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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS  
CONCERNING PART ONE OF THE THIRD INSTALMENT OF "F3" CLAIMS

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## GLOSSARY

“claimant”	Any Ministry or other entity of the Government of Kuwait on whose behalf the Government of Kuwait has filed an “F3” claim
“Commission” or “UNCC”	United Nations Compensation Commission
“‘D1’ Panel”	One of two panels of Commissioners appointed to review the “D” claims, being claims of individuals for damages above USD 100,000
“‘E1’ Panel”	The Panel of Commissioners appointed to review the “E1” claims, being the oil sector claims
“‘E2’ Panel”	The Panel of Commissioners appointed to review the “E2” claims, being claims filed on behalf of corporations and other business entities not incorporated in Kuwait, excluding oil sector, construction/engineering and export guarantee and insurance claims
“‘E4’ Panel”	The Panel of Commissioners appointed to review the “E4” claims, being Kuwaiti private sector corporate claims, excluding oil sector claims
“emergency period”	The period from 27 February 1991 to 31 May 1991, as used by the Government of Kuwait to denote the period during which reconstruction and repair work commenced
“expert consultants”	The expert accounting and loss adjusting consultants to the Panel (see paragraph 8 of the First “F3” Report ( <i>q.v.</i> ))

“‘F1’ Panel”	The Panel of Commissioners appointed to review the “F1” claims, being claims, other than environmental claims, of international organizations and all Governments other than the Governments of Jordan, Kuwait and Saudi Arabia
“‘F3’ claims”	The claims filed with the Commission under the Commission’s claim form entitled “Claim Form for Governments and International Organizations” by the Government of Kuwait, except those reviewed by the “F1” Panel and those which the Commission has classified as environmental claims (see paragraphs 1 and 2 below)
“‘F4’ Panel”	The Panel of Commissioners appointed to review the “F4” claims, being environmental claims submitted by Governments, public sector enterprises, and non-profit corporations
“Farah report”	“Report to the Secretary-General on the scope and nature of damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation” (S/22535)
“First ‘F3’ Report”	“Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘F3’ claims” (S/AC.26/1999/24)
“first instalment claims”	Those claims considered by the Panel in the First “F3” Report
“Form F”	The Commission’s claim form entitled “Claim Form for Governments and International Organizations”

“GCC” or “Gulf Cooperation Council”	Cooperation Council for the Arab States of the Gulf, comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates
“Governing Council decision”	A decision of the Governing Council of the Commission
“Kuwait”	The Government of Kuwait
“Iraq”	The Government of Iraq
“KERO”	Kuwait Emergency Reconstruction Office
“KERP”	Kuwait Emergency and Recovery Program, a procurement programme set up in December 1990 and managed by the Council of Ministers
“level of materiality”	See paragraphs 120 to 123 of the First “F3” Report
“liberation”	The liberation on 26 February 1991 of Kuwait from Iraq’s invasion and occupation
“non-material items”	Those parts of the “F3” claims that fall below the level of materiality adopted by the Panel. See paragraph 120 of the First “F3” Report
“occupation period”	The period from 2 August 1990 to 26 February 1991
“PAAC”	Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression
“pre-paid rent”	See paragraph 83 of the First “F3” Report
“principal claim amount”	See paragraph 4 below



“relief paid to employees”	See paragraph 32 of the First “F3” Report
“Rules”	The Commission’s Provisional Rules for Claims Procedure, a text of which is annexed to Governing Council decision 10 (S/AC.26/1992/10)
“Second ‘F3’ Report	“Report and recommendations made by the Panel of Commissioners concerning the second instalment of ‘F3’ claims” (S/AC.26/2001/7)
“second instalment claims”	Those claims considered by the Panel in the Second “F3” Report
“secretariat”	The secretariat of the Commission
“Social Security Fund”	See paragraph 41 of the First “F3” Report and paragraph 45 of the Second “F3” Report
“third instalment part one claims”	See paragraph 3 below
“USD” or “US\$”	United States dollars
“UNROP”	United Nations Return of Property programme

### Introduction

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

2. The “F3” claims comprise all of the Government of Kuwait’s claims, other than those reviewed by the “F1” Panel and those that the Commission has classified as environmental claims. There are 63 “F3” claims, which have been presented by the Government of Kuwait on behalf of its various Ministries and other entities. 1/ Each claim seeks compensation for loss, damage or injury alleged to be a direct result of the invasion and occupation of Kuwait by the Government of Iraq (“Iraq”). 2/

3. The third instalment of the “F3” claims, comprising 21 claims (the “third instalment claims”), was submitted to the Panel on 14 September 2000, in accordance with article 32 of the Provisional Rules for Claims Procedure (the “Rules”). 3/ The Panel advised the Executive Secretary on 13 June 2001 that it would split the third instalment claims into three parts. 4/ This report contains the Panel’s recommendations to the Governing Council on part one of the third instalment claims (the “third instalment part one claims”), and is issued under article 38(e) of the Rules. The Panel intends to provide its report and recommendations in respect of the remaining parts of the third instalment claims in two further reports to the Governing Council.

#### I. OVERVIEW OF PART ONE OF THE THIRD INSTALMENT CLAIMS

4. The third instalment part one claims seek compensation for losses totalling United States dollars (USD) 3,253,656,245 plus interest of USD 517,063,835. The amount claimed in each claim (after any amendments and withdrawals made by the claimants before the claims were submitted to the Panel) is set out in the table below. The Panel will refer to the total amount claimed in each claim (after amendments and withdrawals made by the claimants before the claims were submitted to the Panel), excluding interest, as the “principal claim amount”. The Panel’s findings in respect of the third instalment part one claims (in section IV below) include a tabular breakdown of each third instalment part one claim that sets out the principal claim amount, including interest, and the amounts recommended.

Table 1. Summary of the third instalment part one claims

<u>Claimant</u>	<u>Short name of claimant (if different)</u>	<u>UNCC claim number</u>	<u>Government of Kuwait claim number</u>	<u>Principal claim amount a/ (USD)</u>	<u>Interest b/ (USD)</u>	<u>Principal claim amount including interest (USD)</u>
Central Bank of Kuwait		5000044	8	212,056,438	33,700,320	245,756,758
Ministry of Communications – Earth Stations, Telecommunications Lost Income, Postal Tangible Assets, and Postal Lost Income	Ministry of Communications	5000045	10	398,816,422	63,379,906	462,196,328
Ministry of Finance – General Operations	Ministry of Finance	5000113	15	435,903,546	69,267,080	505,170,626
Shuaiba Area Authority		5000141	24	76,732,631	12,192,760	88,925,391
Kuwait Fire Department		5000142	25	53,293,615	8,469,160	61,762,775
Ministry of Information – General Operations		5000160	32	166,231,421	26,417,840	192,649,261
Ministry of Education – Tangible Property Loss and Payment or Relief to Others	Ministry of Education	5000162	34	581,242,399	92,370,800	673,613,199

<u>Claimant</u>	<u>Short name of claimant (if different)</u>	<u>UNCC claim number</u>	<u>Government of Kuwait claim number</u>	<u>Principal claim amount a/ (USD)</u>	<u>Interest b/ (USD)</u>	<u>Principal claim amount including interest (USD)</u>
Directorate General of Civil Aviation		5000170	42	27,335,938	4,344,200	31,680,138
General Administration of Customs		5000171	43	474,870,626	75,466,120	550,336,746
Council of Ministers – Crown Prince Diwan		5000174	64	699,016	111,360	810,376
Ministry of Electricity & Water – Power Plants Maintenance Department, Sabiya Power Plant, National Control Center Exchange Rate Losses, Vehicles and Heavy Equipment, and Fuel Oil	Ministry of Electricity and Water	5000176	47	570,225,833	90,620,360	660,846,193
Ministry of Information – General Operations and Department of Antiquity and Museums		5000182	53	108,653,849	17,267,760	125,921,609
Public Authority for Housing		5000186	54	125,637,651	19,966,889	145,604,540
Kuwait University – Intangible Property Losses and Public Service Expenditures	Kuwait University	5000194	62	19,927,371	3,166,800	23,094,171

<u>Claimant</u>	<u>Short name of claimant (if different)</u>	<u>UNCC claim number</u>	<u>Government of Kuwait claim number</u>	<u>Principal claim amount a/ (USD)</u>	<u>Interest b/ (USD)</u>	<u>Principal claim amount including interest (USD)</u>
Ministry of Public Works – Contract Settlement	Ministry of Public Works	5000195	63	2,029,489	322,480	2,351,969
<u>Total</u>				3,253,656,245	517,063,835	3,770,720,080

a/ The figures in this column are the amounts claimed, after any amendments and withdrawals made by the claimants before the claims were submitted to the Panel, and before any of the adjustments described in this report. They do not include any claims preparation costs. The Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression (“PAAC”) has filed a separate claim for such costs (UNCC Claim No. 5000193).

b/ Where necessary, the Panel has recalculated the interest claimed to take account of any amendments and withdrawals made by the claimants before the claims were submitted to the Panel.

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

6. Given the nature of the third instalment part one claims, the Panel determined that due process would require the provision to Iraq of copies of all of the claim files submitted by the claimants. These files were forwarded to Iraq pursuant to the authority described in paragraph 18 of Governing Council decision 114, and pursuant to Procedural Order No. 1 issued in respect of each claim, on 13 July 2000. Iraq submitted a response to each such claim. The Panel has duly considered those responses.

## II. PROCEDURAL HISTORY

7. In undertaking its review of the third instalment part one claims, the Panel has followed the procedures and applied the principles and decisions set out in sections II, III, IV and V of the First “F3” Report and section III of the Second “F3” Report. For the ease of reference of the reader, those sections are repeated as annexes I and II to this report, and the paragraph numbers in each annex follow those of the First “F3” Report and the Second “F3” Report respectively.

8. The Executive Secretary of the Commission submitted a report 5/ dated 28 April 2000 to the Governing Council in accordance with article 16 of the Rules, which set out the first instalment claims and discussed the main factual and legal issues relating to them. A number of Governments, including the Government of Kuwait and the Government of Iraq, submitted additional information and views on the issues raised in response to that report.

## III. CONSIDERATION OF COMMON LEGAL ISSUES

9. In section IV of the First “F3” Report and section III of the Second “F3” Report, the Panel considered issues that arose more than once in the first and second instalment claims, respectively. The third instalment part one claims raise additional common legal issues to which the Panel now turns.

### A. Relief paid to employees

10. The Panel set out its considerations as to the compensability and valuation of the claims for relief paid to employees at paragraphs 31 to 48 of the First “F3” Report. A number of third instalment part one claimants seek compensation for such relief paid. The Panel found that such claims are compensable in principle, and the Panel has continued to apply the valuation basis, as set out in paragraphs 31 to 48 of the First “F3” Report. However, the circumstances in which the relief was paid

to employees of certain third instalment claimants are materially different from those in which relief was paid to the employees of first and second instalment claimants. Relevant considerations arising from those differences are set out below.

11. In paragraph 39 of the First “F3” Report, the Panel recommended that compensation should be awarded based on the period that the employees were reasonably unable to work. Accordingly, the Panel has applied the principle that no compensation for the relief claimed should be recommended to the extent that the employees were able to perform, and did perform, the tasks for which they were employed. 6/

12. The Panel also noted 7/ that the compensation it recommended was calculated on the basis of an average entitlement, one that the Panel sought to ensure was as representative as possible, thereby arriving at the percentage award described in paragraph 48 of the First “F3” Report (the “percentage award”). There were various factors taken into account when the Panel calculated the percentage award. 8/

13. First, adjustments were made in respect of work performed by the employees. That is, the Panel made certain adjustments to the amount claimed when calculating the percentage award so as to reflect the work performed in respect of which the Government of Kuwait had received the relevant benefit. 9/

14. Secondly, the Panel made further adjustments in respect of advance payments of salaries or other payments, to the extent that such payments were not made in mitigation of additional expenses occasioned by Iraq’s invasion and occupation of Kuwait.

15. In the course of its review of the third instalment claims, the Panel has established that the employees of several claimants received such payments in respect of the period of Iraq’s invasion and occupation of Kuwait and the three-month emergency period thereafter. In certain cases, the payments were of a magnitude far greater than others of which the Panel was aware when calculating the percentage award it was to recommend in the First “F3” Report. The Panel has, therefore, made further adjustments to the amounts claimed in relevant cases so as to reflect the magnitude of the payments concerned. 10/ Accordingly, the Panel recommends an award to each respective claimant calculated in accordance with the principles set out above and those contained in the relevant sections of the First “F3” Report.

16. The Panel described, at paragraph 41 of the First “F3” Report, a social security system that the Government of Kuwait operates, which confers pensions and similar benefits on employees, and which is funded by contributions from employers and employees (the “Social Security Fund”). As previously, the Panel has examined the evidence submitted in respect of the third instalment part one

claims and, where necessary, has requested the Government of Kuwait to confirm whether the amounts paid to the employees and claimed as relief paid to employees in those claims took into account the employees' contributions. In cases in which the Panel is not satisfied that the social security contributions have been adequately accounted for, the Panel has made suitable adjustments to the amounts claimed. Such adjustments are set out in the consideration of the individual claims below.

17. The Panel notes that, during its occupation of Kuwait, Iraq requested employees to exercise their normal functions and that certain employees did work during the occupation period. Iraq has asserted, in its response to Procedural Order No. 1 in respect of certain claims, that it paid employees for such work from its own resources. In calculating the percentage deduction from all claims for relief paid to employees that is discussed at paragraph 48 of the First "F3" Report, the Panel made allowance for a certain level of payments made by Iraq for work carried out during the occupation period. The Panel finds that the payments that Iraq asserts were made fall within such allowance and therefore no further adjustment is warranted.

B. The effect of decrees and other laws promulgated or steps taken by the Government of Kuwait

18. A number of claimants seek compensation for losses, some or all of which relate to a period of time during which decrees or other laws passed by the Government of Kuwait had an impact upon the quantum of such losses. In many cases, the effect of the decree or law was to exempt the payment of certain amounts ordinarily paid to claimants. Other decrees and laws included the cancellation of currency and financial stamps used to purchase government services. In other instances, claimants did not collect amounts that would ordinarily have been collected by them. Examples of forgiven or uncollected amounts include rent on state housing, telecommunications service charges, the tax on foreign entities and customs taxes and duties.

19. Detailed discussion of the decree(s) pertinent to relevant claims and their effects on compensation in relevant cases is set out in the consideration of each claim in section IV below. However, the Panel finds it appropriate to set out here the general principles that it has applied in considering those claims, which are as follows.

20. First, the Panel has considered in each case whether the loss is in principle compensable, in accordance with the relevant principles as set out in each "F3" Report. Particular principles relating to two classes of loss are:

(a) in cases of revenue loss, the principles applied are those set out in paragraphs 49 to 58 of the First "F3" Report. In considering such losses, the Panel has also considered the time period in respect of which any compensation should be recommended; and



(b) in cases of income-producing property losses, the principles applied are those set out in paragraphs 26 to 30 of the First “F3” Report regarding real and other tangible property losses.

21. For those claims found to be compensable in principle, the Panel has considered whether the passing and effect of the decree(s) or law(s) concerned 11/ comprised a response to Iraq’s invasion and occupation of Kuwait that, as a matter of objective assessment, would have been expected as a normal and natural consequence of Iraq’s invasion and occupation of Kuwait. In those cases in which the Panel has concluded that the passing and effect of the decree(s) or law(s) concerned would have been so expected, the Panel has applied its usual valuation principles without further adjustment in each relevant case. In those cases in which the Panel has concluded that the passing and effect of the decree(s) or law(s) concerned would not have been so expected, or part thereof would not have been so expected, the Panel has made an adjustment to each relevant claim so as to exclude from the amounts recommended for compensation any loss that has arisen from the passing of the decree or law (or part thereof).

22. In coming to its conclusions in cases in which amounts ordinarily paid to claimants were exempted from payment or not collected, and in considering the effect of the decree(s) or law(s) on the extent of the loss claimed, the Panel has considered whether the length of the time period during which the decree or law operated was a reasonable one in all the circumstances of each case.

### C. Avoiding over-compensation

23. The Panel set out its considerations relating to avoiding over-compensation in paragraphs 86 to 93 of the First “F3” Report. The Panel noted that the general question of unincurred expenses, and whether and to what extent such expenses should be brought into account by way of set-off against the amount of compensation awarded to the Government of Kuwait, would be taken as a single consideration during the Panel’s review of the third instalment claims.

24. The Panel now turns to such general questions of unincurred expenses. 12/

25. The “F3” claims are the claims of the Government of Kuwait, presented under the name of each Ministry (known as a “political sub-division”) for practical reasons. Recalling that not all entities of the Government of Kuwait have made claims, and that there can be no unequivocal statement of the total physical and economic loss incurred by Kuwait as a result of Iraq’s invasion and occupation of Kuwait, the Panel notes that the Government of Kuwait and the people it represents may unavoidably be at risk of over- or under-compensation when the awards recommended for “F3” and other relevant claims have been paid. 13/ The Panel has no remit to make upwards adjustments to the claims presented so as to account for any risk of under-compensation arising out of such matters, but does have a duty to ensure that there is no risk of over-compensation when the awards it has recommended

for the “F3” claims are paid. Such over-compensation might arise were there to exist identifiable saved or unincurred expenses – that is, expenses that absent Iraq’s invasion and occupation of Kuwait would have been incurred but that were not incurred – that have given rise to incidental gains to the Government of Kuwait, and that have not been brought into account by way of set-off against awards of compensation made.

26. The Panel has considered total Government expenditure and revenue over the period under consideration, 14/ adjusted so as to take account of losses and awards of compensation, to derive the measure of any saved expenses. The Panel has sought to identify such revenue, expenditure, losses and savings using all the information provided by the Government of Kuwait in response to the Panel’s enquiries, together with the information derived from the Panel’s own investigations.

27. For this purpose, the Panel asked detailed questions regarding economic data of Kuwait, and technical missions to Kuwait were undertaken on the Panel’s behalf in November 2000 and April 2001 to discuss those data. Although the Panel has been unable to reconcile certain elements of the source data, notably Government accounts and finance statistics, and has therefore taken care not to apply more weight to any source than is appropriate in the circumstances, the data are sufficient so as to allow the Panel to draw conclusions therefrom.

28. In seeking to identify total revenues and expenditure over the period under consideration, the Panel finds that the total expenditure of the Government of Kuwait over that period, as reflected in the relevant Government accounts and finance statistics, is somewhat less than the total of Government revenue over the relevant period and the funds raised by the Government from its investment portfolio 15/ and funds borrowed 16/ over that period. 17/ The Panel finds, therefore, that the Government accounts and finance statistics may understate the extraordinary expenditure of the Government over the period under consideration. 18/ The Panel has not been able to ascertain the precise nature of all such extraordinary expenditure. The Panel is, however, satisfied that the data indicate that the Government of Kuwait suffered losses that exceed the amounts claimed by relevant entities (“additional losses”).

29. The data also indicate that there were, indeed, saved expenses. In deciding how and to what extent to make any adjustment by way of set-off to the amounts it has recommended by way of compensation, the Panel finds that the amount at issue is not the crude figure of any saved expenses themselves, but any incidental gains thereby derived. The latter should be considered over time, as the impact of saved expenses may be felt in subsequent years.

30. The Panel finds that an incidental gain would not arise in the following circumstances, because had the expenditure foregone been disbursed, the expenditure would have led to an equivalent or substantially equivalent gain to Kuwait:

- (a) expenses not permanently saved, but deferred (such as delaying a child inoculation programme for measles); and
- (b) expenses of a capital nature (such as building a hospital).

31. An example of saved expenses that may give rise to an incidental gain would be those expenses saved by not providing street lighting for a period of time. The Panel, in seeking to measure any such incidental gains, would set against the measure of gain any additional expense that may subsequently arise (such as increased health care costs arising from additional accidents on unlit streets, or increased policing required because of additional risk of theft arising from unlit streets).

32. The Panel has also taken account of those saved expenses that have already been deducted by way of adjustments to the individual “F3” claims.

33. Finally, when considering whether there have been any incidental gains, the Panel has taken into account the factors set out at sub-paragraphs 88(a), (b), (c) and (d) of the First “F3” Report. Each of those sub-paragraphs is considered below.

34. The factor set out at paragraph 88(a) of the First “F3” Report is that “not all the Government’s losses are compensable by the Commission, and not all Government losses have been claimed”. Recalling that the aim of the Panel’s deliberations here is the avoidance of over-compensation, rather than the awarding of compensation, the Panel finds that all savings and losses that arose as a result of the invasion and occupation (whether or not the losses at issue are claimed or compensable by the Commission) should be brought into account. 19/

35. The factor set out at paragraph 88(b) of the First “F3” Report is that “the Panel’s recommendations in relation to certain claimed losses may include reductions for evidentiary reasons”. The Panel finds that such adjustments reflect the fact that the Panel is not satisfied that the loss was sustained in the amount claimed. The Panel has not therefore considered the amounts adjusted for insufficient evidence as forming part of relevant losses.

36. The factor set out at paragraph 88(c) of the First “F3” Report is that “any reduction in Government expenses may have had a correlative effect on the benefits that the Government and its citizens would otherwise have enjoyed”. The Panel has taken account of this notion, as set out above, in the calculation of both saved expenses and any incidental gains thereby derived.

37. The factor set out at paragraph 88(d) of the First “F3” Report is that “revenue claims have been submitted by Kuwaiti entities in other claim categories and, in some cases, compensation may have been awarded by the Commission”. The Panel notes that the main source of Government revenue is derived from the oil sector, and that claims for such revenue have been filed and awards of

compensation made. The Panel has made allowance for such losses and claims in its considerations, by allowing both for the losses and claims and the delay in compensation therefor.

38. The Panel has also taken into account any gains derived from post-liberation rejuvenation of capital stock, increased levels of investment and an injection of financial capital into the economy, and any intangibles such as increased pollution to the extent that such have not been claimed. 20/

39. After taking all of the above considerations into account, the Panel finds that the saved expenses it has identified did lead to incidental gains. However, having taken into account all of the factors set out above, the Panel considers that the amount of such incidental gains is exceeded by additional losses that arose as a result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that there should be no adjustment by way of set-off against the awards of compensation made for "F3" claims in respect of such incidental gains.

#### IV. THE THIRD INSTALMENT PART ONE CLAIMS

##### A. Introduction

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

41. So far as claims for property losses are concerned, the Panel has considered the evidence submitted in support of the third instalment part one claims, and is satisfied that such evidence is sufficient to demonstrate that the losses were direct, falling within the provisions of paragraph 34 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) 21/ and those of paragraph 13 of Governing Council decision 9 (S/AC.26/1992/9). 22/ Accordingly, the Panel recommends compensation for such losses, subject to their verification and valuation carried out in the manner described in paragraphs 109 to 115 of the First “F3” Report.

42. The Panel notes that a number of items of tangible property relevant to the third instalment part one claims have been returned by Iraq to Kuwait pursuant to the United Nations Return of Property (“UNROP”) programme. The Government of Kuwait states that relevant claimants have taken account of the items returned. The Panel’s review of the claims has been carried out in accordance with the principles set out at paragraph 44 of the Second “F3” Report.

43. In reporting on the verification and valuation of the first and second instalment claims, the Panel noted at paragraph 125 of the First “F3” Report and paragraph 47 of the Second “F3” Report that it sometimes uses one or more shorthand expressions to explain in any given case why a claim or part thereof has been reduced or rejected. In reporting on the verification and valuation of the third instalment part one claims, the Panel has continued to use those shorthand expressions.

44. The Panel has considered, and made where appropriate, all adjustments that it considers necessary to the amounts claimed for one or more of the reasons set out in paragraph 125 of the First “F3” Report and paragraph 47 of the Second “F3” Report. In reporting on the verification and valuation of the third instalment part one claims, however, the Panel has reported only those adjustments that fall above a de minimis level, which the Panel has established as 1 per cent of the total adjustments made by the Panel (for each claim or part thereof).

45. The Panel has made adjustments for “saved expenses”, being one of the shorthand expressions set out in paragraph 125 of the First “F3” Report, and notes that, as in previous cases, such adjustments arise most commonly in relation to revenue and property losses, in which cases the expenses saved usually comprise operating expenses and (in the case of property losses) maintenance expenses. The period in respect of which expenses were saved extends for the period of loss (in the

case of revenue losses or claims for extraordinary costs incurred) or from the date of loss until the date of repair, reinstatement or renewal (in the case of property or contract losses), save as otherwise noted.

46. The Panel has continued to apply the level of materiality set out at paragraph 121 of the First “F3” Report, and to treat non-material items in the manner set out at paragraphs 120 to 123 of the First “F3” Report. In reporting on the verification and valuation of the third instalment part one claims, the Panel has confirmed, by way of note to the relevant claim or part thereof, whether some or all parts of the claims fall below the level of materiality adopted by the Panel.

47. The Panel has reviewed the third instalment part one claims using amounts rounded to the nearest USD 1,000. Therefore, all recommended compensation amounts are presented in multiples of USD 1,000, except where the Panel recommends payment in full of any claim or part thereof.

B. Central Bank of Kuwait

Government of Kuwait Claim No. 8, UNCC Claim No. 5000044

Table 2. Summary table for Central Bank of Kuwait

<u>Loss type/Loss element</u>	<u>Principal claim amount USD</u>	<u>Amount recommended USD</u>	<u>Paragraph references</u>
Bank accounts and securities			
a) Currency theft	172,064,506	106,807,000	48-60
b) Cancellation of third issue expenses	195,672	123,000	61-66
c) Fourth issue expenses	<u>10,784,949</u>	<u>7,893,000</u>	61-66
Sub-total	<u>183,045,127</u>	<u>114,823,000</u>	
Contract	<u>616,431</u>	<u>472,000</u>	67-71
Business transaction or course of dealing	<u>24,932,559</u>	<u>Nil</u>	72-74
Real property	<u>252,956</u>	<u>136,000</u>	75-78
Other tangible property	<u>513,403</u>	<u>286,000</u>	79
Public service expenditures	<u>2,695,962</u>	<u>2,080,000</u>	80-84
<u>Total</u>	<u>212,056,438</u>	<u>117,797,000</u>	
Interest	<u>33,700,320</u>		

1. Bank accounts and securities – USD 183,045,127

(a) Currency theft – USD 172,064,506

48. The Central Bank of Kuwait (“CBK”) controls Kuwait’s banking system, issues and regulates the supply of currency and directs the credit policies of the Government of Kuwait.

49. CBK seeks compensation for the loss of currency from its vaults. CBK asserts that, on the first day of Iraq’s invasion and occupation of Kuwait, Iraq occupied the CBK and appropriated all the currency in CBK’s vaults, which comprised both unissued and previously issued currency. The Panel notes that some of the currency contained in the vaults appears subsequently to have been put into circulation, such that it became issued currency. At that time, the bank notes in circulation were the third issue of Kuwaiti dinars (KWD). In a technical mission to Kuwait undertaken in April 2001, certain CBK officers with knowledge of CBK’s accounting for the currency it held were interviewed on behalf of the Panel.

50. On 7 October 1990 and 29 November 1990, respectively, the Government of Kuwait, operating in exile, issued two Ministerial Orders 23/ cancelling certain serial numbers of Kuwaiti dinar bank notes 24/ (the “Ministerial Orders”, and the Panel will refer to the bank notes that were the subject of the Ministerial Orders as the “cancelled bank notes”).

51. On 24 March 1991, CBK withdrew the third issue bank notes and announced the issue of a new fourth issue. CBK asserts that it took such steps in order to avoid confusion with currency cancelled during the occupation period and to facilitate the free exchange of the Kuwaiti dinar. CBK permitted third issue currency that was not cancelled during the occupation period to be exchanged for the new fourth issue until 30 September 1991.

52. Over the period 23 August to 2 September 1991, Iraq returned (pursuant to UNROP) a substantial quantity of currency comprising bank notes and coins. 25/

53. The Panel notes that CBK's daily records set out the total face value of bank notes and coins held in its vaults. 26/ Those records did not include the serial numbers of previously issued currency maintained in its vaults. After the occupation of CBK's premises by Iraq, CBK's officers operating in exile estimated from external sources 27/ the serial numbers of unissued currency that remained in the vaults, and the Ministerial Orders cancelled such currency. 28/

54. CBK's claim for the loss of currency from its vaults comprises the currency appropriated by Iraq that was not cancelled by the Ministerial Orders, less that returned by Iraq pursuant to UNROP. CBK also seeks compensation for the currency that was cancelled by the Ministerial Orders but that was subsequently accepted and exchanged for fourth issue currency from Gulf Cooperation Council ("GCC") and some local banks.

55. Applying the principles set out at paragraph 406 of the First "F3" Report, the Panel finds that the claim is, in principle, compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held by CBK. The Panel finds that the records described in paragraph 53 above comprise such probative evidence. 29/

56. Applying the principles set out in paragraphs 21 and 22 above, the Panel finds that CBK's decisions to request the Government of Kuwait to cancel currency in October and November 1990, and to issue a new fourth issue currency and accept in exchange currency that was not cancelled during the occupation period (including currency taken from CBK's vault during Iraq's invasion and occupation of Kuwait) were in each case a normal and natural consequence of Iraq's invasion and occupation of Kuwait. 30/ The Panel also finds that the steps taken to identify that currency that should be cancelled in October and November 1990 were reasonable in all the circumstances.

57. CBK's claim is valued by reference to the face value of the currency lost. The Panel issued Procedural Order No. 48 in April 2001 inviting CBK and Iraq to provide their information and views as to the legal basis for such a valuation. CBK provided a detailed response, but no response was received from Iraq. The Panel, having considered the reasons for judgment of the majority of the House of Lords in Banco de Portugal v Waterlow & Sons Ltd 31/; the responsibilities of CBK



prescribed by Kuwaiti law; 32/ the valuation of other claims for loss of currency by this Panel, 33/ and other factors, finds that in the circumstances it is appropriate to value CBK's loss by reference to the face value of the currency.

58. Procedural Order No. 3 was issued in September 2000 seeking, amongst other things, further information about CBK's claim for loss of currency. In response to Procedural Order No. 3, CBK stated that an amount of KWD 18,024,844.250 (USD 63,809,000) of third issue currency was not cancelled during the occupation period and was not exchanged for the new fourth issue currency. The Panel finds that such amount represents a windfall gain to CBK. CBK stated that this gain was recorded in its audited financial statements for the year ending 30 June 1992. Applying the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses, 34/ the Panel has made an appropriate adjustment to the amount claimed in this regard.

