



Security Council

Distr.
GENERAL

S/AC.26/2002/7
13 March 2002

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS
CONCERNING THE THIRD INSTALMENT OF "F2" CLAIMS

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Introduction

1. This is the third report submitted to the Governing Council of the United Nations Compensation Commission (the "Commission") pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules") 1/ by the Panel of Commissioners (the "Panel"), composed of Messrs. Francisco Orrego Vicuña (Chairman), Hans van Houtte and Jen Shek Voon, appointed to review "F2" claims. 2/ This report sets forth the Panel's determinations and recommendations to the Governing Council with respect to the third instalment of "F2" claims (the "Claims") filed by ministries and other Government entities of Saudi Arabia (collectively, the "Claimants"). The Claims originally comprised 32 claims. However, eleven duplicate claims were consolidated in other "F2" claims included in the third instalment. 3/ Two claims were withdrawn prior to the commencement of the review of the instalment, while one claim was withdrawn during the claims review process. 4/ The Claims were submitted to the Panel in accordance with article 32 of the Rules on 21 September 2000. The Claims seek compensation totalling 9,393,747,198 United States dollars (USD) for alleged direct loss, damage or injury arising as a result of Iraq's invasion and occupation of Kuwait.

2. The Claimants are listed in table 1 below, together with the total asserted amount of compensation claimed and the total amount of compensation recommended by the Panel. The claim amounts set out in table 1 are principal amounts as the Claimants make no claim for interest. However, one Claimant seeks compensation for claim preparation costs. 5/ For the sole purpose of comparison, claimed amounts that were expressed in Saudi Arabian riyals (SAR) have been converted to United States dollars based on August 1990 mid-point rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics. 6/

Table 1. Summary of amounts claimed and amounts recommended in third instalment of "F2" claims

<u>Claimant</u>	<u>Original amount claimed (SAR) a/</u>	<u>Original amount claimed (USD)</u>	<u>Amended amount claimed (SAR) b/</u>	<u>Amended amount claimed (USD)</u>	<u>Recommended amount (SAR) c/</u>
Saudi Ports Authority d/	303,962,482	81,164,882	303,328,477	80,995,588	8,356,416
Ministry of Defence and Aviation/General Department of Military Works	22,712,149	6,064,659	22,712,149	6,064,659	nil
Saline Water Conversion Corporation e/	37,440,626	9,997,497	37,440,626	9,997,497	3,350,413
Ministry of Defence and Aviation/Royal Saudi Air Force	14,347,431,900	3,831,089,960	14,347,431,200	3,831,089,773	nil
Ministry of Defence and Aviation/General Department of Medical Services	2,257,439,063	602,787,467	1,482,439,063	395,844,877	65,268,359

a/ The "Original amount claimed" is that amount asserted in the Claimants' statements of claim. It is stated in the original currency in which the amount was claimed.

b/ The "amended amount" is that amount upon which the Panel bases its review of the claim. It includes reductions in the amount claimed made by the Claimants during the period of review of the Claims. The amended amount is stated in the original currency in which the amount was claimed, and converted into United States dollars. As the Claimants are not permitted to increase amounts claimed or add new losses by way of their responses to the article 34 notifications or as a result of information or evidence provided as a result of the on-site inspection, such increases are not included in the amended amounts listed in table 1.

c/ The "Recommended amount" is the amount of compensation which the Panel recommends should be awarded in respect of each of the Claims, and is stated in the original currency in which the amount was claimed.

d/ The amount originally claimed in respect of the Saudi Ports Authority included a claim in the amount of SAR 1,892,743 for environmental losses. This amount was severed and transferred to the "F4" Panel for future review, and is not included in the original or amended amounts claimed.

e/ The amount originally claimed in respect of the Saline Water Conversion Corporation included a claim in the amount of SAR 2,004,741 for environmental losses. This amount was severed and transferred to the "F4" Panel for future review, and is not included in the original or amended amounts claimed.

<u>Claimant</u>	<u>Original amount claimed (SAR) a/</u>	<u>Original amount claimed (USD)</u>	<u>Amended amount claimed (SAR) b/</u>	<u>Amended amount claimed (USD)</u>	<u>Recommended amount (SAR) c/</u>
Ministry of Defence and Aviation/Joint Forces Affairs	15,684,364,688	4,188,081,359	15,684,364,688	4,188,081,359	nil
Ministry of Agriculture and Water/Agricultural Affairs f/	61,710	16,478	40,256	10,749	12,077
Ministry of Agriculture and Water/Department of Water	109,219,825	29,164,172	108,701,078	29,025,655	1,782,078
Royal Commission for Jubail and Yanbu g/	62,245,637	16,620,998	48,825,470	13,037,509	11,814,217
Ministry of Defence and Aviation/International Airports Project	484,875,796	129,472,843	438,908,800	117,198,611	12,069,474
Ministry of Interior/Eastern Province Emirate	167,660,273	44,769,098	161,393,599	43,095,754	81,247,994
Ministry of Interior/General Passport Department	78,833,363	21,050,297	78,832,363	21,050,030	121,095
Ministry of Interior/General Directorate of Frontier Forces	323,796,379	86,460,982	283,139,382	75,604,641	25,363,731
Ministry of Interior/Public Security and General Department for Projects	556,351,302	148,558,425	549,121,349	146,627,864	237,060,767
Ministry of Interior/General Directorate of Investigations	228,637,892	61,051,506	210,306,320	56,156,561	nil

f/ The amount originally claimed in respect of the Ministry of Agriculture and Water/Agricultural Affairs included a claim in the amount of SAR 1,803,000 for environmental losses. This amount was severed and transferred to the "F4" Panel for future review, and is not included in the original or amended amounts claimed.

g/ The amount originally claimed in respect of the Royal Commission for Jubail and Yanbu included a claim in the amount of SAR 10,592,938 for environmental losses. This amount was severed and transferred to the "F4" Panel for future review, and is not included in the original or amended amounts claimed.

<u>Claimant</u>	<u>Original amount claimed (SAR) a/</u>	<u>Original amount claimed (USD)</u>	<u>Amended amount claimed (SAR) b/</u>	<u>Amended amount claimed (USD)</u>	<u>Recommended amount (SAR) c/</u>
Ministry of Interior/Department of Civil Affairs	38,826,969	10,367,682	38,811,529	10,363,559	10,468,204
Ministry of Interior/General Administration of Civil Defence	474,018,617	126,573,730	470,880,797	125,735,860	137,225,252
Ministry of Interior/Emirate of the Northern Frontiers	1,704,584	455,163	1,704,584	455,163	216,958
<u>Summary total</u>	35,179,583,255	9,393,747,198	34,268,381,730	9,150,435,709	594,357,035

I. PROCEDURAL HISTORY

3. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported to the Governing Council in the thirty-first report, dated 28 April 2000, the significant factual and legal issues raised by the Claims that were in addition to those raised in the second instalment of “F2” claims. ^{7/} The report was circulated to all Governments and international organizations that filed claims before the Commission and to the Government of Iraq. Pursuant to article 16(3) of the Rules, a number of Governments, including Iraq, submitted their information and views concerning the reports to the Commission. These responses have been considered by the Panel during its review, consideration and resolution of the Claims.

4. In December 1999, pursuant to article 36 of the Rules and after a competitive bidding process, the services of expert consultants in accounting and loss adjusting were retained to assist the Panel in the review and valuation of the Claims.

5. After a preliminary review of the Claims, the secretariat sent notifications to each Claimant in March 2000 seeking additional information or documentation to assist the Panel in verifying and valuing the Claims, pursuant to article 34 of the Rules (“article 34 notifications”). The Commission received documentation and information in response to the article 34 notifications from the Claimants during the period from July to September 2000.

6. Following submission of the Claims to the Panel on 21 September 2000, Procedural Order No. 1 was issued to each of the Claimants, informing them that their Claims were under review and had been classified as “unusually large or complex” within the meaning of article 38(d) of the Rules. At the instruction of the Panel, copies of Procedural Order No. 1 were sent to Iraq and to the Claimants.

7. In accordance with article 36(b) of the Rules, the Panel directed the secretariat to request certain factual information within the possession and or knowledge of Iraq relating to the contentions and allegations made in seven of the Claims and requested Iraq to respond by 6 April 2001. ^{8/} The Panel also directed the secretariat to provide copies of the seven claim files to Iraq. These were forwarded to Iraq pursuant to Procedural Order Nos. 2 and 3 issued in respect of the claims on 21 September 2000. Iraq submitted a separate response in respect of each claim in May 2001. The views and comments of Iraq presented in its written responses to Procedural Order Nos. 2 and 3 have been duly taken into account by the Panel. Where appropriate, these views and comments are referred to in this report.

8. On 22 September 2000, the Panel issued Procedural Order No. 4 requesting information from the Ministry of Finance and National Economy (“Ministry of Finance”) concerning disbursement of a grant of money to the Government of Saudi Arabia from the Government of Japan (“Japan”), representing part of Japan’s contribution to the efforts undertaken for the liberation of Kuwait (“Japanese Peace Grant”). At the same time, the Panel issued Procedural Order No. 5 requesting information from Japan in relation to the Japanese Peace Grant. The Ministry of Finance submitted its response to the procedural order on 19 January 2001. Japan submitted its response on 12 June 2001.

The views and comments of Saudi Arabia and Japan presented in their responses to Procedural Order Nos. 4 and 5, respectively, have been duly taken into consideration by the Panel.

9. During the course of review of the Claims, the Panel held regular meetings at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided legal, technical and administrative support to the Panel.

10. After consideration of the Claimants' responses to the article 34 notifications, and in accordance with its work programme for the Claims, the Panel directed a verification team, comprising members of the secretariat and the expert consultants, to visit Saudi Arabia from 1 to 9 February 2001 to clarify issues arising from the review of the Claims. Prior to the inspection, the verification team sent detailed supplementary written requests for further documentation and information to each Claimant. During the inspection, the verification team met with the Claimants, inspected physical assets, and examined documentation too voluminous to dispatch to the Commission's headquarters in Geneva. The verification team also met with officials from the Ministry of Finance to discuss the Japanese Peace Grant and other matters raised by the Claims.

11. During the on-site inspection, the verification team requested that additional documents and information be provided by the Claimants. The Claimants' responses to those requests were received by 28 February 2001.

12. The Panel held detailed discussions with the members of the verification team in respect of their investigations. Information provided by the members of the verification team relating to the quality of the evidence has been taken into consideration by the Panel in assessing the compensability of the claims.

II. COMMON CONSIDERATIONS

13. In undertaking its review of the Claims, the Panel has followed the procedures and applied the principles and decisions set out in chapters II-VI, summarized below, of the Panel's Second Report. 9/

14. Chapter II of the Second Report sets out the background to the claims, describing the influx of approximately 350,000 to 360,000 refugees from Kuwait into Saudi Arabia after Iraq's invasion and occupation of Kuwait and Saudi Arabia's response in providing accommodation, relief and repatriation assistance. 10/ Chapter II also describes Saudi Arabia's provision of "host nation support" to troops from those nations participating in the coalition against Iraq's invasion and occupation of Kuwait (the "Allied Coalition Forces"), as well as its active participation in the military response to Iraq's invasion and occupation of Kuwait.

15. Chapter III examines the legal framework within which the Claims have been reviewed, including the functions of the Commission, the applicable law, the liability of Iraq, the requirement of directness, the location of the loss and the mitigation of losses. 11/

16. Chapter IV sets out the legal issues common to several of the second instalment claims, and the Panel's findings in respect thereof. 12/ These findings, as summarized in paragraphs 17 to 28 below, are equally applicable to the Claims in the present instalment.

A. Military operations, military costs and the threat of military action

17. The Panel found that a claimant seeking compensation for loss or damage arising out of military operations in Saudi Arabia must demonstrate that the loss or damage for which compensation is claimed resulted from a specific military event or events in order to establish the requisite causal link between the loss or damage and Iraq's invasion and occupation of Kuwait. The Panel further found that Saudi Arabian Government claims for real and tangible property damage suffered as a result of Iraq's scud missile attacks on Saudi Arabia, the battle of Al Khafji and other military operations in Saudi Arabia are, in principle, compensable 13/ in accordance with paragraph 34(a) of Governing Council decision 7, 14/ subject to the applicability of Governing Council decision 19. 15/

18. In the context of military costs, the Panel found that the costs of providing services and logistical support to Saudi Arabian forces as well as to other units of the Allied Coalition Forces in the context of Saudi Arabia's role as "host nation" during the period of Iraq's invasion and occupation of Kuwait constitute support provided in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. The Panel further found that the costs of the Claimants' 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 the scope of Governing Council decision 19 and are therefore not eligible for compensation. 16/

19. The Panel found that the fact that a claimant is a military entity, while a factor to be considered, is not determinative of the question of exclusion from compensation under Governing Council decision 19. Rather, the Panel must also examine the nature of the activity for which the costs were incurred and the purpose for which it was carried out. Having considered the nature and purpose of expenditures to assist Saudi Arabia's civilian population or refugees present in Saudi Arabia as a result of Iraq's invasion and occupation of Kuwait, the Panel found that such expenditures do not fall within the terms of Governing Council decision 19, and are, in principle, compensable, even where those expenditures have been incurred by a military entity. 17/

20. This and other Panels have found that preventive and protective measures such as the purchase of gas masks, protective clothing, medicines, medical supplies and emergency equipment, as well as the setting up of emergency plans, that were implemented for the benefit of the civilian population in response to the threat of military action posed by Iraq to the territory of Saudi Arabia during the period of its invasion and occupation of Kuwait are, in principle, compensable. 18/ The Panel found that the measures implemented must, however, have been a reasonable and proportionate response to the type of threat to which Saudi Arabia was exposed during the period of Iraq's invasion and occupation of Kuwait. 19/

B. Payment or relief to others

21. The Panel found that costs incurred in making payments or providing relief, including accommodation, food, water and medical supplies to the refugees who were present in Saudi Arabia as a result of departure from (or a decision not to return to) Iraq or Kuwait during the period of Iraq's invasion and occupation of Kuwait are, in principle, compensable in accordance with paragraphs 34(b) and 36 of Governing Council decision 7. 20/

C. Salary and labour-related benefits

22. Claims for wage and salary costs and other labour-related benefits were asserted in four distinct circumstances. The Panel made the following findings in respect of each set of circumstances.

23. First, the Panel found that incremental salary and overtime costs and incidental staff costs that were incurred in assisting refugees during the period of Iraq's invasion and occupation of Kuwait are, in principle, compensable. 21/ In all cases, the salary and overtime payments must also be reasonable in order to be compensable. However, the Panel found that salary and overtime payments made to staff members who performed their regular tasks in assisting refugees are not, in principle, compensable where those payments would have been made regardless of Iraq's invasion and occupation of Kuwait. 22/

24. Second, the Panel found that increased staff costs incurred in implementing reasonable and proportionate protective measures are, in principle, compensable. Such costs include incremental salary and overtime costs, and other incremental costs of providing benefits such as meals, accommodation and travel allowances, incurred in implementing emergency plans and other preventive and protective measures during the period of Iraq's invasion and occupation of Kuwait. 23/ In all cases, the costs must also be reasonable in order to be compensable.

25. However, the Panel found that payments made to staff members who performed their regular tasks in implementing emergency plans and other preventive and protective measures are not in principle compensable where those payments would have been made regardless of Iraq's invasion and occupation of Kuwait. 24/

26. In addition, the Panel found that in determining the compensability of claims for bonuses and incentive payments made to staff during and after the period of Iraq's invasion and occupation of Kuwait, the Claimant must demonstrate that the payments were made as a direct result of Iraq's invasion and occupation of Kuwait and that the amounts of the payments were reasonable. 25/

27. Third, the Panel found that in view of the threat of military action to which Saudi Arabia was exposed during the relevant period, incremental expatriate staff travel costs incurred as a result of the war risk insurance levied by airlines on one-way and return air fares during the period of Iraq's invasion and occupation of Kuwait are, in principle, compensable in accordance with paragraph 34(a) of Governing Council decision 7, to the extent such increased costs were reasonable. 26/

28. Finally, the Panel found that in accordance with Governing Council decision 19, incremental salary costs incurred in preparing for, participating in or providing support in relation to the activities of the Allied Coalition Forces (including the Saudi Arabian military forces) and their military response to Iraq's invasion and occupation of Kuwait constitute military costs and are therefore not eligible for compensation. 27/

D. Verification and valuation

29. Chapter V of the Second Report examined various issues concerning the verification and valuation of the second instalment claims, including the importance of evidence and the procedures adopted by the Panel to verify and value the second instalment claims, which also arise in the context of the Claims in the present instalment. 28/ The Panel noted that several of the claimants filed their claims without documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss. These claimants were asked, in article 34 notifications, in supplementary written requests for further documentation and information sent prior to the on-site inspection, and at interviews with members of the Commission's verification team in Saudi Arabia during the on-site inspection, to provide evidence to enable the Panel to verify and value the asserted losses. In all cases, the Panel has examined the evidence submitted in support of the claims and determined the weight to be given to the evidence. In those cases where insufficient evidence was provided in support of the second instalment claims to permit their verification or valuation, despite the requests detailed above, the Panel did not recommend any award of compensation. This approach has been followed in relation to the Claims in the present instalment.

E. Other issues

30. Chapter VI of the Second Report dealt with a number of other issues relevant to the second instalment claims, which also apply to the Claims in the present instalment. 29/ With respect to the date of loss, the Panel determined that, with the exception of claims for real and tangible property losses occurring as a result of the invasion of Al Khafji, military operations in the Eastern Province and as a result of scud missile attacks, the mid-point of the period of Iraq's invasion and occupation of Kuwait, being the mid-point of the period during which the losses occurred (that is, 16 November 1990, the mid-point of the period 2 August 1990 to 2 March 1991), is the most appropriate date of loss. 30/

31. With respect to claims for real and tangible property damage occurring as a result of the invasion of Al Khafji, military operations in the Eastern Province and as a result of scud missile attacks, the Panel determined that the date of loss is 7 February 1991. 31/

32. As the claimed losses for which compensation is recommended have been incurred in Saudi Arabian riyals, and as the Commission pays awards in United States dollars, the Panel is required to determine the appropriate rate of exchange. In Chapter VI of the Second Report, the Panel determined that, with the exception of claims for real and tangible property losses occurring as a result of military operations in Al Khafji, the Eastern Province and as a result of scud missile attacks, the average exchange rate during the period of Iraq's invasion and occupation of Kuwait, namely, SAR

3.745:USD 1, is the most appropriate exchange rate to be applied to convert amounts awarded in Saudi Arabian riyals to United States dollars. 32/

33. With respect to claims for real and tangible property damage occurring as a result of military operations in Al Khafji, the Eastern Province and as a result of scud missile attacks, the Panel determined that the rate as of 7 February 1991, namely SAR 3.745:USD 1 is the most appropriate rate to convert amounts awarded in Saudi Arabian riyals to United States dollars. 33/

34. In calculating the rates of exchange, the Panel used the exchange rates as reported in the United Nations Monthly Bulletin of Statistics. 34/

35. With respect to interest on amounts awarded, the Panel determined that for the purposes of Governing Council decision 16, 35/ interest will run from the dates set out at paragraphs 30 and 31 above, in respect of the losses described therein.

36. Based on its review of the Claimants' assertions and the supporting evidence, the Panel has reclassified some or all of the losses claimed in the statements of claim in accordance with the loss types set out in the category "F" claim form.

37. The Panel notes that in some instances, the Claimants have increased the amounts claimed in respect of particular losses in revised statements of claim submitted after the deadlines for filing or amending claims, in their responses to the article 34 notifications or in information provided during or after the on-site inspection. The Panel notes that Claimants are not permitted to increase claimed amounts or add new loss elements after these deadlines. The Panel further notes that replies to enquiries by the Commission and on-site inspections are part of the claims-development process and provide claimants with an opportunity to submit additional evidence and information in support of amounts previously claimed in order to assist the Panel. However, in providing this evidence and information, claimants may not increase claimed amounts or add new loss elements to the claim. 36/

38. The Panel turns now to its review and assessment of the Claims in the light of the findings and framework set out above.

III. THE CLAIMS

A. Saudi Ports Authority (UNCC claim No. 5000197)

39. The Claimant is a Saudi Arabian Government entity which is responsible for the control and administration of all Saudi Arabian commercial seaports.

40. Claims were originally submitted by the Saudi Ports Authority (UNCC claim No. 5000197) and the Port Authority – Al Khafji Port (UNCC claim No. 5000224). The Claimant confirmed in its response to the article 34 notification that UNCC claim No. 5000197 includes the claim of the Port Authority – Al Khafji Port (UNCC claim No. 5000224) and that the latter claim is therefore consolidated with UNCC claim No. 5000197.

1. Business transaction or course of dealing (SAR 270,397,424)

(a) Jeddah Islamic Port (SAR 20,680,909)

(i) Facts and contentions

41. The Claimant, which is located on the Red Sea, asserts that it made available port facilities to the Allied Coalition Forces for the unloading of ships transporting supplies and equipment for the Allied Coalition Forces, but did not receive its usual fees for these services. The Claimant seeks compensation for the following losses:

- (a) Loss of port fees;
- (b) Loss of waste removal fees;
- (c) Loss of stevedoring fees;
- (d) Loss of port service duties; and
- (e) Loss of charges for port equipment and additional services, including telephone facilities.

42. The Claimant states that several docks, warehouses and cold stores were assigned to the Allied Coalition Forces, and telephone lines were installed for ships carrying special equipment. It estimates that 3 per cent of the port's facilities were made available to the Allied Coalition Forces. The Claimant asserts that it did not charge the Allied Coalition Forces for the use of the port.

43. The Claimant further asserts that as a result of the presence of ships of the Allied Coalition Forces at the port, some civilian/commercial ships that were due to arrive at the port offloaded at other, non-Saudi Arabian ports. No evidence was provided in support of this assertion.

44. Iraq asserts that these losses are damages that cannot be considered as direct damages caused by Iraq's invasion and occupation Kuwait.

(ii) Analysis and valuation

45. The Panel finds that the Claimant's alleged loss of revenue arose as a direct result of support provided by the Claimant in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 18 above, the Panel therefore recommends no compensation.

(b) Jubail Commercial Port (SAR 249,716,515)

(i) Facts and contentions

46. The Claimant asserts that during the period of Iraq's invasion and occupation of Kuwait, the entire port was used for military purposes. The Claimant states that approximately 15,000 to 20,000 Allied Coalition Force troops were based at the port during the relevant period. The Claimant seeks compensation for lost income it asserts it would have received for services provided to commercial ships that it expected to have berthed at the port, but for the presence of the Allied Coalition Forces. The Claimant states that during the period of Iraq's invasion and occupation of Kuwait, the port handled 1,900,382 tonnes of military equipment, and that an equivalent commercial tonnage would have produced income in the amount claimed. The Claimant asserts that it incurred certain costs in providing services to the military ships and further, that the following fees would have been received for an equivalent commercial tonnage:

- (a) Consignee dues;
- (b) Agent's dues;
- (c) Anchorage dues; and
- (d) Equipment hire fees.

47. Iraq asserts that these losses are damages that cannot be considered as direct damages caused by Iraq's invasion and occupation of Kuwait.

(ii) Analysis and valuation

48. The Panel finds that the Claimant's alleged loss of revenue arose as a direct result of support provided by the Claimant in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 18 above, the Panel therefore recommends no compensation.

(c) Recommendation

49. Based on its findings, the Panel recommends no award of compensation for business transaction or course of dealing.

2. Real property (SAR 9,753,500)

(a) Jubail Commercial Port (SAR 9,290,500)

(i) Facts and contentions

50. The Claimant seeks compensation for damage to the infrastructure of the port, including damage to the roads, fences, gates, entrances, sheds, warehouses, berths, sanitary installations, equipment and air-conditioning system. The Claimant asserts that all the damage resulted from the use of the port by military vehicles and equipment of the Allied Coalition Forces and that none of the damage to the port arose as a result of military operations by Iraq.

(ii) Analysis and valuation

51. The Panel finds that the damage was incurred as a result of the Claimant's 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. For the reasons stated at paragraph 18 above, the Panel therefore recommends no compensation.

(b) Al Khafji Port (SAR 463,000)

(i) Facts and contentions

52. The Al Khafji Port is under the control of Jubail Commercial Port and is used for shipping bulk petroleum. The Claimant asserts that it incurred costs for the following repairs to the port's administrative building for damage that occurred during the invasion of Al Khafji by Iraqi forces on 29–31 January 1991:

- (a) Compacting and re-asphalting of roads and kerbing and repair of perimeter fences;
- (b) Repairing cracks in concrete and roof tiles, replacement or repair of wall tiles, repair of ceiling tiles and repainting;
- (c) Repairing damage to electrical fittings; and
- (d) Repairing damage to the telephone exchange and cables, requiring replacement of cables, telephone sets and the unit for testing and repairing electronic cards.

53. The Claimant asserts that the premises were evacuated for a seven-day period when Iraqi forces invaded the town at the end of January 1991. Although most of the asserted damage has been repaired, evidence of damage to the building from artillery fire and shelling was noted during the on-site inspection.

54. Iraq asserts that all the works undertaken by the Claimant constitute "innovation and modernization of the facilities in order to improve the work of the port", which was unconnected with Iraq's invasion and occupation of Kuwait.

(ii) Analysis and valuation

55. The Panel finds that the evidence demonstrates that the real property damage resulted from military operations in Al Khafji. For the reasons stated at paragraph 17 above, the Panel finds that the claim is, in principle, compensable. However, adjustments for betterment have been made to the amount claimed.

(iii) Recommendation

56. Having considered the evidence, the Panel recommends an award of SAR 290,600 for real property.

3. Other tangible property (SAR 292,660)

(a) Facts and contentions

57. The Claimant seeks compensation for the loss of and damage to office furniture and for the replacement of miscellaneous elements of the air-conditioning system at the Al Khafji Port administration building that it asserts were lost or damaged as a result of Iraq's invasion of Al Khafji.

(b) Analysis and valuation

58. For the reasons stated at paragraph 17 above, the Panel finds that the claim for loss or damage of other tangible property arising as a result of military operations in Al Khafji is, in principle, compensable. Adjustments have been made to the amount claimed with respect to the air-conditioning system to take into account the age of the lost or damaged equipment. The Panel finds that the evidence is not sufficient to verify or value the claim for loss of furniture.

(c) Recommendation

59. Having considered the evidence, the Panel recommends an award of SAR 157,150 for other tangible property.

4. Payment or relief to others (SAR 2,088,081)

(a) Facts and contentions

60. The Claimant states that the Governor of the Eastern Province instructed King Abdulaziz Port in Dammam to provide urgent aid to Kuwaiti refugees who had arrived in Saudi Arabia as a result of Iraq's invasion and occupation of Kuwait. The Claimant seeks compensation for expenses incurred in refurbishing a camp for the Kuwaiti refugees, in purchasing 10 buses to transport the refugees to and from the camp and in purchasing first-aid equipment for the camp.

61. The Claimant states that the camp comprised barracks and huts that were normally used for accommodating port labour. In order to make the camp suitable to accommodate refugees, the Claimant asserts that it was necessary to carry out some rebuilding and repaving, to install new

plumbing and sanitary equipment, and to undertake some repainting. After the liberation of Kuwait, the Claimant states that the camp once again became available for the use of port labour.

62. Iraq asserts that the buses were purchased to improve the port's services, and that it was the port's own decision to purchase the buses. Iraq therefore asserts that there is no relation between the purchase of the buses and Iraq's invasion and occupation of Kuwait. Iraq further asserts that the purchase of first-aid equipment was not directly related to its invasion of Kuwait.

(b) Analysis and valuation

63. The Panel finds, however, that the buses and first-aid equipment were purchased for the Kuwaiti refugees, whose presence in Saudi Arabia arose as a direct result of Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 20 above, the Panel finds that the claim for refurbishing the camp and purchasing buses and first-aid equipment as part of the Claimant's support provided to Kuwaiti refugees is, in principle, compensable, subject to deductions for residual value of the buses and equipment. However, the Panel finds that the evidence provided in support of the claim for refurbishing the camp is not sufficient to verify and value that portion of the claim, and therefore recommends an award of compensation only in respect of the purchase of buses and first-aid equipment.

(c) Recommendation

64. Having considered the evidence, the Panel recommends an award of SAR 70, 496 for payment or relief to others.

5. Evacuation costs (SAR 7,516,781)

(a) Facts and contentions

65. The Claimant seeks compensation for repatriation of 18,284 Egyptian refugees who left Kuwait and Iraq and fled to Jordan after Iraq's invasion of Kuwait. The Claimant states that in response to a request from the Government of Egypt, the Jeddah Islamic Port provided urgent assistance and domestic passenger services for the evacuation of Egyptian nationals, their belongings and vehicles from Aqaba to Suez during the period from 3 September to 23 October 1990.

66. The Claimant seeks the following costs for repatriation:

(a) Chartering ships (SAR 7,058,710);

(b) Additional overtime and secondment costs for staff who were assigned to Aqaba or Suez, or who travelled on the chartered ships to assist with the repatriation operation (SAR 200,690);

(c) Temporary staff employed (on a monthly basis) for the repatriation operation (SAR 11,154);
and

(d) Air tickets for the return from Suez of staff engaged in the repatriation programme (SAR 9,127).

67. The Claimant also seeks compensation for stevedore and other port service charges that were waived in respect of 664 departing cars (SAR 225,760) and 21 arriving cars belonging to Kuwaiti refugees (SAR 11,340) who were ferried between Jeddah and Suez from August to the end of October 1990.

68. In its revised statement of claim, the Claimant reduced the amount claimed for waiver of port fees for arriving cars from SAR 11,340 to SAR 7,140. During the on-site inspection, the Claimant reduced its claim for chartering ships from SAR 7,058,710 to SAR 6,432,905. The total amount claimed for evacuation costs is thereby reduced to SAR 6,886,776.

69. Iraq asserts that the assistance provided to Egyptian refugees was as a result of a decision made by the Port's administration, which was unconnected with Iraq's invasion and occupation of Kuwait.

(b) Analysis and valuation

70. The Panel finds that the presence of the Egyptian refugees in Aqaba arose as a direct result of Iraq's invasion and occupation of Kuwait. The claim for costs incurred by the Claimant in repatriating Egyptian refugees is therefore, in principle, compensable in accordance with paragraphs 34(b) and 36 of Governing Council decision 7. For the reasons stated at paragraph 23 above, the Panel finds that incremental staff costs that were incurred in providing support to the repatriation operations are also, in principle, compensable.

71. However, the Panel finds that the claim for waiver of port service and other fees with respect to the cars of incoming and exiting Kuwaiti refugees between Jeddah and Suez is not compensable, in principle, as such waiver constitutes an intervening act or decision by the Claimant to forego revenues that breaks the causal link between the alleged loss and Iraq's invasion and occupation of Kuwait. 37/

(c) Recommendation

72. Having considered the evidence, the Panel recommends an award of SAR 5,280,732 for evacuation costs.

6. Public service expenditures (SAR 13,914,036)

(a) Jubail Commercial Port (SAR 7,512,080)

(i) Facts and contentions

73. The Claimant seeks compensation for expenditures incurred in providing spare parts, water, electricity, fuel oil and oil lubricants, and telephone calls for members of the Allied Coalition Forces.

