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GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS
CONCERNING PART TWO OF THE SEVENTH INSTALMENT OF "E1" CLAIMS

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List of claimants

<u>Name</u>	<u>Defined</u>
Arabian Oil Company, Ltd.	AOC
Petrochemical Industries Company	PIC
Saudi Arabian Oil Company	Saudi Aramco

List of currencies

<u>Name</u>	<u>Defined</u>
Kuwaiti dinar	KWD
Saudi Arabian riyal	SAR
United States dollar	USD

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Introduction

1. At its sixteenth and thirty-sixth sessions, the Governing Council of the United Nations Compensation Commission (the “Commission”), pursuant to article 18 of the Provisional Rules for Claims Procedure (the “Rules”) (S/AC.26/1992/10), appointed a Panel of Commissioners (the “Panel”) composed of Messrs. Allan Philip (chairman), Antoine Antoun and Michael Hwang to review energy sector claims submitted by corporations, other private legal entities and public-sector enterprises (“E1” claims).
2. This report contains the determinations and recommendations of the Panel with respect to part two of the seventh instalment of “E1” claims, comprising 11 claims submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules (the “seventh instalment”). One claim was subsequently transferred to another panel as discussed in paragraph 25 below.
3. These claims in part two of the seventh instalment were filed by energy sector companies operating in the Kingdom of Saudi Arabia (“Saudi Arabia”), Japan and the State of Kuwait (“Kuwait”). The claimants advance claims for losses arising from the disruption to their businesses and the increased cost of business operations allegedly caused directly by Iraq’s invasion and occupation of Kuwait.
4. The claims included in this report are listed in the following table. The claim amounts shown in this table are the aggregate of all amounts claimed in category “E” claim forms filed by the claimants, less any amounts for severed or transferred claims, and net of claim preparation costs or interest.

Table 1. Part two of the seventh instalment of “E1” claims

<u>Claimant</u>	<u>Claim number</u>	<u>Original claim amount</u>	<u>Submitting Government</u>
Saudi Arabian Oil Company	4002628 to 4002636 (excluding 4002633)	USD 354,188,295	Saudi Arabia
Arabian Oil Company, Ltd.	4005977	USD 46,851,320	Japan
Petrochemical Industries Company	4003069	KWD 82,086,735	Kuwait
<u>Total</u>		USD 401,039,615 KWD 82,086,735	

I. PROCEDURAL HISTORY OF THE CLAIMS

5. The role and functions of panels of Commissioners operating within the framework of the Commission and the nature and purpose of the proceedings conducted by the panels are discussed by the Panel in the "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'E1' claims" (S/AC.26/1999/10) (the "Second 'E1' Report"), paragraphs 3-4.
6. The secretariat of the Commission (the "secretariat") commenced a detailed preliminary assessment of the claims in part two of the seventh instalment in September 2000. As a result of this review, a number of areas were identified where further documentation or information was required from the claimants. Accordingly, detailed notifications with respect to these deficiencies were issued to all the claimants in part two of the seventh instalment pursuant to article 34 of the Rules (the "article 34 notification(s)").
7. Pursuant to article 16 of the Rules, the Executive Secretary reported to the Governing Council the claims information and new significant factual and legal issues raised by the claims in part two of the seventh instalment in his report dated 10 July 2001. This report was circulated to all governments and international organizations that filed claims before the Commission, and to the Government of the Republic of Iraq ("Iraq"). Pursuant to article 16 (3) of the Rules, a number of governments, including that of Iraq, submitted comments concerning the claims to the Commission. These comments have been taken into consideration by the Panel during its review of the claims.
8. The Panel issued the first procedural orders relating to the claims on 7 September 2000. In view of the complexity of the issues raised, the volume of the documentation underlying the claims and the amount of compensation sought by the claimants, the Panel classified each of the claims in part two of the seventh instalment as "unusually large or complex" claims within the meaning of article 38 (d) of the Rules.
9. The Panel also instructed the secretariat to transmit to Iraq the statement of claim and the documents filed by the claimants with the claims, and invited Iraq to submit its comments on the claims, together with any documentation on which Iraq might wish to rely in support of its comments. In April 2001, Iraq filed its written comments on the claim.
10. In its review of the claims, the Panel has employed the full range of investigative procedures available to it under the Rules. The Panel has also been assisted by the responses of claimants to article 34 notifications, written and verbal questioning and requests for documents. Iraq has filed specific comments on, legal analyses of, and evidence pertaining to the claimed losses. Iraq has also addressed the compensability of some of the individual claim elements.
11. Because of the complexity of the claims, the Panel engaged consultants with expertise in accounting, asset valuation, petrochemical operations, as well as marketing and pricing to assist it in its review and evaluation of those claim elements found to be compensable.

12. After receiving responses to the article 34 notifications, the Panel directed a technical inspection mission to the premises of Petrochemical Industries Company (“PIC”) in Kuwait to review documents and other evidence and to interview witnesses. During the technical inspection mission, PIC produced numerous witnesses for interview and many thousands of documents for review.

13. The initial work raised specific legal issues and identified areas of the claims for which further factual investigation or evidence was required. To address this need, the Panel prepared questions and formal requests for additional evidence from the claimants. Such questions and requests (collectively referred to as “interrogatories”) typically sought clarification of statements in the claims or additional documentation regarding the claimed losses. The claimants responded to the Panel’s interrogatories with additional information.

14. A procedural order was issued on 11 June 2001 inviting Iraq and claimants PIC and Saudi Arabian Oil Company (“Saudi Aramco”) to attend oral proceedings, and to present arguments and evidence on certain limited issues presented in their claims (the “oral proceedings”). The oral proceedings were held on 11 September 2001.

15. Prior to the oral proceedings, these claimants and Iraq submitted additional documents, briefs and memoranda. The claimants and Iraq made substantive oral presentations on the identified issues and responded to questions put by the Panel. Iraq specifically reiterated its objections to the procedures of the Commission in its written submissions and at the beginning of its statements on the day of the oral proceedings. The specific issues raised by the Panel, as well as the main arguments advanced by the claimants and Iraq at the oral proceedings, are summarized in the sections of the report dealing with those particular claims.

16. After reviewing the claims, the evidence submitted with the claims, the claimants’ responses to the article 34 notifications, the claimants’ and Iraq’s responses to interrogatories and the arguments presented at the oral proceedings, the Panel made the recommendations contained in this report.

II. LEGAL FRAMEWORK

A. Applicable law and criteria

17. The law to be applied by the Panel is set forth in article 31 of the Rules, which provides as follows:

“In considering the claims, Commissioners will 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.”

B. Liability of Iraq

18. According to paragraph 16 of Security Council resolution 687 (1991):

“... Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, ... or injury to foreign Governments, nationals and corporations, as a result of Iraq’s unlawful invasion and occupation of Kuwait.”

19. The Panel notes that the issue of Iraq’s liability for losses falling within the Commission’s jurisdiction has been resolved by the Security Council and is not subject to review by the Panel. A further discussion of the liability of Iraq as it relates to resolution of the claims and the Governing Council’s guidance on what constitutes a direct loss may be found in the Second “E1” Report at paragraphs 18-29.

C. Evidentiary requirements

20. Article 35 (1) of the Rules provides general guidance on the submission of evidence by a claimant:

“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).”

A further discussion of the Panel’s application of this standard to the evidence submitted with the claims may be found in the Second “E1” Report at paragraphs 30-32.

D. Amendment of claims

21. The Governing Council has determined that, after 1 January 1997, the Commission would not accept any new category “E” claims for filing 1/ and that, after 11 May 1998, the Commission would not admit any unsolicited supplements to previously filed claims in category “E”, with the exception of environmental claims. Accordingly, the Panel finds that new claims submitted after 1 January 1997, either for new types of loss or additional claim elements, are inadmissible as time barred.

However, the Panel also finds that information or documentation submitted in response to article 34 notifications or procedural orders may clarify or correct calculations regarding existing claim elements, as long as they do not introduce new loss elements or increase the total amount claimed.

III. CLAIM OF SAUDI ARABIAN OIL COMPANY

A. Introduction

22. Saudi Arabian Oil Company (“Saudi Aramco”) is a limited liability company incorporated on 13 November 1988 in accordance with the laws of Saudi Arabia. All of the shares in the capital of Saudi Aramco are owned by the Government of Saudi Arabia.

23. Saudi Aramco filed a single category “E” claim form on behalf of itself and various related entities. The identity and status of the related entities will be described in the sections of this report dealing with those entities’ losses.

24. Saudi Aramco originally sought compensation in the amount of 362,106,969 United States dollars (USD) for loss and damage alleged to have arisen as a direct result of Iraq’s unlawful invasion and occupation of Kuwait. Saudi Aramco also seeks interest on the amount of any award made by the Commission at the appropriate rate, as well as the costs and expenses associated with the preparation of the claim.

25. In the course of the Panel’s investigation of the claim, Saudi Aramco reduced the claimed amount, particulars of which are discussed further in this report. Additionally, the claim for the “Gulf oil spill” was transferred to the “F4” Panel of Commissioners, which has been appointed by the Governing Council to review environmental damage claims.

26. The claim has been divided by Saudi Aramco into nine discrete components (each of which has been assigned a separate claim number), as set out in the table below.

Table 2. Saudi Aramco's claim
(United States dollars)

<u>Claim element</u>	<u>Claim amount</u>	<u>Amended claim amount</u>
Voluntary repatriation of dependants	11,541,586	11,541,586
Saudi Aramco temporary monthly allowance	132,361,326	78,426,555
War risk insurance	29,147,016	29,147,016
Surcharges on purchases	960,352	960,352
Government preparedness programme	147,916,956	137,759,125
Saudi Aramco hostility reaction plan	5,596,007	5,596,007
Repairs to offshore installations	749,208	749,208
"Gulf oil spill" <u>a/</u>	7,918,674	n/a
Saudi Arabian Marketing and Refining Company ("SAMAREC") temporary monthly allowance	25,915,844	6,027,271
<u>Total</u>	362,106,969	270,207,120

a/ This claim element was transferred to the "F4" Panel of Commissioners, as described in paragraph 25 above.

B. General background

27. Saudi Aramco filed its claim on 29 June 1994.

28. On 2 November 2000, after a preliminary consideration of the facts alleged by Saudi Aramco, the Panel directed that an article 34 notification be sent to Saudi Aramco for the purpose of obtaining detailed additional information about all aspects of the claim.

29. In addition, the Panel asked for copies of Saudi Aramco's financial records for the period from 1986 to 1993 inclusive. In response to this request, Saudi Aramco stated that, in order to provide such information, it was first required to obtain the approval of the Government of Saudi Arabia, which in turn advised that such approval would not be given.

30. Saudi Aramco alleges that the financial information has no relevance to the claims. Furthermore, Saudi Aramco contends that the Panel should not be persuaded by the argument that increased profits earned by Saudi Aramco following the invasion and occupation of Kuwait should be set off against its losses.

C. Iraq's position

31. Iraq states that the losses claimed by Saudi Aramco are not direct and therefore are not compensable under Security Council resolution 687 (1991). Its specific arguments concerning the various losses are set out briefly and reviewed in the following discussion of those losses.

32. Iraq also states that the losses allegedly suffered by Saudi Aramco are actually increased costs incurred as a consequence of the Government of Saudi Arabia's instruction to Saudi Aramco to increase its oil production in order to provide fuel to support military operations against Iraq. Iraq says these costs are therefore not eligible for compensation pursuant to Governing Council decision 19 (S/AC.26/Dec.19 (1994)), which excludes compensation for military costs.

33. Iraq further states that Saudi Aramco did not suffer a loss because it made excess profits as a result of its increased crude oil production as well as the increased price of oil. It appears that Iraq attributes the increased profits to both the Government of Saudi Arabia's decision to increase production and the trade embargo imposed as a result of Security Council resolution 661 (1990). 2/

D. Oral proceedings

34. In its procedural order dated 11 June 2001, the Panel requested that Saudi Aramco and Iraq participate in oral proceedings on 11 September 2001, and address the following issues:

(a) Whether costs incurred as a result of Saudi Aramco's decision to increase oil production are compensable losses directly resulting from Iraq's invasion and occupation of Kuwait; and

(b) Whether amounts paid by Saudi Aramco at the request of the Government of Saudi Arabia, for, inter alia, equipment and material to be used or distributed for humanitarian purposes should be considered compensable losses directly resulting from Iraq's invasion and occupation of Kuwait.

35. With respect to the first issue, Saudi Aramco argued, in the context of its claim for temporary allowances as discussed in paragraphs 54-59, that direct losses such as these cannot be set off against indirect profits. It said that the temporary allowances were required to maintain the existing workforce and production in spite of the potentially difficult and dangerous conditions created by Iraq's invasion and occupation of Kuwait. Saudi Aramco relied on two panels' findings to support its assertion that the increase in the price of oil was not caused by Iraq's invasion and occupation of Kuwait. 3/

36. With respect to the second issue, Saudi Aramco explained that a "request" of the Government of Saudi Arabia is mandatory and cannot be refused. Saudi Aramco did not explain what the sanctions might be for refusing such a request. Saudi Aramco also described the office of the Amir of the Eastern Province and his role and responsibilities within the Government in the context of the Amir's requisition of equipment and material. With respect to the larger items constituting this claim, Saudi Aramco distinguished those items that were intended to support the military from those intended to aid and protect civilians. In the course of its address, Saudi Aramco acknowledged that it was no longer pursuing a portion of its claim that related to the support of military operations. Lastly, Saudi Aramco noted that, to the extent items it purchased were used or are being used by individuals and entities

other than Saudi Aramco, its claim should not be reduced by the residual value of such items since Saudi Aramco is not receiving the benefit of their use.

37. Iraq reiterated its specific concerns with respect to the various claim elements that it had raised in its original response, and which are considered under those claim elements as mentioned earlier.

38. Iraq continued to maintain that the losses claimed by Saudi Aramco were not direct and therefore should not be compensable.

39. Iraq also discussed at length the profits it projects that Saudi Aramco earned following the invasion, and that it continues to earn today. To assist the Panel with its presentation, Iraq referred to illustrative materials, consistent with its original submissions, that highlighted its estimates of Saudi Aramco's increased production volume and revenues.

E. Voluntary repatriation of dependants

1. Saudi Aramco's contentions

40. Saudi Aramco alleges that, on 11 August 1990, it announced to its expatriate employees with dependants located in Saudi Arabia that it would either secure transportation for the dependants or reimburse employees for the cost of repatriating their dependants from Saudi Arabia. Saudi Aramco contends that approximately 3,600 dependants of expatriate employees elected to return to their home countries.

41. In order to repatriate the dependants concerned, Saudi Aramco chartered nine airliners, booked blocks of seats and purchased individual tickets on commercial airliners. Saudi Aramco also reimbursed individual employees who had themselves purchased the requisite airline tickets for their dependants. Numerous additional costs, such as hotel accommodation, meals, onward air travel costs, taxi fares, airport taxes, terminal fees and insurance costs, were reimbursed to the employee concerned upon the submission of supporting documentation. Additionally, an allowance of USD 200 per spouse and USD 30 per child was paid to those dependants who travelled on one of the nine chartered flights destined for Europe or North America.

42. Similarly, the cost of return transportation for the dependants was reimbursed by Saudi Aramco to its employees. Saudi Aramco's claim for voluntary repatriation of dependants totals USD 11,465,904.

43. Saudi Aramco has also included an amount of USD 75,682 for reimbursement to employees for the acquisition of special incubators and gas masks for children under two years of age. This amount was included under this category as a result of its accounting treatment by Saudi Aramco. The total amount claimed under this claim element is therefore USD 11,541,586.

2. Iraq's response

44. Iraq contends that it never had any intention to cross the Saudi Arabian border, that the Government of Saudi Arabia provoked Iraq and therefore it was unnecessary to repatriate employees'

dependants. According to Iraq, Saudi Aramco continued its operations without disruption, at an increased pace and without any interference from Iraq notwithstanding the build-up of the Allied Coalition Forces. Iraq asserts that Saudi Aramco tried to justify its concerns by relying on statements of certain Governments and, in particular, that it failed to report to the Commission a portion of the statement of the Foreign Office of the United Kingdom of Great Britain and Northern Ireland dated 8 August 1990 stating: "Her Majesty's Government has not, repeat not, advised the 5000 to 6000 British community in the Eastern Province to leave."

45. As a legal matter, Iraq contends that concern for the safety of expatriate personnel had no direct causal link to the entry of Iraqi forces into Kuwait, and that the costs incurred are therefore not direct losses. As a factual matter, Iraq argues that only 50 per cent of the dependants elected to evacuate the area, and most returned soon afterwards, which suggests that there was no need for an evacuation programme.

46. Iraq also contends that the distribution of gas masks and incubators proved to be unwarranted and, in any event, was not a direct result of Iraq's invasion and occupation of Kuwait.

47. Iraq lastly notes that these costs, according to its calculation, total USD 7,952,495, compared with the claimed amount of USD 11,541,586.

3. Analysis and valuation

48. In support of its claim for repatriation of dependants, Saudi Aramco submitted copies of airline tickets, requests for cheque forms, invoices from affiliate companies, corporate activity account summaries, reimbursement forms and internal correspondence.

49. In the article 34 notification, the Panel requested Saudi Aramco to provide additional information and numerous documents substantiating specific items included within this element of the claim, such as supplier invoices, receipts and passenger lists and, in particular, proof of payment of the costs. As noted by Iraq, no evidence has been provided with respect to approximately USD 3,600,000 of the total claim amount. In addition, slightly more than USD 6,000,000 is supported only by internal documentation, and the remaining approximately USD 1,800,000 is supported by external invoices only.

50. In order to determine whether the air travel costs were in addition to Saudi Aramco's ordinary travel expenses, the Panel also requested Saudi Aramco to specify the number of authorized journeys that would have been made by employees and their dependants during 1990 and 1991, as well as the actual number of journeys made during those years.

51. The information provided with respect to the infant gas masks and incubators consisted of journal entries and payroll processing reports. The Panel requested receipts for the purchases as well as evidence of reimbursement to the employees.

52. In response to the article 34 notification, Saudi Aramco contended that it was unable to deal with the requests in the time available, but would communicate separately with the Commission concerning

this portion of the claim. Saudi Aramco ultimately declined to respond to the article 34 notification. Rather, Saudi Aramco took the position that the documentation originally submitted with the claim was sufficient to demonstrate the circumstances and amount of the claimed loss because it was similar in kind to documentation submitted by another claimant in support of a comparable claim, for which this Panel previously awarded compensation. Saudi Aramco acknowledged that much of the documentation needed to respond to the article 34 notification probably no longer existed as a result of its document retention and disposal policies, and that it would be very difficult to locate and retrieve what might remain. Saudi Aramco cannot say how many trips normally would have been taken by employees and dependants in 1990 and 1991 and therefore cannot demonstrate to what extent the claimed costs are in addition to ordinary travel expenses it would have paid but for Iraq's invasion and occupation of Kuwait.

4. Conclusions

53. The Panel finds that costs of repatriation and protection of employees and their dependants are compensable pursuant to paragraph 21 (a) of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) as losses arising from military operations or the threat of military action. The evidence is clear that Saudi Arabia was credibly threatened with military action. Moreover, the launching of scud missiles by Iraq against Saudi Arabia after 18 January 1991 constituted actual military operations. 4/ The information provided, however, does not demonstrate whether, or to what extent, the evacuation/return trips were in addition to the trips that would ordinarily have been paid by Saudi Aramco for its employees and dependants in 1990 and 1991. The Panel finds there is also insufficient evidence to support this claim. In view of Saudi Aramco's failure to provide such evidence, the Panel recommends no award of compensation for this part of its claim. 5/

F. Temporary monthly allowance

1. Saudi Aramco's contentions

54. Following Iraq's invasion and occupation of Kuwait, Saudi Aramco decided, allegedly at the instruction of the Government of Saudi Arabia, to increase the production of crude oil from 5.5 million barrels per day, first to 7.5 million barrels per day as soon as possible, subsequently to 8 million barrels per day by the end of 1990, and finally to 8.5 million barrels per day by mid-1991.

55. In its statement of claim, Saudi Aramco stated that "[t]he purpose of this production expansion was to provide substitute sources of crude oil for the Iraqi and Kuwaiti crude oil lost to the market because of the invasion of Kuwait and the embargo imposed by Security Council Resolution 661." Saudi Aramco also acknowledged that manpower was the "most critical component" in reactivating many plants which had been shut down previously so that it could achieve these production increases. As it stated in its statement of claim, "[a] successful expansion of production could not occur however, if [Saudi Aramco] were to suffer large-scale losses of employees due to the crisis conditions surrounding them."