59. As to CBK's claim for losses it asserts it suffered when it exchanged for fourth issue currency cancelled bank notes that it received from GCC central banks and some local banks, the Panel finds that CBK has failed to demonstrate that the asserted loss was a normal and natural consequence of Iraq's invasion and occupation of Kuwait, rather than an independent decision to provide assistance to these banks, and therefore this part of its claim is not compensable.

60. In light of the above, the Panel recommends compensation in the amount of USD 106,807,000 out of the USD 172,064,506 claimed.

(b) Cancellation of third issue expenses – USD 195,672 35/

(c) Fourth issue expenses – USD 10,784,949 36/

61. CBK claims compensation for the costs of the cancellation of the third issue of currency and its replacement by the new fourth issue, comprising the costs of engaging consultants to count and destroy cancelled third issue currency, the costs of repairs to damaged bank note destruction equipment, the costs of printing new fourth issue currency, associated transportation costs, and the costs of modifying currency sorting equipment. CBK also claimed the cost of minting coins.

62. It follows from the Panel's findings at paragraph 56 above that the Panel finds that the reasonable costs of the cancellation of currency during the occupation period and of the subsequent cancellation of the third issue of currency and its replacement by a new fourth issue are, in principle, compensable.

63. In response to Procedural Order No. 3, CBK asserted that between 4 September and 8 October 1990 it entered contracts with its normal suppliers from Germany and the United Kingdom of Great Britain and Northern Ireland for the printing of fourth issue currency. On 1 November 1990, CBK

entered a contract with Royal Mint (UK) for the minting of coins. <sup>37/</sup> The Panel finds that the costs incurred in respect of these contracts are reasonable in amount.

64. Procedural Order No. 3 and Procedural Order No. 21, issued in December 2000, sought further information from CBK to support its claim for the costs of modifying currency sorting equipment. The Panel finds that the responses to these orders have not demonstrated that modifications were required as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel does not recommend any compensation for the loss claimed.

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

66. In light of the above, the Panel recommends compensation in the amount of USD 8,016,000 out of the USD 10,980,621 claimed.

## 2. Contract – USD 616,431

67. A contract for the purchase, installation and maintenance of three back-up generators was interrupted by Iraq's invasion and occupation of Kuwait. As at 2 August 1990, construction of the generators had been completed <sup>38/</sup> and CBK had paid 80 per cent of the contract price. The generators were taken from the premises of the supplier during Iraq's occupation of Kuwait. After liberation, CBK contracted with a different supplier at an additional price.

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

69. The evidence shows that the majority of the losses claimed are equivalent to site restoration costs. The Panel therefore recommends compensation in the amount of the post-liberation cost of providing generators equivalent to those to be provided under the original contract. <sup>39/</sup> The Panel finds that none of the remaining losses claimed is attributable to other compensable factors, being additional transportation costs or additional insurance costs.

70. In addition, the Panel finds that an adjustment should be made for insufficient evidence.

71. In light of the above, the Panel recommends compensation in the amount of USD 472,000 out of the USD 616,431 claimed.

## 3. Business transaction or course of dealing – USD 24,932,559

72. CBK asserts that, during Iraq's occupation of Kuwait, the domestic operations of CBK and of domestic commercial banks were suspended and that it therefore lost the revenue it would otherwise have earned on its interest-bearing deposits with those banks. CBK claims the loss of this revenue for

the period 1 July 1990 to 30 June 1991, calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq's invasion and occupation of Kuwait and the revenue in fact earned.

73. The Panel finds that the loss of revenue is in principle compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to any deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government of Kuwait entities and for saved expenses. 40/

74. The Panel finds, however, applying the principles set out at paragraphs 21 to 22 above, that CBK's decision, taken after liberation, not to pursue the domestic commercial banks to collect the revenue due to CBK would not have been expected as a normal and natural consequence of Iraq's invasion and occupation of Kuwait. 41/ Accordingly, the Panel does not recommend any compensation for the loss claimed. 42/

4. Real property – USD 252,956 43/

75. CBK seeks compensation for damage to its security systems, sewage system, and the marble and carved wood exterior of its headquarters. CBK alleges that the damage to the exterior of its headquarters was caused by acid rain from oil well fires.

76. The claim in relation to the damage to the exterior of CBK's headquarters raises issues, amongst other things, regarding the existence and effect of acid rain. For this reason, the Executive Secretary of the Commission has severed and transferred this part of CBK's claim to the "F4" Panel.

77. As to the remainder of the claim, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

78. In light of the above, the Panel recommends compensation in the amount of USD 136,000 out of the USD 252,956 claimed.

5. Other tangible property – USD 513,403 44/

79. CBK seeks compensation for the loss of, or damage to, furniture, fixtures and supplies, safes, cabinets and locks, 45/ and 15 vehicles. 46/ The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence, and recommends compensation in the amount of USD 286,000 out of the USD 513,403 claimed.

6. Public service expenditures – USD 2,695,962 47/

80. CBK asserts that it incurred a variety of expenses as it was compelled to open and operate six offices outside Kuwait. CBK asserts that the offices were necessary to fund the operations of the Government of Kuwait and to provide services to Kuwaiti citizens who were outside Kuwait.

81. The Panel, applying the principles set out at paragraph 79 of the First “F3” Report, finds that CBK’s decision to open and operate the offices was reasonable in the circumstances and therefore that the reasonable costs of so doing are compensable, subject to deductions for expenses that would ordinarily have been incurred by CBK in its operations in Kuwait.

82. CBK also seeks compensation for the cost of emergency supplies of water and fuel purchased after liberation, together with the cost of four satellite dishes used for communication. CBK asserts that these purchases were necessary to ensure that CBK was provided with basic services in the period immediately after liberation. The Panel finds that the purchases were a direct result of Iraq’s invasion and occupation of Kuwait and were reasonable in the circumstances and therefore recommends that compensation be awarded for the costs of them. 48/

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

84. Accordingly, the Panel recommends compensation in the amount of USD 2,080,000 out of the USD 2,695,962 claimed.

C. Ministry of Communications

Government of Kuwait Claim No. 10, UNCC Claim No. 5000045

Table 3. Summary table for Ministry of Communications

<u>Loss type/Loss element</u>	<u>Principal claim amount USD</u>	<u>Amount recommended USD</u>	<u>Paragraph references</u>
<u>Real property</u>			
a) Earth stations <u>49/</u>	42,846,542	24,012,000	94-96
b) Terrestrial links	4,968,300	Nil	97-98
c) International switching system	6,798,508	2,644,000	99-102
d) International services	<u>42,600,653</u>	<u>38,796,000</u>	103-106
Sub-total	<u>97,214,003</u>	<u>65,452,000</u>	
<u>Business transaction or course of dealing</u>			
a) Telecommunications lost income	264,993,109	93,380,000	107-119
b) Postal lost income	<u>33,313,556</u>	<u>Nil</u>	120-124
Sub-total	<u>298,306,665</u>	<u>93,380,000</u>	
Other tangible property	<u>3,295,754</u>	<u>2,360,000</u>	125-127
<u>Total</u>	<u>398,816,422</u>	<u>161,192,000</u>	
Interest	<u>63,379,906</u>		

1. Real property – USD 97,214,003

(a) Introduction

85. The Ministry of Communications (“MoC”) is responsible for providing all telecommunication and postal services in Kuwait. Prior to Iraq’s invasion and occupation of Kuwait, MoC operated five fixed earth stations at Umm Al-Aish, a mobile Intelsat earth station at the Mishref exchange in Kuwait City, and four Inmarsat transportable earth stations. MoC’s international telecommunications network also comprised multiplex and terrestrial interface links 50/ and an international switching centre at the Telecom Centre building in Kuwait City.

86. In a technical mission to Kuwait undertaken in September 2000 certain MoC facilities were inspected on behalf of the Panel.

87. MoC seeks compensation for losses arising from damage to its international telecommunications network. 51/ The damage included destruction of the five fixed earth stations at Umm Al-Aish and of the multiplex and terrestrial interface links, the loss of five mobile earth stations, and damage to the international switching centre. 52/

88. Immediately after liberation MoC began replacing its international telecommunications network with a functional, rather than a structural, equivalent. MoC seeks compensation for the costs of effecting such replacement.

89. The replacement involved three phases: first, repairs were carried out to the least damaged items of equipment. Secondly, facilities that were initially intended to be temporary were procured and installed and, thirdly, permanent replacements were commissioned.

90. The temporary replacements comprised the acquisition of five new earth stations, of which the Kuwait Emergency and Recovery Program (“KERP”) procured one, 53/ and each of which was fitted out to MoC’s specifications. Some of these earth stations were later expanded. Of the earth stations procured by MoC, two were financed using revenue-sharing agreements with the relevant vendors. Additionally, MoC was provided with one earth station for which it paid space segment fees, but it did not make a claim in respect of this earth station.

91. The permanent replacement of the earth stations included the anticipated purchase of four new permanent earth stations at Doha. In January 1994, independent telecommunications consultants, International Communications Inc., produced a report for MoC (the “ICOM Report”) that MoC submitted with its original claim. The ICOM Report evaluated the earth stations existing prior to the invasion and occupation and the planned replacement facilities and identified differences. 54/ ICOM concluded then that the four new permanent earth stations would carry all of the traffic previously carried by the Umm Al-Aish station.

92. After MoC submitted its original claim, it cancelled its plans to construct four permanent earth stations at Doha in favour of a contract to construct two permanent earth stations at Umm Al-Haiman, concluded in June 1997 at a cost of USD 11,165,000.

93. MoC valued its claim as the anticipated and actual costs, as the case may be, of all of the above steps. The Panel finds that procuring temporary replacements and repairs prior to effecting permanent repair and replacement was reasonable in the circumstances. 55/ As to the permanent repairs and replacement, the Panel notes that advances in technology were such that the functionality of the international telecommunications network lost would be replaced by the two new permanent earth stations, the “temporary” replacements, as expanded as the case may be, and repairs to the international switching centre.

(b) Earth stations – USD 42,846,542

94. In its supplemental statement of claim submitted in May 1998, MoC advised that the amount spent in replacing the permanent earth stations was USD 11,165,000, rather less than the costs of USD 32,265,458 anticipated in 1994 when the claim was originally prepared. Having considered the

matters set out above, and noting that the claim includes the costs of revenue-sharing agreements that do not necessarily reflect the value of the underlying assets, the Panel has calculated as a capital sum the reasonable cost of procuring the temporary and permanent earth stations referred to above.

95. The Panel finds that an adjustment should be made for inadequate accounting for depreciation.

96. In light of the above, the Panel recommends compensation in the amount of USD 24,012,000 of the USD 42,846,542 claimed.

(c) Terrestrial links – USD 4,968,300

97. MoC's claim includes the cost of certain interface equipment. <sup>56/</sup> The original tender for the construction of the anticipated four new permanent earth stations at Doha included specifications for terrestrial interface linking equipment. However, in 1993, after bids had been submitted, MoC changed its technical specifications to delete all multiplex requirements. MoC intended separately to purchase a digital multiplex and fibre optic and microwave links. Although the two permanent earth stations described in paragraph 92 above were eventually constructed, as at September 2000 <sup>57/</sup> the replacement international telecommunications service had operated without the equipment that is the subject of this claim.

98. The Panel finds that MoC has replaced the functionality of its pre-invasion international telecommunications network without demonstrating the need to acquire the interface equipment that is the subject of this claim. Accordingly, the Panel does not recommend any compensation for the costs of the interface equipment.

(d) International switching system – USD 6,798,508

99. Pursuant to a contract with AT&T dated 16 March 1991, a new switching system was installed to replace the damaged international switching system that had been located in the Telecom Centre building and that transmitted telecommunication signals received from Umm Al-Aish to the local network.

100. The contract was not awarded using competitive procurement procedures and was performed in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the tests set out at paragraph 138 of the First "F3" Report and paragraph 31 of the Second "F3" Report, the Panel finds that, in the light of Kuwait's need rapidly to restore its international communications system, the works were of such urgency that MoC could not reasonably be required to resort to competitive procurement procedures nor wait until prices had returned to normal patterns. Accordingly, the Panel does not recommend an adjustment in this respect.

101. The Panel finds that an adjustment should be made for inadequate accounting for depreciation.

102. In light of the above, the Panel recommends compensation in the amount of USD 2,644,000 out of the USD 6,798,508 claimed.

(e) International services – USD 42,600,653

103. MoC claims that after Iraq's invasion and occupation of Kuwait, and because of the damage to its international telecommunications network, it had direct channels to fewer countries and therefore had to route telephone calls via third parties, thereby incurring increased transit fees until 30 June 1994. MoC claims these additional transit fees for international services. 58/

104. The contracts pursuant to which MoC incurred such transit fees were not awarded using competitive procurement procedures and were entered into in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the tests set out at paragraph 138 of the First "F3" Report and paragraph 31 of the Second "F3" Report, the Panel finds that, in the light of Kuwait's need rapidly to restore its international communications system, the relevant services were of such urgency that MoC could not reasonably be required to resort to competitive procurement procedures nor wait until prices had returned to normal patterns. Accordingly, the Panel does not recommend an adjustment in this respect.

105. The Panel finds that this part of MoC's claim is, in principle, compensable because the increased fees were incurred as a direct result of Iraq's invasion and occupation of Kuwait. However, the Panel finds that MoC could reasonably have restored its direct channel capacity by the end of 1992 and therefore recommends no compensation be allowed for increased transit fees incurred after 31 December 1992.

106. In light of the above, the Panel recommends compensation in the amount of USD 38,796,000 out of the USD 42,600,653 claimed.

2. Business transaction or course of dealing – USD 298,306,665

(a) Telecommunications lost income – USD 264,993,109

107. Prior to Iraq's invasion and occupation of Kuwait, MoC earned telecommunications revenue primarily from business units concerned with:

- (a) international telephone calls;
- (b) local telephone installation and subscription;
- (c) telegraph, teleprinter and telex services;



- (d) circuits and data transmission;
- (e) mobile telephony; and
- (f) wireless communication, including the provision of short-wave radio licences.

108. MoC claims the loss of revenue from the above sources for the period from 1 July 1990 to 30 June 1993, 59/ calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq's invasion and occupation of Kuwait and the revenue in fact earned. 60/

109. MoC asserted that its loss of revenue was affected by a range of factors, including damage to Kuwait's telecommunications infrastructure during Iraq's invasion and occupation of Kuwait, 61/ the interruption of its administrative operations, the destruction of customer records, the decrease in Kuwait's population, and an Order of the Council of Ministers referred to at paragraph 111 below.

110. In its response to Procedural Order No. 20, issued in December 2000, MoC stated that the services provided by those business units concerned with telegraph, teleprinter and telex, circuits and data transmission, and wireless communication, were taken over by a company called Gulfnet International/KEMS ("Gulfnet"). MoC stated that Gulfnet commenced commercial operations in December 1991 and that the Government of Kuwait had no equity participation in it.

111. A Government of Kuwait decree, Order No. 646 ("the Order"), passed by the Council of Ministers on 19 July 1992, cancelled charges owed by Kuwaiti nationals for (a) international telephone call charges, for the period from 2 August 1990 to 31 May 1991; and (b) annual local telephone subscription fees, for the fiscal year ended 30 June 1991.

112. Applying the principles set out at paragraphs 20 to 22 above, the Panel finds that the loss of telecommunications revenue is compensable in principle, for the periods indicated, and subject to the various adjustments that are outlined below.

113. The Panel finds that the revenue in respect of international telephone calls was affected as a direct result of Iraq's invasion and occupation of Kuwait from 2 August 1990 to 30 June 1991. 62/ In so far as the Order affected this revenue stream, the Panel finds that the Order would have been expected as a normal and natural consequence of Iraq's invasion and occupation of Kuwait, except to the extent that MoC did not charge for international calls made through call boxes provided in Kuwait through AT&T during the emergency period. 63/ The Panel has made an appropriate adjustment in this regard.

114. The Panel finds that the revenue in respect of local telephone installation and subscription was affected as a direct result of Iraq's invasion and occupation of Kuwait from 2 August 1990 to 31 July

1991. The Panel notes from the evidence provided by MoC that changes in MoC's revenue from this and other telecommunications revenue streams 64/ are linked with changes in Kuwait's population. 65/ The Panel finds that MoC has failed to demonstrate that the changes in revenue from this stream arising after 31 July 1991 occurred as a direct result of Iraq's invasion and occupation of Kuwait. 66/

115. In so far as the Order affected revenue from local telephone installation and subscription, the Panel finds that, in the circumstances, the Order would have been expected as a normal and natural consequence of Iraq's invasion and occupation of Kuwait, except to the extent that MoC exempted payment of local telephone subscriptions for the months of July 1990 and June 1991. The Panel has made an appropriate adjustment in this regard.

116. The Panel finds that the revenue in respect of telegraph, teleprinter and telex services, circuits and data transmission, and wireless communication was affected as a direct result of Iraq's invasion and occupation of Kuwait until 31 December 1991, when Gulfnet took over these services from MoC. The Panel also finds that MoC has failed to demonstrate that all of the loss of revenue from these services after 31 July 1991 was a direct result of Iraq's invasion and occupation of Kuwait. 67/ The Panel has made appropriate adjustments in this regard.

117. The Panel finds that the revenue in respect of mobile telephony services was affected as a direct result of Iraq's invasion and occupation of Kuwait from 2 August 1990 to 30 June 1991. 68/

118. The Panel finds that adjustments should also be made to all of MoC's claim for loss of telecommunications revenue for revenue that would have been paid by other Government of Kuwait entities, saved expenses and insufficient evidence.

119. In light of the above, the Panel recommends compensation in the amount of USD 93,380,000 out of the USD 264,993,109 claimed.

(b) Postal lost income – USD 33,313,556

120. Prior to Iraq's invasion and occupation of Kuwait, MoC earned postal revenue from various services including the sale of stamps, express mail charges and package deliveries from foreign countries to Kuwait. MoC claims the loss of such revenue for the period from 1 July 1990 to 30 June 1995, calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq's invasion and occupation of Kuwait and the revenue in fact earned.

121. When MoC submitted its original claim, the amount claimed was based on estimated postal income for the fiscal years ended 30 June 1994 and 30 June 1995. Subsequently, figures for the actual postal income for these periods became available. The actual income figures for the years ended 30

June 1994 and 1995 were lower than those estimated. The Panel has recalculated the claim accordingly.

122. After liberation, postal services resumed gradually. In May 1991, the main post office reopened. In August 1991, express mail delivery resumed, but served fewer countries. MoC asserted that door-to-door mail delivery did not resume until January 1992, mainly because of the theft and destruction of its vehicles. MoC stated that, after liberation, the level of postal service was significantly lower than it had been before the invasion because many non-Kuwaitis (historically, the largest client base of MoC's postal department) had left the country and did not return. Having considered all of the available evidence, the Panel finds that MoC's postal income was affected as a direct result of Iraq's invasion and occupation of Kuwait until 31 January 1992.

123. The Panel finds that adjustments should be made for saved expenses and revenue that would have been paid by other Government of Kuwait entities. Considering the factors referred to in paragraph 122 above and the Panel's approach stated at paragraph 114 above, the Panel finds that MoC has failed to demonstrate that all of the loss of revenue after 31 July 1991 was a direct result of Iraq's invasion and occupation of Kuwait. The Panel has therefore made an appropriate adjustment. The total of such adjustments exceeds the claim for lost postal income as recalculated by the Panel.

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

3. Other tangible property – USD 3,295,754 69/

125. MoC seeks compensation for the loss of an automatic mail-sorting machine, envelopes, postal bags, lorry boxes and automobiles. 70/

126. The Panel finds that adjustments should be made for overstatement in respect of the automatic mail-sorting machine, 71/ inadequate accounting for depreciation, saved expenses and insufficient evidence.

127. In light of the above, the Panel recommends USD 2,360,000 out of the USD 3,295,754 claimed.

D. Ministry of Finance

Government of Kuwait Claim No. 15, UNCC Claim No. 5000113

Table 4. Summary table for Ministry of Finance

<u>Loss type/Loss element</u>	<u>Principal claim</u> <u>amount</u> <u>USD</u>	<u>Amount</u> <u>recommended</u> <u>USD</u>	<u>Paragraph</u> <u>references</u>
Real property			
a) Touristic Enterprises-managed properties	63,217,771	32,148,000	128-133
b) Miscellaneous MoF properties	<u>15,441,555</u>	<u>6,682,000</u>	134-139
Sub-total	<u>78,659,326</u>	<u>38,830,000</u>	
Business transaction or course of dealing	<u>95,301,861</u>	<u>16,405,000</u>	140-146
Income producing property			
a) Lost income at Public Utilities managed properties	3,711,549	674,000	147-149
b) Forgiveness of rent	<u>18,066,422</u>	<u>14,407,000</u>	150-155
Sub-total	<u>21,777,971</u>	<u>15,081,000</u>	
Other tangible property			
a) MoF's mainframe computer system	5,724,322	1,522,000	156-163
b) Theft of motor vehicles	4,615,689	4,230,000	164
c) Office equipment at forward sales liquidation office	51,106	28,000	165
d) Furniture and office equipment	3,358,050	1,833,000	166-167
e) Maintenance supplies and stores	<u>703,572</u>	<u>125,000</u>	168-170
Sub-total	<u>14,452,739</u>	<u>7,738,000</u>	
Bank accounts and securities			
a) Financial stamps	10,142,822	3,550,000	171-177
b) Theft of cash on hand	<u>29,689</u>	<u>11,000</u>	178
Sub-total	<u>10,172,511</u>	<u>3,561,000</u>	
Payment or relief to others			
a) Buyout of Failaka Island property holders	199,668,000	Nil	179-182
b) Relief paid to employees	<u>14,698,108</u>	<u>5,023,000</u>	183-187
Sub-total	<u>214,366,108</u>	<u>5,023,000</u>	
Contract	<u>509,544</u>	<u>56,000</u>	188-191
Other losses			
a) Cost to hire new employees	<u>361,130</u>	<u>120,000</u>	192-193
b) Costs to train new employees	<u>302,356</u>	<u>101,000</u>	194-195
Sub-total	<u>663,486</u>	<u>221,000</u>	
<u>Total</u>	<u>435,903,546</u>	<u>86,915,000</u>	
Interest	<u>69,267,080</u>		

1. Real property – USD 78,659,326

(a) Touristic Enterprises-managed properties – USD 63,217,771 72/

128. The Ministry of Finance (“MoF”) operates in a wide range of areas affecting the fiscal operations of the Government of Kuwait. In a technical mission to Kuwait undertaken in September 2000, certain MoF facilities and equipment were inspected on behalf of the Panel.

129. MoF seeks compensation for damage to tourism, recreation and leisure facilities managed by Touristic Enterprises Company, K.S.C. (“TEC”). TEC funded some of the repairs to the facilities. MoF asserts that, up until 1994, it owned 98 per cent of TEC and that, from 1 January 1994, it owned 99 per cent of TEC. The Panel recognizes that part of this real property loss was borne by MoF and part by TEC. However, to require MoF and TEC to each claim for its portion of the loss would be too technical and rigid an approach. 73/

130. Private companies undertook the responsibility for the repairs effected to two of the facilities concerned. 74/ The Panel finds therefore that MoF has not suffered a loss with respect to such facilities and recommends that no compensation be awarded for the damage to them.

131. The Panel notes that the claim in relation to the repairs carried out to the Kuwait Towers 75/ includes the cost of two sets of window panes, an initial set stated by MoF to be of a quality inferior to those destroyed, and a subsequent set of the correct specifications. The Panel finds that glass of the correct specifications could have been installed initially and thus that the two sets of window panes were not required. The Panel has therefore made an adjustment in respect of the costs related to the initial set of window panes.

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

133. In light of the above, the Panel recommends compensation in the amount of USD 32,148,000 out of the USD 63,217,771 claimed.

(b) Miscellaneous MoF properties – USD 15,441,555 76/

134. MoF seeks compensation for damage to the Ministries Complex, properties managed on its behalf by the Public Utilities Management Company (“PUMC”), 77/ properties on Failaka Island, 78/ residential complexes throughout Kuwait and the Old Kuwait Market.

135. The Panel notes that the contractors for some of the repairs were chosen without recourse to normal competitive procurement procedures. However, the Panel finds that the absence of such procedures did not lead to increased costs. Furthermore, some of the repairs to the Ministries

Complex were performed in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the test set out at paragraph 31 of the Second “F3” Report, the Panel finds that, in the light of the importance of the Ministries Complex to the operations of the Government of Kuwait, the works were of such urgency that MoF could not reasonably be required to wait until prices had returned to normal patterns. Accordingly, the Panel does not recommend an adjustment in this respect.

136. Some of the damage to these properties will never be repaired. Nevertheless, on the basis set out at paragraph 66 of the First “F3” Report, the Panel recommends that compensation be awarded for the damage occasioned and that the compensation be measured by the cost of reconstruction or repair measured at such time as it would be reasonable, in all the circumstances, to expect reconstruction or repair to have taken place.

137. The amount claimed in respect of certain villas on Failaka Island included an amount in respect of the replacement of foundations. The Panel finds that such work was not required as a direct result of Iraq’s invasion and occupation of Kuwait. Further, the Panel finds that the cost incurred in repairing the Al-Riggae Complex (one of the properties managed by PUMC) was less than the estimated amount claimed by MoF. The Panel has made adjustments for overstatement to reflect these factors.

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

139. In light of the above, the Panel recommends compensation in the amount of USD 6,682,000 out of the USD 15,441,555 claimed.

2. Business transaction or course of dealing – USD 95,301,861

140. Prior to Iraq’s invasion and occupation of Kuwait, MoF earned revenue from a tax imposed on foreign entities carrying on trade or business in Kuwait. MoF claims the loss of such revenue for the period 1 July 1990 to 30 June 1993, calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq’s invasion and occupation of Kuwait and the revenue in fact earned.

141. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq’s invasion and occupation of Kuwait, subject to any deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government of Kuwait entities and for saved expenses. 79/

142. The Panel finds that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait until 30 June 1994. For the reasons given at paragraph 145 below, such period is longer than the period claimed.

143. The Panel notes that, in respect of the period until 30 June 1993 (that is, for the period of loss claimed by MoF), revenue in fact earned was lower than MoF's estimate of that which it would have earned in the absence of Iraq's invasion and occupation of Kuwait.

144. The Panel finds, however, that part of the decrease was the result of a decision of the Government of Kuwait to not collect this tax in respect of certain post-liberation activities carried out by foreign entities. In response to Procedural Order No. 29, issued in February 2001, MoF asserted that there were a number of post-liberation contracts that either contained explicit tax waivers or made no reference to the tax obligations to Kuwait on the part of the contractor. Applying the principles set out at paragraphs 21 to 22 above, the Panel finds that the Government of Kuwait's failure to collect this tax would not have been expected as a normal and natural consequence of Iraq's invasion and occupation of Kuwait. The Panel has therefore made an appropriate adjustment on the basis set out at paragraph 21 above. Further, the costs involved in the generation of this tax revenue were lower during the period 1 July 1990 to 30 June 1993 than those that would have been incurred in the absence of Iraq's invasion and occupation of Kuwait, and the Panel recommends a further adjustment accordingly.

145. The accounts of MoF disclose an unexpected increase in revenue for the period from 1 July 1993 to 30 June 1994. The Panel finds that this increase was, in part, a result of the substantial rebuilding undertaken in Kuwait in the period after liberation (in many cases by the foreign entities liable for the tax that is the subject of this claim) and, in part, a result of postponement of the receipt of tax revenue because of the delay in business activity caused by Iraq's invasion and occupation of Kuwait. The Panel has made a negative adjustment to take account of this increase in revenue and a positive adjustment to reflect the increased expenses incurred by MoF in collecting that revenue.

146. In light of the above, the Panel recommends compensation in the amount of USD 16,405,000 out of the USD 95,301,861 claimed.

3. Income producing property – USD 21,777,971

(a) Lost income at Public Utilities managed properties – USD 3,711,549

147. Prior to Iraq's invasion and occupation of Kuwait, MoF earned revenue from properties managed on its behalf by PUMC. MoF claims the loss of such revenue for the period 1 January 1990 to 31 December 1992, calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq's invasion and occupation of Kuwait and the revenue in fact earned.

148. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to any deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government of Kuwait entities and for saved expenses. 80/

149. The Panel finds that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait for the year ended 1 August 1991 and has made an adjustment accordingly. The Panel also finds that an adjustment should be made for insufficient evidence. In light of the above, the Panel recommends compensation in the amount of USD 674,000 out of the USD 3,711,549 claimed.

(b) Forgiveness of rent – USD 18,066,422 81/

150. Prior to Iraq's invasion and occupation of Kuwait, MoF earned revenue from a portfolio of rent-producing properties. MoF claims the loss of this revenue for the period 2 August 1990 to 31 May 1991, calculated as ten twelfths of its estimate of the revenue that would have been earned in the twelve months from 1 July 1990 to 30 June 1991 (that is, calculated to exclude the two months of July 1990 and June 1991) and in the absence of Iraq's invasion and occupation of Kuwait.

151. A Government of Kuwait decree, Order No. 646, passed by the Council of Ministers on 19 July 1992, cancelled the "outstanding charges and rental amounts on the citizens for the Ministry of Finance (Department of State Properties and Services)" for the period from 1 July 1990 to 30 June 1991.

152. Applying the principles set out at paragraphs 20 to 22 above, the Panel finds that the loss of revenue is compensable in principle, subject to an adjustment for saved expenses. In the circumstances, the Panel finds that the Order would have been expected as a normal and natural consequence of Iraq's invasion and occupation of Kuwait, except to the extent that it forgave rent: (a) for the month of July 1990 (i.e. before Iraq's invasion and occupation of Kuwait); (b) for the month of June 1991 (i.e. after the emergency period); and (c) in respect of tenants who reoccupied premises during the emergency period.



153. No adjustment is required for the elements (a) and (b) in paragraph 152 above because, as set out at paragraph 150 above, MoF has not sought compensation for the months of July 1990 or June 1991. 82/ The Panel has, however, made an adjustment for point (c) in paragraph 152 above.

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

155. In light of the above, the Panel recommends compensation in the amount of USD 14,407,000 out of the USD 18,066,422 claimed.

4. Other tangible property – USD 14,452,739

(a) MoF's mainframe computer system – USD 5,724,322

156. MoF seeks compensation for the loss of its mainframe computer system.

157. The largest element of MoF's claim relates to a lost Comparex 3083/3090 mainframe computer. The mainframe was replaced by an IBM ES 9000 series mainframe. The Panel finds that MoF's decision as to how to replace the lost mainframe involved strategic and other commercial considerations. Since a comparable Comparex system was available at the time when the lost system was replaced, the Panel finds that the losses claimed that are referable to the change in MoF's computer system from a Comparex system to an IBM system are not compensable.