74. Iraq asserts that the claimed expenditures are military expenditures which do not fall within the jurisdiction of the Commission in accordance with Governing Council decision 19.

(ii) Analysis and valuation

75. The Panel finds that the costs were incurred as a direct result of support provided by the Claimant in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 18 above, the Panel therefore recommends no compensation.

(b) King Abdulaziz Port

(i) Facts and contentions

76. The Claimant seeks compensation for the costs of ensuring the continued operation of the port and of protecting staff. These costs include:

- (a) Incentive payments to staff (SAR 3,562,429);
- (b) Gas masks and protective equipment purchased for its staff (SAR 2,213,199); and
- (c) Purchase of additional fire-fighting equipment (SAR 626,328).

77. The Claimant reduced the amount for fire-fighting equipment to SAR 622,328 in the revised statement of claim.

78. The Claimant stated that Allied Coalition Forces' ships were based at the port from 24 August 1990 to 17 August 1991, and that the last military ship left the port on 25 November 1991. During this period, 657 military vessels and 869 commercial vessels berthed at various times at the port. Use of the port's facilities by Allied Coalition Forces' ships was authorized by the Minister of Defence on a ship-by-ship basis throughout the period stated above.

a. Incentive payments to staff (SAR 3,562,429)

79. The Claimant asserts that in order to ensure the continued operation of the port, it was necessary to prevent the departure of staff in response to actual or perceived danger, and to persuade those who had left the port to return. The port therefore made incentive payments to its staff and the staff of its contractors.

80. The Claimant asserted that the work performed by the port staff with respect to the ships of the Allied Coalition Forces was the same assistance as is provided to all the port's customers, but that no direct assistance was provided to the Allied Coalition Forces. That is, the general operation of the port's facilities was ensured by the payment of the incentive payments to port staff.

81. The Claimant indicated during the on-site inspection that the amount claimed for incentive payments included an amount for overtime, but stated that the overtime has not yet been paid to the relevant staff. The duties performed by the staff in respect of which overtime costs were incurred

related to the continued operation of the port. The amount claimed is therefore broken down into incentive payments (SAR 2,403,876) and overtime (SAR 1,158,553). Of the amount claimed for incentive payments, the Claimant asserts that SAR 1,903,876 was paid by the port contractor to its staff.

82. Iraq asserts that these payments were made “at will” by the Claimant, and that they are not direct damages caused by Iraq’s invasion and occupation of Kuwait.

b. Gas masks and protective equipment (SAR 2,213,199)

83. The Claimant states that gas masks were provided to all members of its own and contractors’ staff at the port, as the port was directly responsible for their security.

84. Iraq asserts that the gas masks were bought by the port at its own will, and further, that Iraq did not inflict any gas attacks during the relevant period. Iraq asserts that the purchase of gas masks cannot be considered as direct damage caused by Iraq’s invasion and occupation of Kuwait.

c. Additional fire-fighting equipment (SAR 626,328)

85. Due to the proximity of the port to the occupied territory of Kuwait, the Claimant states that the threat of Iraqi bombing raids or artillery or naval attack necessitated the purchase of additional fire-fighting equipment (e.g. water tankers) for the protection of various harbour installations. The Claimant also asserts that the equipment was necessary due to the risk of unloading ammunition from Allied Coalition Forces’ ships.

86. Iraq asserts that it is well known that ports throughout the world provide fire-control equipment for their own purposes. Iraq asserts that there is no relation between the supply of such equipment and its invasion and occupation of Kuwait. Furthermore, Iraq states that it did not cause any fires in the port, and therefore that it is not responsible for the costs of purchasing the equipment.

(ii) Analysis and valuation

a. Incentive payments to staff

87. With respect to the amount of SAR 1,903,876 claimed for incentive payments made by the port contractor to its employees, the Panel notes that no evidence has been provided to demonstrate that the Claimant has reimbursed the contractor for these payments. The Panel therefore finds that the Claimant has not suffered a loss in respect of this amount claimed.

88. For the reasons stated at paragraph 26 above, the Panel finds that incentive payments that were made by the Claimant during the period 2 August 1990 to 2 March 1991 as an inducement to port labour to continue working on-site are compensable, in principle. However, for the reasons stated at paragraph 28 above, the Panel makes an adjustment to the amount claimed to take into account the possibility that the workers provided services, even if indirectly, to Allied Coalition Forces’ ships that were berthed at the port during the period of Iraq’s invasion and occupation of Kuwait. Having

considered the evidence, the Panel therefore recommends an award of SAR 300,000 for incentive payments to staff.

89. With respect to the claim for overtime, the Panel recommends that as this amount has not been paid by the Claimant to the employees, such claim is not compensable. 38/

b. Gas masks

90. For the reasons stated at paragraph 20 above, the Panel finds that the purchase of gas masks for its own and contractors' staff was a reasonable and proportionate response to the threat of military operations to which the port was exposed during the relevant period, and that the costs of purchasing the masks are therefore compensable, in principle. Having considered the evidence, the Panel therefore recommends an award of SAR 2,006,987 for gas masks.

c. Additional fire-fighting equipment

91. For the reasons stated at paragraph 20 above, the Panel finds that the purchase of additional fire-fighting equipment was a reasonable and proportionate response to the additional risks to which the port was exposed during the relevant period, and that the costs of purchasing the equipment are therefore compensable, in principle. However, for the reasons stated at paragraph 18 above, an adjustment has been made to the amount claimed to take account of the fact that the equipment was also purchased in response to the risks posed by unloading ammunition from ships of the Allied Coalition Forces. Having considered the evidence, the Panel therefore recommends an award of SAR 250,451 for additional fire-fighting equipment.

(iii) Recommendation

92. Based on its findings above, the Panel recommends an award of SAR 2,557,438 for public service expenditures.

7. Recommendation for Saudi Ports Authority

93. Based on its findings regarding the Claim by the Saudi Ports Authority, the Panel recommends compensation in the total amount of SAR 8,356,416.

Table 2. Recommended compensation for Saudi Ports Authority
(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Business transaction or course of dealing	270,397,424	270,397,424	nil
Real property	9,753,500	9,753,500	290,600
Other tangible property	292,660	292,660	157,150
Payment or relief to others	2,088,081	2,088,081	70,496
Evacuation costs	7,516,781	6,886,776	5,280,732
Public service expenditures	13,914,036	13,910,036	2,557,438
<u>Total</u>	303,962,482	303,328,477	8,356,416

B. Ministry of Defence and Aviation/General Department of Military Works (UNCC claim No. 5000201)

94. The Claimant, a branch of the Ministry of Defence and Aviation (the “Ministry”), is responsible for planning, design, management and supervision of the implementation of the Ministry’s projects and for providing advisory services in respect of engineering matters.

1. Contract (SAR 22,712,149)

(a) Facts and contentions

95. The Claimant seeks compensation for the cost of penalty payments imposed for delays in the performance of five construction projects asserted to have arisen as a result of Iraq’s invasion and occupation of Kuwait. The Claimant asserts that the penalty payments were either reimbursed to the contracting party or were not deducted by the Claimant from the final contractual payments, despite the fact of the delay. ^{39/} The Claimant states that each of the contracts had been awarded prior to Iraq’s invasion and occupation of Kuwait, and that none of the contracted works were intended to support the activities of the Allied Coalition Forces in relation to their military operations against Iraq.

96. The Panel notes that the amount claimed in the statement of claim appears to be an arithmetical error, and that the correct total amount claimed is SAR 21,572,150.

97. Each of the five contracts will be considered in turn.

(i) Atya Thbaiti Company (SAR 449,194)

98. The contract related to the construction of a chemical warehouse at King Fahd Airforce Base at Taif. It appears from the evidence that the Claimant requested additional works to be performed under the contract and that an extension of six months was granted to complete those works. The Claimant asserts that due to a delay in the shipment of materials required for the additional works, resulting from the use of Saudi Arabian ports by the Allied Coalition Forces and the need to suspend construction due to the location of the project within the perimeter of an air force base, the performance of the contract was delayed for six months, between September 1990 and March 1991. The Claimant deducted penalty delay and supervision fines in the amount of SAR 449,194 from the final payment to the contractor on the basis of the delay in the performance of the contract.

99. The contractor successfully brought an action for the refund of the penalty moneys before the Jeddah Board of Grievances. The judgement of the Jeddah Board of Grievances refers to the approval of an extension in the performance of the contract to take into account the delay in delivery of specialized equipment and other delays caused by Iraq’s invasion and occupation of Kuwait. As the extension period had been approved between the parties, and because the delay “was out of the control of the company”, the Board held there was “no basis for the delay penalty according to article 9(b) of the Government Purchasing Regulations”. ^{40/} The Board held that the deductions made by the Claimant on payments due to the contractor should therefore be paid to the contractor. The Claimant

now seeks the amount of the penalty moneys that it was obligated to pay to the contractor pursuant to the order of the Jeddah Board of Grievances.

(ii) Saad Architectural Establishment (SAR 19,988,184)

100. This contract was for the construction of an army aviation centre and a school at King Khalid Military City in the Northern Province of Saudi Arabia. The Claimant asserts that work under the contract, which comprised three phases, was delayed from August 1990 for a period of between 364 to 528 days. The Claimant states that work was delayed due to the imposition of strict security measures, the location of the project within the direct range of missiles, the departure of some expatriate workers to their home countries and the delay in the shipment of materials.

101. In its response to the article 34 notification, the Claimant stated that additional costs were incurred by the contractor to complete the works, but that no penalties for delayed completion of the projects were imposed. The Claimant stated during the on-site inspection that the delay penalty which it sought to impose on the contractor was waived by Government Committee (not by the Claimant) as a policy decision, but no evidence in support of such decision could be provided. The Claimant asserted that it was therefore deprived of funds to which it would otherwise have been entitled.

(iii) Sulaiman Al-Namlah Establishment (SAR 137,485)

102. The third contract relates to the construction of installations for the maintenance of a military base at Khamis Mushayt. The Claimant alleges that the work was delayed for eleven months from 24 August 1990 to 15 July 1991. The Claimant asserts that the delay in the contract's performance arose because the contractor was unable to import machinery and tools ordered in December 1990 from abroad that were needed for the implementation of contractual works relating to a workshop, as priority was accorded to ships of the Allied Coalition Forces at Saudi ports. Delays were also caused by restrictions on domestic air traffic preventing workers' access to the site and the absence of the contractor's labour force, members of which were on vacation at the date of Iraq's invasion of Kuwait. The Claimant imposed penalties for delay and supervision, equal to the amount claimed of SAR 137,485.

103. The Claimant alleges that the contractor sought exemption from the penalties as the contract site was located within the range of military operations. However, at the on-site inspection, the Claimant confirmed that it retains the penalty moneys. The Claimant expressed its concern that the contractor might challenge the deduction.

(iv) Hajr Company (SAR 462,463)

104. The fourth contract concerns the construction of warehouses at King Khaled Airbase. The Claimant asserts that work was delayed for nine months from August 1990. However, in its response to the article 34 notification, the Claimant alleges that commencement of work under the contract, which was scheduled to take place on 30 October 1990, could not take place on that date as a result of Iraq's invasion and occupation of Kuwait. The contractor, by letter dated 8 December 1991, sought an extension of time in which to perform the contract, stating that "the Gulf crisis, the leaving of workers,

the lack of means of transport, delayed arriving of material and equipment, and delays in disbursement of company dues have had effects on the progress of work”.

105. The Claimant confirmed that it deducted the delay fine and supervision costs from the final payment due to the contractor. The Claimant expressed its concern that the contractor might challenge the deduction.

(v) Ahmed Al-Turki Establishment (SAR 534,824)

106. The fifth contract relates to the construction of certain “facilities” in Tabuk. The Claimant asserts that work was delayed for eleven months from September 1990 as a result of delays in recruiting workers, strict security measures and delayed shipment of materials.

107. The Claimant retains the delay fine and supervision costs imposed on the contractor and deducted from the final payment. The Claimant expressed its concern that the contractor might challenge the deduction. The evidence indicates that the contractor appealed to the Minister of Defence and Aviation to be relieved from paying the penalty fines, referring to the military situation and the location of the site in a military area, but that such appeal was unsuccessful.

(b) Analysis and valuation

(i) Atya –Thbaiti Company

108. The Panel finds that the Claimant has not established that it was entitled to exact and retain the penalty payments as a direct result of Iraq’s invasion and occupation of Kuwait. The Panel therefore finds that the claim is not compensable.

(ii) Saad Architectural Establishment

109. The Panel finds that the Government decision to waive the penalties represents an intervening act or decision to forego revenues that breaks the causal link between the alleged loss and Iraq’s invasion and occupation of Kuwait. ^{41/} The Panel therefore finds that the claim is not compensable.

(iii) Sulamain Al-Namlah Establishment, Hajr Company, Al Turki Establishment

110. The Panel notes that none of the three contractors have commenced actions to challenge the deductions. The Claimant could provide no evidence in support of its assertions that such actions were likely.

111. The Panel finds that the Claimant is seeking compensation in respect of claims which have not been, and might never be, brought by the contractors for the refund of moneys currently retained by the Claimant. Even if such claims were to be brought by the contractors, the outcome of such claims cannot be predicted. The Panel notes that other Panels have found contingent claims not to be compensable by the Commission. ^{42/} Moreover, as the Claimant retains the amounts deducted from the final payments to the three contractors, the Panel finds that it has not suffered any loss.

(c) Recommendation

112. Based on its findings, the Panel recommends no award of compensation for contract.

2. Recommendation for Ministry of Defence and Aviation/General Department of Military Works

113. Based on its findings regarding the Claim by the Ministry of Defence and Aviation/General Department of Military Works, the Panel recommends no award of compensation.

Table 3. Recommended compensation for Ministry of Defence and Aviation/General Department of Military Works
(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Contract	22,712,149	22,712,149	nil
<u>Total</u>	22,712,149	22,712,149	nil

C. Saline Water Conversion Corporation (UNCC claim No. 5000202)

114. The Claimant is an entity within the Ministry of Agriculture and Water. It is responsible for the desalination of sea water in Saudi Arabia and for production of electricity for sale to utility companies in the Eastern, Western and Southern Provinces.

1. Real Property (SAR 3,732,502)

(a) Facts and contentions

115. The Claimant seeks compensation for costs incurred in repairing damage to its compound in Al Khafji. The Claimant asserts that the premises were evacuated on 17 January 1991 and were damaged as a result of the invasion of the town by Iraqi forces on 29 to 31 January 1991. The Claimant asserts that the warehouses, fencing, gates, administration building, plant and external reservoir were damaged during the period of invasion of the town by Iraqi forces.

116. The Claimant states that, following its return to the plant in late February 1991, it was under pressure to resume water production as quickly as possible. Therefore, only limited temporary repairs to the roof of one warehouse were carried out, while the second warehouse has been left unrepaired.

117. In its revised statement of claim, the Claimant increased the amount claimed for repairs to the administration building from SAR 39,000 to SAR 39,800, thereby increasing the amount claimed for real property from SAR 3,732,502 to SAR 3,733,302.

118. Iraq made detailed observations as to the cause and extent of the damage to the buildings and their age at the time of the damage. It asserts that no air strikes took place, and that the damage was caused by the personnel and residents of the compound.

(b) Analysis and valuation

119. For the reasons stated at paragraph 37 above, the Panel finds that the claim for real property is limited to SAR 3,732,502.

120. The Panel finds that the evidence provided and the observations made during the on-site inspection demonstrate that the damage arose as a result of military operations in Al Khafji. For the reasons stated at paragraph 17 above, the Panel finds that the claim is therefore, in principle, compensable. Adjustments have been made to the amount claimed to take into account the age of the property at the time of damage. In those cases where repairs have not yet been carried out, the Panel finds that compensation should be measured by the cost of repair of the building at such time as it would be reasonable, in the ordinary course of events, to expect repair to have taken place, 43/ taking into account the age of the property at the time of damage.

(c) Recommendation

121. Having considered the evidence, the Panel recommends an award of SAR 2,021,476 for real property.

2. Other tangible property (SAR 1,789,179)

(a) Facts and contentions

122. The Claimant asserts that its premises in Al Khafji were evacuated on 17 January 1991 and were attacked by Iraqi forces on or about 29 January 1991. The Claimant returned to the site on 22 February 1991, when it ascertained the extent of damage and commenced carrying out repairs. The Claimant seeks compensation for costs of replacing or repairing other tangible property that it alleges was lost, damaged or destroyed as a result of the invasion of the town of Al Khafji by Iraqi forces.

123. The property includes two rubber boats, used for maintenance of the plant's sea water intakes, office equipment, plant equipment, housing compound furniture, carpets and a vehicle.

124. The Claimant also seeks compensation for the cost of spare parts which were transferred from Jubail to Al Khafji to effect the repairs.

125. Iraq asserts that loss of or damage to other tangible property did not result from the actions of Iraqi troops, but rather was incurred as a result of actions by the Claimant's personnel. Iraq further asserts that, given the age of the property at the time of the loss or damage, the property is fully depreciated.

(b) Analysis and valuation

126. The Panel finds that the evidence provided and the observations made during the on-site inspection demonstrate that the damage arose as a result of military operations in Al Khafji. For the reasons stated at paragraph 17 above, the Panel therefore finds that the claim is, in principle, compensable. The Panel further finds that loss or damage to other tangible property that occurred during the period when the site was evacuated is, in principle, compensable in accordance with Governing Council decision 9, paragraph 13. 44/ However, adjustments have been made to the amount claimed to take into account the age of the property at the time of the loss or damage.

127. The Panel also finds that the claim for other tangible property transferred to the Al Khafji plant from Jubail is compensable, in principle. 45/

128. The Panel finds that the evidence is not sufficient to demonstrate that the damage to the vehicle arose as a result of military operations in Al Khafji and therefore recommends no award of compensation in respect thereof.

129. The Panel notes that the amount claimed includes an amount of SAR 74,915 for repairs to reservoirs at the Al Khafji plant. The Panel finds that this amount was duplicated in the claim for real property, and therefore recommends no award of compensation in respect of this amount.

(c) Recommendation

130. Having considered the evidence, the Panel recommends an award of SAR 473,519 for other tangible property.

3. Income-producing property (SAR 18,000,929)

(a) Facts and contentions

131. The Claimant seeks compensation for loss of revenue in relation to the following plants and units which the Claimant asserts ceased or reduced production during the periods stated :

- (a) Al Khafji plant, Unit 1 (15 January 1991-1 April 1991) (SAR 2,558,520);
- (b) Al Khafji plant, Unit 2 (15 January 1991-18 June 1991) (SAR 4,878,245);
- (c) Al Khobar plant (Unit No. 4) (17 January 1991-25 May 1991) (SAR 5,715,216); and
- (d) Jubail plant (Reduced operation) (17 January 1991- 7 March 1991) (SAR 4,848,948).

132. The Claimant asserts that in response to the threat of military action, the Al Khafji desalination plant suspended operation on 15 January 1991. Both units at the plant were damaged during the period of actual military operations. Production was restored to the plants on the dates stated above after repairs were carried out, the claims for the costs of which were discussed at paragraphs 115 to 130 above in the context of real and other tangible property damage.

133. The Claimant asserts that one unit (Unit 4) at the Al Khobar electricity plant was shut down as the demand on the electricity grid was reduced due to Iraq's invasion and occupation of Kuwait, and also because the Unit 4 gas pipeline was corroded in several places such that "any powerful vibration would cause damages to the pipeline". The Claimant asserts that the pipeline was severely affected by rocket attacks on the neighbouring area, and that the unit was shut down for the safety of the plant's employees until the pipeline could be replaced.

134. The Claimant asserts that the Jubail electricity plant reduced operation during the period stated due to reduced demand for electricity in the Eastern Region, particularly in the industrial cities of the region. Furthermore, the Claimant asserts that the electricity company, SCECO, which is the Jubail plant's sole customer, ordered output to be reduced to avoid the possibility of the electricity network being affected should the Jubail plant be attacked. The Claimant states that oil spills at the Claimant's sea-water intake were also a factor in reducing operation, as the plant is dependent on sea water to cool its turbines.

135. The Claimant asserts that it was not possible to mitigate the loss of production at the three plants by increasing production at other plants because the Eastern and Western Region Water and Sewerage Authorities and electricity companies to which the Claimant supplies water and electricity respectively operated independently of each other during the period of Iraq's invasion and occupation of Kuwait.

136. During the on-site inspection, the Claimant presented a reassessment of the claimed amount, increasing the amount from SAR 18,000,929 to SAR 25,225,839.

137. Iraq asserts that the Al Khafji plant was out of operation prior to Iraq's invasion and occupation of Al Khafji, that operation continued in Jubail and Al Khobar during the claimed period, and that the evidence did not support the amount claimed.

(b) Analysis and valuation

138. For the reasons stated at paragraph 37 above, the Panel finds that the amount claimed is limited to SAR 18,000,929.

139. For the reasons stated at paragraphs 17 and 20 above, the Panel finds that loss of revenue resulting from the shutdown of the Al Khafji plant as a result of threatened and actual military operations in Al Khafji is, in principle, compensable. Similarly, the Panel finds that the shutdown of Unit 4 in Al Khobar due to the risk of explosion resulting from aerial bombardment affecting the pipeline was a reasonable and proportionate preventive measure, given the pipeline's location in the area of military operations. Any loss of revenue resulting from the shutdown is therefore compensable, in principle. Furthermore, the Panel finds that the reduction in output of the Jubail plant was a reasonable and proportionate measure to prevent disruption to the Saudi Arabian electricity network, given the location of Jubail in the area of military operations and the risk that it might be bombarded. Therefore, the Panel finds that any loss of revenue resulting from the reduction in output at Jubail is also compensable, in principle.

140. However, the Panel finds that it remains unclear from the evidence whether other plants in the Eastern Region could have contributed to the overall production of electricity and water, and therefore whether the asserted loss of income from the three plants could have been mitigated.

141. The Panel notes that the basis of the claim for each of the three plants is a comparison of expected and actual production during the claimed periods. However, although the Claimant has provided annual reports and other schedules setting out financial and production data, the Panel was not able to reconcile the calculation of either expected or actual production figures to the documents provided. Nor was it possible to reconcile the selling price per unit of production to the documentation. The Panel therefore finds that the evidence is not sufficient to verify and value the claim.

(c) Recommendation

142. Based on its findings, the Panel recommends no award of compensation for income-producing property.

4. Evacuation costs (SAR 222,944)

(a) Facts and contentions

143. The Claimant seeks compensation for the evacuation of 94 employees from the plant at Al Khafji on 17 January 1991. The Claimant asserts that the staff members were transferred to the Claimant's housing facilities in Al Khobar and Jubail, twelve days before the invasion of Al Khafji, as a protective measure. The Claimant states that the employees resided in the Al Khobar and Jubail housing compounds for two and a half months.

144. The Claimant asserts that it was necessary to prepare and maintain the accommodation in Jubail for the evacuated personnel, and that certain costs were incurred in doing so. However, the Claimant asserts that the claimed amount is based not on the actual cost of housing the employees, including the preparation and maintenance costs for the accommodation, but rather on the housing allowance that is normally paid to employees who do not reside in the Claimant's compounds. This allowance is equivalent to three months' salary per annum. The claimed amount represents two and a half months of the annual housing allowance, per employee. However, this amount was not actually paid to the employees.

145. Iraq, stating that its forces entered Al Khafji on 29 January 1991, asserts that it is unreasonable to seek compensation for loss of production at the Al Khafji plant as well as for the costs of evacuating the plant's personnel.

(b) Analysis and valuation

146. The Panel notes that it has recommended no award of compensation for loss of production (see paragraph 142 above.) The Panel finds further that the costs of evacuating staff as a result of military operations or the threat of military action in Al Khafji are, in principle, compensable in accordance with paragraph 34 (a) of Governing Council decision 7. 46/ Incidental costs of evacuation, including accommodation, are also compensable, provided such costs are temporary and extraordinary. 47/

147. The Panel notes that no evidence was provided to support the alleged "transformation costs" incurred in preparing the accommodation for evacuated staff. The Panel therefore finds that the evidence is not sufficient to verify and value the claim.

(c) Recommendation

148. Based on its findings, the Panel recommends no award of compensation for evacuation costs.

5. Public Service Expenditures (SAR 13,590,673)

149. The Claimant seeks compensation for the following expenditures:

- (a) Increased air fares (war risk insurance) (SAR 363,306);

- (b) Gas masks (SAR 600,000);
- (c) Transfer of personnel – salaries and secondment costs (SAR 428,180);
- (d) Incentive payments (SAR 9,163,664);
- (e) Compensation to employees for personal property loss (SAR 969,033);
- (f) Purchase of generators (SAR 2,003,690); and
- (g) Purchase of emergency sirens (SAR 62,800).

(a) Increased air fares (SAR 363,306)

(i) Facts and contentions

150. The Claimant seeks compensation for increased expatriate staff travel costs as a result of the imposition of war risk insurance on staff air travel, including on air travel for expatriate employees, comprising more than 50 per cent of the Claimant's staff, who wished to leave Saudi Arabia during the relevant period.

151. Iraq asserts that the imposition of war risk insurance was an internal measure to increase the cost of air travel, and that it was not a direct loss.

(ii) Analysis and valuation

152. For the reasons given at paragraph 27 above, the Panel finds that the costs of war risk insurance imposed on staff air travel during the period 2 August 1990 to 2 March 1991 are, in principle, compensable. Having considered the evidence, the Panel recommends an award of SAR 254,310 for war risk insurance.

(b) Gas masks (SAR 600,000)

(i) Facts and contentions

153. The Claimant seeks compensation for the purchase of 6,000 gas masks on 16 January 1991 for 2,860 employees and their dependants in the Eastern Region.

154. Iraq asserts that the purchase of the gas masks was not necessary as the Iraqi forces that entered Al Khafji did not use any chemical gases. Furthermore, the masks could not be used by workers in Al Khafji as they had been evacuated.

(ii) Analysis and valuation

155. The Panel finds that the purchase of gas masks for the Claimant's employees and their dependants was a reasonable and proportionate response to the threat of military operations to which individuals in the Eastern Province were exposed during the relevant period. For the reasons given at

paragraph 20 above, the Panel finds that the expenses incurred by the Claimant in purchasing the gas masks are, in principle, compensable.

156. Having considered the evidence, the Panel recommends an award of SAR 480,000 for gas masks.

(c) Salaries and secondment costs (SAR 428,180)

(i) Facts and contentions

157. The Claimant asserts that in order to repair the cables and pipes at the Al Khafji plant damaged as a result of military operations, 171 technicians from Al Khobar and Jubail plants, as well as workers from Al Khafji, were seconded to undertake the repair work at the end of February 1991. 48/ The Claimant states that the personnel who were seconded from Al Khobar and Jubail were paid their salaries and a secondment allowance. The Claimant asserts that as the staff from Jubail and Al Khobar were not replaced at those locations, it lost the advantage of their labour and seeks compensation for the salaries (SAR 390,787) and the secondment allowances (SAR 37,393) that were paid to the seconded staff. The Claimant asserts that these workers would have been performing routine maintenance activities at the Jubail and Al Khobar plants but for their secondment.

158. With respect to the claim for salaries, the Claimant asserted that part of the amount represented incremental overtime payments made to staff. However, no evidence was provided in support of this assertion.

159. Iraq asserts that the claim is duplicated in other heads of loss.

(ii) Analysis and valuation

160. Having considered the evidence, the Panel finds that the claim is not duplicated in other heads of loss. For the reasons given at paragraph 17 above, the Panel finds that incremental staff costs incurred in repairing real property damage resulting from military operations in Al Khafji are, in principle, compensable. In this respect, the Panel finds that the secondment allowances that were paid to staff are compensable incremental staff costs. However, with respect to the claim for salaries of the seconded staff, the Panel finds that the tasks performed by the seconded staff in Al Khafji did not differ greatly from their regular maintenance activities in Jubail and Al Khobar, 49/ and that these costs therefore represent a fixed cost to the Claimant, rather than an incremental cost arising as a result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation in respect of salaries. 50/

161. Having considered the evidence, the Panel recommends an award of SAR 22,436 for secondment costs.

(d) Incentive payments (SAR 9,163,664)

(i) Facts and contentions

162. The Claimant asserts that as a result of the build-up of Allied Coalition Forces close to Kuwait, the area where the three desalination plants were located was subject to the threat of military action. In order to persuade staff to remain on site, the Claimant states that it made incentive payments comprising an additional 15 per cent payment of the basic salary. The payments were made from 8 November 1990 to 14 April 1991 to employees who performed operations and maintenance functions for the desalination and power plants during the stated period. The Claimant states that the payments continued to be made after the liberation of Kuwait because of the perceived risk to staff health resulting from the burning Kuwaiti oil fields.

163. Iraq asserts that no personnel was present at the site in respect of which the incentive payments could be paid. It further asserts that there was no connection between Iraq's invasion and occupation of Al Khafji and the other plants, which were located at some distance from the military operations.

(ii) Analysis and valuation

164. For the reasons given at paragraph 26 above, the Panel finds that bonus payments made to the Claimant's staff in the Eastern Region during the period 2 August 1990 to 2 March 1991 are, in principle, compensable. The Panel notes the Claimant's assertion that although the Al Khafji plant was evacuated on 15 January 1991, Al Khafji employees continued to receive the incentive payments.

165. The Panel finds that the evidence, which included untranslated payroll records which were not reconciled to the claimed amount, was not sufficient to verify and value the claim, and therefore recommends no award of compensation for incentive payments.

(e) Personal property loss (SAR 969,033)

(i) Facts and contentions

166. In the statement of claim, the Claimant sought compensation for payments it alleges it made to employees for furniture and effects damaged or stolen from their accommodation during the occupation of Al Khafji by Iraqi forces. The Claimant stated that in order to make it possible for the employees to return to the Al Khafji plant and commence work, it paid the employees three months' salary to refurbish their accommodation. The Claimant stated that 92 employees received these payments.

167. However, in its response to the article 34 notification and during the on-site inspection, the Claimant clarified that three months' salary, to a maximum of SAR 15,000, was paid to staff members of the Al Khafji plant not as compensation for personal property loss but as a reward for their superior performance during and after Iraq's invasion and occupation of Kuwait, and to induce them to return to Al Khafji after that period. The Claimant asserted that these payments were made to Al Khafji

personnel only, as the Al Khafji plant had been damaged and required extra effort to repair the damage. Furthermore, the Claimant alleges that the plant was affected by smoke from the oil well fires, thereby making work conditions more difficult. The Claimant asserts that staff members were promised the bonus payment during the period of Iraq's invasion and occupation of Kuwait, but no evidence was provided in support of this assertion. The bonus payments were made in September 1991, in accordance with a decision made by the Claimant in late July 1991.

168. Iraq asserts that this is a duplicate claim, and that during the period when it is asserted the amounts were paid, the Claimant also seeks compensation for the travel costs of the personnel.

