoI claims compensation for lost spare parts.

712. In relation to those boats MoI asserts were damaged beyond repair, the Panel notes that MoI has not adjusted its claim to take account of the residual value of the equipment contained on the boats. The Panel finds that such account is warranted and has therefore made an adjustment in this regard.

713. The Panel notes that a further 17 speedboats were purchased for MoI pursuant to KERP, that the cost of those speedboats is being claimed separately, 187/ and that MoI adjusted its claim to take account of its estimate of their residual value. The Panel finds that MoI underestimated the residual value of those boats and therefore that an adjustment should be made for incorrect valuation of KERP assets.

714. The Panel finds that further adjustments should be made for saved expenses, overstatement and insufficient evidence.

715. In light of the above, the Panel recommends compensation in the amount of US\$17,609,000 out of the US\$35,721,844 claimed.

(b) Communications equipment US\$29,925,915 188/

716. MoI seeks compensation for the loss of communications equipment, including cables, spare parts and inspection equipment. 189/

717. The Panel finds that adjustments should be made for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

718. In light of the above, the Panel recommends compensation in the amount of US\$21,742,000 out of the US\$29,925,915 claimed.

(c) Criminal evidence equipment - US\$6,061,148

719. MoI seeks compensation for the loss of criminal evidence equipment, including scientific analysis equipment, desalination equipment and X-ray equipment.

720. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

721. In light of the above, the Panel recommends compensation in the amount of US\$4,202,000 out of the US\$6,061,148 claimed.

(d) Computer equipment - US\$4,946,813 <sup>190/</sup>

722. MoI seeks compensation for computer equipment losses, comprising mainframe computers and computer peripherals. <sup>191/</sup>

723. After liberation, MoI decided to centralise its pre-invasion computer system, using two mainframe computers, one (an IBM ES/9000-480) purchased pursuant to KERP, instead of six mainframe computers used prior to Iraq's invasion and occupation of Kuwait. The Panel finds that MoI's decision to centralise its computer system was not a direct result of Iraq's invasion and occupation of Kuwait, and therefore that the costs of retaining consultants under three contracts to implement the decision are not compensable.

724. MoI also seeks compensation for 10 per cent of the purchase price of a mainframe computer, purchased in Saudi Arabia during the occupation period as MoI believed that installation of the IBM ES/9000-480 it was to receive pursuant to KERP could have been delayed. <sup>192/</sup> MoI found upon its return to Kuwait that the computer it purchased was not required and it was neither installed nor used. The Panel finds that the purchase of the mainframe computer was not a direct result of Iraq's invasion and occupation of Kuwait and therefore does not recommend any compensation in relation to it.

725. The Panel finds that the remaining costs incurred are compensable, but that adjustments should be made for enhancement, saved expenses and insufficient evidence.

726. As a result of the adjustment made in respect of enhancement by the Panel in the preceding paragraph, the Panel finds that the deduction MoI applied against the amount claimed in respect of depreciation exceeds the deduction warranted, in that the percentage deduction should be applied to

a lower base cost. The Panel has therefore re-calculated the deduction to be applied for depreciation.

727. In light of the above, the Panel recommends compensation in the amount of US\$1,614,000 out of the US\$4,946,813 claimed.

(e) Traffic department equipment and supplies - US\$1,791,622

728. MoI seeks compensation for the loss of traffic department equipment and supplies, including maps and traffic signs.

729. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

730. In light of the above, the Panel recommends compensation in the amount of US\$1,241,000 out of the US\$1,791,622 claimed.

(f) Office furniture & equipment - US\$9,372,748

731. MoI seeks compensation for office furniture and equipment losses, including desks, chairs, shelves, cabinets, photocopiers, fax machines and typewriters. 193/

732. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

733. In light of the above, the Panel recommends compensation in the amount of US\$6,715,000 out of the US\$9,372,748 claimed.

(g) Warehouse equipment and supplies - US\$39,649,782 194/

734. MoI seeks compensation for losses of warehouse equipment and supplies including firearms, ammunition, airport security equipment and uniforms. 195/ The Panel has considered the value of the items lost based on MoI's pre-invasion financial statements due to the loss of most of its pre-invasion invoices, and stock and other records. The Panel therefore finds that an adjustment should be made for insufficient evidence.

735. The Panel finds that further adjustments should be made for overstatement and inadequate accounting for depreciation.

736. In light of the above, the Panel recommends compensation in the amount of US\$26,484,000 out of the US\$39,649,782 claimed.

3. Bank accounts and securities - US\$1,701,496

737. MoI claims compensation for cash taken from its various safes, including those located in the General Financial Department. MOI asserts that cash in the safes typically comprised monthly salaries, cash from the collection of fees for traffic fines and fines imposed by the Immigration Department, cash advances for employees going on leave and deposits from persons involved in accidents. Applying the principles set out at paragraphs 406 of the First "F3" Report, the Panel finds that the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held in the safes by MoI. 196/

738. The Panel finds that adjustments should be made for incorrect method of valuation and insufficient evidence.

739. MoI further claims that the cash lost included an amount of Lebanese lire deposited as security by a litigant involved in a civil action before the domestic courts. Following its investigations, the Panel finds that although the civil action was concluded in June 1994 in favour of the depositor, MoI has not reimbursed the depositor. In the circumstances, the Panel finds that MoI has not suffered a loss and so does not recommend any compensation in respect of the Lebanese lire lost.

740. In light of the above, the Panel recommends compensation in the amount of US\$1,282,000 out of the US\$1,701,496 claimed.

4. Public service expenditures - US\$828,819 197/

741. MoI asserts that it incurred a variety of expenses in establishing and operating two emergency offices in Saudi Arabia at Dammam and Jeddah from October 1990 until April 1991. MoI claims that these offices were necessary in order that its Computer Centre could create and maintain a database of Kuwaiti citizens living abroad during Iraq's invasion and occupation of Kuwait and to plan for the emergency recovery efforts following liberation.

742. The Panel, applying the principles set out at paragraph 79 of the First "F3" Report (repeated as paragraph 79 of the annex), finds that MoI's decision to establish and operate the offices for the period was reasonable in the circumstances. Accordingly, the Panel finds that the reasonable costs of so doing are compensable, subject to any deductions for expenses that would ordinarily have been incurred in MOI's operations in Kuwait.

743. The Panel finds that adjustments should be made for inadequate accounting for residual value.

744. In light of the above, the Panel recommends compensation in the amount of US\$610,000 out of the US\$828,819 claimed.

V. Directorate General of Civil Aviation

Government Claim No. 59, UNCC Claim No. 5000191

Table 22. Summary Table for Directorate General of Civil Aviation

<u>Loss type/Loss element</u>	<u>Amount claimed</u> US\$	<u>Amount recommended</u> US\$	<u>Paragraph references</u>
Real property	<u>8,528,168</u>	<u>5,427,000</u>	745-748
Other tangible property	<u>93,418,606</u>	<u>23,868,000</u>	749-751
<u>Total</u>	<u>101,946,774</u>	<u>29,295,000</u>	
Interest	<u>16,201,720</u>		

1. Real property - US\$8,528,168

- (a) Terminal 1, communications centre and other buildings -  
US\$8,528,168 198/

745. The Directorate General of Civil Aviation ("DGCA") is an independent agency of the Government and is responsible for all aspects of civil aviation in Kuwait, including the operation of Kuwait International Airport (the "Airport"). DGCA claims that the Airport's Terminal One was destroyed by fire and explosives and that other buildings, including the communications centre and the Airport security buildings, were severely damaged or destroyed.

746. DGCA seeks compensation for the replacement costs for the above buildings, estimated as an average cost per square metre, to which a measure of depreciation was applied. The Panel finds that adjustments should be made for overstatement, saved expenses and insufficient evidence.

747. Terminal One, the communications centre and two smaller buildings, namely, the deluge building and the engine test building, required demolition after liberation. DGCA claims the costs incurred under two contracts for such demolition. The Panel finds that, although one of the contracts for demolition was not awarded using competitive procurement procedures, the costs incurred were reasonable and the absence of such procedures did not lead to increased costs. However, the Panel finds that an adjustment should be made for insufficient evidence.

748. In light of the above, the Panel recommends compensation in the amount of US\$5,427,000 out of the US\$8,528,168 claimed.

2. Other tangible property - US\$93,418,606

Communications equipment - US\$92,230,467

Meteorological equipment - US\$1,188,139

749. DGCA seeks compensation for the loss of communications and meteorological equipment, including long range radar stations, a receiver station, a transmission station, the control centre, observation stations, a high frequency receiver, a station used for receiving signals regarding humidity, temperature and pressure, and a hydrogen generator. Other equipment was damaged. The Panel notes that some of the equipment has been replaced, but that the specifications of the replacement items differed from the items lost. DGCA based its claim on the estimated cost of replacing all the equipment lost, but was unable to provide details of the equipment yet to be purchased, nor a breakdown or particulars of the estimated cost. 199/

750. The Panel finds that it is unable precisely to quantify the losses sustained and that an adjustment should be made for insufficient evidence.

751. In light of the above, the Panel recommends compensation in the amount of US\$23,868,000 out of the US\$93,418,606 claimed.

V. SUMMARY OF RECOMMENDATIONS

752. The following is a summary showing, for each second instalment claim, the principal claim amount and the Panel's recommended award.