158. MoF acknowledges that its replacement mainframe is more powerful than its original system. Despite this, MoF made no adjustment for enhancement. The Panel finds therefore that an adjustment should be made for enhancement, and further adjustments for inadequate accounting for depreciation, saved expenses and insufficient evidence.

159. MoF also seeks compensation for the costs of restoring its computer applications and software. The Panel finds that the losses are compensable in principle, but that the majority of the costs claimed arose from the change in computer system discussed at paragraph 157 above and has made a consequential adjustment to the amount claimed in this regard. In relation to this part of the claim, the Panel recommends that an adjustment should also be made for insufficient evidence.

160. MoF also seeks compensation for the amount paid after liberation for software licence fees referable to the period 2 August 1990 to 31 December 1991. MoF asserts that it paid those fees to obtain the software vendor's assistance with the restoration of its computer systems and that it did not have use of the relevant software during that period. The Panel recommends that no compensation should be awarded for these software licence fees as they would have been incurred in the absence of Iraq's invasion and occupation of Kuwait.

161. MoF asserts that a one-year warranty from 1 July 1990 was provided as part of the purchase of a software package before Iraq's invasion and occupation of Kuwait. After liberation, numerous defects were found in the software package. MoF seeks compensation for the amount paid to two external consultants to rectify those defects that, it asserts, would have been rectified under the one-year warranty in the absence of Iraq's invasion and occupation of Kuwait. The Panel finds that compensation should be awarded for the reasonable cost of rectifying defects that would otherwise have been rectified by the software vendor during the period of the warranty, but which could not be so rectified as a direct result of Iraq's invasion and occupation of Kuwait. In relation to this part of the claim, however, the Panel recommends that an adjustment be made for insufficient evidence.

162. MoF seeks further compensation for the costs incurred in training employees on the change in computer system discussed at paragraph 157 above and in training those employees who replaced employees that did not return to MoF after liberation. As set out at paragraph 157 above, the Panel recommends that all such costs referable to the change in MoF's computer system are not compensable. The Panel notes that, had MoF retained the Compaq 3083/3090, some of the costs claimed may nonetheless have been incurred. <sup>83/</sup> However, it is unable to quantify the extent of such costs, if any. The Panel therefore does not recommend any compensation for the loss claimed.

163. In light of the above, the Panel recommends compensation in the amount of USD 1,522,000 out of the USD 5,724,322 claimed.

(b) Theft of motor vehicles – USD 4,615,689

164. MoF seeks compensation for the loss of vehicles, including 30 special, high-security, limousines. The Panel finds that adjustments should be made for enhancement and saved expenses and recommends compensation in the amount of USD 4,230,000 out of the USD 4,615,689 claimed.

(c) Office equipment at forward sales liquidation office – USD 51,106 <sup>84/</sup>

165. MoF seeks compensation for the loss of the above office equipment. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence and recommends compensation in the amount of USD 28,000 out of the USD 51,106 claimed.

(d) Furniture and office equipment – USD 3,358,050

166. MoF seeks compensation for the loss of the above furniture and office equipment. MoF asserts that it acts as "equipment custodian" for certain items of furniture and fixtures that are owned by other Ministries of the Government of Kuwait. However, to require each Ministry to claim for its portion of the loss would be too technical and rigid an approach. The Panel therefore finds that MoF

is entitled to compensation for such furniture and fixtures, provided that the other Ministries have not also claimed. 85/

167. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence, and recommends compensation in the amount of USD 1,833,000 out of the USD 3,358,050 claimed.

(e) Maintenance supplies and stores – USD 703,572

168. MoF seeks compensation for lost spare parts, supplies and tools from various storage locations at the Ministries Complex.

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

170. In light of the above, the Panel recommends compensation in the amount of USD 125,000 out of the USD 703,572 claimed.

5. Bank accounts and securities – USD 10,172,511

(a) Financial stamps – USD 10,142,822

171. Financial stamps purchased by residents of Kuwait comprise a means by which the Government of Kuwait collects fees for licences, permits and applications and as payment for various medical and social services. In the ordinary course, MoF provides the stamps at no charge to Ministries, Government of Kuwait agencies and banks. The stamps are then sold at face value to members of the public, with the proceeds being remitted to MoF. The members of the public then use the stamps to pay for licences, permits and applications or exchange them for the provision of medical and social services.

172. MoF asserts that, during Iraq's occupation of Kuwait, stamps to the face value of USD 10,142,822 were lost from 21 different organizations. After liberation, the Government of Kuwait continued to accept all financial stamps presented to it. On 1 October 1992, MoF issued a new series of financial stamps. There was a short period when members of the public could exchange old series stamps for new series stamps or for cash.

173. MoF asserts that it should be assumed that all of the lost stamps were either used by members of the public, exchanged for a stamp of the new series and then used, or exchanged for cash. As such, it claims the face value of all lost stamps.

174. The Panel finds that MoF has suffered a loss equal to the face value of the stamp each time that a stamp that had not been paid for was used by a member of the public, exchanged for a stamp of the new series and then used by a member of the public, or exchanged for cash. In the first two instances, the loss arises because, in the absence of Iraq's invasion and occupation of Kuwait, the member of the public would have used a stamp for which he or she had paid the face value. In the third instance, the loss arises because MoF provided cash to a member of the public in exchange for a stamp that had not been paid for.

175. On the other hand, MoF has suffered no loss if a lost stamp has either not been used by a member of the public or exchanged for cash. Furthermore, MoF made a gain each time that a stamp that had been purchased by a member of the public before Iraq's invasion and occupation of Kuwait was not used, exchanged for a stamp of the new series, or exchanged for cash. This is because MoF has received, in cash, the face value of the stamp without providing any service in return. Such a gain may have occurred, for instance, in the case of stamps held by members of the public who departed Kuwait with the stamps and did not return after liberation. Adjustments should be made to take account of the matters set out in this paragraph.

176. MoF has been unable to provide documentation that would allow the Panel accurately to determine either the face value of the financial stamps that were lost 86/ or the extent of the loss to MoF. 87/ The Panel has therefore made an adjustment for insufficient evidence.

177. In light of the above, the Panel recommends compensation in the amount of USD 3,550,000 out of the USD 10,142,822 claimed.

(b) Theft of cash on hand – USD 29,689 88/

178. MoF seeks compensation for the loss of cash from its cash collection box at the Ministries Complex. Applying the principles set out at paragraph 406 of the First "F3" Report, the Panel finds the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held by MoF. The Panel is satisfied as to the existence of the loss but finds that an adjustment should be made for insufficient evidence. Accordingly, the Panel recommends compensation in the amount of USD 11,000 out of the USD 29,689 claimed.

6. Payment or relief to others – USD 214,366,108

(a) Buyout of Failaka Island property holders – USD 199,668,000

179. MoF asserts that, because of the extent of damage to Failaka Island, the Government of Kuwait decided not to rebuild Failaka Island's community or infrastructure. As a result, MoF purchased the properties of the displaced former residents of Failaka Island (thereby acquiring title to

the properties) and seeks compensation for the estimated costs of so doing. The Panel finds that compensation should be recommended for this claim only if the decision not to rebuild the community and infrastructure were a direct result of Iraq's invasion and occupation of Kuwait.

180. The documents submitted in support of the "F3" claims disclose various reasons for the Government of Kuwait's decision not to rebuild Failaka Island's community or infrastructure, including the level of destruction to the infrastructure, the presence of unexploded ordnance and mines and the Iraqi military and political environment. These documents also disclose that the Government of Kuwait has not yet made a final decision as to whether to resettle the island or put it to some other use, but has "evacuated" the residents for the time being. The Panel therefore finds that the decision not to rebuild Failaka Island's community and infrastructure was not a direct result of Iraq's invasion and occupation of Kuwait. 89/

181. Further, the Panel notes that the "D1" Panel has implicitly made the same finding. In the "D1" seventh instalment report, the "D1" Panel of Commissioners stated that:

"[A 'D1'] claimant states that numerous mines had been placed on ... [Failaka] Island during the occupation period, and that the Government of Kuwait had decided that the Island remain uninhabited. The Panel finds that as the [loss claimed] ... is due to the Government of Kuwait's decision to keep the island uninhabited, there is no sufficient reason [to award compensation for the period of loss that is attributable to that decision]". 90/

182. In light of the above, the Panel does not recommend any compensation for the loss claimed.

(b) Relief paid to employees – USD 14,698,108 91/

183. MoF seeks compensation in the amount of USD 14,698,108 for relief paid to employees. 92/ This amount consists of relief paid to MoF employees and relief paid to PUMC employees who were assigned to MoF projects.

184. In relation to the relief paid to MoF employees, MoF based its claim on amounts recorded in its payroll records. MoF also provided fund transfer receipts showing the amount in fact paid to each relevant employee through his or her bank. As set out at paragraphs 38 of the First "F3" Report, the Panel's consideration of claims for relief paid to employees is concerned with ascertaining "the amount of salary which would have been received by each individual". The Panel has therefore valued this loss by reference to the fund transfer receipts rather than the payroll records. The Panel is satisfied that, by taking such an approach, its recommended award will not include the employer's or the employees' social security contributions. 93/

185. As set out at paragraph 36 of the First “F3” Report, and subject to the percentage adjustment set out at paragraph 48 thereof and the discussion at paragraph 184 above, the Panel accepts the compensability of such relief paid to employees.

186. The Panel finds that an adjustment should also be made for insufficient evidence. 94/

187. In light of the above, the Panel recommends compensation in the amount of USD 5,023,000 out of the USD 14,698,108 claimed.

7. Contract – USD 509,544

188. MoF asserts that a contract for the repair and replacement of some masonry walls was interrupted by Iraq’s invasion and occupation of Kuwait.

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

190. The Panel notes that the post-liberation contract included work on a wall that was not part of the initial contract. MoF asserts that the work was required to repair damage caused by vibrations from bombing. The Panel is not satisfied that the damage was caused by vibrations from bombing and therefore finds that MoF has failed to show that the additional work was a direct result of Iraq’s invasion and occupation of Kuwait.

191. In light of the above, the Panel recommends compensation in the amount of USD 56,000 out of the USD 509,544 claimed.

8. Other losses – USD 663,486

(a) Cost to hire new employees – USD 361,130 95/

192. MoF asserts that, after liberation, a number of its employees failed to return to Kuwait and it therefore paid an organization to provide staff and incurred costs in advertising for new employees. The Panel finds that this claim is compensable in principle, 96/ but has made an adjustment to exclude the costs consequent upon the failure of employees of certain nationalities to return. 97/ The Panel finds that an adjustment should also be made for insufficient evidence.

193. In light of the above, the Panel recommends compensation in the amount of USD 120,000 out of the USD 361,130 claimed.

(b) Costs to train new employees – USD 302,356 <sup>98/</sup>

194. MoF asserts that its new employees required extensive training. The claim includes the cost of training materials and the salaries paid during the time spent on training, both for the instructors and the participants. <sup>99/</sup> The Panel finds that this claim is compensable in principle, <sup>100/</sup> but has made an adjustment to exclude the costs consequent upon the failure of employees of certain nationalities to return. <sup>101/</sup> The Panel finds that an adjustment should also be made for insufficient evidence.

195. In light of the above, the Panel recommends compensation in the amount of USD 101,000 out of the USD 302,356 claimed.

E. Shuaiba Area Authority

Government of Kuwait Claim No. 24, UNCC Claim No. 5000141

Table 5. Summary table for Shuaiba Area Authority

<u>Loss type/Loss element</u>	<u>Principal claim</u> <u>amount</u> <u>USD</u>	<u>Amount</u> <u>recommended</u> <u>USD</u>	<u>Paragraph</u> <u>references</u>
Business transaction or course of dealing	<u>54,102,341</u>	<u>Nil</u>	196-201
Other tangible property			
a) Industrial equipment, machinery and tools	5,807,880	1,883,000	202
b) Motor vehicles	391,774	131,000	203
c) Residential and office furniture	922,804	607,000	204
d) Office equipment	544,027	302,000	205
e) Spare parts stores and stocks	2,434,164	1,653,000	206
f) Goods in transit	268,707	40,000	207-208
g) Books and reference materials	<u>82,285</u>	<u>29,000</u>	209
Sub-total	<u>10,451,641</u>	<u>4,645,000</u>	
Contract			
a) Research and consulting contracts	117,139	Nil	210-211
b) Construction projects	458,747	188,000	212-214
c) Prepaid expenses	<u>98,768</u>	<u>39,000</u>	215
Sub-total	<u>674,654</u>	<u>227,000</u>	
Real property			
a) Roads and parking areas	3,008,527	1,321,000	216-217
b) Traffic and security controls	1,148,419	441,000	216-217
c) Buildings and structures	<u>2,075,040</u>	<u>773,000</u>	216-217
Sub-total	<u>6,231,986</u>	<u>2,535,000</u>	
Payment or relief to others			
a) Relief paid to employees	5,170,508	1,688,000	218-222
b) Employee repatriation expense	<u>93,765</u>	<u>36,000</u>	223-224
Sub-total	<u>5,264,273</u>	<u>1,724,000</u>	
Bank accounts and securities			
a) Currency	<u>7,736</u>	<u>3,000</u>	225
<b>Total</b>	<b><u>76,732,631</u></b>	<b><u>9,134,000</u></b>	
Interest	<u>12,192,760</u>		



1. Business transaction or course of dealing – USD 54,102,341

196. The Shuaiba Area Authority (“SAA”) is an independent agency of the Government of Kuwait and is responsible for the administration and supervision of the Shuaiba Industrial Area (“SIA”), the largest industrial area in Kuwait. In a technical mission to Kuwait undertaken in September 2000, certain SAA facilities and equipment were inspected on behalf of the Panel.

197. Prior to Iraq’s invasion and occupation of Kuwait, SAA earned revenue primarily from the pumping of sea cooling water to industries in the SIA, and from industrial plot rentals. SAA claims the loss of this revenue for the period from 1 July 1990 to 30 June 1994, calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq’s invasion and occupation of Kuwait and the revenue in fact earned.

198. A Government of Kuwait decree, Order No. 646 of the Council of Ministers, passed on 19 July 1992, cancelled plot rental charges for the year ended 30 June 1991 that were levied on the companies and firms working in the SIA.

199. Applying the principles set out at paragraphs 20 to 22 above, the Panel finds that the loss of revenue is compensable in principle, subject to adjustments for revenue that would have been paid by other Government of Kuwait entities 102/ and for saved expenses.

200. In the circumstances, the Panel finds that the Order would have been expected as a normal and natural consequence of Iraq’s invasion and occupation of Kuwait, except to the extent that it forgave industrial plot rental in respect of tenants that occupied premises during the period from 1 July to 1 August 1990, or the emergency period, for which the Panel has made a further adjustment.

201. The total adjustments exceed the amount claimed. Accordingly, the Panel does not recommend any compensation for this loss type.

2. Other tangible property – USD 10,451,641

(a) Industrial equipment, machinery and tools – USD 5,807,880 103/

202. SAA seeks compensation for industrial equipment, machinery and tools that it claims were lost or damaged during Iraq’s invasion and occupation of Kuwait. The Panel finds that adjustments should be made for saved expenses, inadequate accounting for depreciation and insufficient evidence, and recommends compensation in the amount of USD 1,883,000 out of the USD 5,807,880 claimed.

(b) Motor vehicles – USD 391,774

203. SAA seeks compensation for the loss of its fleet of motor vehicles. The Panel finds that adjustments should be made for saved expenses and insufficient evidence, and recommends compensation in the amount of USD 131,000 out of the USD 391,774 claimed.

(c) Residential and office furniture – USD 922,804

204. SAA seeks compensation for the loss of, or damage to, residential and office furniture. The Panel finds that adjustments should be made for saved expenses, inadequate accounting for depreciation and insufficient evidence, and recommends compensation in the amount of USD 607,000 out of the USD 922,804 claimed.

(d) Office equipment – USD 544,027 104/

205. SAA seeks compensation for the loss of, or damage to, office equipment. The Panel finds that adjustments should be made for enhancement, saved expenses, inadequate accounting for depreciation and insufficient evidence, and recommends compensation in the amount of USD 302,000 out of the USD 544,027 claimed.

(e) Spare parts stores and stocks – USD 2,434,164

206. SAA seeks compensation for the loss of spare parts stores and stocks. The Panel finds that adjustments should be made for saved expenses, overstatement and insufficient evidence, and recommends compensation in the amount of USD 1,653,000 out of the USD 2,434,164 claimed.

(f) Goods in transit – USD 268,707

207. SAA seeks compensation for goods that had been delivered, but not taken into inventory, just prior to 2 August 1990 that it claims were lost during Iraq's invasion and occupation of Kuwait. SAA informed the Panel that, since submission of its claim, a court has ruled that SAA is not liable to pay for the loss of one of the items claimed. Therefore SAA withdrew its claim in respect of that item in the amount of USD 189,376. The Panel has made an adjustment accordingly.

208. The Panel finds that an adjustment should also be made for insufficient evidence, and recommends compensation in the amount of USD 40,000 out of the USD 268,707 claimed.

(g) Books and reference materials – USD 82,285 105/

209. SAA seeks compensation for the loss of books and reference materials. The Panel finds that adjustments should be made for enhancement, inadequate accounting for depreciation, overstatement

and insufficient evidence, and recommends compensation in the amount of USD 29,000 out of the USD 82,285 claimed.

3. Contract – USD 674,654 106/

(a) Research and consulting contracts – USD 117,139

210. SAA claims compensation for losses sustained due to the interruption of six research and consulting contracts with the Kuwait Institute for Scientific Research (“KISR”) that were in existence on 2 August 1990. Such losses consisted of the additional costs of completing the projects.

211. The Panel finds that an adjustment should be made to the extent that the additional costs were payable to another Government of Kuwait entity. 107/ In the light of this, the Panel does not recommend any compensation for this loss type.

(b) Construction projects – USD 458,747

212. SAA claims compensation for losses sustained due to the interruption of three construction contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts.

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

214. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 213 above. Accordingly, the Panel recommends compensation in the amount of USD 188,000 out of the USD 458,747 claimed.

(c) Prepaid expenses – USD 98,768

215. SAA claims compensation for certain expenses pre-paid prior to Iraq’s invasion and occupation of Kuwait for which it received no benefit, 108/ and for the costs of providing temporary housing to employees after liberation who, before the invasion, were provided with accommodation by SAA. Following the approaches set out in the First “F3” Report at paragraphs 83 to 85 and 394, and 76, respectively, the Panel finds that these costs are compensable, subject to a deduction for insufficient evidence. In light of the above, the Panel recommends compensation in the amount of USD 39,000 out of the USD 98,768 claimed.

4. Real property – USD 6,231,986

216. SAA seeks compensation for damage to roads and parking areas, 109/ traffic and security controls and SAA buildings and structures within the SIA as follows:

- (a) Roads and parking areas – USD 3,008,527
- (b) Traffic and security controls – USD 1,148,419
- (c) Buildings and structures – USD 2,075,040.

217. SAA claims the costs of repairing the above damage. The Panel finds that adjustments should be made for saved expenses, inadequate accounting for depreciation and insufficient evidence. In light of the above, the Panel recommends compensation in the amount of USD 2,535,000 out of the USD 6,231,986 claimed.

5. Payment or relief to others – USD 5,264,273

- (a) Relief paid to employees – USD 5,170,508

218. SAA seeks compensation in the amount of USD 5,170,508 for relief paid to employees.

219. The Panel finds that the amount claimed includes social security contributions of USD 244,000 paid by SAA in respect of its employees. 110/ The Panel finds, in accordance with paragraph 41 of the First “F3” Report, that sums paid by way of social security contributions are not compensable.

220. The Panel finds that a further adjustment should be made for overstatement.

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

222. In light of the above, the Panel recommends compensation in the amount of USD 1,688,000 out of the USD 5,170,508 claimed.

- (b) Employee repatriation expense – USD 93,765 111/

223. SAA claims the costs of returning some SAA employees to Kuwait after liberation to enable them to resume work. The Panel finds, in accordance with paragraphs 80 to 82 of the First “F3” Report, that these costs are compensable, in so far as the amounts incurred are reasonable. The Panel finds that an adjustment should be made for insufficient evidence.

224. In light of the above, the Panel recommends compensation in the amount of USD 36,000 out of the USD 93,765 claimed.

6. Bank accounts and securities – USD 7,736 112/

(a) Currency – USD 7,736

225. SAA seeks compensation for the loss of petty cash from its offices. Applying the principles set out at paragraph 406 of the First “F3” Report, the Panel finds the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held by SAA. The Panel is satisfied as to the existence of the loss but finds that an adjustment should be made for insufficient evidence. In light of the above, the Panel recommends compensation in the amount of USD 3,000 out of the USD 7,736 claimed.

F. Kuwait Fire Department

Government of Kuwait Claim No. 25, UNCC Claim No. 5000142

Table 6. Summary table for Kuwait Fire Department

<u>Loss type/Loss element</u>	<u>Principal claim</u>		<u>Paragraph references</u>
	<u>amount</u>	<u>recommended</u>	
	<u>USD</u>	<u>USD</u>	
<u>Real property</u>			
a) Repair of 14 fire stations	1,619,010	935,000	226-231
b) Estimated cost to repair remaining fire stations	<u>4,729,204</u>	<u>2,185,000</u>	226-231
Sub-total	<u>6,348,214</u>	<u>3,120,000</u>	
<u>Other tangible property</u>			
a) Fire-fighting and other rescue vehicles	7,737,574	3,171,000	232-238
b) Trucks, buses and heavy equipment	710,351	436,000	232-238
c) Cars, pickups and jeeps	653,304	353,000	232-238
d) Spare parts and labour for damaged vehicles	386,383	Nil	232-238
e) Fireboats and marine equipment	6,309,761	2,660,000	232-238
f) Furniture and office equipment	855,045	615,000	232-238
g) Warehouse supplies and other equipment	<u>1,082,749</u>	<u>818,000</u>	232-238
Sub-total ((a) to (g))	<u>17,735,167</u>	<u>8,053,000</u>	
h) Adjustment for assets purchased by KERP	<u>-17,253,558</u>	<u>-18,139,000</u>	239-240
Sub-total ((a) to (h))	<u>481,609</u>	<u>-10,086,000</u>	
Contract	<u>1,815,617</u>	Nil	241-242
Payment or relief to others	<u>44,648,175</u>	<u>14,890,000</u>	243-247
<u>Total</u>	<u>53,293,615</u>	<u>7,924,000</u>	
Interest	<u>8,469,160</u>		

1. Real property – USD 6,348,214 113/

(a) Repair of 14 fire stations – USD 1,619,010

(b) Estimated cost to repair remaining fire stations – USD 4,729,204 114/

226. The Kuwait Fire Department (“KFD”) is an independent agency of the Government of Kuwait responsible for fire-fighting and fire-protection in Kuwait and related activities. 115/ KFD seeks

compensation for damage to its headquarters, 20 fire stations and fences (including seven fire stations and some fences that it claims were destroyed). 116/

227. KFD claims the costs incurred in effecting repairs to its headquarters and 14 fire stations. 117/

228. In a technical mission to Kuwait undertaken in September 2000, certain KFD facilities were inspected on behalf of the Panel.

229. The Panel finds that KFD has saved maintenance expenses from 2 August 1990 until the dates upon which the relevant repairs were completed or the dates upon which it would be reasonable, in all the circumstances, to expect the relevant repairs to have taken place. The Panel has made an adjustment to the amount claimed in this regard.

230. The Panel finds that adjustments should also be made for overstatement, 118/ inadequate accounting for depreciation, saved expenses and insufficient evidence.

231. In light of the above, the Panel recommends compensation in the amount of USD 3,120,000 out of the USD 6,348,214 claimed.

2. Other tangible property – USD 481,609 119/

232. KFD seeks compensation for the loss of a variety of vehicles comprising fire-fighting and rescue vehicles, 120/ automobiles, buses, trucks, pickups, jeeps, heavy and other equipment as follows:

- (a) Fire-fighting and other rescue vehicles – USD 7,737,574
- (b) Trucks, buses and heavy equipment – USD 710,351
- (c) Cars, pickups and jeeps – USD 653,304
- (d) Spare parts and labour for damaged vehicles – USD 386,383
- (e) Fireboats and marine equipment – USD 6,309,761
- (f) Furniture and office equipment – USD 855,045
- (g) Warehouse supplies and other equipment – USD 1,082,749.

233. The Panel finds that, in respect of the items referred to in sub-paragraphs 232 (a), (b) and (c) above, adjustments should be made for saved expenses, overstatement 121/ and insufficient evidence.

234. KFD seeks compensation for the estimated cost of spare parts and labour of its employees to repair damaged vehicles. The Panel finds that adjustments should be made for overstatement 122/ and

saved expenses. The Panel finds that the adjustment for saved expenses exceeds the amount claimed. Accordingly, the Panel does not recommend any compensation for this loss element.

235. KFD seeks compensation for the loss of nineteen marine vessels, including fireboats for fighting fires on the coast and nearby islands, that it claims were lost or destroyed during Iraq's invasion and occupation of Kuwait. The Panel finds that adjustments should be made for saved expenses, overstatement 123/ and insufficient evidence.

236. KFD seeks compensation for the loss of furniture and equipment. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

237. KFD seeks compensation for the loss of, or damage to, warehouse supplies comprising uniforms and linens, communications and other equipment, and spare parts. The Panel finds that adjustments should be made for saved expenses, overstatement and insufficient evidence.

238. The Panel's recommendations regarding compensation for this loss element are contained in paragraph 240 below.

(h) Adjustment for assets purchased by KERP – (USD 17,253,558)

239. The Panel notes that a number of replacement vehicles and vessels and some equipment were purchased for KFD pursuant to KERP, that the costs of those items are claimed separately, 124/ and that KFD adjusted its claim for "other tangible property" to take account of its estimate of the residual value of those items. The Panel finds that KFD underestimated the total residual value of these items and therefore that an adjustment should be made for incorrect valuation of KERP assets.

240. In light of the above, the Panel finds that the adjustment for assets purchased by KERP should be increased from (USD 17,253,558) to (USD 18,139,000) and recommends that the increased adjustment be applied to KFD's entire claim. This adjustment exceeds the amount of compensation of USD 8,053,000 that the Panel would have awarded in respect of loss elements (a) to (g) set out at paragraph 232 above. 125/

3. Contract – USD 1,815,617

241. KFD claims compensation for losses that it asserts were sustained resulting from the interruption of a contract, in existence on 2 August 1990, to purchase a fire-fighting and rescue tug from Neue Jadewerft GmbH ("NJ"). 126/ KFD asserted that such losses comprised additional costs attributable to inflation in respect of NJ's costs of labour and materials, NJ's loss of a European Community subsidy and various disruption costs asserted by NJ.



242. The Panel, continuing its approach set out at paragraph 63 of the First “F3” Report, finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The Panel finds that the price increase claimed is not compensable, as it was not attributable to any of the three factors set out at paragraph 63 of the First “F3” Report. 127/ Accordingly, the Panel does not recommend any compensation for KFD’s contract claim.

4. Payment or relief to others – USD 44,648,175

(a) Relief paid to employees – USD 44,648,175

243. KFD seeks compensation in the amount of USD 44,648,175 for relief paid to employees.

244. The amount claimed includes salaries that KFD asserts it paid to those employees that worked during the three-month emergency period putting out fires caused by Iraq’s invasion and occupation of Kuwait. 128/ The Panel finds that KFD would have incurred this expense in any event and that these employees were able to perform, and did perform, the tasks for which they were employed. Therefore, applying the principle stated at paragraph 11 above, the Panel has made an adjustment in respect of payments made to the employees concerned. 129/

245. The Panel finds that the amount claimed includes social security contributions of USD 1,362,000 paid by KFD in respect of its employees. 130/ The Panel finds, in accordance with paragraph 41 of the First “F3” Report, that sums paid by way of social security contributions are not compensable.

246. As set out at paragraph 36 of the First “F3” Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees (excluding the sums paid by way of social security contributions and the sums referred to in paragraph 244 above). 131/

247. In light of the above, the Panel recommends compensation in the amount of USD 14,890,000 out of the USD 44,648,175 claimed.

G. Ministry of Information (General Operations)

Government of Kuwait Claim No. 32, UNCC Claim No. 5000160

Table 7. Summary table for Ministry of Information (General Operations)

<u>Loss type/Loss element</u>	<u>Principal claim</u>	<u>Amount</u>	<u>Paragraph</u>
	<u>amount</u>	<u>recommended</u>	<u>references</u>
	<u>USD</u>	<u>USD</u>	
<u>Real property</u>			
a) Television transmission stations	10,988,779	7,892,000	250-252
b) Radio transmission stations	44,301,347	28,849,000	253-256
c) Television studios and auxiliary facilities	4,253,264	3,322,000	257
d) Radio studios	<u>1,569,627</u>	<u>335,000</u>	258
Sub-total	<u>61,113,017</u>	<u>40,398,000</u>	
Contract	<u>12,191,835</u>	<u>5,051,000</u>	259-266
<u>Other tangible property</u>			
a) Existing printing press equipment	6,232,730	2,615,000	267-271
b) Newly acquired printing press equipment	26,973,284	21,566,000	267-271
c) Television outside broadcasting vehicles	3,936,895	2,623,000	272-275
d) Radio outside broadcasting vehicles, standard-use vehicles and heavy equipment vehicles	<u>1,415,364</u>	<u>946,000</u>	276-280
Sub-total	<u>38,558,273</u>	<u>27,750,000</u>	
Bank accounts and securities	<u>739,590</u>	<u>702,000</u>	281
<u>Payment or relief to others</u>			
a) Relief paid to employees	<u>53,628,706</u>	<u>18,651,000</u>	282-285
<u>Total</u>	<u>166,231,421</u>	<u>92,552,000</u>	
Interest	<u>26,417,840</u>		

1. Real property – USD 61,113,017 132/

(a) Introduction

248. The Ministry of Information (“MoInf”) is responsible, amongst other things, for the production, broadcasting and transmission of television and radio programmes throughout Kuwait and worldwide, the production of theatrical productions for Kuwait, and the printing and publication of all Government of Kuwait publications.

249. In a technical mission to Kuwait undertaken in September 2000, certain MoInf facilities were inspected on behalf of the Panel.

(b) Television transmission stations – USD 10,988,779

250. MoInf seeks compensation for damage to a television transmission station constructed in 1988 in Mutlaa (“Mutlaa #2”) and four transmitters purchased in 1988. Mutlaa #2 has not been rebuilt. MoInf claims the historical cost of the Mutlaa #2 and the transmitters, adjusted for inflation and depreciation.