(ii) Analysis and valuation

169. The Panel finds that the amount claimed represents bonus or reward payments made to staff rather than compensation for lost personal property. The Panel finds on the basis of the evidence that the decision to grant the bonus payments was made in July 1991 and that the payments were partly intended as an inducement to staff to return to Al Khafji after 2 March 1991. The Panel notes that no evidence of a pre-existing promise or legal obligation to pay the bonuses was provided. The Panel finds that the Claimant has not demonstrated that the bonus payments were in the nature of incentive payments to staff members to continue to work in the affected locations during the period of Iraq's invasion and occupation of Kuwait. The Panel therefore finds that the payments were not losses arising as a direct result of Iraq's invasion and occupation of Kuwait and therefore recommends no award of compensation. 51/

(f) Purchase of generators and sirens (SAR 2,066,490)

(i) Facts and contentions

170. In response to the possibility that the desalination plants might be cut off from other sources of power, the Claimant asserts that it purchased 15 generators at a total cost of SAR 2,003,690 for the Al Khobar and Jubail plants during the period September 1990 to January 1991.

171. The Claimant also asserts that it purchased two emergency sirens for the Jubail and Al Khobar plants in order to warn employees at work or at home of the possibility of military attack. The purchase of the sirens in the total amount of SAR 62,800 was made on 14 December 1990.

172. Iraq asserts that as the generators were purchased in September 1990, the purchase was not related to the military operations which took place in Al Khafji. Iraq further asserts that the plants should already have possessed the emergency sirens prior to Iraq's invasion and occupation of Kuwait, and that the purchase of the sirens was not related to Iraq's invasion of Al Khafji.

(ii) Analysis and valuation

173. The Panel finds that the purchase of generators and sirens for the Jubail and Al Khobar plants was a reasonable and proportionate response to the threat of military operations to which the plants in the Eastern Province were exposed during the relevant period. For the reasons given at paragraph 20 above, the Panel finds that the expenses incurred by the Claimant in purchasing the generators and

sirens are, in principle, compensable, subject to an adjustment to the amount claimed for generators to account for their residual value.

174. Having considered the evidence, the Panel recommends an award of SAR 98,672 for generators and sirens.

(g) Recommendation

175. Based on its findings, the Panel recommends an award of SAR 855,418 for public service expenditures.

6. Claim preparation costs (SAR 104,399)

176. The Claimant seeks compensation for the cost of preparing and submitting its claim to the Commission.

177. In a letter dated 7 September 1997, the Chairman of the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claims preparation costs at a future date. Pursuant to the letter from the Executive Secretary, the Panel makes no recommendation with respect to the claim for claim preparation costs.

7. Recommendation for Saline Water Conversion Corporation

178. Based on its findings regarding the Claim by the Saline Water Conversion Corporation, the Panel recommends compensation in the total amount of SAR 3,350,413.

Table 4. Recommended compensation for Saline Water Conversion Corporation

(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Real Property	3,732,502	3,732,502	2,021,476
Other tangible property	1,789,179	1,789,179	473,519
Income-producing property	18,000,929	18,000,929	nil
Evacuation costs	222,944	222,944	nil
Public service expenditures	13,590,673	13,590,673	855,418
Other	104,399	104,399	n/a
<u>Total</u>	37,440,626	37,440,626	3,350,413

D. Ministry of Defence and Aviation/Royal Saudi Air Force (UNCC claim No. 5000203)

179. The Claimant is a branch of the Saudi Arabian Armed Forces. During Iraq's invasion and occupation of Kuwait, the Claimant provided substantial logistical support to the Allied Coalition Forces.

1. Payment or relief to others (SAR 34,550,000)

(a) Facts and contentions

180. The Claimant seeks reimbursement of the compensation it asserts it was obligated to pay to wounded personnel and to the families of personnel who were killed during Iraq's invasion and occupation of Kuwait.

(b) Analysis and valuation

181. The Panel finds that the compensation payments made to military personnel or their families do not satisfy the exceptions stated in Governing Council decision 11, and are therefore not compensable. 52/

(c) Recommendation

182. Based on its findings, the Panel recommends no award of compensation for payment or relief to others.

2. Public service expenditures (SAR 14,312,881,900)

(a) Facts and contentions

183. The Claimant seeks compensation for increased staff costs and costs of purchasing equipment and supplies that it asserts were incurred while providing protection to the civilian population during Iraq's invasion and occupation of Kuwait.

(i) Increased staff costs (SAR 387,691,000)

184. The Claimant seeks compensation in the amount of SAR 387,691,000 for overtime, bonuses and expenses paid to civilian and military staff. The Claimant asserts that during the period of Iraq's invasion and occupation of Kuwait, the Saudi Arabian Armed Forces were on full state of alert. Twenty-four hour security was provided at various Air Force installations, resulting in increased overtime payments for both civilian and military staff. Allowances were also paid to staff performing overtime. The Claimant asserts that:

“the work was not essentially military in nature but also involved a major logistic effort in mobilising the Royal Saudi Air Forces in the preparation of sufficient defence capability to ensure the security of the Kingdom and its civilian population”.

185. Of the amount claimed, the Claimant asserts that SAR 2,590,013 relates to overtime performed by civilian staff in the Claimant's administrative and financial departments to process payments in co-ordination with the Ministry of Finance.

186. The Claimant asserts that security was increased on the bases but that the arrangement benefitted both civilian and military staff on the bases. Security was also increased for accommodation for military and civilian staff and their families who were located close to the military bases. The Claimant states that it was not possible to identify the costs that were incurred specifically for civilian security.

(ii) Equipment and supplies (SAR 13,925,190,900)

187. The Claimant seeks compensation in the amount of SAR 13,925,190,900 for costs that it asserts were incurred in procuring building materials for construction of bomb shelters, training centres and storage and maintenance facilities, and military and telecommunications equipment. The Claimant asserts that the mobilization of the Royal Saudi Air Force required "a tremendous procurement programme in order to support [the] additional infrastructures which were set up". Bomb shelters were constructed at all strategic target sites, while military technology was purchased to support the "defensive war machine". The Claimant argues that such supplies were purchased to assist its role in defending the civilian population of Saudi Arabia. The Claimant asserts that it was also necessary to purchase advanced military technology in order to provide a viable deterrent to the Iraqi army, which allegedly outnumbered the Saudi Arabian forces.

188. The evidence provided indicates that expenditures included the purchase of radar operations and services; supply contracts for the purchase of weapons, aircraft and equipment; shipment costs; facilities and construction; additional weapons systems support costs; and food and emergency expenditures, including gas masks and other protective equipment. The Claimant asserts that gas masks were purchased and distributed to military staff, administrative/civilian staff and to the families of the military and civilian staff.

189. The Claimant asserts that the principal expenditures claimed for supply of materials and weapons were intended for military purposes, although some were incurred to protect civilians. However, no evidence in support of expenditures incurred specifically for civilian protection could be provided.

190. The amount claimed was reduced to SAR 13,925,190,200 in the Claimant's response to the article 34 notification.

(b) Analysis and valuation

191. The Panel finds that the overtime performed by the civilian staff was performed in support of the military activities of the Claimant. Furthermore, the Panel finds that the Claimant has failed to provide sufficient evidence supporting the assertion that it implemented preventive and protective measures directly for the benefit of the civilian population, apart from the general protection that the armed forces of a State are responsible for providing to its civilian population. The Panel therefore

finds that the costs of equipment and materials were incurred as part of the Claimant's preparation for, participation in and 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. For the reasons stated at paragraph 18 above, the Panel recommends no award of compensation for these costs. Similarly, for the reasons stated at paragraph 28 above, the Panel recommends no award of compensation for increased staff costs incurred in providing support to the military operations of the Claimant.

(c) Recommendation

192. Based on its findings, the Panel recommends no award of compensation in respect of public service expenditures.

3. Recommendation for Ministry of Defence and Aviation/Royal Saudi Air Force

193. Based on its findings regarding the Claim by the Ministry of Defence and Aviation/Royal Saudi Air Force, the Panel recommends no award of compensation.

Table 5. Recommended compensation for Ministry of Defence and Aviation/Royal Saudi Air Force

(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Payment or relief to others	34,550,000	34,550,000	nil
Public service expenditures	14,312,881,900	14,312,881,200	nil
<u>Total</u>	14,347,431,900	14,347,431,200	nil

E. Ministry of Defence and Aviation/General Department of Medical Services (UNCC claim No. 5000204)

194. The Claimant, a division of the Ministry of Defence and Aviation, is responsible for providing medical services to armed forces personnel and their families.

1. Payment or relief to others (SAR 19,890,000)

(a) Facts and contentions

195. The Claimant seeks compensation for expenses incurred in providing assistance in the form of medicines and food to refugees from Iraq ("Iraqi refugees") in Rafha hospital. The Claimant states that although Joint Forces Affairs were primarily responsible for the operation of the camp in Rafha, the Claimant provided and paid for some medical services for the refugees at the camp. 53/

196. During the on-site inspection, the Claimant asserted that medical assistance was also provided to Iraqi prisoners of war at the Rafha hospital, and that costs were incurred in providing this assistance.

(b) Analysis and valuation

197. For the reasons stated at paragraphs 214 and 219 below, the Panel finds that the claim for medical assistance provided to Iraqi refugees and prisoners of war is not compensable, in principle. 54/

(c) Recommendation

198. Based on its findings, the Panel recommends no award of compensation for payment or relief to others.

2. Public service expenditures (SAR 2,237,549,063)

(a) Facts and contentions

199. The Claimant seeks compensation for the following costs that it alleges it incurred during the period of Iraq's invasion and occupation of Kuwait:

- (a) Purchase of medicines for chemical warfare;
- (b) Procurement of disinfecting unit for Riyadh military hospital;
- (c) Purchase of vaccines and antitoxins for Riyadh military hospital;
- (d) Purchase of additional ambulances;
- (e) Purchase of equipment for Neriah hospital;

- (f) Emergency food;
- (g) Military uniforms;
- (h) Overtime paid to employees (including hospital staff); and
- (i) Contracts with Government of the United States of America for military medical support.

200. The Claimant asserts that “incremental expenses ... were incurred for the protection of civilians, citizens and refugees, notably in areas affected by repeated rocket attacks”. The Claimant further asserts that the hospitals and other facilities under the Claimant’s control were intended “not only for military staff but also for their families” and that some of the Claimant’s staff provided “direct services to civilians, refugees and prisoners of war”.

201. During the period of Iraq’s invasion and occupation of Kuwait, the Claimant asserts that "field" hospitals (mobile, military-owned hospitals) were built in Dhahran and other locations, for the treatment of civilians as well as military staff, and that a number of new hospitals were specifically set up for this purpose during the relevant period. The Claimant further asserts that it was concerned with the protection of families, and therefore increased its stock, purchased gas masks for children and family members, and medicines that would be required in the event of chemical warfare. Shelters were established to protect staff, nurses and families of doctors, while certain specialists were recruited to assist in establishing these protective measures.

202. In its response to the article 34 notification, the Claimant reduced the amount claimed for overtime paid to hospital employees from SAR 861,199,285 to SAR 86,199,285, thereby reducing the total amount claimed for public service expenditures from SAR 2,237,549,063 to SAR 1,462,549,063.

203. Iraq asserts that the expenditures fall within the ambit of Governing Council decision 19 and are therefore not eligible for compensation. Iraq further asserts that the Claimant did not indicate the types and quantities of the medicines purchased. Iraq further asserts that salary amounts were not incremental, and that the equipment purchased remained in the Claimant’s possession after the liberation of Kuwait. Finally, Iraq argues that the amounts claimed are exaggerated.

(b) Analysis and valuation

204. The Panel finds that part of the expenditures was incurred for the benefit of the civilian population. For the reasons stated at paragraph 19 above, incremental expenditures incurred during the period 2 August 1990 to 2 March 1991 in providing medical assistance to civilians are, in principle, compensable to the extent that such expenditures are supported by the evidence. An adjustment has been made to take into account the residual value of the equipment purchased. For the reasons stated at paragraph 24 above, the Panel finds that incremental overtime costs incurred in providing support to the civilian population are also, in principle, compensable.

205. The Panel notes that no evidence was provided in support of the claims for additional ambulances and military uniforms. The Panel therefore recommends no award of compensation for these claim elements.

206. For the reasons stated at paragraph 18 above, the Panel recommends no award of compensation for contracts with the Government of the United States of America for military medical support, nor for the portion of the other expenditures that was incurred in providing medical support to members of the Allied Coalition Forces.

(c) Recommendation

207. Having considered the evidence, the Panel recommends an award of SAR 65,268,359 for public service expenditures.

3. Recommendation for Ministry of Defence and Aviation/General Department of Medical Services

208. Based on its findings regarding the Claim by the Ministry of Defence and Aviation/General Department of Medical Services, the Panel recommends compensation in the total amount of SAR 65,268,359.

Table 6. Recommended compensation for Ministry of Defence and Aviation/General Department of Medical Services

(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Payment or relief to others	19,890,000	19,890,000	nil
Public service expenditures	2,237,549,063	1,462,549,063	65,268,359
<u>Total</u>	2,257,439,063	1,482,439,063	65,268,359

F. Ministry of Defence and Aviation/Joint Forces Affairs (UNCC claim No. 5000205)

209. The Claimant, a division of the Ministry of Defence and Aviation, was formed in response to Iraq's invasion and occupation of Kuwait. It was responsible for providing a military response to Iraq's invasion and occupation of Kuwait, for the care of refugees from Iraq, and the provision of support to Iraqi Prisoners of War ("POWs").

1. Payment or relief to others (SAR 2,455,213,767)

(a) Relief provided to refugees from Iraq

(i) Facts and contentions

210. The Claimant seeks compensation in the amount of SAR 2,142,234,903 for costs allegedly incurred in providing support and assistance to refugees of Iraqi nationality, who, the Claimant asserts, arrived in the northern area of Saudi Arabia as a result of Iraq's invasion and occupation of Kuwait. The Claimant asserts that in response to the influx of Iraqi refugees, it concluded contracts for the construction of camps (including accommodation in the form of pre-fabricated houses) and for the supply of necessary materials and equipment, the costs of which were borne by the Claimant. In addition, the Claimant provided allowances and other forms of assistance to the refugees in the camps. The Claimant states that the costs were incurred over a period of two years from March 1991 to February 1993. According to the Claimant, the refugees were provided with food, water, shelter, medical assistance, communications facilities, transportation and allowances at a number of camps throughout the northern area of Saudi Arabia. The Claimant states that one of the camps, at Rafha, remains operational and fully equipped, and continues to provide assistance to 5,000 Iraqi refugees.

211. The evidence provided includes a report prepared by the Claimant indicating that the Rafha camp was constructed "following the failure of the Iraqi uprisings in southern Iraq against the Iraqi regime". The Claimant explained that the refugees were individuals and their families from southern Iraq who had risen up against the Government of Iraq towards the end of the period of Iraq's invasion and occupation of Kuwait. ^{55/} As a result of the suppression of the uprisings in southern Iraq, approximately 35,000 Iraqis fled the region and arrived in the northern region of Saudi Arabia in March 1991. The Claimant asserted that the Director of the Joint Forces directed all departments to provide assistance to the refugees for humanitarian reasons and that a special department for Iraqi refugees was set up under the auspices of the Claimant.

212. Iraq asserts that the departure of Iraqi refugees from Iraq was as a result of the heavy bombardment of residential areas throughout Iraq by the Allied Coalition Forces.

(ii) Analysis and valuation

213. The Panel notes that the total of the separate amounts claimed for costs incurred with respect to Iraqi refugees and Iraqi POWs (addressed at paragraph 215 below), which was provided during the on-site inspection, is greater than the total amount claimed in the original statement of claim. For the

reasons given at paragraph 37 above, the Panel finds that the amount claimed for payment or relief to others is limited to SAR 2,455,213,767.

214. The Panel finds that the Iraqi refugees arrived in Saudi Arabia at the end of March 1991 as a result of uprisings in southern Iraq, and not as a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore finds that expenditures incurred in providing assistance to those refugees are not compensable, in principle. Furthermore, the Panel finds that the provision of such assistance to the refugees commenced at the end of March 1991, after the period of Iraq's invasion and occupation of Kuwait. 56/ The Panel therefore recommends no award of compensation for payment or relief provided to those Iraqi refugees.

(b) Iraqi Prisoners of War

(i) Facts and contentions

215. The Claimant seeks compensation in the amount of SAR 370,492,827 for support provided to approximately 70,000 Iraqi POWs who were captured by the Allied Coalition Forces, including French, British, American and Saudi Arabian forces, and transferred into Saudi Arabian custody from 15 February 1991. 57/ The Claimant asserts that it detained the POWs in Al Aratawiyah, a camp especially constructed for them, and provided support to the POWs in accordance with articles 12 and 15 of the Geneva Convention (III) relative to the Treatment of Prisoners of War (1949) ("Third Geneva Convention"). The POWs remained at the Al Aratawiyah camp until completion of the repatriation programme in August 1991. Those POWs (approximately 13,000) who refused to be repatriated became civilians entitled to the protection accorded by Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949) 58/ and were accorded refugee status by Saudi Arabia in August 1991. They remained at the Al Aratawiyah camp until 1992, when the camp was closed and the remaining inmates were transferred to the refugee camp at Rafha.

216. Iraq asserts that the costs of caring for POWs are borne by the "detention" state in accordance with the terms of the Third Geneva Convention. 59/

(ii) Analysis and valuation

217. The Panel finds that the question of eligibility of the costs of support provided to Iraqi POWs for compensation depends upon the application of Governing Council decision 19.

218. As noted at paragraph 18 above, the Panel determined in its Second Report that the costs of 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 the scope of Governing Council decision 19 and are therefore not eligible for compensation. 60/

219. The Panel finds that the detention and repatriation of Iraqi POWs by the Claimant formed part of Saudi Arabia's participation in the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. The costs incurred by the Claimant in

providing support to the POWs during their detention by Saudi Arabia, therefore, are not eligible for compensation in accordance with the application of Governing Council decision 19.

220. The Panel notes that, with a few specific and limited exceptions, the Third Geneva Convention is silent as to the issue of compensation for costs incurred by the detaining power for POW maintenance. Although the operation of Governing Council decision 19 excludes the possibility of compensation for all costs incurred in the conduct of military operations against Iraq, including those incurred in complying with the terms of the Third Geneva Convention, this application of Governing Council decision 19 does not alter the humanitarian nature of the legal obligation of Saudi Arabia under the Third Geneva Convention to provide support to the POWs in its care. The POWs were captured by the Allied Coalition Forces and the obligations to provide support to such prisoners are governed by articles 12 and 15 of the Third Geneva Convention. The Panel notes that in cases of other armed conflicts unrelated to Iraq's invasion and occupation of Kuwait, there may be a need for bodies responsible for the implementation of the Geneva Conventions to clarify, as a matter of general interpretation, who is to bear the final cost for complying with the obligations to provide support to POWs established under the Third Geneva Convention, in the light of the nature and purpose of the expenditures made and whether ultimately a claim for reimbursement might be appropriate.

221. The Panel finds that this analysis is equally applicable regardless of the party that captured the POWs. The Panel further notes that article 12 of the Third Geneva Convention provides that where custody of the POWs has been transferred by the capturing party to a third party, ultimate responsibility for the treatment of the POWs remains with the party or parties by whom the POWs were captured in the event that the party accepting custody of the POWs fails to carry out the provisions of the Third Geneva Convention in any important respect. 61/

222. The Panel wishes to emphasize that the application of Governing Council decision 19 to the present Claim does not derogate from the humanitarian concerns underlying the Third Geneva Convention as the obligations established in the Convention are to be complied with by both the capturing power and the power responsible for providing the appropriate treatment of POWs, in both cases independently of the question of eventual compensation.

223. With respect to the costs of support that the Claimant continued to provide to those POWs who refused to be repatriated to Iraq upon the cessation of hostilities, the Panel finds that the decision by those POWs not to return to Iraq, and the decision by Saudi Arabia to continue to provide support to those POWs after their refusal to be repatriated, were independent decisions on the part of the POWs and Saudi Arabia, respectively, that broke the chain of causation between the costs incurred and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no award of compensation.

(c) Recommendation

224. Based on its findings, the Panel recommends no award of compensation in respect of payment or relief to others.

2. Public service expenditures (SAR 13,229,150,921)(a) Facts and contentions

225. The Claimant seeks compensation for the costs of providing logistical support to the Allied Coalition Forces during the period of Iraq's invasion and occupation of Kuwait, including hiring of equipment; various insurance costs; wells and water; installations; communications equipment; materials, vehicles and spare parts; motor fuel; aviation fuel; subsistence; accommodation; and medical services.

(b) Analysis and valuation

226. The Panel finds that the claimed expenditures constitute costs of the Claimant's 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. In accordance with the reasons stated at paragraph 18 above, the Panel therefore recommends no award of compensation.

(c) Recommendation

227. Based on its findings, the Panel recommends no award of compensation in respect of public service expenditures.

3. Recommendation for Ministry of Defence and Aviation/Joint Forces Affairs

228. Based on its findings regarding the Claim by the Ministry of Defence and Aviation/Joint Forces Affairs, the Panel recommends no award of compensation.

Table 7. Recommended compensation for Ministry of Defence and Aviation/Joint Forces Affairs

(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Payment or relief to others	2,455,213,767	2,455,213,767	nil
Public service expenditures	13,229,150,921	13,229,150,921	nil
<u>Total</u>	15,684,364,688	15,684,364,688	nil

G. Ministry of Agriculture and Water/Agricultural Affairs (UNCC claim No. 5000208)

229. The Claimant, one of the four sectors of the Ministry of Agriculture and Water, is responsible for the planning and implementation of policies relating to agriculture.

1. Other tangible property (SAR 61,710)

(a) Facts and contentions

230. The Claimant seeks compensation for lost and damaged tools and equipment at three quarantine stations, in Al Khafji (on Saudi Arabia's border with Kuwait), Judaida Ar'ar (on Saudi Arabia's border with Iraq) and Al Raqa'i (in the Eastern Province). In Al Khafji, the damage was alleged to have occurred during the invasion of the town by Iraqi forces on 29 January 1991, and in Judaida Ar'ar to have resulted from "the action of infiltrators" when the quarantine station was left unattended during the period of military operations in the Northern Region. The Claimant similarly states that Al Raqa'i station was evacuated during the period of military operations, and that the loss took place during this time.

231. During the on-site inspection, the Claimant reduced the total amount claimed to SAR 40,256.

(b) Analysis and valuation

232. For the reasons stated at paragraph 17 above, the Panel finds that loss or damage of other tangible property arising as a result of military operations in Al Khafji is, in principle, compensable. The Panel further finds that loss or damage to tangible property that occurred when the stations in Judaida Ar'ar and Al Raqa'i were left unguarded as a result of Iraq's invasion and occupation of Kuwait is compensable, in principle, in accordance with paragraph 13 of decision 9. 62/ However, adjustments have been made to the amount claimed to take into account the age of the property at the time of loss or damage.

(c) Recommendation

233. Having considered the evidence, the Panel recommends an award of SAR 12,077 for other tangible property.

2. Recommendation for Ministry of Agriculture and Water/Agricultural Affairs

234. Based on its findings regarding the Claim by the Ministry of Agriculture and Water/Agricultural Affairs, the Panel recommends compensation in the total amount of SAR 12,077.

Table 8. Recommended compensation for Ministry of Agriculture and Water/Agricultural Affairs
(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Other tangible property	61,710	40,256	12,077
<u>Total</u>	61,710	40,256	12,077

H. Ministry of Agriculture and Water/Department of Water (UNCC claim No. 5000209)

235. The Claimant, one of the four sectors of the Ministry of Agriculture and Water, is responsible for investigating ground water resources; developing surface water resources; drilling wells, constructing water treatment plants, executing water supply projects and supplying water tankers; and observing and measuring rainfall and recording other hydrological data.

236. The Claimant asserts that prior to Iraq's invasion and occupation of Kuwait, it interacted with other Saudi Arabian Government ministries to make water available to all citizens. As a result of Iraq's invasion and occupation of Kuwait, the Claimant formed emergency committees with the Ministry of Interior (Civil Defence), the Ministry of Defence and Aviation and the Saline Water Conversion Corporation.

1. Contract (SAR 63,768,539)

(a) Facts and contentions

237. The claim relates to two contracts with specialized private firms for the drilling, operation and maintenance of wells in the south-eastern and central-northern regions of Saudi Arabia, respectively, which were nearing expiration at the date of Iraq's invasion of Kuwait. The original contracts were dated 8 June 1988 and were for a period of three years. Tenders for new contracts were invited in August 1990. The advertised date for the tenders to be received for both contracts was stated to be 20 March 1991. The bids for both contracts were evaluated at a meeting held on 23 April 1991 and the new contracts were signed and commenced on 7 May 1991, the old contracts having expired the previous day.

238. The Claimant asserts that while the new contracts with the same firms commenced in May 1991, the bids and terms of the new contracts were drafted and terms agreed upon during the period of Iraq's invasion and occupation of Kuwait. As a result, the Claimant asserts that the contract prices of the renewed contracts were significantly greater than those of the contracts dated June 1988 for the same type of work in the same areas.

239. The Claimant gives differing reasons for the increased contract prices. According to the Claimant's report, the influx of refugees and the deployment of the Allied Coalition Forces in Saudi Arabia called for the provision of water, the need for which was taken into account when the two contracts were signed. No evidence was provided in support of these assertions. However, in its response to the article 34 notification, the Claimant states that:

"the execution of the contracts was, partially, due during an armed conflict situation and in a region exposed to the Iraqi forces. Furthermore, the flight of skilled labour used by companies and establishments affected the speed of the implementation of works assigned to them".

240. The Claimant asserts that it did not renegotiate the terms and prices of the contracts after the liberation of Kuwait because, in accordance with Saudi business practice, it was not permitted to attempt to renegotiate the tenders, other than to accept the lowest bid.

241. The original contract for the south-eastern region covered 131 projects at a total contract value of SAR 48,063,000. The new contract dated 7 May 1991 covered 126 projects at a total contract value of SAR 74,837,000. In the statement of claim, the Claimant sought compensation for the increased costs for an equivalent number of projects that it calculated to be SAR 28,458,468.50. In its response to the article 34 notification, the Claimant increased the claimed amount from SAR 28,458,468.50 to SAR 46,228,465.60 due to an alleged arithmetical error in the original calculation of the loss.

242. The original contract for the central-northern region covered 191 projects at a total contract value of SAR 56,899,000. The new contract dated 7 May 1991 covered 200 projects at a total contract value of SAR 96,554,000. The Claimant seeks compensation for increased costs that it calculated to be SAR 35,310,070 in the statement of claim. In its response to the article 34 notification, the Claimant increased the claimed amount for this contract from SAR 35,310,070 to SAR 39,655,004.50, due to an alleged arithmetical error.

243. The Claimant, in its response to the article 34 notification, increased the total amount claimed for contract to SAR 68,263,471.38.

(b) Analysis and valuation

244. For the reasons stated at paragraph 37 above, the Panel finds that the amount claimed is limited to SAR 63,768,539.

245. Paragraph 10 of Governing Council decision 9 states that in respect of contracts where Iraq is not a party, "Iraq is responsible for the losses that have resulted from the invasion and occupation of Kuwait". In order to be compensable, such losses must have been direct. 63/

246. The Panel finds that the evidence is not sufficient to demonstrate that the increased contract prices were a direct loss resulting from Iraq's invasion and occupation of Kuwait. 64/ No evidence has been provided to support the assertion that the contractors suffered from a shortage of labour at the time when bids were submitted and evaluated and the contracts concluded. Nor has any evidence been provided to demonstrate how such alleged labour shortage increased the contract prices.

247. Furthermore, the Panel finds that as the date for receipt of the bids was 20 March 1991, the Claimant could have renegotiated the basis for the tenders or invited new tenders to be submitted after the liberation of Kuwait, in an attempt to seek lower bids given that circumstances had changed since the bidding process had opened. In order to do so, the Claimant could have inserted a clause in its call for tender allowing for bids to be renegotiated or resubmitted should the hostilities conclude prior to the date for submission of bids. The failure to do so represents a failure on the part of the Claimant to mitigate its losses.

(c) Recommendation

248. Based on its findings, the Panel recommends no award of compensation for contract.

2. Payment or relief to others (SAR 38,330,720)

(a) Facts and contentions

249. The Claimant states that it incurred costs for 59 measures which were taken, under contract, to ensure the provision of water to Kuwaiti refugees and to members of the Allied Coalition Forces. The measures included drilling wells, supplying water by tankers, and supplying engines, pumps, generators and other spare parts. The Claimant states that it has excluded 10 measures taken solely to benefit the Allied Coalition Forces, although some measures benefitted both the refugees and the Allied Coalition Forces, thus serving a dual purpose. The Claimant therefore seeks compensation only for the costs of 49 measures that were undertaken for the exclusive benefit of refugees or for refugees and the Allied Coalition Forces. The Claimant asserts that while some of the contracts commenced during the period of Iraq's invasion and occupation of Kuwait, some contracts commenced shortly thereafter because the refugees did not leave Saudi Arabia immediately after the cessation of hostilities.

250. In its response to the article 34 notification, the Claimant states that it cannot provide a precise breakdown of the provision of the services between the Allied Coalition Forces and civilians/refugees. The Claimant asserts that the services were provided "mainly to refugees and local citizens and that in extraordinary cases and to the least extent, the Coalition Forces were amongst the beneficiaries". The Claimant further alleges that "[g]enerally, the Coalition Forces used their own means of water supply".

251. In its response to the article 34 notification, the Claimant reduced the amount claimed for payment or relief to others to SAR 37,811,973. The Claimant also stated that it was withdrawing a claim relating to 20 wells in the Eastern Province for a value of SAR 11,990,000, but did not explicitly reduce the total amount claimed by this amount.

(b) Analysis and valuation

252. For the reasons stated at paragraph 21 above, the Panel finds that costs of measures undertaken to supply water to refugees are, in principle compensable. However, adjustments have been made to the amount claimed to take into account the residual value of the wells and equipment. Given that Kuwaiti refugees were advised by the Government of Kuwait not to return to Kuwait for safety reasons for a period of three months after the liberation of Kuwait, the Panel finds that costs incurred in supplying water to refugees during the period 2 August 1990 to 31 May 1991 are, in principle, compensable. 65/

253. The Panel further finds that measures taken to supply water to members of the Allied Coalition Forces constitute support provided in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 18 above, the Panel finds that these costs are not compensable. An adjustment to the

amount claimed has therefore been made to take into account the proportion of services that were provided to the Allied Coalition Forces.

(c) Recommendation

254. Having considered the evidence, the Panel recommends an award of SAR 1,311,584 for payment or relief to others.

3. Public service expenditures (SAR 7,120,566)

(a) Facts and contentions

255. The Claimant seeks compensation for the costs of measures undertaken “to ensure that water would be available to citizens displaced by the Iraqi invasion and, generally, to meet emergencies in that connection”. The Claimant explained in its response to the article 34 notification that “displaced citizens” refers to citizens mainly from the eastern part of Saudi Arabia who abandoned their homes and sought refuge in the central region. The Claimant added that the works were carried out to assist Kuwaiti refugees as well as the displaced citizens and Allied Coalition Forces.