Table 23. Summary of the principal claim amount and the Panel's recommendation for each second instalment claim

<u>Claimant</u>	<u>Principal claim amount (US\$)</u>	<u>Recommendation (US\$)</u>
Ministry of Finance - Kuwait Emergency and Recovery Program	533,472,120	432,309,059
Kuwait Institute for Scientific Research	390,343,692	104,699,000
Ministry of Public Works - Bayan Palace, Amiri Diwan, Telecommunications Tower, Audit Bureau, and MEW-MPW Headquarters construction and repair projects	232,874,040	105,128,000
Ministry of Electricity and Water - Stores Department, Communications Systems, Emergency Electrical Department, Primary Substations, and Water Division	362,234,083	215,702,865
Ministry of Defense - Navy Fast Attack Craft	483,440,514	63,957,000
Ministry of Electricity and Water - Power Plants, Underground Cables and Overhead Lines Maintenance Department, Electrical Network Projects Construction Department, Shuwaikh Distillation Facilities, Salaries, and Computer Center	606,672,157	321,455,000
Ministry of Information - Dar al- Athar al-Islamiyya Collection	61,036,607	20,770,000
Ministry of Public Works - Mishref Neighborhood Center, Kuwait University, Old Sief Palace, Government Testing Center, Computers, Stores, Equipment, Furniture, Salaries	79,446,364	25,487,000
Ministry of Defense - Reconstruction of Naval Base and Support Facilities	63,453,966	39,946,000



Kuwait University - Tangible Property Losses and Payment or Relief to Others	264,379,603	123,816,000
Ministry of Oil	7,882,908	2,990,048
Kuwait Municipality	196,459,271	105,202,000
Ministry of Public Works - Buildings Construction Department, Local Roads Construction Department, Motorways Department, Sanitation Department, Buildings and Roads Maintenance, and Bubiyan Bridge	177,026,963	64,849,000
Ministry of Health	422,193,464	196,223,000
Ministry of Planning	34,053,732	13,699,000
Environment Protection Council	4,136,255	2,467,000
Ministry of Communications - Real and Tangible Property, Contract Losses, Payment or Relief to Others	229,638,928	123,915,000
Public Authority for Applied Education and Training	120,776,864	66,519,326
Public Authority for Agriculture Affairs and Fish Resources	46,921,883	19,654,576
Ministry of Interior - Buildings, Coast Guard, Communications Equipment, Criminal Evidence Equipment, Computer Equipment, Traffic Department, Office Furniture and Equipment, Warehouses, Currency, and Emergency Offices	154,518,335	100,051,000
Directorate General of Civil Aviation - Terminal 1, Communications Center and Other Buildings, Communications Equipment and Meteorological Equipment	101,946,774	29,295,000
Total	4,572,908,523	2,178,134,874

Geneva, 13 September 2000

(Signed) L. Yves Fortier, Q.C.  
Chairman

(Signed) Andrew Jacovides  
Commissioner

(Signed) Reiner Soll  
Commissioner

Notes

- 1/ The Panel's report and recommendations in relation to the first instalment of the "F3" claims (the "first instalment claims") can be found in the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of "F3" claims" (S/AC.26/1999/24) (the "First "F3" Report").
- 2/ A text of which is annexed to decision 10 (S/AC.26/1992/10).
- 3/ Being the coalition of States assembled in response to Iraq's invasion and occupation of Kuwait.
- 4/ In the "Report and recommendations of the Panel of Commissioners appointed to review the well blowout control claim (the "WBC Claim")" (S/AC.26/1996/5/Annex) (the "WBC Report"), the Panel of Commissioners, in interpreting this phrase, found that any bombing of oil wells by the Allied Coalition Forces did not break the chain of causation between Iraq's invasion and occupation of Kuwait and the losses claimed in relation to the damage to those wells (see paragraph 86 of the WBC Report).
- 5/ See, for example, the claims of the Ministry of Defense considered at paragraphs 258 to 274 and 374 to 380.
- 6/ S/AC.26/Dec.19 (1994).
- 7/ It should be noted that, in a number of cases, the Panel has recommended adjustments to the amounts claimed for other tangible property losses to reflect the pilferage that would have occurred even in the absence of Iraq's invasion and occupation of Kuwait (see, for example, paragraphs 228 and 352). Such pilferage is not a direct loss as a result of Iraq's invasion and occupation of Kuwait.
- 8/ The Panel requested information from relevant claimants as to the reconstruction and repair work undertaken since the submission of their claims and has taken account of the responses received.
- 9/ Including research reports, computer files, analysis and specimens relating to scientific projects, and computer software.
- 10/ See paragraph 24 of the First "F3" Report (repeated as paragraph 24 of the annex) and paragraphs 137 to 138 of the First "F3" Report.
- 11/ UNCC Claim No. 5000038.
- 12/ Ministry of Electricity and Water and Kuwait Institute for Scientific Research.
- 13/ See further paragraphs 235, 241, 280 and 286.
- 14/ See further paragraphs 170 to 176 and 240.
- 15/ See further paragraphs 358 and 359 of the First "F3" Report, at which the Panel considered a claim for salaries paid to employees referable to

the time they spent on training. The claimant was operated as a commercial entity and had hired these employees to replace those who left Kuwait as a direct result of Iraq's invasion and occupation of Kuwait and did not return after liberation. The Panel found that no compensation should be awarded because the loss was subsumed in the claimant's loss of revenue claim.

16/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

17/ The Panel has instructed the secretariat to provide details of its recommendations to those Panels of Commissioners that are reviewing the contractors' claims.

18/ In cases where the claimant intends to enter into a post-liberation contract in the future, the Panel has calculated its price at such time as it would be reasonable, in all the circumstances, to expect it to have been entered into.

19/ Provided that this amount does not exceed the amount claimed.

20/ Kuwait Institute for Scientific Research, see further paragraphs 156 to 164.

21/ See further paragraph 156.

22/ See further paragraph 57 of the First "F3" Report (repeated as paragraph 57 of the annex).

23/ The receivable may be claimed in part as a loss of property (such as the underlying product or information) and/or in part as a loss of revenue.

24/ This programme is described at paragraph 52.

25/ The assumptions were as follows:

- (a) there would be a protracted siege of Kuwait City;
- (b) the fighting in Kuwait City would result in widespread disruption of food and water distribution, medical services and other essential public services;
- (c) there would be a large number of civilian casualties that could not be accommodated in U.S. Army hospitals; and
- (d) the population of Kuwait City would be approximately 800,000 at liberation and KERP would need to provide sufficient food, water, health supplies and other goods and services to support that population for three months.

26/ The Panel notes that certain Consumed Goods, such as food, that were not in fact consumed by the end of the emergency period, retained no value.

27/ That is, that:

(a) the Receiving Agency has deducted the residual value of the Transferred Goods from its real and/or other tangible property loss claim; or

(b) the Receiving Agency has deducted the value of its post-liberation inventory (which includes the goods received pursuant to KERP) from the value of its pre-invasion inventory; or

(c) if the Receiving Agency received Transferred Goods of greater value, or a longer remaining useful life, than those lost as a direct result of Iraq's invasion and occupation of Kuwait, an appropriate adjustment has been made in the present claim.

28/ The Panel issued Procedural Orders Nos. 6, 45 and 46 in September 1999, March 2000 and May 2000, respectively, to elicit such support.

29/ See further the explanation of the shorthand expression "incorrect valuation of KERP assets" at paragraph 47. Such adjustments are applied at paragraphs 358, 437, 507, 511 and 713. The Panel has not otherwise identified the Receiving Agencies, as many claimants were such Receiving Agencies.

30/ The Panel also finds that those purchases made at prices higher than the norm were of such urgency that the claimant could not reasonably be required to wait until prices had returned to normal patterns.

31/ The amount referable to the claim of the Kuwait Public Transportation Co. is US\$6,808,000 and that to the claim of the Kuwait Ports Authority is US\$379,000.

32/ The only exception was one sub-contract for the transport of some mobile generators by air. The Panel finds that, in light of the fact that only one type of aeroplane could accommodate the generators, it was reasonable for the contractor to choose the only sub-contractor that could provide that type of aeroplane.

33/ The Farah report at paragraph 477 noted that:

"Virtually all [of KISR's] buildings have been defiled and minor damage inflicted to finishes, as well as to electrical and plumbing systems ... Fires were set selectively in both the University and the Kuwait Institute for Scientific Research. Gunfire was intentionally aimed at the latter's main building, causing some structural damage. Restoring the Institutes's building will require around 50 per-cent of replacement value for burned areas and blast-damaged areas and 10 per-cent elsewhere".

34/ Paragraph 3(b) of Governing Council decision 13 (S/AC.26/1992/13) provides that "When the Commission learns, either through information

provided by the claimant or through other means, and before paying compensation from the Fund, that a claimant in categories "C", "D", "E" and "F" has received compensation elsewhere for the same loss, the amount already received will be deducted from the compensation to be paid from the Fund to that claimant for the same loss".

35/ The Farah report at paragraph 473 provided that "The entire libraries of [KISR] and all the nine university faculties, totalling over 300,000 volumes and 8,300 periodical titles and a quarter of a million technical reports on microfiche, have been removed, reportedly by truck to Iraq." And at paragraph 475 "Overall, there has been a mass removal of equipment. The June 1990 book value of that belonging to the Kuwait Institute for Scientific Research was KD 22 million, and the University inventory is far larger. The removal was systematic."

36/ The Farah report provided at paragraph 473 that "Twenty years of accumulated research data by the Kuwait Institute for Scientific Research researchers and the University professors have been taken away, burned or reduced to litter. The mission's inspection showed that lecture notes, research data and personal technical libraries are missing."

37/ See further endnote 23 of the First "F3" Report (repeated as endnote 23 of the annex). With the exception that compensation will be recommended for any portion of the cost of the post-liberation contract referable to repairing damage that was a direct result of Iraq's invasion and occupation of Kuwait, subject to verification and valuation.

38/ The Panel has therefore not found it necessary to consider whether such debts would have been written off under international accounting practice.

39/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

40/ The amount claimed is non-material.

41/ Being Jordanian, Palestinian, Sudanese and Yemeni employees.

42/ The amount claimed in respect of incentive bonuses is non-material.

43/ See further paragraph 45.

44/ Including both the employer's and the employees' contributions.

45/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

46/ This is the same rationale as that applied by the Panel to claims by tenants for repairs performed by them which were properly the responsibility of the landlord (see paragraph 68 of the First "F3" Report (repeated as paragraph 68 of the annex)).

47/ The repairs to the other residences were performed by KERO. The Panel is satisfied that there is no duplication.

48/ Including the hosting of conferences and receptions by the Amir of Kuwait.

49/ Applying the Panel's approach to claims for the cost of temporary repairs and for the cost of renting temporary premises (see paragraphs 72 to 77 of the First "F3" Report (repeated as paragraphs 72 to 77 of the annex)).

50/ Following the Panel's approach to the claim of the Civil Service Commission for temporary furniture (see paragraphs 296 to 297 of the First "F3" Report).

51/ The tangible property lost from the other residences was replaced by KERO and the Amiri Diwan. The Panel is satisfied that there is no duplication.

52/ Part of the amount claimed is non-material.

53/ Part of the amount claimed is non-material.

54/ The amount claimed is non-material.

55/ Part of the amount claimed is non-material.

56/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

57/ Part of the amount claimed is non-material.

58/ See further paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex).

59/ Part of the amount claimed is non-material.

60/ Except for one contract in relation to initial site restoration for one of the projects.