251. Following its approach set out at paragraphs 65 and 66 of the First “F3” Report and paragraphs 20 and 22 of the Second “F3” Report, the Panel finds that MoInf’s claim is compensable in principle subject to deductions for overstatement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

252. In light of the above, the Panel recommends compensation in the amount of USD 7,892,000 out of the USD 10,988,779 claimed.

(c) Radio transmission stations – USD 44,301,347

253. MoInf seeks compensation for damage to a medium wave (“MW”) station in Magwa and two of its transmitters, an MW station in Kabd and one of its transmitters, a short wave (“SW”) transmitter in Kabd and a microwave station located in a media complex situated in Salhiya (“the Media Complex”). 133/ MoInf claims the costs of repairing this damage. 134/

254. MoInf also claims the costs of purchasing two transmitters in June 1991 in order to upgrade an undamaged stand-by station so that it could be used as a full-capacity station. Following the approach set out at paragraphs 72 to 73 of the First “F3” Report, the Panel finds that this loss is compensable and the costs are reasonable in amount in the circumstances.

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

256. In light of the above, the Panel recommends compensation in the amount of USD 28,849,000 out of the USD 44,301,347 claimed.

(d) Television studios and auxiliary facilities – USD 4,253,264

257. MoInf seeks compensation for damage to television studios and auxiliary facilities located in the Media Complex. The Panel finds that adjustments should be made for saved expenses and insufficient evidence. In light of the above, the Panel recommends compensation in the amount of USD 3,322,000 out of the USD 4,253,264 claimed.

(e) Radio studios – USD 1,569,627

258. MoInf seeks compensation for damage to radio studios and a master control centre located in the Media Complex. The Panel finds that adjustments should be made for overstatement, saved expenses and insufficient evidence. In light of the above, the Panel recommends compensation in the amount of USD 335,000 out of the USD 1,569,627 claimed.

2. Contract – USD 12,191,835 <sup>135/</sup>

(a) Introduction

259. MoInf claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990 and in respect of the projects set out below. Such losses included the costs of site restoration and the additional costs of completing the contracts. <sup>136/</sup> In the latter case, MoInf asserts that the additional costs are to cover increased costs in the post-liberation period.

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

(b) Contract interruption loss – USD 12,191,835

261. MoInf asserts that a contract for the construction of a new television transmitter island on Failaka Island (the “Failaka Island contract”) and two contracts for the development of a SW station and transmitter in Kabd were interrupted by Iraq’s invasion and occupation of Kuwait.

262. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 260 above. The evidence shows that a number of the losses claimed are equivalent to site restoration costs. Therefore the Panel recommends compensation for a payment for initial mobilization costs made under the post-liberation Failaka Island contract in the same amount as that paid for similar costs under the pre-invasion Failaka Island contract. The Panel also recommends

compensation for additional labour costs associated with transport to, and restoration of, the Failaka Island contract site.

263. The Panel notes that costs of site restoration claimed by MoInf in respect of the Failaka Island contract included the costs of repairing or replacing damaged real and tangible property that formed part of the site of the pre-invasion contract but were not subject of the pre-invasion contract. Following its approach set out at paragraph 29 of the First “F3” Report, the Panel finds that such costs are compensable, subject in this case to an adjustment for inadequate accounting for depreciation. 137/

264. The post-invasion Failaka Island contract did not include the supply of equipment that was contemplated under the pre-invasion contract. Instead, a portion of the television transmission equipment that had been purchased by the Government of Kuwait in exile during the occupation period was used. It had been intended that this equipment be used for a “station-in-exile” close to the border of Saudi Arabia and Kuwait, but liberation preceded its delivery. MoInf claimed for the additional cost associated with use of this transmission equipment instead of that contemplated under the pre-invasion contract. The Panel finds that the additional cost is a direct result of Iraq’s invasion and occupation of Kuwait and that the cost is reasonable. 138/

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

266. In light of the above, the Panel recommends compensation in the amount of USD 5,051,000 out of the USD 12,191,835 claimed.

3. Other tangible property – USD 38,558,273

267. MoInf seeks compensation for the loss of, or damage to, printing press equipment, including equipment that was acquired between 1985 and 1989 but not installed prior to Iraq’s invasion of Kuwait (the “newly acquired equipment”) as follows:

- (a) Existing printing press equipment – USD 6,232,730
- (b) Newly acquired printing press equipment – USD 26,973,284.

268. MoInf claims the costs of repairing the damaged items and replacing the lost items. At the time of submitting its claim, MoInf had not replaced the newly acquired equipment and MoInf valued its loss of that equipment by reference to its historic cost.

269. MoInf provided information with its supplementary submission of claim indicating that it had made an error in calculating its claim for existing printing press equipment. The Panel has made an appropriate adjustment.

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

271. In light of the above, the Panel recommends compensation in the amount of USD 24,181,000 out of the USD 33,206,014 claimed.

(c) Television outside broadcasting vehicles – USD 3,936,895

272. MoInf seeks compensation for the loss of nine television outside broadcasting vehicles (“TV OB vehicles”) and items from the maintenance garage used to service them. MoInf claims the costs of replacing six of the TV OB vehicles that had been replaced at the time of submitting the original claim and values its loss for the remaining items by reference to the historic cost of those or similar items, less adjustments for inflation and depreciation.

273. The Panel finds that five of the six TV OB vehicles that were replaced at the time of submitting the original claim were replaced using competitive procurement procedures, including the selection of the lowest acceptable bid, and therefore that the method adopted, and prices paid, were reasonable. The sixth vehicle was replaced during the emergency period without resort to competitive procurement procedures. Applying the test set out at paragraph 31 of the Second “F3” Report, the Panel finds that, in the light of Kuwait’s need rapidly to restore its communications system, the acquisition of this vehicle was of such urgency that resort to competitive procurement procedures could not reasonably be required in the circumstances. Accordingly, the Panel does not recommend an adjustment in this respect.

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

275. In light of the above, the Panel recommends compensation in the amount of USD 2,623,000 out of the USD 3,936,895 claimed.

(d) Radio outside broadcasting vehicles, standard-use vehicles and heavy equipment vehicles – USD 1,415,364

276. MoInf seeks compensation for the loss of three radio outside broadcasting vehicles (“Radio OB vehicles”) and items from the maintenance garage used to service them. MoInf values its loss of the Radio OB vehicles by reference to the actual cost of replacing the two vehicles replaced using competitive procurement procedures. MoInf values its loss for the items from the maintenance garage by reference to the historic cost of those items, less adjustments for inflation and depreciation.

277. The Panel finds that two of the three Radio OB vehicles were replaced using competitive procurement procedures, including the selection of the lowest acceptable bid, and therefore that the

method adopted, and prices paid, were reasonable. The Panel also finds that the amount claimed in respect of the vehicle that was not so replaced is reasonable in the circumstances.

278. MoInf seeks compensation for the loss of 96 standard-use vehicles, and 34 heavy equipment vehicles, including forklifts, cranes, small buses and small trucks. MoInf claims the costs of replacing these vehicles and has made adjustments for depreciation.

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

280. In light of the above, the Panel recommends compensation in the amount of USD 946,000 out of the USD 1,415,364 claimed.

4. Bank accounts and securities – USD 739,590

281. MoInf seeks compensation for the loss of cash from its vault. Applying the principles set out at paragraph 406 of the First “F3” Report, the Panel finds the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held by MoInf. The Panel is satisfied as to the existence of the loss but finds that an adjustment should be made for insufficient evidence. Accordingly, the Panel recommends compensation in the amount of USD 702,000 out of the USD 739,590 claimed.

5. Payment or relief to others – USD 53,628,706

(a) Relief paid to employees – USD 53,628,706

282. MoInf seeks compensation in the amount of USD 53,628,706 for relief paid to employees.

283. The Panel finds that the amount claimed includes social security contributions of USD 7,001,000 paid by MoInf in respect of its employees. The Panel finds, in accordance with paragraph 41 of the First “F3” Report, that sums paid by way of social security contributions are not compensable.

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

285. In light of the above, the Panel recommends compensation in the amount of USD 18,651,000 out of the USD 53,628,706 claimed.

H. Ministry of Education

Government of Kuwait Claim No. 34, UNCC Claim No. 5000162

Table 8. Summary table for Ministry of Education

<u>Loss type/Loss element</u>	<u>Principal claim</u>	<u>Amount</u>	<u>Paragraph</u>
	<u>amount</u>	<u>recommended</u>	<u>references</u>
	<u>USD</u>	<u>USD</u>	
<u>Other tangible property</u>			
a) Furniture and office equipment	25,057,777	14,820,000	288-291
b) Laboratory equipment	23,005,603	11,879,000	292-296
c) Library books	15,189,492	5,927,000	297-301
d) Sports and gymnasium equipment	5,682,056	3,212,000	302-305
e) Musical instruments	854,380	543,000	306
f) Stores	38,020,286	23,953,000	307-310
g) Vehicles	930,903	123,000	311-313
h) Furniture and equipment for administration	<u>13,184,571</u>	<u>5,937,000</u>	314-317
Sub-total	<u>121,925,068</u>	<u>66,394,000</u>	
<u>Payment or relief to others</u>			
a) Relief paid to employees	453,875,776	151,827,000	318-322
b) Repatriation costs	3,759,538	697,000	323-327
c) Advance lease payments	<u>1,682,017</u>	<u>1,675,000</u>	328-331
Sub-total	<u>459,317,331</u>	<u>154,199,000</u>	
<u>Total</u>	<u>581,242,399</u>	<u>220,593,000</u>	
Interest	<u>92,370,800</u>		

1. Other tangible property – USD 121,925,068

(a) Introduction

286. The Ministry of Education (“MoE”) is the Government of Kuwait authority responsible for the administration of public education in Kuwait from kindergarten through to secondary school levels. Prior to Iraq’s invasion and occupation of Kuwait, MoE administered a public education system with approximately 375,000 students, 26,000 teachers and 15,000 administrative staff.

287. In a technical mission to Kuwait undertaken in September 2000, certain MoE facilities were inspected on behalf of the Panel.



(b) Furniture and office equipment – USD 25,057,777

288. MoE seeks compensation for the loss of furniture and office equipment from its schools.

289. The Panel finds that, considering the number of pupils and the number of student desks that were the subject of the claim, the number of classroom chairs damaged is overstated. The Panel has made an appropriate adjustment.

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

291. In light of the above, the Panel recommends compensation in the amount of USD 14,820,000 out of the USD 25,057,777 claimed.

(c) Laboratory equipment – USD 23,005,603

292. MoE seeks compensation for the loss of laboratory and technical equipment from primary, intermediate and secondary schools. MoE calculated its claim by reference to the number of schools of each type, the average number of laboratories per type, and the cost to replace the equipment in each laboratory. 139/

293. The Panel finds that the replacement costs of equipment by reference to which the claim is calculated are reasonable.

294. After liberation, MoE entered into a contract with the British Education Consortium for Kuwait 140/ (“BECK”) to manage the procurement of replacement laboratory and technical equipment for intermediate and secondary schools prior to the beginning of the school year in September 1991. MoE claims the value of fees paid to BECK under this contract. The Panel finds that MoE acted reasonably in entering into a procurement contract with BECK, and that the selection of BECK was undertaken using reasonable procurement procedures in the circumstances. 141/ However, the Panel finds that the scope of the contract with BECK was greater than that necessary to procure replacement laboratory and technical equipment 142/ and has made an appropriate adjustment.

295. The Panel finds that adjustments should also be made for overstatement, 143/ saved expenses and insufficient evidence.

296. In light of the above, the Panel recommends compensation in the amount of USD 11,879,000 out of the USD 23,005,603 claimed.

(d) Library books – USD 15,189,492

297. MoE seeks compensation for the loss of reference and story books from school libraries and seven public libraries in Kuwait.

298. In calculating this part of its claim MoE deducted accumulated depreciation of 10 per cent without reference to the books' useful life. The Panel considers that the books that were the subject of the claim had a useful life limited to 12 years and has made an adjustment on this basis.

299. The Panel finds that additional adjustments should be made for overstatement 144/ and insufficient evidence.

300. This element of MoE's claim includes a claim 145/ for USD 280,000 for the cost of air transport of some replacement books from Cairo to Kuwait during the period July to September 1991. The Panel finds that it was reasonable for MoE to incur this expense in order to facilitate the re-opening of some schools at the beginning of the school year in September 1991. 146/

301. In light of the above, the Panel recommends compensation in the amount of USD 5,927,000 out of the USD 15,189,492 claimed.

(e) Sports and gymnasium equipment – USD 5,682,056

302. MoE seeks compensation for the loss of sports and gymnasium equipment from its schools.

303. MoE calculated this element of its claim by multiplying the average price for equipment in each type of school by the total number of primary, intermediate and secondary schools, then deducting depreciation. The Panel finds that the total number of schools of the type used by MoE to calculate the claim is overstated and has made an adjustment. 147/ However, the Panel finds that as a result of this overstatement, MoE has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation.

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

305. In light of the above, the Panel recommends compensation in the amount of USD 3,212,000 out of the USD 5,682,056 claimed.

(f) Musical instruments – USD 854,380

306. MoE seeks compensation for the loss of musical instruments from its schools. The Panel finds that an adjustment should be made for saved expenses and insufficient evidence and recommends compensation in the amount of USD 543,000 out of the USD 854,380 claimed.

(g) Stores – USD 38,020,286

307. MoE seeks compensation for furniture, supplies and equipment lost from its stores.

308. The Panel notes that MoE has not adjusted its claim to take account of depreciation. 148/ The Panel has requested and received information in addition to the evidence submitted with the claim. The Panel finds that some of the equipment and supplies in MoE's stores was obsolete and has made an appropriate adjustment.

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

310. In light of the above, the Panel recommends compensation in the amount of USD 23,953,000 out of the USD 38,020,286 claimed.

(h) Vehicles – USD 930,903 149/

311. MoE seeks compensation for the loss of a variety of vehicles comprising automobiles, light trucks, buses, water tankers, an ambulance, a trailer and a forklift. The Panel notes that a number of replacement vehicles were purchased for MoE pursuant to KERP, that the costs of those vehicles are claimed separately, 150/ and that MoE adjusted its claim to take account of its estimate of the residual value of those vehicles. The Panel finds that MoE underestimated the residual value of those vehicles and therefore that an adjustment should be made for incorrect valuation of KERP assets.

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

313. In light of the above, the Panel recommends compensation in the amount of USD 123,000 out of the USD 930,903 claimed.

(i) Furniture and equipment for administration – USD 13,184,571

314. MoE seeks compensation for the loss of its furniture and equipment from its administrative offices.

315. In its response to Procedural Order No. 17, issued in December 2000, MoE stated that its claim for the loss of furniture and office equipment from MoE's administrative offices was overstated. 151/ MoE therefore recalculated this part of its claim from USD 13,184,571 to USD 9,888,428.

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

317. In light of the above, the Panel recommends compensation in the amount of USD 5,937,000 out of the USD 13,184,571 claimed.

2. Payment or relief to others – USD 459,317,331

(a) Relief paid to employees – USD 453,875,776

318. MoE seeks compensation in the amount of USD 453,875,776 for relief paid to employees.

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

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

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

322. In light of the above, the Panel recommends compensation in the amount of USD 151,827,000 out of the USD 453,875,776 claimed.

(b) Repatriation costs – USD 3,759,538

323. MoE seeks compensation for the cost of (a) returning non-Kuwaiti teachers to Kuwait after liberation to enable them to resume work; and (b) transporting new non-Kuwaiti employees to replace those who left Kuwait as a result of Iraq's invasion and occupation of Kuwait and never returned. The Panel finds that such costs are compensable in principle. 152/

324. The Panel sought and obtained information about the number of non-Kuwaiti teachers under contract to MoE between May 1991 and February 1992. This information indicated that the number of employees that were the subject of the claim was overstated and the Panel has made an appropriate adjustment.

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

326. MoE also seeks compensation for support payments made to the new and returning non-Kuwaiti teachers referred to in paragraph 323 above on their arrival in Kuwait. 153/ The Panel finds that these payments are reasonable costs of returning employees and hiring new employees and are therefore compensable in principle. The Panel finds that the payments are reasonable in amount but that adjustments should be made for overstatement 154/ and insufficient evidence.

327. In light of the above, the Panel recommends compensation in the amount of USD 697,000 out of the USD 3,759,538 claimed.

(c) Advance lease payments – USD 1,682,017

328. MoE seeks compensation for pre-paid rent on residential facilities for foreign students and teachers and on administrative offices. 155/ The rent was paid in early July 1990 for the six-month period from 1 July to 31 December 1990. MoE seeks compensation for the amount of pre-paid rent referable to the period 2 August to 31 December 1990.

329. As set out at paragraph 84 of the Second “F3” Report, compensation should be awarded for that portion of the pre-paid rent referable to the period that MoE was unable to use the premises as a direct result of Iraq’s invasion and occupation. The Panel finds that this period is 2 August to 31 December 1990.

330. The Panel finds that an adjustment should be made for amounts of rent pre-paid to a Government of Kuwait entity. 156/

331. In light of the above, the Panel recommends compensation in the amount of USD 1,675,000 out of the USD 1,682,017 claimed.

I. Directorate General of Civil Aviation

Government of Kuwait Claim No. 42, UNCC Claim No. 5000170

Table 9. Summary table for Directorate General of Civil Aviation

<u>Loss type/Loss element</u>	<u>Principal claim</u> <u>amount</u> <u>USD</u>	<u>Amount</u> <u>recommended</u> <u>USD</u>	<u>Paragraph</u> <u>references</u>
Business transaction or course of dealing	<u>11,309,799</u>	<u>Nil</u>	332-335
Real property	<u>1,756,072</u>	<u>1,276,000</u>	336-338
Other tangible property			
a) Airport furnishings, fixtures and equipment	512,489	401,000	339-341
b) Stolen vehicles	-61,525	-202,000	342-344
c) Heavy equipment	<u>37,660</u>	<u>26,000</u>	345-347
Sub-total	<u>488,624</u>	<u>225,000</u>	
Payment or relief to others	<u>13,781,443</u>	<u>5,512,000</u>	348-351
<u>Total</u>	<u>27,335,938</u>	<u>7,013,000</u>	
Interest	<u>4,344,200</u>		

1. Business transaction or course of dealing – USD 11,309,799

332. The Directorate General of Civil Aviation (“DGCA”) is an independent agency of the Government of Kuwait and is responsible for all aspects of civil aviation in Kuwait, including the operation of Kuwait International Airport (the “Airport”). Prior to Iraq’s invasion and occupation of Kuwait, DGCA’s main sources of revenue comprised fees charged for commercial air operations, passenger exit taxes 157/ and rental of terminal space. DGCA claims the loss of this revenue for the period from 2 August 1990 to 30 June 1992, calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq’s invasion and occupation of Kuwait and the revenue in fact earned. DGCA made no adjustment for saved expenses.

333. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq’s invasion and occupation of Kuwait, subject to deductions for revenue that would have been paid by another Government of Kuwait entity, and for saved expenses. 158/ The Panel finds that the revenue was affected as a direct result of Iraq’s invasion and occupation of Kuwait until 30 June 1992.

334. The Panel sought information from DGCA as to the costs involved in the generation of its revenue. 159/ This information disclosed that the expenses that would have been incurred in earning the lost revenue for the relevant periods exceeded that lost revenue.

335. Accordingly, the Panel does not recommend any compensation for this loss element.

2. Real property – USD 1,756,072

336. DGCA seeks compensation for damage to airport runways and lighting systems and to air-conditioning units that served the Airport's Terminal Two. 160/ DGCA claims the costs of repairing this damage. 161/

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

338. In light of the above, the Panel recommends compensation in the amount of USD 1,276,000 out of the USD 1,756,072 claimed.

3. Other tangible property – USD 488,624 162/

(a) Airport furnishings, fixtures and equipment – USD 512,489

339. DGCA seeks compensation for furnishings, furniture and equipment that it claims were lost or damaged during Iraq's invasion and occupation of Kuwait.

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

341. In light of the above, the Panel recommends compensation in the amount of USD 401,000 out of the USD 512,489 claimed.

(b) Stolen vehicles – USD (61,525) 163/

342. DGCA seeks compensation for the loss of a variety of vehicles comprising automobiles, jeeps and pickup trucks. The Panel notes that a number of replacement vehicles were purchased for DGCA pursuant to KERP, that the costs of those vehicles are claimed separately, 164/ and that DGCA adjusted its claim to take account of its estimate of the residual value of those vehicles. This results in a negative adjustment to DGCA's claim. The Panel finds that DGCA underestimated the residual value of those vehicles and therefore that a further adjustment should be made for incorrect valuation of KERP assets.

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

344. In light of the above, the Panel recommends that the negative adjustment to be applied to the claim for other tangible property be increased from USD (61,525) to USD (202,000).

(c) Heavy equipment – USD 37,660 165/

345. DGCA seeks compensation for the loss of heavy equipment comprising a cargo truck with a crane, a forklift and a large air compressor.

346. The Panel finds that an adjustment should be made for saved expenses and insufficient evidence.

347. In light of the above, the Panel recommends compensation in the amount of USD 26,000 out of the USD 37,660 claimed.

4. Payment or relief to others – USD 13,781,443

(a) Relief paid to employees – USD 13,781,443

348. DGCA seeks compensation in the amount of USD 13,781,443 for relief paid to employees.

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

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

351. In light of the above, the Panel recommends compensation in the amount of USD 5,512,000 out of the USD 13,781,443 claimed.



J. General Administration of Customs

Government of Kuwait Claim No. 43, UNCC Claim No. 5000171

Table 10. Summary table for General Administration of Customs

<u>Loss type/Loss element</u>	<u>Principal claim amount USD</u>	<u>Amount recommended USD</u>	<u>Paragraph references</u>
Business transaction or course of dealing	<u>433,025,135</u>	<u>108,534,000</u>	352-360
Payment or relief to others			
a) Relief paid to employees	<u>34,858,754</u>	<u>13,944,000</u>	361-364
Real property	<u>3,969,810</u>	<u>2,091,000</u>	365
Other tangible property	<u>3,016,927</u>	<u>1,694,000</u>	366-367
<u>Total</u>	<u>474,870,626</u>	<u>126,263,000</u>	
Interest	<u>75,466,120</u>		

1. Business transaction or course of dealing – USD 433,025,135

352. The General Administration of Customs (“GAC”) is responsible for administration of customs activities in Kuwait including controlling the flow of goods across Kuwait’s borders, inspecting passengers, boats, planes and vehicles at Kuwait’s points of entry, and levying and collecting taxes and customs duties on imported, exported and transit goods. Prior to Iraq’s invasion and occupation of Kuwait, GAC earned revenue primarily from collecting taxes and customs duties levied on goods imported to Kuwait (“Taxes and Duties”) and collecting port service charges levied in respect of oil tankers (“Port Service charges”). GAC claims the loss of this revenue for the period from 2 August 1990 to 30 June 1993, calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq’s invasion and occupation of Kuwait and the revenue in fact earned. GAC made no adjustment for saved expenses.

353. GAC asserted that its loss of revenue during the occupation period arose because of damage to its facilities, because its employees did not report for work, and because of the trade embargo imposed on Kuwait. <sup>166/</sup> GAC asserted that a cause of its loss of revenue during the emergency period was that many employees did not return to work then and the few that did were engaged in damage assessment and recovery activities and not their normal duties.

354. Pursuant to Law No. 137 of 1992, passed on 11 October 1992 (“the decree”), it was decreed that goods entering Kuwait between 1 June 1991 and 30 June 1992 were exempted from Taxes and Duties. An explanatory memorandum of the decree states that it was made “considering the various needs of citizens and encouraging firms and individuals to import all such needs into Kuwait”.

355. The Panel issued Procedural Order No. 11 in October 2000 to obtain further information about GAC's claim.

356. Port Service charges were unaffected by the decree. The Panel therefore finds it convenient to consider GAC's claim for loss of revenue from Taxes and Duties separately from its claim for loss of Port Service charges and has recalculated the claim accordingly.

357. The Panel finds that the losses of revenue from both Taxes and Duties and Port Service charges are compensable for the period that the revenue streams were affected as a direct result of Iraq's invasion and occupation of Kuwait. 167/ The Panel finds that the revenue from Taxes and Duties was affected as a direct result of Iraq's invasion and occupation of Kuwait until 31 May 1991 and that the revenue from Port Service charges was so affected until 30 June 1993.

358. Applying the principles set out at paragraphs 20 to 22 above, the Panel finds that GAC has failed to demonstrate that the decree would have been expected as a normal and natural consequence of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel has made an adjustment in respect of revenue from Taxes and Duties lost during the period from 1 June 1991 to 30 June 1992, the period of the decree. 168/

359. The Panel also finds that adjustments should be made for revenue that would have been paid by other Government of Kuwait entities, saved expenses and insufficient evidence. 169/

360. In light of the above, the Panel recommends compensation in the amount of USD 108,534,000 out of the USD 433,025,135 claimed.

2. Payment or relief to others – USD 34,858,754

(a) Relief paid to employees – USD 34,858,754

361. GAC seeks compensation in the amount of USD 34,858,754 for relief paid to employees.

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

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

364. In light of the above, the Panel recommends compensation in the amount of USD 13,944,000 out of the USD 34,858,754 claimed.

3. Real property – USD 3,969,810

365. GAC seeks compensation for damage to its buildings and facilities throughout Kuwait, including border facilities. 170/ The Al-Abdally customs centre close to the border between Iraq and Kuwait has not been rebuilt. 171/ GAC claims the costs of repairing this damage. In a technical mission to Kuwait undertaken in September 2000, certain GAC facilities were inspected on behalf of the Panel. The Panel finds that adjustments should be made for saved expenses, inadequate accounting for depreciation and insufficient evidence, and recommends compensation in the amount of USD 2,091,000 out of the USD 3,969,810 claimed.

4. Other tangible property – USD 3,016,927 172/

366. GAC seeks compensation for the loss of, or damage to, tangible property comprising 116 cars trucks and vehicles, two patrol craft, 173/ air-conditioning units, a wireless communications network and modem network, X-ray and baggage check equipment, furniture and office equipment from GAC's facilities, and the inventories of five warehouses as follows:

- (a) Motor vehicles – USD 1,023,926
- (b) Patrol craft – USD 975,694
- (c) Air-conditioning units – USD 136,754
- (d) Radio and communications equipment – USD 110,532
- (e) X-ray and baggage check equipment – USD 39,644
- (f) Furniture and office equipment – USD 436,479
- (g) Warehouse inventory – USD 293,898.

367. The Panel finds that adjustments should be made for saved expenses and insufficient evidence. In light of the above, the Panel recommends compensation in the amount of USD 1,694,000 out of the USD 3,016,927 claimed.

K. Council of Ministers (Crown Prince Diwan)

Government of Kuwait Claim No. 64, UNCC Claim No. 5000174

Table 11. Summary table for Council of Ministers (Crown Prince Diwan)

<u>Loss type/Loss element</u>	<u>Principal claim</u> <u>amount</u> <u>USD</u>	<u>Amount</u> <u>recommended</u> <u>USD</u>	<u>Paragraph</u> <u>references</u>
Other tangible property			
(Precious gifts)	<u>699,016</u>	<u>489,000</u>	368-371
<u>Total</u>	<u>699,016</u>	<u>489,000</u>	
Interest	<u>111,360</u>		

1. Other tangible property – USD 699,016

368. The Council of Ministers (“the Council”) serves as the Government of Kuwait’s governing branch in conjunction with the National Assembly and the Amir. The Council is composed of all Government of Kuwait Ministers and is headed by the Crown Prince and Prime Minister. The Crown Prince Diwan (“CPD”) is a subdivision of the Council of Ministers that serves as an office of the Crown Prince and Prime Minister and is located in the Bayan Palace. The Council asserts that precious gifts maintained by the CPD in Bayan Palace were taken or destroyed. The Council claims for the loss of those precious gifts.

369. In the course of its consideration of items returned pursuant to UNROP 174/ the Panel has considered whether items of a similar description to those claimed are subject of the claim. The Panel has considered relevant UNROP documents and on balance does not consider that any items returned pursuant to UNROP are subject of this claim.

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

371. In light of the above, the Panel recommends compensation in the amount of USD 489,000 out of the USD 699,016 claimed.

L. Ministry of Electricity and Water

Government of Kuwait Claim No. 47, UNCC Claim No. 5000176

Table 12. Summary table for Ministry of Electricity and Water

<u>Loss type/Loss element</u>	<u>Principal claim amount USD</u>	<u>Amount recommended USD</u>	<u>Paragraph references</u>
Real property			
a) Power plants maintenance department real property loss	<u>20,191,780</u>	<u>6,938,000</u>	372-376
Contract			
a) Sabiya power plant contract loss	509,506,959	9,867,000	383-388
b) National Control Center exchange rate contract losses	<u>13,381,841</u>	<u>Nil</u>	389
Sub-total	<u>522,888,800</u>	<u>9,867,000</u>	
Other tangible property			
a) Vehicles tangible property loss	1,840,799	-570,000	390-391
b) Fuel oil tangible property loss	<u>25,304,454</u>	<u>Nil</u>	392-396
Sub-total	<u>27,145,253</u>	<u>-570,000</u>	
<u>Total</u>	<u>570,225,833</u>	<u>16,235,000</u>	
Interest	<u>90,620,360</u>		

1. Real property – USD 20,191,780

(a) Power plants maintenance department real property loss – USD 20,191,780 175/

372. The Ministry of Electricity and Water (“MEW”) is responsible for the provision of electricity and water in Kuwait. In a technical mission to Kuwait undertaken in September 2000, certain MEW facilities and equipment were inspected on behalf of the Panel.

373. MEW asserts that the above-captioned department supervised 30 contracts for the repair of MEW’s power plants. 176/

374. Not all of the contracts were awarded using competitive procurement procedures and some were performed in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the tests set out at paragraph 138 of the First “F3” Report and paragraph 31 of the Second “F3” Report, the Panel finds that, in the light of Kuwait’s need rapidly to restore its critical power plants, the works were of such urgency that MEW could not reasonably be required to resort to competitive procurement procedures nor wait until prices had returned to normal patterns. Accordingly, the Panel does not recommend an adjustment in this respect.

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

376. In light of the above, the Panel recommends compensation in the amount of USD 6,938,000 out of the USD 20,191,780 claimed.

2. Contract – USD 522,888,800

(a) Introduction

377. In respect of the projects set out below, MEW seeks compensation for certain losses sustained due to the interruption of contracts that were in existence on 2 August 1990. This introduction considers a component of such losses, which the Panel will refer to as “exchange rate losses”.

378. At the time of the invasion, the contractor for each contract considered below was non-Kuwaiti, each contract was denominated in Kuwaiti dinars, and payments had therefore been made in Kuwaiti dinars. Each contractor thus bore the risk of subsequent adverse movements in exchange rates.