256. The measures taken include drilling wells, and purchasing diesel engines, supplies, equipment, and water tanks. Some of the tanks were purchased for the use of the Allied Coalition Forces. In its response to the article 34 notification, the Claimant increased the total amount claimed from SAR 7,120,566 to SAR 7,364,422.

(b) Analysis and valuation

257. For the reasons given at paragraph 37 above, the Panel finds that the amount claimed is limited to SAR 7,120,566.

258. The Panel finds that the drilling of wells and purchase of equipment to ensure the supply of water to displaced citizens and Kuwaiti refugees, represents a reasonable preventive and protective measure for the benefit of the civilian population that is proportionate to the threat of military operations to which the population was exposed during the period of Iraq’s invasion and occupation of Kuwait. For the reasons given at paragraph 20 above, the Panel therefore finds that the costs incurred for the benefit of the civilian, including the refugee, population are compensable, in principle. However, adjustments have been made to the amount claimed to take into account the residual value of the wells and equipment. Given that the beneficiaries of the measures include Kuwaiti refugees, for the reasons stated at paragraph 252 above, the Panel finds that costs incurred in supplying water to refugees during the period 2 August 1990 to 31 May 1991 are, in principle, compensable.

259. For the reasons stated at paragraph 18 above, the Panel finds that the costs incurred for the benefit of the Allied Coalition Forces are not eligible for compensation, in principle, and therefore recommends no award of compensation for the costs of the water tanks.

(c) Recommendation

260. Having considered the evidence, the Panel recommends an award of SAR 470,494 for public service expenditures.

4. Recommendation for Ministry of Agriculture and Water/Department of Water

261. Based on its findings regarding the Claim by the Ministry of Agriculture and Water/Department of Water, the Panel recommends compensation in the total amount of SAR 1,782,078.

Table 9. Recommended compensation for Ministry of Agriculture and Water/Department of Water
(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Contract	63,768,539	63,768,539	nil
Payment or relief to others	38,330,720	37,811,973	1,311,584
Public service expenditures	7,120,566	7,120,566	470,494
<u>Total</u>	109,219,825	108,701,078	1,782,078

I. Royal Commission for Jubail and Yanbu (UNCC claim No. 5000216)

262. The Royal Commission for Jubail and Yanbu (the “Claimant”) was established in 1975 to oversee the development of two cities, Jubail and Yanbu, that now encompass major industrial complexes. Jubail is situated on the Persian Gulf, north of Dammam, while Yanbu is located on the Red Sea, north of Jeddah. The Claimant is an autonomous agency directly under the chairmanship of the King of Saudi Arabia. The Presidency of the Royal Commission is based in Riyadh. The claim comprises claims by the Presidency, the General Directorate for the Yanbu Project and the General Directorate for the Jubail Project.

263. The Claimant is responsible for constructing and operating industrial and community complexes in Jubail and Yanbu, and for providing infrastructure and services such as desalination, water distribution, sanitary and industrial sewage treatment, power, telecommunications, roads and highways, seaports, airports, community housing, schools, hospitals and other commercial and government-support facilities.

264. During Iraq’s invasion and occupation of Kuwait, the Claimant states that its seaports, airports and its community-support facilities were made available to the Allied Coalition Forces. The Claimant mobilized its personnel and material resources to support and accommodate the Allied Coalition Forces, as well as refugees from Kuwait (in Jubail).

1. Payment or relief to others (SAR 33,122,585)

(a) Facts and contentions

265. The Claimant asserts that it provided assistance to Kuwaiti refugees, in the form of food and medical care, accommodation and utilities (electricity, water, communications and waste collection) in Jubail. The Claimant alleges that it was deprived of the use of the property which was designed for development and investment as a result of providing accommodation to the refugees. 66/

266. In its response to the article 34 notification, the Claimant limited the amount claimed to SAR 6,143,928.60 for loss of rent, and SAR 13,960,000 for aid provided to refugees, thereby reducing the total claimed amount to SAR 20,103,929.

267. The Claimant states that 2,875 refugees were accommodated in camp 1 (945 rooms) and 3,914 refugees in camp 4 (1,238 rooms) during the period of Iraq’s invasion and occupation of Kuwait. The Claimant asserts that prior to Iraq’s invasion and occupation of Kuwait, Arabian Supply and Architectural Contracting Company Ltd (“ASACO”) operated the two camp facilities (camps 1 and 4) in accordance with a concession agreement which was entered into on 22 September 1987. The Claimant states that each of the camps was leased to ASACO at an annual total rent of SAR 8,496,000.

268. The Claimant stated that under normal circumstances, the camps housed ASACO employees, and that the Claimant usually received fixed monthly rental payments from ASACO for the accommodation, regardless of the number of the units occupied. At the beginning of Iraq’s invasion

and occupation of Kuwait, the Claimant verbally requested ASACO to vacate the camps so they could be used for refugee accommodation. A letter dated 19 August 1990 was provided confirming the verbal instructions from the Emir of the Eastern Province to make the camps available to refugees. ASACO was requested to house the refugees in the two camps and to provide them with full services, including meals. At that time, the Claimant asserts that the camps were fully occupied by ASACO employees and workers.

269. During the on-site inspection, the Claimant clarified that during a period of approximately three months following the date of Iraq's invasion of Kuwait, the two camps in question housed refugees. Camp 4 was then handed over to the Allied Coalition Forces on 9 October 1990, while camp 1 was handed over to the Allied Coalition Forces on 10 November 1990. The claim relates to the period when the refugees occupied the two camps. The Claimant asserts that ASACO was not requested to pay rent during this period and that, consequently, none was received. The Claimant seeks compensation in the amount of SAR 3,960,000, which it asserts is equivalent to the rent that it would have received from ASACO, but for the presence of the refugees in the camps. The claim is stated as follows:

- (a) Camp 1 occupied for 98 days at a loss of rent of SAR 2,352,000; and
- (b) Camp 4 occupied for 67 days at a loss of rent of SAR 1,608,000.

270. During the on-site inspection, the Claimant asserted that the "exact nature of the assistance provided to the refugees is only accommodation". No explanation of the separate amount of SAR 13,960,000 claimed in the response to the article 34 notification for relief to refugees was provided.

(b) Analysis and valuation

271. For the reasons given at paragraph 21 above, the Panel finds that loss of rent incurred as a result of providing accommodation to Kuwaiti refugees is, in principle, compensable.

272. However, the Panel notes that no evidence has been provided to demonstrate that rent was foregone during the period when the camps were occupied by the refugees. Nor has any evidence been provided to demonstrate the annual rental costs upon which the claim is based. The Panel therefore finds that the evidence is not sufficient to verify and value the claim.

273. The Panel further finds that no evidence or explanation was provided in support of the amount of SAR 13,960,000 claimed for relief provided to refugees and therefore recommends no award of compensation.

(c) Recommendation

274. Based on its findings, the Panel recommends no award of compensation for payment or relief to others.

2. Public service expenditures (SAR 29,123,052)

(a) Presidency (SAR 2,240,921)

275. The Presidency, based in Riyadh, seeks compensation for war risk insurance against death and injury of staff in Jubail (SAR 651,375) and war risk insurance premiums for the Claimant's aircraft (SAR 1,589,546).

(i) War risk insurance for staff (SAR 651,375)

a. Facts and contentions

276. The Claimant alleges that although the threat of military action was "acute" in the eastern areas of Saudi Arabia (which included the industrial city of Jubail), the Claimant's contractors maintained skeleton crews in Jubail to protect ongoing construction sites during the period of Iraq's invasion and occupation of Kuwait. The crews were responsible for providing ongoing maintenance for normal municipal services such as water supply, power supply, water cooling and telecommunications installations required during this period, in order to keep the city functioning. In order to assure the 12 contractors involved in active construction sites in Jubail that their employees "would not suffer disastrous financial loss" as a result of possible injury or death caused by military action, the Claimant asserts that it insured the contractors' 965 emergency staff members against death and permanent disability resulting from war and allied perils. The Claimant stated that the insurance cover was taken out as an incentive for employers and their staff to stay in Jubail during the period of military operations. The claimed amount is based on the net premium paid on a group policy issued on 16 January 1991 by the National Company for Co-Operative Insurance in accordance with the results of a bidding process. The Claimant asserts that it chose to take out war risk coverage for the employees for a period of one year from 16 January 1991 as it could not anticipate, at that time, how long hostilities were likely to continue, and because annual insurance coverage was a cheaper option than daily insurance coverage.

277. The Claimant asserts that the total premium paid was SAR 868,500, and that 25 per cent of that amount was refundable in the event of hostilities breaking out but no claim being made. SAR 217,125 was refunded on 5 May 1991 in accordance with these terms. The Claimant therefore seeks compensation for the net cost of the insurance of SAR 651,375.

278. The Claimant stated that the skeleton staff that remained in charge of maintaining and running Jubail's infrastructure may have provided services to members of the Allied Coalition Forces who were based in camps in Jubail.

b. Analysis and valuation

279. The Panel finds that the reasonable costs of taking out war risk insurance for staff in Jubail as an incentive for staff to remain on site to continue essential services and maintenance during the period of military operations were incurred as a direct result of Iraq's invasion and occupation of Kuwait, and are therefore, in principle, compensable. 67/ The Panel further finds that it was

reasonable for the Claimant to take out annual coverage, given the uncertainty as to the possible duration of Iraq's occupation of Kuwait and the fact that annual coverage was cheaper than shorter-term alternatives.

280. The Panel notes that some services may have been provided to members of the Allied Coalition Forces and therefore makes an adjustment to the amount claimed to take this possibility into account.

281. Having considered the evidence, the Panel recommends an award of SAR 325,688 for war risk insurance premiums for employees.

(ii) War risk insurance premiums for the Claimant's aircraft (SAR 1,589,546)

a. Facts and contentions

282. The Claimant alleges that due to the fact that the two sites for which it is responsible are located at opposite coasts (Yanbu is on the Red Sea, while Jubail is on the Persian Gulf), it has owned a Gulf Stream aircraft since 1982 to facilitate access to the two sites. At the date of Iraq's invasion of Kuwait, the Claimant states that the aircraft was covered by an Aviation Hull Political Risks policy concluded in May 1990 for one year, the premium of which was an annual amount of USD 10,049 for USD 17,865,000 cover. The policy was open to review of premium rates or cancellation at seven-days' notice.

283. On 18 August 1990, the insurers notified the Claimant of the cancellation of the policy but offered to reinstate it on revised terms, that is, to provide shorter periods of coverage at higher premiums. The Claimant alleges that it had no choice but to accept the new terms if it wished to continue to operate the aircraft. The Claimant states that no rebate was received upon cancellation of the policy, and that 18 short-term policies of insurance cover were taken out by the Claimant from 25 August 1990 until 13 February 1991, the rate of the premium being dependent on the gravity of the circumstances at the date of each of the policies. The total cost of the additional premiums payable under the 18 short-term policies was SAR 1,589,546.27 (approximately USD 424,445). The Claimant states that insurance premiums at normal rates resumed on 14 February 1991, while insurance coverage on normal terms was reinstated on 14 March 1991.

284. Correspondence from the insurer refers to "the volatile situation in the Gulf" in tendering seven-days' notice cancelling the policy. In analysing the revised terms of the policy, the Claimant's insurance broker queried whether the aircraft could be relocated to another country during the period of hostilities. The Claimant stated that it was not aware of any consideration that might have been given to basing the aircraft outside Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait.

285. The Claimant stated that it wished to have the aircraft available for use by its officials to supervise activities and to ensure the smooth functioning of essential services at Jubail and Yanbu during the period of Iraq's invasion and occupation of Kuwait.

286. The Claimant stated that in peacetime, the aircraft was not used on a daily basis, but rather two or three times per month by the Claimant's officials to travel on Commission-related activities. It was also lent to other Government departments for official business from time to time.

b. Analysis and valuation

287. The Panel finds that increased war risk insurance premiums payable during the period 2 August 1990 to 2 March 1991 with respect to the aircraft used for the Claimant's official business are, in principle, compensable in accordance with paragraph 34 (a) of Governing Council decision 7. 68/ However, the Panel further finds that an adjustment should be made to take into account the Claimant's failure to mitigate the loss by relocating the aircraft, and the possibility that some flights may have been used in providing assistance to the Allied Coalition Forces.

288. Having considered the evidence, the Panel recommends an award of SAR 794,773 for aircraft war risk insurance.

(b) General Directorate for Yanbu (SAR 13,354,398)

289. The Claimant states that as Yanbu is on the Red Sea, it was "not as directly in the area of threatened and actual hostilities as Jubail". However, as a result of Iraq's declaration of a Jihad (holy war) against Saudi Arabia on 10 August 1990, the Claimant alleges that there was considerable apprehension that industrial sites would be the subject of attack. The Claimant therefore seeks compensation for the costs of implementing the following measures in response to the threat to which the Claimant asserts Yanbu was exposed:

(a) Gas masks for adults and dependants (SAR 6,522,200);

(b) Incentive payments ("danger money") paid to contractors' employees responsible for ensuring general maintenance and the provision of power and water (SAR 4,978,033); and

(c) Overtime for 425 members of the Claimant's security staff (SAR 1,854,165).

(i) Gas masks (SAR 6,522,200)

a. Facts and contentions

290. The Claimant seeks compensation in the amount of SAR 6,522,200 for the purchase of 7,882 gas masks that were provided to operations and maintenance contractors' employees and their dependants in January 1991 in response to Iraq's invasion and occupation of Kuwait. The purchases included miscellaneous accessories such as "baby-lifts" for newborn to 12-month old babies, and protective jackets for children. Some of the gas masks were purchased by the contractors under the costs reimbursable provisions of the contracts with the Claimant.

b. Analysis and valuation

291. For the reasons stated at paragraph 20 above, the Panel finds that the purchase of gas masks for the Claimant's own and contractors' staff was a reasonable and proportionate response to the threat of military operations to which Saudi Arabia was exposed during the relevant period, and that the costs of purchasing the masks are therefore compensable, in principle. Having considered the evidence, the Panel therefore recommends an award of SAR 6,522,200 for gas masks.

(ii) Incentive payments (SAR 4,978,033)

a. Facts and contentions

292. The Claimant asserts that the retention of two contractors at the project site in Yanbu was particularly important – the one ensuring general maintenance (Saudi Arabian Parsons Ltd (“SAPL”)) and the other being responsible for the provision of power and water (Resource Sciences Arabia Ltd (“RSAL”)). The Claimant states that it agreed to pay the contractors' employees a special allowance of 15 per cent of their salary as “danger money” and to meet special expenses, during the period December 1990 to March 1991. The Claimant seeks compensation in the amount of SAR 4,978,033 for the payments, representing payments of SAR 944,014 to SAPL and 4,034,019 to RSAL.

293. The Claimant alleges that during the period of Iraq's invasion and occupation of Kuwait, RSAL experienced “severe financial and operational difficulties directly attributable to the emergency”. The Claimant states that because this situation was beyond RSAL's control and because there was an urgent need to maintain operation of utility services, it approved an increase in RSAL's contract labour rates for the period of Iraq's invasion and occupation of Kuwait.

294. On 8 February 1992, the Claimant issued a modification to the contract with RSAL authorizing an additional payment of 15 per cent of the total labour cost billed by RSAL during the period from 2 August 1990 to 28 February 1991. RSAL was required to pass this amount on to its employees in respect of wages paid during this period. The modification provided that it was to be accepted by RSAL in full settlement of all claims for additional compensation or for extensions of time arising out of matters occurring on or before the effective date of the modification. The modification required RSAL to pay an additional amount of 15 per cent to all its employees for the period stated above.

295. SAPL was also contracted to provide management and technical services to the Claimant for the Yanbu Industrial Complex. On 24 November 1990, SAPL requested a 15 per cent additional payment to its staff, which request was approved on 27 December 1990. The request cites two reasons for the payment: the retention of staff, and compensation for staff whose families had left the area because of Iraq's invasion and occupation of Kuwait, and who were therefore incurring additional costs in maintaining two households. Reference is made in the request to the fact that two employees had already resigned because of Iraq's invasion and occupation of Kuwait.

296. The Claimant asserts that the special payments were made to foreign labourers as a “morale-booster” and to induce them to stay at the site, for the purposes of operation and maintenance. The

special payments were deemed exceptional and temporary and were intended to take into account the increased cost of living resulting from the war, such as increased costs of goods and services, increased airfares and increased insurance costs.

297. The Claimant reduced the total amount claimed to SAR 4,576,522 during the on-site inspection, as a result of an audit of the payments made to RSAL staff.

b. Analysis and valuation

298. For the reasons stated at paragraph 26 above, the Panel finds that incentive payments made by the Claimant during the period 2 August 1990 to 2 March 1991 as an inducement to SAPL's employees to continue working on-site are compensable, in principle. However, the Panel finds that the portion of the amount paid to SAPL employees intended to cover increased costs of family support is not compensable, in principle, as such costs cannot be directly attributed to Iraq's invasion and occupation of Kuwait.

299. With respect to the payments made to RASL, the Panel finds that these payments were made in February 1992 in full settlement of RASL's claims for additional compensation against the Claimant, and not in accordance with a pre-existing promise to make incentive payments as an inducement for RASL's staff to stay on site. The Panel therefore finds that the payments were not made as a direct result of Iraq's invasion and occupation of Kuwait and recommends no award of compensation in respect thereof.

300. Having considered the evidence, the Panel recommends an award of SAR 141,922 for incentive payments.

(iii) Staff overtime (SAR 1,854,165)

a. Facts and contentions

301. The Claimant asserts that 425 members of its security staff performed overtime in response to the threat of military action. Their functions included additional guard and patrol services, which were doubled and intensified in accordance with Ministry of Interior instructions. The evidence states that guard and patrol personnel were split into 11 instead of the normal six shifts, as many of the work sites required 24-hour surveillance.

302. The Claimant further stated that essential facilities, especially power and water supplies, were guarded around the clock as there was a fear that such facilities would be sabotaged by Iraqi agents. In addition, increased security measures were implemented pursuant to the Claimant's emergency plan.

b. Analysis and valuation

303. The Panel finds that implementing the Claimant's emergency plan and increasing security measures to protect facilities at the Claimant's industrial complexes, including from possible sabotage by Iraqi agents, represent a reasonable and proportionate response to the threat of military action to

which Saudi Arabia was exposed during the period 2 August 1990 to 2 March 1991. For the reasons stated at paragraph 24 above, the Panel finds that incremental overtime costs incurred during this period in implementing the emergency plan and increasing security measures are, in principle, compensable.

304. However, the Panel finds that the evidence is not sufficient to verify and value the claim, and therefore recommends no award of compensation for staff overtime.

(c) General Directorate for Jubail (SAR 13,527,733)

305. The Claimant seeks compensation for a number of losses it alleges it incurred as a result of Iraq's invasion and occupation of Kuwait, as follows:

- (a) Lunch subsidies for the Claimant's and contractors' employees (SAR 94,930);
- (b) Incentive payments for the Claimant's and contractors' employees (SAR 2,196,858);
- (c) Miscellaneous protective equipment and other items for the Claimant's and contractors' employees (SAR 7,504,634);
- (d) Measures to facilitate evacuation from Jubail – road improvement (SAR 2,787,596); and
- (e) Services (waste and potable water) for refugees and Allied Coalition Forces (SAR 935,390).

306. In its response to the article 34 notification, the Claimant stated that support in excess of SAR 25,000,000 was provided to the Allied Coalition Forces. This amount was not included in the original statement of claim or the revised statement of claim.

307. The Panel notes that there is an arithmetical error in the amount claimed for public service expenditures with respect to the General Directorate for Jubail, and that the correct amount claimed should be SAR 13,519,408, being the total of the amounts listed in paragraph 305 above.

(i) Lunch subsidies (SAR 94,930)

a. Facts and contentions

308. The Claimant seeks compensation for the cost of providing lunch on a daily basis in February 1991 to "direct hire" and its own employees. The Claimant asserts that the meals were provided in order to have staff on stand-by at all times. The Claimant states the employees carried out their routine work as well as emergency assignments in the field and in the office. The payments for the meals were made directly to the catering companies responsible for providing them.

b. Analysis and valuation

309. For the reasons given at paragraph 24 above, the Panel finds that incremental staff costs, including costs of providing meals, incurred in implementing reasonable and proportionate protective

measures during the period of Iraq's invasion and occupation of Kuwait are, in principle, compensable, to the extent such costs are reasonable.

310. Having considered the evidence, the Panel recommends an award of SAR 45,100 for lunch subsidies.

(ii) Incentive payments (SAR 2,196,858)

a. Facts and contentions

311. The Claimant seeks compensation for incentive payments made to contractors' employees in Jubail from 17 January to 2 March 1991 to ensure continuation of work on various projects and to avoid increased costs of completing contracts in case of delay. The Claimant alleges that it would not have made the payments but for the threat of military action. The evidence indicates that contractors in Jubail Industrial City had written to the Claimant passing on their concerns about the circumstances of Iraq's invasion and occupation of Kuwait. Thirteen contractors invoiced and received payment from the Claimant for incentive payments made to approximately 3,250 employees.

312. The Claimant asserts that a daily allowance of SAR 20 was paid to the contractors' employees "at the beginning of the crisis" and that this amount was increased to SAR 100 following the outbreak of hostilities (the request for such increase is dated 8 January 1991) to keep the employees at work. The employees who received the incentive payments were responsible for operation and maintenance of services and infrastructure in Jubail Industrial City in accordance with the Claimant's emergency plan, which required water, waste water and industrial waste water systems to be partially operated. The Claimant asserted that no assistance was provided to members of the Allied Coalition Forces as they were "taking care of themselves".

b. Analysis and valuation

313. For the reasons stated at paragraph 26 above, the Panel finds that incentive payments made by the Claimant during the period 2 August 1990 to 2 March 1991 as an inducement to contractors' employees to continue working on site are compensable, in principle. Having considered the evidence, the Panel recommends an award of SAR 1,485,278 for incentive payments.

(iii) Miscellaneous protective equipment and other items (SAR 7,504,634)

a. Facts and contentions

314. The Claimant states that it purchased gas masks and other protective equipment in January 1991 for its employees and their dependants, and that it provided food, clothing and "bedding" to duty officers required to work extra hours. The Claimant states that duty officers provided services to all residents in the city.

315. The Claimant asserts that its normal operations room was converted into a 24-hour emergency room during the period of Iraq's invasion and occupation of Kuwait and was staffed with Royal Commission employees to co-ordinate the implementation of emergency procedures. The emergency

room and other emergency centres were set up under the Commission's evacuation plan. The centres were usually equipped from stock, although in some cases equipment, such as facsimile machines and video cameras, was purchased. Meals were also provided to staff in the emergency centres.

316. The Claimant seeks compensation for catering costs incurred for Royal Commission employees and contracted staff who were present on 24-hour duty at emergency desks (not emergency centres) maintained by the contractors. The claim also includes some costs for accommodation and protective clothing provided for emergency staff during the relevant period.

317. Vehicles were purchased to access the remote areas of Jubail, as duties were intensified and properties under the Claimant's jurisdiction required inspection. Transport costs were incurred with respect to the transport of volunteers for military training and stand-by charges for school buses that could not be put into operation due to the extension of the school holidays because of Iraq's invasion and occupation of Kuwait.

318. Costs regarding tankers and water supplies were incurred pursuant to the emergency plan for the provision of water. Three trucks were bought for emergency purposes, and were fitted out with water and oil tanks. In addition, wells were drilled in Jubail City for emergency use in the event that desalination plants were attacked. Although the wells are no longer in use, the pumps remain in working order.

319. The Claimant stated that solid waste collection for landfill operations increased during the relevant period, and estimated that the services were to the benefit of civilians and military in the ratio of 70 to 30 per cent. The documentation provided in support of the claim refers to demand by the military for 24 hour services, and increased demands in the city. The services were increased from mid-November 1990 to mid-March 1991.

320. The claim also includes a total amount of SAR 220,000 for petty cash disbursements made to one contractor for the purchase of emergency items intended for emergency shelter for civilians.

321. The Claimant stated that some gas masks were purchased as a form of incentive for employees to remain on site.

b. Analysis and valuation

322. The Panel finds that the setting up of emergency centres, the implementation of an emergency plan and the purchase of protective equipment, including gas masks, represent a reasonable and proportionate response to the threat of military action to which Jubail was exposed during the period of Iraq's invasion and occupation of Kuwait. For the reasons given at paragraph 20 above, the Panel finds that the incremental costs incurred during the period 2 August 1990 to 2 March 1991 in carrying out these measures are, in principle, compensable, to the extent such costs are reasonable. An adjustment to the amount claimed is made to take into account the residual value of equipment purchased such as facsimile machines, video cameras, trucks, tanks, wells and pumps.

323. For the reasons given at paragraph 18 above, the Panel finds that the claim for transport of military volunteers is not compensable, in principle. As the remaining transport costs were incurred after 2 March 1991, the Panel recommends no award of compensation in respect thereof.

324. With respect to the claim for solid waste collection, the Panel notes that these services were provided in response to requests by the military, and also due to general increased demand in the city from mid-December 1990 to mid-March 1991. It is to be noted that the refugee camps were vacated in November 1990. While the Claimant estimated that the ratio of civilian to military demand was 70 to 30 per cent, the documentation and timing of the increased operations support the conclusion that military use was somewhat greater than this ratio. The Panel therefore finds that a greater adjustment should be made to take into account the likelihood of military demand for and use of these services.

325. Having considered the evidence, the Panel recommends an award of SAR 2,288,132 for miscellaneous purchases.

(iv) Measures to facilitate evacuation from Jubail (SAR 2,787,596)

a. Facts and contentions

326. In preparation for the possible need to evacuate a large number of people from Jubail, the Claimant alleges that it incurred the following costs:

(a) From September 1990, the Claimant allegedly incurred costs to improve the road system, including hiring equipment and other materials, salaries and purchasing protective clothing for workers; and

(b) In February 1991, the Claimant purchased three vans, while six buses were hired for a limited period.

327. The Claimant states that the pre-existing road system was not adequate for the possible need to evacuate large numbers of people from Jubail in the face of threatened or actual military action. In September 1990, steps to improve the road system, such as paving roads, were taken. In particular, the Claimant alleges that it was necessary to build an evacuation road because the old road would have been closed in the event of military action as it passed alongside petrochemical factories. The evacuation road was constructed to link Jubail with Tareeg Dammam/Abu Hadriyah Highway. Road building equipment such as bulldozers, excavators, dump trucks, rollers and asphalt pavers were hired for this purpose. Workcrews undertook roadworks for a period of three months. The necessary materials for road building were also purchased. The Claimant seeks compensation for these costs.

328. The Claimant asserts that the evacuation road, which is a single-lane carriageway, has not been maintained since the liberation of Kuwait. The Claimant states that the evacuation road was subject to very limited military use and is still in use with an extremely low traffic volume.

329. After the on-site inspection, the Claimant asserted that the claim related principally to the costs of constructing the evacuation road.

b. Analysis and valuation

330. The Panel finds that the construction of the evacuation road was a reasonable and proportionate response to the threat of military action to which Jubail was exposed during the period of Iraq's invasion and occupation of Kuwait. For the reasons given at paragraph 20 above, the Panel therefore finds that the costs incurred in constructing the road are, in principle, compensable. However, adjustments have been made to the amount claimed to take into account the residual value of the road and the use of the road for military purposes during the relevant period.

331. The Panel notes that the claimed amount includes claims for "Additional contractors furnished basic equipment" and "Additional basic labour". The Panel finds that the evidence is not sufficient to verify and value these losses.

332. Having considered the evidence, the Panel recommends an award of SAR 63,682 for the evacuation road.

(v) Services to community (SAR 935,390)

a. Facts and contentions

333. To serve a community that was enlarged as a result of the influx of refugees from Kuwait and the presence of Allied Coalition Forces, the Claimant alleges that it incurred costs to ensure and protect the availability of drinking water and the reclamation of waste water from September 1990. The Claimant also asserts that it provided protective clothing and food to the employees; that it incurred additional costs in relation to solid waste collection and disposal; and that it purchased heavy duty vehicles and other equipment. These additional expenditures are included under miscellaneous expenditures, discussed above.

334. The Claimant asserts that the work involved preparing and rehabilitating the potable water facilities, pipelines and tank distribution system in order to meet the increasing demand during the period of Iraq's invasion and occupation of Kuwait.

335. An examination of the work authorizations indicates that some activities were specifically carried out for safety purposes, while other tasks appear to be normal maintenance or intended for the provision of water to military camps. Moreover, some tasks were specifically intended to facilitate an oil slick clean-up operation, discussed further at paragraph 338 below.

336. The Claimant states that the armed forces used potable water for drinking and washing tanks and military equipment. A 1.8 kilometre pipeline was extended to provide irrigation water for these purposes.

337. In response to requests made during the on-site inspection, the Claimant provided a breakdown of the claim between the beneficiaries of the services, being refugees, civilians and military.

b. Analysis and valuation

338. The Panel notes that the total original claim amount included a claim in the amount of SAR 10,592,938 for environmental losses. This amount was severed and transferred to the "F4" Panel for future review. The Panel therefore does not consider further those costs included in the claim for services to the community that relate to the oil slick operation, being SAR 54,285 for waste water and SAR 2,456 for potable water.

339. The Panel finds that waste and potable water services that were provided to the Allied Coalition Forces constitute support provided in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. For the reasons given at paragraph 18 above, the Panel finds that these costs are not eligible for compensation.

340. For the reasons given at paragraphs 20 and 21 above, the Panel finds that the remaining costs that were incurred in providing waste and potable water services to the civilian and refugee population during the period of Iraq's invasion and occupation of Kuwait are, in principle, compensable.

341. Having considered the evidence, the Panel recommends an award of SAR 12,448 for waste water and SAR 134,994 for potable water, respectively.

(d) Recommendation

342. Based on its findings, the Panel recommends an award of SAR 11,814,217 for public service expenditures.

3. Recommendation for Royal Commission for Jubail and Yanbu

343. Based on its findings regarding the Claim by Royal Commission for Jubail and Yanbu, the Panel recommends compensation in the total amount of SAR 11,814,217.

Table 10. Recommended compensation for Royal Commission for Jubail and Yanbu

(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Payment or relief to others	33,122,585	20,103,929	nil
Public service expenditures	29,123,052	28,721,541	11,814,217
<u>Total</u>	62,245,637	48,825,470	11,814,217

J. Ministry of Defence and Aviation/International Airports Project (UNCC claim No. 5000220)

344. The Claimant is included within the Ministry of Defence and Aviation's ("MODA") Civil Aviation Sector. The International Airports Project involved designing, contracting, operating, managing and maintaining the three civilian international airports in Saudi Arabia under its control: King Abdulaziz International Airport, Jeddah ("KAIA"); King Khaled International Airport, Riyadh ("KKIA"); and King Fahd International Airport, Dhahran ("KFIA"). The Claimant seeks compensation for losses incurred by the three airports which are asserted to have arisen as a direct result of Iraq's invasion and occupation of Kuwait.