61/ The Panel finds, as more fully set out at paragraphs 374 to 380, that losses resulting from the destruction of the facilities at the Base are direct losses.

62/ This is the exception to the general findings at paragraphs 15 and 16.

63/ The Panel also finds that the same conclusion applies to the works planned for the Istiglal.

64/ Part of the amount claimed is non-material.

65/ In relation to the power station that is alleged to have been destroyed, MEW's claim is only for dismantling and debris removal costs and

the cost of repairs to some equipment related to the production of desalinated water (see paragraphs 290 to 293).

66/ See the general discussion on depreciation at paragraphs 17 to 19.

67/ Part of the amount claimed is non-material.

68/ At paragraph 66 of the First "F3" Report (repeated as paragraph 66 of the annex), the Panel found that damage to buildings that are not to be rebuilt is compensable. As the repairs in this claim were, in fact, undertaken, the Panel finds that the appropriate measure of damage is the costs thereby incurred.

69/ Except for some equipment related to the desalination process which is claimed under "Power plants" considered at paragraphs 275 to 278.

70/ The Panel has made a notional addition to correct an understatement that it found in reviewing this claim.

71/ Part of the amount claimed is non-material.

72/ This is an application of the Panel's finding at paragraphs 74 and 75 of the First "F3" Report (repeated as paragraphs 74 and 75 of the annex) that compensation should be provided for the cost of renting temporary premises while damaged premises were repaired.

73/ Part of the amount claimed is non-material.

74/ Except for those items on exhibition outside of Kuwait.

75/ The Panel's recommendation has taken these items into account in the manner set out at paragraph 44.

76/ MoInf was found liable to pay, and has paid, US\$60,379,745 to the private owners of the Collection. This is equal to the sum of the amounts claimed by MoInf for tangible property losses and for the losses discussed at paragraphs 328 to 333.

77/ This is because the seller must incur, amongst other things, dealer mark-up and shipping and conservation costs.

78/ As there is no evidence that any attempt has been, or will be, made to replace the lost pieces.

79/ Except that the valuation was by reference to the seller's price.

80/ The Panel does not recommend any compensation in relation to the retrieval of a small number of the pieces which were owned by the private owners of the Collection, but were not part of the Collection. An adjustment has been made to reflect that portion of the amount claimed that is referable to the retrieval of such pieces.

81/ At paragraph 24 of the First "F3" Report (repeated as paragraph 24 of the annex), the Panel found that compensation should be provided for the



reasonable costs of mitigating the damages resulting from Iraq's invasion and occupation of Kuwait.

82/ The amount claimed is non-material.

83/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

84/ The Panel has assessed the unit price by reference to the time at which it would have been reasonable, in all the circumstances, to place the replacement order.

85/ The Panel's recommendation has taken some items of heavy equipment, which were returned pursuant to UNROP, into account in the manner set out at paragraph 44.

86/ MPW does not claim loss of revenue for the period 2 August 1990 until 31 May 1991 because it asserts that to do so would be to duplicate its claim for relief paid to employees.

87/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

88/ Part of the amount claimed is non-material.

89/ "Base" is defined at paragraph 265.

90/ Iraq asserted in its response to Procedural Order 1 that various items were returned through UNROP, but provided no details of such items. The Panel does not therefore recommend any adjustment to the amount claimed in this regard.

91/ MoD notes that the contracts do not cover all repairs, and that some items were to be repaired or replaced as variations to those contracts.

92/ Some of the repairs were not completed until October 1995.

93/ The Farah report at paragraphs 473, 474 and 477 noted that:

"...The entire libraries of ... all the nine university faculties, totalling over 300,000 volumes and 8,300 periodical titles and a quarter of a million technical reports on microfiche, have been removed, reportedly by truck to Iraq. The books, manuscripts and files of four widely read journals published by the Faculties of Arts and Law have been plundered or destroyed. ...

The sophisticated equipment used for generating the research data is also gone. ... [The losses include] a large VAX machine from the Central Services of the University ... Smaller mainframes have been taken from the Faculties of Science and Engineering and complete specialized teaching laboratories in psychology, languages, commerce and geography are gone. Costly spectrometers, centrifuges and virtually every other sophisticated machine and instrument have been

taken from the science and engineering laboratories, while all faculties together have lost more than 1,000 personal computers. Typewriters were removed on a massive scale ...

All modern furniture has been taken from classrooms, offices and meeting rooms. Even non-academic spaces were plundered. The University sports stadium had 20,000 plastic seats removed."

94/ The amount claimed is non-material.

95/ See further paragraph 45.

96/ The Panel has made an adjustment which is de minimis as defined in paragraph 48 for overstatement.

97/ The amount claimed is non-material.

98/ See further paragraph 138 of the First "F3" Report.

99/ See further paragraph 45.

100/ This is a negative amount because the Municipality asserts that it received vehicles pursuant to KERP of a value in excess of those that it lost as a direct result of Iraq's invasion and occupation of Kuwait.

101/ Part of the amount claimed is non-material.

102/ The Panel notes that not all of the tenants ceased doing business for the whole of the occupation and emergency periods.

103/ The Panel finds that the period claimed is the period that revenue from the slaughterhouses was affected as a direct result of Iraq's invasion and occupation of Kuwait.

104/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

105/ All constituent parts are non-material items.

106/ The Municipality asserts in its claim that three of the nine contracts were abandoned after liberation and claims the amount paid for the work performed up to Iraq's invasion and occupation of Kuwait in respect of them. However, in its response to Procedural Order 29 issued in November 1999, the Municipality submitted that the work under one of these three contracts was, in fact, continued by two contracts entered into in late 1991 and 1992, respectively. The Panel accepts this assertion. The Panel's recommendation for this contract is, however, limited to the amount initially claimed by the Municipality.

107/ A contract for the construction of a funeral parlour on Failaka Island was abandoned as a result of the Government's decision to evacuate Failaka Island. A contract for the construction of prefabricated buildings at Wafra was abandoned because the buildings were completely destroyed and because of the Municipality's decision not to replace its lost heavy equipment.

108/ Provided that this amount does not exceed the amount claimed.

109/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

110/ This is the same rationale as that applied by the Panel to claims by tenants for repairs performed by them which were properly the responsibility of the landlord (see paragraph 68 of the First "F3" Report (repeated as paragraph 68 of the annex)).

111/ Provided that this amount does not exceed the amount claimed.

112/ This is the same rationale as that applied by the Panel to claims by tenants for repairs performed by them which were properly the responsibility of the landlord (see paragraph 68 of the First "F3" Report (repeated as paragraph 68 of the annex)).

113/ With the exception of a contract for a forestry irrigation project for which the saved expenses were calculated for the period 2 August 1990 to 31 May 1991.

114/ The Panel finds that there is no duplication of the claim of Kuwait Municipality considered at paragraphs 422 to 424.

115/ The post-liberation contract with the consultant was entered into at the same price as the pre-invasion contract.

116/ All constituent parts are non-material items.

117/ The Panel notes that the Farah report, at paragraphs 426 and 435, describes some of MoH's losses:

"The inspection by the mission showed that there was not a single room of [the building of the Ministry, situated on the sea-front] left untouched: ceilings had been destroyed, files and documents had been strewn on the floors, corridors and staircases. Computers and typewriters had been taken away ...

The Infectious Diseases Hospital is a 220-bed facility ... [t]wo of its wards were hit by bombs, causing structural damage and loss of equipment".

118/ The Panel notes that repairs to MoH's property were also carried out by KERO and is satisfied that such repairs are not claimed by MoH.

119/ Part of the amount claimed is non-material.

120/ The Panel notes that certain replacement medicines were purchased pursuant to KERP and is satisfied that they have been accounted for by MoH.

121/ Part of the amount claimed is non-material.

122/ The Farah report described the loss of significant quantities of medical equipment. For example, at paragraph 431, it is noted that "There are six general hospitals in Kuwait ... [T]he extensive and modern equipment of these hospitals, particularly in the electro-medical field, was either removed from the country, or exposed to damage as a result of the lack of maintenance and skilled personnel to operate it."

123/ The amount claimed is non-material.

124/ See further the discussion of the KERP claim commencing at paragraph 52.

125/ Part of the amount claimed is non-material.

126/ The Panel's recommendation has taken these items into account in the manner set out at paragraph 44.

127/ The Panel notes that certain items were replaced pursuant to KERP and is satisfied that they have been accounted for by MoH.

128/ Part of the amount claimed is non-material.

129/ The amount claimed is non-material.

130/ Part of the amount claimed is non-material.

131/ The Panel finds that the proportion of former employees who failed to return after liberation did not vary significantly from nationality to nationality.

132/ It should be noted that the cost incurred by the Government in providing medical treatment in countries other than Kuwait during the occupation period was claimed by the Ministry of Finance in Claim No. 5000112 (see paragraphs 188 to 211 of the First "F3" Report).

133/ See further paragraph 45.

134/ Part of the amount claimed is non-material.

135/ The Panel notes that certain repairs to MoP's real property were effected by and claimed for by KERO and is satisfied that there is no claim for such repairs by MoP.

136/ Part of the amount claimed is non-material.

137/ The amount claimed is non-material.

138/ Part of the amount claimed is non-material.

139/ The work boats and control boats were used primarily to clean up oil spills and the surveillance boat was used for monitoring water pollution.

140/ The Panel has taken the work boats into account in the manner set out at paragraph 44 and in so doing has made a further adjustment to the amount claimed.

141/ The amount claimed is non-material.

142/ The amount claimed is non-material.

143/ The Panel is satisfied that there is no duplicate claim for the chromatograph.

144/ The amount claimed is non-material.

145/ Part of the amount claimed is non-material.

146/ The Panel has found an arithmetical error in the amounts claimed in respect of the South Subahiya exchange, and has made a notional addition to the amount claimed so as to correct that error. The Panel also notes that repairs to another main centre, the Telecom Centre (known as the TEC building), were carried out by KERO and MPW and pursuant to KERP and is satisfied that there is no claim for such repairs contained in this claim.

147/ The Panel notes that certain repairs to the microwave links were carried out pursuant to KERP and is satisfied that MoC has not claimed for such repairs.

148/ The Panel finds, however, that MoC would have undertaken that conversion at dates earlier than set out in its claim and therefore that the useful life of certain parts of the network was overstated.

149/ MoC's claim includes the cost of temporary repairs that were not intended to be permanent, but the Panel notes that such repairs have not in fact been replaced by permanent repairs.