379. After liberation, MEW and the pre-invasion contractor for the construction of the steam and turbine generators for the Sabiya power plant agreed that the post-liberation contract was to be denominated in Japanese Yen. The exchange rate losses in relation to this contract arise because, at the time the post-liberation contract was concluded and for the period over which payments under that contract have so far been made, the Kuwaiti dinar has (in the main) declined in value against the Japanese Yen as compared to its value at the time the pre-invasion contract was concluded.

380. After liberation, MEW and the pre-invasion contractors on the control centre projects agreed on the value of work still to be carried out under each pre-invasion contract (in Kuwaiti dinars). This value was then converted to each contractor’s home currencies at the exchange rate applicable at the date the relevant pre-invasion contract was concluded and MEW and the contractors agreed that this was to be the price for the work still to be done. The exchange rate losses in relation to these contracts arise because, at the time the post-liberation contracts were concluded and for the period over which payments under those contracts were made, the Kuwaiti dinar had declined in value against the contractors’ home currencies as compared to its value at the time the pre-invasion contracts were concluded.

381. The effect of the post-liberation contractual provisions set out in paragraphs 379 and 380 above was that MEW assumed the exchange rate risks under the relevant contracts. The Panel notes that the relative declines in the value of the Kuwaiti dinar had commenced prior to Iraq’s invasion and occupation of Kuwait. The Panel has concluded that such changes in the currency exchange rates

prior to Iraq's invasion and occupation of Kuwait was a significant factor in the changes to the contractual terms concluded after liberation.

382. When considering contract interruption loss claims in the First "F3" Report and Second "F3" Report, the Panel has awarded compensation only for increases in cost attributable to site restoration costs, additional transportation costs and additional insurance costs. As set out at paragraph 63 of the First "F3" Report, these are the "only three causes of increase in price [where] the Panel has been able to determine that the causal link was "direct"". The decision to change the currency under which the payments were to be made and adverse movements in exchange rates brought about the exchange rate losses. This combination of events does not provide the required causal link to Iraq's invasion and occupation of Kuwait. 177/ Accordingly, the Panel has been unable to conclude that the exchange rate losses were a direct result of Iraq's invasion and occupation of Kuwait 178/ and therefore does not recommend any compensation for them.

(b) Sabiya power plant contract loss – USD 509,506,959

383. MEW seeks compensation in relation to the interruption of the following three contracts related to the construction of the Sabiya power plant:

(a) a contract for the construction of steam and turbine generators (discussed at paragraph 379 above) (the "Generator Contract");

(b) a contract for civil, structural, architectural and miscellaneous works (the "Works Contract"); and

(c) a contract for the preparation of specifications, basic design and site supervision (the "Supervision Contract").

384. As set out at paragraph 382 above, the Panel finds that the losses claimed are compensable in so far as they are attributable to site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed in relation to each interrupted contract is attributable to these factors.

385. Approximately half of the loss claimed for the Generator Contract relates to exchange rate losses. As set out at paragraph 382 above, the Panel has been unable to conclude that these losses were a direct result of Iraq's invasion and occupation of Kuwait and therefore does not recommend any compensation in relation to them. Further, the Panel finds that only part of the remaining loss claimed is attributable to the factors set out at paragraph 63 of the First "F3" Report. 179/

386. Part of the loss claimed for the Works Contract relates to the cost of restoring facilities at the power plant site. Such facilities were originally constructed pursuant to a different contract in relation to the Sabiya power plant. The Panel finds that compensation should be awarded for such site restoration costs, notwithstanding that the facilities were not constructed pursuant to the pre-invasion Works Contract, because the facilities were damaged as a direct result of Iraq's invasion and occupation of Kuwait. Further, the Panel finds that only part of the remaining loss claimed is attributable to the factors set out at paragraph 63 of the First "F3" Report.

387. Part of the loss claimed for the Supervision Contract relates to an amount paid to the contractor for work performed in relation to the re-tender of the Works Contract after liberation. The pre-invasion contractor for the Works Contract dissolved after liberation as a result of a dispute between its partners. The Panel therefore finds that the re-tendering of the Works Contract was not a direct result of Iraq's invasion and occupation of Kuwait and does not recommend any compensation for the costs of so doing. The Panel further finds that only part of the remaining loss claimed is attributable to the factors set out at paragraph 63 of the First "F3" Report.

388. In light of the above, the Panel recommends compensation in the amount of USD 9,867,000 out of the USD 509,506,959 claimed.

(c) National Control Center exchange rate contract losses – USD 13,381,841 180/

389. MEW seeks compensation for exchange rate losses in relation to the interruption of three contracts concerning its control centres. As set out at paragraph 382 above, the Panel has been unable to conclude that these losses were a direct result of Iraq's invasion and occupation of Kuwait and therefore does not recommend any compensation in relation to them. The Panel notes, however, that it has previously made an award for site restoration costs in relation to one of these interrupted control centre contracts (see paragraphs 250 and 251 of the Second "F3" Report).

3. Other tangible property – USD 27,145,253

(a) Vehicles tangible property loss – USD 1,840,799 181/

390. MEW seeks compensation for the loss of, and damage to, a variety of vehicles and heavy equipment. The Panel notes that a number of replacements for the lost items were purchased for MEW pursuant to KERP, that the costs of those vehicles are being claimed separately, 182/ and that MEW adjusted its claim to take account of its estimate of the residual value of those replacements. The Panel also notes that MEW adjusted its claim to take account of the amount received in selling damaged vehicles and heavy equipment for scrap. The Panel finds that the amounts so adjusted were reasonable.



391. The Panel finds, however, that adjustments should be made for saved expenses, insufficient evidence, and to correct an understatement in the value of lost heavy equipment. As a result, the compensation that the Panel recommends in respect of this loss element (before taking account of the vehicles and heavy equipment provided pursuant to KERP) is exceeded by the residual value of the vehicles so provided in the amount of USD 570,000. The Panel recommends that this adjustment be applied to the claim for other tangible property.

(b) Fuel oil tangible property loss – USD 25,304,454

392. MEW asserts that fuel oil storage tanks for the Doha-East and Doha-West power plants were damaged by explosives just before liberation and seeks compensation for the fuel oil lost as a result. MEW procured the fuel oil from Kuwait Petroleum Corporation (“KPC”) at market prices. It asserts that such fuel oil was stored in the tanks for use in emergency or peak periods of energy consumption.

393. MEW asserts that it valued its loss as the estimated amount of fuel oil in the tanks at the time of their destruction multiplied by the unit price of the fuel oil. MEW states that it cannot determine the exact amount of fuel oil in the tanks at the time of their destruction and a witness statement attached to MEW’s statement of claim provides that MEW was unable to keep track of the movement of fuel oil during the occupation period. It thus appears that MEW’s estimate of the fuel oil in the tanks at the time of their destruction was based on MEW’s estimate of the fuel oil in the tanks immediately before Iraq’s invasion and occupation of Kuwait.

394. The Panel notes that the Doha-East and Doha-West power plants continued to operate, and thus receive and consume fuel oil, until February 1991. The Panel has concluded, therefore, that the fuel oil that was in the tanks when they were destroyed may not have been the fuel oil that was in the tanks immediately before Iraq’s invasion and occupation of Kuwait.

395. The Panel has, therefore, sought to establish whether it was MEW or some other entity that suffered a loss when the fuel oil was destroyed. Secondly, and in order to ascertain whether there may be any other claim for the fuel oil concerned, the Panel issued Procedural Order No. 54 in June 2001. In particular, the Panel sought to ascertain whether or not KPC had sought compensation for the lost fuel oil. 183/ In response thereto, MEW stated that the production and sales loss claim of KPC 184/ did not make any allowance for sales and/or deliveries of fuel oil to the tanks during the occupation period. The Panel, having considered the totality of the evidence, has concluded that a claim for the value of the fuel oil delivered to the tanks during the occupation period 185/ has been made by KPC and a recommendation for compensation for its loss was made by the “E1” Panel.

396. The Panel therefore finds that MEW has failed to prove the loss claimed and therefore does not recommend any compensation in respect of it.

M. Ministry of Information (General Operations and Department of Antiquity and Museums)

Government of Kuwait Claim No. 53, UNCC Claim No. 5000182

Table 13. Summary table for Ministry of Information (General Operations and Department of Antiquity and Museums)

<u>Loss type/Loss element</u>	<u>Principal claim amount USD</u>	<u>Amount recommended USD</u>	<u>Paragraph references</u>
<u>Real property</u>			
a) Mechanical and electrical repairs, security system, civil works and fibre optic cables	2,241,079	1,161,000	399
b) Museum Complex, historical monuments and archaeological sites	<u>11,306,051</u>	<u>5,841,000</u>	400-406
Sub-total	<u>13,547,130</u>	<u>7,002,000</u>	
<u>Other tangible property</u>			
a) Library collection	28,881,635	10,448,000	407-410
b) Stores	17,006,859	13,071,000	411
c) Office equipment and specialized equipment	4,964,438	2,660,000	412-413
d) Museum collection and the Planetarium exhibition	<u>1,212,492</u>	<u>326,000</u>	414-417
Sub-total	<u>52,065,424</u>	<u>26,505,000</u>	
Business transaction or course of dealing	<u>43,041,295</u>	<u>18,578,000</u>	418-421
<u>Total</u>	<u>108,653,849</u>	<u>52,085,000</u>	
<u>Interest</u>	<u>17,267,760</u>		

1. Real property – USD 13,547,130

397. The Ministry of Information (“MoInf”) is responsible, amongst other things, for the dissemination of information to the whole of Kuwait and, until 1994, was responsible for the Department of Antiquity and Museums, which includes the Kuwait National Museum, two museums on Failaka Island, and many historical and archaeological sites in Kuwait.

398. In a technical mission to Kuwait undertaken in September 2000, certain MoInf facilities were inspected on behalf of the Panel.

(a) Mechanical and electrical repairs, security system, civil works and fibre optic cables – USD 2,241,079

399. MoInf seeks compensation for damage to the mechanical and electrical systems and structures of MoInf's properties, its security system and fibre optic cables. 186/ MoInf claims the costs of repairing this damage. The Panel finds that adjustments should be made for saved expenses, inadequate accounting for depreciation and insufficient evidence. In light of the above, the Panel recommends compensation in the amount of USD 1,161,000 out of the USD 2,241,079 claimed.

(b) Museum Complex, historical monuments and archaeological sites – USD 11,306,051

400. MoInf seeks compensation for damage to the Museum Complex, including a planetarium. MoInf claims the costs to repair this damage. The Panel finds that adjustments should be made for saved expenses, inadequate accounting for depreciation, overstatement and insufficient evidence.

401. MoInf seeks compensation for damage to historical monuments, namely, the Boom Al-Muhallab (a traditional dhow), the Al-Jahra, Al-Shaab and Al-Shamiya Gates ("the Gates"), the Red Palace, the Free Art Studio and the Al-Bader and the Al-Sedu Houses. MoInf claims the costs of repairing this damage, and in the case of the Boom Al-Muhallab, the costs of constructing a replica. 187/

402. In response to written questions following the technical mission to Kuwait in September 2000, MoInf stated that in 1996, as a gift to the Kuwaiti people, the Amir of Kuwait paid from his personal funds for the construction of the replica Boom Al-Muhallab. Accordingly, the Panel finds that MoInf's claim for the cost of the construction of the replica is not compensable. 188/

403. MoInf asserts that damage to the historical monuments included damage from termites owing to lack of maintenance throughout Iraq's invasion and occupation of Kuwait. The Panel finds that such damage was a direct result of Iraq's invasion and occupation of Kuwait.

404. As to MoInf's claim in respect of historical monuments, the Panel finds that adjustments should also be made for saved expenses and overstatement.

405. MoInf seeks compensation for damage to residential, laboratory and museum buildings located near archaeological sites on Failaka Island. 189/ The Panel finds that adjustments should be made for overstatement, saved expenses and inadequate accounting for depreciation.

406. In light of the above, the Panel recommends compensation in the amount of USD 5,841,000 out of the USD 11,306,051 claimed.

2. Other tangible property – USD 52,065,424

(a) Library collection – USD 28,881,635

407. MoInf seeks compensation for the loss of video and audio tapes and reference books from its library collection. MoInf valued its loss by reference to the historical cost of the items, less an adjustment for depreciation.

408. The Panel finds that it is appropriate to value this part of MoInf's claim on the basis that the reference books had a useful life of five years, that the video and audio tapes had a useful life of three years, and that the books and tapes had a residual value of thirteen per cent as historical archive material. The Panel has made an adjustment for inadequate accounting for depreciation on this basis.

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

410. In light of the above, the Panel recommends compensation in the amount of USD 10,448,000 out of the USD 28,881,635 claimed.

(b) Stores – USD 17,006,859

411. MoInf seeks compensation for the loss of items from its stores. The Panel finds that an adjustment should be made to reflect the obsolescence that would have occurred in the stores' contents in the absence of Iraq's invasion and occupation of Kuwait. The Panel finds that adjustments should also be made for saved expenses and insufficient evidence. In the light of the above, the Panel recommends compensation in the amount of USD 13,071,000 out of the USD 17,006,859 claimed.

(c) Office equipment and specialized equipment – USD 4,964,438 190/

412. MoInf seeks compensation for the loss of office equipment from the Media Complex and its remote stations and the loss of various specialized equipment. The Panel finds that adjustments should be made for overstatement in respect of the claim for office equipment, 191/ saved expenses and insufficient evidence.

413. In light of the above, the Panel recommends compensation in the amount of USD 2,660,000 out of the USD 4,964,438 claimed.

(d) Museum collection and the Planetarium exhibition – USD 1,212,492 192/

414. MoInf seeks compensation for the loss of and damage to objects from the collection of the Kuwait National Museum ("the Collection") 193/ and for the destruction of the planetarium exhibition area, including its exhibits. 194/

415. The majority of the Collection was moved to Iraq during Iraq's occupation of Kuwait but most was returned after liberation to Kuwait pursuant to UNROP. 195/ However, a number of the pieces returned had been damaged during their transport to, and storage in, Iraq. Furthermore, some pieces in the Collection were never recovered. 196/

416. The Panel finds that an adjustment should be made for overstatement.

417. In light of the above, the Panel recommends compensation in the amount of USD 326,000 out of the USD 1,212,492 claimed.

3. Business transaction or course of dealing – USD 43,041,295

418. Prior to Iraq's invasion and occupation of Kuwait, MoInf earned revenue from various services including advertising in media operated by it ("Advertising") - its primary source of revenue - and selling magazines published by it to the general public ("Printing for the public"). MoInf claims the loss of this revenue for the period from 2 August 1990 to 30 June 1993, calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq's invasion and occupation of Kuwait and the revenue in fact earned. MoInf made no adjustment for saved expenses.

419. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, 197/ subject to a deduction for saved expenses. 198/

420. The Panel finds that the revenue from Printing for the public was affected as a direct result of Iraq's invasion and occupation of Kuwait until 30 June 1993. The Panel finds that MoInf has failed to demonstrate that the revenue from Advertising was affected as a direct result of Iraq's invasion and occupation of Kuwait after 30 June 1992. 199/

421. In light of the above, the Panel recommends compensation in the amount of USD 18,578,000 out of the USD 43,041,295 claimed.

N. Public Authority for Housing

Government of Kuwait Claim No. 54, UNCC Claim No. 5000186

Table 14. Summary table for Public Authority for Housing

<u>Loss type/Loss element</u>	<u>Principal claim</u>	<u>Amount</u>	<u>Paragraph</u>
	<u>amount</u>	<u>recommended</u>	<u>references</u>
	<u>USD</u>	<u>USD</u>	
Contract	<u>22,060,531</u>	<u>14,946,000</u>	422-425
Other tangible property			
a) Office equipment, and residential and office furniture	2,134,094	811,000	426
b) Electrical equipment and supplies	13,897,763	6,742,000	427
c) Motor vehicles	<u>195,125</u>	<u>72,000</u>	428
Sub-total	<u>16,226,982</u>	<u>7,625,000</u>	
Payment or relief to others			
a) Relief paid to employees	17,203,229	4,599,000	429-433
b) Support payments to residents of damaged homes <u>200/</u>	<u>54,157,125</u>	<u>1,166,000</u>	434-438
Sub-total	<u>71,360,354</u>	<u>5,765,000</u>	
Real property	<u>4,822,958</u>	<u>1,800,000</u>	439-442
Income producing property	<u>9,294,183</u>	<u>7,828,000</u>	443-447
Other losses	<u>1,872,643</u>	<u>1,763,000</u>	448-451
<b>Total</b>	<b><u>125,637,651</u></b>	<b><u>39,727,000</u></b>	
Interest	<u>19,966,889</u>		

1. Contract – USD 22,060,531 201/

422. The Public Authority for Housing (“PAH”) is an independent agency of the Government of Kuwait and is responsible for providing accommodation to residents of Kuwait in need of assistance and supplying such accommodation with all necessary services and public facilities. In a technical mission to Kuwait undertaken in September 2000, certain PAH facilities were inspected on behalf of the Panel.

423. PAH claims compensation for losses sustained due to the interruption of 33 construction contracts that were in existence on 2 August 1990. 202/ Such losses included the costs of site restoration and the additional costs of completing the contracts. In the latter case, PAH asserts that the additional costs are to cover increased costs in the post-liberation period.

424. The Panel, continuing its approach set out at paragraph 63 of the First “F3” Report, finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that

paragraph, namely, site restoration costs, 203/ additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

425. In light of the above, the Panel recommends compensation in the amount of USD 14,946,000 out of the USD 22,060,531 claimed.

2. Other tangible property – USD 16,226,982

(a) Office equipment, and residential and office furniture – USD 2,134,094

426. PAH seeks compensation for the loss of, or damage to, office equipment from PAH's headquarters building and furniture from its headquarters building and housing units. The Panel finds that adjustments should be made for overstatement, inadequate accounting for depreciation and insufficient evidence. In light of the above, the Panel recommends compensation in the amount of USD 811,000 out of the USD 2,134,094 claimed.

(b) Electrical equipment and supplies – USD 13,897,763

427. PAH seeks compensation for the loss of electrical equipment and supplies from its warehouses. The Panel finds that adjustments should be made for shrinkage (that is, pilferage or erroneous bookkeeping), saved expenses and insufficient evidence. In light of the above, the Panel recommends compensation in the amount of USD 6,742,000 out of the USD 13,897,763 claimed.

(c) Motor vehicles – USD 195,125 204/

428. PAH seeks compensation for the loss of its fleet of 67 motor vehicles. The Panel finds that an adjustment should be made for saved expenses. In light of the above, the Panel recommends compensation in the amount of USD 72,000 out of the USD 195,125 claimed.

3. Payment or relief to others – USD 71,360,354

(a) Relief paid to employees – USD 17,203,229

429. PAH seeks compensation in the amount of USD 17,203,229 for relief paid to employees. PAH asserts that the amount claimed is equivalent to the value of the employees' salaries in respect of the occupation and emergency periods plus, in the case of payments to Kuwaiti nationals, the period from 1 June to 31 October 1991. 205/

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

431. As set out at paragraph 36 of the First “F3” Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of payments referable to the occupation and emergency periods as relief paid to employees.

432. The Panel finds that PAH has failed to demonstrate that payments referable to the period from 1 June to 31 October 1991 constitute payments made or relief provided to others within the meaning of paragraph 36 of Governing Council decision 7 and therefore finds that such payments are not compensable.

433. In light of the above, the Panel recommends compensation in the amount of USD 4,599,000 out of the USD 17,203,229 claimed.

(b) Support payments to residents of damaged homes – USD 54,157,125

434. PAH claims compensation for payments made to people whose homes had been damaged or destroyed during Iraq’s invasion and occupation of Kuwait. 206/ PAH commenced making payments from 1 June 1991. Most recipients of payments that were the subject of this claim were former residents of Failaka Island. In its supplementary submission of claim and its response to Procedural Order No. 24, issued in January 2001, PAH stated that although most payments that were the subject of this claim ceased by 31 December 1997, it continued making payments to some former residents of Failaka Island after that date.

435. Considering its approach set out paragraphs 74 to 77 of the First “F3” Report, the Panel determines that, in principle, payments in a reasonable amount are compensable for a reasonable period following liberation. In the circumstances, the Panel finds that PAH has failed to demonstrate that payments made after 1 August 1991, which constitute the overwhelming majority of the amount claimed, constitute payments made or relief provided to others within the meaning of paragraph 36 of Governing Council decision 7. The Panel notes, for example, paragraph 22 of the “D1” seventh instalment report, cited at paragraph 181 above, and the factors underlying that decision. The Panel notes that it is implicit in this and other decisions of the “D” Panels that, in the absence of proof of exceptional circumstances, delay past 1 August 1991 in repairing damaged properties is not considered a direct result of Iraq’s invasion and occupation of Kuwait.

436. The Panel has accordingly made an adjustment to the amount claimed in respect of the payments made from 1 August 1991 onwards. The Panel finds that the payments made from 1 June to 31 July 1991 are reasonable in amount, although it notes such payments comprise only a small proportion of the amount claimed.

437. In response to Procedural Order No. 46, issued in April 2001, PAH identified an overstatement for which the Panel has made an additional adjustment. 207/



438. In light of the above, the Panel recommends compensation in the amount of USD 1,166,000 out of the USD 54,157,125 claimed.

4. Real property – USD 4,822,958

439. PAH seeks compensation for damage to housing units and claims the costs to repair this damage.

440. The Panel notes that individuals have submitted to the Commission category “C” and “D” claims for the costs of repairs, or other costs, in respect of a number of properties repaired by PAH. In response to Procedural Order No. 53, issued in June 2001, PAH stated that it was unable to ascertain that there was no duplication. This factor has been taken into account when the Panel has determined the adjustment to be applied for insufficient evidence set out below.

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

442. In light of the above, the Panel recommends compensation in the amount of USD 1,800,000 out of the USD 4,822,958 claimed.

5. Income producing property – USD 9,294,183

443. Prior to Iraq’s invasion and occupation of Kuwait, PAH earned revenue from the rental of subsidized housing units (“the units”). PAH claims the loss of this revenue for the period from 2 August 1990 to 31 May 1991.

444. PAH asserts that during Iraq’s invasion and occupation of Kuwait many tenants of the units fled their homes. PAH asserted that after liberation many tenants returned to their units and by June 1991 it had leased some 95 per cent of the units.

445. PAH did not collect any rent from tenants of the units for the period from 2 August 1990 to 31 May 1991. A Government of Kuwait decree, Order No. 646, passed by the Council of Ministers on 19 July 1992, forgave rental payments for tenants of the units for the period 1 August 1990 to 31 May 1991.

446. Applying the principles set out at paragraphs 20 to 22 above, the Panel finds that the loss of revenue is compensable in principle, subject in this case to an adjustment for saved expenses. In the circumstances, the Panel finds that the Order would have been expected as a normal and natural consequence of Iraq’s invasion and occupation of Kuwait, except to the extent that it forgave rent in respect of tenants who reoccupied premises during the emergency period, for which the Panel has made a further adjustment.

447. In light of the above, the Panel recommends compensation in the amount of USD 7,828,000 out of the USD 9,294,183 claimed.

6. Other losses – USD 1,872,643

448. PAH seeks compensation for pre-payable rent on two headquarters buildings and on housing that was rented for employees prior to Iraq's invasion and occupation of Kuwait. 208/ PAH seeks compensation for the amount of pre-payable rent referable to the period 2 August 1990 to 30 June 1991 for the leases of the headquarters buildings and the period 2 August 1990 to 31 December 1990 for leases of the employee housing.

449. The Panel recommends that, considering the principles set out at paragraph 84 of the First "F3" Report, compensation be awarded for that portion of the pre-payable rent referable to the period that PAH was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this period is that claimed. 209/

450. The Panel finds that an adjustment should be made for rent pre-payable to other Government of Kuwait entities. 210/

451. In light of the above, the Panel recommends compensation in the amount of USD 1,763,000 out of the USD 1,872,643 claimed.

O. Kuwait University

Government of Kuwait Claim No. 62, UNCC Claim No. 5000194

Table 15. Summary table for Kuwait University

<u>Loss type/Loss element</u>	<u>Principal claim amount USD</u>	<u>Amount recommended USD</u>	<u>Paragraph references</u>
<u>Other losses</u>			
a) Research losses	14,846,513	960,000	452-460
b) Computer services	<u>1,580,865</u>	<u>345,000</u>	461-467
Sub-total	<u>16,427,378</u>	<u>1,305,000</u>	
<u>Public service expenditures</u>			
a) Study effects on the Iraqi aggression	<u>3,499,993</u>	<u>Nil</u>	468
<u>Total</u>	<u>19,927,371</u>	<u>1,305,000</u>	
Interest	3,166,800		

1. Other losses – USD 16,427,378

(a) Research losses – USD 14,846,513

452. Kuwait University (“KU”) is Kuwait’s national university. KU seeks compensation for the loss of research that was being undertaken at the time of Iraq’s invasion and occupation of Kuwait. It asserts that:

(a) one hundred and twenty-four research projects were cancelled after liberation because the staff working on them did not return to Kuwait (the “cancelled projects”);

(b) forty research projects were not reactivated after liberation because of the looting and destruction of KU’s facilities (the “frozen projects”); 211/

(c) twenty-seven research projects were terminated after liberation because of the loss of supporting research and underlying data (the “terminated projects”); and

(d) eighty-five research projects were reactivated after liberation with new plans and at increased cost (the “reactivated projects”).

453. KU also asserts that almost all of its research and development data files, research specimens, scientific results and other reports and analyses were lost.

454. The claim for the cancelled, frozen and terminated projects is valued as those expenses incurred on the projects in the period before Iraq's invasion and occupation of Kuwait (consisting of travel, running and technical support costs plus the cost of academic researchers). The claim for the reactivated projects is valued as the cost of academic researchers in the period before Iraq's invasion and occupation of Kuwait plus the increased travel, running and technical support costs incurred after the reactivation of the projects (calculated by comparing the 1993 budget for the projects to the 1990 budget).

455. As set out at paragraphs 23 to 28 of the Second "F3" Report, the Panel recommends that compensation should, in principle, be awarded for such lost information.

456. Paragraph 27 of the Second "F3" Report noted that, in valuing such claims, the Panel considers whether "adjustments to the amounts claimed should be made ... for the use that would have been made of the information if it had not been lost". The Panel notes that none of the cancelled, frozen or terminated projects were reactivated after liberation. 212/ The Panel finds that KU has failed to show that use would have been made of the information derived from those projects in the absence of Iraq's invasion and occupation of Kuwait. It therefore does not recommend any compensation in relation to the cancelled, frozen or terminated projects. 213/

457. For the reactivated projects (including one project that was categorised by KU as a frozen project but which was, in fact, subsequently reactivated), the Panel finds that they were mostly undertaken for academic purposes. The Panel therefore recommends an adjustment to reflect the limited use that would have been made of the information derived from those projects in the absence of Iraq's invasion and occupation of Kuwait. In this respect, the Panel notes that, unlike the Kuwait Institute for Scientific Research, 214/ KU has only claimed for the loss of research that was being undertaken at the time of Iraq's invasion and occupation of Kuwait – KU notes that "any information pertaining to earlier years is essentially of historical value, although it may be technically important". 215/

458. The Panel further notes that staff involved in a large number of the reactivated projects returned to KU after liberation and that there have been post-liberation technological advances. The Panel therefore recommends that an adjustment be made for economies of re-creation. 216/

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

460. In light of the above, the Panel recommends compensation in the amount of USD 960,000 out of the USD 14,846,513 claimed.

(b) Computer services – USD 1,580,865 217/

461. KU asserts that its computer equipment was severely damaged and seeks compensation for the cost of restoring its computer services. In the main, this claim is for the costs of restoring and reinstalling data tapes that were available after liberation, and for the costs of installing and programming KU's replacement computer equipment

462. The Panel notes that, after liberation, KU replaced its lost mainframe computers with two new enhanced mainframe computers. 218/ The Panel finds that KU's decision as to how to replace its lost mainframe computers involved strategic and other commercial considerations. Since comparable systems were available at the time when the lost systems were replaced, the Panel finds that those parts of the losses claimed that are referable to the change in KU's computer systems are not compensable.

463. Some of the remaining work was performed by KU's existing employees. The Panel has valued the loss as set out at paragraph 34 of the Second "F3" Report, and finds that the value of the work that these particular employees would have performed if they had not worked on restoring the computer services is equivalent to the amount of their salaries.

464. Part of the claim is for the cost of renting an IBM 4381 system for five months while the computer services were being restored. The Panel recommends that compensation be awarded for this cost because the decision to rent was a reasonable one in the circumstances. 219/ However, the Panel finds that an adjustment should be made for insufficient evidence.

465. The Panel does not recommend any compensation for the costs of recruitment claimed because KU has failed to show that they were incurred, as claimed, as a direct result of Iraq's invasion and occupation of Kuwait.

466. The Panel finds that further adjustments should be made for an overstatement in the cost of computer consultants claimed and insufficient evidence.

467. In light of the above, the Panel recommends compensation in the amount of USD 345,000 out of the USD 1,580,865 claimed.

2. Public service expenditures – USD 3,499,993

(a) Study effects on the Iraqi aggression – USD 3,499,993

468. KU seeks compensation for the costs of a research department set up after liberation to study the effects of Iraq's invasion and occupation of Kuwait. This claim raises issues, amongst other things, regarding the application and interpretation of paragraphs 35(c) and 35(d) of Governing

Council decision 7. 220/ For this reason, the Executive Secretary of the Commission has severed and transferred this part of KU's claim to the "F4" Panel. Accordingly, the Panel does not recommend any compensation for the loss claimed.

P. Ministry of Public Works

Government of Kuwait Claim No. 63, UNCC Claim No. 5000195

Table 16. Summary table for Ministry of Public Works

<u>Loss type/Loss element</u>	<u>Principal claim</u>	<u>Amount</u>	<u>Paragraph references</u>
	<u>amount</u>	<u>recommended</u>	
	<u>USD</u>	<u>USD</u>	
Contract	<u>2,029,489</u>	<u>1,353,000</u>	469-475
<u>Total</u>	<u>2,029,489</u>	<u>1,353,000</u>	
Interest	<u>322,480</u>		

1. Contract – USD 2,029,489

469. The Ministry of Public Works (“MPW”) is responsible for the construction and maintenance of the Government of Kuwait’s public assets such as roads, sewers and buildings.