345. The Claimant states that its interaction with the Allied Coalition Forces during the period of Iraq's invasion and occupation of Kuwait was limited to civilian matters, including co-ordination in the use of airfields and security (KAIA). However, KKIA was used in part by the Allied Coalition Forces; while most of the facilities at KFIA were taken over by the Allied Coalition Forces.

346. The claim of KFIA was prepared by Saudi Arabian Bechtel Co. Ltd, ("SABCO") but submitted under the authority of the Minister for Defence and Aviation. The Claimant states that SABCO (then called Arabian Bechtel Co. Ltd) and Bechtel Civil and Minerals, Inc. were the project managers in charge of project and construction services at KFIA, which was still under construction at the time of Iraq's invasion and occupation of Kuwait. No corresponding claim by SABCO or Bechtel Civil and Minerals, Inc., has been filed in any other claims category at the Commission.

1. Contract (SAR 51,038,280)

(a) Facts and contentions

347. The claim relates to a claim by a contractor (Joannou and Paraskevaides Overseas Ltd ("J&P")) for loss and damage to materials and goods and delay in execution of works due to the use of the passenger terminal building and KFIA facilities by the Allied Coalition Forces. The losses include damage and loss to facilities caused by the Allied Coalition Forces, suspension of works, loss of manpower and efficiency, and costs of providing services to the Allied Coalition Forces during the period of Iraq's invasion and occupation of Kuwait.

348. In its response to the article 34 notification, the Claimant states that J&P seeks compensation for damage due to the intensive use of the facilities by the Allied Coalition Forces and for disruption costs (incremental costs incurred by J&P in order to resume and complete the works delayed as a result of the war situation) which the Claimant asserts were unrelated to the activities of the Allied Coalition Forces.

349. Claims of other contractors are also referred to in the statement of claim, but are not quantified therein. It is unclear whether the Claimant is seeking compensation in respect of these claims.

350. During the on-site inspection, the Claimant explained that although J&P contracted directly with the Claimant in relation to the KFIA construction works and sought compensation for its losses

directly from the Claimant, SABCO had submitted J&P's claim to the Commission in accordance with SABCO's responsibility for all aspects of the KFIA construction and management project, as set out in the General Conditions of the Project and Construction Services Agreement with the Claimant regarding the International Airports Project ("IAP"). The Panel notes that the evidence includes some communications between SABCO and J&P, which support the inference that J&P assigned its claim to SABCO to bring the claim to the Commission on its behalf without prejudice to its claim against the Claimant. The Claimant stated that J&P's losses have not been paid by it. Correspondence dated 14 May 1996 indicates that J&P's claim against the Claimant for the additional expenses had not been settled at that date.

351. During the on-site inspection, the Claimant stated that it had not paid J&P's claim for losses arising as a result of Iraq's invasion and occupation of Kuwait as it wished to keep those costs separate and that it wished to await the outcome of the Claim now under review by the Commission.

(b) Analysis and valuation

352. The Panel finds that the claims of contractors other than J&P that are referred to in the supporting documentation, but not specifically quantified or adequately explained in the statement of claim, cannot be considered by the Panel. Consideration of the claim is therefore limited to the claim of J&P as submitted by SABCO.

353. The Panel notes that the Claimant has not made any payment to J&P with respect to the alleged losses. The Panel therefore finds that the Claimant has not itself suffered a direct loss as a result of Iraq's invasion and occupation of Kuwait. 69/

354. The Panel finds that the costs incurred and the losses suffered by J&P arose from the occupancy of the airport and its facilities by the Allied Coalition Forces. As the airport and its facilities were made available to the Allied Coalition Forces by the Claimant during the period of Iraq's invasion and occupation of Kuwait 70/, the Panel finds that the costs and losses were incurred as a result of the Claimant's 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. For the reasons stated at paragraph 18 above, the Panel recommends no award of compensation for the claim of J&P as submitted by SABCO.

(c) Recommendation

355. Based on its findings, the Panel recommends no award of compensation for contract.

2. Business transaction or course of dealing (SAR 307,286,450)

356. The Claimant seeks compensation for loss of revenue at all three airports due to the interruption of civilian air traffic as a result of Iraq's invasion and occupation of Kuwait, and, in KFIA's case, as a result of making the airport available to the Allied Coalition Forces.

(a) King Abdulaziz International Airport (SAR 30,189,840)

(i) Facts and contentions

357. The Claimant seeks compensation for loss of landing fees and loss of rent from airport commercial tenants because civilian air traffic was interrupted during the period of Iraq's invasion and occupation of Kuwait as a result of the threat of military action.

358. The Claimant states that as a result of overall security considerations, flight restrictions in Saudi Arabian airspace came into force in August 1990 and ceased in March 1991. The Claimant states that airline companies, their insurers and passengers would not run the risk of landing in Saudi Arabia and that the drop in passenger movements at the airport's two commercial terminals resulted from these overall security considerations.

359. During the period of Iraq's invasion and occupation of Kuwait, the Claimant asserted that the Allied Coalition Forces used two other terminals at the airport, the Royal Saudi Air Force terminal and the Hajj terminal. The Claimant was not notified of the arrival of Allied Coalition Forces troops and ongoing military activity at those terminals. The Claimant stated that the Allied Coalition Forces did not use the commercial terminals during Iraq's invasion and occupation of Kuwait and that only one of the three runways at the airport was used by military aircraft.

360. The original amount claimed in the statement of claim was SAR 30,189,840. However, the supporting documentation and response to the article 34 notification both state the total loss to be SAR 34,189,840. This amount is broken down into SAR 18,361,425 for loss of revenue from commercial tenants and SAR 15,828,415 for loss of landing and other airport fees.

a. Commercial tenants' revenue

361. The Claimant states that commercial tenants at the airport requested to be excused from paying rent during the period of Iraq's invasion and occupation of Kuwait as the lack of passenger traffic had drastically reduced their turnover. The tenants included car rental companies, hotels, currency-exchange offices and travel agencies.

362. The Claimant alleges that there was a likelihood that the tenants would sue the Claimant for loss of profits if they were compelled to pay rent during the relevant period. Letters from three concessions are attached in support of this argument, each of which set out losses due to closure of the airport to civilian traffic during the relevant period. The Claimant alleges that the standard lease agreement does not provide for the reduction of rent in the event of force majeure.

363. During the on-site inspection, the Claimant explained that although it had required the commercial tenants to continue to pay rent during the period of Iraq's invasion and occupation of Kuwait, it was seeking compensation in an amount equal to the rent payments made by the tenants for the seven-month period of Iraq's invasion and occupation of Kuwait. 71/ In the light of potential claims for loss of profits against the Claimant by the tenants, the Claimant stated that any compensation received from the Commission would be used to compensate the tenants for their losses.

b. Loss of airport fees

364. The Claimant asserts that as a result of the decrease in commercial airline traffic, it did not receive landing fees, security fees and overflight fees during the relevant period, although it continued to incur costs such as salaries, equipment and installation depreciation during that period. The Claimant seeks compensation in the amount of SAR 15,828,414,73 for the loss of the fees.

(ii) Analysis and valuation

365. For the reasons stated at paragraph 37 above, the Panel finds that the amount claimed is limited to SAR 30,189,840.

a. Commercial tenants' revenue

366. The Panel finds that the Claimant is effectively making a claim on behalf of the tenants for rent that the Claimant received from the tenants and does not wish to refund to them. Moreover, the Panel notes that even if claims were to be brought by the tenants against the Claimant for refund of the rent or for any other loss alleged to arise as a result of the drop in passenger traffic, the outcome of such claims cannot be predicted. The Panel notes that contingent claims are not generally compensable by the Commission. ^{72/} As the Claimant has not refunded any amount to the tenants, the Panel finds that it has not suffered any loss. The Panel therefore recommends no award of compensation for commercial tenants' rent.

b. Loss of fees

367. For the reasons given at paragraph 17 above, the Panel finds that loss of fees resulting from restrictions to civilian air traffic during the period 2 August 1990 to 2 March 1991 are, in principle, compensable. ^{73/} The Panel further finds that, based on the evidence, no savings in costs were made by the Claimant during the relevant period. Having considered the evidence, the Panel therefore recommends an award of SAR 7,198,468 for loss of revenue for KAIA.

(b) King Khaled International Airport (SAR 8,041,321)

(i) Facts and contentions

368. The Claimant seeks compensation for the loss of air traffic and landing fees from civilian aircraft during the period of Iraq's invasion and occupation of Kuwait. The Claimant asserts that civilian air traffic was restricted during the period of Iraq's invasion and occupation of Kuwait as a direct result of the threat of Iraqi military operations, such as scud missile attacks. The Claimant states that there was a drop in passenger traffic from August 1990 to March 1991, and that flight restrictions on civilian flights came into force on 16 January 1991 and prevailed until 30 March 1991. The Claimant states that overall security considerations also resulted in the airline companies, their insurers and passengers not wishing to risk landing in Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait.

369. The Claimant asserts that no costs could have been saved during the relevant period, despite the drop in commercial traffic.

370. The Claimant estimated that approximately 10 per cent of its facilities, which include three commercial terminals (one not operational), one Royal terminal, and one private terminal, were given over to use by the Allied Coalition Forces during the period of Iraq's invasion and occupation of Kuwait, but that the airport could have continued to operate commercially, albeit with some restrictions, during this period.

(ii) Analysis and valuation

371. The Panel finds that the explanation provided by the Claimant during the on-site inspection supports the view that the decline in civilian traffic was not attributable to use of the airport by military forces, but rather resulted from restrictions on civilian air traffic to areas that were subject to military operations or the threat thereof. For the reasons given at paragraph 17 above, the Panel finds that loss of landing and other fees resulting from restrictions to civilian air traffic during the period 2 August 1990 to 2 March 1991 are, in principle, compensable. The Panel further finds that, based on the evidence, no savings in costs were made by the Claimant during the relevant period.

372. Having considered the evidence, the Panel therefore recommends an award of SAR 688,382 for loss of revenue by KKIA.

(c) King Fahd International Airport (SAR 269,055,289)

(i) Facts and contentions

373. The Claimant seeks compensation for loss of profits allegedly suffered from August 1990 to August 1991 due to the use of its airport facilities, project camps and project facilities by the Allied Coalition Forces. The amount claimed in the statement of claim was calculated on the basis of the rental cost of these facilities that the Claimant asserts it could have charged the Allied Coalition Forces, but did not.

374. In the article 34 response, the Claimant alleged, in the alternative, that the situation of Iraq's invasion and occupation of Kuwait, independently of the occupation of the facilities by the Allied Coalition Forces, caused the Airport Operational Readiness to be delayed for a period of one year, thereby causing the airport to lose income. The Claimant asserts that the Airport Operational Readiness was postponed from July 1991 to July 1992 as a result of Iraq's invasion and occupation of Kuwait.

375. The Claimant asserts that the presence of the Allied Coalition Forces at the airport commenced on 4-5 August 1990. The airport was still under construction at this time and was not operating on a civilian basis. The Claimant asserts that a telephone order from the Deputy President of the Presidency of Civil Aviation to Bechtel Project Management was made in early August 1990, requesting that the airport facilities be made available to the Allied Coalition Forces. The runway was cleared within 24 hours of receiving the order. The Allied Coalition Forces took over all airport

facilities it required. All administrative staff left the airport at this time for Jeddah, while support maintenance staff remained on site to assist the Allied Coalition Forces. All construction work at the airport ceased at this time due to staff restrictions.

376. The Claimant states that the following facilities were used by the Allied Coalition Forces: airport facilities, being the control tower, passenger terminal and parking facilities; project camp (a SABCO camp for the accommodation of single employees; another contractor's project camp was also used by the Allied Coalition Forces); and project facilities, such as sanitation facilities which were put in operation for the Allied Coalition Forces, but which were intended to be incorporated into the airport once it became operational.

377. The Claimant considered that the airport would have become fully operational, but for Iraq's invasion and occupation of Kuwait, by the beginning of 1991 (it had originally been scheduled to open in 1988, but this was postponed due to budgetary problems). The Claimant asserts that construction of the airport was nearly completed on 2 August 1990, hence its ability to provide the facilities mentioned above to the Allied Coalition Forces. The airport finally opened in November 1999, further delays being due to budgetary constraints.

378. The Claimant confirmed during the on-site inspection that the facilities in respect of which the claim is made would not have been rented out on a commercial basis in peacetime.

(ii) Analysis and valuation

379. The Panel finds that the provision of the airport facilities, project camp, and project facilities to the Allied Coalition Forces represents the 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. For the reasons stated at paragraph 18 above, the Panel therefore recommends no award of compensation for the claim for loss of revenue arising as a result of the provision of such support.

(d) Recommendation

380. Based on its findings, the Panel recommends an award of SAR 7,886,850 for business transaction or course of dealing.

3. Real property (SAR 74,379,727)

(a) King Abdulaziz Airport (SAR 24,379,727)

381. In its statement of claim, the Claimant sought compensation for the following losses caused by use of the airport and its facilities by the Allied Coalition forces: repairs of damage to the runway resulting from the landing of heavy military aircraft, including B-52 bombers; asphalt resurfacing; repair of concrete slabs; repair of fuel lines; and repair of fences.

382. The Claimant stated in its article 34 response that this claim relates to the provision of support to the Allied Coalition Forces and is therefore no longer being pursued.

383. The Panel notes the withdrawal of the claim for real property by KAIA.

(b) King Fahd International Airport (SAR 50,000,000)

(i) Facts and contentions

384. The Claimant seeks compensation for payments made to contractors who repaired damage resulting from wear and tear (damage to painted surfaces, carpets, floor coverings, doors and cable installations) and other damage to the KFIA facilities due to their occupation by the Allied Coalition Forces. The Claimant alleges that after the departure of the Allied Coalition Forces, the facilities had to be restored to their pre-existing state. The Claimant states that the repairs were carried out by contractors under SABCO's supervision.

385. The Claimant confirmed during the on-site inspection that the airport had suffered no direct damage as a result of military operations and that all damage to the airport's facilities was due to the use of the facilities by the Allied Coalition Forces.

(ii) Analysis and valuation

386. The Panel finds that real property damage arising as a result of the use of KFIA's facilities by the Allied Coalition Forces was incurred as a result of the Claimant's provision of support to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. For the reasons stated at paragraph 18 above, the Panel recommends no award of compensation.

(c) Recommendation

387. Based on its findings, the Panel recommends no award of compensation for real property.

4. Other tangible property (SAR 3,284,300)

(a) Facts and contentions

388. The Claimant seeks compensation for vehicles damaged by the Allied Coalition Forces and lost or damaged project equipment resulting from the use of KFIA and its facilities by the Allied Coalition Forces.

(b) Analysis and valuation

389. The Panel finds that other tangible property damage arising as a result of the use of KFIA's facilities by the Allied Coalition Forces was incurred as a result of the Claimant's 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. For the reasons stated at paragraph 18 above, the Panel recommends no award of compensation.

(c) Recommendation

390. Based on its findings, the Panel recommends no award of compensation for other tangible property.

5. Evacuation costs (SAR 12,589,164)

(a) Facts and contentions

391. The Claimant seeks compensation for the costs of evacuating SABCO employees and their families to their home countries or to facilities at KAIA, which was perceived to be a safer location. The Claimant states that evacuation of the employees and their dependants was pursuant to the terms of their employment agreements or the agreements with the contractors. The Claimant states that the reason for the departure of the staff was the threat of military action, that all staff departed from Dammam and that all expenses related to the evacuation process.

392. The claim is broken down in the Claimant's response to the article 34 notification as follows:

- (a) Payroll and related (SAR 8,014,444);
- (b) Administration (SAR 3,565,973); and
- (c) Additional (SAR 1,008,747).

393. Payroll and related expenses relate to costs of air flights out of Saudi Arabia; telephone calls to families and insurance; additional rest and recreation travel entitlements for employees who stayed on site during the relevant period and for those who were relocated; salaries for evacuated employees, housing and living allowances paid to relocated expatriate employees who were accommodated in hotels in Jeddah; and special allowances paid to Government employees paid by SABCO, who remained to supervise construction employees on site.

394. Administration expenses related to board, lodging and other expenses incurred with respect to relocated employees in Jeddah; war risk insurance; special allowances for SABCO employees (15 per cent loading); costs of telephone calls to employees' families; costs of renewing visas for employees who had left Saudi Arabia during the relevant period and wished to return after the liberation of Kuwait; and shipment and courier costs for employees' belongings.

395. No explanation of "additional expenses" has been provided.

396. The Claimant stated that SABCO received a directive in the first week of August 1990 from its San Francisco head office to evacuate families immediately. SABCO thereupon commenced evacuating employees from the site, in accordance with the procedures laid down in its emergency plan.

397. The claimed costs are stated to be over and above normal staff entitlements such as home leave and biannual rest and recreation travel. Where staff members were entitled to certain benefits at

KFIA, for example petrol allowances, such allowances continued to be made available to evacuated staff in Jeddah.

398. The Claimant asserts that although the claimed costs for evacuation and other related expenses of SABCO staff were incurred by SABCO, they were invoiced by SABCO and paid by the Claimant in accordance with the payment arrangements established between the Claimant and SABCO. Pursuant to these arrangements, under normal circumstances SABCO withdrew the moneys it required for the project from the project bank account into which the Claimant had paid funds to cover the cost of the project.

(b) Analysis and valuation

399. The Panel finds that costs of evacuating SABCO staff and their dependants from an area subject to threatened and actual military operations such as Dhahran, are compensable, in principle, in accordance with paragraphs 34 (a) and 36 of Governing Council decision 7. However, only incremental costs that were incurred during the period 2 August 1990 to 2 March 1991 are compensable, in principle.

400. The Panel notes that the evidence indicates that KFIA continued to be occupied by the Allied Coalition Forces until July 1991 and that the delayed return of the employees to the site was as a result of the troop presence at the airport. The Panel finds that any costs incurred as a result of the delayed return of staff to the site resulted from the provision of support to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. For the reasons given at paragraph 18 above, the Panel finds that delayed return costs are not eligible for compensation.

401. Similarly, the Panel finds that any payments that were made to staff who remained in Dhahran to assist the Allied Coalition Forces are not eligible for compensation in accordance with the reasons given at paragraph 18 above.

402. The Panel notes that the claim for war risk insurance has been duplicated in the claim for public service expenditures. The Panel has therefore excluded this amount from the claim for evacuation costs.

403. With respect to visa and authentication costs, the Panel finds that these costs would have been incurred in any event and therefore recommends no award of compensation in respect thereof.

404. With respect to special allowances for SABCO employees, the Panel finds that these payments were made to staff who remained on site to supervise staff assisting the Allied Coalition Forces. The Panel therefore finds that these amounts are not eligible for compensation.

405. With respect to the claims for war related telephone costs, "extra R&R" and additional evacuation expenses, the Panel finds that the evidence is not sufficient to verify and value the claims and therefore recommends no award of compensation in respect thereof.

406. In respect of the other items of expenditure listed at paragraphs 393 and 394 above, having considered the evidence, the Panel recommends an award of SAR 2,437,651.

(c) Recommendation

407. Based on its findings, the Panel recommends an award of SAR 2,437,651 for evacuation costs.

6. Public service expenditures (SAR 36,297,875)

(a) King Abdulaziz International Airport (SAR 1,426,154)

408. In the statement of claim, the Claimant sought compensation for services provided to the Allied Coalition Forces, including removal of rubber from the runways, increased overtime for fire and rescue service staff, and other increased staff and overtime costs.

409. The Claimant states in its response to the article 34 notification that this claim relates to the provision of support and operations and maintenance services to the Allied Coalition Forces and is therefore no longer being pursued.

410. The Panel notes the withdrawal of the claim for public service expenditures by KAIA.

(b) King Khaled International Airport (SAR 20,869,431)

(i) Facts and contentions

411. The Claimant asserts that measures were carried out for the protection of its civilian employees from missile, chemical or biological gas attacks. The Claimant seeks compensation for overtime work performed by emergency teams which were required to work around the clock to implement the protective measures.

412. In its response to the article 34 notification, the Claimant withdrew its claim for compensation for services provided to the Allied Coalition Forces (SAR 19,586,407) and for operations and maintenance services (SAR 574,708) relating to support provided to the Allied Coalition Forces, thereby reducing the total amount claimed to SAR 708,316.

413. During the on-site inspection, the Claimant provided a revised breakdown of costs that were incurred with respect to Allied Coalition Forces' and civilian support, thereby increasing the amount claimed for civilian overtime from SAR 708,316 to SAR 1,047,297.

414. The Claimant asserts that the performance of overtime was necessary during the months of January, February and March 1991 to accommodate staff shortages resulting from the fact that a number of staff members had fled the country, and to assist in protecting civilians and civil facilities.

(ii) Analysis and valuation

415. The Panel finds that the implementation of emergency measures for the benefit of KKIA's civilian employees was a reasonable and proportionate response to the threat of military action to which the airport was exposed during the period of Iraq's invasion and occupation of Kuwait. For the

reasons given at paragraph 24 above, the Panel finds that the incremental costs of such overtime incurred during the period 2 August 1990 to 2 March 1991 are, in principle, compensable.

416. The Panel notes that as the overtime was also required as a result of staff shortages due to staff departures during the relevant period, the resultant savings in salary costs should be taken into account in determining the loss to the Claimant. On the basis of the evidence, the Panel finds that the savings in salaries, when set off against the incremental element of the overtime claimed, exceed the latter amount. The Panel therefore recommends no award of compensation for overtime.

(c) King Fahd International Airport (SAR 14,002,290)

(i) Facts and contentions

417. KFIA seeks compensation for the following losses:

- (a) Material and equipment supplied to the Allied Coalition Forces (SAR 10,515,450);
- (b) Provision of electricity to the Patriot missile site (SAR 25,300);
- (c) Operation and maintenance of critical facilities (SAR 110,700);
- (d) War risk insurance (SAR 2,908,662); and
- (e) Purchase of gas masks and protective equipment (SAR 442,178).

418. The Claimant asserts that payments were made to SABCO for the operation and maintenance of critical facilities in December 1990 in order to secure the facilities, prevent their degradation and to assist the Allied Coalition Forces. These facilities, including central pumping station, power, and water and sewerage distribution, were provided by SABCO because the normal contractors had left the site.

419. With respect to war risk insurance, the Claimant stated that the airlines applied surcharges to the cost of air tickets to cover war risk insurance. All insurance costs were incurred on behalf of Bechtel employees and their dependants and were paid by the Claimant through the project bank account. ^{74/}

420. The Claimant asserts that gas masks and protective equipment were purchased by SABCO in September 1990 for its personnel in Saudi Arabia, and that such costs were paid by the Claimant through the project bank account. The masks and suits were supplied to the contractors' staff on site. The Claimant stated that all staff members on site between 2 August 1990 and 2 March 1991 were assisting the Allied Coalition Forces in order to keep certain facilities operational as and when required.

(ii) Analysis and valuation

421. The Panel finds that costs incurred in supplying material and equipment to the Allied Coalition Forces, providing electricity to the Patriot missile site, operating and maintaining critical

facilities for the Allied Coalition Forces and providing gas masks and protective equipment to staff members who remained on site to assist the Allied Coalition Forces constitute costs incurred in the 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. For the reasons given at paragraph 18 above, the Panel therefore recommends no award of compensation in respect of these costs.

422. With respect to war risk insurance costs, the Panel finds that for the reasons given at paragraph 27 above, increased war risk insurance premiums paid with respect to staff air travel during the period 2 August 1990 to 2 March 1991 are, in principle, compensable. Having considered the evidence, the Panel recommends an award of SAR 1,744,973 for war risk insurance.

(d) Recommendation

423. Based on its findings, the Panel recommends an award of SAR 1,744,973 for public service expenditures.

7. Recommendation for Ministry of Defence and Aviation/International Airports Project

424. Based on its findings regarding the Claim by the Ministry of Defence and Aviation/International Airports Project, the Panel recommends compensation in the total amount of SAR 12,069,474.

Table 11. Recommended compensation for Ministry of Defence and Aviation/International Airports Project

(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Contract	51,038,280	51,038,280	nil
Business transaction or course of dealing	307,286,450	307,286,450	7,886,850
Real property	74,379,727	50,000,000	nil
Other tangible property	3,284,300	3,284,300	nil
Evacuation costs	12,589,164	12,589,164	2,437,651
Public service expenditures	36,297,875	14,710,606	1,744,973
<u>Total</u>	484,875,796	438,908,800	12,069,474

K. Ministry of Interior/Eastern Province Emirate (UNCC claim No. 5000240)

425. The Claimant, a division of the Ministry of Interior, is responsible for representing the Custodian of the Two Holy Mosques in the Eastern Province, assuring justice, maintaining security and providing services for citizens of the Eastern Province in liaison with other Saudi Arabian Government departments.

426. Claims were originally submitted by the Ministry of Interior/Eastern Province Emirate (UNCC claim No. 5000240) and the Ministry of Interior/Eastern Province Police (UNCC claim No. 5000242); Ministry of Interior/Eastern Province Police Department (UNCC claim No. 5000243); and Ministry of Interior/Police Department – Eastern Province (UNCC claim No. 5000249).

427. The Claimant confirmed in its response to the article 34 notification that UNCC claim No. 5000240 includes the claims of Ministry of Interior/Eastern Province Police (UNCC claim No. 5000242), Ministry of Interior/Eastern Province Police Department (UNCC claim No. 5000243) and Ministry of Interior/Police Department – Eastern Province (UNCC claim No. 5000249) and that the latter claims are therefore consolidated with UNCC claim No. 5000240.

1. Real property (SAR 504,710)

(a) Facts and contentions

428. The Claimant seeks compensation for damage to the Governorate's administration building and guest accommodation in Al Khafji caused by artillery fire and bombing during the invasion of the town by Iraqi troops on 29 January 1991. The Claimant asserts that the marble facade of the administration building was damaged in numerous areas due to machine-gun fire and that some of the building's contents were damaged. The side of the main administrative building was struck by a rocket, which destroyed both the facade and a large section of wall, requiring rebuilding. The Claimant further asserts that the guest house extension suffered extensive damage from a direct hit that required one section of the wall to be rebuilt.

429. During the on-site inspection, it was observed that the external marble facade was replaced in some places where large areas were damaged but some repairs are unsightly, resulting in some disfigurement to the building.

430. During the on-site inspection, the Claimant increased the amount claimed to SAR 555,074. The amount was broken down into emergency and longer-term repairs.

431. Iraq asserts that the Claimant has provided no evidence of repair contracts or third party reports of damage, and that the properties were in good condition when the Iraqi forces left Al Khafji. Furthermore, Iraq asserts that the losses are those of military operations of the Allied Coalition Forces, and are therefore not compensable.

(b) Analysis and valuation

432. For the reasons stated at paragraph 37 above, the Panel finds that the claim amount is limited to SAR 504,710.

433. The Panel notes that the evidence provided and the observations made during the on-site inspection demonstrate that the real property damage arose as a result of military operations in Al Khafji. For the reasons stated at paragraph 17 above, the Panel finds that the claim for damage arising as a result of military operations by either side is, in principle compensable. As most of the repairs were “patch” repairs, the Panel finds that no betterment resulted from the repair of the damage, except with respect to the cost of interior and exterior decorating.

(c) Recommendation

434. Having considered the evidence, the Panel recommends an award of SAR 348,826 for real property.

2. Other tangible property (SAR 95,000)

(a) Facts and contentions

435. The Claimant seeks compensation for damage to vehicles located in Al Khafji, allegedly caused during the invasion of the town by Iraqi troops. The evidence provided includes an undated damage report referring to three vehicles which sustained damage in the amount of SAR 95,000. One vehicle was stated to have been burnt in Al Nairyia “during Gulf events”, another was involved in a traffic accident on its way to Raas Mishaab, and a third was stated to have been damaged during the battle of Al Khafji.

436. However, in its response to the article 34 notification, the Claimant states that no cars were damaged, but that there was some lost furniture at Al Raqa’i which was damaged as a result of evacuating the town at the beginning of military operations.

437. During the on-site inspection, the Claimant clarified that it was seeking compensation for three cars that were damaged. Following the on-site inspection, the Claimant stated that the damage was to two vehicles, one of which is alleged to have been damaged by fire.

(b) Analysis and valuation

438. The Panel notes that the evidence states that the fire-damaged vehicle had an electrical fault or fuel leak which caused the fire. The Panel therefore finds that the fire damage was not a direct result of Iraq’s invasion and occupation of Kuwait. Furthermore, the Panel finds that the evidence is not sufficient to determine whether the claim is for two or three vehicles, and otherwise to verify and value the claim.

(c) Recommendation

439. Based on its findings, the Panel recommends no award of compensation for other tangible property.

3. Payment or relief to others (SAR 112,871,016)

440. The Claimant seeks compensation for assistance provided to Kuwaiti refugees and to the citizens of Al Khafji who lost their homes during Iraq's invasion of the town. The claimed amount is comprised of the following costs:

(a) Cash assistance to Kuwaiti refugees and citizens from Al Khafji for necessities (SAR 95,996,000);

(b) Accommodation and rations for Kuwaiti refugees and Al Khafji citizens (SAR 13,961,649);
and

(c) Emirate Palace guest house expenses (SAR 2,913,367).

(a) Cash assistance (SAR 95,996,000)

(i) Facts and contentions

441. The Claimant asserts that Kuwaiti refugees and Al Khafji citizens were provided with cash and accommodation. With respect to the Kuwaiti refugees, the Claimant states that "relief and accommodation" were provided from 6 August to 10 November 1990, after which date the Government of Kuwait made monthly support payments to its citizens in Saudi Arabia. 75/

442. The Claimant explained that in order to provide relief, it formed a committee which specified the amount to be paid to the refugees and Al Khafji citizens. These payments were one-time payments made to assist refugees and Al Khafji citizens upon their arrival in the Province (thereafter they were provided with accommodation) as a form of immediate relief. The Claimant asserted that the production of proof of identity (for example a passport) was required and reviewed by the committee before any moneys were transferred. Other payments were made direct to service providers who assisted refugees and citizens, while refugees and citizens were provided with vouchers for accommodation, subsistence and transportation.

443. Iraq asserts that the Claimant has provided no evidence that the amounts claimed were in fact expended with respect to Kuwaiti refugees. Furthermore, Iraq states that the aid was provided by the Government of Saudi Arabia of its own free will, and that it was not obligated in any way to provide such aid. Finally, Iraq asserts that the refugees immigrated willingly to Saudi Arabia, and were not subject to any pressure by the Iraqi troops to depart Kuwait.

(ii) Analysis and valuation

444. The Panel finds that the presence of Kuwaiti refugees in Saudi Arabia arose as a direct result of Iraq's invasion and occupation of Kuwait. The Panel notes that the Kuwaiti citizens were advised by the Government of Kuwait not to return to Kuwait for a three-month period after the liberation of Kuwait. Similarly, the loss of their houses and destruction in Al Khafji prevented the Al Khafji citizens from returning to Al Khafji immediately after the liberation of Kuwait. For the reasons stated at paragraph 21 above, the Panel finds that cash assistance provided by Saudi Arabia to Kuwaiti refugees during the period 2 August 1990 to 31 May 1991 is, in principle, compensable. ^{76/} The Panel also finds that cash assistance provided to displaced Al Khafji citizens during the same period is, in principle compensable, in accordance with paragraphs 34 (a) and 36 of Governing Council decision 7. ^{77/}

445. Having considered the evidence, the Panel recommends an award of SAR 68,278,174 for cash assistance.

(b) Accommodation and rations (SAR 13,961,649)

(i) Facts and contentions

446. The Claimant seeks compensation for accommodation provided to Kuwaiti refugees and Al Khafji citizens who sought refuge in the Eastern Province. The accommodation was provided at Government general housing, which was unoccupied but equipped with basic items such as furniture, air-conditioning and ovens, and in hotels, furnished flats, rented buildings, government halls, schools and sports halls. In some instances, meals and other forms of assistance for the refugees were also paid for by the Claimant.