56. On 30 September 1990, Saudi Aramco's compensation committee authorized an additional allowance of 15 per cent of base salary to be paid to each employee situated in Saudi Arabia. The allowance was paid to employees for the period 1 October 1990 to 30 April 1991. It was then reduced to 10 per cent until 31 August 1991, when it was finally discontinued.

57. Saudi Aramco originally claimed USD 132,361,326 for this claim element. Saudi Aramco has since reduced its claim to USD 78,426,555 given its understanding of the Commission's jurisprudence concerning these kinds of claims. On 31 March 1991, as the chairman of Saudi Aramco announced the phasing out of the bonus, he concluded that "... the conditions that gave rise to the special allowance have thus effectively ended ...". Saudi Aramco therefore limited its claim to allowances for the period 1 October 1990 to 31 March 1991. It also reduced the claim to take into account employees that were outside a compensable location.

58. Contrary to its statement of claim, Saudi Aramco took the position at the oral proceedings that the allowance was entirely unrelated to the increase in oil production. In these later submissions, Saudi Aramco contended that the allowance was solely as a result of the crisis conditions and was "... absolutely essential to maintaining even existing production levels, let alone increased ones, which could be achieved within a short period of time only by extra efforts on the part of that existing workforce." Moreover, Saudi Aramco says it has not sought to recover any costs incurred to support the increase in oil production, which it estimates were approximately USD 41,000,000.

59. At the oral proceedings, Saudi Aramco also argued that direct losses cannot be set off against indirect profits. As noted earlier, its position, based on the findings of various panels, is that the increase in the price of oil was not caused directly by Iraq's invasion and occupation of Kuwait whereas the need for the temporary allowance was so caused.

2. Iraq's response

60. Iraq asserts that the allowances paid to Saudi Aramco's employees were not a direct result of "events in Kuwait", but were instead the consequence of the instructions by the Government of Saudi Arabia to Saudi Aramco to increase its oil production.

61. Iraq also alleges that Saudi Aramco earned additional revenue of USD 49,865,200,000 that should be taken into account by the Panel. Iraq relies upon an annex to its response entitled "Saudi Additional Production and Revenue – Aug/90-Jan/92". 6/ The annex purports to provide information published by OPEC (Organization of the Petroleum Exporting Countries) regarding Saudi Aramco's crude oil production volumes as well as the additional revenue earned by Saudi Aramco for the specified period. 7/ The additional revenue is separated into two categories: (1) additional revenue resulting from the rise in oil price - USD 24,335,400,000 and (2) the estimated value of additional production – USD 25,529,800,000. Iraq provided further materials on this topic at the oral proceedings.

62. Iraq also questioned whether any company would choose not to increase its production when it could achieve the profits that Iraq has projected Saudi Aramco earned, particularly given Saudi

Aramco's estimate of the costs required to do so, which Iraq says are negligible in comparison with such profits.

3. Analysis and valuation

63. In order to substantiate the payment of the additional allowance, Saudi Aramco included letters issued to its employees on 30 September 1990 and 31 March 1991 informing them of the payments. In addition, it submitted monthly documents entitled "SAO Manpower Summary" specifying the number of Saudi Aramco employees in service during the period 1 October 1990 to 31 August 1991. Similarly, Saudi Aramco provided a monthly "Payroll Processing Report" indicating the base salary, temporary allowance and other bonuses paid to its employees during the period from August 1988 to July 1992.

64. To support this element of the claim, Saudi Aramco also procured and provided to the Panel an independent audit report. In that report, the auditor expressed the opinion that "... the Schedule [describing the temporary allowance] presents fairly, in all material respects, the special temporary allowance paid by Saudi Aramco to eligible Saudi Arabia based personnel for the period from October 1, 1990 to August 31, 1991 on the basis described in the Notes to the Schedule."

65. In response to the article 34 notification, Saudi Aramco provided a schedule specifying gross salary costs, temporary allowances and other bonuses paid to Saudi Aramco employees from 1989 to 1992. It also provided monthly payroll reports for that period in its response to the article 34 notification.

4. Conclusions

66. Based on its review of Saudi Aramco's gross salary costs and benefit schedule, the Panel finds that a special temporary allowance of USD 78,426,555 was paid to Saudi Aramco employees during the period from 1 October 1990 to 31 March 1991. ^{8/} This amount takes into account Saudi Aramco's deductions for payments to employees who were located outside a compensable area. The Panel, however, recommends that no compensation be awarded for this claim element. It is persuaded that the payment of the temporary monthly allowance was necessary for the purpose of achieving the increase in the production of oil, as originally stated by Saudi Aramco, rather than to mitigate any actual or potential losses arising as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that, regardless of whether the decision to increase the production of oil was taken as the result of a governmental order or must be attributed to Saudi Aramco itself, the costs connected with such an increase, which in itself was profitable, are not compensable.

G. War risk insurance

1. Saudi Aramco's contentions

67. Saudi Aramco contends that vessels calling at its terminals both in the Persian Gulf and the Red Sea were required to pay substantially higher premiums for war risk insurance coverage from August

1990 until September 1991. Saudi Aramco's marine landing terminals in the Persian Gulf are located at Ras Tanura and Ju'aymah. Saudi Aramco also operates a loading terminal at Yanbu in the Red Sea.

68. Saudi Aramco's tanker operating subsidiary, Vela International Marine Limited ("Vela"), incurred the additional costs for the increased premiums charged by its insurers. Vela's contractual responsibility to Saudi Aramco both prior to and after the invasion was to transport crude oil and petroleum products by sea using both its own vessels and chartered vessels. Vela was liable under the charters for increased insurance premiums. Saudi Aramco states that, pursuant to a series of contractual arrangements among Vela, Vela's affiliates and Saudi Aramco, Saudi Aramco ultimately bore the cost of additional premiums for war risk insurance.

69. The aggregate amount paid by Vela in respect of the additional insurance costs is alleged to be USD 29,147,016.

2. Iraq's response

70. Iraq contends that the additional war risk insurance charges were not a direct result of its invasion and occupation of Kuwait, but rather of the build-up of the Allied Coalition Forces in preparation for aggression against Iraq. Iraq again contends that Saudi Aramco earned "enormous profits" as a result of the increase in both production volume and the value of that production during the period from August 1990 to December 1991, as previously described in paragraph 61 above.

3. Analysis and valuation

71. Saudi Aramco submitted documentary evidence, including internal cash disbursement authorization forms, documents titled "Checklist for Payment of War Risk Insurance", bank statements, charter-party agreements, vessel logbooks, certificates of delivery and invoices from insurance brokers.

72. Based on its review of the supporting documentation provided, the Panel finds that USD 28,741,940 of the total amount claimed relates to vessel transport undertaken during the period 2 August 1990 to 2 March 1991 and that USD 405,076 relates to shipments after 2 March 1991 until September 1991.

4. Conclusions

73. The Panel finds that the claim for USD 405,076 relating to shipments after 2 March 1991 is not compensable. With respect to the balance of the claim, the Panel considers that only increased premiums related to shipments of Saudi Aramco's existing production are compensable in principle. However, the Panel finds that, based on the evidence provided, it is not possible to apply the distinction between increased insurance premiums relating to existing and increased production to the amount claimed. In the light of the Panel's conclusion in paragraph 149 below regarding set-off, the Panel considers it unnecessary to attempt to quantify the increased insurance premiums related to existing production.

H. Surcharges on purchases

1. Saudi Aramco's contentions

74. Saudi Aramco claims compensation in the amount of USD 960,352 for additional costs in the form of surcharges of various types passed on to Saudi Aramco by vendors, transporters and insurers for the materials, equipment and spare parts needed by the company for ongoing operations and maintenance. These surcharges are alleged to comprise items such as increased war risk insurance incurred by its vendors, higher ocean and air freight charges, and other increased costs.

2. Iraq's response

75. Iraq contends that the additional transportation charges incurred by Saudi Aramco were mainly to cover war risk insurance. Further, it says that they were not a direct result of Iraq's invasion and occupation of Kuwait, but related to the build-up of the Allied Coalition Forces in Saudi Arabia in preparation for aggression against Iraq. Iraq also says that Saudi Aramco's programme to increase its production (from 5.5 million barrels per day to 8.5 million barrels a day), and its refinery capacities (to supply the military with fuel), resulted in a tremendous increase in the volume of materials and equipment being imported, and hence an increase in surcharges. Lastly, Iraq alleges that all of these costs are outweighed by the enormous profits from Saudi Aramco's additional oil production and export.

3. Analysis and valuation

76. In support of the claim, Saudi Aramco provided supplier and transporter invoices, purchase orders, copies of cheques, bank statements and correspondence with vendors and transport companies.

4. Conclusions

77. The Panel finds that increased costs arising from Iraq's invasion and occupation of Kuwait that are associated with the regular supply of materials, equipment and spare parts for a company's ongoing operations and maintenance are compensable in principle. The Panel has confirmed Saudi Aramco's claim of USD 960,352, but again notes that a distinction has to be made between those surcharges that relate to Saudi Aramco's existing production and its increased production. For the same reason as stated in paragraph 73 above, the Panel finds that it is not possible to apply this distinction to this part of the claim. Therefore, the Panel recommends that no compensation be awarded.

I. Government preparedness programme

1. Saudi Aramco's contentions

78. Saudi Aramco alleges that various agencies of the Government of Saudi Arabia requested Saudi Aramco to provide equipment such as 10,000 tents and other related items, 10 gas detector sets, 2,000 gallons of firefighting foam, gas masks, warning sirens and 2,000 finished portable homes, as well as other types of assistance and services. In response to these requests, Saudi Aramco subsequently

approved a plan to provide various types of assistance and services similar to military and civil defence measures being undertaken by the Government of Saudi Arabia at the time. 9/ Saudi Aramco alleges that it was required to incur these costs because of the need to protect individuals and property that were threatened by the large and hostile Iraqi force on the border between Kuwait and Saudi Arabia, and thus the loss clearly resulted from Iraq's invasion and occupation of Kuwait. The costs alleged to have been incurred under this part of the claim have been categorized as shown in the table below and total USD 147,916,956.

Table 3. Government preparedness programme
(United States dollars)

<u>Claim element</u>	<u>Claim amount</u>	<u>Amended claim amount</u>
Portable homes	89,118,888	84,174,464
Tents and related items	5,147,819	5,147,819
Gas masks	30,770,323	30,770,323
Firefighting equipment	15,228,746	15,228,746
Personal protective equipment	1,084,646	1,084,646
Industrial security	724,466	724,466
Miscellaneous	421,468	356,550
Assistance provided to Kuwaiti refugees	1,000,000	1,000,000
Military	5,148,489	Nil
Unreconciled amount	(349)	(349)
Less: Amount realized from the sale of miscellaneous equipment and materials	(727,540)	(727,540)
<u>Total</u>	147,916,956	137,759,125

79. Since filing its original claim, Saudi Aramco has amended its claim downwards by USD 5,213,407, 10/ for water, telephones, portables, dormitories, a barge and other miscellaneous items provided to the military and deducted USD 4,944,424 from its claim for portable homes, as discussed in paragraph 85 below. The amended claim amount is therefore USD 137,759,125.

2. Iraq's response

80. Iraq alleges that the costs were incurred by Saudi Aramco in response to requests from the Government of Saudi Arabia and orders. As the costs, according to Saudi Aramco itself, were largely beyond the scope of the company's approved business plans and budgets, Iraq contends that they cannot constitute losses of Saudi Aramco and are therefore not compensable.

81. Finally, Iraq states that almost all of the major items provided for in the claim were not needed, mostly not used and should have had a high remaining residual value.

3. Analysis and valuation

82. In support of this part of its claim, Saudi Aramco provided purchase orders and related charges, payment authorizations, invoices, bank statements, cancelled cheques, cost allocation documents, purchase order cost reports, material cost reports, customs declarations, short-form contracts, internal correspondence and the details of various costs and expenses incurred by Aramco Services Company and Aramco Overseas Company B.V., which were charged to and borne by Saudi Aramco under applicable inter-company service agreements.

(a) Portable homes

(i) Cost of portable homes

83. In its statement of claim, Saudi Aramco claimed portable home costs of USD 88,051,529, which are summarized as follows:

Table 4. Portable homes
(United States dollars)

<u>Claim element</u>	<u>Original claim amount</u>	<u>Amended claim amount</u>
Portable homes	51,081,677	46,137,253
Ocean freight	37,077,568	37,077,568
Less: proceeds received from sale of 46 salvaged homes and furnishings damaged in transit	(107,716)	(107,716)
<u>Total</u>	88,051,529	83,107,105

84. Saudi Aramco ordered 2,000 portable homes in October 1990 at the instruction of the Amir of the Eastern Province to house refugees who might have been forced to leave their homes as a result of the hostilities. At the request of the Panel, Saudi Aramco provided evidence to show that these portable homes were not intended for military use. Slight changes to the purchase order were made during November and December 1990 regarding price and model type.

85. In its response to the article 34 notification, Saudi Aramco reduced this claim element by USD 4,944,424 to reflect two adjustments: duplication of costs for 46 portable homes lost in transit and proceeds received from an arbitration held to resolve the value of the homes lost in transit. The amended claim amount is therefore USD 46,137,253.

86. Saudi Aramco provided purchase orders, invoices and documents indicating wire transfers in order to substantiate the amended claim of USD 46,137,253 for the portable homes. However, based on its review of the documentation, the Panel finds that charges totalling USD 139,120 were overpaid by Saudi Aramco to the supplier. The Panel has therefore deducted these charges from the amount claimed, leaving a claim of USD 45,998,133.

87. Saudi Aramco received the portable homes as they arrived and arranged to store most of them in its storage areas, although some were stored in a laydown yard in Dammam and in other storage areas under the control of the Eastern Province Amirate. Starting in May 1991 and extending over a period of six years, the Amir distributed the unused homes to government agencies and to other organizations such as schools, universities, charitable societies, youth clubs and Saudi Aramco.

88. The freight costs of USD 37,077,568 for the portable homes have been substantiated with the contract and wire transfers indicating payment of these costs. It appears that a portion of these costs were due to the increased freight rates that prevailed following Iraq's invasion and occupation of Kuwait.

89. While Saudi Aramco has not retained the portable homes, except for 50 allocated to it by the Amir, the Panel considers that there is an issue of the residual value of these homes, as well as other items that are the subject of its claim for government preparedness. Saudi Aramco's position is that, since it does not enjoy the benefit of the portable homes (with the exception of the 50 homes noted previously), its claim should not be adjusted for any ongoing use that might be made of them. The Panel finds, however, that the residual value of the portable homes, as well as of other items in this claim, must be taken into account and therefore deducted from the claimed amount. Moreover, with respect to the portable homes, as well as some of the other items claimed for, the Panel finds that Saudi Aramco does not appear to have made any attempt to mitigate its loss as required under Governing Council decision 9 (S/AC.26/1992/9).

90. Accordingly, the Panel's recommendation of compensation for the portable homes is comprised of two elements. The first element is the decline in value over the period they could have potentially been used for the purpose for which they were intended. The second element consists of the extraordinary freight costs. With respect to the first element, the Panel adjusted the cost of the asset (purchase price plus normal freight costs) based on the depreciation of the asset over this period using the "reducing balance method" of depreciation having regard to the asset's residual value at the end of the period as well as its standard useful life. Consequently, this would result in a recommended award of USD 29,003,306 but for the Panel's conclusion in paragraph 149 below regarding set-off.

(ii) Transportation and miscellaneous costs

91. Saudi Aramco claims USD 1,067,359 for various transportation costs related to the portable housing.

92. With respect to transportation costs of USD 1,059,500, no supporting documentation has been provided for USD 44,381. The balance, with the exception of USD 14,259, relates to expenses incurred in storing the portable homes and carrying out the Amir's instructions to deliver the homes to the designated recipients. The Panel finds that these costs are not compensable since they are not losses arising as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has confirmed USD 14,259 in compensable costs relating to parts for the portable homes and the initial storage of the portable homes. This would result in a recommended award of USD 14,259, but for the Panel's conclusion in paragraph 149 below regarding set-off.

93. Costs of USD 7,859 for component parts for the mobile houses have also been claimed, but the Panel has been unable to confirm this claim based on the information provided and therefore recommends no compensation for such costs.

(b) Tents and related items

94. Saudi Aramco alleges that it incurred additional costs for tents and related items, which the Panel has grouped in the table below based on the information provided. Saudi Aramco states that these items were likewise purchased to shelter civilians who might have been forced to leave their homes due to Iraq's invasion and occupation of Kuwait and were not designated for use by the military.

Table 5. Tents and related items
(United States dollars)

<u>Description</u>	<u>Claim amount</u>
Tents, toilets and ground cloths	2,435,829
Tent furnishings	1,577,920
Erection of tents, toilets and related items	88,235
Electrical materials	61,580
Electric generators	950,535
Hot plates	33,720
<u>Total</u>	5,147,819

95. The claimed costs of USD 2,435,829 include the purchase of 10,000 tents and ground cloths, and 2,000 toilets. Saudi Aramco provided a purchase order, invoice, copy of a cheque and bank statement to substantiate this amount. With respect to the tent furnishings of USD 1,577,920, Saudi Aramco likewise provided invoices, copies of cheques and bank statements. Saudi Aramco also provided a short-form contract, a cheque and bank statements to substantiate the claimed amount of USD 88,235 for the cost of erecting 2,000 of the tents that were released by Saudi Aramco at the request of the civil defence authority. Saudi Aramco states that it has no record of any other tents or related items being released. The various electrical items totalling USD 1,045,835 have been substantiated with purchase orders, invoices and bank statements. These items were turned over to the civil defence authority following the cessation of hostilities.

96. Applying the same considerations referred to in paragraphs 89 and 90 above concerning residual value to the claim amount, this would result in a recommended award of USD 1,300,499, but for the Panel's conclusion in paragraph 149 below regarding set-off.

(c) Gas masks and accessories

(i) Cost of gas masks and accessories

97. Saudi Aramco states that 290,000 gas masks 11/ were purchased for its employees and their dependants.

98. Of that amount, 190,000 gas masks, for which a claim of USD 19,700,000 has been advanced, were obtained from Saudi Arabia's civil defence stocks. No purchase orders, bills of lading or invoices in respect of these purchases were provided. Internal memoranda confirm that Saudi Aramco agreed to pay the third-party vendor directly. Saudi Aramco has provided documents signed by various individuals, acknowledging the receipt of approximately 154,000 gas masks from civil defence stocks. Saudi Aramco provided payment authorization forms and bank statements to substantiate the total claimed costs of USD 19,700,000, although it is not clear from these documents who the payee was. The Panel finds that Saudi Aramco provided insufficient evidence to show that the payee was, in fact, the third-party vendor and to demonstrate that there was no duplication between this claim and the claims of the Government of Saudi Arabia for the purchase of gas masks in other claims before the Commission. 12/

99. The Panel has confirmed that the remaining gas masks and accessories (canisters and bags) were purchased from outside suppliers. Saudi Aramco provided invoices, receiving records, cheques, bank statements and internal forms to substantiate USD 9,824,242 of the claimed amount of USD 9,907,602.

100. Saudi Aramco made no attempt after 2 March 1991 to retrieve the gas masks from the people to whom they had been distributed. It continues to store nearly 36,000 gas masks that were never distributed and have not been used because there is no industrial use for them. The Panel finds that the purchase of the gas masks was a reasonable and proportionate response to the risk to which Saudi Aramco's employees and their families were exposed. 13/ The Panel finds that Saudi Aramco has substantiated USD 9,824,242 of this part of its claim. The Panel further finds that no issue of residual value arises because there is no continuing benefit involved with this kind of asset given the limited use that can be made of gas masks and the fact that they deteriorate relatively quickly.

(ii) Custom duties - gas masks and accessories

101. Saudi Aramco alleges that, in purchasing the gas masks and accessories from outside suppliers, it incurred custom duties of USD 522,499. It provided invoices, customs declarations and copies of cheques in order to document the claim amount, which the Panel has reviewed.