150/ Known as transmultiplexers.

151/ The Panel has identified an arithmetical error in the amounts presented and has corrected the error so that the amount claimed is correctly stated as US\$24,221,209. Part of the amount claimed is non-material.

152/ In a supplemental submission for this claim, filed in March 1999, MoC reduced the amount claimed for other tangible property by US\$1,362,804, so as to account for property returned by Iraq to MoC through UNROP. Having reviewed the nature of the property returned, the Panel has applied the reduction against this loss element. The Panel has made an adjustment to the amount of the UNROP deduction so as to conform the exchange rate used by MoC in the reduction calculation to that used in the claim itself.

153/ The Panel has identified an arithmetical error in the amounts presented and has corrected the error so that the amount claimed is correctly stated as US\$612,947.

154/ Some items were replaced pursuant to KERP and the Panel is satisfied that such items are not claimed by MoC.

155/ The Panel notes that MoC's lost vehicles were in part replaced pursuant to KERP and are in part claimed in MoC's claim number 5000045.

156/ All constituent parts are non-material items.

157/ The Panel considered the response to Procedural Order 30 issued in November 1999 in making this finding.

158/ Provided that this amount does not exceed the amount claimed.

159/ See further paragraph 45.

160/ See further paragraphs 17 to 19.

161/ The amount claimed is non-material.

162/ Part of the amount claimed is non-material.

163/ All constituent parts are non-material items.

164/ PAAET has shown that the failure of the majority of the employees to return was due to Iraq's invasion and occupation of Kuwait and, therefore, that the reasonable costs of locating and attracting new employees to replace these employees was a direct loss. The remaining employees who failed to return were of Jordanian, Palestinian, Yemeni or Sudanese origin. Having considered all the evidence and information available, the Panel has concluded that there is insufficient evidence to demonstrate that the failure of these employees to return to Kuwait was a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore does not recommend any compensation for the amounts claimed for locating and attracting their replacements.

165/ The course, which was given in the summer of 1992, covered the studies for the academic year 1991/92 because that academic year had been spent studying the material from the lost 1990/91 academic year.

166/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

167/ The Panel finds that there is insufficient evidence to show that the fall in this revenue to zero for the year ended 30 June 1993 was a direct result of Iraq's invasion and occupation of Kuwait.

168/ The amount claimed is non-material.

169/ See further paragraph 45.

170/ The amount claimed is non-material.

171/ In its response to Procedural Order 1, Iraq asserted that the employees could have returned to Kuwait using the return component of tickets issued to them by the Government as part of the employees' home leave entitlements under their employment contracts. Iraq did not provide any support for this assertion and, in addition, the Panel notes that it

would be unlikely that any tickets issued before 2 August 1990 would still have been valid at the end of the emergency period.

172/ Part of the amount claimed is non-material.

173/ Part of the amount claimed is non-material.

174/ The Panel finds that the saved expenses exceed the amount claimed for the Zoo animals but not for the Arabian horses.

175/ The amount claimed is non-material.

176/ Part of the amount claimed is non-material.

177/ Part of the amount claimed is non-material.

178/ The amount claimed is non-material.

179/ See further paragraph 45.

180/ Part of the amount claimed is non-material.

181/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

182/ The amount claimed is non-material.

183/ Part of the amount claimed is non-material.

184/ The Panel notes that certain repairs to MoI's buildings were carried out in the first year following liberation by KERO and is satisfied that MoI has not claimed for such repairs.

185/ Part of the amount claimed is non-material.

186/ The Panel's recommendation has taken 13 of these boats, which were returned pursuant to UNROP, into account in the manner set out at paragraph 44.

187/ See further the discussion of the KERP claim commencing at paragraph 52.

188/ Part of the amount claimed is non-material.

189/ The Panel notes that certain equipment was replaced pursuant to KERP and is satisfied that MoI has not claimed for such equipment.

190/ Part of the amount claimed is non-material.

191/ The Panel notes that certain computer equipment was purchased for MoI pursuant to KERP and is satisfied that MoI has not claimed for such computer equipment.

192/ The amount claimed for the purchase of this mainframe computer falls below the level of materiality adopted by the Panel.

193/ The Panel notes that certain equipment was purchased for MoI pursuant to KERP and is satisfied that MoI has not claimed for such equipment.

194/ Part of the amount claimed is non-material.

195/ The Panel notes that certain equipment was replaced pursuant to KERP and is satisfied that MoI has not claimed for such equipment.

196/ In its original claim filed in 1994, MoI valued its loss on the basis of its cash balance as of 30 June 1990, but later stated that its claim should be measured by reference to the estimated balance as at 31 July 1990 (thereby decreasing the amount stated to have been lost). The Panel has taken at its starting point such lower value.

197/ Part of the amount claimed is non-material.

198/ Part of the amount claimed is non-material.

199/ The Panel notes that certain repairs and replacements were carried out by KERO and pursuant to KERP and is satisfied that they are not claimed by DGCA.



Annex

RE-STATEMENT OF SECTIONS II, III, IV AND V OF THE FIRST  
"F3" REPORT (SEE PARAGRAPH 7 OF THIS REPORT)

II. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

6. In undertaking its review of the first instalment claims, the Panel has borne in mind:

(a) the status and functions of the Commission;

(b) its claims review processes, which are documentary rather than oral, and inquisitorial rather than adversarial; and

(c) the Panel's function to provide an element of due process in the review of claims filed with the Commission.

7. The Panel has, like other panels, carried out a thorough and detailed factual and legal review of these claims, performing the investigative role incumbent on the panels in the claims review process.

B. The procedural history of the claims

8. Prior to the formal submission of the first instalment claims to the Panel, the secretariat of the Commission (the "secretariat") performed a detailed review of these claims and determined, in accordance with articles 14 and 15 of the Rules, that each of the claims complied with the formal and procedural requirements of the Commission. The review also demonstrated that the complex and technical nature of a number of the elements in the claims would require the Panel to make use of independent loss adjusters and accountants as expert consultants ("expert consultants"). These were selected in August 1998. The expert consultants have worked closely with the Panel, preparing for the Panel's consideration reports covering the verification and valuation issues raised by the claims.

9. Pursuant to article 32 of the Rules, the Panel was provided with claim summaries recording the significant legal and factual issues identified in the claims as well as other information, such as legal briefing notes and reports produced by observers shortly after the liberation of Kuwait, to assist the Panel in its review of the claims.

10. The review of each claim by the Panel identified in many cases a need for further information and evidence. Each of the claimants was given the opportunity to provide the Panel with such further information and evidence.

11. The Executive Secretary of the Commission submitted a report 3/ dated 8 July 1998 to the Governing Council in accordance with article 16 of the Rules, which set out the first instalment claims and discussed the main factual and legal issues relating to them. A number of governments, including the Government of Kuwait and the Government of the Republic of Iraq, submitted additional information and views on the issues raised in response to that report.

12. Given the nature of the claims, the Panel determined that due process would require the provision to Iraq of copies of all of the claim files submitted by claimants. These were forwarded to Iraq pursuant to Procedural Order 1 issued in respect of each claim on 14 September 1998.

13. Iraq submitted a response to each of the first instalment claims. Each response included a statement of its position regarding the Commission's procedures and operation and raised specific issues of law, verification, valuation or fact. The Panel has duly considered these responses and has investigated those issues of fact accompanied by sufficient information to make investigation possible. Details of the responses so investigated, and the Panel's findings in respect of them, are set out in the consideration of each of the claims below.

14. In its responses to the claims, Iraq also requested the Panel to hold oral hearings into each claim at which Iraq would be permitted to attend and make submissions. Iraq has made similar requests in relation to the Commission's review of other claims. The Panel has considered carefully whether such hearings are required for the processing of the claims and their proper review by the Panel. The Panel concludes, in common with other panels, that the submissions and documents made available to it and the additional information obtained by it have permitted a thorough and fair determination and evaluation of each of the claims. Consequently, the Panel finds that it is not necessary to hold oral hearings.

15. At the direction of the Panel, technical missions were sent to Kuwait and to Winchester, Virginia, in the United States of America, 4/ to investigate certain factual and valuation issues and to carry out on-site inspections. Six such missions took place between August 1998 and June 1999. In June 1999, one of the Panel members, Commissioner Jacovides, participated in one such mission to Kuwait. The missions to Kuwait also included meetings

with PAAC and the Government of Kuwait's advisers, interviews with certain claimant witnesses, inspection of documents and visits to sites of physical damage and reconstruction. The findings of each mission are set out in the relevant sections of this report. The Panel has also reviewed videotape evidence submitted by the Government of Kuwait.

### III. THE LEGAL FRAMEWORK

#### A. Applicable law

16. The law generally to be applied by the Panel is found in article 31 of the Rules. This provides that the Panel shall apply:

"Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law".

17. The principal substantive rule applied by the Panel is paragraph 16 of Security Council resolution 687 (1991). In this, the Security Council declared Iraq to be liable under international law "for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

18. The Panel has taken note of certain findings contained in the reports of other panels of Commissioners, which have been approved by the Governing Council, regarding the interpretation of relevant Security Council and Governing Council resolutions and decisions, as well as the reports of the Executive Secretary issued pursuant to article 16 of the Rules and the responses to them.

#### B. The directness requirement

19. The Panel construes the requirements of paragraph 16 of Security Council resolution 687 (1991) as meaning that all loss or damage directly caused by Iraq's invasion and occupation of Kuwait is in principle compensable and, correspondingly, that any loss or damage not so caused is not compensable.

20. The Panel has also taken into account the Governing Council's guidance on the interpretation of these requirements, notably as set out in decisions 7 5/ and 15. 6/

21. Paragraph 34 of decision 7 provides as follows:

"These payments are available with respect to any direct loss, damage, or injury to Governments or international organizations as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period;  
or

(e) Hostage-taking or other illegal detention".

22. Paragraph 6 of decision 15 confirms that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait", in relation to which claimants will have to prove that a loss is "direct".

Paragraph 3 of decision 15 emphasises that for any alleged loss or damage to be compensable, the "causal link must be direct".

23. The Panel finds that there is ample authority in international law, including the reports of other panels, 7/ to support the view that a "direct loss" in these circumstances is one which, as a matter of objective assessment, would have been expected as a normal and natural consequence of Iraq's invasion and occupation of Kuwait. This is the test of causation that the Panel has applied to these claims.