447. The Claimant asserts that the Kuwaiti refugees were provided with accommodation from approximately one week after the date of Iraq's invasion of Kuwait until 10 November 1990, when the Emir of the Eastern Province issued a cable generally curtailing the costs of providing accommodation in the light of the commencement of monthly support payments by the Government of Kuwait to its citizens in Saudi Arabia.

448. The Claimant states that the Al Khafji citizens were provided with accommodation at Government General Housing in Khobar, Dammam, Qatif and Al-Hassa.

449. As part of its contribution to the liberation of Kuwait, the Government of Japan contributed funds to the Cooperation Council for the Arab States of the Gulf in September 1990. As noted at paragraph 8 above, a part of these funds was distributed to Saudi Arabia for various purposes, including the provision of support to the Allied Coalition Forces. The Ministry of Finance and National Economy states that after the liberation of Kuwait, a portion of the Japanese Peace Grant remained unutilized. The Ministry of Finance and National Economy suggested to the Japanese Embassy in Riyadh by letter dated 17 May 1992 that the remaining portion of the funds be used to bear some of the expenses incurred by the Ministry to accommodate, provide subsistence to and transport Kuwaiti refugees. The Japanese Embassy consented to the use of funds in this manner by

letter dated 5 September 1992. The Ministry of Finance and National Economy asserts that SAR 439.2 million was distributed from the fund to cover these expenditures. The Ministry further asserts that no claim has been submitted for compensation for these expenses.

(ii) Analysis and valuation

450. For the reasons given at paragraphs 21 and 444 above, the Panel finds that costs of providing accommodation and rations to Kuwaiti refugees and displaced Al Khafji citizens during the period 2 August 1990 to 31 May 1991 are, in principle, compensable. Having considered the evidence, the Panel recommends an award of SAR 6,496,788 for accommodation and rations for Kuwaiti refugees and Al Khafji citizens.

451. The Panel further finds that as no duplication of amounts claimed by the Claimant and disbursed by the Ministry of Finance and National Economy from the Japanese Peace Grant could be found, no deduction should be made for amounts disbursed from the Japanese Peace Grant for refugee subsistence and accommodation.

(c) Emirate Palace guest house expenses (SAR 2,913,367)

(i) Facts and contentions

452. The Claimant seeks compensation for costs, comprising travel and accommodation costs, of hosting important guests such as public figures from Kuwait and embassy officials in a hotel. The Claimant asserts that its special budget for such expenditures was increased in response to the crisis.

453. In its response to the article 34 notification, the Claimant reduced the amount claimed for Emirate Palace guest house expenses to SAR 2,706,293.

454. Iraq asserts that these expenses were incurred for religious festivities which had no connection with its invasion and occupation of Kuwait. Moreover, Iraq asserts that the costs were incurred after 2 March 1991.

(ii) Analysis and valuation

455. The Panel finds that the evidence is not sufficient to demonstrate that the costs of accommodating the guests were a direct loss resulting from Iraq's invasion and occupation of Kuwait. ^{78/} The Panel therefore recommends no award of compensation for Emirate Palace guest house expenses.

(d) Recommendation

456. Based on its findings, the Panel recommends an award of SAR 74,774,962 for payment or relief to others.

4. Evacuation costs (SAR 3,480,460)

(a) Facts and contentions

457. The Claimant seeks compensation for the cost of repatriating “more than three thousand” non-Kuwaiti housemaids who arrived in Saudi Arabia with their Kuwaiti employers, who were themselves refugees. The Claimant asserts that the housemaids were repatriated for humanitarian reasons and only the Claimant was in a position to pay for their repatriation expenses.

458. The amount claimed was paid by the Claimant to Saudi Arabian Airlines and various travel agents and represented the costs of airfares to the housemaids’ home countries. The Claimant asserts that it received no reimbursement of the claimed costs from the housemaids, their employers or their respective Governments.

459. Iraq asserts that the housemaids departed in 1992 and left because their contracts had terminated, rather than as a result of the war.

(b) Analysis and valuation

460. The Panel finds that the influx of the housemaids in Saudi Arabia from Kuwait was a direct result of Iraq’s invasion and occupation of Kuwait. The Panel notes that although the payment orders and cheques are dated 14 October 1991, the evidence indicates that the housemaids were repatriated between August and October 1990. For the reasons given at paragraph 21 above, the Panel finds that the costs of repatriating the housemaids from Saudi Arabia are, in principle, compensable.

(c) Recommendation

461. Having considered the evidence, the Panel recommends an award of SAR 2,784,368 for evacuation costs.

5. Public service expenditures (SAR 50,709,087)

462. The Claimant seeks compensation for the following costs of implementing its emergency measures:

- (a) Purchase of motor vehicles (SAR 4,307,699);
- (b) Purchase of communications equipment and facsimile machines (SAR 11,059,600);
- (c) Overtime, deputation and staff bonuses (SAR 17,341,788); and
- (d) Construction of temporary camp in Dhahran (SAR 18,000,000).

463. The Claimant alleges that emergency measures were taken during the period 2 August 1990 to 2 March 1991 “to ensure the security” of the Eastern Province. The Claimant asserts that in support of the security plan and because “Eastern Province Police were not able to cover all important locations”, it had to purchase cars, communications equipment and facsimile machines, and increase the presence of security forces along the border. These security forces were required to work overtime.

464. In its response to the article 34 notification, the Claimant increased the amount claimed to SAR 51,110,983. However, during the on-site inspection, the amount claimed was reduced to SAR 45,051,383.

(a) Motor vehicles (SAR 4,307,699)

(i) Facts and contentions

465. The Claimant asserts that the influx of Kuwaiti refugees and the evacuation of Al Khafji resulted in the crowding of the main cities in the Eastern Province. The police of the Eastern Province Emirate therefore required additional vehicles and equipment to carry out their responsibilities and “to meet the needs of the refugees and citizens coming to the Eastern Province”.

466. The claimed amount is stated to be after the deduction of 30 per cent for the residual value of the vehicles, indicating that the original cost of the cars was SAR 6,153,857.

467. Iraq asserts that there is no documentary evidence to support the expenditures incurred with respect to vehicles and communications equipment. Furthermore, Iraq asserts that the Claimant, in purchasing the vehicles and equipment, has merely replaced old property with new, and states that any claim should be limited to take this fact into account.

(ii) Analysis and valuation

468. For the reasons stated at paragraphs 20 and 21 above, the Panel finds that the incremental costs of purchasing the cars to support the Claimant’s emergency plan and to ensure the security of citizens and refugees in the towns of the Eastern Province are, in principle, compensable to the extent that such costs are supported by the evidence. ^{79/} However, an adjustment has been made to take into account the residual value of the vehicles.

469. Having considered the evidence, the Panel recommends an award of SAR 235,545.

(b) Communications equipment and facsimile machines (SAR 11,059,600)

(i) Facts and contentions

470. The Claimant seeks compensation for the purchase of communications equipment and facsimile machines which it alleges were required to support the increased activities of its police in carrying out the emergency plan and providing security for refugees and displaced citizens.

471. In its response to the article 34 notification, the Claimant reduced the amount claimed to SAR 5,000,000.

(ii) Analysis and valuation

472. For the reasons stated at paragraphs 20 and 21 above, the Panel finds that the incremental costs of purchasing the communications equipment and facsimile machines to support the Claimant’s emergency plan and to ensure the security of citizens and refugees in the towns of the Eastern

Province are, in principle, compensable. However, an adjustment has been made to take into account the residual value of the equipment and machines.

473. Having considered the evidence, the Panel recommends an award of SAR 164,363.

(c) Overtime and secondment costs (SAR 17,341,788)

(i) Facts and contentions

474. The Claimant asserts that its employees assisted Kuwaiti refugees by acting on committees to provide services and accommodation for the refugees. The Claimant asserts that all the staff costs concern additional work for providing services to the Kuwaiti refugees and Al Khafji citizens, and relate to paid overtime, unpaid overtime and transportation allowances (secondment costs).

475. The Claimant stated that a central council organized emergency activities, and that there was some co-ordination between the ministerial representatives of Civil Defence and the Claimant's police department with respect to the implementation of the emergency plan. However, the financial burden of the emergency activities was placed on the Claimant.

476. Although the Claimant had its own written emergency plan, the Claimant stated that, given the crisis situation, not all activities were planned. During the war, the Eastern Province was a targeted area and therefore police activities were intensified. Functions included ensuring the security of the population, especially of refugees, and crime prevention. The Claimant asserted that while duties of police during the period of Iraq's invasion and occupation of Kuwait were substantially the same as those pre-dating the crisis, the scope and intensity of those activities increased; some new duties were added and additional policing was undertaken. Staff had to be seconded from other provinces to assist in emergency operations.

477. The Claimant stated that in some cases, actual payments of overtime have been deferred due to insufficient funds, and remain unpaid. Some transportation allowances also remain unpaid.

478. In its response to the article 34 notification, the Claimant increased the total claimed amount from SAR 17,341,788 to SAR 17,723,684, although the sum of the losses as set out in the evidence is SAR 17,743,684.

479. Iraq asserts that such costs are not direct, that the claims are not supported by evidence of payment and that the Claimant did not state the period during which the overtime was performed. Iraq further asserts that after invading and departing Kuwait, Iraq did not threaten the Eastern Region of Saudi Arabia in any manner, and that the security measures taken by the Claimant were based on unjustified fear, rather than as a direct result of Iraq's invasion and occupation of Kuwait.

(ii) Analysis and valuation

480. For the reasons stated at paragraph 37 above, the Panel finds that the amount claimed is limited to SAR 17,341,788.

481. For the reasons stated at paragraphs 20, 23 and 24 above, the Panel finds that incremental overtime and secondment costs incurred during the period 2 August 1990 to 2 March 1991 in implementing the Claimant's emergency plan and assisting Kuwaiti refugees and displaced citizens were incurred as a direct result of Iraq's invasion and occupation of Kuwait and are, in principle, compensable to the extent that these costs are supported by the evidence. However, the Panel finds that only those amounts that have been paid are compensable, and therefore recommends no award of compensation for overtime and transportation allowances that have not yet been paid. 80/

482. Having considered the evidence, the Panel recommends an award of SAR 2,939,930 for overtime and secondment costs.

(d) Temporary camp in Dhahran (SAR 18,000,000)

(i) Facts and contentions

483. The Claimant seeks compensation for the construction of a temporary camp for the "Air Force" to protect the city of Dhahran, which was a "main strategic area". The Claimant states in its revised statement of claim that it assumes this aspect of the claim constitutes military costs that are not compensable.

484. The evidence indicates that payments were made for "constructing temporary camps at Dhahran for the friends forces".

485. Iraq asserts that the temporary camp at Dhahran is a military establishment.

(ii) Analysis and valuation

486. The Panel finds that the costs of constructing the camp for the Air Force constitute costs of the 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. For the reasons given at paragraph 18 above, the Panel therefore recommends no award of compensation.

(e) Recommendation

487. Based on its findings, the Panel recommends an award of SAR 3,339,838 for public service expenditures.

6. Recommendation for Ministry of Interior/Eastern Province Emirate

488. Based on its findings regarding the Claim by the Ministry of Interior/Eastern Province Emirate, the Panel recommends compensation in the total amount of SAR 81,247,994.

Table 12. Recommended compensation for Ministry of Interior/Eastern Province Emirate
(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Real property	504,710	504,710	348,826
Other Tangible Property	95,000	95,000	nil
Payment or relief to others	112,871,016	112,663,942	74,774,962
Evacuation costs	3,480,460	3,480,460	2,784,368
Public service expenditures	50,709,087	44,649,487	3,339,838
<u>Total</u>	167,660,273	161,393,599	81,247,994

L. Ministry of Interior/General Passport Department (UNCC claim No. 5000245)

489. The Claimant, a division of the Ministry of Interior, issues passports to Saudi Arabian nationals, monitors the arrival of foreigners by sea, land, and air and issues visas and residency permits.

490. Claims were originally submitted by the General Passport Department in Riyadh (UNCC claim No. 5000245) and the General Passport Departments in the Eastern Province (UNCC claim No. 5000244) and Al Raqa'i (UNCC claim No. 5000248).

491. The Claimant confirmed in its response to the article 34 notification that UNCC claim No. 5000245 includes the claims of the General Passport Department – Eastern Province (UNCC claim No. 5000244) and General Passport Department – Al Raqa'i (UNCC claim No. 5000248), and that the latter claims are therefore consolidated with UNCC claim No. 5000245.

1. Real property (SAR 650,000)

(a) Facts and contentions

492. The Claimant seeks compensation for the costs of repairing the Passport Department buildings in Riyadh (SAR 350,000) and Dammam (SAR 300,000). The Claimant alleges that the damage comprised broken glass, loosening of the aluminium dividers, collapse of exterior and interior decorations, and cracks in the walls of the Riyadh building and in the ceilings and walls of the Dammam building. The Claimant asserts that the Riyadh building was damaged during the same scud missile attack that destroyed the Ministry of Civil Affairs building on the night of 16/17 January 1991, the claim for which is considered separately, below, and that the building has since been partly repaired. The Dammam building is alleged to have been damaged by aftershocks from the intercept of scud missiles, given that the building was close to the area of military operations.

(b) Analysis and valuation

493. For the reasons given at paragraph 17 above, the Panel finds that real property damage arising as a result of scud missile attacks in Riyadh and Dammam is, in principle, compensable.

494. However, during the on-site inspection of the damaged building in Riyadh, it was observed that some of the damage was unrelated to military operations. The Panel finds that a contemporaneous report stating the damage to be limited to glazing, some damage to tiles and some cracks provides a more accurate assessment of the damage than a 1996 committee report estimating the costs of repairing the damage. No schedule of repairs or invoices for the repairs have been provided.

495. The Panel finds that the evidence is not sufficient to verify and value the claim for damage to the Riyadh building.

496. With respect to the Dammam passport office building, an examination of the evidence, including photographs of the damage and an architect's report, indicates that the damage to the concrete structure of the building arose as a result of corrosion of the building's steel reinforcements

rather than as a result of military operations in or around Dammam. No evidence has been provided to indicate the cost of repairing damage that could have been attributable to military operations in Dammam. The Panel therefore finds that the evidence is not sufficient to verify and value the claim.

(c) Recommendation

497. Based on its findings, the Panel recommends no award of compensation for real property.

2. Other tangible property (403,650)

(a) Facts and contentions

498. The Claimant seeks compensation for the loss of cars, furniture and electrical equipment at Al Khafji (SAR 303,450) on 29 January 1991, when the town was invaded by Iraqi troops, and for damage or loss of furniture and electrical equipment at Al Raqa'i (SAR 100,200), which was located in the area of military operations.

499. The Claimant asserted that its staff members were evacuated from Al Khafji at the commencement of military operations in January 1991, and returned to the area after the liberation of Kuwait. Upon their return, the staff made an inventory of the items taken from the main passport building and the border crossing in Al Khafji. In respect of Al Raqa'i, the Claimant alleged that the building was looted during the period when it was evacuated as a result of military operations.

(b) Analysis and valuation

500. For the reasons given at paragraph 17 above, the Panel finds that the claim for other tangible property loss or damage suffered as a result of military operations in Al Khafji is, in principle, compensable. For the reasons given at paragraph 126 above, the Panel further finds that loss or damage to other tangible property in Al Khafji and Al Raqa'i that occurred during the period when the sites were evacuated is, in principle, compensable. However, adjustments have been made to the amount claimed to take into account the age of the property at the time of the loss or damage.

(c) Recommendation

501. Having considered the evidence, the Panel recommends an award of SAR 121,095 for other tangible property.

3. Public service expenditures (SAR 77,779,713)

(a) Facts and contentions

502. The Claimant alleges that it had "to take additional security measures" as a result of Iraq's invasion and occupation of Kuwait, particularly because of the presence of Iraqi troops at the north-eastern border of Saudi Arabia. The Claimant alleges that "[t]he desired impact was to be ready for any emergency and to offer services to facilitate the affairs of Kuwaiti refugees".

503. The Claimant asserts that it incurred incremental staff costs because the influx of large numbers of Kuwaiti refugees resulted in an increased burden on the entry and exit centres as follows:

(a) Kuwaiti refugees were received at official entry centres “without sticking to the generally applicable legal measures required to enter the Kingdom”;

(b) Non-Kuwaiti refugees who were working in Kuwait were received at the official entry centres and subsequently assisted in returning to their countries of origin;

(c) Sixteen passport departments issued and distributed temporary documents for 358,929 Kuwaiti refugees using a special computer program, in co-operation with special committees established to facilitate the affairs of Kuwaiti refugees; and

(d) A total of 230,943 Kuwaiti refugees who arrived without identity documents were issued with identity cards.

504. The Claimant also asserts that its normal duties and tasks increased during the period of Iraq’s invasion and occupation of Kuwait.

505. The Claimant seeks compensation for the following staff costs which it asserts it incurred as a result of the activities described above:

(a) Stationing of personnel (daily rations for staff on 24-hour alert) (SAR 56,528,642);

(b) Secondment costs (SAR 208,804);

(c) Costs for the participation of personnel in committees that provided services to Kuwaiti refugees (SAR 209,944); and

(d) Overtime payments to civilian personnel (posted in offices, rather than in the field) (SAR 20,832,323).

506. The Claimant asserted that its staff members were placed on a state of readiness, which required staff in the field to work 24-hour shifts and specialist civilian office staff to perform overtime. The increase in fieldwork resulted in civilian office staff having additional responsibilities and roles. Overtime payments were made to civilian office staff, while field officers received subsistence and half-day field allowances. Field officers who were stationed outside their units also received travel costs.

507. The Claimant stated that additional staff members were also required for the southern region due to the large number of people crossing the Saudi Arabian border into Yemen.

508. In addition, certain staff members were required to work on a committee, which was set up to issue identity and other documents to refugees. The Claimant advised that the claim was for the additional allowances that were paid to personnel for working on the committee. An examination of the evidence indicates that the amount claimed represents a bonus payment of two months’ salary to

staff members who participated on the refugee committees. The payment of this bonus was authorized in July 1991, but was not paid until January 1994 due to the lack of available funds.

509. In its response to the article 34 notification, the Claimant reduced the amount claimed for overtime to SAR 20,831,323, thereby reducing the total claim amount to SAR 77,778,713.

(b) Analysis and valuation

510. For the reasons given at paragraph 23 above, the Panel finds that incremental staff costs incurred in assisting refugees are, in principle, compensable. However, the Panel finds that increased costs that were incurred in the southern region as a result of the increased number of people crossing the border from Saudi Arabia into Yemen were not incurred as a direct result of Iraq's invasion and occupation of Kuwait, and are therefore not compensable.

511. The Panel notes that although the Claimant provided administrative orders authorizing the payment of allowances, the documents did not reconcile to the amount claimed for stationing personnel. Insufficient evidence of payment was provided. The Panel therefore finds that the evidence is not sufficient to verify and value the claim, and recommends no award of compensation for stationing military officers.

512. The Panel further finds that the evidence was not sufficient to verify and value the claim for secondment costs, and recommends no award of compensation in respect thereof.

513. With respect to the claim for costs incurred for staff participating on refugee committees, the Panel notes that the bonus payments were not authorized until July 1991. As no evidence of a pre-existing promise or legal obligation to pay the bonuses was provided, the Panel finds that the Claimant has not demonstrated that the bonus payments were in the nature of incentive payments to staff to work on the committees during the period of Iraq's invasion and occupation of Kuwait. The Panel therefore finds that the payments were not losses arising as a direct result of Iraq's invasion and occupation of Kuwait and recommends no award of compensation. 81/

514. With respect to the claim for overtime of civilian staff, the Panel notes that the evidence includes a report dated July 1996 setting out the overtime amounts allegedly paid to staff in each of the five regions of Saudi Arabia. No reconciliation of the documentation to the amount claimed or evidence of payment has been provided. The Panel therefore finds that the evidence is not sufficient to verify and value the claim, and recommends no award of compensation for overtime.

(c) Recommendation

515. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

4. Recommendation for Ministry of Interior/General Passport Department

516. Based on its findings regarding the Claim by the Ministry Interior/General Passport Department, the Panel recommends compensation in the total amount of SAR 121,095.

Table 13. Recommended compensation for Ministry of Interior/General Passport Department
(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Real property	650,000	650,000	nil
Other tangible property	403,650	403,650	121,095
Public service expenditures	77,779,713	77,778,713	nil
<u>Total</u>	78,833,363	78,832,363	121,095

M. Ministry of Interior/General Directorate of Frontier Forces (UNCC claim No. 5000246)

517. The Claimant is responsible for guarding Saudi Arabian land and sea borders, ports and harbours; raising the alarm in the event of any abnormal movement on those borders; and searching, providing assistance and controlling security inside Saudi Arabian ports and harbours.

518. Claims were originally submitted by the General Directorate of Frontier Forces in Riyadh (UNCC claim No. 5000246) and the Frontier Forces at Al Raqa'i (UNCC claim No. 5000241).

519. The Claimant confirmed in its response to the article 34 notification that UNCC claim No. 5000246 includes the claim of the Frontier Forces at Al Raqa'i (UNCC claim No. 5000241) and that the latter claim is therefore consolidated with UNCC claim No. 5000246.

1. Real property (SAR 5,553,950)

(a) Facts and contentions

520. The Claimant seeks compensation for damage to buildings owned by the Border Guard in the Eastern and Northern Provinces. The Claimant alleges that during the period of Iraq's invasion and occupation of Kuwait, the Al Khafji Command Post and seven of its border posts as well as the Al Raqa'i Command post and six of its border posts in the Eastern Province were damaged.

521. In the Northern Region, Al Rafha and Al Judaida Command Post and five of its border posts allegedly suffered damage. The Claimant alleges that the damage resulted from direct air and missile attack, artillery fire and the use of some of the facilities by Iraqi and Allied Coalition Forces.

522. The Claimant asserts that six buildings were damaged beyond repair, and therefore seeks compensation for the costs of reconstructing the buildings.

523. In the revised statement of claim, the Claimant increased the amount claimed for real property to SAR 9,673,700. In the response to the article 34 notification, the Claimant produced a contract for SAR 15,500,000 for refurbishment of a number of buildings.

524. Iraq asserts that there was no activity of the Iraqi Air Force in the airspace during the relevant period. Iraq also refers to a damage report indicating that the Al Khafji Headquarters building had been abandoned ten years previously and was scheduled for demolition at the time of the damage. With respect to the remaining buildings in the Al Khafji sector, Iraq asserts that the damage was caused by the Allied Coalition Forces, and that as such, these losses are not compensable in accordance with Governing Council decision 19. Iraq states that the Al Ogaa border post was 15 years old at the time of the damage, and that construction of a new post would have been required in any event. Finally, Iraq asserts that the claims are not properly supported by the evidence.

(b) Analysis and valuation

525. For the reasons stated at paragraph 37 above, the Panel finds that the claim amount is limited to SAR 5,553,950.

526. The Panel finds that the evidence provided demonstrates that the damage arose as a result of military operations in the Eastern and Northern Regions. For the reasons given at paragraph 17 above, the Panel finds that the costs of repair and/or reconstruction of real property damage are therefore, in principle, compensable to the extent that such costs are supported by the evidence. However, an adjustment to the amount claimed has been made to take into account the ages of five of the six buildings that required reconstruction.

527. With respect to the sixth building that required reconstruction, the Al Khafji Headquarters building, the Panel notes that an examination of the Claimant's expert's report states that "this building had been evacuated almost ten years prior to Iraq's attack and it had long been scheduled for demolition". The report also states that Iraq's military attack damaged the walls and ceilings. The Claimant provided no evidence to refute the assertions as to the age of the building in the report. The Panel therefore finds that the reconstruction of the Al Khafji Headquarters building was not required as a direct result of Iraq's invasion and occupation of Kuwait, and recommends no award of compensation for this building.

(c) Recommendation

528. Having considered the evidence, the Panel recommends an award of SAR 3,680,138 for real property.

2. Public service expenditures (SAR 318,242,429)

(a) Facts and contentions

529. The Claimant seeks compensation for costs incurred as a result of increasing security on Saudi Arabia's borders and purchasing equipment in support thereof. The Claimant alleges that its personnel were stationed at their posts 24 hours a day and that the following additional costs were incurred as a result:

- (a) Field staff allowances, civilian staff overtime and additional rations (SAR 65,419,992);
- (b) Uniforms and other supplies for staff at the front (SAR 19,715,553);
- (c) Furniture and academic and office supplies (SAR 19,857,927);
- (d) Vehicles, spare parts and maintenance (SAR 71,696,926);
- (e) Costs of establishing and supplying sea and land garrisons (SAR 16,297,333);
- (f) Port equipment and maintenance (SAR 16,297,667);
- (g) Equipment and maintenance (SAR 39,746,999);

- (h) Catering costs and kitchen equipment (SAR 60,991,902); and
- (i) Fuel and equipment (SAR 8,218,130).

530. The Claimant indicates that during the period of Iraq's invasion and occupation of Kuwait, its personnel were placed on Operational Duties, state of alert B, in accordance with an order issued by the General Director of the Frontier Forces. Their activities, including guarding and patrolling the borders to prevent smuggling and trespassing and to search for immigrants and other displaced persons, intensified accordingly. The Claimant further alleges that it provided relief for refugees and immigrants who entered Saudi Arabia as a result of Iraq's invasion and occupation of Kuwait. The Claimant asserts that it therefore mobilized all its capabilities "in all land and sea border sites of the Kingdom". In order to carry out these duties and functions, the Claimant asserts that it was necessary to purchase the equipment that forms the subject of the claim, and for its staff to perform overtime.

531. The Claimant stated that co-ordination of activities between different departments took place at the Ministerial level, and orders were then issued to the Claimant. If necessary, the Claimant assisted other security forces to perform their duties.

532. Iraq made comments with respect to each of the heads of loss set out at paragraph 529 above and opposes the Claim.

- (i) Staff allowances, civilian overtime and rations (SAR 65,419,992)

533. The Claimant seeks compensation in the amount of SAR 55,781,967 for additional rations, SAR 8,477,811 for field daily allowance and SAR 1,160,214 for overtime for civilian staff who had to work outside official working hours.

534. This claim comprises costs of staff on 24-hour duty at the border centres, of which there are 312 marine and land posts throughout Saudi Arabia. All posts are regularly staffed on a shift basis, but in times of war additional field staff members are posted to various centres. The field staff members were paid basic salaries and allowances for accommodation, food and transport, plus a special war allowance. Civilian staff members (being staff located in offices) were paid overtime during the relevant period.

535. With respect to the claim for daily rations, the Claimant states that food is only provided to its staff in abnormal circumstances. In its response to the article 34 notification, the Claimant stated that the basis for calculating the amount claimed for daily rations "is the payment made to the establishments supplying the rations to the [Claimant's] personnel".

536. The Panel notes that the evidence provided in support of the claim for daily rations is the same as that provided in support of the claim for catering costs. This part of the claim is therefore dealt with under catering costs.

(ii) Military uniforms (SAR 19,715,553)

537. The Claimant seeks compensation for uniforms for all of its personnel and for supplies for personnel at the front because their functions and duties intensified during the period of Iraq's invasion and occupation of Kuwait. The Claimant stated that staff members were generally provided with two sets of uniforms per year, but because the uniforms were worn 24 hours a day during the relevant period, they were subject to increased wear and tear. The additional personnel at the border posts also required uniforms.

538. During the on-site inspection, the Claimant increased the amount claimed to SAR 21,084,022.

(iii) Furniture, academic and office supplies (SAR 19,857,927)

539. The Claimant seeks compensation for the purchase of furniture and academic and office supplies for various locations throughout Saudi Arabia, including for its training institutes. The Claimant states that the furniture and office equipment were purchased for staff accommodation, including for those staff working in offices or assigned to guard and patrol the borders, and at the sites for lodging and receiving refugees and displaced persons. The Claimant asserted that the academic supplies were for additional training of staff and included maps and publications, to prepare personnel who were assigned to the border areas.

540. During the on-site inspection, the Claimant reduced the amount claimed to SAR 17,145,781.

(iv) Vehicles and spare parts (SAR 71,696,926)

541. The Claimant seeks compensation for the purchase of vehicles, spare parts and for maintenance, to enable the Claimant's personnel to undertake 24-hour patrols of Saudi Arabia's borders during the period of Iraq's invasion and occupation of Kuwait, and to respond to the influx of refugees and displaced people in the border areas. The Claimant asserts that continuous use of the vehicles during the period of Iraq's invasion and occupation of Kuwait resulted in the vehicles experiencing frequent breakdowns, and requiring continuous replacement of parts.

542. During the on-site inspection, the Claimant reduced the amount claimed to SAR 53,441,883, "after a deduction of 30 per cent for depreciation".

(v) Marine and land garrisons (SAR 16,297,333)

543. The Claimant seeks compensation for the costs of establishing and supplying land and sea garrisons with supplies and equipment to enable staff members who were stationed there to perform their duties and tasks. The work included constructing pre-cast buildings, renovating docks and installing fuel tanks. The buildings were used for storage and for dormitories for the Claimant's staff. The berths were required for rescue operations and to prevent illegal entries into ports.

544. In the revised statement of claim and the article 34 response, the Claimant sought to increase the amount claimed to SAR 16,711,746.

(vi) Marine equipment and spare parts (SAR 16,297,667)

545. The Claimant seeks compensation for marine equipment and spare parts, which it claims were required as a result of its increased activities, including increased sea patrols, during the period of Iraq's invasion and occupation of Kuwait.

546. The Panel notes that an error was made in the original calculation of the amount claimed as the claim as stated in the statement of claim included a number of amounts in different currencies. Following the on-site inspection, the Claimant recalculated the amount claimed to take into account the different currencies, thereby increasing the amount claimed to SAR 22,320,838.

(vii) Equipment and maintenance (SAR 39,746,999)

547. The Claimant seeks compensation for the costs of purchasing equipment and maintenance. The Claimant states that the purchase of the equipment, comprising general office equipment, photocopiers, photographic equipment and supplies, medical supplies, water coolers and refrigerators for checkpoints, communications equipment and stationery, was required as a result of the Claimant's increased activities during the relevant period.