(iii) Freight costs – gas masks and accessories

102. Saudi Aramco also claims freight costs of USD 512,634 for shipment of the gas masks and accessories from outside suppliers, for which it provided invoices and bank statements. The Panel has confirmed USD 480,756 of the claimed amount. No supporting documentation was provided for the balance of this claim element being USD 31,878.

(iv) Landing fees on charter flights – gas masks and accessories

103. With respect to the claimed landing costs of USD 127,588 for the gas masks and accessories from outside suppliers, while Saudi Aramco was unable to provide a copy of its agreement with Saudi Arabian Airlines, it has provided a fax from Saudi Arabian Airlines confirming the 15 per cent fee rate. The Panel has reviewed copies of the invoice, a cheque and bank statement provided to support the claimed costs of USD 127,588.

104. Together, these four claims would result in a recommended award of USD 10,955,085 but for the Panel's conclusion in paragraph 149 below regarding set-off.

(d) Firefighting equipment

105. Saudi Aramco claims USD 15,228,746 for various items of equipment, such as large hoses, pumps, goose-neck van trailers, trailer accessories and compounds, that were intended to be used if hostilities arising from Iraq's invasion and occupation of Kuwait had resulted in major hydrocarbon fires. After 2 March 1991, the hoses, pumps, trailers and accessories remained at their locations. Saudi Aramco has advised that the equipment has occasionally been used in connection with other company operations and that any hoses which have not deteriorated will be incorporated into its firefighting operations as part of a conversion from smaller to larger hoses that began in 1999. The Panel has confirmed USD 14,791,289 of the claimed amount, which was supported by invoices, purchase orders and cheques. No supporting documentation was provided for USD 437,457 of this claim element.

106. Taking into account the considerations outlined in paragraphs 89 and 90 above concerning residual value, Saudi Aramco's claim would result in a recommended award of USD 1,941,479 but for the Panel's conclusion in paragraph 149 below regarding set-off.

(e) Personal protective equipment

107. Saudi Aramco purchased various items of equipment and related services totalling USD 1,084,646 in the belief that such items would be required if Iraq launched poisonous chemical or gas attacks against Saudi Aramco facilities and personnel. These items included chemical monitor sets and extra lithium batteries, protection suits, combo pens and naps for the protection suits, instruction manuals, cooling vests and gel strips and training services. The Panel has confirmed USD 1,061,479 of the claimed amount of USD 1,084,646 based on invoices, customs declaration forms, cheques and bank statements. No supporting documentation was provided for USD 23,167.

108. Of all the equipment procured, only the cooling vests and gel strips totalling USD 124,831 have been found to have any continuing use to Saudi Aramco. No industrial use has been found for the other items, some of which had a limited useful life. Applying the considerations referred to in paragraphs 89 and 90 above concerning residual value to the cooling vests and gel strips, the amount claimed for the cooling vests and gel strips is reduced to USD 28,087. This amount, together with the

balance of the items claimed, USD 936,648, would result in a recommended award of USD 964,735 but for the Panel's conclusion in paragraph 149 below regarding set-off.

(f) Industrial security

109. Saudi Aramco claims USD 724,466 for vapour detectors, search dogs, dog handlers and related equipment to detect the presence of certain types of explosives. Saudi Aramco has acknowledged that these items were procured to deal with potential terrorist attacks, whether from supporters of Iraq or elsewhere. Accordingly, the Panel finds that this claim cannot be said to arise as a direct result of Iraq's invasion and occupation of Kuwait.

(g) Miscellaneous

110. As mentioned previously, Saudi Aramco advised that USD 64,918 of its miscellaneous expenses related to costs incurred to support the military and therefore reduced its claim to USD 356,550. At Saudi Aramco's request, USD 20,219 of the remaining amount, which were costs incurred in connection with the oil spill referred to in paragraph 25 above, were transferred to the "F4" Panel of Commissioners so they could be dealt with as part of the claim for the oil spill. Of the balance of the claimed amount, the Panel would recommend an award of USD 15,502 for the initial storage of the tents and related items discussed in paragraphs 94-96 but for its conclusion in paragraph 149 below regarding set-off. The Panel finds that the other amounts claimed are not supported by appropriate evidence or have not been shown to arise as a direct result of Iraq's invasion and occupation of Kuwait.

(h) Assistance to Kuwaiti refugees

111. At the request of the Amir, Saudi Aramco provided USD 1,000,000 to assist Kuwaiti refugees with essential day-to-day services in the Eastern Province of Saudi Arabia. Iraq contends that the payment constitutes a donation, and that all Kuwaitis who left Kuwait after Iraq's invasion have filed their own claims. In support of this claim element, Saudi Aramco provided a copy of the cheque payable to the Amir of the Eastern Province. As noted earlier, the Government of Saudi Arabia has, however, filed claims with the Commission that include a significant amount for assistance to refugees. As the Panel has been unable to determine if this claim was netted against the Government's claims, it does not recommend that any compensation be awarded for this claim element.

(i) Amount realized from the sale of miscellaneous equipment and materials

112. Saudi Aramco advised that it received USD 727,540 from the resale of miscellaneous equipment and materials, for which the acquisition cost is claimed as part of the government preparedness programme. These sale proceeds have not been deducted from the amounts that the Panel would find to be compensable but for the conclusion in paragraph 149 below regarding set-off. The Panel's valuation approach considers the decline in value of the equipment and materials over the compensable period determined by the Panel, as discussed in paragraphs 89 and 90 above.

4. Conclusions

113. As noted previously, Saudi Aramco received requests from various government agencies to provide different types of assistance and services that it considered went beyond the scope of its approved business plans, budgets and normal operations. Saudi Aramco therefore sought the concurrence of the Government of Saudi Arabia to respond to these requests to the extent that:

- (a) They were within the company's means to do so;
- (b) They would not impair the company's operations; and
- (c) They were consistent with the public interest.

This concurrence was given by the Government of Saudi Arabia.

114. The Panel finds that requests made of Saudi Aramco by government agencies, such as the provision of temporary housing for refugees and gas masks, were a direct result of Iraq's invasion and occupation of Kuwait.

115. The Commission distinguishes between claims for payment or relief to others that are in the nature of "on-going ordinary living" payments and expenses, which are not compensable, and those that are of a "temporary and extraordinary nature", which are compensable. ^{14/} The Panel finds that the expenses claimed by Saudi Aramco are both temporary and extraordinary in nature. The Panel has confirmed USD 44,194,865 of the claimed amount as being related to these expenses.

116. Of this amount, the Panel finds that USD 13,861,299 in expenses was incurred by Saudi Aramco to safeguard its employees and property. ^{15/} Applying its decision in its sixth instalment report, ^{16/} the Panel finds that this was a reasonable and proportionate response by Saudi Aramco to Iraq's threats against Saudi Arabia.

117. The balance, being USD 30,333,566, relates to equipment and materials bought by Saudi Aramco to be used or distributed for humanitarian purposes. ^{17/} The Commission has held, in the context of claims by Governments, that expenditures such as these are compensable in principle. The "F2" Panel, for example, noted, that "... preventive and protective measures ... that were implemented for the benefit of the civilian population in response to the threat of military action posed by Iraq during the period of its invasion and occupation of Kuwait are, in principle, compensable." ^{18/} The Commission has also held that claims by corporations for such expenditures may be compensable. The "E2" Panel of Commissioners, for example, has held that the costs incurred by an airline to evacuate individuals from locations threatened by military action, at the request of its Government, are compensable. ^{19/} The Panel therefore finds these costs to be compensable in principle.

118. This would result in an award of USD 44,194,865 but for the Panel's conclusion in paragraph 149 below regarding set-off.

Table 6. Government preparedness programme
(United States dollars)

<u>Claim element</u>	<u>Claim amount</u>	<u>Amended claim amount</u>	<u>Compensable amount before set-off</u>
Portable homes	89,118,888	84,174,464	29,017,565
Tents and related items	5,147,819	5,147,819	1,300,499
Gas masks	30,770,323	30,770,323	10,955,085
Firefighting equipment	15,228,746	15,228,746	1,941,479
Personal protective equipment	1,084,646	1,084,646	964,735
Industrial security	724,466	724,466	Nil
Miscellaneous	421,468	356,550	15,502
Assistance provided to Kuwaiti refugees	1,000,000	1,000,000	Nil
Military	5,148,489	Nil	Nil
Unreconciled amount	(349)	(349)	n/a
Less: Amount realised from the sale of miscellaneous equipment and materials	(727,540)	(727,540)	n/a
<u>Total</u>	147,916,956	137,759,125	44,194,865

J. Saudi Aramco hostility reaction plan

1. Saudi Aramco's contentions

119. Saudi Aramco claims compensation in the amount of USD 5,596,007 under this category.

120. Saudi Aramco alleges that, prior to Iraq's invasion and occupation of Kuwait, it had developed disaster contingency plans to deal with industrial incidents such as gas leaks, chemical spills and major fires or explosions. Saudi Aramco did not, however, have a plan for dealing with rising tension due to military operations, war or possible hostile acts.

121. Saudi Aramco therefore developed the "Saudi Aramco Hostility Reaction Plan" for dealing with the phased evacuation of personnel from company communities and for the control of panic. Saudi Aramco alleges that the costs incurred under this claim element were incurred to protect individuals and property, to evacuate personnel if necessary, to provide further basic needs until personnel could be taken to a place of refuge and to enable essential personnel to continue with their work so that company operations would not be impeded. Saudi Aramco alleges that these preparations were

required as a direct result of Iraq's invasion and occupation of Kuwait and the threatened and actual military operations that resulted.

2. Iraq's response

122. Iraq contends that these costs are similar to the costs incurred in respect of the government preparedness programme, and should be rejected on the same grounds raised by Iraq in respect of that part of the claim.

123. Additionally, Iraq contends that Saudi Aramco's reference to the anticipated rise in tensions or possible acts of terrorism against Saudi Aramco is a reference to "... the expected reaction of the people of Saudi Arabia when U.S. and Allied Forces begin [sic] their planned military offensive on Kuwait and Iraq. This claim evidently has its special political angles, and is directly related to military operations, hence cannot be eligible for compensation."

3. Analysis and valuation

124. Saudi Aramco submitted copies of invoices, waybills, service order forms, material cost reports, monthly sub-ledger accounts, as well as other internal forms and correspondence to support some of the claimed costs. The Panel requested additional documentary evidence in the article 34 notification in order to substantiate this part of the claim. Saudi Aramco has not produced the requested information because it would involve extensive additional documentation, much of which would have been disposed of in accordance with its policies on document retention and disposal. It would also require involving people who are no longer employed by Saudi Aramco.

4. Conclusions

125. The Panel has found that extraordinary costs incurred to ensure the safety of a company's employees and property, such as those claimed, represent reasonable and proportionate measures in response to the risks inherent in Iraq's threats and actions against Saudi Arabia. ^{20/} While much of the claim is supported by internal documentation only, there is no supporting documentation for USD 2,334,736 of the claim. Further, although requested to do so, Saudi Aramco did not explain how some of the costs were incurred as a direct result of Iraq's invasion and occupation of Kuwait. An analysis of the information provided demonstrates that there is no proof of payment for many items claimed. The Panel therefore finds that Saudi Aramco has not provided sufficient evidence to support its claim and recommends no compensation.

K. Repairs to offshore installations

1. Saudi Aramco's contentions

126. Saudi Aramco alleges that Iraq released floating mines into the Persian Gulf, causing damage to three offshore facilities that cost USD 749,208 to repair.

(a) Safaniya platform

127. Saudi Aramco alleges that, between 28 and 30 December 1990, a floating mine exploded at Safaniya well platform number 58, causing extensive damage. The boat landing and access ladder were blown off, bracing and supports were twisted, separated and displaced, piping and gratings were damaged and the emergency shutdown system and other equipment were damaged or destroyed. The cost of the repair work, carried out during 1991, totalled USD 235,944.

(b) Zuluf GOSP-4 platform

128. Saudi Aramco says that, on 26 January 1991, a floating mine exploded under the accommodation platform at Saudi Aramco's Zuluf GOSP-4 facility, causing damage to the underside and cracking one of the legs of the platform. The deck and electrical and other equipment on it were also damaged. Repairs were carried out at various times during 1991 totalling USD 245,041.

(c) Zuluf GOSP-3 platform

129. Saudi Aramco states that, on 6 February 1991, a floating mine exploded under the flare platform at Saudi Aramco's Zuluf GOSP-3 platform. The braces of the structure were deformed, the platform and bridge were damaged and there was extensive damage to piping, electrical equipment, pumps and other equipment on the platform. The cost of the repair work done in 1991 totalled USD 268,223.

2. Iraq's response

130. Iraq contends that there is no clear evidence that the damage to the platforms was caused by mines and not by other external sources or sabotage. Additionally, Iraq contends that there is no clear evidence that the mines (if these were the cause of the damage) were planted during the "Kuwait crisis". Iraq alleges that some of these mines may have remained from the eight-year war between Iran and Iraq which ended in 1988, and relies for this contention on a newswire report dated 8 April 1991 provided by Saudi Aramco with its statement of claim. Iraq also disputes whether the costs claimed reflect the true costs because the work was performed by Saudi Aramco employees.

3. Analysis and valuation

131. Iraq's suggestion that the damage may have been caused by external sources or sabotage is not supported by evidence, and the newswire report is inconclusive as to whether the mines were remnants from the earlier war between Iran and Iraq. It is widely accepted that Iraq laid mines in the Persian Gulf, in particular in waters off Kuwait where a "minebelt" of some 1,200 mines was laid and that some of these mines broke free from their moorings. 21/

132. The documents relied upon by Saudi Aramco to substantiate the claim include internal correspondence and a preliminary investigation report for the Safaniya platform dated 30 December 1990. Additionally, vessel and equipment usage activity reports and daily diving reports were provided by Saudi Aramco to substantiate the hours worked by contractors and various service departments. Cost distribution rates were provided to substantiate the hourly service charges applied

by each department. In regard to Zuluf GOSP-3 and GOSP-4, Saudi Aramco has provided monthly costs sub-ledgers dated between 31 October 1990 and 29 December 1991.

4. Conclusions

133. The Panel finds that the costs to repair property damage that arose as a direct result of Iraq's invasion and occupation of Kuwait are compensable to the extent that these costs represent additional costs to a claimant. This would result in a recommended award of USD 626,694 but for the Panel's conclusion in paragraph 149 below regarding set-off.

L. Set-off

134. From the previous discussion, the Panel finds that Saudi Aramco suffered losses of USD 44,821,559, which are compensable in principle. However, the Panel must determine whether this amount should be set off against the increased profits that may have been earned by Saudi Aramco during Iraq's invasion and occupation of Kuwait.

1. Saudi Aramco's contentions

135. As noted previously, Saudi Aramco has said that any increased profits that it earned following Iraq's invasion and occupation of Kuwait should not be set off against its losses because indirect profits cannot be used to set off direct losses.

2. Iraq's response

136. Iraq has alleged that Saudi Aramco earned profits of between approximately USD 37.5 billion and USD 50 billion that it would not have earned but for the invasion and occupation of Kuwait. As noted in paragraph 39 above, Iraq provided additional materials at the oral proceedings that further demonstrated how it estimated Saudi Aramco's increase in volume and prices.

3. Conclusions

137. In the absence of Saudi Aramco's financial records, it is not possible for the Panel either to accept or reject Iraq's assertion with any degree of accuracy. However, in the light of Saudi Aramco's admission that it dramatically increased production and the effect that Iraq's invasion and occupation of Kuwait had on the price of oil, the Panel finds that some extraordinary profits were earned by Saudi Aramco as a direct result of the invasion (partly because of the increase in production, and partly as a result of the increase in the price of oil), which would not have been earned but for the invasion and occupation.

138. In order to determine what extraordinary profits would have been earned by Saudi Aramco, the Panel must consider the situation that would, in all probability, have existed had Iraq's invasion and occupation of Kuwait not occurred. 22/

139. Saudi Aramco says that the Commission's practice of taking into account extraordinary profits earned by a claimant in assessing the amount of compensation to be awarded applies only to claims for

lost profits, which it has not claimed. Saudi Aramco states in the brief it prepared for the oral proceedings that in no other instance has the Commission "... proposed or decided that increased profits following Iraq's invasion and occupation of Kuwait should be taken into account ..." in considering losses. In its brief, Saudi Aramco refers in this connection to claims where post-invasion events have been examined to determine when a claimant has achieved its pre-invasion level of production or profits. Saudi Aramco states that the Commission has never examined post-invasion profits in assessing other kinds of losses, such as those it claims for here. The Panel notes, however, that the profits that are at issue here were earned by Saudi Aramco during Iraq's invasion and occupation of Kuwait, which is the same period during which it incurred the costs that are the basis of its claim, and not after the invasion and occupation. Further, the Panel notes that the profits were earned by Saudi Aramco as a result of an increase in the business it was already doing before Iraq's invasion and occupation of Kuwait, and were made possible only by the invasion and occupation.

140. In Saudi Aramco's view, even when the Commission has indicated that losses suffered can be set off against profits made, the Commission has required a causal connection between the profits earned and Iraq's invasion and occupation of Kuwait. Saudi Aramco, after quoting paragraph 187 of the Fourth "E1" Report 23/, stated in its brief:

"Thus, the Panel found that even if Iraq had not invaded Kuwait, the supply of and demand for oil would have increased, and that the price of oil would have increased because demand outstripped supply. Thus, any profits from increased volume sales or increased oil prices were not the result of Iraq's invasion and occupation of Kuwait, because, based on the UNCC's own projections, these sales would have occurred anyway."

141. The Panel has repeatedly stated that Iraq's invasion and occupation of Kuwait was also a cause of the increase in the price of oil. 24/ For example, in paragraph 56 of the Fourth "E1" Report, it said "... oil prices after 2 August 1990, which had a direct effect on the GSPs [Government selling price] increased drastically as a result of Iraq's invasion and occupation of Kuwait and fear of shortages that ensued." Throughout that report, the Panel has found that both Iraq's invasion and occupation of Kuwait and market factors affected the price of oil. 25/

142. In order to put Saudi Aramco in the position that it would have been in but for Iraq's invasion and occupation of Kuwait, the Panel therefore finds that it should consider all the extraordinary effects of the invasion to which Saudi Aramco was exposed and, accordingly, compare Saudi Aramco's actual position with the position Saudi Aramco would have been in had the invasion not occurred. As noted earlier, Saudi Aramco has not furnished the Panel with detailed financial records for the relevant period due to the Government of Saudi Arabia's refusal to allow it to do so. In the absence of such evidence, the Panel has therefore attempted to project the effect of Iraq's invasion and occupation of Kuwait on Saudi Aramco.

143. Saudi Aramco, by its own admission in its statement of claim, increased production following Iraq's invasion and occupation of Kuwait. It undertook to increase its production first to 7,500,000 barrels per day (from 5,500,000 barrels per day) as soon as possible after 2 August 1990, then to 8,000,000 barrels per day by year-end and finally 8,500,000 barrels per day by mid-year 1991. In an

article in the Oil & Gas Journal, Saudi Aramco stated that it had added almost 2,000,000 barrels per day of crude oil to the market before the end of August 1990 and another 1,000,000 barrels per day by mid-December 1990. 26/ In the same article, Saudi Aramco also stated:

“The initial increases in production from 5.5 million b/d to 7.5 million b/d were achieved with Arabian Heavy and Arabian Medium crudes from Safaniya and Zuluf fields.... Subsequent increases to 8.5 million b/d provided Arabian Light from Ghawar and Arabian Medium from Khursaniyah, Qatif, and Khurais fields.” 27/

144. This information is consistent with what is known about Saudi Aramco’s production during the period of Iraq’s invasion and occupation of Kuwait. While total oil production continued to meet market requirements despite the loss of Kuwait and Iraq’s production, the oil produced to replace it was on average heavier than previously sold. 28/

145. In the absence of the financial information specifically requested of Saudi Aramco, it is not possible to determine exactly when its production increased, the blend of oil it sold, the amount of oil sold or the price at which it sold the oil.

146. The Panel estimates conservatively that Saudi Aramco would have earned an additional USD 2,350,000,000 in revenue in the 47-day period from 15 September 1990 to 31 October 1990 29/ by making the following assumptions, in which it has endeavoured to apply, for the purposes of illustration, the information in a manner most favourable to Saudi Aramco:

(a) Saudi Aramco was producing an additional 2,000,000 barrels per day 30/ by 15 September 1990 and continued to do so through to 31 October 1990. 31/

(b) Saudi Aramco sold only heavy oil, the least valuable type of crude oil.