C. Mitigation

24. In assessing the first instalment claims, the Panel has borne in mind the duty of the injured party to take all reasonable measures to avoid, diminish or mitigate the damage resulting from Iraq's invasion and occupation of Kuwait, 8/ and finds that the reasonable costs of so doing are themselves compensable.

IV. CONSIDERATION OF COMMON LEGAL ISSUES

A. Approach

25. Many of the legal issues raised in the first instalment claims arise more than once. The Panel therefore finds it appropriate to report first on issues common to several claims and then, in the light of these common considerations, to examine and report on each claim individually. The Panel now turns to such common legal issues.

B. Property losses

26. As to property losses, the Panel notes that in the first instalment claims there are 10 claims totalling US\$494,622,998 for loss of real property and there are 16 claims totalling US\$93,667,608 for loss of tangible property.

27. Some claimants assert that their premises were occupied by Iraq. All claimants provide evidence of loss, damage or destruction by way of witness statements, damage assessment reports and/or photographs or videotapes. Understandably, much of this evidence dates not from the occupation period itself, but rather from the period after liberation, when Ministry or other Government of Kuwait personnel were able to re-enter the premises of the various Ministries or other Government entities, as the case may be.

28. The Panel has also taken into consideration the Farah report, 9/ which sets out in detail 10/ the level of damage and destruction found after liberation. The report noted that the damage, while generally minor from a structural point of view, included significant damage to walls and installations. It also noted widespread vandalism and looting of equipment and furnishings.

29. The Panel is accordingly satisfied that the evidence submitted in support of the claims for property losses is sufficient to demonstrate that

the losses were direct, falling within the provisions of paragraph 34 of decision 7 11/ and those of paragraph 13 of decision 9. 12/

30. Accordingly, the Panel recommends compensation for such losses, subject to their verification and valuation carried out in the manner described in paragraphs 109 to 115 below. In relation to claims for vehicles, the Panel reviewed a motor vehicle valuation table submitted by the Government of Kuwait that lists the value of a wide range of motor vehicles in Kuwait as at 1 August 1990. After independent inquiries were made by the expert consultants as to the accuracy of this table, the Panel, in common with other panels, accepted it. 13/

C. Relief paid to employees

31. At the outset it is necessary to make it clear that the discussion in this section, and the amounts examined in it, relate not only to the first instalment claims, which are the principal subject of this report, but also to the other "F3" claims. This explains the large size of the totals involved.

32. Thirty-six of the sixty-two "F3" claimants seek compensation for relief payments made to the Kuwaiti and Gulf Cooperation Council ("GCC") employees of the Government of Kuwait. The payments amounted to the salaries the employees would have earned, but did not receive, in respect of the occupation and emergency periods. Each such claimant seeks compensation in respect of its own employees. These employees, some of whom remained in Kuwait during the occupation and emergency periods and some of whom left after Iraq's invasion and occupation of Kuwait, did not receive their regular salaries during those periods. The Government made the relief payments in a series of lump-sum payments commencing after liberation, and claims the amounts so paid. The total amount of the compensation sought for these payments in all the "F3" claims is US\$2.03 billion and the number of employees in respect of whom such claims are made is around 100,000.

33. The facts surrounding each of these claims are sufficiently similar for the Panel to consider them together. The amounts claimed constitute a not insignificant percentage of the total compensation sought by the Government of Kuwait. The Panel has therefore found it appropriate to set out its consideration of these claims in detail.

34. The Government supplemented each of these claims by submitting in May 1998 additional information that included the following background:

"In 1991, Kuwait's Council of Ministers directed, in partial relief for the major losses suffered as a result of Iraq's invasion and occupation, that Government organizations should pay the salaries that their Kuwaiti and GCC employees would have earned during the seven-month occupation period ... and three-month recovery period".

35. Paragraph 36 of decision 7 provides in part as follows:

"[P]ayments are ... available to reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

36. The Panel finds, on the basis of the considerable evidence now made available to it, that the payments for which the claimants seek compensation were made to compensate for the loss of the employees' financial support during the occupation and emergency periods. Such payments constitute payments made or relief provided to others within the meaning of paragraph 36 of decision 7 and are thus in principle compensable.

37. In assessing the amount of compensation to be paid, the Panel has borne in mind the number of employees concerned and the impossibility of calculating the actual entitlement of each individual. It has therefore proceeded on the basis of calculating the compensation payable in respect of the employees by way of an average individual entitlement (the "entitlement"), using information provided by the claimants and the Government so as to ensure that the entitlement is as representative as possible.

38. The two main factors determining the entitlement are the length of the period for which payment of compensation is justified and the amount of salary which would have been received by each individual during that period, less appropriate deductions as explained in paragraphs 41 to 48 below.

39. With respect to the first factor, the Panel finds that compensation should be awarded based on the period that the employees were reasonably unable to work. Recalling that the positions of the employees were suspended, not terminated, the Panel concludes that it was usually not possible for the employees to resume their positions until the end of the emergency period. The employees were thus reasonably unable to work during both the (seven-

month) occupation period and the (three-month) emergency period, a total of ten months.

40. With respect to the second factor, the first step undertaken by the Panel is to compare the monthly amounts ordinarily received by way of salary by the employees and the amounts actually paid retrospectively. 14/

41. The Panel notes that the Government of Kuwait operates a social security system which confers pensions and similar benefits on employees, and which is funded by contributions from employers and employees (the "Social Security Fund"). These contributions are calculated as a percentage of salary and the contributions of the employees, being five per cent of gross salary, are deducted at source from the salaries paid to them. As part of the first step described above, the Panel requested the Government to confirm whether the amounts paid to the employees and claimed as relief took into account the employees' contributions where necessary and whether there had been any loss of benefits to the employees. The Government responded that there had been no loss of benefits, and that some but not all claimants had accounted for the contributions by paying to the employees only their gross salary less the five per cent deduction. The Panel has taken the Government's response into consideration and reviewed it in light of the evidence provided in support of each claim. The Panel has found that suitable account has been taken in a number of claims. The Panel has therefore determined that an adjustment should be made to the amounts claimed in cases in which the Panel is not satisfied that the social security contributions have been adequately accounted for.

42. In order to ensure that the entitlement accounts for the employees' true losses, as a second step the Panel considers and brings into account the employees' entire financial receipts (including the benefits received from relief programmes) and expenditures over the compensable period. Furthermore, the Panel has applied the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses. In other words, "saved" expenses, that is, expenses that the employees would ordinarily have incurred if Iraq's invasion and occupation of Kuwait had not taken place, but did not in fact incur during the period for which compensation is recommended, fall to be deducted from the entitlement.

43. In order to ascertain what other relief payments were made and what expenses the employees might have "saved" during the period, the Panel issued Procedural Order 15 in respect of all relevant first instalment claims, seeking information in this connection. A comprehensive response was received, which provided a model of the average Government employee covering



the amount and nature of his or her income and expenditure and the benefits obtained by him or her through policies implemented by the Government of Kuwait during the period.

44. This response showed that the pre-invasion levels of consumption in Kuwait were very high, exceeding on average the average Government employee's monthly salary. 15/ It also described a wide-ranging programme of relief payments. 16/ The Panel has taken this information into account. 17/

45. The Government submitted that only a few employees who left Kuwait could demonstrate that their costs outside Kuwait exceeded the relief received and that these employees have made individual claims before the Commission. With regard to those who did not leave Kuwait, the Panel assumes that any losses in respect of additional costs incurred could similarly have been the subject of claims before the Commission. Accordingly, the Panel assumes that additional living expenses and the relief paid in respect of them need not be taken into account when calculating the employees' true losses.

46. In the light of the above considerations, the Panel finds that deductions for "compensation received elsewhere for the same loss" should be made in respect of the free food and utility services provided in Kuwait over the period above. 18/

47. The Panel further finds, from the model provided by the Government of Kuwait, that the employees who were outside Kuwait during the period did indeed "save" certain expenses in Kuwait. 19/ That is, they did not incur a proportion of ordinary and anticipated living expenses over the period.

48. On the basis of the matters noted in paragraphs 46 and 47 above, the Panel recommends a deduction of 60 per cent from the amounts claimed. That is, the Panel recommends a total award of 40 per cent of the relief paid to employees and claimed in each of the relevant "F3" claims, subject to verification of the amounts claimed and the Panel's assessment of the evidence presented. 20/ Accordingly, the Panel recommends an award to each respective claimant calculated in this manner.

#### D. Loss of revenue

49. A number of the Government of Kuwait's claims seek compensation for the loss of revenue that would have been earned by the relevant claimant during the occupation, emergency and subsequent periods. The facts and circumstances of each claim vary according to the nature of the revenue-generating activity, but the basic question of the compensability of the Government's loss of

revenue is relevant to all such claims, and the Panel has therefore considered the question as a common legal issue.

50. The Panel has considered whether losses of the Government of Kuwait's revenues are compensable in accordance with paragraphs 1 to 4 of Governing Council decision 9. 21/ These paragraphs state that the propositions and conclusions contained therein "shall apply to compensation for the loss of earnings or profits and other business losses covered by Security Council resolution 687 (1991)" and, after noting the liability of Iraq for direct losses, continue that "[u]ltimately it will be up to the commissioners to identify the applicable principles and apply them to the circumstances of particular cases".

51. The Panel is satisfied that Iraq's invasion and occupation of Kuwait led to the interruptions in Government services complained of, but that, by reason of the diversity of economic factors bearing upon each case, the determination of any revenue losses suffered has to be made separately for each claim.

52. The Panel will discuss in section VI below, in connection with the first instalment claims, whether individual revenue losses are compensable and, if so, the measure of compensation and the time period in respect of which compensation should be paid. The Panel finds that the time period is that during which the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has considered such time periods by reference to historical revenue trends and notes that the periods may in some cases extend to several years.

53. The Panel appreciates that acceptance of a loss of revenue as a compensable claim assumes that the revenue-generating activity would have continued at the same general level if Iraq's invasion and occupation of Kuwait had not occurred. It is, of course, true that all revenue collection depends upon some activity by a third party, e.g., a licensee seeking a licence for which he or she must pay. But the fact that the collection of such revenue is predicated upon the action of a third person cannot be seen as breaking the chain of causation between Iraq's invasion and occupation of Kuwait, on the one hand, and the particular loss of revenue, on the other. This is because the third party's action belongs to a class of conduct the continuation of which in periods of normality can reasonably be expected. Losses of revenue arising from the fact that fines or other penalties were not generated during the occupation and emergency periods are also to be treated in the same manner as other claims for loss of revenue and are to be valued accordingly.