548. During the on-site inspection, the Claimant reduced the amount claimed to SAR 20,057,191.

(viii) Catering costs and kitchen equipment (SAR 60,991,902)

549. The Claimant seeks compensation for contracts that were entered into for catering services and for the purchase of kitchens, refrigerators and freezers for the benefit of all the Claimant's personnel. Evidence provided in support of the claim indicates that catering services were provided to cadets at the maritime training centre in Jeddah and to Kuwaiti refugees. The Claimant advised that the cadets would usually have been provided with food during their courses, but in this instance, the course was specifically to train staff for the emergency situation. During the on-site inspection, the Claimant confirmed that the beneficiaries were its staff and not refugees, although it admitted that in some instances, staff members would share or give their cooked meals to refugees. The Claimant states that it did not provide catering services to the Allied Coalition Forces.

550. During the on-site inspection, the Claimant increased the amount claimed to SAR 61,560,954. However, during the on-site inspection, the Claimant confirmed that the amount claimed includes an amount of SAR 22,136,490 for subsistence costs for staff in the Eastern Province. This amount was taken from a report dated 1 September 1991 by the Commander of the Eastern Province estimating the total costs of damage and costs incurred as a result of Iraq's invasion and occupation of Kuwait. The Claimant asserted that this amount is duplicated in the separate claim items that are supported by cheques and contracts, many of which relate to the provision of catering services in the Eastern Province, but has not specifically excluded this amount from the amount claimed.

(ix) Fuel and equipment (SAR 8,218,130)

551. The Claimant seeks compensation for the costs of purchasing petrol and gas that were required to support its increased activities, including patrolling land and sea borders and transporting refugees to safe locations, during the period of Iraq's invasion and occupation of Kuwait. The claim also includes costs incurred in purchasing equipment, comprising fuel pumps.

(b) Analysis and valuation

552. For the reasons given at paragraph 37 above, the Panel finds that the amount claimed for uniforms is limited to SAR 19,715,553, for marine and land garrisons to SAR 16,297,333 and for catering and kitchens to SAR 60,991,902.

553. The Panel finds that the increased activities of the Claimant's staff represent a reasonable and proportionate response to the threat of military action to which Saudi Arabia was exposed during the period 2 August 1990 to 2 March 1991. The Panel finds that these activities are separate and distinct from activities of a military nature. For the reasons given at paragraph 20 above, the Panel therefore finds that the incremental costs of purchasing uniforms, equipment, vehicles, spare parts, fuel and fuel tanks and for constructing dock buildings during that period for the increased activities are, in principle, compensable. However, adjustments have been made to the amounts claimed to take into account the residual value of the uniforms, equipment, vehicles, spare parts, dock buildings and fuel tanks.

554. The Panel notes, in respect of the claim for vehicles and spare parts, that the claim includes an amount of SAR 4,121,940 for road construction equipment which was purchased in September 1990. During the on-site inspection, the Claimant advised that the equipment was required for construction of a sand barrier on the Saudi Arabian border. However, the Panel notes that the evidence indicates that the equipment was purchased following a tender process which took place on 25 June 1990. As the item was ordered prior to the date of Iraq's invasion of Kuwait, the Panel finds that the equipment was not purchased as a direct result of Iraq's invasion and occupation of Kuwait and therefore recommends no award of compensation in respect of the purchase.

555. The Panel notes that the claim for marine and land garrisons includes an amount of SAR 4,133,895 for dock works which were completed in August 1991. The Panel finds that the evidence is not sufficient to demonstrate that these dock works were carried out as a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation in respect of this amount.

556. With respect to the claim for marine equipment and spare parts, the Panel notes that the claim includes an amount of SAR 8,226,172 for the purchase of three hovercraft, which were ordered during the period of Iraq's invasion and occupation of Kuwait but were not delivered until after this period. The Claimant stated during the on-site inspection that the three hovercraft were still in use. The Panel finds that the evidence is not sufficient to demonstrate that the hovercraft were purchased as a direct result of Iraq's invasion and occupation of Kuwait, and therefore recommends no award of compensation in respect of this amount.

557. The claim also includes an amount of SAR 5,334,404 for servicing and maintenance of various vessels which were based in Jeddah but were relocated to the Persian Gulf during the period of Iraq's invasion and occupation of Kuwait. The Panel finds that the evidence is not sufficient to demonstrate that the servicing and maintenance costs were incremental costs incurred as a direct result of Iraq's invasion and occupation of Kuwait and therefore recommends no award of compensation in respect of this amount.

558. Having considered the evidence, the Panel recommends an award of SAR 510,147 for uniforms, SAR 162,415 for furniture and equipment, SAR 2,911,024 for vehicles and spare parts, SAR 107,063 for marine and land garrisons, SAR 232,303 for marine equipment and spare parts, SAR 570,867 for equipment and maintenance, SAR 165,490 for kitchen equipment and SAR 1,966,995 for fuel and equipment.

559. For the reasons stated at paragraphs 23 and 24 above, the Panel finds that incremental staff costs incurred during the period 2 August 1990 to 2 March 1991 in assisting refugees and implementing reasonable preventive and protective measures in response to Iraq's invasion and occupation of Kuwait are, in principle, compensable. Having considered the evidence, the Panel recommends an award of SAR 526,947 for overtime and SAR 14,530,342 for catering costs.

560. The Panel notes, as stated at paragraph 536 above, that as part of the claim for daily rations has been duplicated, that part of the claim for daily rations has been considered under the claim for catering costs.

561. The Panel finds that the remaining evidence provided in support of the claim for daily rations is not sufficient to verify and value the claim, and therefore recommends no award of compensation for this head of loss. Similarly, with respect to field allowances, the Panel finds that the evidence is not sufficient to verify and value the claim, and therefore recommends no award of compensation for field allowances.

(c) Recommendation

562. Based on its findings, the Panel recommends compensation in the total amount of SAR 21,683,593 for public service expenditures.

3. Recommendation for Ministry of Interior/General Directorate of Frontier Forces

563. Based on its findings regarding the Claim by the Ministry Interior/General Directorate of Frontier Forces, the Panel recommends compensation in the total amount of SAR 25,363,731.

Table 14. Recommended compensation for Ministry of Ministry of Interior/General Directorate of Frontier Forces

(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Real property	5,553,950	5,553,950	3,680,138
Public service expenditures	318,242,429	277,585,432	21,683,593
<u>Total</u>	323,796,379	283,139,382	25,363,731

N. Ministry of Interior/Public Security and General Department for Projects (UNCC claim No. 5000250)

564. This claim comprises claims filed by two departments of the Ministry of Interior, Public Security and the General Department for Projects (“GDP”). Public Security is responsible for preventive control, prevention of criminal activity, preservation of public security, assistance in the performance of the law, observation of the movement of traffic, registration of vehicles, combatting prohibited drugs, arresting criminals, investigating crimes and dealing with traffic violations. GDP is responsible for supervising all the works projects and managing some of the assets of the Ministry of the Interior.

565. Claims were originally submitted by Public Security and GDP (UNCC claim No. 5000250), Public Security Engineering Department (UNCC claim No. 5000251) and General Management of Police Traffic (UNCC claim No. 5000247). The Claimant confirmed in its article 34 response that UNCC claim No. 5000250 includes the claims of the Public Security Engineering Department (UNCC claim No. 5000251) and General Management of Police Traffic (UNCC claim No. 5000247) and that the latter claims are therefore consolidated with UNCC claim No. 5000250.

1. Real property (SAR 15,849,086)

(a) Public Security (SAR 1,184,046)

(i) Facts and contentions

566. The Claimant alleges that during the invasion of Al Khafji by Iraqi troops on 29 January 1991, buildings in its police compound and its prison building were damaged.

567. The Claimant seeks compensation in the amount of SAR 999,046 for the costs of repairing damage to the police-compound buildings. The damage consisted of broken glass and windows, broken doors and locks and damage to the mosque due to missile explosions.

568. The Claimant also seeks compensation in the amount of SAR 185,000 for damage to the prison building. The damage comprises bullet holes in the external walls, broken windows and doors, cracks in the visiting hall, and damage to the windows and decorative roof of the Guards Officers’ office. The prison has not yet been repaired due to budgetary constraints. The Claimant asserts that the damage did not affect its normal operation.

569. Iraq asserts that the damage and material losses are part of the military costs of the Allied Coalition Forces and are therefore not eligible for compensation in accordance with Governing Council decision 19. Iraq further states that Iraqi forces entered the town of Al Khafji and left in less than two days, which was too short a time for the alleged damage to have occurred.

(ii) Analysis and valuation

570. During the on-site inspection to Al Khafji, both buildings were inspected. It was observed that the buildings were in generally poor condition, and that only limited damage and repairs to the buildings can be attributed to military operations in Al Khafji, while most of the required repairs are due to structural defects of the buildings. In this respect, the Panel notes that one building in the police compound collapsed in early 2001 as a result of structural defects and poor quality construction.

571. For the reasons given at paragraph 17 above, the Panel finds that real property damage arising as a result of military operations in Al Khafji by either side is, in principle, compensable. The Panel finds that no betterment would result from the limited nature of the repairs carried out. The Panel further finds that the cost of repair of the prison building should be measured at such time as it would be reasonable, in the ordinary course of events, to expect repair to have taken place, 82/ taking into account the age of the building at the time of damage. Having considered the evidence, the Panel recommends an award of SAR 56,750 for real property.

(b) General Department of Projects (SAR 14,665,040)

(i) Facts and contentions

572. The Claimant alleges that during the invasion of Al Khafji, the GDP property at the Public Security Forces Complex in Al Khafji (including 32 villas, 500 housing units, and public service buildings) was damaged. The Claimant states that the damaged buildings comprised a girls' school, a boys' school, two kindergartens, mosques, an officers' club, an infirmary, an administration office, a dispensary, a water reservoir, a gate, workshops and the housing complexes.

573. The Claimant stated that civilian families were evacuated from the Al Khafji complex in August 1990 following Iraq's invasion and occupation of Kuwait. Public Security staff, however, remained in the compound until on or about 19 January 1991, when the site was fully evacuated. The Claimant alleged that Iraqi forces that entered the town at the end of January 1991 hid in a number of the compound houses and on the viewing platform at the top of the water reservoir, from where they were able to guide their troops in the battle. The Allied Coalition Forces, upon realising this, attacked the water tower with two Apache attack helicopters. The attacks destroyed the tower, killing the soldiers.

574. The Allied Coalition Forces then systematically searched all houses in the complex for Iraqi troops. These search actions resulted in broken doors and windows of the various buildings.

575. The Claimant asserted that fighting took place within the compound. Numerous examples of gunfire damage to walls were observed during the on-site inspection to the complex, even although the

Claimant had carried out limited repairs to these buildings. Extensive damage was caused to concrete walls where missiles exploded, causing the walls to require extensive repairs.

576. The Claimant seeks compensation for the following costs to repair the damage:

- (a) Repairs to housing complex (SAR 1,499,240);
- (b) Reconstruction of water reservoir (SAR 11,150,700); and
- (c) Replacement of doors and windows (SAR 2,015,100).

577. The Claimant stated that the original drawings were used for construction of the new water tank, with the same capacity, viewing tower and height as the original water tower.

578. Iraq asserts that the claimed losses are part of the military costs of the Allied Coalition Forces and are therefore not compensable in accordance with Governing Council decision 19. Iraq further asserts that the extent of the damage alleged does not accord with the short period of two days during which Iraqi forces entered and left the town.

(ii) Analysis and valuation

579. The Panel finds that the evidence provided and the observations made during the on-site inspection demonstrate that the damage arose as a result of military operations in Al Khafji. For the reasons given at paragraph 17 above, the Panel finds that the claim is therefore, in principle, compensable. ^{83/} The Panel finds that an adjustment should be made to take into account betterment of the buildings as a result of the repairs. Having considered the evidence, the Panel recommends an award of SAR 1,227,486 for repairs to the housing complex, SAR 10,528,611 for reconstruction of the water reservoir, and SAR 1,658,720 for replacement of doors and windows. The Panel recommends a total award of SAR 13,414,817 for real property of GDP.

(c) Recommendation

580. Based on its findings, the Panel recommends an award of SAR 13,471,567 for real property.

2. Other tangible property (SAR 1,829,979)

(a) Facts and contentions

581. Public Security seeks compensation for the following items that it alleges were lost or damaged at its police station during the battle of Al Khafji: military supplies and furniture (including tents, tables, electrical appliances, facsimile machines and weapons) (SAR 527,607) and communication equipment (SAR 1,302,372).

582. The Claimant stated that some equipment was left behind at the station when it was evacuated, and that not all the abandoned equipment was new at the time of loss or damage. The Claimant therefore depreciated the cost of the equipment at a rate of 20 per cent, although the basis for this calculation was not explained.

583. Iraq asserts that the damage and material losses are part of the military costs of the Allied Coalition Forces and are therefore not eligible for compensation in accordance with Governing Council decision 19. Iraq further asserts that Iraqi forces entered the town of Al Khafji and left it in less than two days, which was too short a time for the alleged theft of property to have occurred.

(b) Analysis and valuation

584. The Panel finds that the evidence provided demonstrates that the loss or damage of other tangible property arose as a result of threatened or actual military operations in Al Khafji. For the reasons given at paragraphs 17 and 126 above, the Panel finds that the claim is, in principle, compensable. However, adjustments have been made to the amount claimed to take into account the age of the property at the time of the loss or damage.

(c) Recommendation

585. Having considered the evidence, the Panel recommends an award of SAR 588,564 for other tangible property loss.

3. Income-producing property (SAR 186,705)

(a) Facts and contentions

586. The GDP alleges that due to the “war situation” and the damage to the General Security Forces Housing Complex in Al Khafji (described at paragraphs 572 to 575 above), the residents of the complex were forced to evacuate the complex, which was left empty for three months (approximately January to March 1991). The Claimant asserts that the residents were not required to pay rent during this period in accordance with a decree issued by the President of the Council of Ministers. In accordance with the decree, the Claimant was required to refund the rental payments that had been deducted from the evacuated residents’ salaries, in the amount of SAR 186,705. The Claimant seeks compensation for the amount of rent it was obligated to refund to the residents.

587. Although the claim is based on the three-month period of the decree referred to above, the Claimant asserts that the complex could not be occupied for a five-month period from 19 January 1991, due to the need to carry out repairs to the damaged property and to clear the area of mines.

588. During the on-site inspection, the claim was reassessed. The Claimant provided a table showing the total rental income per month of SAR 179,086 based on house types. The Claimant seeks compensation for loss of rent in respect of a three-month period only, corresponding to the period set out in the Royal Decree, when the housing complex was not occupied. The recalculation results in an increased claim amount of SAR 537,258.

589. Iraq asserts that evacuating the housing complex for a period of three months does not constitute direct loss or damage. The period is longer than required to repair the damage to the houses, as described by the repair contracts. Iraq also challenged the number of villas in the complex,

and argued that the very existence of such a complex was doubtful, given the fact that Al Khafji is a small border town.

(b) Analysis and valuation

590. For the reasons given at paragraph 37 above, the Panel finds that the claim amount is limited to SAR 186,705.

591. The Panel finds that the evidence provided and the observations made during the on-site inspection demonstrate the existence and size of the Claimant's housing compound in Al Khafji. The Panel further finds that the evacuation of the compound took place in response to the threat of military action and the inability of the residents to return to the compound was due to its damaged state as a result of actual military operations. The Panel therefore finds that loss of income is, in principle, compensable in accordance with paragraph 34(a) of Governing Council decision 7. 84/ The Panel further finds that the decision of the Government to reimburse those tenants from whom rent payment had been deducted in respect of the period when the complex was evacuated is not an act that breaks the causal link between Iraq's invasion and occupation of Kuwait and the loss of income.

(c) Recommendation

592. Having considered the evidence, the Panel recommends an award of SAR 186,705.

4. Public service expenditures (SAR 538,485,532)

(a) Facts and contentions

593. Public Security alleges that it was responsible for taking "additional security measures" in response to the large influx of Kuwaiti refugees and vehicles into Saudi Arabia as a result of Iraq's invasion and occupation of Kuwait, as well as to the influx of displaced Saudi Arabian citizens fleeing areas subject to a greater threat of military action. The Claimant asserts that as well as increasing patrols to prevent looting in evacuated areas, security had also to be reinforced in the locations where the population had grown. The Claimant asserts that it suspended the vacation of staff members and required them to work 24 hours a day at their posts from 3 August 1990 to 3 March 1991. The Claimant also employed 10,000 volunteers.

594. The Claimant asserts that a "State of Readiness B" was issued during the period of Iraq's invasion and occupation of Kuwait, in accordance with which the emergency measures were implemented. The Claimant further asserts that all police throughout Saudi Arabia, regardless of location, were mobilized in response to the state of alert.

595. Consequently, the Claimant asserts that it incurred the following additional costs during the period of Iraq's invasion and occupation of Kuwait:

(a) Food and field allowances (SAR 410,355,069);

(b) Additional uniforms (SAR 27,409,876);

(c) Overtime of civilian personnel (SAR 11,228,248);

(d) Transport/travel allowance for seconded staff (SAR 36,341,132); and

(e) Additional fuel and spare parts for patrol cars as a result of increasing patrols throughout Saudi Arabia (SAR 53,151,207).

596. The Claimant asserts that “over 120,000 police officers” received the allowances in accordance with Government regulations. The staff who received field and food allowances were stationed principally in Riyadh and the eastern and northern regions to provide protection to oil refineries or to protect evacuated premises from looting and vandalism. During the on-site inspection, the Claimant increased the amount claimed for allowances to SAR 421,153,064.

597. The Claimant asserts that it was required to purchase additional standard police uniforms for 10,000 volunteers who assisted the police and officers who were required to work 24-hour shifts. The claimed uniforms were either an additional uniform issued for a particular season or a replacement of a worn-out uniform. The Claimant further stated that as it was concerned that there would be disturbances during the hajj in 1991, it stationed staff on a stand-by basis in hajj training camps from November 1990 to June 1991. Police units were assigned to the hajj locations from 15 April 1991. The Claimant admitted that some of the additional uniforms claimed might well have been issued to staff in these camps.

598. The Claimant asserts that approximately 3,048 “civilian personnel”, that is, those working in offices and not in the field, were required to perform overtime during the period August 1990 to March 1991. During the on-site inspection, the Claimant reduced the amount claimed for overtime to SAR 7,071,841 to exclude bonus payments that had previously been included in the claim.

599. The Claimant states that transport and travel allowances are paid to employees assigned to a location more than 70 kilometres from their normal place of work. For instance, according to the Claimant, pilgrimage security staff in Mecca were moved to the Eastern Province. The main secondment assignments were from Riyadh to the Eastern Province, and from Mecca to the Eastern Province, Jeddah and Yanbu. In its response to the article 34 notification, the Claimant reduced the amount claimed for transport and travel allowances to SAR 33,267,586.

600. The Claimant asserts that there were more than 10,000 patrol cars in all parts of Saudi Arabia “especially in Riyadh, in the Eastern Region and in the Northern Region”. The Claimant asserted that approximately 11,000 patrols were carried out during the period of Iraq’s invasion and occupation of Kuwait. During the on-site inspection, the Claimant increased the amount claimed for additional fuel and spare parts to SAR 53,464,891, broken down between SAR 51,866,395 for fuel and SAR 1,598,496 for spare parts. The Claimant stated that it did not seek to claim for an amount of SAR 30,287 for maintenance.

601. Iraq asserts that the costs of preventive and protective measures constitute military costs within the meaning of Governing Council decision 19. Iraq further states that there was no

justification for the security measures taken in the areas which were close to the area of military operations (the north-eastern border region).

(b) Analysis and valuation

602. For the reasons stated at paragraph 37 above, the Panel finds that the amounts claimed for food and field allowances and fuel and spare parts are limited to SAR 410,355,069 and SAR 53,151,207, respectively.

603. The Panel finds that the implementation of emergency measures for the protection of the civilian population represents a reasonable and proportionate response to the threat of military action to which Saudi Arabia was exposed during the relevant period. For the reasons given at paragraphs 20 and 24 above, the Panel therefore finds that the incremental costs of such measures that were incurred during the period 2 August 1990 to 2 March 1991 are, in principle, compensable. For the reasons stated at paragraphs 21 and 23 above, the Panel further finds that incremental costs incurred during the period 2 August 1990 to 2 March 1991 in increasing security measures for the civilian population enlarged by Kuwaiti refugees and displaced citizens as a result of Iraq's invasion and occupation of Kuwait are, in principle, compensable. However, the Panel finds that costs that were incurred with respect to internal security measures that were implemented in response to causes other than Iraq's invasion and occupation of Kuwait are not direct losses suffered as a result of Iraq's invasion and occupation and are not, in principle, compensable. 85/

604. The Panel finds that a proportion of the amount claimed related to uniforms that were provided for internal security purposes. However, as the evidence is not sufficient to determine this proportion, nor to verify and value the claim, the Panel recommends no award of compensation for uniforms.

605. An adjustment has been made to the amount claimed to take into account the residual value of spare parts.

606. Having considered the evidence, the Panel recommends an award of SAR 196,616,083 for food and field allowances; SAR 3,678,184 for civilian overtime; SAR 9,069,497 for transport and travel allowances; and SAR 13,450,167 for fuel and spare parts.

(c) Recommendation

607. Based on its findings, the Panel recommends an award of SAR 222,813,931 for public service expenditures.

5. Recommendation for Ministry of Interior/Public Security and General Department for Projects

608. Based on its findings regarding the Claim by the Ministry of Interior/Public Security and General Department for Projects, the Panel recommends compensation in the total amount of SAR 237,060,767.

Table 15. Recommended compensation for Ministry of Interior/Public Security and General
Department for Projects
(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Real property	15,849,086	15,849,086	13,471,567
Other tangible property	1,829,979	1,829,979	588,564
Income-producing property	186,705	186,705	186,705
Public service expenditures	538,485,532	531,255,579	222,813,931
<u>Total</u>	556,351,302	549,121,349	237,060,767

O. Ministry of Interior/General Directorate of Investigations (UNCC claim No. 5000252)

609. The Claimant is primarily responsible for maintaining stability and security in Saudi Arabia. It states that its functions are to protect citizens and private and public property from fire, war, accidents and disaster; and to help ensure safe transportation and communications during peace and war.

610. Claims were originally submitted by the General Directorate of Investigations in Riyadh (UNCC claim No. 5000252) and the General Directorate of Investigations/Eastern Province (UNCC claim No. 5000239). The Claimant confirmed in its article 34 response that UNCC claim No. 5000252 includes the claim of the General Directorate of Investigations/Eastern Province (UNCC claim No. 5000239) and that the latter claim is therefore consolidated with UNCC claim No. 5000252.

1. Public service expenditures (SAR 228,637,892)

(a) Facts and contentions

611. The Claimant asserts that as a result of Iraq's invasion and occupation of Kuwait, and in response to a state of alert that was issued by the Minister of the Interior, it implemented emergency plans aimed at preventing "any disaster which might occur to people and the natural environment" throughout Saudi Arabia. The Claimant seeks compensation for costs that it alleges it incurred in implementing these plans. These costs include incremental overtime payments and daily rations for "service personnel"; incremental overtime payments to civilian personnel; telecommunications and technical equipment and spare parts; furniture and office supplies; vehicles and generators; and fuel and maintenance costs.

612. The Claimant asserts that the influx of refugees, the shifting population and the overall situation caused the Claimant to perform its normal security tasks in a more intensive manner. The Claimant states that the staff members in respect of whom increased staff costs were incurred were stationed in Riyadh and in the main areas in the Eastern Province "where it was necessary to ensure that public security prevailed in the Kingdom during the invasion period". The Claimant's personnel were responsible for guaranteeing "internal security" and maintaining "unity and stability among citizens" during the relevant period.

613. Acting in response to the state of alert issued by the Minister of Interior, the Claimant states that it "undertook to make all necessary preparations to participate Kingdom-wide; to cover/be available at the sites where massed groups of people of different nationalities and religions working in Saudi Arabia reside". The Claimant added that staff members were mobilized as soon as orders were issued at the end of October 1990, including to areas where refugees were accommodated, to be prepared for any "unexpected cases". The Claimant stated that "unexpected cases" referred to public demonstrations, riots, and the dissemination of anti-government propaganda but in reality such incidents only happened on "rare occasions". The Claimant's personnel, who were mobilized throughout Saudi Arabia, were responsible for patrolling, monitoring and supervising foreigners who

were employees of Government entities and private companies. Its personnel did not provide direct assistance to refugees.

614. The Claimant reduced the amounts claimed for overtime and daily rations in its response to the article 34 notification, thereby reducing the total amount claimed to SAR 210,306,320.

(b) Analysis and valuation

615. The Panel finds that the activities undertaken by the Claimant during the period of Iraq's invasion and occupation of Kuwait related to internal security measures that were not instituted as a direct result of Iraq's invasion and occupation of Kuwait for the humanitarian benefit of refugees or displaced members of the civilian population. Accordingly, the Panel finds that the costs of such measures are not compensable, in principle. 86/

(c) Recommendation

616. Based on its findings, the Panel recommends no award of compensation for public service expenditures.

2. Recommendation for Ministry of Interior/General Directorate of Investigations

617. Based on its findings regarding the Claim by the Ministry of Interior/General Directorate of Investigations, the Panel recommends no award of compensation.

Table 16. Recommended compensation for Ministry of Interior/General Directorate of Investigations

(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Public service expenditures	228,637,892	210,306,320	nil
<u>Total</u>	228,637,892	210,306,320	nil

P. Ministry of Interior/Department of Civil Affairs (UNCC claim No. 5000253)

618. The Claimant is responsible for the regulation of the civil status of Saudi Arabian nationals; recording births, marriages, divorces and deaths; for recording the civil status of foreigners inside Saudi Arabia; issuing identity cards and family records; and handling cases involving nationality.

1. Real property (SAR 38,826,969)

(a) Facts and contentions

619. The Claimant alleges that on the night of 25/26 January 1991, the impact of a scud missile fired by Iraqi forces partially destroyed its building in Riyadh and further, that most of the furniture and equipment in the building were damaged. The Claimant seeks compensation in the amount of SAR 38,567,127, comprising the original construction costs of the building, which was approximately eight years old at the time of the damage, and costs of improvements (including furniture) made to the building from the date of construction until the date of impact; and compensation of SAR 259,842 for the cost of transferring to another building records, archives and other equipment that were not destroyed in the attack. The building, which the Claimant asserts was structurally unsound as a result of the missile impact, was eventually demolished in 1997.

620. In its response to the article 34 notification, the Claimant deducted an amount of SAR 15,440 from the amount claimed for removal costs, representing fines imposed on contractors for performance delays regarding the removal costs, thereby reducing the total amount claimed to SAR 38,811,529.

(b) Analysis and valuation

621. For the reasons stated at paragraph 17 above, the Panel finds that real property damage to the Claimant's building arising as a result of scud missile attack is, in principle compensable. Based on its consideration of the evidence, the Panel further finds that the building was incapable of repair and therefore that it was reasonable for the Claimant to demolish the damaged building. The Panel therefore finds that compensation should be measured by the cost of reconstruction of the building at such time as it would be reasonable, in the ordinary course of events, to expect reconstruction to have taken place, 87/ taking into account the age of the building at the time of damage.

622. The Panel further finds that the losses consequent upon the damage, including the cost of removing the contents of the building, are, in principle, compensable to the extent that such costs are supported by the evidence.

623. However, adjustments have been made to the amount claimed for costs of ordinary maintenance of the building incurred prior to the damage and for furniture that was not damaged as a result of the missile impact.

(c) Recommendation

624. Having considered the evidence, the Panel recommends an award of SAR 10,468,204 for real property.

2. Recommendation for Ministry of Interior/Department of Civil Affairs

625. Based on its findings regarding the Claim by the Ministry of Interior/Department of Civil Affairs, the Panel recommends compensation in the total amount of SAR 10,468,204.

Table 17. Recommended compensation for Ministry of Interior/Department of Civil Affairs

(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Real property	38,826,969	38,811,529	10,468,204
<u>Total</u>	38,826,969	38,811,529	10,468,204

Q. Ministry of Interior/General Administration of Civil Defence (UNCC claim No. 5000254)

626. The Claimant, a division of the Ministry of Interior, is responsible for protecting citizens and public and private property from fire, war, accident and disaster, and securing the safety of transportation and communication networks during peace and war.

627. The Claimant states that in normal times there is “no supervisory relation or direct connection with the Ministry of Defence except for co-ordination in certain matters related to consultation aspects of Civil Defence in certain fields related to fire, rescue, first aid and ambulance services only”. During the period of the invasion and occupation, the Claimant asserts that its contact with the Ministry of Defence was limited to co-ordination to avoid casualties, such as alerting citizens prior to scud missile attacks.

628. Claims were originally submitted by the General Administration of Civil Defence in Riyadh (UNCC claim No. 5000254) and the Department of Civil Defence/Eastern Province (UNCC claim No. 5000238). The Claimant confirmed in its article 34 response that UNCC claim No. 5000254 includes the claim of the Department of Civil Defence/Eastern Province (UNCC claim No. 5000238) and that the latter claim is therefore consolidated with UNCC claim No. 5000254.

1. Public service expenditures (SAR 474,018,617)

(a) Facts and contentions

629. The Claimant alleges that following Iraq’s invasion of Kuwait, and in accordance with the instructions of the Ministry of Interior, it implemented an emergency plan to ensure an efficient and rapid response to any crisis which might occur “to people and the natural environment”. The measures were “intended for the civilian population, notably in the event of missiles hitting (including chemical bombs) Saudi Arabian territory (cities, villages, houses)”. In addition, the Claimant states that “[d]uring the invasion period, the Claimant had to take additional security measures in order to accomplish the police tasks for which it is responsible”.

630. The Civil Defence Council, headed by the Minister of Interior, is the principal committee responsible for overseeing civil defence activities throughout Saudi Arabia, in accordance with an emergency plan established by the Council for the entire country. The emergency plan and procedures provide for the Civil Defence Council to have broad overall responsibility for co-ordination of civil defence, while specific responsibilities are assigned to individual ministries and regions (emirates). The Claimant implemented and co-ordinated operations with local Councils of Civil Defence headed by the emir of each region. The Claimant states that during the period of Iraq’s invasion and occupation of Kuwait, the Minister of Interior issued a number of alerts. Emergency procedures were carried out in accordance with these alerts. However, the Claimant notes that the general emergency plans and procedures were drawn up during peacetime and that the scope and effects of the invasion and occupation were much greater than anticipated.

631. The Claimant seeks compensation for two categories of costs that were incurred in implementing the emergency plan and procedures: for the purchase of equipment and supplies,

including costs of constructing warehouses for storing the equipment; and for increased staff costs including overtime, field allowances and daily rations.

(i) Purchase of equipment and supplies (SAR 344,127,315)

632. The Claimant asserts that in normal times, its equipment was appropriate for fire, rescue and ambulance services. In view of the “extraordinary situation resulting from Iraqi threats to Saudi Arabia”, the Claimant asserts that it was necessary to purchase additional equipment and supplies “to prevent Iraqi missile attacks causing widespread panic among the population”. The claim includes parts for engines and cars (SAR 39,319,120); various equipment, including jeeps, ambulances, fire and first-aid equipment, generators, sirens, loud speakers and gas masks (SAR 226,841,262); and communications equipment (SAR 20,499,959), comprising wireless equipment, telephone exchanges and facsimile machines.