470. MPW seeks compensation for the loss of construction materials delivered to project sites before Iraq’s invasion and occupation of Kuwait which had not yet been incorporated into the projects concerned. As set out in the Panel’s discussion of contract interruption losses at paragraph 36 of the Second “F3” Report, the Panel recommends compensation for such lost contractors’ materials on site (subject to verification and valuation). 221/

471. One of the interrupted projects was transferred to Kuwait Municipality and then to a private investor (who has now completed construction). At paragraph 455 of the Second “F3” Report, the Panel recommended that no compensation be awarded for the interruption of this contract. The Panel therefore does not recommend any compensation for the amount claimed for materials on site in relation to that project.

472. For another of the interrupted projects, the final payment certificate disclosed that the amount of lost materials on site was lower than the amount claimed. The Panel therefore recommends an adjustment for overstatement equal to the difference between the amount claimed and the amount on the payment certificate.

473. In addition, MPW disclosed in response to Procedural Order No. 55, issued in June 2001, that one of the interrupted projects included in this claim was also included in a claim of MPW considered in the Second “F3” Report. 222/ The Panel therefore recommends an adjustment equal to the amount claimed in this claim in respect of that project.

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

475. In light of the above, the Panel recommends compensation in the amount of USD 1,353,000 out of the USD 2,029,489 claimed.



V. SUMMARY OF RECOMMENDATIONS

476. The following is a summary showing, for each third instalment part one claim, the principal claim amount and the Panel's recommended award.

Table 17. Summary of the principal claim amount and the Panel's recommendation for each third instalment part one claim

<u>Claimant</u>	<u>UNCC claim number</u>	<u>Principal claim amount (USD)</u>	<u>Recommendation (USD)</u>
Central Bank of Kuwait	5000044	212,056,438	117,797,000
Ministry of Communications – Earth Stations, Telecommunications Lost Income, Postal Tangible Assets, and Postal Lost Income	5000045	398,816,422	161,192,000
Ministry of Finance – General Operations	5000113	435,903,546	86,915,000
Shuaiba Area Authority	5000141	76,732,631	9,134,000
Kuwait Fire Department	5000142	53,293,615	7,924,000
Ministry of Information – General Operations	5000160	166,231,421	92,552,000
Ministry of Education – Tangible Property Loss and Payment or Relief to Others	5000162	581,242,399	220,593,000
Directorate General of Civil Aviation	5000170	27,335,938	7,013,000
General Administration of Customs	5000171	474,870,626	126,263,000
Council of Ministers – Crown Prince Diwan	5000174	699,016	489,000
Ministry of Electricity & Water – Power Plants Maintenance Department, Sabiya Power Plant, National Control Center Exchange Rate Losses, Vehicles and Heavy Equipment, and Fuel Oil	5000176	570,225,833	16,235,000
Ministry of Information – General Operations and Department of Antiquity and Museums	5000182	108,653,849	52,085,000
Public Authority for Housing	5000186	125,637,651	39,727,000
Kuwait University – Intangible Property Losses and Public Service Expenditures	5000194	19,927,371	1,305,000
Ministry of Public Works – Contract Settlement	5000195	2,029,489	1,353,000
<u>Total</u>		3,253,656,245	940,577,000

477. The Panel respectfully submits this report, pursuant to article 38(e) of the Rules, through the Executive Secretary to the Governing Council.

Geneva, 12 October 2001

(Signed) L. Yves Fortier, Q.C.  
Chairman

(Signed) Andrew Jacovides  
Commissioner

(Signed) Reiner Soll  
Commissioner

Notes

1/ The Government of Kuwait filed 62 “F3” claims. One of the Panel’s recommendations regarding the first instalment of the “F3” claims (the “first instalment claims”), which can be found in the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘F3’ claims” (S/AC.26/1999/24) (the “First ‘F3’ Report”), was that the Executive Secretary of the Commission should divide one “F3” claim into two separate claims. The claim was so split such that there are now 63 “F3” claims.

2/ The Panel’s report and recommendations in relation to the first instalment of “F3” claims can be found in the First “F3” Report as per note 1 above. The Panel’s report and recommendations in relation to the second instalment of “F3” claims (the “second instalment claims”) can be found in the “Report and recommendations made by the Panel of Commissioners concerning the second instalment of ‘F3’ claims” (S/AC.26/2001/7) (the “Second ‘F3’ Report”).

3/ A text of which is annexed to Governing Council decision 10 (S/AC.26/1992/10).

4/ The Panel notes that paragraphs 12 and 21 of Governing Council decision 114 (S/AC.26/Dec.114 (2000)) provide that certain claims as described therein should be the subject of a oral proceedings and of a separate report containing the Panel’s recommendations into each such claim. The Panel has therefore split the third instalment claims into parts so as to comply with the provisions of Governing Council decision 114. The Panel has grouped the claims into such parts according to the issues that they raise.

5/ S/AC.26/2000/R.13.

6/ In such cases, payments made to the employees comprise payments of salaries, duly earned, and not relief payments, even where the payments were made retroactively.

7/ At paragraph 37 of the First “F3” Report.

8/ Note 14 to paragraph 40 of the First “F3” Report.

9/ That is, in those cases in which such work comprised the performance of the tasks for which the relevant employees were ordinarily employed.

In certain other cases, in which the work did not comprise such tasks, the Panel has recommended that claims for payments made in relation to such extraordinary work be compensated.

10/ In each case, the Panel has made any further adjustments on the basis of the valuation principles set out in paragraphs 42 to 47 of the First “F3” Report.

11/ All references in paragraphs 21 and 22 herein to decrees or laws apply equally to decisions not to collect amounts ordinarily collected by a claimant.

12/ The Panel has sought and received advice from both the expert consultants retained for the “F3” claims and from an expert consultant in economics on the matters raised in this section, and has received comprehensive reports into such matters from all such consultants.

13/ The Panel further notes that an award of interest upon those awards will be considered by the Governing Council at the appropriate time.

14/ The Panel considers that the period from 2 August 1990 to 30 June 1992 is the period over which the effects of Iraq's invasion and occupation of Kuwait were the dominant factors affecting the economy of Kuwait.

15/ The Panel notes that the Government of Kuwait liquidated a significant portion of the portfolio known as the Future Generations Fund, and that the claim for losses that arose following such liquidations will be considered by the Panel in the third part of the third instalment of "F3" claims. The claim concerned is that filed by the Kuwait Investment Authority ("KIA"), UNCC Claim No. 5000158.

16/ The losses that arose following such borrowings are also claimed in the KIA claim.

17/ The Panel further notes that there was no budget surplus over the period.

18/ Though the Panel has identified that there are unexpected increases in Government expenditure relating to certain sectors of the economy during the period under consideration, even after losses have been taken into account, the Government of Kuwait was unable to explain many of these increases.

19/ In other words, the Panel has not restricted its considerations to losses or gains that arose as a "direct" result of Iraq's invasion and occupation of Kuwait, but has considered all losses or gains that the Panel is satisfied arose as a result thereof.

20/ The Panel notes that the gross saved expenses were further adjusted for the accounting value of any lost productivity over the period and, from the economic standpoint, for future gains and losses, including the impact of the delay in the payment of compensation.

21/ Quoted in paragraph 21 of the First "F3" Report.

22/ Governing Council decision 9 provides at paragraph 13 that "[i]n a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from the invasion and occupation". The Panel finds this statement equally applicable to the Government of Kuwait's property left unguarded.

23/ Pursuant to an Amiri Decree of 7 October 1990.

24/ CBK cancelled currency that it understood was in the vault as at 2 August 1990 but that had not been previously issued. CBK identified the currency to be cancelled by considering vendor invoices for currency shipments made immediately prior to Iraq's invasion and occupation of Kuwait and the serial numbers of bank notes presented to commercial banks in London during the occupation period.

25/ The Panel finds that CBK has correctly accounted for currency returned pursuant to UNROP. The currency returned by Iraq included some first and second issue currency that was not legal tender

at the time of Iraq's invasion and occupation of Kuwait but could be exchanged at CBK until 1 February 1992. The Panel finds that for present purposes the first and second issues of currency can be treated similarly to third issue currency. Iraq also returned to Kuwait, pursuant to UNROP, all of the gold and precious metals it had taken from CBK's vault.

26/ CBK's calculation of the currency balance at CBK on 1 August 1990 is net of mutilated and damaged bank notes that it asserts were not appropriated by Iraq.

27/ Including from the printers of its bank notes.

28/ The Panel notes that CBK's calculation of its claim proceeds on the basis that all currency cancelled during the occupation period was in CBK's vaults as at 2 August 1990. The Panel notes that the "E4" Panel has decided claims in which the claimants asserted that they had received such currency prior to Iraq's invasion and occupation of Kuwait. (See the "Report and recommendations made by the Panel of Commissioners concerning the third instalment of 'E4' claims" (S/AC.26/2000/6), at paragraphs 27 to 31 where the "E4" Panel considers claims submitted mostly by Kuwaiti banks, and the "Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of 'E4' claims" (S/AC.26/2000/7), at paragraph 102 where the "E4" Panel considers a claim submitted by a corporation.) The Panel notes that, in principle, a windfall gain accrues to CBK from the cancellation of currency that was in fact issued in the ordinary course prior to Iraq's invasion and occupation of Kuwait. However, any such windfall gain will correspond with an understatement in CBK's calculation of the "outstanding uncanceled currency stolen by Iraq". Accordingly, the Panel makes no adjustment in this respect.

29/ The Panel notes that the evidence provided by CBK to support its claim included daily currency registers as at 1 August 1990 and other dates.

30/ The Panel makes this finding notwithstanding the possibility that municipal laws may not have imposed a legal obligation on CBK to honour or exchange currency taken from its vaults.

31/ [1932] AC 452 at 477 to 478 (per Viscount Sankey LC), 487 and 490 (per Lord Atkin) and 511 (per Lord MacMillan). The central bank of Portugal, on discovering that a large number of unauthorized Vasco da Gama series 500 escudo notes had been put into circulation, withdrew the whole of this issue of notes, and undertook, within a limited time, to exchange all notes of this type presented to the bank for other notes. In an action by the bank against the printers of the notes for breach of contract, a majority of the House of Lords held that the proper measure of damages was the face value of the genuine currency given in exchange for the spurious notes together with the cost of printing the genuine notes withdrawn.

32/ Article 15 of Law No. 32 of 1968 provides that CBK's objects "shall be", among others, "...2- to endeavour to secure the stability of the Kuwaiti currency and its free convertibility into foreign currencies; (and) 3- to endeavour to direct credit policy in such a manner as to assist the social and economic progress and the growth of national income..." Article 12 prescribes the specific types of assets that CBK must have to cover currency in circulation.

33/ See, for example, the First "F3" Report at paragraph 406.

34/ Stated at paragraphs 42 and 55 of the First “F3” Report.

35/ The amount claimed is non-material.

36/ Part of the amount claimed is non-material.

37/ The Panel finds that it was reasonable for CBK to incur costs in minting coins. The Panel notes that the newly minted coins would replace lost coins, the return of which was uncertain at the time the costs were incurred.

38/ Delivery had been delayed, pending the completion of facilities by CBK.

39/ Subject to the adjustment at paragraph 70 of this report.

40/ See further paragraphs 51 to 58, and 433 to 434 of the First “F3” Report.

41/ In its response to Procedural Order No. 3, issued in September 2000, CBK stated that “During the occupation, the Bank was unable to operate in a normal manner and operations were extremely limited in foreign locations. After the liberation and up to June 1991, the Central Bank was supporting the recovery and did not seek the collection of interest from member banks” and “[T]he primary objectives of the Bank following the occupation were to assist the growth of the economy and to bring stability to the banking system of Kuwait. For this reason, no additional efforts were made to collect interest due with respect to money on deposit during 1991”.

42/ Given this finding, the Panel has not found it necessary to consider special factors that might apply in the valuation of central bank revenue losses.

43/ All constituent parts are non-material items.

44/ All constituent parts are non-material items.

45/ The safes and cabinets were returned pursuant to UNROP. The Panel’s recommendation has taken such return into account in the manner set out at paragraph 44 of the Second “F3” Report.

46/ Part of the claim is for the cost of transporting the safes and cabinets from Saudi Arabia to Kuwait City after their return pursuant to UNROP. Following its decision at paragraphs 325 to 327 of the Second “F3” Report, the Panel finds that compensation should be awarded for the reasonable cost of such transportation.

47/ Part of the amount claimed is non-material.

48/ The Panel has, however, made an adjustment for the residual value of the four satellite dishes.

49/ Described in the statement of claim as claims in respect of “temporary earth stations” and “permanent earth stations”.

50/ The pre-invasion terrestrial interface consisted of coaxial cable and microwave links and frequency division multiplex. This equipment carried telecommunications traffic between the earth stations at Umm Al-Aish and the International Switching Center located in Kuwait City.

51/ The Panel finds that there is no duplication of the claim of MoC considered at paragraphs 574 to 616 of the Second “F3” Report.

52/ The Farah report at paragraphs 355 and 360 noted:

“355. The damage at the satellite Earth station and the transmitting and receiving station, both located in the north, is total. Equipment at the Arabsat and Immarsat satellite stations was taken, and the station structures were subsequently destroyed by explosions. Although some buildings still remain at the satellite Earth station, the damage is so extensive that the station can be considered totally lost. ... A mobile satellite Earth station has also been stolen.

...

360. ... The international telecommunication services however have suffered almost total damage with the destruction of the Earth satellite facilities and the plundering of the Town Tower installations.”

53/ The Panel is satisfied that certain replacement earth station equipment that was purchased pursuant to KERP has been correctly accounted for by MoC.

54/ MoC made an adjustment for enhancements in its original claim.

55/ The Panel has applied the test set out at paragraph 31 of the Second “F3” Report. The Panel notes, in addition, that the earth stations that were expanded became part of the permanent replacement of the functionality of MoC’s pre-invasion international telecommunications system.

56/ Digital multiplex and microwave and fibre optic terrestrial interface.

57/ The date of a technical mission undertaken on behalf of the Panel.

58/ MoC has deducted the amount claimed for transit fees for the year ended 30 June 1991 (USD 4,165,925) from its claim for telecommunications lost income (see paragraph 108 of this report).

59/ The Panel notes that MoC claimed for losses from the business units concerned with international telephone calls and mobile telephone only for the fiscal year ended 30 June 1991.

60/ MoC has deducted the amount claimed for transit fees (considered at paragraphs 103 to 106 of this report) for the year ended 30 June 1991 (USD 4,165,925) from its claim. The Panel finds that this deduction is appropriate.

61/ See further paragraph 87 of this report, and paragraphs 574 to 603 of the Second “F3” Report.

62/ See note 59.

63/ MoC provided relevant information in response to Procedural Order No. 36, issued in February 2001.

64/ Other revenue streams include telegraph, teleprinter and telex, circuits and data transmission, and wireless communication.

65/ The Panel refers to the decision of the “D1” Panel in the “Report and recommendations made by the ‘D1’ Panel of Commissioners concerning the seventh instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2000/25) (the “‘D1’ seventh instalment report”), at paragraph 22. The Panel notes that it is implicit in this and other decisions of

the “D” Panels about claims for lost rental income that it was not demonstrated to the satisfaction of those Panels that the continuing reduction in Kuwait’s post-liberation population after 1 August 1991 was the direct result of Iraq’s invasion and occupation of Kuwait.

66/ The Panel has followed its approach as stated at paragraph 58 of the First “F3” Report.

67/ See paragraph 114 of this report.

68/ See note 59.

69/ Part of the amount claimed is non-material.

70/ The Farah report at paragraph 359 noted:

“The postal service has suffered an almost total loss of equipment and supplies. The full-service garage, serving about 60 postal vehicles and 5 large transport trucks, has been rendered completely destitute. The \$3 million automatic sorting system has been removed, as have the revenue and postal stamps along with their safe containers. There is no postal service in Kuwait at the present time.”

71/ The Panel finds that the historical cost used in MoC’s claim included a maintenance repayment. However, the Panel finds that as a result of this overstatement, MoC has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation.

72/ Part of the amount claimed is non-material.

73/ This is the same rationale as that applied by the Panel to claims by tenants for repairs performed by them which were properly the responsibility of the landlord (see paragraph 68 of the First “F3” Report).

In addition, the Panel is satisfied that there is no duplication between this claim and the claims of TEC and the minority shareholders.

74/ Described as the “Mangraf Beach Club” and “KFC and Hardees” in MoF’s claim.

75/ The Kuwait Towers are three towers constructed of concrete and steel housing two restaurants, an entertainment hall, a mini-theater, a snack shop and a revolving viewing platform.

76/ Part of the amount claimed is non-material.

77/ The Panel is satisfied that there is no duplication between this claim and the claims of PUMC and its shareholders.

78/ The Panel notes that some military training exercises were conducted on Failaka Island in the period after liberation and has considered whether MoF has sought compensation for any damage caused by such training exercises. The Panel finds that the damage assessment reports upon which the claim for the Failaka Island properties is based were produced before the training exercises took place. The Panel is therefore satisfied that MoF has not sought compensation for the damage that may have been caused by such training exercises.



79/ See further paragraphs 51 to 58, and 433 to 434 of the First “F3” Report.

80/ Ibid.

81/ The Panel has reclassified this claim as one for income producing property.

82/ MoF asserts that, for these months, rent relief was not necessary.

83/ Subject to a consideration of whether the failure of the employees to return after liberation was a direct result of Iraq’s invasion and occupation of Kuwait.

84/ The amount claimed is non-material.

85/ This is the same rationale as that applied by the Panel to claims by tenants for repairs performed by them which were properly the responsibility of the landlord (see paragraph 68 of the First “F3” Report). The Panel is satisfied that there has been no duplication of this claim.

86/ That is, it has failed to prove the assertion at paragraph 172 of this report.

87/ That is, it has failed to prove the assertion at paragraph 173 of this report and has failed to provide sufficient documentation to allow the Panel to determine the extent of the losses and gains set out at paragraphs 174 and 175 of this report.

88/ The amount claimed is non-material.

89/ The Panel has also taken into account the degree of physical damage to the properties concerned.

90/ Paragraph 22.

91/ Part of the amount claimed is non-material. This relates to relief paid by MoF to certain employees of PUMC assigned to MoF properties (see paragraph 134 of this report).

92/ The Panel has corrected an arithmetical error that it found in reviewing this claim.

93/ See paragraph 41 of the First “F3” Report.

94/ The Panel, in assessing the amount of compensation to be recommended in respect of the relief paid to PUMC employees who were assigned to MoF projects, has investigated PUMC’s claim before the “E4” Panel for salaries paid to Kuwaiti and GCC employees referable to the occupation and emergency periods. The Panel has considered such claim so as to satisfy itself that there is no risk of duplication between its, and other Panels’, awards. The Panel finds that the evidence is not sufficient so as to provide the degree of confirmation that the Panel requires to be so satisfied. Accordingly, the Panel has made an adjustment to reflect the insufficiency of the evidence concerned.

95/ The amount claimed is non-material.

96/ See further paragraph 351 of the First “F3” Report in relation to hiring and training costs.

97/ Being Jordanian, Palestinian, Sudanese and Yemeni employees.

98/ The amount claimed is non-material.

99/ The Panel has valued that part of the loss referable to salaries paid to existing employees of MoF in the manner set out at paragraphs 358 to 359 of the First “F3” Report and paragraph 34 of the Second “F3” Report. The Panel finds that the value of the work that these particular employees would have performed if they had not been participating in the training programmes is equivalent to the amount of their salaries.

100/ See further paragraph 351 of the First “F3” Report in relation to hiring and training costs.

101/ Being Jordanian, Palestinian, Sudanese and Yemeni employees.

102/ For the purposes of considering the application of paragraph 57 of the First “F3” Report, the Panel has treated corporations that are wholly-owned, or substantially wholly-owned, by the Government of Kuwait as Government entities. In response to Procedural Order Nos. 10 and 31, issued in October 2000 and February 2001, respectively, SAA stated that it derived all of its income from the pumping of sea cooling water, and a portion of its income from industrial plot rental, from corporations that were ultimately wholly-owned, or substantially wholly-owned, by the Government of Kuwait.

103/ Part of the amount claimed is non-material.

104/ All constituent parts are non-material items.

105/ The amount claimed is non-material.

106/ All constituent parts are non-material items.

107/ The Panel applies the approach set out in paragraph 57 of the First “F3” Report.

108/ Including pre-paid telephone, subscriptions and insurance expenses.

109/ The Panel notes that the cost of repairs to a damaged parking lot within the SIA were included in the claim of Kuwait Municipality (considered at paragraphs 413 to 448 of the Second “F3” Report) and is satisfied that SAA has not claimed for such costs.

110/ SAA provided further information about its claim for “Payment or relief to others” in response to Procedural Order No. 10, issued in October 2000.

111/ The amount claimed is non-material.

112/ The amount claimed is non-material.

113/ Part of the amount claimed is non-material.

114/ Part of the amount claimed is non-material.

115/ KFD’s functions include jurisdiction over the design of new buildings and changes in the occupancy rating of existing buildings, approval of construction materials and responsibility for the implementation of codes and regulations.

116/ The Farah report at paragraph 420 noted that:

"All [of KFD's] district fire stations have been reported vandalized and most of the district communication equipment has been taken or destroyed. The central control equipment, however, is intact."

117/ The Panel notes that certain repairs to KFD's real property were effected by and claimed for by the Kuwait Emergency Reconstruction Office ("KERO") and is satisfied that there is no claim for such repairs by KFD.

118/ On the technical mission, a fire station that KFD asserted had been destroyed was inspected on behalf of the Panel. That inspection indicated that the building foundations and surrounding areas of hardstanding were substantially undamaged. The Panel has made an adjustment for overstatement in respect of KFD's claim for the replacement of "destroyed" fire stations. Further, in calculating this part of its claim, KFD used the exchange rate as at February 1991. Considering the approach stated at paragraphs 95 to 97 of the First "F3" Report, the Panel finds that it is appropriate to apply the exchange rate as at the date the repairs were performed or ought reasonably to have been performed.

119/ Part of the amount claimed is non-material.

120/ The Farah report at paragraphs 418 and 420 noted:

"418. ... It [KFD] had a total of 350 fire-fighting vehicles, including over 60 state-of-the-art fire-fighting trucks. ...

420. Over 90 per cent of the fire-fighting vehicles and equipment has been taken or destroyed, including all spares and stores."

121/ KFD valued its claim for some items by reference to a depreciated average price for post-liberation replacements. Considering the available evidence, the Panel finds that it is more appropriate to value the loss of these items by reference to the historical cost of the items, adjusted for depreciation and inflation. This results in an overstatement for which the Panel has made an adjustment. However, the Panel finds that as a result of the overstatement, KFD has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation.

122/ The Panel finds that as a result of the overstatement, KFD has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation.

123/ The Panel finds that as a result of the overstatement, KFD has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation.

124/ See further the discussion of the KERP claim commencing at paragraph 52 of the Second "F3" Report.

125/ The breakdown of the sum of USD 8,053,000 is provided in Table 6.

126/ The contract was being performed in Germany.

127/ The Panel has considered paragraph 6 of Governing Council decision 9, “Propositions and conclusions on compensation for business losses: types of damages and their valuation”:

“The trade embargo and related measures, and the economic situation caused thereby, will not be accepted as the basis for compensation. ...”.

The Panel has also considered paragraph 5 of Governing Council decision 15 (S/AC.26/1992/15), “Compensation for business losses resulting from Iraq’s unlawful invasion and occupation of Kuwait where the trade embargo and related measures were also a cause”:

“In all cases, Commissioners will require evidence that claims fall within the criteria of direct loss as set out in paragraph 16 of resolution 687 in order for them to be eligible for compensation by the Compensation Fund. It will not be enough for claimants to argue that losses were due to the chaotic economic situation following Iraq’s unlawful invasion and occupation of Kuwait. There will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury.”

The Panel notes the decision of the “E2” Panel, made in the context of claims in respect of interrupted contracts, and set out in “Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of ‘E2’ claims” (S/AC.26/2000/2) at paragraph 165:

“As is the case with the claims based on non-payment, the claimants seek a variety of special costs that are collateral to the contract. Among these are governmental export incentives that were lost when goods could not be delivered (or were not paid for). ... Consistent with its findings set out in paragraph 159 above, the Panel concludes that such losses are indirect and non-compensable, in the absence of exceptional circumstances.”

128/ The Panel notes that KFD made no claim for overtime payments during the emergency period.

129/ The Panel notes that in the “Report and recommendations made by the Panel of Commissioners appointed to review the Well Blowout Control claim”, (S/AC.26/1996/5/Annex) that Panel considered a claim by Kuwait Oil Company KSC (“KOC”) for compensation for payments made to its own fire-fighting team. At paragraph 162, that Panel stated:

“Considering that the firefighting personnel in question appear to have been regular staff members of KOC, the Panel is of the opinion that the Claimant would have had to make such salary payments even if there had been no invasion. Consequently, in the absence of any further details by the Claimant regarding the precise nature of the payments in question, the Panel is not prepared to regard these costs as loss, damage or injury sustained by the Claimant as a direct result of Iraq’s invasion and occupation of Kuwait.”

130/ The Panel obtained this information pursuant to Procedural Order No. 5, issued in September 2000, and subsequent enquiries made by the expert consultants.

131/ The Panel notes that approximately 700 employees performed services in Kuwait during the occupation period, for which, Iraq asserted in response to Procedural Order No. 1 (issued in July

2000), they received payments. The Panel notes that the percentage reduction takes into account payment for the work done during the relevant period (see paragraph 17 of this report).

132/ The Panel notes that some of MoInf's UNCC Claim No. 5000182, considered at paragraphs 397 to 406 of this report, relates to facilities subject of this claim, and is satisfied that there is no duplication.

133/ MoInf did not claim in respect of two further transmission stations and four transmitters that its claims were damaged.

134/ As at the date MoInf submitted its original claim, some repairs had been completed but others were outstanding.

135/ Part of the amount claimed is non-material.

136/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

137/ The Panel notes its decision in respect of the claim of the Ministry of Electricity and Water at paragraph 386 of this report.

138/ The contract to provide this equipment was not awarded using competitive procurement procedures but was entered into in the occupation period. Applying the tests set out at paragraph 138 of the First "F3" Report and paragraph 31 of the Second "F3" Report, the Panel finds that, in light of Kuwait's need rapidly to restore its communications systems, the works were of such urgency that the Government of Kuwait could not reasonably be required to resort to competitive procurement procedures. Accordingly, the Panel does not recommend an adjustment in this respect.

139/ In the case of primary schools, MoE estimated the replacement cost by reference to its annual budget. In the case of intermediate and secondary schools, MoE calculated the replacement cost by reference to the actual cost paid for equipment through a procurement contract (see further paragraph 294 of this report).

140/ A consortium between The British Council and John Laing International Ltd (UK).

141/ See the principles set out at paragraph 60 of the Second "F3" Report.

142/ BECK also provided teacher and technician training and maintenance services.

143/ The Panel has considered the following United Nations Educational, Scientific and Cultural Organization ("UNESCO") "Report by Professor Iba Der Thiam, Special Representative of the Director-General, on the mission he conducted in Kuwait pursuant to 135 Ex/Decision 8.4", May 1991 (the "Thiam UNESCO Report"). To the extent of inconsistencies between the numbers of schools and pupils by reference to which MoE has calculated its claim, the Panel has preferred figures stated in the Thiam UNESCO Report. Where use of such figures results in an overstatement, as here, the Panel has made an adjustment. The Panel finds that as a result of this overstatement, MoE has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation.

144/ Relying on the report prepared for UNESCO, by Mohammed M. Aman, “Rebuilding the Public and School Library System in Kuwait” (RP/1990-1991/II.C(i)), 30 July 1992, the Panel finds that MoE lost 1,329,000 school books as a result of the invasion and occupation, not 1,854,820 as claimed.

145/ This part of the claim is non-material.

146/ The Panel notes the principle stated at paragraph 31 of the Second “F3” Report in respect of claims for procurement of items in circumstances of urgency.

147/ See note 143.

148/ MoE asserted that all of the items taken from its stores were purchased new and remained unused in inventory.

149/ Part of the amount claimed is non-material.

150/ See further the discussion of the KERP claim commencing at paragraph 52 of the Second “F3” Report.

151/ MoE advised that it had incorrectly claimed on the basis of a 100 per cent loss of furniture and office equipment from its administrative offices. MoE advised that its claim should be calculated on the basis of a 75 per cent loss.

152/ See paragraphs 81 and 351 of the First “F3” Report.

153/ MoE claimed that male teachers received a single payment of KWD 30 and female teachers received a single payment of KWD 15 plus additional benefits.

154/ See paragraph 324 of this report.

155/ The Panel notes that the claim for pre-paid rent in respect of MoE’s administrative offices is properly classified under “Other losses”. The Panel notes MoE’s administrative difficulties in presenting this element of its claim under two categories and finds that it is convenient to consider the claim in its entirety under “Payment or relief to others”.

156/ See note 102.

157/ DGCA commenced collection of passenger exit fees on 1 April 1989.

158/ See paragraphs 51 to 58 of the First “F3” Report.

159/ The Panel considers that, because DGCA’s revenue arises from the facilities and services provided by the organization as a whole, DGCA’s total costs of “salaries” and “services” are an appropriate basis for assessing unincurred expenditure (the general principles that the Panel applies in assessing unincurred expenditure are set out at paragraph 56 of the First “F3” Report).

160/ The Panel finds that there is no duplication of the claim of DGCA considered at paragraphs 745 to 748 of the Second “F3” Report.

161/ The Panel notes that certain repairs were carried out by KERO (referred to in the First “F3” Report at paragraphs 151 to 153) and is satisfied that DGCA has not claimed for such repairs.

162/ The Panel finds that there is no duplication of the claim of DGCA considered at paragraphs 749 to 751 of the Second “F3” Report.

163/ The amount claimed is non-material.

164/ See further the discussion of the KERP claim commencing at paragraph 52 of the Second “F3” Report

165/ The amount claimed is non-material.

166/ Paragraph 9(I)(i) of Governing Council decision 15 provides in part: “The trade embargo against Kuwait was applied from 6 August 1990 to 3 April 1991 during Iraq’s occupation of Kuwait”.

167/ The Panel notes paragraph 6 of Governing Council decision 9 and paragraph 9(III) of Governing Council decision 15. The Panel finds that the trade embargo imposed on Kuwait was a parallel cause of GAC’s loss of revenue from Taxes and Duties and Port Service charges for the duration of the embargo and does not recommend any deduction therefor.

168/ The Panel also finds that GAC has failed to demonstrate that revenue foregone as a result of the decree is recoverable as payment or relief to others within the meaning of paragraph 36 of Governing Council decision 7.

169/ See paragraphs 51 to 58 of the First “F3” Report.

170/ The Panel notes that the Ministry of Public Works submitted a claim (UNCC Claim No. 5000159, considered at paragraphs 449 to 493 of the Second “F3” Report) in respect of damage to new headquarters being constructed for GAC in Kuwait City and is satisfied that there is no duplication.