(c) The oil was sold at USD 25 per barrel (the figure reported by Platts Oilgram). 32/

147. The result is the same even if the pre-invasion price of USD 14.70 per barrel for heavy oil 33/ is applied to the initial increase in production of 2,000,000 barrels per day for the same period; under these assumptions Saudi Aramco’s extra revenue is USD 1,381,800,000.

148. Similarly, if the difference in the price of heavy oil immediately before and after Iraq’s invasion and occupation of Kuwait (but before the imposition of the trade embargo) 34/ is applied to Saudi Aramco’s existing production of 5,500,000 barrels for a like number of days, Saudi Aramco’s increased revenue is USD 271,425,000.

149. While Saudi Aramco implicitly conceded that extraordinary profits could be taken into account if it had claimed for lost profits, it did not address the issue of whether extraordinary profits should be set off against other kinds of losses. The Panel finds that there is no basis for distinguishing between the kinds of losses Saudi Aramco has claimed and other kinds of losses, such as lost profits. Even allowing for operating costs of USD 28,000,000 35/, and recognizing that Saudi Aramco did not sell all of the oil it produced and that market factors did influence the price to some extent, the Panel finds that Saudi Aramco undoubtedly achieved profits from its increased sales that far exceed both the claim it has advanced of USD 270,207,120, and the amount this Panel would otherwise recommend for

compensation, USD 44,821,559. The Panel therefore finds that it is unnecessary to estimate Saudi Aramco's extraordinary profits beyond 31 October 1990.

M. SAMAREC temporary monthly allowance

1. Saudi Aramco's contentions

150. Saudi Aramco alleges that SAMAREC was established on 1 January 1989 as a wholly-owned subsidiary of the General Petroleum and Minerals Organization ("Petromin"), an organization operating under the jurisdiction of the Ministry of Petroleum and Mineral Resources of Saudi Arabia. SAMAREC, it claims, was established to integrate and operate all of the country's oil refining and marketing operations.

151. Saudi Aramco alleges that, throughout SAMAREC's existence, it was designated as a "company under formation" pending the anticipated issuance of a royal decree "more formally defining its legal status". The royal decree was never issued, and on 14 June 1993, the Government of Saudi Arabia "... announced that effective July 1, 1993 the project of formation of SAMAREC was cancelled and that its operations would be merged into Saudi Aramco...".

152. SAMAREC, like Saudi Aramco, paid each of its employees a 15 per cent temporary allowance, calculated according to the individual employee's salary, for the period from 1 October 1990 to 30 April 1991. The temporary allowance was reduced to 10 per cent from 1 May to 31 August 1991, and was discontinued after that date.

153. Saudi Aramco alleges that the temporary allowance was paid to the employees to meet the "challenge the company faced" and to encourage them not to leave their jobs during the period in question. The "challenge" is a reference to the allegation that SAMAREC was ordered by the Government of Saudi Arabia "... to supply all fuel and other products required by the Saudi and international military forces assembled to defend Saudi Arabia against the very real threat of Iraqi aggression." SAMAREC took all the necessary steps to ensure that the fuel and other refined products required were accumulated, stored and delivered to the military forces. Saudi Aramco alleges that SAMAREC paid a total of USD 25,915,844 to its employees as temporary monthly allowances. This amount is alleged to have been transferred to the books of Saudi Aramco as at the effective date of the merger, being 1 July 1993. Therefore, Saudi Aramco claims that it is entitled to bring this claim as SAMAREC's successor in interest. The amount of this claim has since been reduced to USD 6,027,271 for the period 1 October 1990 to 31 March 1991 for the same reasons Saudi Aramco reduced its claim for temporary allowances, as discussed in paragraph 57 above.

2. Iraq's response

154. Iraq alleges that the allowances in question were paid as "incentives" to the employees of SAMAREC in order to increase the volume of fuel and other refined oil products required for military operations.

155. Iraq contends that the costs incurred by SAMAREC were related to the support of military operations and hostility against Iraq and should be considered ineligible for compensation in accordance with Governing Council decision 19 and Governing Council decision 102 (S/AC.26/Dec.102 (2000)), in which the Governing Council adopted this Panel's recommendation in its Fourth "E1" Report that other SAMAREC operating expenses should be considered "military costs" and therefore non-compensable. Iraq repeats its allegation that Saudi Aramco earned extraordinary profits of approximately USD 49,000,000,000 during the relevant period that should be taken into consideration.

3. Analysis and valuation

156. In order to substantiate the payment of the temporary monthly allowance, Saudi Aramco produced an independent auditor's report and a letter issued by the Ministry of Petroleum and Mineral Resources to SAMAREC, dated 27 October 1990, approving the payment of the allowance.

157. The Panel requested additional information and supporting evidence relating to this part of the claim, including the relevant payroll records. The Panel also asked Saudi Aramco for copies of all audit and independent accounting working papers with respect to the review of the temporary allowance payments. These documents were not produced because they could not be located.

4. Conclusions

158. The Panel finds that, while the amount claimed is alleged to have been transferred to the books of Saudi Aramco, the claim is not subject to set-off against Saudi Aramco's profits because SAMAREC had not yet merged with Saudi Aramco when the loss occurred (and when Saudi Aramco's extraordinary profits were achieved).

159. However, the Panel is unable to confirm the accuracy of the claim because Saudi Aramco failed to comply with the Panel's request for information and documents. Furthermore, the claimed amount would not be compensable even if proved. Applying the same reasoning the Panel used in the Fourth "E1" Report, in which it considered SAMAREC's other operating expenses, the Panel finds that these costs relate to the provision of support for the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait. Governing Council decision 19 specifically provides that such costs are not eligible for compensation. The Panel therefore recommends that no compensation be awarded for this claim.

N. Conclusions and summary of recommendations

160. Accordingly, the Panel recommends no award of compensation for the whole of the claim of Saudi Aramco, as shown in the following table.

Table 7. Saudi Aramco's claim - recommended compensation a/

(United States dollars)

<u>Claim element</u>	<u>Claim amount</u>	<u>Amended claim amount</u>	<u>Compensable amount before set-off</u>	<u>Panel's recommendations</u>
Voluntary repatriation of dependants	11,541,586	11,541,586	Nil	Nil
Saudi Aramco temporary monthly allowance	132,361,326	78,426,555	Nil	Nil
War risk insurance	29,147,016	29,147,016	Nil	Nil
Surcharges on purchase	960,352	960,352	Nil	Nil
Government preparedness programme	147,916,956	137,759,125	44,194,865	Nil
Hostility reaction plan	5,596,007	5,596,007	Nil	Nil
Repairs to offshore installations	749,208	749,208	626,694	Nil
SAMAREC temporary monthly allowance	25,915,844	6,027,271	Nil	Nil
<u>Total</u>	354,188,295	270,207,120	44,821,559	Nil

a/ Although Saudi Aramco substantiated certain parts of its claim for which the Panel would otherwise recommend an award, the Panel has recommended that these amounts be set off against the extraordinary profits Saudi Aramco achieved as a direct result of Iraq's invasion and occupation of Kuwait.

IV. CLAIM OF ARABIAN OIL COMPANY, LTD.

A. Introduction

161. Arabian Oil Company, Ltd. (“AOC”) is a Japanese corporation. Saudi Arabia and Kuwait each own 10 per cent of AOC. In 1957 and 1958, AOC entered into two separate concession agreements with Saudi Arabia and Kuwait. ^{36/} Pursuant to these agreements, AOC received the exclusive right and responsibility for petroleum exploration, development and production in the offshore area of the partitioned neutral zone between Saudi Arabia and Kuwait.

162. Pursuant to a 1974 Participation Agreement and a 1981 Memorandum of Understanding, Saudi Arabia and Kuwait respectively became joint venture partners in AOC’s offshore operations in the concession area of the partitioned neutral zone. As of 2 August 1990, AOC held a 40 per cent equity interest in the joint venture, and Saudi Arabia and Kuwait each held a 30 per cent equity interest. AOC, as the operator of the joint venture, submits this claim on behalf of itself and its joint venture partners, Saudi Arabia and Kuwait.

163. AOC selected Al-Khafji, which is located at the middle of the partitioned neutral zone, approximately 20 km south from the Saudi Arabian-Kuwaiti border and 130 km south of Kuwait City, as the site for its permanent operation base (the “field office”).

1. AOC’s contentions

164. AOC states that the field office was bombarded after military activities escalated on 17 January 1991 following Iraq’s unlawful invasion and occupation of Kuwait. AOC alleges it suffered losses as a result of military operations arising as a direct result of Iraq’s invasion and occupation of Kuwait, which can be summarized as follows:

Table 8. AOC’s claim
(United States dollars)

<u>Claim element</u>	<u>Claim amount</u>
Losses related to contracts	8,490,439
Additional war risk insurance	11,013,890
Losses related to real property	7,058,774
Losses related to other tangible property	3,711,182
Payment or relief to others	16,577,035
<u>Total</u>	46,851,320

165. During the course of claims review, the Panel requested that AOC supply more precise information regarding certain components of the claim for which AOC had only provided estimates

when the claim was originally filed. Where AOC has supplied this information, the Panel has relied on actual results rather than estimates in reviewing the claim.

166. On 11 October 2000, AOC was notified pursuant to article 34 of the Rules that it had not fulfilled the evidentiary requirements with respect to various parts of its claim.

167. In its reply dated 28 February 2001, AOC gave a number of reasons why it was unable to provide the information.

- (a) Some information was lost during Iraq's invasion and occupation of Kuwait.
- (b) Formal procedures were not followed because of the emergency.
- (c) Ten years have elapsed since the events occurred.
- (d) Many employees who worked at AOC during the relevant period have since left.
- (e) AOC's head office and its office in Kuwait have both moved.

168. Subsequently, the Panel requested further information and documents from AOC to assist in reviewing its claim. In response to these requests, AOC provided some additional evidence.

2. Iraq's position

169. Iraq's general response to AOC's claim is that the losses claimed by AOC were not a direct result of its invasion and occupation of Kuwait because it did not bombard the field office. Iraq also states that the various buildings and facilities were intentionally damaged or destroyed by AOC in order to have them replaced at Iraq's expense. ^{37/} Additional arguments Iraq made with respect to specific elements of AOC's claim have been addressed in the sections dealing with those claim elements.

B. Losses related to contracts

170. AOC claims that it incurred expenses by having to keep on standby equipment that it used in its operations, which was evacuated from the field office as a result of increased military activities. AOC also claims for equipment that it had ordered but that could not be delivered to the field office as a direct result of Iraq's invasion and occupation of Kuwait.

171. Iraq states that, as it repeatedly said it would not attack Saudi Arabia, there was no justification for equipment being evacuated or not delivered. Iraq also states that AOC has not provided sufficient details of how this claim was calculated.

1. Standby fee for rig "AD-8" and related expenses

(a) AOC's contentions

172. AOC alleges that drilling rig AD-8, which was hired from a third-party contractor, was evacuated to Sharja port in the Persian Gulf from 5 September 1990 to 1 May 1991 in response to Iraq's threats of military action. AOC says that in 1990 it repeatedly, but unsuccessfully, tried to

convince the contractor that the field office was not in danger. Due to the contractor's removal of the rig, AOC says it negotiated with the contractor as to what payments were to be made during the time the rig was at Sharja port.

173. AOC says it also considered terminating the contract based on its view that the contractor had breached the contract, but decided against doing so for a number of reasons. First, AOC was given instructions by the Government of Saudi Arabia in writing, and the Government of Kuwait verbally, to resume normal oil production procedures, which involved the use of the rig, as soon as the hostilities ended. Second, AOC suggests that it would have taken a considerable period of time to replace the rig. Third, AOC expected, presumably at the outset of hostilities, that the rig would be unavailable for only a short period of time. Lastly, the rig could not be used by AOC outside the concession area because it had no other operations that required such equipment.

174. The standby fee and other expenses paid during this period were USD 6,029,510. These costs included well-testing technical services for the rig and drilling-tool rental expenses that had to be paid even though operations were suspended, as well as temporary well-closure expenses that were incurred in connection with the removal of the rig.

(b) Conclusions

175. The Panel finds that there is clear evidence that Saudi Arabia was credibly threatened with military action for a substantial part of the period during which the rig was kept on standby in Sharjah. Moreover, the launching of scud missiles by Iraq after 18 January 1991 constituted actual military operations. ^{38/} The Panel also finds that most of the reasons given by AOC for not terminating the contract might be considered a reasonable attempt to mitigate its losses directly resulting from Iraq's invasion and occupation of Kuwait. Notwithstanding the foregoing, the Panel has not been able to test the veracity of AOC's contention that it tried to convince the contractor to remain at the field office because it did not provide the additional information that the Panel requested. The Panel also finds that AOC did not provide the information requested in order to assess whether AOC acted reasonably, having regard to the various provisions in the contract for termination or reduction in services. The Panel notes that the payments made to the contractor were, in fact, the payments that would have been due under the contract. The Panel accordingly recommends that no compensation be awarded for this claim element because AOC has not provided sufficient evidence to substantiate the existence and extent of its loss.

2. Standby fee for 200-ton crane barge

(a) AOC's contentions

176. AOC claims that a 200-ton crane barge, also hired from a third-party contractor, was evacuated to Umm Al Quwain, United Arab Emirates on 10 January 1991 due to the threat of military operations. While AOC and the barge contractor initially agreed to terminate the contract effective 3 March 1991, the parties subsequently reinstated the contract. AOC says it could not have used the barge, which was located outside the concession area from 10 January to 18 May 1991, because AOC had no other operations that required such equipment. AOC claims USD 2,025,234 for the standby

fee negotiated with the contractor during the period the barge was not available. The fee represented a reduced percentage of the rate due under the contract until 21 April 1991 when it reverted to the full rate, less the cost of the substitute barge that AOC was required to hire during the first week of the contractor's absence from the field office.

(b) Iraq's response

177. Iraq notes that the barge was out of service from 24 July 1990 to 15 September 1991. As 24 July 1990 is prior to Iraq's invasion and occupation of Kuwait, Iraq suggests that there must have been other reasons why the barge was not being used.

(c) Conclusions

178. The Panel finds that AOC has provided documentation confirming that the barge was out of service from 10 January to 18 May 1991. Based on the provisions of the contract and the correspondence exchanged between the parties, the Panel finds that AOC acted reasonably in invoking the force majeure provision contained in the contract and subsequently negotiating to have the barge kept on standby to avoid delay when it resumed operations. However, while AOC provided various internal accounting documents in relation to the claimed costs, no proof of payment was provided. ^{39/} Therefore, the Panel does not recommend an award of compensation for this claim element.

3. Additional charges related to new offshore platform

(a) AOC's contentions

179. Prior to Iraq's invasion and occupation of Kuwait, AOC had contracted for the fabrication and installation of a new offshore platform module. The contractor was ready to transport the platform to the field office on 2 August 1990. AOC says that, under the circumstances, it had no choice but to accept the contractor's refusal to perform its contractual duty to install the platform. In doing so, AOC considered the instructions from the Governments of Saudi Arabia and Kuwait to return to normal oil production procedures as soon as the hostilities ended, the length of time it would take to find a comparable replacement and the expectation that operations would be suspended for a relatively brief period of time.

180. AOC therefore paid for the storage and maintenance of the platform from 3 August 1990 to 7 May 1991, as well as certain additional charges. The invoiced amount was USD 464,982. The parties subsequently agreed to a fee of USD 380,000 for the work. The total for this claim element is USD 435,695, which includes charges related to the hook-up contract, the performance of which AOC states was likewise delayed by Iraq's invasion and occupation of Kuwait.

(b) Iraq's response

181. Iraq states that, because it took until a month after the conclusion of the hostilities for the platform to be moved to the field office, AOC's assertion that it was ready to be used immediately prior to the invasion is incorrect.

(c) Conclusions

182. Based on the provisions of the contract and the correspondence exchanged between the parties, the Panel finds that AOC acted reasonably in arranging for the storage and maintenance of the platform. The Panel further finds that the platform was transported to the field office within a reasonable period of time after 2 March 1991. The Panel does not, however, recommend an award of compensation for this claim element because, while AOC provided internal accounting documents in relation to the claimed costs, no proof of payment was provided.

C. Additional war risk insurance

(a) AOC's contentions

183. AOC alleges that, prior to 17 January 1991, generally accepted terms of sale required the purchaser to bear the risk and the cost of insurance for transporting crude oil and oil products. In order to minimize losses after 2 August 1990, AOC negotiated with purchasers to continue to make shipments by agreeing to share a portion of the increased war risk insurance premiums. The amounts AOC agreed to pay varied because they were based on AOC's existing relationship with the particular purchasers. AOC claims USD 11,013,890 for its share of such premiums.

(b) Conclusions

184. The Panel notes that the only information provided by AOC in support of the claimed amount was debit notes and credit notes. The Panel specifically requested further information in order to assess this part of the claim that was not provided. Therefore, the Panel does not recommend an award of compensation for this claim element due to insufficient evidence to substantiate the amount of the loss.

D. Losses related to real property

185. AOC shut down its operations at the field office on 17 January 1991 as a consequence of the increased military action and ensuing bombardment. AOC alleges that buildings and facilities at the field office relating to its operations were damaged or destroyed as a direct result of such military operations. AOC claims that no damage reports with respect to the various buildings and facilities are available because they were provided verbally under emergency circumstances. To the extent repairs have been made or reinstatement completed, AOC generally provided copies of the relevant contracts, specifications and invoices, as requested by the Panel.

1. Destroyed property

(a) AOC's contentions

(i) Crude settling tank DTK-201 and connecting pipe

186. AOC states that crude settling tank DTK-201 and the pipe connecting it to another tank, which were used in the production process to separate water from crude oil, were completely destroyed on 17

January 1991. When AOC originally filed its claim, the replacement cost was estimated to be USD 4,616,091. AOC has since rebuilt the facilities for Saudi Arabian riyals (SAR) 24,992,000.

(ii) Hospital No. 1 building, radio shop building and company housing

187. AOC states that, when staff returned to the field office in March 1991, after being evacuated on 17 January 1991, they discovered that the buildings for hospital No. 1, the radio shop and company housing had been completely destroyed. When AOC originally filed its claim, the total replacement cost for the three items was estimated to be USD 1,123,366. AOC has since rebuilt the buildings for hospital No. 1 and the radio shop.

188. The cost to replace the building for hospital No. 1 was estimated to be USD 921,587 at the time AOC filed its claim. The building has since been replaced for SAR 4,848,458.

189. The replacement cost for the radio shop building was estimated to be USD 11,630 at the time AOC filed its claim. AOC has since replaced the building for SAR 883,607.

190. AOC claims USD 190,149 for the loss of the company housing building, which was calculated by multiplying the net book value of the asset by the average of wholesale price indices for 12 industrialized countries as published by the International Monetary Fund. The net book value represents the original acquisition cost less depreciation calculated on a straight-line method. If the net book value was less than 10 per cent of the original acquisition cost at the time of destruction, then AOC used a salvage value of 10 per cent, a method which it asserts is in accordance with Japanese tax law. AOC alleges that the use of the average of the wholesale price indices was necessary because the field office assets included a variety of items that had been purchased and would need to be replaced from sources all over the world. It appears, however, based on information provided in response to the Panel's interrogatories, that AOC has also repaired the company housing building.

(b) Iraq's response

191. Iraq has objected to the valuation methodology employed by AOC, which is described in the preceding paragraph, because it is based on AOC's information without any external audit.

(c) Conclusions

192. Based on the information provided, including contracts, specifications, drawings and invoices, the Panel finds that AOC reinstated the various buildings and facilities, but that there is insufficient evidence to recommend an award based on actual repair costs. The Panel therefore recommends an award of USD 4,788,279 based on the detailed calculations of the net book value of the property, which the Panel finds are reflected in the extraordinary loss recorded in AOC's audited financial statements for the period 1 January to 31 December 1991.

2. Damaged property

(a) AOC's contentions

(i) Connecting pipe for crude settling tank DTK-201

193. AOC states that, due to the destruction of crude settling tank DTK-201 and the pipe that connected it to crude settling tank DTK-202, as reviewed in paragraph 186 above, additional piping was necessary to connect crude settling tank DTK-202 to other facilities while crude settling tank DTK-201 was being rebuilt. AOC claims USD 397,637 for the additional piping.