633. A claim for medical supplies (SAR 2,637,819) was withdrawn by the Claimant during the on site inspection. The amount claimed for communication equipment was reduced by the Claimant during the on-site inspection to SAR 19,999,959.

634. The Claimant also seeks compensation in the amount of SAR 23,589,606 for uniforms. The Claimant asserts that pursuant to the emergency measures it purchased for its staff “uniforms against chemical materials and gases”. In its response to the article 34 notification, the Claimant describes the uniforms as “standard civil defence uniforms”, including helmets, berets, socks, boots and shoes. The uniforms were allegedly purchased for 19,981 field personnel and 634 office personnel.

635. During the on-site inspection, the Claimant explained that the claim related to heavy duty uniforms that were not distributed to staff under normal circumstances. The Claimant asserts that these uniforms were subject to intensive wear during the relevant period.

636. The Claimant asserts that in many cases it had no pre-existing inventory of the equipment and supplies that form the subject of the claim, and therefore had to purchase the equipment and supplies, rather than draw from existing stock.

637. In addition, the Claimant seeks compensation in the amount of SAR 4,555,000 for the construction of six warehouses that it asserts were required to store the large number of equipment and vehicles purchased during the period of Iraq’s invasion and occupation of Kuwait to protect them against “weather conditions and other risks”. The Claimant asserts that all the warehouses were constructed in August 1990 and acknowledges that some of the warehouses, including a warehouse in Riyadh, continued to be used after 2 March 1991. With respect to those warehouses that are no longer in use, the Claimant asserts that the costs of their maintenance are greater than the value of the warehouses.

638. The Panel notes that there is an arithmetical error in the amount claimed for public service expenditures and that the correct amount claimed should be SAR 317,442,766, being the total of the amounts stated in paragraphs 632 to 637 above.

(ii) Increased staff costs (SAR 129,891,302)

639. The Claimant seeks compensation for daily rations and overtime and field allowance payments that it made to its staff during the period of Iraq's invasion and occupation of Kuwait. The Claimant explains that its personnel are divided into two categories, office personnel and field personnel. Office personnel "perform civil jobs in offices", while field personnel are "field technicians in uniform" who perform technical services such as fire, rescue, first aid, ambulance and other services of the civil defence.

640. With respect to daily rations, the Claimant alleges that its personnel were placed on 24-hour work schedules pursuant to the emergency measures. The Claimant either paid caterers to provide cooked food to the staff or, where no catering services were available, paid personnel subsistence allowances. The rations were provided in respect of 18,568 field personnel and 633 office personnel.

641. With respect to overtime and field allowance payments, the Claimant asserts that because staff were required to remain on duty 24 hours a day, it incurred overtime for 634 office personnel and field allowances for 19,981 field personnel.

642. The Claimant reduced the amount claimed for increased staff costs to SAR 129,891,301.

(b) Analysis and valuation

(i) Purchase of equipment and supplies

643. For the reasons stated at paragraph 20 above, the Panel finds that the purchase of emergency equipment and supplies was a reasonable and proportionate response to the threat of military operations to which Saudi Arabia was exposed during the period of Iraq's invasion and occupation of Kuwait. The incremental purchase costs of the equipment incurred during the period 2 August 1990 to 2 March 1991 are therefore, in principle, compensable, subject to an adjustment to reflect their residual value, where appropriate. Having considered the evidence, the Panel recommends an award of SAR 20,055,874 for equipment and supplies (including military uniforms).

644. With respect to the claim for construction of the warehouses, however, the Panel notes that the evidence, including the contracts and payment orders for the construction of the warehouses which are dated after 2 March 1991, does not support the Claimant's assertion that the warehouses were constructed in August 1990. The Panel therefore finds that the evidence is not sufficient to demonstrate that the warehouses were constructed during the period of Iraq's invasion and occupation of Kuwait. The Panel further finds that the Claimant has not demonstrated that the warehouses were constructed as a result of Iraq's invasion and occupation of Kuwait and therefore recommends no award of compensation for the claim for the costs of their construction.

(ii) Increased staff costs

645. The Panel finds that for the reasons stated at paragraph 20 above, the costs of rations, overtime and field allowances that were incurred during the period 2 August 1990 to 2 March 1991 in implementing the Claimant's emergency plan in response to Iraq's invasion and occupation of Kuwait

are, in principle, compensable, to the extent that such costs are incremental and supported by the evidence. Having considered the evidence, the Panel recommends an award of SAR 117,169,378 for increased staff costs.

(c) Recommendation

646. Based on its findings, the Panel recommends an award of SAR 137,225,252 for public service expenditures.

2. Recommendation for Ministry of Interior/General Administration of Civil Defence

647. Based on its findings regarding the Claim by the Ministry of Interior/General Administration of Civil Defence, the Panel recommends compensation in the total amount of SAR 137,225,252.

Table 18. Recommended compensation for Ministry of Interior/General Administration of Civil Defence

(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Public service expenditures	474,018,617	470,880,797	137,225,252
<u>Total</u>	474,018,617	470,880,797	137,225,252

R. Ministry of Interior/Emirate of the Northern Frontiers (UNCC claim No. 5000255)

648. The Claimant is the representative of the Custodian of the Two Holy Mosques in the northern region of Saudi Arabia, and is responsible for justice, security and providing services for citizens in the region.

1. Real property (SAR 331,234)

(a) Facts and contentions

649. The Claimant originally sought compensation for the costs of repairing two of its buildings, the Al Judaida Centre and the Al Samah Centre, both of which were located on Saudi Arabia's northern border with Iraq. However, in its response to the article 34 notification, the Claimant clarified that the claim relates solely to the costs of repairing the Al Samah Centre. The Claimant alleges that the building was partially destroyed by Iraqi rocket and artillery fire, thereby causing damage to the building's ceilings and walls.

650. In the article 34 response, the Claimant sought to increase the amount claimed from SAR 331,234 to SAR 331,250.

(b) Analysis and valuation

651. For the reasons stated at paragraph 37 above, the Panel finds that the Claim amount is limited to SAR 331,234.

652. For the reasons stated at paragraph 17 above, the Panel finds that the claim for real property damage in Al Samah is, in principle, compensable. However, the Panel notes that the amount of SAR 331,234 claimed includes an amount of SAR 117,350 for other tangible property, which is considered separately below. The Panel has therefore excluded this latter amount from consideration of the claim for real property.

(c) Recommendation

653. Having considered the evidence, the Panel recommends an award of SAR 168,878 for real property.

2. Other tangible property (SAR 120,326)

(a) Facts and contentions

654. The Claimant seeks compensation for the alleged destruction by Iraqi rocket and artillery fire of electronic equipment, furniture, sleeping bags and sheets, and electrical and drainage installations located in the Al Judaida and the Al Samah Centres. The Claimant also alleges that Iraqi soldiers attacked the two centres, which were evacuated during the period of military operations, and stole items of office and house furniture therefrom. The Claimant asserted that the two centres required refurbishment following the loss and damage.

655. In the revised statement of claim and the response to the article 34 notification, the Claimant sought to increase the amount claimed to SAR 251,600.

(b) Analysis and valuation

656. For the reasons stated at 37 above, the Panel finds that the Claim amount is limited SAR 120,326.

657. For the reasons stated at paragraph 17 above, the Panel finds that the claim for other tangible property is, in principle, compensable. Adjustments have been made to the amount claimed to take into account the age of the property.

(c) Recommendation

658. Having considered the evidence, the Panel recommends an award of SAR 24,065 for other tangible property.

3. Public service expenditures (SAR 1,253,024)

(a) Facts and contentions

659. The Claimant seeks compensation for various expenses that it alleges were incurred in order to implement its security plan. These expenses include the following:

(a) Purchase of vehicles to transport security groups and officials to the border (SAR 1,006,554);

(b) Payment of staff secondment and overtime costs (SAR 126,842);

(c) Hospitality for United Nations personnel and Kuwaiti Ambassador (SAR 119,628).

(i) Purchase of cars

660. The Claimant asserts that it was responsible for maintaining security along an 800 kilometre length of border with Iraq, and that several villages were located in this area. The Claimant asserts that during the period of Iraq's invasion and occupation of Kuwait, it increased the number of security patrols on the northern border of Saudi Arabia "in order to prevent Iraqi infiltrators from entering the Kingdom for looting or even killing civilians". The Claimant states that these security patrols were not intended to be capable of resisting any attack by Iraqi troops. Although the Claimant possessed a fleet of approximately 90 to 100 vehicles at the date of Iraq's invasion of Kuwait, it asserts that this fleet was inadequate to carry out the increased number of patrols and therefore purchased 20 additional vehicles.

(ii) Increased staff costs

661. The Claimant asserts that increased staff costs relate to office staff who were required to remain on duty for increased hours as part of the Claimant's security plan and who were therefore paid

overtime; and casually employed drivers who undertook security patrols and received a secondment allowance.

(iii) Hospitality for United Nations personnel and Kuwaiti Ambassador

662. The Claimant asserts that it paid for the accommodation of United Nations representatives at a hotel in Ar'ar during the period 2 August 1990 to 2 March 1991 and hosted United Nations' representatives and the Ambassador of Kuwait to Saudi Arabia who were present in the area "to supervise the exchange of Kuwaiti prisoners and the handover of some stolen gold at the border centre of Judaida Ar'ar". The date when this event took place has not been provided.

663. In its response to the article 34 notification, an additional amount of SAR 18,313 was claimed for these hospitality costs.

(b) Analysis and valuation

(i) Purchase of vehicles

664. For the reasons stated at paragraph 20 above, the Panel finds that increased security patrols along the northern border of Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait requiring the purchase of additional cars, were a reasonable and proportionate response to the threat of military operations to which Saudi Arabia was exposed during this period. The purchase costs of the vehicles are therefore, in principle, compensable, subject to an adjustment to reflect their residual value.

(ii) Increased staff costs

665. The Panel finds that for the reasons stated at paragraph 24 above, overtime and secondment costs incurred during the period 2 August 1990 to 2 March 1991 in implementing the Claimant's security plan and carrying out security patrols in response to Iraq's invasion and occupation of Kuwait are, in principle, compensable.

(iii) Hospitality for United Nations personnel and Kuwaiti Ambassador

666. For the reasons stated at paragraph 37 above, the Panel finds that the amount claimed is limited to SAR 119,628.

667. The Panel finds that the costs of providing accommodation and other hospitality to United Nations personnel and diplomatic representatives were not incurred as a direct result of Iraq's invasion and occupation of Kuwait, but rather as a result of the Claimant's independent decision to provide the hospitality, and are therefore not compensable.

(c) Recommendation

668. Having considered the evidence, the Panel recommends an award of compensation of SAR 24,015 for public service expenditures.

4. Recommendation for Ministry of Interior/Emirate of the Northern Frontiers

669. Based on its findings regarding the Claim by the Ministry of Interior/Emirate of the Northern Frontiers, the Panel recommends compensation in the total amount of SAR 216,958.

Table 19. Recommended compensation for Ministry of Interior/Emirate of the Northern Frontiers

(Saudi Arabian riyals)

<u>Loss type</u>	<u>Original claim amount</u>	<u>Amended amount</u>	<u>Recommended compensation</u>
Real property	331,234	331,234	168,878
Other tangible property	120,326	120,326	24,065
Public service expenditures	1,253,024	1,253,024	24,015
<u>Total</u>	1,704,584	1,704,584	216,958

IV. SUMMARY OF RECOMMENDATIONS

670. The recommendations of the Panel are summarized as follows:

Table 20. Summary of recommended amounts in third instalment of "F2" claims

<u>Ministry or entity</u>	<u>Amount recommended (SAR)</u>	<u>Amount recommended (converted to USD)</u>
Saudi Ports Authority	8,356,416	2,231,353
Ministry of Defence and Aviation/General Department of Military Works	nil	nil
Saline Water Conversion Corporation	3,350,413	894,636
Ministry of Defence and Aviation/Royal Saudi Air Force	nil	nil
Ministry of Defence and Aviation/General Department of Medical Services	65,268,359	17,428,133
Ministry of Defence and Aviation/Joint Forces Affairs	nil	nil
Ministry of Agriculture and Water/Agricultural Affairs	12,077	3,225
Ministry of Agriculture and Water/Department of Water	1,782,078	475,855
Royal Commission for Jubail and Yanbu	11,814,217	3,154,664
Ministry of Defence and Aviation/International Airports Project	12,069,474	3,222,824
Ministry of Interior/Eastern Province Emirate	81,247,994	21,695,058
Ministry of Interior/General Passport Department	121,095	32,335
Ministry of Interior/General Directorate of Frontier Forces	25,363,731	6,772,692
Ministry of Interior/Public Security and General Department for Projects	237,060,767	63,300,605
Ministry of Interior/General Directorate of Investigations	nil	nil
Ministry of Interior/Department of Civil Affairs	10,468,204	2,795,248
Ministry of Interior/General Administration of Civil Defence	137,225,252	36,642,257
Ministry of Interior/Emirate of the Northern Frontiers	216,958	57,933
<u>Total</u>	<u>594,357,035</u>	<u>158,706,818</u>

Geneva, 12 September 2001

(Signed) Mr. Francisco Orrego Vicuña
Chairman

(Signed) Mr. Jen Shek Voon
Commissioner

(Signed) Mr. Hans van Houtte
Commissioner

Notes

1/ Governing Council decision 10 (S/AC.26/1992/10).

2/ “F2” claims are the claims submitted by the Governments of Jordan and Saudi Arabia, except environmental claims, which are being considered by the “F4” Panel.

3/ The duplicate claims are as follows:

<u>Main claim</u> <u>(UNCC claim number)</u>	<u>Claimant entity</u>	<u>Duplicate claims</u> <u>(UNCC claim numbers)</u>
5000197	Ports Authority	5000224
5000240	Eastern Province Emirate	5000242, 5000243, 5000249
5000246	Frontier Forces	5000241
5000245	General Directorate of Passports	5000244, 5000248
5000250	Public Security	5000247, 5000251
5000252	Directorate General of Investigations	5000239
5000254	Civil Defence	5000238

For a description of the duplicate claims, see paragraphs 40, 426 - 427, 490 - 491, 518 - 519, 565, 610 and 628.

4/ The claims of the Royal Saudi Land Forces (UNCC claim No. 5000206) and Royal Saudi Naval Forces (UNCC claim No. 5000233) were withdrawn on 1 September 2000, while the claim of the Royal Saudi Land Forces/Eastern Area Command (UNCC claim No. 5000234) was withdrawn on 10 August 2001.

5/ The Saline Water Conversion Corporation (UNCC claim No. 5000202) seeks compensation for claim preparation costs in the amount of SAR 104,399.

6/ ST/ESA/STAT/SER.Q/220, Vol. XLV, No. 4 (1991). The dates of loss for the purpose of determining the exchange rate to be applied to calculate the recommended amounts of compensation are described in paragraphs 32 - 33 of this report.

7/ See the twenty-seventh and twenty-eighth reports, dated 26 April 1999 and 23 July 1999, respectively.

8/ The seven claims are those of the Saudi Ports Authority (UNCC claim No. 5000197), Saline Water Conversion Corporation (UNCC claim No. 5000202), Ministry of Defence and Aviation/General Department of Medical Services (UNCC claim No. 5000204), Ministry of Defence and Aviation/Joint Forces Affairs (UNCC claim No. 5000205), Ministry of Interior/Eastern Province

Emirate (UNCC claim No. 5000240), Ministry of Interior/Border Guard (UNCC claim No. 5000246), Ministry of Interior/Public Security and General Department of Projects (UNCC claim No. 5000250).

9/ “Report and recommendations made by the Panel of Commissioners concerning the second instalment of ‘F2’ claims”, (“Second Report”), S/AC.26/2000/26.

10/ Second Report, paras. 14-17.

11/ Ibid., paras. 18-30.

12/ Ibid., paras. 31-64.

13/ Ibid., paras. 33-37.

14/ S/AC.26/1991/7/Rev.1. See also the “Executive Summary of the report and recommendations made by the Panel of Commissioners appointed to review the Well Blowout Control Claim”, (S/AC.26/1996/5), (“WBC’ Claim”), at para. 20, where the “E1” Panel held, in accordance with paragraph 34(a) of Governing Council decision 7, that Iraq is liable for any direct loss, damage or injury whether caused by its own or by the Allied Coalition Forces.

15/ S/AC.26/Dec.19 (1994).

16/ Second Report, paras. 39-40.

17/ Ibid., para. 41.

18/ Ibid., paras. 43-46. See also, for example, “Report and recommendations made by the panel of Commissioners concerning the second instalment of ‘F1’ claims”, (S/AC.26/1998/12), (“Third ‘F1’ Report”), para. 122; “Report and recommendations made by the panel of Commissioners concerning the third instalment of ‘F1’ claims”, (S/AC.26/1999/7), (“Fourth ‘F1’ Report”), para. 140; and “Report and recommendations made by the panel of Commissioners concerning the first instalment of ‘F2’ claims”, (S/AC.26/1999/23), (“First Report”), para. 257.

19/ Second Report, para. 46. See also Third “F1” Report, para. 122 and Fourth “F1” Report, para. 140. See also the “Report and recommendations made by the panel of Commissioners concerning the first instalment of ‘E2’ claims” (S/AC.26/1998/7), (“First ‘E2’ Report) paras. 158-159, and 162, where the “E2” Panel examined in some detail what constitutes a threat of military action for the purposes of paragraph 34(a) of Governing Council decision 7.

20/ Second Report, para. 22. The precise number of refugees who arrived in Saudi Arabia during the period of Iraq’s invasion and occupation of Kuwait is difficult to ascertain. The Ministry of Finance and National Economy, in response to a request by the Commission for further information during the on-site inspection, provided information detailing the number of refugees present in 12

regions of Saudi Arabia during the relevant period. The Ministry of Finance and National Economy stated that more than 262,126 refugees entered Saudi Arabia between 2 August 1990 and 2 March 1991.

21/ Second Report, para. 53. The Panel notes that the “F1” Panel has drawn a distinction between general expenditures and expenditures specifically incurred in providing humanitarian relief. See Fourth “F1” Report, para. 127.

22/ Second Report, para. 54. See also First Report, paras. 101, 366; “WBC” Claim, para. 162; Third “F1” Report, para. 115; “Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of ‘E3’ claims” (S/AC.26/1999/2), (“Fifth ‘E3’ Report”), para. 205; and First “E2” Report, para. 213.

23/ Second Report, para. 56. See also First Report, paras. 100-102, and 255-257 and “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘E3’ claims” (S/AC.26/1998/13), (“First ‘E3’ Report”), paras. 218-219, 379-381.

24/ Second Report, para. 57.

25/ Ibid., para. 58. See also Third “E2” Report, para. 100.

26/ Second Report para. 61. The “E3” and “E4” Panels have also determined that claims for incremental travel costs incurred as a direct result of Iraq’s invasion and occupation of Kuwait are, in principle, compensable. See Fifth “E3” Report, para. 188; “Report and recommendations made by the panel of Commissioners concerning the first instalment of ‘E4’ claims” (S/AC.26/1999/4), (“First ‘E4’ Report”), para. 222.

27/ Second Report, para. 64.

28/ Ibid., paras. 65-77.

29/ Ibid., paras. 78-86.

30/ Ibid., para. 78.

31/ Ibid., para. 79. Military operations took place between 15 January to 2 March 1991. 7 February 1991 is the mid-point of the loss period.

32/ Second Report, para. 81.

33/ Ibid., para. 82.

34/ ST/ESA/STAT/SER.Q/220, Vol. XLV, No. 4 (1991).

35/ S/AC.26/1992/16.

36/ See First Report, para. 120.

37/ See First Report, para. 269 and “Report and recommendations made by the panel of Commissioners concerning the fourth instalment of ‘F1’ claims”, (S/AC.26/2000/13), (“Fifth ‘F1’ Report”), at para. 161.

38/ First Report, para. 94.

39/ In some instances, the Claimant states that additional payments, calculated by reference to the penalties for delay provided for in the contracts, were made to the contractors to cover additional costs, such as staff costs, that were incurred by the contractors as a result of the delays or to allow them to complete the contracts.

40/ Article 9 of the Saudi Arabian Government regulations for procurement and the execution of works and projects provides as follows:

“a. A contractor entered into contract with the Government shall be subject to a delay penalty ... in accordance with the details specified in the contract and in the Executive By-Laws, unless the delay is the result of force majeure, emergency or an action beyond the contractor’s control.

b. The Minister or head of the soliciting agency may extend the contract period if the delay was the result of the following:

1. Assigning new works to the Contractor if he was ordered to do them within a period that does not allow the performance thereof in the remaining period agreed upon in the contract.
2. An order from the department concerned for supervision of works for reasons that are not related to the contractor.
3. If the delay was caused by factors other than those mentioned in the previous paragraph, exemption of the delay penalty shall not be granted except after approval by the Ministry of Finance and National Economy.”

41/ First Report, para. 269.

42/ In the “Report and Recommendations made by the panel of Commissioners concerning the fourth instalment of “E3” claims”, (S/AC.26/1999/14), paras. 440-442, the “E3” Panel found that a claim for compensation for loss of bank guarantee bonds in favour of the Claimant’s Iraqi clients was not compensable, in principle, in circumstances where the Claimant stated that it had not

incurred a loss with respect to the bank guarantee bonds, but was merely reserving its right to file a claim in the future if the Iraqi clients cashed the bonds at some future point in time. The Panel found that the claim was “too contingent and remote”. See also “Report and Recommendations made by the panel of Commissioners concerning the seventh instalment of ‘E3’ claims”, (S/AC.26/2000/3), para. 265; and “Report and Recommendations made by the panel of Commissioners concerning the eighth instalment of ‘E3’ claims”, (S/AC.26/1999/15), para. 86.

43/ “Report and recommendations made by the panel of Commissioners concerning the first instalment of ‘F3’ Claims” (S/AC.26/1999/24), (“First ‘F3’ Report”), para. 66. See also “Report and recommendations made by the panel of Commissioners concerning the second instalment of ‘F3’ Claims” (S/AC.26/2001/7), (“Second ‘F3’ Report”), paras. 21-22.

44/ Paragraph 13 of Governing Council decision 9 states 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 “F3” Panel in the First “F3” Report found this statement to be applicable to the Government of Kuwait’s property left unguarded, at para. 29 and note 12. The “E3” Panel, in its “Report and recommendations made by the panel of Commissioners concerning the eleventh instalment of ‘E3’ claims” (S/AC.26/2000/4), (“Eleventh ‘E3’ Report”), at para. 59 extended application of paragraph 13 to business property left unguarded in Saudi Arabia.

45/ The “F3” Panel in the Second “F3” Report, at paras. 32-33, recommended compensation for 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.

46/ Second Report, para. 612.

47/ See for example, “Report and recommendations made by the panel of Commissioners concerning the sixth instalment of ‘E3’ claims”, (S/AC.26/1999/3), para. 23; compare with the Third “F1” Report, para. 104.

48/ The seconded employees carried out repairs for items for which claims have been discussed under the headings Real Property and Other tangible property. Where work was carried out by seconded staff, the Panel has ensured that there is no duplication of labour costs.

49/ The Panel notes that the “F3” Panel in the Second “F3” Report at para. 34 allowed compensation for salaries paid to existing employees referable to the time they spent 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. The “F3” Panel held that 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 considered the valuation of 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 had a loss of revenue claim or a loss of profits claim for all or part of the period covered by the claim for salaries.

50/ In making this recommendation, the Panel notes that staff were seconded from Al Khobar and Jubail, where production had slowed or ceased for some period during and after Iraq's invasion and occupation of Kuwait, and that operations and maintenance functions at those locations may have been reduced accordingly.

51/ Second Report, paras. 58, 415 and 417.

52/ S/AC.26/1992/11. Governing Council decision 11 states that:

“The Governing Council decides that members of the Allied Coalition Armed Forces are not eligible for compensation for loss or injury arising as a consequence of their involvement in Coalition military operations against Iraq, except if the following three conditions are met:

- (a) the compensation is awarded in accordance with the general criteria already adopted; and
- (b) they were prisoners of war as a consequence of their involvement in Coalition military operations against Iraq in response to its unlawful invasion and occupation of Kuwait; and
- (c) the loss or injury resulted from mistreatment in violation of international humanitarian law (including the Geneva Conventions of 1949).”

See also Second Report, para. 456.

53/ Ministry of Defence and Aviation/Joint Forces Affairs (UNCC claim No. 5000205) seek compensation in the amount of SAR 2,455,213,767 for payment or relief provided to refugees from Iraq. See paragraphs 210 - 214.

54/ The facts and circumstances of the claim for payment or relief provided to Iraqi refugees and support provided to Iraqi Prisoners of War are fully set out in the claim of Ministry of Defence and Aviation/Joint Forces Affairs (UNCC claim No. 5000205), paragraphs 210 - 211 and 215.

55/ The International Committee of the Red Cross states that a revolt flared up in southern Iraq at the beginning of March 1991, and that “singularly violent fighting erupted in the principal towns of Southern Iraq” thereafter. “Annual report of the International Committee of the Red Cross”, 1991, p. 104. United Nations High Commissioner for Refugees’ sources state that:

“It was not, however, until early April 1991, shortly after the war had ended, that armed conflict between the Iraqi Government and disaffected groups within the country provoked one of the largest and fastest refugee movements in recent history ... [including] some 70,000 Shi’ites from the southern region around Basra...” “The State of the World’s Refugees”, United Nations High Commissioner for Refugees, 1993, p. 84.

56/ See also “Report and recommendations made by the panel of Commissioners concerning the fifth instalment of ‘F1’ claims”, (S/AC.26/2001/15), (“Sixth ‘F1’ Report”) paras. 62-63, concerning a claim for payment or relief provided to Kurdish refugees who fled to Iran from Iraq after 2 March 1991 after the failure of uprisings in northern Iraq against the Government of Iraq in March 1991. The Panel, in recommending no award of compensation for the claim, stated that if the assistance or relief did not relate to a loss which occurred within the period of Iraq’s invasion and occupation of Kuwait or a reasonable period immediately thereafter, then, absent an adequate explanation from the Claimant regarding the directness of the losses, such assistance or relief was not compensable.

57/ See appendix L, “Report to Congress, Conduct of the Persian Gulf Conflict” 1991, p. 578.

58/ See “Annual Report of the International Committee of the Red Cross”, 1991, p. 102.

59/ In support of its submission, Iraq provided witness statements of four Iraqi soldiers who were captured by the Allied Coalition Forces and detained in camps in Saudi Arabia.

60/ Second Report, para. 40.

61/ The majority of the Iraqi POWs were captured by the United States’ forces. However, several thousand Iraqi POWs were also captured by British, French and Saudi Arabian forces. Custody of the POWs was transferred to Saudi Arabia in March 1991.

62/ Second Report, para. 107.

63/ Claims for contract interruption losses, including claims for extra payments demanded by contractors to cover increased costs in materials and other increased costs after the liberation of Kuwait, were considered by the “F3” Panel in the First “F3” Report. The “F3” Panel found that the factors alleged by the contractor as the cause of the increased contract prices must have been

themselves a direct result of Iraq's invasion and occupation of Kuwait (First "F3" Report, paras. 59-64).

64/ Second Report, paras. 427-428, and 432.

65/ In its first report, the "F3" Panel found that refugees were urged not to return to Kuwait for a three-month period after the liberation of Kuwait because, "until the critical work needed to restore hospitals, public water supplies, electricity and other essential services in Kuwait was completed, it was not safe for the population of Kuwait to return in large numbers". See First "F3" Report, para. 190.

66/ The Claimant states that "agreements with the Ministry of Defence for the lease of a variety of industrial property ... give an idea of the extent to which the Royal Commission had to deprive itself of the use of property designed for development and investment". In the revised statement of claim, the Claimant presented a list of amounts attributed to suspended lease agreements with the Ministry of Defence and Aviation totalling SAR 6,143,928.60 and a list of the Claimant's facilities that were leased to the Ministry of Defence and Aviation in 1990-1991, indicating equipment, utilities, land rent, and maintenance and totalling SAR 26,623,651.

67/ See Third "E2" Report, para. 100.

68/ Ibid., paras. 89-93.

69/ See Second Report, para. 351 in which the Panel, referring to the claims of two construction contractors against the Ministry of Health, stated that "as the Claimant has made no payment to either [of the contractors] in respect of their claims against it, the Claimant has not suffered a direct loss resulting from Iraq's invasion and occupation of Kuwait".

70/ See paragraphs 375 - 376.

71/ The Claimant in its statement of claim asserted that under normal circumstances, the lease agreements are not automatically renewed upon expiry, but rather are put up for auction and then awarded to the highest bidders. To avoid the possibility of legal action as a result of the loss of revenue suffered by the tenants during the relevant period, the Claimant stated that it waived its right to award leases pursuant to the auction procedure, and that it automatically renewed the leases to the existing tenants for three years at the same rent. The Claimant alleged that an average increase of 25 to 30 per cent in rental prices would have resulted if the auction procedures had been followed. The Claimant therefore stated that its claim (for SAR 18,361,425.71) was for the rent that it would have obtained but for the settlement reached with the tenants. This amount allegedly represents seven months' rent with a 25 per cent increase.

72/ See paragraph 111 above.

73/ In its First Report, the Panel found that Jordanian airspace was the subject of military operations or the threat of military action during the period from 15 January until 2 March 1991 as a result of Iraq's threats or military operations against Israel. Accordingly, it found that a claim by the Jordanian Civil Aviation Authority for loss of revenue due to the decrease in the number of aircraft overflying or landing in Jordan during that period was, in principle, compensable because the loss resulted directly from such military operations or the threat of military action. See First Report paras. 204, and 207. See also Third "E2" Report, paras. 97-98.

74/ The Claimant asserted in its response to the article 34 notification that the payments (including four major invoices totalling SAR 2,662,678) related to blanket insurance policies for staff, for personal property belongings of employees and officers of Bechtel; an addendum to Group Personal Accident insurance due to war risks; and an additional premium for special war risk protection (Business Travel and Company Paid Accident plans). However, during the on-site inspection, the Claimant asserted that the claim related solely to war risk insurance premiums imposed by airlines on staff air travel.

75/ See First "F3" Report, paras. 188-202.

76/ The Panel notes that the majority of the payments made to Kuwaiti refugees were made in the first three months after the date of Iraq's invasion of Kuwait.

77/ Second Report, paras. 611-612.

78/ *Ibid.*, paras. 457-461.

79/ See First Report, paras. 100-105.

80/ See paragraph 89 above.

81/ Second Report, paras. 58, 415 and 417.

82/ See paragraph 120 above.

83/ See note 14 above.

84/ The "D" and "E4" panels have determined that claims for loss of rental income on apartment buildings, after tenants failed to pay rent due to their departure from Kuwait or due to civil disorder in Kuwait, are compensable, in principle. See "Report and recommendations made by the panel of Commissioners concerning part two of the fourth instalment of individual claims for damages above US\$100,000 (category 'D' claims)", (S/AC.26/2000/11), paras. 16, 25, 37 and 61-64; and the First "E4" Report, paras. 65 and 85-86.

85/ Second Report, para. 282.

86/ Ibid.

87/ See paragraph 120 above.