54. In order to have a basis for assessing the extent and nature of revenue that could have been expected to be earned and that which was in fact earned, and to assist it in the consideration of the individual losses of revenue described below, the Panel issued Procedural Order 4 to obtain information as to revenue earned by relevant claimants in the period from 1 July 1985 to 30 June 1995. The information thus provided has been taken into consideration by the Panel in reaching the recommendations in section VI below.

55. In calculating revenue losses, the Panel has again applied the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses.

56. This principle involves two considerations: first, that any expenditure which would have been incurred in the generation of the revenue lost, but which has not been so incurred, should be brought into account to reduce the claimed loss; 22/ second, where the Panel has identified extraordinary or increased revenues flowing from Iraq's invasion and occupation of Kuwait, such revenues should be accounted for in like manner. The Panel has therefore taken any such extraordinary income into account in connection with the loss of revenue claims.

57. The Panel has also taken account of amounts going to generate revenue in one Ministry or Government entity that would have been paid by another. This is because any such loss of revenue by one Government entity is an expense saved by the entity that would otherwise have paid it.

58. The Panel notes that the revenue of the Government of Kuwait may have been affected by changes in the population composition of Kuwait after liberation and has considered the impact of such changes where necessary.

#### E. Contract interruption losses

59. The Government of Kuwait has presented a number of claims for compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990 23/ and which had been concluded between a Government entity and third-party contractors, generally for the construction of a building or facility. The work was usually under way at the time of the invasion of Kuwait. In most cases, the relevant Government entity asserts that the contractor refused to complete the remaining contract work without extra payment to cover the costs of site restoration, increases in the cost of materials and other cost increases in the post-liberation period. The claimants usually negotiated a revised price with the contractors.

60. "Contract interruption losses" therefore encompass claims for increased costs under re-negotiated contracts, reflecting in certain cases additional work, such as site restoration. In considering these losses, the Panel, like the "F1" panel, 24/ has noted the obligation on each claimant, arising from article 35(1) of the Rules, to demonstrate that a particular loss is eligible for compensation. In the context of contract interruption losses, therefore, the claimants must demonstrate that the price increases were a direct result of Iraq's invasion and occupation of Kuwait.

61. Recalling the obligation upon the claimants under article 35(3) of the Rules to submit sufficient evidence to prove their losses, the Panel sought information as to the conditions pertaining in the construction and building industry both before and after the occupation period, including information as to the number and nationality of construction workers in both periods. The Panel has considered such information in arriving at its recommendations on the first instalment claims set out below.

62. The Panel finds that, following the liberation of Kuwait, there was a general increase in the price of goods and services in Kuwait and that such increase was the result of many factors, the precise effect of which it is impossible to identify.

63. In relation to only three causes of increases in price has the Panel been able to determine that the causal link was "direct". These are price rises shown to be linked specifically to:

(a) site restoration costs (including those related to the replacement of materials and equipment taken during Iraq's invasion and occupation of Kuwait and which were needed for the resumption of construction contracts);

(b) additional transportation costs (including double-handling costs);  
and

(c) additional insurance costs. 25/

64. The Panel has determined that price increases caused by these factors are compensable. As regards other causes of price increases, the Panel was unable to conclude that they were a direct result of Iraq's invasion and occupation of Kuwait.

F. Buildings not intended to be rebuilt

65. The Government has presented a number of claims for compensation for damage to buildings, usually schools or mosques, which will not be rebuilt principally because of their location near the border between Kuwait and Iraq or on Failaka Island. The claim is usually made for the estimated cost of reconstructing the building.

66. The Panel finds that the damage to such buildings is, in principle, compensable. In particular, the Panel finds that Iraq is liable for damage caused by it, even if the Government of Kuwait decides not to rebuild or repair the damage. However, the Panel has awarded as compensation the cost of reconstruction only in cases in which it is satisfied that the relevant building was incapable of repair. In other cases, only the cost of repair is awarded. In appropriate cases, the Panel has made adjustments for such items as depreciation, wear and tear, and reduced maintenance expenses arising from not having to maintain the building in the future. The compensation is measured by the cost at such time as it would be reasonable, in the ordinary course of events, to expect reconstruction or repair to have taken place.

G. Damage to leased premises

67. The Government of Kuwait has presented a number of claims for the cost of repairing damage to premises which it occupied as tenant at the time of Iraq's invasion and occupation of Kuwait.

68. The Panel has noted that, in common with a number of legal systems, such repairs may legally have been the responsibility of the landlord pursuant to the lease and/or Kuwaiti law. To require the landlord to undertake the repairs and subsequently claim the cost from the Commission or (if the landlord was unwilling or unable to undertake the repairs) to require the Government of Kuwait to undertake the repairs and reclaim the cost from the landlord and not the Commission would, in the circumstances of Iraq's invasion and occupation of Kuwait and the widespread damage to the Government's facilities, be too technical and rigid an approach. The Panel finds that where premises leased to the Government were damaged as a result of Iraq's invasion and occupation of Kuwait, the cost of the repairs should be awarded to the person who paid for them, provided that the other party to the lease has not been awarded compensation for the same loss.

69. In order to ensure that the Commission recommends payment only once for repairs to each of the damaged buildings in question, the Panel instructed the

secretariat to examine the claims of the relevant landlords and advise the Panel of any duplication of claims in respect of the repairs. An award has been made by the Panel only where no duplicate claim has been awarded by the Commission.

H. Contractual provisions allowing penalties for late completion or other breaches of contract

70. The Government of Kuwait has presented a number of claims for compensation for the full price of contracts for repair or reconstruction made after the end of the occupation period, although there were provisions within such contracts for a reduction in the contract sum for late completion or other breaches. Although it is at times apparent that a situation may have existed giving rise to the right to use such provisions, in most instances there is no evidence of advantage having been taken thereof.

71. The Panel has considered the effect of such provisions, and of whether or not they were invoked, on the extent of compensation payable. The Panel notes the obligation on each claimant to obtain a reasonable price for remedial works. Having regard to this obligation, and as part of the overall determination of the reasonable cost of the repair or reconstruction, the Panel finds that where the evidence shows that a reduction in the contract sum could have been insisted on, a reduction in the claim to that extent is warranted.

I. Temporary repairs followed by more permanent repairs

72. The Government of Kuwait has presented a number of claims for the cost of urgent work undertaken to effect temporary repairs (for example, the claim in relation to the Kuwait Emergency Reconstruction Office). The cost of subsequent and more permanent repair has also been claimed in many cases, sometimes found in the same claim as the temporary repairs and sometimes in a different claim.

73. The Panel has considered whether and to what extent the assessment of loss should take into account the cost of such temporary repairs. Many of the Government's facilities and services suffered a considerable amount of damage as a result of Iraq's invasion and occupation of Kuwait. In many cases, and particularly in the immediate post-liberation period, it was essential rapidly to restore these facilities and services to at least a minimum operating capacity. In other cases, temporary repairs prevented greater damage being caused to the Government's facilities and services and thus helped to mitigate

future damage. The Panel therefore considers that it was reasonable for the Government to address required emergency repairs as priorities and then to undertake permanent repairs at a later time. The Panel finds that the cost of temporary repairs which were reasonably necessary in the circumstances is compensable and has proceeded on this basis.

J. Temporary premises

74. The Government of Kuwait has presented a number of claims for the cost of renting residential or business premises in Kuwait during periods in which the construction of new premises or the repair of existing premises was delayed as a result of Iraq's invasion and occupation of Kuwait. The claim for compensation is for the cost of renting alternative premises for varying periods following liberation.

75. The Panel determines that in principle such costs should be awarded for a reasonable period following liberation. In each specific case, consideration has been given to the nature of the damage and to the time normally likely to be necessary to effect site restoration, repairs or to complete construction. Associated with the latter question is that of the attribution of the cause for the relevant delay. In this regard, the Panel finds that the principles set out in paragraph 63 above are pertinent.

76. The Panel similarly finds that the costs of providing temporary housing to employees who, before the invasion, were provided with accommodation by a Ministry, is compensable to the same extent as the costs of temporary premises.

77. The Panel has sought to ascertain the reasons for the delay in the construction of new buildings and has scrutinised the evidence to identify both the original contractual date for completion of the new premises and the date for completion under the resumed contract. It has done so to ensure that delays arising other than from Iraq's invasion and occupation of Kuwait, including pre-invasion delays, are not considered in the ascertainment of the loss.

K. Temporary headquarters outside Kuwait

78. The Government of Kuwait has presented a number of claims for the expenses of operating offices outside Kuwait during the occupation and emergency periods and for some short period thereafter.

79. The Panel recalls that as a result of Iraq's invasion and occupation of Kuwait, many of the Government's usual operations in Kuwait could not continue there. The Government was therefore obliged to conduct its operations elsewhere. Further, in some situations, the operation of offices outside Kuwait prevented greater damage being caused to the Government and to the people remaining in Kuwait. The Panel thus finds that the cost of operating offices outside Kuwait is compensable where the decision to establish such operations was reasonable in the circumstances. In each such claim, however, the Panel has been careful to ensure that only reasonable costs are allowed and it has deducted expenses that would ordinarily have been incurred in Kuwait if Iraq's invasion and occupation of Kuwait had not occurred.

L. Cost of returning employees to Kuwait

80. The Government has also presented a number of claims for the cost of returning its employees to Kuwait after liberation to enable them to resume work. Most of these employees were non-Kuwaitis who left Kuwait following Iraq's invasion and occupation to return to their home countries.

81. The Panel finds that the reasonable costs of returning employees to Kuwait are compensable:

(a) under paragraph 34(b) of decision 7 where the cost of returning employees is a necessary consequence of evacuation; or

(b) where the return of the employees was a reasonable step in mitigation of loss (for example, where it is shown that the cost of returning an employee is less than the cost of hiring and training a new employee).

82. In each case the Panel has considered whether the costs were reasonable and were wholly incurred as a result of Iraq's invasion and occupation of Kuwait. In particular, the Panel has taken into consideration such factors as whether the employees would have been granted home leave during the period in question and whether the employees travelled in a class higher than appropriate. 26/

M. Pre-paid rent

83. A number of the first instalment claims seek compensation for rent paid in advance on office or other premises ("pre-paid rent"). The claimants maintain that no benefit for the amounts paid was derived during the seven month occupation period and during the months following liberation because the Government was unable to use the premises. In each such case the Government



claims the amount of the pre-paid rent for the period during which it is asserted that no benefit was obtained.