(ii) Well jacket TS-09

194. AOC alleges that, after the evacuation of the field office on 17 January 1991, the Allied Coalition Forces observed oil leaking in the field. When AOC employees returned to the field office in March 1991, they discovered that the source of the leak was severe damage to well jacket TS-09 that was caused by an exploded drifting mine. AOC claims USD 428,061 as the cost of repairing this damage.

(iii) Valve station and loading hose of SBM No. 3

195. AOC employees who returned to the field office after the liberation of Kuwait allegedly found that the valve station and loading hose for a single buoy-mooring system had deteriorated due to AOC's inability to perform the required periodic maintenance. AOC claims USD 38,564 for the cost of restoration.

(iv) Field office buildings

196. Various buildings and facilities were allegedly found to be severely damaged when AOC employees returned to the field office after 2 March 1991. AOC claims USD 398,967 for these repairs.

(v) Hospital No. 2

197. As a result of the destruction of hospital No. 1, which was discussed in paragraph 187 above, AOC added and refurbished trailer houses to hospital No. 2 in order to create additional sick rooms, and modified a maternity clinic into an operating room, at a total cost of USD 56,088.

(b) Conclusions

198. The Panel notes that AOC did not provide the additional information requested in order to substantiate its claim for repairs to damaged property. The insufficiency of the evidence relates to either proof of damage, repair or payment. The Panel finds that, although AOC provided various kinds of documents for each item of this part of its claim, such as work orders, invoices and internal accounting documents, the evidence was insufficient to confirm the existence and extent of any one loss. Therefore, the Panel does not recommend an award of compensation for this claim element.

E. Losses related to other tangible property

199. AOC claims that, in conjunction with the loss of the buildings discussed in paragraph 187 above, equipment in those buildings was also allegedly destroyed. In addition, 187,885 barrels of crude oil in settling tank DTK-201, discussed in paragraph 186 above, were lost. AOC also says it suffered damage to equipment in its office in Kuwait City.

1. Equipment in hospital No. 1, radio shop and company housing and repair of radio communication facilities

(a) AOC's contentions

200. The damage to the equipment in hospital No. 1, the radio shop and company housing is estimated at USD 366,972 using the same methodology discussed in paragraph 190 above.

201. As a result of the damage to the radio shop and equipment, it was necessary for AOC to restore radio communication as quickly as possible in order to resume operations. AOC claims USD 54,591 based on actual expenses incurred.

(b) Conclusions

202. The Panel finds that there is no evidence that the equipment was located in or used in connection with hospital No.1, the radio shop and company housing at the time of the alleged loss. Based on the information provided, the Panel also finds that it has not been possible to reconcile the items claimed to asset registers. The Panel further finds there is also no evidence of proof of payment of the emergency radio repairs. Therefore, the Panel does not recommend an award of compensation for this loss element.

2. Loss of crude oil in settling tank

(a) AOC's contentions

203. AOC states that settling tank DTK-201 contained 187,885 barrels of crude oil, which it values at USD 3,086,763 at the time of the tank's destruction on 17 January 1991. In its claim for lost production, which this Panel reviewed in its Fourth "E1" Report, AOC referred to the oil contained in the settling tank and deducted the value of that oil from its claim for lost production. AOC stated that it sought compensation for this oil in connection with its claim for the settling tank, which the Panel is reviewing in this instalment.

(b) Iraq's response

204. With respect to this part of the claim, Iraq has objected to the price used by AOC in originally calculating its claim for lost production. Iraq has also stated that, due to the sedimentation in the heavy oil, it may have been impossible to pump such an amount of oil out of the tank. 40/

(c) Conclusions

205. In the Fourth "E1" Report, the Panel considered AOC's claim for lost production. The Panel concluded that AOC's loss should be calculated using a no-invasion price for the lost production, rather than the higher actual prices that the Panel considered to have resulted from Iraq's invasion and occupation of Kuwait.

206. The Panel found in the Fourth "E1" Report that the no-invasion value of the crude oil in settling tank DTK-201 was USD 2,244,418 and awarded compensation including that amount. However, pending its review of the claim for this settling tank in the present instalment, the Panel followed AOC's methodology and deducted an amount equal to the full amount of the original claim from its recommended award of compensation in its Fourth "E1" Report. Based on its review of the evidence provided by AOC in this claim, the Panel now considers this deduction inappropriate, and therefore recommends an award of compensation in the amount of USD 3,086,763 to restore the amount deducted.

3. Kuwait office expenses

(a) AOC's contentions

207. AOC claims USD 202,856 for damage to its office and some employee residences in Kuwait City that occurred during Iraq's invasion and occupation of Kuwait as is discussed in paragraphs 208-210 below.

208. AOC alleges that various items of office furniture and furnishings were damaged by Iraqi troops during Iraq's invasion and occupation of Kuwait. AOC has provided an officer's certificate in support of the existence of its claimed loss. It estimates the amount of its loss at USD 51,600, using the methodology discussed in paragraph 190 above.

209. AOC states that its office in Kuwait was occupied by Iraqi troops and that employees' residences were also confiscated and/or occupied by the troops as well. AOC claims USD 80,808 for the actual cost of repairing and cleaning these premises. In support of its claimed loss, AOC relies upon an officer's certificate as well as internal authorizations for expenditures and invoices, which generally are not in English.

210. AOC claims that property worth USD 70,448 was stolen from its office in Kuwait during Iraq's invasion and occupation of Kuwait. AOC bases its claim on what was missing from the premises when staff returned in March 1991. AOC has prepared a list of missing items and their alleged fair market value.

(b) Iraq's response

211. Iraq denies that any representative of the Government of Iraq entered AOC's offices. It maintains that Kuwait City remained secure during the occupation, asserts that the damage may have occurred after its withdrawal, and concludes that the damage may have been inflicted by AOC's employees.

(c) Conclusions

212. The Panel notes that, although the information used by AOC to calculate the loss of office furniture and furnishings is information that normally would be found in a company's accounting records, AOC has not made the records available as requested.

213. The Panel also notes that much of the information provided by AOC to substantiate the costs for repairing and cleaning the office in Kuwait has not been translated into English, as required by the Rules.

214. With respect to the evidence submitted for the stolen property, the Panel notes that AOC has estimated the fair market value of the lost artwork, carpets, silver and furniture. The Panel considers that the nature and detail of the items on the list suggests that there was primary evidence of these assets which AOC has declined to provide. The Panel also notes that Governing Council decision 46 (S/AC.26/Dec.46 (1998)) provides that no loss shall be compensated solely on the basis of an explanatory statement provided by a claimant.

215. Therefore, the Panel recommends that no compensation be awarded for this claim element because AOC has provided insufficient evidence of the existence and extent of its claimed loss.

F. Payment or relief to others

216. AOC claims USD 16,577,035 for temporary offices, safety measures, special payments to employees and relief measures for third parties.

1. Temporary facilities

(a) AOC's contentions

217. AOC opened a temporary management facility in Dammam and temporary office facilities in Riyadh and Jeddah, Saudi Arabia, immediately after the evacuation of the field office on 17 January 1991. AOC used these facilities for relief, liaison and co-ordination with its employees and contractors, as well as with the Governments of Saudi Arabia and Kuwait. These temporary facilities were disbanded at various dates from the end of February to the middle of April 1991. AOC claims USD 120,309 for this claim element.

(b) Iraq's response

218. Iraq questions the need for three facilities to be opened in Saudi Arabia where AOC previously had none, and queries whether AOC simply intended to recover the cost of doing so from Iraq.

(c) Conclusions

219. The Panel notes that AOC has provided two brief, internal memoranda referring only to the set-up of the facilities in Dammam and Riyadh as well as some internal accounting documents and some invoices, which generally have not been translated into English. The Panel also notes that AOC has provided very little information concerning items used in these temporary facilities that were supplied from existing stocks.

220. The Panel finds that, as Iraq contends, AOC has not adequately explained the need for two office facilities in addition to the facility used to replace its evacuated field office. The Panel also finds that AOC has not explained what extra costs it incurred in operating the replacement facility. The Panel further finds that AOC appears to have included in this claim amounts unrelated to the temporary facilities.

221. Therefore, the Panel recommends that no compensation be awarded for this claim element because AOC has provided insufficient evidence of the existence and extent of its claimed loss.

2. Safety measures

(a) AOC's contentions

222. AOC claims USD 1,679,225 for safety measures it took both during and after Iraq's invasion and occupation of Kuwait. Following 2 August 1990, AOC constructed shelters, purchased gas masks and installed warning sirens to ensure its employees' safety at an alleged cost of USD 1,133,475. After the liberation of Kuwait, AOC took steps to minimize the effects of air pollution caused by the burning oil wells, at an alleged cost of USD 545,750.

223. In support of its claim, AOC has provided internal accounting documents and some invoices. Only some of the invoices are in English, and the rest have not been translated into English.

(b) Iraq's response

224. Iraq's states that, since it repeatedly said it would not attack Saudi Arabia, nor use weapons that had been banned internationally, the measures taken by AOC were unwarranted.

(c) Conclusions

225. As noted by the Panel in paragraph 175 above, Saudi Arabia was the subject of both threatened and actual military operations. The Panel finds, however, that AOC has not provided sufficient information to support this claim element, with the exception of one item of expense incurred to

minimize the effects of air pollution. Therefore, the Panel recommends compensation of USD 26,689 for that portion of the claim.

3. Special payments to employees

226. AOC claims to have expended USD 14,450,168 for various payments to employees, which have been grouped by kind.

227. Iraq says that AOC paid such excessive amounts because it believed Iraq would be compelled to pay for them, and that the payments are not the type of loss for which Iraq is responsible under Security Council resolution 687 (1991).

(a) Hardship allowances

(i) AOC's contentions

228. From October 1990 to August 1991, AOC alleges that it paid its approximately 2,000 employees in Saudi Arabia and Kuwait a temporary monthly allowance in recognition of the circumstances under which they were working. The allowance was 15 per cent of base salary from October 1990 to April 1991, and 10 per cent from May 1991 to August 1991. Saudi Arabia and Kuwait both apparently agreed to the payments. AOC states that the total hardship allowance it paid was USD 5,388,049.

(ii) Conclusions

229. The Panel finds that these kinds of payments are compensable in principle. ^{41/} The Panel has confirmed the claimed amount by tracing the hardship allowance to AOC's payroll registers and reconciling it to the cumulative labour costs in AOC's accounting records for the periods ended 31 December 1990 and 31 December 1991. The Panel notes, however, that AOC evacuated the field office on 17 January 1991. Therefore, the Panel only recommends compensation for hardship allowances paid from 1 October 1990 until that date, amounting to USD 2,058,022, since the Panel considers that the reasons cited for paying the allowance no longer existed after 17 January 1991.

(b) Evacuation subsidies

(i) AOC's contentions

230. Immediately after the evacuation of the field office, AOC made a one-time payment equal to roughly one month's average salary to its approximately 2,000 employees in Saudi Arabia and Kuwait in consideration of their difficulties in arranging accommodation at the locations to which they were evacuated. The amount claimed is USD 8,080,908.

(ii) Conclusions

231. The Panel finds that AOC's payment of evacuation subsidies to employees who were forced to evacuate from the field office was a reasonable measure taken as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has reviewed AOC's payroll registers and other documentary evidence, such as proof of payment and receipts. The Panel finds that this amount corresponds to the

“special allowance” element of the extraordinary loss recorded in AOC’s audited financial statements for the period 1 January to 31 December 1991. The Panel accordingly recommends compensation in the amount of USD 8,080,908.

(c) Compensation for employees requested to work in Dammam, Riyadh and Jeddah

(i) AOC’s contentions

232. From 19 January to 14 April 1991, AOC paid an additional allowance to employees who relocated to AOC’s temporary facilities in Dammam, Riyadh and Jeddah, in consideration of the hardships they incurred in working during Iraq’s invasion and occupation of Kuwait and its aftermath. AOC claims USD 797,211 for this allowance.

(ii) Conclusions

233. The Panel’s review of payroll registers and other documentary evidence confirms that payments made to employees who relocated temporarily were in addition to basic salary and other allowances. The Panel has also reconciled the amount claimed to the “special loss” element of the extraordinary loss recorded in the audited financial statements for the period from 1 January to 31 December 1991. While AOC has not adequately explained why it required three temporary office facilities, as discussed in paragraph 220 above, the Panel finds that AOC would have had to carry on its operations from somewhere given that it was forced to evacuate the field office. The Panel therefore recommends compensation in the amount of USD 362,731 for the period 17 January 1991 to 2 March 1991 for the relocation payments made to the employees at the temporary management facility in Dammam. As noted, it is not possible to make a similar recommendation for the costs of the three facilities because of insufficient evidence.

(d) Kuwait office staff special aid

(i) AOC’s contentions

234. Employees of AOC in its Kuwait office were apparently evacuated with their families and some of their possessions on 2 August 1990. AOC alleges that it paid approximately USD 184,000 in special aid to assist them. AOC provided a certificate signed by a company officer as evidence in support of this claim element.

(ii) Conclusions

235. The Panel finds that, although AOC states that all of its records relating to these payments were destroyed when the cashier’s house in Kuwait City was looted during Iraq’s invasion and occupation of Kuwait, it has not provided the secondary evidence requested by the Panel to substantiate this part of its claim. The Panel therefore recommends that no compensation be awarded for this claim element.

4. Other extraordinary expenses

236. AOC alleges that it incurred other extraordinary expenses as a result of Iraq's invasion and occupation of Kuwait, including expenses for Kuwaiti refugees, additional war risk insurance and maintenance of vessels, which total USD 327,333.

(a) Kuwaiti refugees

(i) AOC's contentions

237. AOC claims that it paid USD 100,134 to the Amir of Al-Khafji as a donation and expended a further USD 15,754 at the instruction of the Amir on meals for Kuwaiti refugees who fled to the field office after Iraq's invasion and occupation of Kuwait. In support of its claim, AOC provided the payment requisitions.

(ii) Iraq's response

238. Iraq disputes that it is responsible for AOC's voluntary assistance to Kuwaiti refugees.

(iii) Conclusions

239. The Panel finds that AOC has not provided sufficient information to substantiate the existence and extent of its claim, and therefore the Panel recommends that no compensation be awarded for this claim element.

(b) Additional war risk insurance

(i) AOC's contentions

240. Prior to the outbreak of hostilities, AOC contracted with companies for offshore work such as tugging and berthing of tankers, maintaining offshore facilities, testing wells and supplying materials for offshore works. After 2 March 1991, AOC requested the contractors to resume performance of their contracts and, as an incentive for them to return to the site, offered to bear the expense of insurance for their vessels, rigs and crews against such extraordinary risks as drifting mines, bombs and the like.

241. AOC claims USD 67,467 for the additional insurance premiums. In addition to the insurance cover note relating to the period 27 April to 26 July 1991, AOC has provided internal accounting documents. AOC has also produced supplements to most of its contracts in which AOC undertook to pay for such insurance.

(ii) Conclusions

242. The Panel finds that this claim element is not compensable because the costs were incurred after 2 March 1991 and are therefore not losses directly resulting from Iraq's invasion and occupation of Kuwait. In addition, the Panel also notes that, although the documentation provided confirms the amount claimed, AOC did not provide proof of payment. Therefore, the Panel recommends that no compensation be awarded for this claim element.

(c) Vessel maintenance

(i) AOC's contentions

243. AOC claims USD 143,978 for expenses incurred to keep and maintain at Sharjah port the vessels referred to in paragraph 240 above. It appears that some of these expenses, such as fresh water and diesel, would have been incurred under AOC's contracts in any event, whereas other charges were agreed to by AOC in supplemental agreements to the contracts, including bonuses for the crews while the vessels were on standby.

(ii) Conclusions

244. The Panel finds that AOC has not provided the evidence requested to identify which of the costs referred to in the preceding paragraph are additional in nature, nor has it provided any proof of payment. Therefore, the Panel recommends that no compensation be awarded for this claim element.

G. Conclusions and summary of recommendations

245. AOC, like other oil companies, did earn extraordinary profits as a result, in part, of Iraq's invasion and occupation of Kuwait. All of these profits were set off by the Panel against AOC's loss of profit claim in the Fourth "E1" Report. The Panel therefore recommends that compensation be awarded for AOC's claim in this instalment as set out in the following table.

Table 9. AOC's claim – recommended compensation
(United States dollars)

<u>Claim element</u>	<u>Original claim amount</u>	<u>Panel's adjustment</u>	<u>Panel's recommendations</u>
Losses related to contracts	8,490,439	(8,490,439)	Nil
Additional war risk insurance	11,013,890	(11,013,890)	Nil
Losses related to real property	7,058,774	(2,270,495)	4,788,279
Losses related to other tangible property	3,711,182	(624,419)	3,086,763
Payment or relief to others	16,577,035	(6,048,685)	10,528,350
<u>Total</u>	46,851,320	(28,447,928)	18,403,392

V. CLAIM OF PETROCHEMICAL INDUSTRIES COMPANY (K.S.C)

A. Introduction

1. Description of Petrochemical Industries Company (K.S.C.)

246. Petrochemical Industries Company (K.S.C) ("PIC") is a company incorporated under the laws of the State of Kuwait. All of the issued shares in the capital of PIC are owned by Kuwait Petroleum Company ("KPC"). All of the issued shares in the capital of KPC are owned by the State of Kuwait. Therefore, PIC is indirectly wholly-owned by the State of Kuwait.

2. Description of PIC's business operations

247. PIC produces, stores, transports, distributes and markets chemicals. At the time of Iraq's invasion and occupation of Kuwait, PIC owned and operated a fertilizer plant and a salt and chlorine plant, both situated at Shuaiba industrial area, about 50 kilometres south of Kuwait City.

248. As at 2 August 1990, PIC's fertilizer plant comprised four ammonia units and three urea units. The ammonia units are used to manufacture ammonia from natural gas. This is achieved by extracting hydrogen from the natural gas and combining the hydrogen with nitrogen obtained from the air. At the time of Iraq's invasion and occupation of Kuwait, the natural gas feedstock for PIC's fertilizer plant was obtained from the gas plant at Mina Al-Ahmadi, which was operated by Kuwait National Petroleum Company ("KNPC"). Prior to 2 August 1990, PIC sold liquid ammonia both locally and abroad. Most of the ammonia, however, was used in the production of urea.

249. The urea units include urea reactors, which combine the ammonia with carbon dioxide to produce urea particles known as "brills". Most of the urea produced by PIC is exported to foreign purchasers for use as fertilizer. Prior to 2 August 1990, PIC also produced liquid fertilizer but has since discontinued this line of business.

250. At its salt and chlorine plant, PIC produced salt from seawater by a process of evaporation. Most of the salt was thereafter converted into chlorine by electrolysis. PIC sold chlorine to the Kuwait Ministry of Electricity and Water ("MEW") under a long term supply contract. MEW used the chlorine to purify seawater prior to its desalination. PIC also sold chlorine to other customers, but only to the extent that MEW's requirements had been satisfied. PIC sold the salt and chlorine plant to a third party in July 2000.

251. Prior to 2 August 1990, PIC produced sulphuric acid from sulphur recovered from KNPC's refining operations. The sulphuric acid facility was part of the fertilizer plant and was used for a limited period of two months per year. PIC has not operated the sulphuric acid facility since 2 August 1990.

252. For accounting and management purposes, PIC divided its business operations into two divisions, the fertilizer division and the salt and chlorine division. PIC maintained the distinction between the divisions in most aspects of its claim.

B. Compensation claimed

253. PIC filed its claim in August 1993. It sought compensation in the amount of Kuwaiti Dinars 82,086,735 for losses and damage that it allegedly sustained as a direct result of Iraq's invasion and occupation of Kuwait. PIC also claims interest on any award at a rate to be determined appropriate by the Commission. PIC reserved the right to claim compensation for the costs of preparing the claim. Notwithstanding the reservation of this right, PIC did not file an amended claim to include this type of loss.

254. The amount claimed was divided by PIC into three categories: loss of profits, loss of or damage to real and tangible property and a claim for debts alleged to have become uncollectible as a direct result of Iraq's invasion and occupation of Kuwait ("bad debts"). The table below describes the various components of PIC's claim and the amounts claimed in respect of each.