171/ The Panel has applied the principles set out at paragraphs 65 and 66 of the First “F3” Report and paragraphs 20 to 22 of the Second “F3” Report.

172/ Part of the amount claimed is non-material.

173/ In its supplementary submission of claim GAC asserts that it has not replaced the patrol craft subject of this claim but has purchased a small temporary craft until it does so. The Panel finds that it is limited to consideration of the amount originally claimed.

174/ See paragraph 42 of this report.

175/ Part of the amount claimed is non-material.

176/ KERO and MEW also undertook repairs to power plants (see paragraphs 148 to 150 of the First “F3” Report and paragraphs 275 to 278 of the Second “F3” Report, respectively). The Panel is satisfied that there is no duplication between this claim and those of KERO and MEW (UNCC Claim No. 5000111).

177/ At paragraphs 393 to 395 of the “Report and recommendations made by the Panel of Commissioners concerning the third instalment of ‘E1’ claims” (S/AC.26/1999/13), the “E1” Panel considered a claim by Halliburton Limited for a loss incurred when funds were held up in transit from Citibank to Kuwait as a result of Iraq’s invasion and occupation of Kuwait. Halliburton Limited

claimed that it suffered a currency exchange rate loss as compared to pre-invasion exchange rates. The “E1” Panel, at paragraph 395 of the report, found that “the amount claimed by Halliburton Limited for currency losses is not compensable as the loss is too remote and speculative to be considered a direct result of the unlawful invasion and occupation of Kuwait”. The Panel notes in this regard that payments continue to be made to the contractor for the steam and turbine generators and therefore that part of the exchange rate losses relate to movements in exchange rates over eleven years after Iraq’s invasion and occupation of Kuwait.

178/ See paragraph 64 of the First “F3” Report.

179/ In addition, MEW asserted in its claim that the completion contract compensated the contractor, “in an unspecified amount, for maintaining and storing the units” in Japan (where they were being constructed) from the time of Iraq’s invasion and occupation of Kuwait until execution of the completion contract. Since the amount referable to such maintenance and storage has not been ascertained by either MEW or the Panel, the Panel has not considered whether such maintenance and storage costs are compensable.

180/ Part of the amount claimed is non-material.

181/ Part of the amount claimed is non-material.

182/ See further the discussion of the KERP claim commencing at paragraph 52 of the Second “F3” Report.

183/ Applying the principle set out at paragraph 69 of the First “F3” Report of ensuring that there is only one award for the lost fuel oil.

184/ Considered in the “Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of ‘E1’ claims” (S/AC.26/2000/16).

185/ As well as for other fuel oil that would have been sold to MEW during the occupation period but was not sold as a direct result of Iraq’s invasion and occupation of Kuwait.

186/ The Panel notes that some of this claim relates to facilities the subject of MoInf’s UNCC Claim No. 5000160, considered at paragraphs 248 to 258 of this report, and is satisfied that there is no duplication.

187/ The Panel notes that MoInf has not claimed for the destruction of the Al-Maqsab Gate and that it states that the intangible value of the Gates is priceless.

188/ The Panel notes that the replica is of lesser value than the original Boom Al-Muhallab but there is no claim for diminution of value.

189/ The Panel notes that the Government of Kuwait has not claimed for the damage to its significant archaeological sites, including those on Failaka Island, Akkaz Island and Umm Al-Namil Island. MoInf states that as historical and cultural relics of Kuwait, the sites are priceless and incapable of being valued.

190/ Part of the amount claimed is non-material.



191/ The Panel has made this adjustment by reference to evidence of the actual cost of replacing a “substantial” amount of the equipment. The Panel finds that as a result of this overstatement, MoInf has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation.

192/ All constituent parts are non-material items.

193/ The Panel notes that at the time of Iraq’s invasion and occupation of Kuwait, the Kuwait National Museum was exhibiting the Dar al-Athar al-Islamiyya collection. The Panel considered MoInf’s claim in respect of that collection at paragraphs 312 to 333 of the Second “F3” Report. The Panel is satisfied that there is no duplication of that claim.

194/ The Panel is satisfied that there is no duplication with MoInf’s “Real property” claim in respect of the planetarium, considered at paragraph 400 of this report.

195/ The Panel’s recommendation has taken these items into account in the manner set out at paragraph 44 of the Second “F3” Report.

196/ The Panel notes that in its statement of claim MoInf stated that even if it received financial compensation for its claim in respect of the Collection, Kuwait is not relinquishing its rights to reclaim missing items. The Panel notes that MoInf has not withdrawn its claim for compensation, and, following its approach set out at paragraph 177 of the First “F3” Report, finds that it is unable to make an order in respect of MoInf’s statement.

197/ Considering the different factors affecting the revenue streams subject of this claim (see further note 199), the Panel finds that it is appropriate to consider MoInf’s claim for loss of revenue from Advertising separately from that for Printing for the public and has recalculated the claim accordingly.

198/ The Panel sought and received further information relevant to calculating saved expenses by way of Procedural Order No. 12, issued in October 2000 and Procedural Order No. 26, issued in January 2001.

199/ In the light of the evidentiary requirements set out in paragraph 5 of Governing Council decision 15, the Panel has considered a range of factors including: the chaotic economic situation following Iraq’s invasion and occupation of Kuwait; changes in the population composition of Kuwait after liberation; the decline in revenue from Advertising in the years ended 30 June 1994 and 30 June 1995, after a partial recovery after liberation; and a proliferation of satellite television in the years after liberation.

200/ The Public Authority for Housing (“PAH”) originally claimed USD 39,180,640 for “Support payments to residents of damaged homes”. In its supplementary submission of claim dated 11 May 1998, PAH stated that a total amount of USD 54,157,125 had been incurred in respect of this part of the claim, which is greater than the amount originally claimed. The Panel has considered this amended amount in assessing PAH’s claim.

201/ Part of the amount claimed is non-material.

202/ The work under the contracts included construction of houses, mosques, schools, police stations, shopping centres, medical clinics and community centres and the supply and installation of water tanks and electrical equipment.

203/ The Panel, in assessing the amount of compensation to be recommended in respect of site restoration costs, has investigated the amounts claimed by PAH for lost “materials on site”. “Materials on site” comprise those materials that a contractor had delivered to the relevant project site prior to Iraq’s invasion and occupation of Kuwait, that were not incorporated into the project works and that were lost during the occupation period (see paragraph 36 of the Second “F3” Report). The Panel has considered relevant contractors’ claims so as to satisfy itself that there is no risk of duplication between its, and other Panels’, awards. The Panel has found no clear instances of such duplication but has found in certain cases that the evidence is not sufficient so as to provide the degree of confirmation that the Panel requires to be so satisfied. Accordingly, the Panel’s recommendations have taken into account the insufficiency of the evidence concerned.

204/ The amount claimed is non-material.

205/ PAH asserts that it could not resume its primary function of overseeing the construction of new housing units until November 1991.

206/ In its response to Procedural Order No. 24 issued in January 2001, PAH stated that some support payments were made to low-income families but the criteria for making the payment was simply whether housing assistance was required.

207/ The Panel is satisfied that there is no duplication between this claim and individual category “C” or “D” claims for the cost of temporary housing. The Panel is also satisfied that there is no duplication between this claim and the Ministry of Finance’s claim in respect of the costs of a “buyout of Failaka Island property holders”, considered at paragraphs 179 to 182 of this report.

208/ The Panel finds that PAH’s obligation to pre-pay rent arose under the leases prior to Iraq’s invasion and occupation of Kuwait, although payments pursuant to these obligations were not made until some time after liberation. Noting its approach set out at paragraphs 286 and 287 of the First “F3” Report, the Panel finds that for present purposes the rent should be treated as being paid prior to Iraq’s invasion and occupation of Kuwait (that is, as pre-paid rent).

209/ The Panel does not consider that PAH’s conduct was in breach of its duty to mitigate its losses.

210/ The Panel notes its approach set out in paragraph 57 of the First “F3” Report.

211/ One of these projects has been reactivated (see paragraph 457 of this report).

212/ With the exception of one of the frozen projects discussed at paragraph 457 of this report.

213/ With the exception of one of the frozen projects discussed at paragraph 457 of this report.

214/ See paragraphs 141 to 147 of the Second “F3” Report for the Panel’s consideration of the claim of the Kuwait Institute for Scientific Research for lost information.

215/ Exhibit 1B to the statement of claim.

216/ A number of KU's faculty members before Iraq's invasion and occupation of Kuwait were of Jordanian, Palestinian and Sudanese origin. Having considered all the evidence and information available, the Panel has concluded that there is insufficient evidence to demonstrate that the failure of these faculty members to return to Kuwait after liberation was a direct result of Iraq's invasion and occupation of Kuwait. The Panel's adjustment is therefore based on what would have occurred if these faculty members had returned after liberation.

217/ Part of the amount claimed is non-material.

218/ The appropriate deductions for the post-liberation enhancements to KU's computer systems were made at paragraph 384 of the Second "F3" Report.

219/ This follows the Panel's approach to the claim of the MEW for the cost of leasing a temporary computer (see paragraphs 299 to 304 of the Second "F3" Report) and is an application of the Panel's finding at paragraphs 74 and 75 of the First "F3" Report that compensation should be provided for the cost of renting temporary premises while damaged premises were repaired.

220/ Paragraphs 35(c) and 35(d) of Governing Council decision 7 provide that:

"These payments are available with respect to direct environmental damage and the depletion of natural resources as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include losses or expenses resulting from: ...

(c) Reasonable monitoring and assessment of the environmental damage for the purposes of evaluating and abating the harm and restoring the environment;

(d) Reasonable monitoring of public health and performing medical screenings for the purposes of investigation and combating increased health risks as a result of the environmental damage."

221/ The Panel has instructed the secretariat to provide details of its recommendations to those Panels of Commissioners that are reviewing the contractors' claims.

It should also be noted that this claim is for amounts in respect of contractors' materials on site that were not included in the contract interruption loss claims of MPW that were considered in the Second "F3" Report (with the exception of the amount discussed at paragraph 473 of this report).

222/ See paragraphs 191 to 193 of the Second "F3" Report.

## Annex I

[Re-statement of sections II, III, IV and V of the First “F3” Report (see paragraph 7 above)]

### II. PROCEDURAL HISTORY

#### A. The nature and purpose of the proceedings

6. In undertaking its review of the first instalment claims, the Panel has borne in mind:
- (a) the status and functions of the Commission;
  - (b) its claims review processes, which are documentary rather than oral, and inquisitorial rather than adversarial; and
  - (c) the Panel’s function to provide an element of due process in the review of claims filed with the Commission.

7. The Panel has, like other panels, carried out a thorough and detailed factual and legal review of these claims, performing the investigative role incumbent on the panels in the claims review process.

#### B. The procedural history of the claims

8. Prior to the formal submission of the first instalment claims to the Panel, the secretariat of the Commission (the “secretariat”) performed a detailed review of these claims and determined, in accordance with articles 14 and 15 of the Rules, that each of the claims complied with the formal and procedural requirements of the Commission. The review also demonstrated that the complex and technical nature of a number of the elements in the claims would require the Panel to make use of independent loss adjusters and accountants as expert consultants (“expert consultants”). These were selected in August 1998. The expert consultants have worked closely with the Panel, preparing for the Panel’s consideration reports covering the verification and valuation issues raised by the claims.

9. Pursuant to article 32 of the Rules, the Panel was provided with claim summaries recording the significant legal and factual issues identified in the claims as well as other information, such as legal briefing notes and reports produced by observers shortly after the liberation of Kuwait, to assist the Panel in its review of the claims.

10. The review of each claim by the Panel identified in many cases a need for further information and evidence. Each of the claimants was given the opportunity to provide the Panel with such further information and evidence.

11. The Executive Secretary of the Commission submitted a report 3/ dated 8 July 1998 to the Governing Council in accordance with article 16 of the Rules, which set out the first instalment claims and discussed the main factual and legal issues relating to them. A number of governments, including the Government of Kuwait and the Government of the Republic of Iraq, submitted additional information and views on the issues raised in response to that report.

12. Given the nature of the claims, the Panel determined that due process would require the provision to Iraq of copies of all of the claim files submitted by claimants. These were forwarded to Iraq pursuant to Procedural Order 1 issued in respect of each claim on 14 September 1998.

13. Iraq submitted a response to each of the first instalment claims. Each response included a statement of its position regarding the Commission's procedures and operation and raised specific issues of law, verification, valuation or fact. The Panel has duly considered these responses and has investigated those issues of fact accompanied by sufficient information to make investigation possible. Details of the responses so investigated, and the Panel's findings in respect of them, are set out in the consideration of each of the claims below.

14. In its responses to the claims, Iraq also requested the Panel to hold oral hearings into each claim at which Iraq would be permitted to attend and make submissions. Iraq has made similar requests in relation to the Commission's review of other claims. The Panel has considered carefully whether such hearings are required for the processing of the claims and their proper review by the Panel. The Panel concludes, in common with other panels, that the submissions and documents made available to it and the additional information obtained by it have permitted a thorough and fair determination and evaluation of each of the claims. Consequently, the Panel finds that it is not necessary to hold oral hearings.

15. At the direction of the Panel, technical missions were sent to Kuwait and to Winchester, Virginia, in the United States of America, 4/ to investigate certain factual and valuation issues and to carry out on-site inspections. Six such missions took place between August 1998 and June 1999. In June 1999, one of the Panel members, Commissioner Jacovides, participated in one such mission to Kuwait. The missions to Kuwait also included meetings with PAAC and the Government of Kuwait's advisers, interviews with certain claimant witnesses, inspection of documents and visits to sites of physical damage and reconstruction. The findings of each mission are set out in the relevant sections of this report. The Panel has also reviewed videotape evidence submitted by the Government of Kuwait.

### III. THE LEGAL FRAMEWORK

#### A. Applicable law

16. The law generally to be applied by the Panel is found in article 31 of the Rules. This provides that the Panel shall apply:

“Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law”.

17. The principal substantive rule applied by the Panel is paragraph 16 of Security Council resolution 687 (1991). In this, the Security Council declared Iraq to be liable under international law “for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq’s unlawful invasion and occupation of Kuwait”.

18. The Panel has taken note of certain findings contained in the reports of other panels of Commissioners, which have been approved by the Governing Council, regarding the interpretation of relevant Security Council and Governing Council resolutions and decisions, as well as the reports of the Executive Secretary issued pursuant to article 16 of the Rules and the responses to them.

#### B. The directness requirement

19. The Panel construes the requirements of paragraph 16 of Security Council resolution 687 (1991) as meaning that all loss or damage directly caused by Iraq’s invasion and occupation of Kuwait is in principle compensable and, correspondingly, that any loss or damage not so caused is not compensable.

20. The Panel has also taken into account the Governing Council’s guidance on the interpretation of these requirements, notably as set out in decisions 7 5/ and 15. 6/

21. Paragraph 34 of decision 7 provides as follows:

“These payments are available with respect to any direct loss, damage, or injury to Governments or international organizations as a result of Iraq’s unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

- (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
- (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

- (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
- (d) The breakdown of civil order in Kuwait or Iraq during that period; or
- (e) Hostage-taking or other illegal detention”.

22. Paragraph 6 of decision 15 confirms that there “will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq’s unlawful invasion and occupation of Kuwait”, in relation to which claimants will have to prove that a loss is “direct”. Paragraph 3 of decision 15 emphasises that for any alleged loss or damage to be compensable, the “causal link must be direct”.

23. The Panel finds that there is ample authority in international law, including the reports of other panels, 7/ to support the view that a “direct loss” in these circumstances is one which, as a matter of objective assessment, would have been expected as a normal and natural consequence of Iraq’s invasion and occupation of Kuwait. This is the test of causation that the Panel has applied to these claims.

#### C. Mitigation

24. In assessing the first instalment claims, the Panel has borne in mind the duty of the injured party to take all reasonable measures to avoid, diminish or mitigate the damage resulting from Iraq’s invasion and occupation of Kuwait, 8/ and finds that the reasonable costs of so doing are themselves compensable.

#### IV. CONSIDERATION OF COMMON LEGAL ISSUES

##### A. Approach

25. Many of the legal issues raised in the first instalment claims arise more than once. The Panel therefore finds it appropriate to report first on issues common to several claims and then, in the light of these common considerations, to examine and report on each claim individually. The Panel now turns to such common legal issues.

##### B. Property losses

26. As to property losses, the Panel notes that in the first instalment claims there are 10 claims totalling US\$494,622,998 for loss of real property and there are 16 claims totalling US\$93,667,608 for loss of tangible property.

27. Some claimants assert that their premises were occupied by Iraq. All claimants provide evidence of loss, damage or destruction by way of witness statements, damage assessment reports and/or photographs or videotapes. Understandably, much of this evidence dates not from the occupation period itself, but rather from the period after liberation, when Ministry or other Government of Kuwait personnel were able to re-enter the premises of the various Ministries or other Government entities, as the case may be.

28. The Panel has also taken into consideration the Farah report, 9/ which sets out in detail 10/ the level of damage and destruction found after liberation. The report noted that the damage, while generally minor from a structural point of view, included significant damage to walls and installations. It also noted widespread vandalism and looting of equipment and furnishings.

29. The Panel is accordingly satisfied that the evidence submitted in support of the claims for property losses is sufficient to demonstrate that the losses were direct, falling within the provisions of paragraph 34 of decision 7 11/ and those of paragraph 13 of decision 9. 12/

30. Accordingly, the Panel recommends compensation for such losses, subject to their verification and valuation carried out in the manner described in paragraphs 109 to 115 below. In relation to claims for vehicles, the Panel reviewed a motor vehicle valuation table submitted by the Government of Kuwait that lists the value of a wide range of motor vehicles in Kuwait as at 1 August 1990. After independent inquiries were made by the expert consultants as to the accuracy of this table, the Panel, in common with other panels, accepted it. 13/



C. Relief paid to employees

31. At the outset it is necessary to make it clear that the discussion in this section, and the amounts examined in it, relate not only to the first instalment claims, which are the principal subject of this report, but also to the other “F3” claims. This explains the large size of the totals involved.

32. Thirty-six of the sixty-two “F3” claimants seek compensation for relief payments made to the Kuwaiti and Gulf Cooperation Council (“GCC”) employees of the Government of Kuwait. The payments amounted to the salaries the employees would have earned, but did not receive, in respect of the occupation and emergency periods. Each such claimant seeks compensation in respect of its own employees. These employees, some of whom remained in Kuwait during the occupation and emergency periods and some of whom left after Iraq’s invasion and occupation of Kuwait, did not receive their regular salaries during those periods. The Government made the relief payments in a series of lump-sum payments commencing after liberation, and claims the amounts so paid. The total amount of the compensation sought for these payments in all the “F3” claims is US\$2.03 billion and the number of employees in respect of whom such claims are made is around 100,000.

33. The facts surrounding each of these claims are sufficiently similar for the Panel to consider them together. The amounts claimed constitute a not insignificant percentage of the total compensation sought by the Government of Kuwait. The Panel has therefore found it appropriate to set out its consideration of these claims in detail.

34. The Government supplemented each of these claims by submitting in May 1998 additional information that included the following background:

“In 1991, Kuwait’s Council of Ministers directed, in partial relief for the major losses suffered as a result of Iraq’s invasion and occupation, that Government organizations should pay the salaries that their Kuwaiti and GCC employees would have earned during the seven-month occupation period ... and three-month recovery period”.

35. Paragraph 36 of decision 7 provides in part as follows:

“[P]ayments are ... available to reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council”.

36. The Panel finds, on the basis of the considerable evidence now made available to it, that the payments for which the claimants seek compensation were made to compensate for the loss of the employees’ financial support during the occupation and emergency periods. Such payments constitute

payments made or relief provided to others within the meaning of paragraph 36 of decision 7 and are thus in principle compensable.

37. In assessing the amount of compensation to be paid, the Panel has borne in mind the number of employees concerned and the impossibility of calculating the actual entitlement of each individual. It has therefore proceeded on the basis of calculating the compensation payable in respect of the employees by way of an average individual entitlement (the “entitlement”), using information provided by the claimants and the Government so as to ensure that the entitlement is as representative as possible.

38. The two main factors determining the entitlement are the length of the period for which payment of compensation is justified and the amount of salary which would have been received by each individual during that period, less appropriate deductions as explained in paragraphs 41 to 48 below.

39. With respect to the first factor, the Panel finds that compensation should be awarded based on the period that the employees were reasonably unable to work. Recalling that the positions of the employees were suspended, not terminated, the Panel concludes that it was usually not possible for the employees to resume their positions until the end of the emergency period. The employees were thus reasonably unable to work during both the (seven-month) occupation period and the (three-month) emergency period, a total of ten months.

40. With respect to the second factor, the first step undertaken by the Panel is to compare the monthly amounts ordinarily received by way of salary by the employees and the amounts actually paid retrospectively. 14/

41. The Panel notes that the Government of Kuwait operates a social security system which confers pensions and similar benefits on employees, and which is funded by contributions from employers and employees (the “Social Security Fund”). These contributions are calculated as a percentage of salary and the contributions of the employees, being five per cent of gross salary, are deducted at source from the salaries paid to them. As part of the first step described above, the Panel requested the Government to confirm whether the amounts paid to the employees and claimed as relief took into account the employees' contributions where necessary and whether there had been any loss of benefits to the employees. The Government responded that there had been no loss of benefits, and that some but not all claimants had accounted for the contributions by paying to the employees only their gross salary less the five per cent deduction. The Panel has taken the Government's response into consideration and reviewed it in light of the evidence provided in support of each claim. The Panel has found that suitable account has been taken in a number of claims. The Panel has therefore

determined that an adjustment should be made to the amounts claimed in cases in which the Panel is not satisfied that the social security contributions have been adequately accounted for.

42. In order to ensure that the entitlement accounts for the employees' true losses, as a second step the Panel considers and brings into account the employees' entire financial receipts (including the benefits received from relief programmes) and expenditures over the compensable period. Furthermore, the Panel has applied the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses. In other words, "saved" expenses, that is, expenses that the employees would ordinarily have incurred if Iraq's invasion and occupation of Kuwait had not taken place, but did not in fact incur during the period for which compensation is recommended, fall to be deducted from the entitlement.

43. In order to ascertain what other relief payments were made and what expenses the employees might have "saved" during the period, the Panel issued Procedural Order 15 in respect of all relevant first instalment claims, seeking information in this connection. A comprehensive response was received, which provided a model of the average Government employee covering the amount and nature of his or her income and expenditure and the benefits obtained by him or her through policies implemented by the Government of Kuwait during the period.

44. This response showed that the pre-invasion levels of consumption in Kuwait were very high, exceeding on average the average Government employee's monthly salary. 15/ It also described a wide-ranging programme of relief payments. 16/ The Panel has taken this information into account. 17/

45. The Government submitted that only a few employees who left Kuwait could demonstrate that their costs outside Kuwait exceeded the relief received and that these employees have made individual claims before the Commission. With regard to those who did not leave Kuwait, the Panel assumes that any losses in respect of additional costs incurred could similarly have been the subject of claims before the Commission. Accordingly, the Panel assumes that additional living expenses and the relief paid in respect of them need not be taken into account when calculating the employees' true losses.

46. In the light of the above considerations, the Panel finds that deductions for "compensation received elsewhere for the same loss" should be made in respect of the free food and utility services provided in Kuwait over the period above. 18/

47. The Panel further finds, from the model provided by the Government of Kuwait, that the employees who were outside Kuwait during the period did indeed "save" certain expenses in Kuwait. 19/ That is, they did not incur a proportion of ordinary and anticipated living expenses over the period.

48. On the basis of the matters noted in paragraphs 46 and 47 above, the Panel recommends a deduction of 60 per cent from the amounts claimed. That is, the Panel recommends a total award of 40 per cent of the relief paid to employees and claimed in each of the relevant “F3” claims, subject to verification of the amounts claimed and the Panel’s assessment of the evidence presented. 20/ Accordingly, the Panel recommends an award to each respective claimant calculated in this manner.

D. Loss of revenue

49. A number of the Government of Kuwait’s claims seek compensation for the loss of revenue that would have been earned by the relevant claimant during the occupation, emergency and subsequent periods. The facts and circumstances of each claim vary according to the nature of the revenue-generating activity, but the basic question of the compensability of the Government’s loss of revenue is relevant to all such claims, and the Panel has therefore considered the question as a common legal issue.

50. The Panel has considered whether losses of the Government of Kuwait’s revenues are compensable in accordance with paragraphs 1 to 4 of Governing Council decision 9. 21/ These paragraphs state that the propositions and conclusions contained therein “shall apply to compensation for the loss of earnings or profits and other business losses covered by Security Council resolution 687 (1991)” and, after noting the liability of Iraq for direct losses, continue that “[u]ltimately it will be up to the commissioners to identify the applicable principles and apply them to the circumstances of particular cases”.

51. The Panel is satisfied that Iraq’s invasion and occupation of Kuwait led to the interruptions in Government services complained of, but that, by reason of the diversity of economic factors bearing upon each case, the determination of any revenue losses suffered has to be made separately for each claim.

52. The Panel will discuss in section VI below, in connection with the first instalment claims, whether individual revenue losses are compensable and, if so, the measure of compensation and the time period in respect of which compensation should be paid. The Panel finds that the time period is that during which the revenue was affected as a direct result of Iraq’s invasion and occupation of Kuwait. The Panel has considered such time periods by reference to historical revenue trends and notes that the periods may in some cases extend to several years.

53. The Panel appreciates that acceptance of a loss of revenue as a compensable claim assumes that the revenue-generating activity would have continued at the same general level if Iraq’s invasion and occupation of Kuwait had not occurred. It is, of course, true that all revenue collection depends upon some activity by a third party, e.g., a licensee seeking a licence for which he or she must pay. But the fact that the collection of such revenue is predicated upon the action of a third person cannot

be seen as breaking the chain of causation between Iraq's invasion and occupation of Kuwait, on the one hand, and the particular loss of revenue, on the other. This is because the third party's action belongs to a class of conduct the continuation of which in periods of normality can reasonably be expected. Losses of revenue arising from the fact that fines or other penalties were not generated during the occupation and emergency periods are also to be treated in the same manner as other claims for loss of revenue and are to be valued accordingly.

54. In order to have a basis for assessing the extent and nature of revenue that could have been expected to be earned and that which was in fact earned, and to assist it in the consideration of the individual losses of revenue described below, the Panel issued Procedural Order 4 to obtain information as to revenue earned by relevant claimants in the period from 1 July 1985 to 30 June 1995. The information thus provided has been taken into consideration by the Panel in reaching the recommendations in section VI below.

55. In calculating revenue losses, the Panel has again applied the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses.

56. This principle involves two considerations: first, that any expenditure which would have been incurred in the generation of the revenue lost, but which has not been so incurred, should be brought into account to reduce the claimed loss; 22/ second, where the Panel has identified extraordinary or increased revenues flowing from Iraq's invasion and occupation of Kuwait, such revenues should be accounted for in like manner. The Panel has therefore taken any such extraordinary income into account in connection with the loss of revenue claims.

57. The Panel has also taken account of amounts going to generate revenue in one Ministry or Government entity that would have been paid by another. This is because any such loss of revenue by one Government entity is an expense saved by the entity that would otherwise have paid it.

58. The Panel notes that the revenue of the Government of Kuwait may have been affected by changes in the population composition of Kuwait after liberation and has considered the impact of such changes where necessary.

#### E. Contract interruption losses

59. The Government of Kuwait has presented a number of claims for compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990 23/ and which had been concluded between a Government entity and third-party contractors, generally for the construction of a building or facility. The work was usually under way at the time of the invasion of Kuwait. In most cases, the relevant Government entity asserts that the contractor refused to complete the remaining contract work without extra payment to cover the costs of site restoration, increases in

the cost of materials and other cost increases in the post-liberation period. The claimants usually negotiated a revised price with the contractors.

60. “Contract interruption losses” therefore encompass claims for increased costs under re-negotiated contracts, reflecting in certain cases additional work, such as site restoration. In considering these losses, the Panel, like the “F1” panel, 24/ has noted the obligation on each claimant, arising from article 35(1) of the Rules, to demonstrate that a particular loss is eligible for compensation. In the context of contract interruption losses, therefore, the claimants must demonstrate that the price increases were a direct result of Iraq’s invasion and occupation of Kuwait.

61. Recalling the obligation upon the claimants under article 35(3) of the Rules to submit sufficient evidence to prove their losses, the Panel sought information as to the conditions pertaining in the construction and building industry both before and after the occupation period, including information as to the number and nationality of construction workers in both periods. The Panel has considered such information in arriving at its recommendations on the first instalment claims set out below.

62. The Panel finds that, following the liberation of Kuwait, there was a general increase in the price of goods and services in Kuwait and that such increase was the result of many factors, the precise effect of which it is impossible to identify.

63. In relation to only three causes of increases in price has the Panel been able to determine that the causal link was “direct”. These are price rises shown to be linked specifically to:

(a) site restoration costs (including those related to the replacement of materials and equipment taken during Iraq’s invasion and occupation of Kuwait and which were needed for the resumption of construction contracts);

(b) additional transportation costs (including double-handling costs); and

(c) additional insurance costs. 25/

64. The Panel has determined that price increases caused by these factors are compensable. As regards other causes of price increases, the Panel was unable to conclude that they were a direct result of Iraq’s invasion and occupation of Kuwait.

#### F. Buildings not intended to be rebuilt

65. The Government has presented a number of claims for compensation for damage to buildings, usually schools or mosques, which will not be rebuilt principally because of their location near the border between Kuwait and Iraq or on Failaka Island. The claim is usually made for the estimated cost of reconstructing the building.

66. The Panel finds that the damage to such buildings is, in principle, compensable. In particular, the Panel finds that Iraq is liable for damage caused by it, even if the Government of Kuwait decides not to rebuild or repair the damage. However, the Panel has awarded as compensation the cost of reconstruction only in cases in which it is satisfied that the relevant building was incapable of repair. In other cases, only the cost of repair is awarded. In appropriate cases, the Panel has made adjustments for such items as depreciation, wear and tear, and reduced maintenance expenses arising from not having to maintain the building in the future. The compensation is measured by the cost at such time as it would be reasonable, in the ordinary course of events, to expect reconstruction or repair to have taken place.

G. Damage to leased premises

67. The Government of Kuwait has presented a number of claims for the cost of repairing damage to premises which it occupied as tenant at the time of Iraq's invasion and occupation of Kuwait.