84. The Panel finds that compensation should be awarded where rent has been pre-paid on premises but only for the period that the Government of Kuwait was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. 27/ The measure of compensation should be the amount of pre-paid rent referable to that period, since such rent is an accurate indicator of the value of the benefit lost. The Panel has considered in each first instalment claim whether the claimant has demonstrated that its inability to use the premises for the period claimed was a direct result of Iraq's invasion and occupation of Kuwait, such as would have been the case if, for example, Iraq had occupied the premises in question.

85. The Panel is satisfied that there were no means by which the Government of Kuwait could have recovered the pre-paid rent and that, therefore, there has been no failure to mitigate on the part of the Government.

N. Avoiding over-compensation

86. The Panel notes that the Government of Kuwait's activities in Kuwait were interrupted during the occupation and emergency periods and it would appear, therefore, that a proportion of usual Government expenditure may not have been incurred. The Panel has begun examining and will continue to examine throughout its review of the F3 claims whether and to what extent to bring into account any such unincurred expenses by way of set-off against the amount of compensation awarded to the Government.

87. In relation to the first instalment claims, the Panel has adopted and applied the following principles:

(a) loss of revenue claims should be awarded net of the identifiable expenses which would ordinarily have been incurred in the generation of that particular revenue (including, where appropriate, salaries); 28/

(b) where it can be established that expenses were saved as a result of damage to or destruction of assets, adjustments should be made to reflect this (see, for example, the claim for quality control testing equipment in the claim of the Ministry of Commerce and Industry at paragraph 317 below); and

(c) in claims for the cost of operating temporary offices outside Kuwait, considered at paragraphs 78 and 79 above, adjustments should be made to reflect any expenses saved by not operating offices in Kuwait.

88. The Panel does not consider it appropriate to deal with the more general question of unincurred expenses, which have not been brought into account as set out in the preceding paragraph, in a piecemeal fashion in the first instalment claims. It prefers, instead, to deal with the matter in a single consideration which can best take place in the context of the claim relating to the Kuwait Investment Authority 29/ to be reviewed in the third instalment. At that time the Panel will wish further to consider the following factors:

(a) that not all the Government's losses are compensable by the Commission, and not all Government losses have been claimed;

(b) that the Panel's recommendations in relation to certain claimed losses may include reductions for evidentiary reasons;

(c) that any reduction in Government expenses may have had a correlative effect on the benefits that the Government and its citizens would otherwise have enjoyed; and

(d) that revenue claims have been submitted by Kuwaiti entities in other claim categories and, in some cases, compensation may have been awarded by the Commission.

89. In this connection, the Panel requested from the Government of Kuwait, amongst other things, information as to the historic income and expenditure position of the Government and the Kuwaiti economy as a whole, a history of the financial reserves of the Government for the period 1986 to 1996, details as to claims made to the Commission for loss of revenue and an indication as to revenue losses for which no claim has been lodged with the Commission.

90. The Government of Kuwait submitted a detailed response which provided extracts from its national accounts and the bases upon which its financial information is recorded, a description of budgets and procedures, explanations as to the bases of presentation of financial accounts and statistics, and details of revenue claims before the Commission. The Panel notes that the Government keeps confidential certain information regarding its financial reserves and assets and that only limited secondary sources of such information are available.

91. The adjustments in the first instalment claims in relation to matters falling within sub-paragraphs 87(b) and 87(c) above will be borne in mind by the Panel when eventually considering the more comprehensive question of the overall position of the Government as set out in paragraph 86 above.

O. Claims preparation and claims processing costs

92. The Government of Kuwait has presented a claim for claims preparation costs (being the fees of attorneys and other professional persons, and costs of support and secretarial staff, reproduction, and communication facilities). 30/ This claim aggregates such costs incurred in relation to the preparation of virtually all "F3" claims. It also includes the Government's own claims processing costs (being the cost of the administrative work involved in dealing with claims, including the establishment of necessary infrastructure such as PAAC). It is not clear which portion of the claim is for claims preparation costs and which portion is for claims processing costs.

93. The Panel has been notified by the Executive Secretary that the Governing Council intends to resolve the issue of the compensability of claims preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to the claim for such costs.

94. As to claims processing costs, the Panel notes that decision 18 31/ provides for compensation for such costs by allowing for the deduction of a set fee from payments made to claimants. In light of this decision, the Panel considers itself bound not to recommend any additional compensation in respect of claims processing costs.

P. Exchange rate

95. The claims for repair costs or replacement materials involve losses incurred in Kuwaiti dinars ("KD") or other currencies, but in all cases converted into and claimed in United States dollars. The Commission issues awards in United States dollars. The Panel must therefore consider whether the exchange rates used by the claimants are appropriate.

96. The Government of Kuwait states that, generally, when a single payment was made the exchange rate used was the rate on the date of payment; when many payments were made the rate was the average rate or rates for the relevant period over which the payments were made; and, for future payments, the rate was the average rate for the most recently available twelve-month period.

97. The Panel finds that such an approach is reasonable in the circumstances. In some cases other factors operate. These are described in the recommendations for the claims concerned.

Q. Interest

98. The Government seeks interest on the principal claim amount in respect of each first instalment claim. Decision 16 provides in part that "interest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". The Governing Council has stated that it will address the methods of calculation and payment of interest in the future. It is thus for the Panel to determine only the date from which interest is to run.

99. The Panel has considered how for the purposes of calculating interest the date of a specific loss is to be determined. It finds that, in the context of the enormous number of individual claim items, within several loss types, a specific determination for each claim item is impractical. The Panel has, therefore, concluded that for this purpose all losses should be deemed to have occurred on one single date.

100. The Government of Kuwait itself identified two possible dates at two different stages of the proceedings. The Government first selected, in its "Summary Report of Government Claims" submitted in July 1994, 26 February 1991 as the relevant date. This was on the basis that it was the last date on which Iraq could have taken or damaged assets, and that the Government was entitled to interest from that date, regardless of when expenditure was incurred on repairing or replacing the asset. A further reason was that since many of the losses occurred near the end of the occupation, the date of liberation was closer to the date of the actual losses than any other. In a subsequent submission, however, filed in May 1998, the Government amended its first submission to provide that interest should accrue from 2 August 1990, the date on which Iraq invaded Kuwait.

101. The matter has to a large extent already been examined in the "Report and Recommendations made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim (the "WBC Claim")" 32/ wherein the panel took the view that Kuwait did not suffer loss until it actually disbursed the costs of repair or reconstruction. The Panel shares this view and is therefore unable to accept Kuwait's second submission, that interest should commence on 2 August 1990.

102. Having regard to the varying dates of loss and the need to select one date for interest purposes, the Panel determines that, in all the circumstances, the date of loss for calculation of interest is 26 February 1991. 33/

V. VERIFICATION AND VALUATION

A. The importance of evidence

103. The Rules direct that each claim must be supported by sufficient evidence. Thus, article 35(1) of the Rules prescribes that:

"Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

104. In relation specifically to governmental claims, article 35(3) provides that:

"... such claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss".

105. Pursuant to these provisions, each claimant has submitted a considerable body of documentary and other evidence in support of its claim. Some of this material was filed with the statement of claim itself; substantial further material has been provided in response to questions raised by the Panel; and still other material has been submitted to the Commission and reviewed (in some cases during on-site inspections) in Kuwait and elsewhere.

106. The evidence submitted by the claimants, including that additionally requested by the Panel, comprises, in most cases, a sample of the documents available. The size of the sample has been determined by reference to the nature of the loss and the character and quantity of the evidence available.

107. The Panel has addressed a number of specific requests to various Ministries and other Government entities for additional information and documents in their possession. These requests took the form of procedural orders, and other requests issued pursuant to procedural orders, of which to date some 100 have been issued. The responses to each such order or request, and their accompanying documents, have been duly considered by the Panel and its expert consultants.

108. The Panel has noted the claimants' general assertions that physical damage and destruction during Iraq's invasion and occupation of Kuwait

included the destruction of large numbers of documentary records, though the degree of destruction varied from claimant to claimant. As a result, certain elements of claims are supported only by witness statements or by reports without underlying primary documentation. The Panel, in the observance of due process and by the issue of procedural orders to claimants, has on occasion requested further evidence from the claimants in order to ascertain the degree of destruction of records with a view to assessing the evidence as a whole.

B. The procedures adopted by the Panel to verify and value the first instalment claims

109. The principal tasks of the Panel are to assess the evidence with a view to determining whether the claimed loss or damage has in fact occurred and, in light of that determination, to assess the amount of compensation to be recommended in respect thereof.

110. In carrying out these tasks, one of the prime objectives of the Panel is to ensure consistency in the examination of the material and the resulting recommendations. This cannot be achieved other than by a systematic approach rigorously pursued in accordance with the requirements of the Rules. For this purpose the Panel has established three series of steps.

111. The first is a general verification and valuation programme applicable to all claims. This sets out procedures for the verification and valuation of the claims, including an initial assessment of the character and probative value of all the evidence originally submitted in support of each claim.

112. The second series of steps comprises specific verification and valuation programmes. These set out more detailed procedures for certain loss types, namely, contract, real property and tangible property losses. They include the identification of particular documents needed to establish the existence and terms of contracts and the title and character of real and tangible property as well as those needed to value the losses claimed.

113. The third series of steps comprises supplemental verification and valuation programmes. These set out further detailed procedures for each loss element and were designed at an early stage of the review of a claim to meet its particular character. The programmes identify any additional evidence and other information beyond that originally submitted by the claimant which the Panel considers necessary for a proper review of the claim. This step has not been carried out if the loss element under review falls below the level of materiality which is described below.

114. In applying these programmes the Panel has systematically scrutinised the evidence according to its type, date, 34/ quality and quantity and has made consistent adjustments to reflect the extent to which the evidence is not sufficient.

115. Any attempt by the Panel to set out in detail in relation to the individual claims before it the precise manner in which it has found that the evidence is sufficient or not sufficient would involve it in a complex exposition of a very large volume of material and would not be feasible within the confines of a panel report. Moreover, the weighing of evidence is not an exact science but necessarily involves some exercise of judgement or discretion by the Panel. The Panel has, therefore, normally not gone beyond a statement of its conclusions in each case.