Table 10. PIC's claim
(Kuwaiti Dinars)

<u>Claim element</u>	<u>Claim amount</u>
Loss of profits	
Fertilizer plant	50,062,526
Salt and chlorine plant	7,836,474
Subtotal loss of profits	57,899,000
Real and tangible property losses	24,147,758
Bad debts	39,977
<u>Total</u>	82,086,735

C. Loss of profits

1. Fertilizer plant

(a) PIC's contentions

255. On 2 August 1990, PIC's fertilizer plant comprised four ammonia units (I-IV) and three urea units (I-III). The units were commissioned at various times between 1966 and 1984. PIC's production capacity prior to Iraq's invasion and occupation of Kuwait was 2,400 metric tons 42/ of urea and 3,000 metric tons of ammonia per day.

256. PIC states that, on 2 August 1990, the Iraqi army occupied the fertilizer plant. Iraqi officials ordered it to be shut down and the staff to leave within two hours. The staff implemented an emergency shutdown and left the premises.

257. Approximately 22,500 tons of liquid ammonia were stored in the storage tanks at the fertilizer plant on 2 August 1990. PIC states that its senior management persuaded the Iraqi forces that, for safety reasons, the plant should be restarted in order to convert the stored ammonia into urea. On 9 August 1990, the plant was restarted for this purpose. PIC states that the processing operations were extremely erratic as feedstock density fluctuated, and that there were several shutdowns caused by electrical power failures, irregularities and surges. Operations continued until 15 September 1990, when nearly all of the liquid ammonia had been processed into urea. The plant was shut down again on 15 September 1990 and not restarted until after the liberation of Kuwait on 2 March 1991.

258. After 2 March 1991, operating conditions remained difficult. PIC alleges that it was some time before there was a reliable supply of electricity and water. Transportation and communications were difficult and there was a shortage of manpower. PIC alleges that, although sufficient natural gas to restart the fertilizer plant became available in July 1991, it was only in January 1992 that the ammonia IV and urea II and III units were ultimately restarted due to the amount of preparatory work required. PIC states that these units were restarted first as they were the most efficient and had the greatest capacity. The ammonia II and urea I units were restarted in December 1992. PIC originally alleged that the ammonia I and III units could not be brought back into operation due to the continued shortage of natural gas, much of which originated from Iraq. 43/

259. PIC retained the services of an international firm of loss adjusters ("PIC's consultants"), who produced a comprehensive report of the damage and losses sustained by PIC as a consequence of Iraq's invasion and occupation of Kuwait. The report of PIC's consultants was annexed to the statement of claim and was incorporated by reference. In relation to the claim for loss of profits, PIC's consultants estimated that the fertilizer plant would return to ordinary operating capacity by 30 June 1994. Accordingly, PIC bases its claim on the period from 2 August 1990 to 30 June 1994, during which it alleges that operating results were detrimentally affected by Iraq's invasion and occupation of Kuwait ("the FP claim period").

(b) Iraq's response

260. Iraq makes the general submission in relation to all of PIC's "business interruption" losses that the losses are indirect, are not covered by Security Council resolution 687 (1991) and could not have been reasonably foreseen.

261. Iraq contends that a four-year period should not form the basis for the loss of profit calculation because this period is affected by a number of independent decisions made by PIC and the Government of Kuwait. Iraq alleges that these decisions concerned the "priority of the installations, repair rehabilitation philosophy and the balance between the need of early production and the desire to improve the performance of the installations and to eliminate existing bottlenecks".

262. Iraq alleges further that the four-year period taken by PIC to repair the fertilizer plant resulted in an inflated claim. Iraq contends that a period of four years would have been adequate to build an entirely new plant. In Iraq's view, the fertilizer plant could have been fully repaired and operational by the end of 1991, as it alleges that the plant was under protective maintenance by the Iraqi forces at the time of their departure from Kuwait.

263. Iraq alleges further that PIC sustained losses during financial years 1987/88 and 1989/90, and more specifically, that PIC's financial statements for financial year 1989/90 reflect an accumulated loss of KWD 44,411,033. Iraq contends that PIC was "probably losing money all the time with the exception of 1988/89, the only year when the company made a profit because of the rise in the price of urea in that year".

(c) The oral proceedings

264. In its original claim and in documents submitted in response to article 34 notifications issued by the Panel, PIC alleged that it had been unable to restore production at its ammonia I and III units due to the continued unavailability of natural gas from Iraq. This raised the question of whether PIC's losses were attributable to the United Nations trade embargo implemented pursuant to Security Council resolution 661 (1990) (the "trade embargo"). The Governing Council stated, in paragraph 6 of its decision 9 that: "[c]ompensation will be provided to the extent that Iraq's unlawful invasion and occupation of Kuwait constituted a direct loss, damage or injury separate and distinct from the trade embargo and related measures".

265. The Governing Council further explained this language in paragraph 9 of its subsequent decision 15 (S/AC.26/1992/15).

"The practical effect of this statement is that compensation will be provided if and to the extent that loss, damage or injury resulting directly from Iraq's unlawful invasion and occupation of Kuwait was actually suffered and would have been suffered irrespective of whether the trade embargo and related measures had been in force."

266. In order to determine whether the failure to re-establish production from the ammonia I and III units resulted from a compensable or non-compensable cause, the Panel notified PIC and Iraq of its intention to conduct oral proceedings, as described in paragraph 14 above. The Panel requested PIC and Iraq to address the issue of "[w]hether PIC's failure to restart certain ammonia units after the liberation of Kuwait is attributable to causes other than the trade embargo, and if so, what those causes were and for how long should they have reasonably existed".

267. Prior to the oral proceedings, PIC provided written submissions in relation to the issue. Both PIC and Iraq made presentations during the course of the oral proceedings.

268. During the course of the oral proceedings, both PIC and Iraq acknowledged that the shortage of natural gas was not the cause of PIC's failure to restart the ammonia I and III units.

(d) Analysis and valuation

269. During the course of claims review, the Panel requested that PIC supply more precise information regarding certain components of the claim for which PIC had only provided estimates when the claim was originally filed. Where PIC has supplied this information, the Panel has relied on actual results rather than estimates in reviewing the claim.

270. Based upon the submissions made by Iraq and PIC during the oral proceedings and other evidence, the Panel finds that the trade embargo was not the cause of the loss of profits from the operations at PIC's fertilizer plant. The Panel finds that any shortage of natural gas affecting PIC was brought about by the re-allocation of natural gas resources within Kuwait for alternative purposes and not a result of the fact that PIC could not import natural gas from Iraq due to the trade embargo. The available evidence indicates that Kuwait redirected gas resources, which would otherwise have been used for the production of ammonia, to the production of electricity.

271. The Panel finds that PIC partially resumed production as the facilities became available and that, in any event, PIC could not have reasonably restored production of ammonia to pre-invasion levels until some time in 1994. The Panel bases this conclusion on the fact that PIC's ammonia export facilities had been damaged by a missile during military operations after 17 January 1991. The facilities were restored to full operational capacity by the end of April 1994. The Panel finds that PIC would reasonably have required at least until 30 June 1994 in order to produce sufficient stocks of ammonia, conclude agreements for its sale, arrange for its shipment and otherwise arrange its affairs in order to resume normal business operations. The Panel accordingly finds that PIC's failure to restart the fertilizer plant at an earlier time was a direct result of Iraq's invasion and occupation of Kuwait, and that the FP claim period from 2 August 1990 to 30 June 1994 is reasonable in respect of PIC's loss of profits claim for the fertilizer plant.

272. The Panel investigated Iraq's contention that PIC had historically suffered losses, and that the claim for loss of profits was therefore unfounded. Based on its investigations, the Panel finds that the markets for the type of chemicals produced by PIC are cyclical in nature. The Panel determined that the prices of ammonia and urea were rising during the FP claim period. The Panel therefore considers that, but for Iraq's invasion and occupation of Kuwait, PIC would have been profitable during the FP claim period, notwithstanding the losses realized in the preceding years. This conclusion is reinforced by the Panel's finding that PIC earned significant profits of KWD 6,797,870 and KWD 28,553,198 respectively in the two financial years following the FP claim period, as is evident from PIC's audited financial statements. The Panel also considers that its finding is supported by Iraq's recognition that PIC was profitable in financial year 1988/89, when the price of urea was high.

273. In order to determine PIC's claim for loss of profits, the Panel investigated what PIC would have earned but for Iraq's invasion and occupation of Kuwait (the "no-invasion profits"). No-invasion profits 44/ were calculated by reference to PIC's budgets, prepared prior to 2 August 1990 in which PIC projected its sales revenue less its cost of sales. 45/ The Panel separately analysed and reviewed projected sales revenue and projected cost of sales as described in the following paragraphs.

274. PIC projected its sales revenue from the fertilizer plant for the claim period to be KWD 162,199,112. This amount was calculated by multiplying the projected production volumes of ammonia and urea by their respective market prices during the FP claim period. For the period from February 1993 to June 1994, however, PIC calculated its claim using the price of urea it had actually achieved, which was different from the market price because PIC fixed the prices on a contract basis.

275. With respect to urea, PIC alleges that, but for Iraq's invasion and occupation of Kuwait, it would have produced and sold 3,270,775 metric tons during the claim period. This quantity corresponds to an average of 93.3 per cent of PIC's theoretical production capacity of 876,000 metric tons per year. The Panel notes, based on its review of monthly production and sales records, that PIC had achieved an average production efficiency of 93.9 per cent in the two financial years prior to Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that PIC's projected production volume for the claim period is reasonably stated.

276. The Panel then compared the projected production volumes with PIC's actual production of urea during the two financial years following the claim period. The Panel finds that PIC restored its levels of urea production for financial year 1994/95 to 726,805 metric tons and for the financial year 1995/96 to 839,100 metric tons, which further supports the conclusion that PIC reasonably projected its urea production for the FP claim period.

277. With respect to ammonia, PIC estimates that, but for Iraq's invasion and occupation of Kuwait, it would have produced 3,107,465 metric tons of ammonia during the FP claim period (equivalent to 776,866 metric tons per year), of which it would have sold, predominantly on the export market, a quantity of 1,145,000 metric tons.

278. PIC's theoretical annual production capacity for ammonia at the time of Iraq's invasion and occupation of Kuwait was 1,095,000 metric tons. The Panel noted from PIC's monthly production and sales records that PIC had achieved an average annual production efficiency of 67.7 in the two financial years prior to Iraq's invasion and occupation of Kuwait, whereas PIC's projected ammonia production assumes an average annual production efficiency of 70.9 per cent.

279. The Panel was unable to contrast PIC's projected production volumes of ammonia with PIC's actual production following the FP claim period because two of the units were not restarted, as discussed in paragraphs 258 above. The Panel finds that PIC has not demonstrated that its projected production of ammonia for sale would have exceeded the annual average production volume of ammonia for sale achieved during the two financial years immediately preceding the invasion, namely 241,536 metric tons annually. The Panel therefore finds that PIC has only substantiated a projected production of 966,144 metric tons of ammonia for sale during the FP claim period.

280. The Panel has previously found that the price of ammonia increased as a result of Iraq's invasion and occupation of Kuwait. ^{46/} Based on subsequent investigations, the Panel finds that the price of urea also increased due to the same cause. The Panel finds that these price increases were directly attributable to Iraq's invasion and occupation of Kuwait for the periods from 2 August 1990 until 30 June 1992 for ammonia, and from 2 August 1990 until 31 January 1993 for urea.

281. PIC bases its loss of profits claim on either the ruling market prices for ammonia and urea, or the actual prices it received. The Panel considers that this methodology has the effect of overstating PIC's compensable losses. As it has done in previous reports, the Panel calculated the hypothetical prices of urea and ammonia that would have prevailed in the absence of Iraq's invasion and occupation of Kuwait ("no-invasion prices"). ^{47/} The Panel then applied the no-invasion prices (adjusted for PIC's historically achieved selling prices relative to market prices) to the projected production volume of urea and ammonia that PIC would have sold in order to determine PIC's no-invasion sales revenue. On this basis, the Panel finds that PIC's no-invasion sales revenue for urea and ammonia would have been KWD 135,350,184 as opposed to PIC's projection of KWD 162,199,112. As stated in the previous paragraphs, the adjustments to PIC's no-invasion sales revenue were made by the Panel in two separate areas. The first adjustment was made to PIC's estimated production volume of ammonia and the second to the prices of urea and ammonia utilized by PIC.

282. PIC estimated its cost of sales per metric ton of urea and ammonia based on its operating results for the financial year 1989/90. The Panel reviewed PIC's cost records for the period 1 July 1988 to 30 June 1990. Based on this investigation, the Panel finds that the cost of sales of both ammonia and urea were reasonably stated.

283. The Panel then investigated PIC's actual results for the FP claim period. PIC's actual results reflect a net loss. The Panel found that the principal reason for the loss was the dramatic decline in production as a result of Iraq's invasion and occupation of Kuwait and the resultant decline in sales revenue which was not sufficient to absorb all of the fixed costs. In determining its actual profits earned or losses suffered during the claim period, PIC subtracted its actual cost of sales from its actual sales revenues. The Panel finds that the actual losses suffered by PIC are compensable, as PIC would, but for Iraq's invasion and occupation of Kuwait, have been profitable during this period. The Panel assessed actual sales revenues by reference to PIC's audited financial statements and production and sales records for the FP claim period. The Panel finds that PIC accurately stated its actual sales revenues.

284. The Panel finds, however, that PIC included amounts it expended in the repair and replacement of its urea and ammonia units within its cost of sales. The Panel considers that the inclusion of these amounts in the cost of sales element of PIC's calculation of its loss of profit claim has the effect of overstating the actual losses suffered, and of reducing the actual profits earned, during the claim period. In addition, the Panel finds that PIC seeks compensation for the same losses within its claim for tangible property losses (see paragraph 345 below). For this reason the Panel finds that the actual loss figures advanced by PIC should be reduced by the amount of KWD 6,961,411.

285. In the calculation of its lost profits, PIC included within its actual results a charge of KWD 3,696,000 for the depreciation of its ammonia IV unit during the 18-month period during which the unit was not operational. The Panel finds that the amount of depreciation taken by PIC during the FP claim period caused an artificial increase in the loss of profit claim. The Panel is not persuaded that the amount of depreciation reflected in PIC's books of account during the FP claim period accurately reflects the reduction in the value of the unit.

286. The Panel has taken into consideration the actual level of operation of the ammonia IV unit during the FP claim period. The Panel has also considered the probability that the repair and restoration of the unit reinstated the unit to its pre-invasion condition. Finally, the Panel has considered the possibility that the ammonia IV unit may have suffered some reduction in value due to the effects of technical obsolescence during its idle period. Based on these considerations, the Panel finds that the amount of depreciation applied by PIC in respect of the ammonia IV unit exceeded the actual reduction in the value of the unit by KWD 1,282,000. The Panel recommends that PIC's claim for lost profits be reduced accordingly.

287. The expenses that PIC alleges it was able to save are limited to the "head office and marketing expenses" category. These expenses were budgeted but not expended in full during the FP claim period. The Panel confirmed the figures supplied by PIC by reference to the relevant budgets and the audited financial statements for each year of the FP claim period and adjusted to take account of the saving of budgeted expenditure during the financial years 1992/93 and 1993/94. The Panel found that no additional expenses could reasonably have been saved. For these reasons, the Panel finds that PIC's saved expenses amounted to KWD 3,761,000 for the fertilizer plant during the claim period.

(e) Conclusions

288. For the reasons described in the preceding paragraphs, the Panel finds that PIC sustained a loss of profit at its fertilizer plant in the amount of KWD 31,728,680. The Panel recommends compensation of this amount.

2. Salt and chlorine plant

(a) PIC's contentions

289. PIC's salt and chlorine plant was commissioned in 1986. The plant has a daily capacity of 150 metric tons of salt, 75 metric tons of chlorine and 84 metric tons of caustic soda. Four by-products of the production process were also produced by PIC. These were hydrogen, hydrochloric acid, sodium hypochlorite and distilled water. These products were sold locally and abroad.

290. Prior to Iraq's invasion and occupation of Kuwait the chlorine was sold to MEW for use at its power stations and desalination plants, to the Ministry of Public Works and on the export market. Caustic soda was primarily exported.

291. PIC alleges that, on 2 August 1990, the Iraqi forces arrived at the plant and gave instructions to shut it down. The staff at the plant carried out an emergency shutdown. Shortly after the shutdown PIC's management decided, with the agreement of the Iraqi representatives, to restart the plant. The chlorine produced by the plant was required by the local power stations and desalination plants in order to continue to supply the population with electricity and water. The plant restarted continuous operations on 15 August 1990 and remained operational under the supervision of the Iraqi forces until the middle of January 1991. The plant was again shut down on 15 January 1991 pursuant to emergency shutdown procedures.

292. PIC alleges that, although the salt and chlorine plant remained operational except as described in the preceding paragraphs, PIC earned no income from these operations. PIC alleges further that operating conditions after 2 March 1991 remained very difficult due to a shortage of manpower and utilities, resulting in a loss of profit.

293. PIC's calculation of its loss of profits at the salt and chlorine plant has been performed on the assumption that normal operating results would have been restored by 30 June 1993. Accordingly, PIC's loss of profits at the salt and chlorine plant has been calculated over an approximately three-year period from 2 August 1990 to 30 June 1993 (the "S&C claim period"). The method of calculation of the loss of profits sustained at the salt and chlorine plant was, save for the different S&C claim period, identical to the method employed in relation to the fertilizer plant, as described at paragraph 273 above.

(b) Iraq's response

294. Iraq contends that the three-year claim period is unrealistic. Iraq makes the further submission that the prices of salt, chlorine and caustic soda employed by PIC in the calculation of its claim for loss of profits are overstated by "double or higher".

(c) Analysis and valuation

295. The Panel finds that PIC lost profits from the operation of its salt and chlorine plant for the reasons dealt with at paragraph 272. The Panel also finds that the three-year claim period has been reasonably stated.

296. In order to assess its loss, PIC calculated its no-invasion profits. From its no-invasion profits PIC deducted its actual profits/losses and saved expenses. The Panel investigated each of the calculations performed by PIC, and the assumptions underlying them. Based upon PIC's financial statements, sales, production and budget records, the Panel found that PIC had reasonably stated its actual profits and losses. The adjustments made by the Panel to the no-invasion profits and saved expenses components of the calculation are described in the following paragraphs. 48/

297. PIC projected its annual production and sales of chlorine, caustic soda, salt, hydrochloric acid, sodium hypochlorite and compressed hydrogen 49/ (collectively "the products"). For each of the products the Panel found PIC's projected production volumes to be overstated. The Panel adjusted the values to correspond with the average production for each product during the two years prior to and the two years after the S&C claim period.

298. PIC provided no projected production volume in respect of distilled water. Additionally, no sales of distilled water were recorded in the two financial years prior to Iraq's invasion and occupation of Kuwait. The Panel was accordingly unable to assess sales of distilled water, and excludes projected sales of this product from the amount of compensation recommended in respect of PIC's claim for loss of profits.

299. In order to calculate its projected sales revenue, PIC multiplied the projected production volume for each product by the actual selling prices achieved during the S&C claim period. The Panel finds that the market prices for all of the products, save salt, were affected by Iraq's invasion and occupation of Kuwait. The Panel replaced PIC's actual selling prices of chlorine, caustic soda, hydrochloric acid and sodium hypochlorite with the Panel's no-invasion prices in order to value PIC's claim. On the other hand, the prices for compressed hydrogen achieved by PIC prior to 2 August 1990 were lower than the actual market prices as determined from industry sources. Accordingly, the Panel did not apply the no-invasion price of compressed hydrogen for this component of the loss, but instead applied the actual prices achieved by PIC during the S&C claim period.

300. The Panel adjusted PIC's cost of sales to correspond with the average cost of sales for the two-year period prior to and the two-year period after Iraq's invasion and occupation of Kuwait. 50/

301. The figures supplied by PIC in regard to expenses saved at the salt and chlorine plant were determined by the Panel by reference to the relevant budgets and financial statements. The Panel adjusted PIC's saved expenses to the amount of KWD 1,650,000 in order to take account of the difference between actual and budgeted marketing and head office costs in financial years 1990/91 to 1992/93.

(d) Conclusions

302. Based on the findings described in the preceding paragraphs, the Panel finds that the loss of profits from PIC's salt and chlorine division was KWD 2,652,609. The Panel recommends compensation in this amount.

D. Real and tangible property losses

(a) PIC's contentions

303. PIC claims compensation of KWD 24,147,758 for losses of and damage to its real and tangible property. PIC divided its claim into numerous categories and separated some, but not all of its losses between its fertilizer division, salt and chlorine division and its other locations. In view of the inconsistent application of the distinctions, overlaps between the different categories and the artificial nature of the separation of the losses, the Panel elected to assess PIC's real and tangible property losses under the categories appearing in the following table.