68. The Panel has noted that, in common with a number of legal systems, such repairs may legally have been the responsibility of the landlord pursuant to the lease and/or Kuwaiti law. To require the landlord to undertake the repairs and subsequently claim the cost from the Commission or (if the landlord was unwilling or unable to undertake the repairs) to require the Government of Kuwait to undertake the repairs and reclaim the cost from the landlord and not the Commission would, in the circumstances of Iraq's invasion and occupation of Kuwait and the widespread damage to the Government's facilities, be too technical and rigid an approach. The Panel finds that where premises leased to the Government were damaged as a result of Iraq's invasion and occupation of Kuwait, the cost of the repairs should be awarded to the person who paid for them, provided that the other party to the lease has not been awarded compensation for the same loss.

69. In order to ensure that the Commission recommends payment only once for repairs to each of the damaged buildings in question, the Panel instructed the secretariat to examine the claims of the relevant landlords and advise the Panel of any duplication of claims in respect of the repairs. An award has been made by the Panel only where no duplicate claim has been awarded by the Commission.

H. Contractual provisions allowing penalties for late completion or other breaches of contract

70. The Government of Kuwait has presented a number of claims for compensation for the full price of contracts for repair or reconstruction made after the end of the occupation period, although there were provisions within such contracts for a reduction in the contract sum for late completion or other breaches. Although it is at times apparent that a situation may have existed giving rise to the right to use such provisions, in most instances there is no evidence of advantage having been taken thereof.

71. The Panel has considered the effect of such provisions, and of whether or not they were invoked, on the extent of compensation payable. The Panel notes the obligation on each claimant to obtain a reasonable price for remedial works. Having regard to this obligation, and as part of the overall determination of the reasonable cost of the repair or reconstruction, the Panel finds that where the evidence shows that a reduction in the contract sum could have been insisted on, a reduction in the claim to that extent is warranted.

I. Temporary repairs followed by more permanent repairs

72. The Government of Kuwait has presented a number of claims for the cost of urgent work undertaken to effect temporary repairs (for example, the claim in relation to the Kuwait Emergency Reconstruction Office). The cost of subsequent and more permanent repair has also been claimed in many cases, sometimes found in the same claim as the temporary repairs and sometimes in a different claim.

73. The Panel has considered whether and to what extent the assessment of loss should take into account the cost of such temporary repairs. Many of the Government's facilities and services suffered a considerable amount of damage as a result of Iraq's invasion and occupation of Kuwait. In many cases, and particularly in the immediate post-liberation period, it was essential rapidly to restore these facilities and services to at least a minimum operating capacity. In other cases, temporary repairs prevented greater damage being caused to the Government's facilities and services and thus helped to mitigate future damage. The Panel therefore considers that it was reasonable for the Government to address required emergency repairs as priorities and then to undertake permanent repairs at a later time. The Panel finds that the cost of temporary repairs which were reasonably necessary in the circumstances is compensable and has proceeded on this basis.

J. Temporary premises

74. The Government of Kuwait has presented a number of claims for the cost of renting residential or business premises in Kuwait during periods in which the construction of new premises or the repair of existing premises was delayed as a result of Iraq's invasion and occupation of Kuwait. The claim for compensation is for the cost of renting alternative premises for varying periods following liberation.

75. The Panel determines that in principle such costs should be awarded for a reasonable period following liberation. In each specific case, consideration has been given to the nature of the damage and to the time normally likely to be necessary to effect site restoration, repairs or to complete construction. Associated with the latter question is that of the attribution of the cause for the relevant delay. In this regard, the Panel finds that the principles set out in paragraph 63 above are pertinent.



76. The Panel similarly finds that the costs of providing temporary housing to employees who, before the invasion, were provided with accommodation by a Ministry, is compensable to the same extent as the costs of temporary premises.

77. The Panel has sought to ascertain the reasons for the delay in the construction of new buildings and has scrutinised the evidence to identify both the original contractual date for completion of the new premises and the date for completion under the resumed contract. It has done so to ensure that delays arising other than from Iraq's invasion and occupation of Kuwait, including pre-invasion delays, are not considered in the ascertainment of the loss.

K. Temporary headquarters outside Kuwait

78. The Government of Kuwait has presented a number of claims for the expenses of operating offices outside Kuwait during the occupation and emergency periods and for some short period thereafter.

79. The Panel recalls that as a result of Iraq's invasion and occupation of Kuwait, many of the Government's usual operations in Kuwait could not continue there. The Government was therefore obliged to conduct its operations elsewhere. Further, in some situations, the operation of offices outside Kuwait prevented greater damage being caused to the Government and to the people remaining in Kuwait. The Panel thus finds that the cost of operating offices outside Kuwait is compensable where the decision to establish such operations was reasonable in the circumstances. In each such claim, however, the Panel has been careful to ensure that only reasonable costs are allowed and it has deducted expenses that would ordinarily have been incurred in Kuwait if Iraq's invasion and occupation of Kuwait had not occurred.

L. Cost of returning employees to Kuwait

80. The Government has also presented a number of claims for the cost of returning its employees to Kuwait after liberation to enable them to resume work. Most of these employees were non-Kuwaitis who left Kuwait following Iraq's invasion and occupation to return to their home countries.

81. The Panel finds that the reasonable costs of returning employees to Kuwait are compensable:

(a) under paragraph 34(b) of decision 7 where the cost of returning employees is a necessary consequence of evacuation; or

(b) where the return of the employees was a reasonable step in mitigation of loss (for example, where it is shown that the cost of returning an employee is less than the cost of hiring and training a new employee).

82. In each case the Panel has considered whether the costs were reasonable and were wholly incurred as a result of Iraq's invasion and occupation of Kuwait. In particular, the Panel has taken into consideration such factors as whether the employees would have been granted home leave during the period in question and whether the employees travelled in a class higher than appropriate. 26/

M. Pre-paid rent

83. A number of the first instalment claims seek compensation for rent paid in advance on office or other premises ("pre-paid rent"). The claimants maintain that no benefit for the amounts paid was derived during the seven month occupation period and during the months following liberation because the Government was unable to use the premises. In each such case the Government claims the amount of the pre-paid rent for the period during which it is asserted that no benefit was obtained.

84. The Panel finds that compensation should be awarded where rent has been pre-paid on premises but only for the period that the Government of Kuwait was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. 27/ The measure of compensation should be the amount of pre-paid rent referable to that period, since such rent is an accurate indicator of the value of the benefit lost. The Panel has considered in each first instalment claim whether the claimant has demonstrated that its inability to use the premises for the period claimed was a direct result of Iraq's invasion and occupation of Kuwait, such as would have been the case if, for example, Iraq had occupied the premises in question.

85. The Panel is satisfied that there were no means by which the Government of Kuwait could have recovered the pre-paid rent and that, therefore, there has been no failure to mitigate on the part of the Government.

N. Avoiding over-compensation

86. The Panel notes that the Government of Kuwait's activities in Kuwait were interrupted during the occupation and emergency periods and it would appear, therefore, that a proportion of usual Government expenditure may not have been incurred. The Panel has begun examining and will continue to examine throughout its review of the F3 claims whether and to what extent to bring into account any such unincurred expenses by way of set-off against the amount of compensation awarded to the Government.

87. In relation to the first instalment claims, the Panel has adopted and applied the following principles:

(a) loss of revenue claims should be awarded net of the identifiable expenses which would ordinarily have been incurred in the generation of that particular revenue (including, where appropriate, salaries); 28/

(b) where it can be established that expenses were saved as a result of damage to or destruction of assets, adjustments should be made to reflect this (see, for example, the claim for quality control testing equipment in the claim of the Ministry of Commerce and Industry at paragraph 317 below); and

(c) in claims for the cost of operating temporary offices outside Kuwait, considered at paragraphs 78 and 79 above, adjustments should be made to reflect any expenses saved by not operating offices in Kuwait.

88. The Panel does not consider it appropriate to deal with the more general question of unincurred expenses, which have not been brought into account as set out in the preceding paragraph, in a piecemeal fashion in the first instalment claims. It prefers, instead, to deal with the matter in a single consideration which can best take place in the context of the claim relating to the Kuwait Investment Authority 29 to be reviewed in the third instalment. At that time the Panel will wish further to consider the following factors:

(a) that not all the Government's losses are compensable by the Commission, and not all Government losses have been claimed;

(b) that the Panel's recommendations in relation to certain claimed losses may include reductions for evidentiary reasons;

(c) that any reduction in Government expenses may have had a correlative effect on the benefits that the Government and its citizens would otherwise have enjoyed; and

(d) that revenue claims have been submitted by Kuwaiti entities in other claim categories and, in some cases, compensation may have been awarded by the Commission.

89. In this connection, the Panel requested from the Government of Kuwait, amongst other things, information as to the historic income and expenditure position of the Government and the Kuwaiti economy as a whole, a history of the financial reserves of the Government for the period 1986 to 1996, details as to claims made to the Commission for loss of revenue and an indication as to revenue losses for which no claim has been lodged with the Commission.

90. The Government of Kuwait submitted a detailed response which provided extracts from its national accounts and the bases upon which its financial information is recorded, a description of budgets and procedures, explanations as to the bases of presentation of financial accounts and statistics, and details of revenue claims before the Commission. The Panel notes that the Government keeps confidential certain information regarding its financial reserves and assets and that only limited secondary sources of such information are available.

91. The adjustments in the first instalment claims in relation to matters falling within subparagraphs 87(b) and 87(c) above will be borne in mind by the Panel when eventually considering the more comprehensive question of the overall position of the Government as set out in paragraph 86 above.

O. Claims preparation and claims processing costs

92. The Government of Kuwait has presented a claim for claims preparation costs (being the fees of attorneys and other professional persons, and costs of support and secretarial staff, reproduction, and communication facilities). <sup>30/</sup> This claim aggregates such costs incurred in relation to the preparation of virtually all “F3” claims. It also includes the Government’s own claims processing costs (being the cost of the administrative work involved in dealing with claims, including the establishment of necessary infrastructure such as PAAC). It is not clear which portion of the claim is for claims preparation costs and which portion is for claims processing costs.

93. The Panel has been notified by the Executive Secretary that the Governing Council intends to resolve the issue of the compensability of claims preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to the claim for such costs.

94. As to claims processing costs, the Panel notes that decision 18 <sup>31/</sup> provides for compensation for such costs by allowing for the deduction of a set fee from payments made to claimants. In light of this decision, the Panel considers itself bound not to recommend any additional compensation in respect of claims processing costs.

P. Exchange rate

95. The claims for repair costs or replacement materials involve losses incurred in Kuwaiti dinars (“KD”) or other currencies, but in all cases converted into and claimed in United States dollars. The Commission issues awards in United States dollars. The Panel must therefore consider whether the exchange rates used by the claimants are appropriate.

96. The Government of Kuwait states that, generally, when a single payment was made the exchange rate used was the rate on the date of payment; when many payments were made the rate was the average rate or rates for the relevant period over which the payments were made; and, for future payments, the rate was the average rate for the most recently available twelve-month period.

97. The Panel finds that such an approach is reasonable in the circumstances. In some cases other factors operate. These are described in the recommendations for the claims concerned.

Q. Interest

98. The Government seeks interest on the principal claim amount in respect of each first instalment claim. Decision 16 provides in part that “interest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award”. The Governing Council has stated that it will address the methods of calculation and payment of interest in the future. It is thus for the Panel to determine only the date from which interest is to run.

99. The Panel has considered how for the purposes of calculating interest the date of a specific loss is to be determined. It finds that, in the context of the enormous number of individual claim items, within several loss types, a specific determination for each claim item is impractical. The Panel has, therefore, concluded that for this purpose all losses should be deemed to have occurred on one single date.

100. The Government of Kuwait itself identified two possible dates at two different stages of the proceedings. The Government first selected, in its “Summary Report of Government Claims” submitted in July 1994, 26 February 1991 as the relevant date. This was on the basis that it was the last date on which Iraq could have taken or damaged assets, and that the Government was entitled to interest from that date, regardless of when expenditure was incurred on repairing or replacing the asset. A further reason was that since many of the losses occurred near the end of the occupation, the date of liberation was closer to the date of the actual losses than any other. In a subsequent submission, however, filed in May 1998, the Government amended its first submission to provide that interest should accrue from 2 August 1990, the date on which Iraq invaded Kuwait.

101. The matter has to a large extent already been examined in the “Report and Recommendations made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim (the “WBC Claim”)” <sup>32/</sup> wherein the panel took the view that Kuwait did not suffer loss until it actually disbursed the costs of repair or reconstruction. The Panel shares this view and is therefore unable to accept Kuwait’s second submission, that interest should commence on 2 August 1990.

102. Having regard to the varying dates of loss and the need to select one date for interest purposes, the Panel determines that, in all the circumstances, the date of loss for calculation of interest is 26 February 1991. <sup>33/</sup>

V. VERIFICATION AND VALUATION

A. The importance of evidence

103. The Rules direct that each claim must be supported by sufficient evidence. Thus, article 35(1) of the Rules prescribes that:

“Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted.”

104. In relation specifically to governmental claims, article 35(3) provides that:

“... such claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss”.

105. Pursuant to these provisions, each claimant has submitted a considerable body of documentary and other evidence in support of its claim. Some of this material was filed with the statement of claim itself; substantial further material has been provided in response to questions raised by the Panel; and still other material has been submitted to the Commission and reviewed (in some cases during on-site inspections) in Kuwait and elsewhere.

106. The evidence submitted by the claimants, including that additionally requested by the Panel, comprises, in most cases, a sample of the documents available. The size of the sample has been determined by reference to the nature of the loss and the character and quantity of the evidence available.

107. The Panel has addressed a number of specific requests to various Ministries and other Government entities for additional information and documents in their possession. These requests took the form of procedural orders, and other requests issued pursuant to procedural orders, of which to date some 100 have been issued. The responses to each such order or request, and their accompanying documents, have been duly considered by the Panel and its expert consultants.

108. The Panel has noted the claimants' general assertions that physical damage and destruction during Iraq's invasion and occupation of Kuwait included the destruction of large numbers of documentary records, though the degree of destruction varied from claimant to claimant. As a result, certain elements of claims are supported only by witness statements or by reports without underlying primary documentation. The Panel, in the observance of due process and by the issue of procedural orders to claimants, has on occasion requested further evidence from the claimants in order to ascertain the degree of destruction of records with a view to assessing the evidence as a whole.

B. The procedures adopted by the Panel to verify and value the first instalment claims

109. The principal tasks of the Panel are to assess the evidence with a view to determining whether the claimed loss or damage has in fact occurred and, in light of that determination, to assess the amount of compensation to be recommended in respect thereof.

110. In carrying out these tasks, one of the prime objectives of the Panel is to ensure consistency in the examination of the material and the resulting recommendations. This cannot be achieved other than by a systematic approach rigorously pursued in accordance with the requirements of the Rules. For this purpose the Panel has established three series of steps.

111. The first is a general verification and valuation programme applicable to all claims. This sets out procedures for the verification and valuation of the claims, including an initial assessment of the character and probative value of all the evidence originally submitted in support of each claim.

112. The second series of steps comprises specific verification and valuation programmes. These set out more detailed procedures for certain loss types, namely, contract, real property and tangible property losses. They include the identification of particular documents needed to establish the existence and terms of contracts and the title and character of real and tangible property as well as those needed to value the losses claimed.

113. The third series of steps comprises supplemental verification and valuation programmes. These set out further detailed procedures for each loss element and were designed at an early stage of the review of a claim to meet its particular character. The programmes identify any additional evidence and other information beyond that originally submitted by the claimant which the Panel considers necessary for a proper review of the claim. This step has not been carried out if the loss element under review falls below the level of materiality which is described below.

114. In applying these programmes the Panel has systematically scrutinised the evidence according to its type, date, <sup>34/</sup> quality and quantity and has made consistent adjustments to reflect the extent to which the evidence is not sufficient.

115. Any attempt by the Panel to set out in detail in relation to the individual claims before it the precise manner in which it has found that the evidence is sufficient or not sufficient would involve it in a complex exposition of a very large volume of material and would not be feasible within the confines of a panel report. Moreover, the weighing of evidence is not an exact science but necessarily involves some exercise of judgement or discretion by the Panel. The Panel has, therefore, normally not gone beyond a statement of its conclusions in each case.

C. Evidential status of the reports of the claimants' accountants and engineers

116. Each claim contains an accountant's report and a number of them contain an engineer's report, in all cases commissioned by the Government of Kuwait.

117. The accountant's reports include descriptions of the claimed losses, summaries of the valuation methodologies adopted and schedules showing the derivation of the amounts claimed.

118. The engineer's reports contain evaluations of the repair and restoration works, commenting on the extent to which the works were required to repair invasion-related damage, the scope of works including enhancements, the degree of documentary support for the work said to have been done, the avoidance of duplication within the "F3" claims and, where contract interruption losses are claimed, a comparison of the work done under the pre-invasion and post-liberation contracts.

119. The Panel notes that all of the reports have been commissioned by the Government of Kuwait for the purpose of the submission of its claims to the Commission. They do not, therefore, constitute original or primary evidence, in contrast to, for example, written contracts, receipts and invoices. As such, the Panel has treated these accountant's and engineer's reports as supporting documents and not as primary evidence of the matters of fact asserted in them.

D. Materiality

120. The sheer bulk of the claims before the Panel obliged it to focus on those parts of the claims 35/ which carry a greater risk of significant overstatement. The line between these parts and others is called the "level of materiality", with those parts of the claims above the level of materiality being called "material" and those below it "not material".

121. The Panel has set the level of materiality at US\$500,000. However, the Panel has reduced the level of materiality in the following cases:

(a) where it is necessary to ensure the examination in sufficient detail of at least 80 per cent of the total value of any loss element across the "F3" claims, the level of materiality has been reduced accordingly, but not below US\$100,000;

(b) for claims with a value below US\$5,000,000 (excluding interest, claims preparation costs and any other part of the claim that the Panel finds not to be a direct loss) the level of materiality has been reduced to 10 per cent of the total value of the claim, but not below US\$100,000; and

(c) in exceptional instances in which the Panel has found it appropriate to do so.

122. The Panel has determined that the use of these materiality levels will ensure a detailed review of over 99 per cent of the principal claim amount of the "F3" claims. The Panel considers this to be a



necessary and therefore suitable approach to achieving its objective: that is, properly to review the “F3” claims within the time allotted for that task.

123. While the general and (where relevant) specific verification and valuation programmes have been carried out in the review of all loss elements, a supplemental verification and valuation programme has been designed and followed only for material loss elements. Further, so far as the non-material loss elements are concerned, the Panel has not requested any documentation other than that originally submitted by the claimant. In assessing the sufficiency of the evidence submitted in support of these loss elements, the Panel has regard to the fact that the claimant has not been requested to submit additional evidence and that to conclude that the evidence submitted is insufficient may unfairly penalise the claimant concerned. The Panel therefore assesses the sufficiency of the evidence in support of these loss elements in two stages; first, by applying the criteria described at paragraphs 114 and 115 above in the usual manner and, second, by adjusting its conclusions to reflect the average sufficiency of all the evidence submitted in support of the claim concerned and/or the relevant loss element, as appropriate.

E. Reporting on the verification and valuation of the first instalment claims

124. The expert consultants have provided the Panel with comprehensive reports on the results of the verification and valuation programmes for the first instalment claims, indicating their opinions as to the extent that each is supported by the evidence and the value to be given to each. The Panel has considered these reports in detail prior to coming to its conclusions and recommendations. These are set out in section VI below. The Panel is satisfied that each of the recommendations which it has made is reasonable in all the circumstances.

125. In explaining in any given case why a claim or part thereof has been reduced or rejected the Panel has sometimes used one or more of the following shorthand expressions, the weight of which will necessarily vary from case to case:

(a) “method of valuation” means that the amount claimed has been reduced because the valuation method used by the Government of Kuwait is not appropriate under the circumstances of the loss or the Panel has used an alternative method of valuation (such as the use of book value rather than the use of depreciated replacement cost);

(b) “overstatement” is used where an error of fact or of calculation is discovered;

(c) “inadequate procurement process” is used where the Government has failed to use an appropriate procurement process to ensure that the loss is kept to a minimum. In many cases, the appropriate procurement process would involve resort to competitive tendering, but such procedures may not be appropriate in the context of urgent or emergency repair work, for example;

(d) “enhancement” is used where the Government in replacing damaged or lost items has obtained an asset that is better than the one previously used, but has failed to give adequate credit for the improvement;

(e) “inadequate accounting for depreciation” is used where the Government has not properly considered the age or the remaining useful life of the asset as at the date of the loss or has used an inappropriate rate of depreciation;

(f) “inadequate accounting for residual value” is used where an amount is likely to be received from the disposal of an asset at the end of its useful life, and that amount is not adequately taken into account;

(g) “saved expenses” is used where the Government has not incurred expenses that it would ordinarily have incurred had Iraq’s invasion and occupation of Kuwait not occurred, or has incurred reduced expenses as a result of the invasion and occupation; and the claim has not been correspondingly reduced. The matter is more fully discussed at paragraph 87 above; and

(h) “insufficient evidence” is used where the Panel considers that the claim must be reduced or rejected because it is not supported by sufficient evidence. 36/

Notes

3/ S/AC.26/1998/R.22.

4/ The U.S. Army Corps of Engineers held documents in Winchester in relation to the claim of the Ministry of Finance - Kuwait Emergency Reconstruction Office (see paragraph 134).

5/ S/AC.26/1991/7/Rev.1.

6/ S/AC.26/1992/15.

7/ Notably, “Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to USD100,000 (category “C” claims)” (S/AC.26/1994/3), at part II, section D.

8/ Paragraph 9 of Governing Council decision 15 (S/AC.26/1992/15) states that: “The duty to mitigate applies to all claims”.

9/ “Report of the Secretary-General on the scope and nature of the damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation” (S/22535).

10/ At paragraphs 370 and following.

11/ Quoted in paragraph 21.

12/ Section II of Governing Council decision 9 (S/AC.26/1992/9) provides at paragraph 13 that “[i]n a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from the invasion and occupation”. The Panel finds this statement equally applicable to the Government of Kuwait’s property left unguarded.

13/ See, for example, “Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above USD100,000 (category “D” claims)” (S/AC.26/1998/1), at paragraphs 267-269.

14/ As a result of Iraq’s response to Procedural Order 1 in relation to the claim of the Ministry of Interior (UNCC Claim No. 5000137), the Panel made enquiries in relation to the extent to which the employees had received payment of their salaries in advance prior to the invasion. The Panel also notes that a few employees who received relief payments retrospectively also received payment for work done during the relevant period. The Panel has, in arriving at the percentage deduction to the claims for relief paid to employees set out in paragraph 48, taken into account the advance payments and the payments for work done.

15/ The Panel has considered the nature of economic activity in Kuwait and has concluded that this situation is explained by the fact that many Kuwaitis are owners or part-owners of businesses from which they derive income in addition to their salaried employment.

16/ The relief provided by the Government of Kuwait covered such items as living expenses while outside Kuwait, the provision of free utilities within Kuwait (by the forgiveness of payment therefor), the forgiveness of consumer debt, the forgiveness of certain rental payments, the distribution of free food, and the payment of a grant to each Kuwaiti individual who remained in Kuwait during the occupation period.

17/ The Panel notes that the response was compiled applying Government of Kuwaiti national accounts and statistics and on the basis of certain assumptions regarding income and expenditure patterns, and has made suitable allowance for the use of such techniques in quantifying its findings.

18/ Amounts provided for living expenses outside Kuwait during the period (under a programme set up by the Ministry of Finance and the subject of UNCC Claim No.5000112) were paid in respect of additional living expenses and do not comprise “compensation received elsewhere”. Further, the Panel has not included in its consideration any relief provided for losses other than loss of income, such as relief in respect of loss of amenity, again to ensure that compensation is based upon the employees’ true financial losses.

19/ See paragraph 42.

20/ A large percentage of the 60 per cent deduction arises in respect of “saved expenses”.

21/ Governing Council decision 9 (S/AC.26/1992/9).

22/ See paragraph 87.

23/ Where the formation of a formal contract was not complete at the time of the invasion, the Panel finds that there ought to be compensation for contract interruption losses only when there is evidence of consensus at the time of the invasion as to the essential provisions of the contract (being the identification of the parties, the principal undertakings and the price to be paid).

24/ “Report and recommendations made by the Panel of Commissioners concerning part two of the first instalment of claims by governments and international organizations (category “F” claims)” (S/AC.26/1998/4), paragraphs 70-72.

25/ Increased transport costs arise because some of Kuwait’s ports of entry remained closed until October 1991, during which time shipments were landed elsewhere and goods then transported to Kuwait over land. The types of insurance costs include all risks and public liability insurance.

26/ “Report and recommendations made by the Panel Of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category “F” claims)” (S/AC.26/1997/6), at paragraph 106.

27/ The Panel views the decision of the “F1” panel in relation to pre-paid rent set out in, for example, “Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category “F” claims)” (S/AC.26/1997/6) at paragraph 74 as turning on the particular facts found by the “F1” panel.

28/ As stated at paragraph 36, the Panel finds that the relief paid to employees is compensable (on the basis of paragraph 36 of decision 7) as being payment or relief to others. This categorisation is based on a finding that the Government of Kuwait did not, in fact, pay the salaries of its Kuwaiti and GCC employees during the occupation and emergency periods. What it paid, in fact, was an amount of relief measured by reference to the salaries that those employees would otherwise have received. Those salaries therefore constitute a saved expense.

29/ Which, amongst other things, manages the Government’s general reserve and future generations funds.

30/ The claim on behalf of the Public Authority for the Assessment of Compensation, UNCC Claim No. 5000193.

31/ (S/AC.26/Dec.18) (1994), at paragraph 1.

32/ (S/AC.26/1996/5/Annex.) (“WBC Report”) at paragraphs 227-230.

33/ An exception to this is the claim of the National Committee for Missing and Prisoner of War’s Affairs where the date of loss for calculation of interest is determined to be 31 October 1997 (see paragraph 344).

34/ The Panel has considered the three periods during which a document may have come into existence: prior to Iraq’s invasion of Kuwait; during the occupation and emergency periods; and thereafter. The Panel accepts that the number and quality of documents which may be expected to exist will vary according to each such period.

35/ Within the loss types (that is, those appearing on the Form F) the claimants have further subdivided the losses into categories which the Panel will refer as “loss elements”. For example, “loss of revenue” is a loss element within the “business transaction or course of dealing” loss type. The Panel has approached its review of the claims and their supporting evidence by reference to loss elements as opposed to the more general loss types.

36/ See paragraph 115.

Annex II

[Re-statement of sections III of the Second “F3” Report (see paragraph 7)]

III. CONSIDERATION OF COMMON LEGAL ISSUES

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

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

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

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

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

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

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

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

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

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

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

16. In light of the above, the Panel finds that the property losses claimed in the second instalment claims (including those in relation to military assets) are "direct losses" and hence compensable (an exception to this finding is discussed at paragraphs 265 to 268 below), subject to verification and valuation. 7/

B. Accounting for depreciation in claims for property loss

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

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

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

19. The Panel notes that claimants usually applied deductions for depreciation only in the first two cases mentioned at paragraph 18 above (to reflect the longer useful life of the new property compared with that lost or destroyed). Claims made for the costs of repairs generally make no equivalent adjustment for depreciation, because the Government asserts that repairs do not generally extend the

useful life of the property repaired. The Panel finds, however, that there are cases of repairs that have extended the useful life of the property (or part thereof) repaired and has made adjustments for inadequate accounting for depreciation in such cases.

C. Buildings not repaired or rebuilt

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

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

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

D. Loss of research and information

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

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

25. In most cases, the claimants seek the replacement cost of the lost information, itself measured as the costs of the initial creation of the information or the costs of re-creating the information after liberation. In each case, the loss was based on the historic labour and materials costs, save in a few instances in which post-liberation labour and materials costs were used. Adjustments were sometimes



made to reflect the obsolescence of the lost information at the time of its loss and to account for inflation between the creation of the lost information and the date of loss.

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

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

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

E. Work undertaken in the immediate post-liberation period

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

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

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

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

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

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

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

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

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

G. Contract interruption losses

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

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

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

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

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

H. Uncollectible receivables

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

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

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

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

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

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

Notes

3/ Being the coalition of States assembled in response to Iraq's invasion and occupation of Kuwait.

4/ In the "Report and recommendations of the Panel of Commissioners appointed to review the well blowout control claim (the "WBC Claim")" (S/AC.26/1996/5/Annex) (the "WBC Report"), the Panel of Commissioners, in interpreting this phrase, found that any bombing of oil wells by the Allied Coalition Forces did not break the chain of causation between Iraq's invasion and occupation of Kuwait and the losses claimed in relation to the damage to those wells (see paragraph 86 of the WBC Report).

5/ See, for example, the claims of the Ministry of Defense considered at paragraphs 258 to 274 and 374 to 380.

6/ S/AC.26/Dec.19 (1994).

7/ It should be noted that, in a number of cases, the Panel has recommended adjustments to the amounts claimed for other tangible property losses to reflect the pilferage that would have occurred even in the absence of Iraq's invasion and occupation of Kuwait (see, for example, paragraphs 228 and 352). Such pilferage is not a direct loss as a result of Iraq's invasion and occupation of Kuwait.

8/ The Panel requested information from relevant claimants as to the reconstruction and repair work undertaken since the submission of their claims and has taken account of the responses received.

9/ Including research reports, computer files, analysis and specimens relating to scientific projects, and computer software.

10/ See paragraph 24 of the First "F3" Report and paragraphs 137 to 138 of the First "F3" Report.

11/ UNCC Claim No. 5000038.

12/ Ministry of Electricity and Water and Kuwait Institute for Scientific Research.

13/ See further paragraphs 235, 241, 280 and 286.

14/ See further paragraphs 170 to 176 and 240.

15/ See further paragraphs 358 and 359 of the First "F3" Report, at which the Panel considered a claim for salaries paid to employees referable to the time they spent on training. The claimant was operated as a commercial entity and had hired these employees to replace those who left Kuwait as a direct result of Iraq's invasion and occupation of Kuwait and did not return after liberation. The Panel found that no compensation should be awarded because the loss was subsumed in the claimant's loss of revenue claim.

16/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

17/ The Panel has instructed the secretariat to provide details of its recommendations to those Panels of Commissioners that are reviewing the contractors' claims.

18/ In cases where the claimant intends to enter into a post-liberation contract in the future, the Panel has calculated its price at such time as it would be reasonable, in all the circumstances, to expect it to have been entered into.

19/ Provided that this amount does not exceed the amount claimed.

20/ Kuwait Institute for Scientific Research, see further paragraphs 156 to 164.

21/ See further paragraph 156.

22/ See further paragraph 57 of the First "F3" Report.

23/ The receivable may be claimed in part as a loss of property (such as the underlying product or information) and/or in part as a loss of revenue.

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