C. Evidential status of the reports of the claimants' accountants and engineers

116. Each claim contains an accountant's report and a number of them contain an engineer's report, in all cases commissioned by the Government of Kuwait.

117. The accountant's reports include descriptions of the claimed losses, summaries of the valuation methodologies adopted and schedules showing the derivation of the amounts claimed.

118. The engineer's reports contain evaluations of the repair and restoration works, commenting on the extent to which the works were required to repair invasion-related damage, the scope of works including enhancements, the degree of documentary support for the work said to have been done, the avoidance of duplication within the "F3" claims and, where contract interruption losses are claimed, a comparison of the work done under the pre-invasion and post-liberation contracts.

119. The Panel notes that all of the reports have been commissioned by the Government of Kuwait for the purpose of the submission of its claims to the Commission. They do not, therefore, constitute original or primary evidence, in contrast to, for example, written contracts, receipts and invoices. As such, the Panel has treated these accountant's and engineer's reports as supporting documents and not as primary evidence of the matters of fact asserted in them.

D. Materiality

120. The sheer bulk of the claims before the Panel obliged it to focus on those parts of the claims 35/ which carry a greater risk of significant overstatement. The line between these parts and others is called the "level of materiality", with those parts of the claims above the level of materiality being called "material" and those below it "not material".

121. The Panel has set the level of materiality at US\$500,000. However, the Panel has reduced the level of materiality in the following cases:

(a) where it is necessary to ensure the examination in sufficient detail of at least 80 per cent of the total value of any loss element across the "F3" claims, the level of materiality has been reduced accordingly, but not below US\$100,000;

(b) for claims with a value below US\$5,000,000 (excluding interest, claims preparation costs and any other part of the claim that the Panel finds not to be a direct loss) the level of materiality has been reduced to 10 per cent of the total value of the claim, but not below US\$100,000; and

(c) in exceptional instances in which the Panel has found it appropriate to do so.

122. The Panel has determined that the use of these materiality levels will ensure a detailed review of over 99 per cent of the principal claim amount of the "F3" claims. The Panel considers this to be a necessary and therefore suitable approach to achieving its objective: that is, properly to review the "F3" claims within the time allotted for that task.

123. While the general and (where relevant) specific verification and valuation programmes have been carried out in the review of all loss elements, a supplemental verification and valuation programme has been designed and followed only for material loss elements. Further, so far as the non-material loss elements are concerned, the Panel has not requested any documentation other than that originally submitted by the claimant. In assessing the sufficiency of the evidence submitted in support of these loss elements, the Panel has regard to the fact that the claimant has not been requested to submit additional evidence and that to conclude that the evidence submitted is insufficient may unfairly penalise the claimant concerned. The Panel therefore assesses the sufficiency of the evidence in support of these loss elements in two stages; first, by applying the criteria described at paragraphs 114 and 115 above in the usual manner and, second, by adjusting its



conclusions to reflect the average sufficiency of all the evidence submitted in support of the claim concerned and/or the relevant loss element, as appropriate.

E. Reporting on the verification and valuation of the first instalment claims

124. The expert consultants have provided the Panel with comprehensive reports on the results of the verification and valuation programmes for the first instalment claims, indicating their opinions as to the extent that each is supported by the evidence and the value to be given to each. The Panel has considered these reports in detail prior to coming to its conclusions and recommendations. These are set out in section VI below. The Panel is satisfied that each of the recommendations which it has made is reasonable in all the circumstances.

125. In explaining in any given case why a claim or part thereof has been reduced or rejected the Panel has sometimes used one or more of the following shorthand expressions, the weight of which will necessarily vary from case to case:

(a) "method of valuation" means that the amount claimed has been reduced because the valuation method used by the Government of Kuwait is not appropriate under the circumstances of the loss or the Panel has used an alternative method of valuation (such as the use of book value rather than the use of depreciated replacement cost);

(b) "overstatement" is used where an error of fact or of calculation is discovered;

(c) "inadequate procurement process" is used where the Government has failed to use an appropriate procurement process to ensure that the loss is kept to a minimum. In many cases, the appropriate procurement process would involve resort to competitive tendering, but such procedures may not be appropriate in the context of urgent or emergency repair work, for example;

(d) "enhancement" is used where the Government in replacing damaged or lost items has obtained an asset that is better than the one previously used, but has failed to give adequate credit for the improvement;

(e) "inadequate accounting for depreciation" is used where the Government has not properly considered the age or the remaining useful life of

the asset as at the date of the loss or has used an inappropriate rate of depreciation;

(f) "inadequate accounting for residual value" is used where an amount is likely to be received from the disposal of an asset at the end of its useful life, and that amount is not adequately taken into account;

(g) "saved expenses" is used where the Government has not incurred expenses that it would ordinarily have incurred had Iraq's invasion and occupation of Kuwait not occurred, or has incurred reduced expenses as a result of the invasion and occupation; and the claim has not been correspondingly reduced. The matter is more fully discussed at paragraph 87 above; and

(h) "insufficient evidence" is used where the Panel considers that the claim must be reduced or rejected because it is not supported by sufficient evidence. 36/

Notes

3/ S/AC.26/1998/R.22.

4/ The U.S. Army Corps of Engineers held documents in Winchester in relation to the claim of the Ministry of Finance - Kuwait Emergency Reconstruction Office (see paragraph 134).

5/ S/AC.26/1991/7/Rev.1.

6/ S/AC.26/1992/15.

7/ Notably, "Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US\$100,000 (category "C" claims)" (S/AC.26/1994/3), at part II, section D.

8/ Paragraph 9 of Governing Council decision 15 (S/AC.26/1992/15) states that: "The duty to mitigate applies to all claims".

9/ "Report of the Secretary-General on the scope and nature of the damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation" (S/22535).

10/ At paragraphs 370 and following.

11/ Quoted in paragraph 21.

12/ Section II of Governing Council decision 9 (S/AC.26/1992/9) provides at paragraph 13 that "[i]n a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from the invasion and occupation". The Panel finds this statement equally applicable to the Government of Kuwait's property left unguarded.

13/ See, for example, "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above US\$100,000 (category "D" claims)" (S/AC.26/1998/1), at paragraphs 267-269.

14/ As a result of Iraq's response to Procedural Order 1 in relation to the claim of the Ministry of Interior (UNCC Claim No. 5000137), the Panel made enquiries in relation to the extent to which the employees had received payment of their salaries in advance prior to the invasion. The Panel also notes that a few employees who received relief payments retrospectively also

received payment for work done during the relevant period. The Panel has, in arriving at the percentage deduction to the claims for relief paid to employees set out in paragraph 48, taken into account the advance payments and the payments for work done.

15/ The Panel has considered the nature of economic activity in Kuwait and has concluded that this situation is explained by the fact that many Kuwaitis are owners or part-owners of businesses from which they derive income in addition to their salaried employment.

16/ The relief provided by the Government of Kuwait covered such items as living expenses while outside Kuwait, the provision of free utilities within Kuwait (by the forgiveness of payment therefor), the forgiveness of consumer debt, the forgiveness of certain rental payments, the distribution of free food, and the payment of a grant to each Kuwaiti individual who remained in Kuwait during the occupation period.

17/ The Panel notes that the response was compiled applying Government of Kuwaiti national accounts and statistics and on the basis of certain assumptions regarding income and expenditure patterns, and has made suitable allowance for the use of such techniques in quantifying its findings.

18/ Amounts provided for living expenses outside Kuwait during the period (under a programme set up by the Ministry of Finance and the subject of UNCC Claim No.5000112) were paid in respect of additional living expenses and do not comprise "compensation received elsewhere". Further, the Panel has not included in its consideration any relief provided for losses other than loss of income, such as relief in respect of loss of amenity, again to ensure that compensation is based upon the employees' true financial losses.

19/ See paragraph 42.

20/ A large percentage of the 60 per cent deduction arises in respect of "saved expenses".

21/ Governing Council decision 9 (S/AC.26/1992/9).

22/ See paragraph 87.

23/ Where the formation of a formal contract was not complete at the time of the invasion, the Panel finds that there ought to be compensation for contract interruption losses only when there is evidence of consensus at the time of the invasion as to the essential provisions of the contract (being the

identification of the parties, the principal undertakings and the price to be paid).

24/ "Report and recommendations made by the Panel of Commissioners concerning part two of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1998/4), paragraphs 70-72.

25/ Increased transport costs arise because some of Kuwait's ports of entry remained closed until October 1991, during which time shipments were landed elsewhere and goods then transported to Kuwait over land. The types of insurance costs include all risks and public liability insurance.

26/ "Report and recommendations made by the Panel Of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1997/6), at paragraph 106.

27/ The Panel views the decision of the "F1" panel in relation to pre-paid rent set out in, for example, "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1997/6) at paragraph 74 as turning on the particular facts found by the "F1" panel.

28/ As stated at paragraph 36, the Panel finds that the relief paid to employees is compensable (on the basis of paragraph 36 of decision 7) as being payment or relief to others. This categorisation is based on a finding that the Government of Kuwait did not, in fact, pay the salaries of its Kuwaiti and GCC employees during the occupation and emergency periods. What it paid, in fact, was an amount of relief measured by reference to the salaries that those employees would otherwise have received. Those salaries therefore constitute a saved expense.

29/ Which, amongst other things, manages the Government's general reserve and future generations funds.

30/ The claim on behalf of the Public Authority for the Assessment of Compensation, UNCC Claim No. 5000193.

31/ (S/AC.26/Dec.18) (1994), at paragraph 1.

32/ (S/AC.26/1996/5/Annex.) ("WBC Report") at paragraphs 227-230.

33/ An exception to this is the claim of the National Committee for Missing and Prisoner of War's Affairs where the date of loss for calculation of interest is determined to be 31 October 1997 (see paragraph 344).

34/ The Panel has considered the three periods during which a document may have come into existence: prior to Iraq's invasion of Kuwait; during the occupation and emergency periods; and thereafter. The Panel accepts that the number and quality of documents which may be expected to exist will vary according to each such period.

35/ Within the loss types (that is, those appearing on the Form F) the claimants have further subdivided the losses into categories which the Panel will refer as "loss elements". For example, "loss of revenue" is a loss element within the "business transaction or course of dealing" loss type. The Panel has approached its review of the claims and their supporting evidence by reference to loss elements as opposed to the more general loss types.

36/ See paragraph 115.

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