Table 11. PIC's real and tangible property losses
(Kuwaiti dinars)

<u>Claim element</u>	<u>Claim amount</u>
Loss of products	1,812,677
Materials and supplies	6,992,115
Repairs and replacements	15,337,652
Loss of cash	5,314
<u>Total</u>	24,147,758

(i) Loss of products

304. PIC alleges that members of the Iraqi forces stole quantities of urea, sulphuric acid and liquid fertilizer, salt, caustic soda and chlorine from PIC's warehousing facilities during Iraq's invasion and occupation of Kuwait. Additionally, PIC asserts that a quantity of liquid ammonia was lost as a result of its emergency conversion into urea as described in paragraph 257. PIC quantified the amount of lost products by comparing the products on hand on 31 July 1990 with the products on hand after 2 March 1991. PIC valued its claim for loss of products by reference to cost prices.

(ii) Materials and supplies

305. PIC alleges that its store of spare parts, catalysts, chemicals and other materials and supplies was extensively looted during Iraq's invasion and occupation of Kuwait. PIC alleges that it was able to determine accurately the nature and value of missing items by reference to its computerized inventory system. PIC states that this system was updated at the end of each day and provided a reliable record of the inventory of materials and supplies on hand as at 2 August 1990, together with the moving average cost value in respect of each item of stock. PIC alleges that it took a comprehensive inventory after 2 March 1991 in order to identify the missing items ^{51/} and assessed their value on a replacement basis using historical cost, an uplift for inflation and a reduction for obsolescence.

306. In addition to the items missing from its storage facilities, PIC claimed compensation for the cost of catalyst damaged during the inadequate shutdown at its ammonia IV unit and for urea bags lost from its bagging unit.

(iii) Repairs and replacements

307. As described in paragraph 256 above PIC states that the Iraqi forces ordered the fertilizer plant to be shut down immediately upon their arrival at the plant but that the plant was restarted in order to convert ammonia in the storage tanks into urea. PIC states that the plant was shut down in mid-September 1990 and was not restarted until January 1992.

308. PIC alleges that the fertilizer plant suffered extensive internal damage due to the inadequate shutdown procedures adopted on both occasions, and also due to the long period of inactivity to which

the plant was subjected. PIC alleges that, during the conversion operation in August-September 1990, the density of feed gas varied considerably and that there were electrical power failures, irregularities and surges which caused additional shutdowns. PIC states that the second shutdown was not performed in a proper and controlled manner, and that no nitrogen gas was available to carry out purging of the system, a procedure that PIC states is necessary to protect the components of the plant.

309. PIC claims the costs of specific contracts concluded with external contractors for repair, reinstatement, overhaul and maintenance of its plant and equipment. PIC also claims the costs of materials used in the restoration work, including materials purchased from external suppliers, materials purchased using petty cash and materials obtained from PIC's stores.

310. PIC alleges that it made a decision to utilize its own engineering and maintenance staff for the reinstatement, repairs and overhaul of the damaged units. This decision was made due to a shortage of skilled manpower in the local market and on the assumption that it would be more cost effective. The claimed amount of KWD 1,675,974 is made up of 100 per cent of PIC's relevant salary costs for the 1991/92 financial year (KWD 931,614) and 75 per cent for the 1992/93 financial year (KWD 744,360). No costs were claimed in the 1990/91 financial year on the basis that no work was undertaken during this period. PIC indicated that it had estimated the proportions of its relevant salary costs on the basis that none of the plants was operating during the 1991/92 financial year, but asserts that some production activity started in the last quarter of "fiscal year 1993", namely April to June 1993.

311. PIC has made a claim for estimated costs that it elected not to incur in relation to certain damaged assets. PIC subdivided its claim into assets not repaired, assets not replaced and assets not repaired but sold as scrap.

312. PIC alleges that it had entered into a contract for the sale of an old salt and chlorine plant, situated at Shuwaikh. The contract was lawfully cancelled by the purchaser as a direct result of Iraq's invasion and occupation of Kuwait. In November 1991 the purchaser and PIC concluded a revised agreement in which the purchase price was reduced. ^{52/} PIC alleges that the difference between the original purchase price and the revised purchase price represents a loss suffered by PIC as a direct result of Iraq's invasion and occupation of Kuwait.

313. PIC alleges that equipment in several of its locations was missing following Iraq's invasion and occupation of Kuwait. These items include laboratory equipment at the salt and chlorine plant, steel chlorine cylinders at its Wafra storage facility and a number of vehicles.

314. With respect to the laboratory and testing equipment, PIC relies on the report of its consultants in regard to the identity and valuation of the missing equipment.

315. With respect to the missing vehicles (three cranes, five forklifts, one truck, one lifeguard car, one ambulance and one fire truck), PIC identifies these by reference to the register of vehicles in use on 2 August 1990 as compared to the list of vehicles recorded after 2 March 1991. The missing vehicles were valued on a replacement basis by PIC's consultants.

316. With respect to the steel chlorine cylinders, PIC alleges that 391 cylinders (1,000 kilogram capacity) were stored at the Wafra storage facility prior to Iraq's invasion and occupation of Kuwait. After the liberation of Kuwait, none of these cylinders remained at Wafra. PIC assumes that the cylinders were taken by Iraqi forces. PIC alleges that the cost price of the cylinders was KWD 729.40 per unit. The claimed amount was reduced to take account of actual replacement costs and an error in calculating the number of missing cylinders.

317. PIC claims damages due to looting and vandalism at its head office. A detailed list of the items requiring repair and replacement was produced. The list specifies items in the nature of computers, photocopying and telephone equipment, desks, chairs and general office furniture. Estimated repair or replacement costs are specified for each item. In 1992, PIC's loss adjustment consultants conducted a separate investigation into the loss and damages, as well as their value. The claimed amount corresponds to the value ascribed by PIC's consultants to these losses. The claimed amount was subsequently revised to reflect actual replacement costs.

318. PIC alleges that extensive losses of property and damage to an office building at the Shuaiba plant resulted from looting and vandalism.

319. PIC alleges that its sporting and recreational facility, the Bubyen Club, was occupied by Iraqi forces shortly after Iraq's invasion and occupation of Kuwait, who used it as a command headquarters. PIC alleges that extensive looting and vandalism took place at the club.

320. PIC owned a storage facility at Wafra, which was used to store chlorine cylinders. The facility comprised a main warehouse, four stores and an office. All of the buildings except the office were constructed using steel frames and metal cladding. The office was constructed with a concrete frame and walls. Iraqi forces occupied the facility during Iraq's invasion and occupation of Kuwait. All of the buildings were totally destroyed by Allied Coalition Forces bombing.

321. At the time of the formulation of the statement of claim, the losses associated with this portion of the claim were quantified using estimates. In order to account for the anticipated rise in prices over the period during which the repairs and replacements were expected to be made (two years), PIC applied an inflationary factor of 3 per cent per annum to the anticipated costs. As a result of the revision of PIC's claim, and the substitution of estimated repair costs with actual repair costs at the Panel's request, this claim element is no longer in issue.

(iv) Loss of cash

322. PIC alleges that a cash amount of KWD 5,314 was lost, stolen or rendered obsolete as a result of Iraq's invasion and occupation of Kuwait. PIC relied for these contentions upon witness statements, memoranda and contemporaneously generated accounting records.

(b) Iraq's response

323. Iraq makes general submissions in relation to all of PIC's claims for real and tangible property damage. Iraq contends that there is no conclusive evidence that Iraq caused the damage. Iraq rejects

PIC's allegations of looting and theft, and contends that "everything that was taken from the plants was documented. Any liability outside such documents must either be further substantiated or discarded completely." Iraq also contends that the plants were shut down properly and the fertilizer plant was put in preventive maintenance.

324. Iraq disputes the accuracy of the market prices used for the purposes of the calculation of the value of the lost products. Iraq also contends that PIC has employed inaccurate figures in respect of the volume of products allegedly produced during the occupation period.

325. With respect to the loss of catalyst, Iraq states that the catalyst for which PIC claimed was used in ammonia IV and that it was effectively exhausted on 2 August 1990 and had little or no residual value as at that date.

326. With respect to the damage to plant and equipment, Iraq contends that PIC has claimed twice for this loss. Iraq further contends that the costs of repair and replacement are excessive.

327. Iraq states that the rate of uplift used by PIC in calculating the replacement cost of lost assets is excessive, that all repairs should have been completed by the end of 1991 and that, in any event, such rate should not be applied to the entire tangible property claim element.

328. Iraq contends that the vehicles could have been damaged after the withdrawal of Iraq during maintenance of the plant thereafter. Iraq asserts that the damage was "minor" and that "new ones are obviously preferred by PIC".

329. Iraq states that chlorine and chlorine cylinders were used entirely to provide the Kuwaiti power stations and desalination plants and for no other purposes.

330. Iraq contends that the estimated costs of repair of the Bubyah club were excessive, to the extent that an entirely new and improved facility could be constructed and furnished for the amount claimed.

331. Iraq asserts that the damage to the Wafra storage facility was not caused by Iraq, but by bombing and shelling by the Allied Coalition Forces. Iraq states that it is quite possible that the damage occurred after the withdrawal of its forces from Kuwait.

(c) Analysis and valuation

(i) Loss of products

332. The Panel determined the quantities of lost ammonia and urea by reference to PIC's pre and post-invasion inventory records. The lost quantities are consistent with PIC's audited financial statements dated 30 June 1990 and 30 June 1991. The Panel determined the accuracy of the missing quantities of salt, chlorine and caustic soda by reference to the audited financial statements dated 30 June 1990, production and sales records for the month of July 1990 and production, sales and inventory records from PIC's 1991/92 financial year. The Panel finds that PIC's inventory records accurately reflect the quantities of lost products in PIC's claim.

333. PIC calculated the value of its losses by multiplying the quantities of lost products by their unit production cost. With respect to ammonia and urea, the unit cost of production was determined by reference to PIC's cost records for December 1989. The Panel examined monthly cost records for the months of October and November 1989 and annual cost records for the 1989/90 financial year.

334. PIC did not provide documentary evidence of the cost of producing liquid fertilizer and sulphuric acid. After 2 March 1991 PIC ceased producing these products and was not in possession of the appropriate information relevant to the cost of producing them. The Panel assessed the reasonableness of the cost values utilized by PIC by reference to the sales prices achieved by PIC during the 11-month period ending 31 May 1990. Based upon this analysis, the Panel finds that the amounts claimed by PIC for sulphuric acid and liquid fertilizer are reasonable.

335. At the request of the Panel, PIC revised the formulation of its claim for the value of salt, chlorine and caustic soda by substituting the estimated cost prices specified in the statement of claim with actual cost of production values obtained from cost records for the 12 months ending 30 June 1990. The cost records reflected costs such as direct payroll, material, stores issues, power, steam, sea cooling and overheads. The Panel found the revised cost values in respect of these products to be reasonably stated.

336. The Panel assessed PIC's loss of products to be KWD 1,626,071 and recommends an award of compensation in that amount.

(ii) Materials and supplies

337. PIC claims KWD 6,406,329 for materials and supplies lost from its store. PIC bases its claim on inventories and stock takings prior to 2 August 1990, as compared to the value of its inventory after 2 March 1991, which was based upon the results of a physical stocktaking. PIC's calculations assumed an "inventory before occupation" of KWD 13,944,226. This value had been arrived at by adjusting the final inventory at 30 June 1990 by additions to and removals from stock of KWD 528 during the month of July 1990. In response to the Panel's enquiries, PIC submitted a document entitled "stock details at group level at end of 31st July 1990 before invasion" ("the stock document"). The stock document reflects an inventory value at 31 July 1990 of KWD 13,666,997, made up of materials and supplies, urea bags and catalysts. PIC calculates the value, prior to the deduction for obsolescence, of its loss of materials and supplies to be KWD 7,355,326. The Panel adjusted the value of the loss in accordance with the stock document, prior to the deduction for obsolescence, to KWD 7,078,097.

338. The Panel established that PIC's deduction for obsolescence was consistent with the percentage provision for obsolescence reflected in the audited financial statements dated 30 June 1990. The Panel finds, however, that PIC was not able to provide any documentary or other evidence in support of PIC's adjustment of 5 per cent per year to account for increases in prices over the replacement period. Applying the established values of pre-invasion and post-invasion inventory, and the established obsolescence factor, the Panel finds that PIC lost materials and supplies from its storage facilities with a value of KWD 5,325,560.

339. PIC makes a claim for catalysts used in the ammonia IV unit. It bases its claim on net book value (cost less accumulated depletion) of these catalysts, as reflected in its 30 June 1990 financial statements. The financial statements show that, as at 30 June 1990, the value of the catalysts represented 31.2 per cent of the initial cost. For purposes of its claim, PIC reduced the value of the catalysts by 58.9 per cent to account for their depletion, based on the life expectancy of the individual catalysts and their last charge date.

340. The Panel finds that the depletion rate applied by PIC to the catalyst was reasonable. The Panel is not persuaded by Iraq's argument that the catalysts had no residual value at 2 August 1990 because, based on PIC's records, the Panel finds that the catalyst could have been used for a significant period but for Iraq's invasion and occupation of Kuwait. The Panel finds that PIC sustained a catalyst loss in the amount of KWD 280,074.

341. PIC claims KWD 305,712 for urea bags. Based on its investigations, the Panel finds that there is some duplication of this claim with the urea bags lost from PIC's store. Based upon the available inventory records, the Panel determined that PIC lost 195,836 urea bags from the bagging unit, with an adjusted value of KWD 25,850.

342. The Panel recommends compensation for this category of loss in the amount of KWD 5,631,484, comprising materials and supplies from PIC's store (KWD 5,325,560), catalysts (KWD 280,074) and urea bags (KWD 25,850).

(iii) Repairs and replacements

343. The total claimed amount in respect of repairs to and replacements of PIC's real and tangible property is KWD 15,337,652. The Panel assessed losses described by PIC as plant and equipment, laboratory and testing equipment, vehicles and mobile equipment, Wafra storage facilities, chlorine cylinders, Shuwaikh plant, head office, polypropylene plant office, Bubyan club and cost increases under this section of the report. Each of these losses is dealt with in the following paragraphs.

344. PIC separated the claimed amount in respect of the repairs to and replacement of its plant and equipment into actual cost of reinstatement and repairs and estimated costs of repair.

345. The Panel agrees with Iraq's contention that some of the losses claimed in this category are duplicative of losses asserted in PIC's loss of profit claim. As indicated in paragraph 284 above, the Panel finds that these losses are more accurately investigated and valued as real and tangible property losses and reviews them in this section of the report.

346. PIC claimed an amount of KWD 2,048,944 in respect of service contracts for the restoration of its damaged production units. PIC provided a summary of all service orders issued, identifying all of the salient features of the contracts in question. These features included the service order document number, the unit of the plant in question, the date of the order, the name of the contractor or supplier, a general description of the repair, overhaul or maintenance work undertaken and its cost. PIC provided documentary evidence of payment, such as cheques, payment vouchers, bank statements, and correspondence with banks. The Panel finds that PIC incurred costs in respect of this element of loss of KWD 1,058,932.

347. With respect to PIC's claim for the costs of specific repair contracts, PIC provided 47 contracts with an aggregate value of KWD 4,808,745. Forty-four of the contracts with a value of KWD 4,768,280 were concluded prior to 30 June 1994. PIC provided documentary evidence of payment, including letters from suppliers confirming receipt of payment. The Panel finds that 20 of the contracts concerned work unrelated to damages directly resulting from Iraq's invasion and occupation of Kuwait, as determined from PIC's consultants' report. The Panel therefore adjusted PIC's claim by KWD 326,617 to exclude the value of these 20 contracts. The Panel also finds that an amount of KWD 66,000 had been expended in order to remedy damage to PIC's ammonia tank T6101A that existed prior to Iraq's invasion and occupation of Kuwait. The Panel therefore adjusts PIC's claim accordingly, and finds that PIC incurred costs of repair contracts in the amount of KWD 4,375,663.

348. PIC claimed an amount of KWD 2,081,918 for the cost of materials for the restoration of the production units. PIC provided a summary of all material and purchase orders issued, identifying the material and purchase order document number, the unit of the plant in question, the date of the order, the supplier name, a description of the material supplied and its cost. PIC provided documentary evidence of payment. The Panel finds that PIC incurred costs of KWD 1,439,937 for the materials required to restore its production units.

349. PIC makes a claim for cash purchases of sundry items required on an emergency basis. PIC provided a summary of all purchases identifying the date and amount, listing 283 separate purchases ranging in value between KWD 100 and KWD 250. PIC provided documentary evidence of payment in the form of petty cash vouchers. The Panel reviewed the evidence provided by PIC both as to the nature and the existence of the claimed losses. The Panel finds that all of the emergency purchases were losses directly resulting from Iraq's invasion and occupation of Kuwait. The Panel therefore finds that PIC incurred costs for these emergency purchases of KWD 56,383.

350. In addition to its claim for materials purchased to repair and reinstate its production units, PIC claims separately for the parts utilized from its own stores for the repair and reinstatement of the damaged units. The allocation of each cost to PIC's individual production units was provided. PIC provided stores requisition documents issued during the period from March 1991 to December 1994 to support the claim. The Panel finds that PIC incurred costs in respect of this loss element of KWD 4,807,120.

351. With respect to PIC's claim for the salaries of its technical staff, PIC provided a schedule listing all employees assigned to its technical services department as well as their monthly salary and the total salary costs for the 1990/91 to 1992/93 financial years. The aggregate departmental salary costs amounted to KWD 931,614 and KWD 992,481 in the 1991/92 and 1992/93 financial years respectively. These costs included the salaries of engineers and maintenance staff. The Panel considers that these costs are in the nature of ordinary, ongoing payroll expenses which PIC would have incurred notwithstanding Iraq's invasion and occupation of Kuwait. Additionally, the salary costs constitute an expense in PIC's audited financial reports, which are included in the claim for lost

profits. For these reasons, and in conformity with the Panel's previous decision on the same issue, the Panel finds that this element of the claim is not compensable. 53/

352. In regard to its estimated repair costs, PIC claims a total of KWD 2,512,640 in respect of the ammonia III unit (KWD 2,172,740) and the ammonia storage tank "B" (KWD 339,900), both of which PIC did not repair. PIC alleges that its ammonia III unit was damaged during the shutdown operations described in paragraph 256 above. PIC's consultants estimated that the repair costs would be KWD 925,000. PIC's technical department subsequently estimated that the repair costs would be KWD 2,172,740. Based upon a review of the two estimates, the Panel finds that PIC's consultants reasonably stated the estimated cost of the repairs, and adjusts the claimed amount accordingly.

353. PIC alleges that the same type of repairs as those carried out on ammonia tank A (dealt with at paragraph 347 above) would have been required for tank B. The Panel finds that, based on its review of the actual costs to repair tank A, the estimated repair cost of tank B in the amount of KWD 339,900 is reasonable.

354. The Panel finds that PIC incurred losses in respect of which it estimated its repair costs, in the amount of KWD 1,264,900.

355. PIC claims the replacement cost of its hydrogen and ammonia recovery units in the amount of KWD 1,448,000. The combined original purchase cost of the units was established to be KWD 765,000. The net book value (cost less accumulated depreciation) of the units in PIC's financial records was KWD 543,189 as at 30 June 1990. The Panel adjusted PIC's estimated replacement cost by applying a depreciation rate commensurate with industry standard rates for the assets in question. Based on the adjustment, the Panel finds that PIC incurred losses for unreplaced assets of KWD 649,995.

356. PIC claims KWD 1,163,948 for damage to three production units that were not repaired but were sold as scrap, the ammonia I unit (KWD 1,060,000), the sulphuric acid unit (KWD 79,448) and the liquid fertilizer unit (KWD 24,500). All three units were sold at auction. PIC calculates its claimed amounts by reference to the estimated cost of repairs to the units.

357. The Panel finds that the ammonia I unit, after adjustments for industry standard depreciation, had a value of KWD 472,500 on 2 August 1990. The Panel finds that PIC reasonably calculated estimated repair costs to the unit in the amount of KWD 1,060,000. The Panel finds that it would accordingly have been uneconomical to repair the unit. In these circumstances, the Panel recommends compensation of KWD 426,500 for the unit based upon the Panel's assessment of the value of the unit less the realized scrap value.

358. The sulphuric acid unit was being started up at the time of Iraq's invasion and occupation of Kuwait and was reflected in PIC's books as "work in progress". After 2 March 1991, PIC did not restart the unit and later sold it, with the exception of the main product tank and the loading station. The Panel recommends compensation in the amount of KWD 79,448 for the unit based upon the estimated repair costs.

359. The Panel considers that PIC provided insufficient evidence to demonstrate the reasonableness of the amount claimed in relation to the liquid fertilizer unit. The Panel accordingly recommends no compensation for damage to this production unit.

360. In regard to the loss related to the sale of the Shuwaikh salt and chlorine plant, the Panel reviewed minutes of a meeting between representatives of both parties which took place after 2 March 1991. PIC also submitted a copy of the buyer's cheque dated 31 July 1990 in the amount of KWD 113,014, representing the purchase price less bank transfer cost, and a copy of a bank guarantee drawn on a Kuwaiti bank in the amount of USD 60,000 issued prior to the sale in favour of PIC. PIC also submitted a letter from the buyer dated 2 May 2001 confirming the revised sale of the remaining plant for a purchase price of USD 250,000 "due to damage to the equipment/plant caused by the Iraqi invasion". The Panel considers that the documentary evidence supports PIC's contentions and finds that the loss alleged by PIC is compensable in the amount of KWD 38,014. 54/

361. With respect to laboratory and testing equipment, PIC provided evidence of the cost of its replacement in the amount of KWD 142,250. The Panel adjusted the replacement cost by a factor of 55 per cent in order to take account of the accumulated depreciation applied by PIC and the industry standard depreciation for the assets in question. The Panel finds PIC's loss to be KWD 75,692.

362. With respect to the missing vehicles, PIC produced its register of vehicles in use at 2 August 1990 and documents relating to the replacement of five vehicles. PIC alleged that the remaining acquisition records for vehicles had been lost during Iraq's invasion and occupation of Kuwait. PIC produced certificates from the traffic registration authorities confirming the registration of all and the de-registration of certain of the vehicles.

363. The Panel reviewed PIC's audited financial statements, which showed that it had depreciated all of its mobile equipment at 30 June 1990 by 85.5 per cent. The Panel adjusted the established replacement cost in order to take account of the accumulated depreciation applied by PIC, the applicable industry standard depreciation factor and betterment. The Panel determined the amount of PIC's loss for missing vehicles to be KWD 79,942.

364. With respect to the missing chlorine cylinders, PIC alleges that it did not immediately replace these items as its lower production did not warrant incurring the expense. PIC produced a contract for the supply of 600 chlorine cylinders, entered into pursuant to a competitive bidding process. The unit cost paid amounted to approximately KWD 571 per cylinder. PIC substantiated the replacement cost of 381 cylinders in the amount of KWD 217,684. The Panel adjusted the established replacement cost in order to take account of the accumulated depreciation applied by PIC and the applicable industry standard depreciation factor. The Panel determined the loss for this claim element to be KWD 37,659.

365. With respect to the damage sustained at PIC's head office, PIC provided supplier invoices and payment vouchers in support of the revised actual costs of repair. The Panel adjusted the established replacement cost in order to take account of accumulated depreciation applied by PIC and the applicable industry standard depreciation rates. The Panel determined the loss for this claim element to be KWD 37,120.

366. Notwithstanding the Panel's requests, PIC failed to provide any documentary evidence to substantiate the claimed loss in respect of the plant office at Shuaiba. In the circumstances, the Panel was unable to assess PIC's claim for this claim element.

367. In respect of the Wafra storage facility, PIC's consultants' report contains photographs of the destroyed facility and a description of the dimensions of the buildings. The Panel adjusted the established replacement cost in order to take account of accumulated depreciation applied by PIC and the applicable industry standard depreciation factor. The Panel determined the loss for this claim element to be KWD 316,400.

368. With respect to the Bubyuan club, PIC produced documentation, including contracts for the repair or replacement of specific items of property, invoices from contractors, service orders addressed to PIC affiliated companies, payment vouchers, material order requisitions, petty cash slips and similar records. PIC's audited financial statements dated 30 June 1991 reflect that PIC wrote off the entire net book value of the Bubyuan club in the amount of KWD 162,532 during the 1990/91 financial year.

369. The Panel adjusted the established replacement cost in order to take account of accumulated depreciation applied by PIC and the applicable industry standard depreciation rates. The Panel determined the loss for this claim element to be KWD 142,961.

370. Based on the findings contained in the preceding paragraphs, the Panel recommends compensation in the amount of KWD 14,886,666 for this category of loss.

(iv) Loss of cash

371. The Panel reviewed written memoranda signed by the appropriate employees as well as sales invoices and noted that these were confirmed in PIC's contemporaneous accounting records. These documents substantiated the loss of KWD 5,238. The Panel recommends an award of compensation in this amount.

(d) Conclusions

372. For the reasons described in the preceding paragraphs, the Panel recommends compensation for this loss element in the amount of KWD 22,149,459. A summary of the individual recommendations contained within this category appears in the following table.

Table 12. Summary of recommendations - real and tangible property losses
(Kuwaiti dinars)

<u>Claim element</u>	<u>Claim amount</u>	<u>Recommended compensation</u>
Loss of products	1,812,677	1,626,071
Materials and supplies	6,992,115	5,631,484
Repairs and replacements	15,337,652	14,886,666
Loss of cash	5,314	5,238
<u>Total</u>	24,147,758	22,149,459

E. Bad debts

(a) PIC's contentions

373. PIC claims KWD 39,977 corresponding to amounts owed by customers in respect of products supplied prior to Iraq's invasion and occupation of Kuwait. In support of its claim, PIC produced documentary evidence concerning the identity of the debtors, the nature and amount of the debts as well as evidence that the debts had not been collected. During the Panel's review of the claim, however, PIC reported that it had recovered KWD 16,861 from one of the debtors, leaving an uncollected balance of KWD 23,116.

374. PIC alleged that the outstanding amounts had become due and payable prior to 2 August 1990, but that, notwithstanding demand, the debtors had failed to settle their respective accounts. PIC contended that the customers in question had historically honoured their payment obligations, that their failure to pay was due to Iraq's invasion and occupation of Kuwait, and that there was no prospect of recovering the amounts owed. PIC stated that, under the circumstances, legal proceedings had not been considered economical or practical.

(b) Iraq's response

375. Iraq objects to the contention that PIC found it impractical and uneconomical to collect the debts as a basis for imposing liability for these losses on Iraq.

(c) Analysis and valuation

376. Based on its review of the evidence submitted, the Panel finds that a portion of the claimed amount concerns a debt that arose in 1986. Accordingly, in the light of previous decisions by this and other panels 55/ the Panel finds that the claimed loss falls outside of the jurisdiction of the Commission, and makes no award in respect of this portion of the claim.

377. With respect to the remaining portion of PIC's claim for bad debts, the Panel finds that PIC has failed to demonstrate that the debts became uncollectable as a result of Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation for PIC's claim in respect of bad debts.

F. Conclusions and summary of recommendations

378. The Panel's recommendations in respect of PIC's claim are summarised in the following table:

Table 13. PIC's claim - recommended compensation
(Kuwaiti dinars)

<u>Claim element</u>	<u>Claim amount</u>	<u>Panel's recommendations</u>
Loss of profits		
Fertilizer plant	50,062,526	31,728,680
Salt and Chlorine plant	7,836,474	2,652,609
Subtotal	57,899,000	34,381,289
Real and tangible property losses	24,147,758	22,149,459
Bad debts	39,977	0
<u>Total</u>	82,086,735	56,530,748

VI. INCIDENTAL ISSUES

A. Currency exchange rate

379. The Panel notes that some claimants have advanced claims in currencies other than United States dollars. Except as specifically noted in this report, the Panel has assessed all such claims in the original claim currencies. However, the Commission issues its awards in United States dollars. Accordingly, the Panel must determine the appropriate rate of exchange to apply to recommended awards expressed and assessed in currencies other than United States dollars.

380. The Panel also notes that most prior awards of compensation by the Commission have relied on the United Nations Monthly Bulletin of Statistics for determining commercial exchange rates into United States dollars. The Panel adopts such an approach for this report.

381. In the circumstances, the Panel finds that the appropriate currency exchange rate to be applied to the claims in the second part of the seventh instalment in currencies other than the United States dollars is the rate prevailing on the date of loss, as outlined below.

Table 14. Currency exchange rate for PIC

<u>Claim element</u>	<u>Recommended compensation (KWD)</u>	<u>Currency conversion rate</u>	<u>Recommended compensation (USD)</u>
Loss of profits	34,381,289	0.293	117,342,283
Real and tangible property	22,149,459	0.289	76,641,727
Bad debts	Nil	n/a	Nil
<u>Total</u>	56,530,748		193,984,010

B. Interest

382. All claim amounts in the body of this report are net of any individual interest claims advanced by the claimants.

383. In accordance with Governing Council decision 16 (S/AC.26/1992/16), “[i]nterest 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 further specified that “[i]nterest will be paid after the principal amount of awards”, while postponing a decision on the methods of calculation and payment of interest.

384. The task of the Panel, therefore, is to determine from which date interest will run for successful claimants in this instalment.

385. In each instance where a precise date of loss is apparent or discernible, the Panel recommends that precise date as the date from which interest will run. In some instances, the precise date of loss cannot be established. In those cases, the Panel has been guided by relevant principles set forth in the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘E2’ claims”. ^{56/} In particular, where the claim is for a loss of profit or payment to others, and that loss was incurred over a period of time, the Panel has selected the midpoint of that period. Further, where the claim is for a loss of tangible assets, the Panel has selected 2 August 1990 (the date of Iraq’s invasion of Kuwait) as the date of the loss, as that coincides with the claimants’ date of loss of control over the assets in question.

Table 15. Interest start date

<u>Claim element</u>	<u>Interest start date</u>
Loss of profits	15 July 1992
Payment or relief to others	6 January 1991
Real and tangible property	2 August 1990
Bad debts	n/a

C. Claim preparation costs

386. All claim figures in the body of this report are net of any claim preparation costs advanced by the claimants. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

VII. FINAL RECOMMENDATIONS

387. The following table summarizes claim amounts and the Panel's recommended awards:

Table 16. Panel's recommended compensation

<u>Claimant</u>	<u>Claim number</u>	<u>Original claim amount</u> <u>(Original currency)</u>	<u>Recommended compensation</u> <u>(Original currency)</u>	<u>Original claim amount</u> <u>(USD)</u>	<u>Recommended compensation</u> <u>(USD)</u>
Saudi Arabian Oil Company	4002628 to 4002636 (excluding 4002633)	USD 354,188,295	Nil	354,188,295	Nil
Arabian Oil Company, Ltd.	4005977	USD 46,851,320	USD 18,403,392	46,851,320	18,403,392
Petrochemical Industries Company	4003069	KWD 82,086,735	KWD56,530,748	281,302,094	193,984,010
<u>Total</u>		USD 401,039,615 KWD 82,086,735	USD 18,403,392 KWD56,530,748	682,341,709	212,387,402

Geneva, 4 December 2001

(Signed) Mr. Allan Philip
Chairman

(Signed) Mr. Antoine Antoun
Commissioner

(Signed) Mr. Michael Hwang
Commissioner

Notes

1/ Pursuant to Governing Council decision 30 (S/AC.26/Dec.30 (1995)), the deadline for filing category “E” and “F” claims was 1 January 1996. At the Governing Council’s twenty-second session, the Council decided that late claims in categories “E” and “F” would be considered for filing if submitted before 1 January 1997 and if based on strong original contemporaneous evidence of the claimant’s good faith.

2/ The Security Council, in resolution 661 (1990), instituted a trade embargo shortly after Iraq’s invasion and occupation of Kuwait. With Iraqi and Kuwaiti oil production restricted to minor volumes for local consumption because of the embargo on their exports, other producers sought to provide substitute sources of crude oil by increasing their production.

3/ “Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of ‘E1’ claims”, S/AC.26/2000/16 (“Fourth ‘E1’ Report”), para. 187; “Report and recommendations made by the Panel of Commissioners concerning the third instalment of ‘E2’ claims”, S/AC.26/1999/22 (“Third ‘E2’ Report”), para. 95.

4/ See “Report and recommendations made by the Panel of Commissioners concerning the second instalment of ‘F2’ claims”, S/AC.26/2000/26 (“Second ‘F2’ Report”), paras. 33-36 and 43-44.

5/ Where, as here, the Panel recommends no compensation be awarded on the basis of insufficient evidence, it does not need to consider the other arguments advanced by Saudi Aramco and Iraq in the body of the report.

6/ In the text of its response to this part of the claim, Iraq alleges Saudi Aramco earned USD 37.5 billion. The difference in amount appears to be because different periods of time are relied upon for the two calculations.

7/ The pricing formulation in the annex is described as: (1) “Production as published by OPEC” and (2) “From official pricing formula assuming 40 per cent Far East; 25 per cent Europe; 35 per cent USA; 65 per cent Arab Light; 10 per cent Arab Medium; 15 per cent Arab Heavy; 10 per cent Berri”.

8/ The Panel notes that the compensable period for these kinds of claims has been limited to 2 March 1991 by it as well as other panels.

9/ Saudi Aramco advised the Minister of Petroleum and Mineral Resources and Chairman of the Board of Saudi Aramco on 19 August 1990, who concurred in its actions, as follows:

“I propose that the Company respond to these [Government] requests in an appropriate manner, consistent with the public interest, when the requests are judged by Management to be within the capability of the Company’s existing resources, provided that no impairment of the Company’s business operations will result. Since the provision of these services is largely beyond the scope of the Company’s approved business plans and budgets, the Company’s activities along these lines will be periodically reported to Your Excellency. Any necessary additional expenditure authorization will be obtained from the Executive Committee on an after-the-fact basis. I trust the foregoing procedure will be satisfactory to Your Excellency given the unusual circumstances which prevail.”

10/ At the oral proceedings, Saudi Aramco distributed a document entitled “Claimant’s Adjusted Claim Totals” explaining these amendments. Saudi Aramco’s amendment with respect to

costs incurred to support the military is comprised of the claim element “military” in the amount of USD 5,148,489 and USD 64,918 of the claim element “miscellaneous”.

11/ Based on the Panel’s review of the information Saudi Aramco provided, it appears Saudi Aramco purchased close to 294,000 gas masks.

12/ The claims of the Saudi Arabian Government were considered by the “F2” Panel of Commissioners in its second and third instalments of claims.

13/ See “Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of ‘E1’ Claims”, S/AC.26/2001/18 (“Sixth ‘E1’ Report”), paragraphs 61-67.

14/ “Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above US \$100,000 (Category ‘D’ Claims)”, S/AC.26/1998/1, para. 361. This distinction has also been applied to corporate claims. For example, see Governing Council decision 77 (S/AC.26/Dec.77/1999).

15/ This total consists of the amounts that are compensable in principle for gas masks, firefighting equipment and personal protective equipment.

16/ Sixth “E1” Report, paragraphs 61-67.

17/ This total consists of the amounts that are compensable in principle for portable homes, tents and related items and miscellaneous.

18/ Second “F2” Report, paragraph 46.

19/ “Report and recommendations made by the Panel of Commissioners concerning the ninth instalment of ‘E2’ claims”, paragraphs 171 and 174-175.

20/ See Sixth “E1” Report, paragraphs 61-67.

21/ See Third “E2” Report, paragraph 73.

22/ Case concerning the Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 47.

23/ Paragraph 187 of the Fourth “E1” Report states:

“Based on this review, the Panel finds that, even if Iraq had not invaded Kuwait, world demand for oil would most likely have increased after 2 August 1990. This development would have resulted in an increase in oil prices unless it had been accompanied by a sufficiently large increase in the supply of oil. Based on the data it has reviewed, the Panel concludes that, while in a no-invasion scenario the supply of crude oil would have increased in response to the rise in demand, it would not have done so by an amount sufficient to cause crude oil prices to fall below their pre-invasion levels. Therefore, the Panel finds that KPC has not overstated the crude oil prices that would have prevailed if the invasion had not occurred.”

24/ Fourth “E1” Report, paragraphs 6, 56, 164, 184 and 187. The Panel has maintained this position throughout, as evidenced in the Sixth “E1” Report subsequently issued by it: paragraph 205.

25/ Paragraphs 6, 56, 164, 184 and 187.

26/ “Saudi Aramco describes crisis oil flow hike”, Oil & Gas Journal (Special) 2 December 1991, p. 49. This article was included in the exhibits provided by Saudi Aramco with its statement of claim. In the same article, Saudi Aramco also stated at page 50 that “[t]otal crude output increased systematically from 5.5 million b/d in August to over 7.5 million b/d by early September.”

27/ Ibid., p. 50.

28/ For example, The Middle East Economic Survey, Vol. XXXIII, No. 49 (10 September 1990); The Middle East Economic Survey, Vol. XXXIII, No. 52 (1 October 1990).

29/ While this period of time is much shorter than the period of time in which the losses claimed by Saudi Aramco were sustained, it allows for the fact that volumes of refined products, which were supplied to the military by SAMAREC, increased significantly after October 1990 (Fourth “E1” Report, paragraph 78). It is assumed that the volume of crude oil needed for those products would necessarily have increased as well.

30/ The Panel assumes that Saudi Aramco’s increased production during 15 September 1990 to 31 October 1990 never exceeded 2 million barrels per day, even though it appears that its increased production may have been higher. For example, The Middle East Economic Survey, Vol. XXXIV, No. 1 (8 October 1990).

31/ While the increase was achieved sometime in late August or early September 1990 according to Saudi Aramco, the exact date of the increase is unclear.

32/ This represents the average of official spot prices for the five working days prior to 14 September 1990, FOB Ras Tanura, Saudi Arabia, based on information provide by Platts Oilgram. The price continued to escalate above this figure. This figure is also significantly less than the average monthly price for light, medium and heavy oil, using the weekly figures reported by Platts Oilgram which in September and October 1990, were USD 29.05 and USD 30.57 respectively.

33/ This represents the average of official spot prices for the five working days prior to 27 July 1990, FOB Ras Tanura, Saudi Arabia, based on information provided by Platts Oilgram.

34/ The average of official spot prices for the five working days prior to 3 August 1990, FOB Ras Tanura, Saudi Arabia, based on information provided by Platts Oilgram, was USD 15.75. The price, as noted previously, immediately prior to the invasion was USD 14.70. The average monthly price for light, medium and heavy oil, using the weekly figures reported by Platts Oilgram in August 1990, was USD 23.08 and, as outlined in endnote 32, increased in September and October of that year.

35/ This amount is stated in Saudi Aramco’s brief for the oral proceedings and described as the labour, equipment and material costs incurred to support the increase in oil production. This amount, however, is Saudi Aramco’s estimate of its costs for August through December 1990, which is again an assumption in Saudi Aramco’s favour as the period evaluated to determine revenue ended two months before that date.

36/ In 1957, Japan Petroleum Trading Company, Ltd. entered into the concession agreement with Saudi Arabia but later assigned all its rights and obligations under the concession agreement to AOC in an assignment agreement dated 19 February 1958. AOC then entered into a concession agreement with Kuwait in July 1958.

37/ Whether or not the damage and destruction was caused by Iraq or the Allied Coalition Forces is irrelevant because decision 7 of the Governing Council (S/AC.26/1991/7/Rev.1) expressly

stipulates that a loss may be the result of military actions by either side. Iraq also offered no evidence to support its claim that AOC intentionally damaged or destroyed its own property.

38/ Second “F2” Report, paragraphs 33-36 and 43-44.

39/ As a general reply in its response to the article 34 notification, AOC advised that it is difficult for them to provide proof of payment because:

(a) Cancelled cheques are not available in Japan and Saudi Arabia as cheques are not used for remittances; and

(b) The amount of an invoice and the amount of a bank statement differ because the remittance advice often covers more than one invoice.

In response to another question in the article 34 notification, however, AOC correlated an invoice to the relevant bank statement. The Panel therefore requested by way of written interrogatory that AOC provide complete copies of entire remittance advices and corresponding bank statements wherever it had been requested to provide proof of payment. AOC replied by repeating the same reason for not doing so: the invoice and bank statement are generally for different amounts.

40/ The Panel addressed Iraq’s concern regarding how the price of the oil was calculated by AOC in its Fourth “E1” Report. Iraq has offered no evidence to support its assertion that it may have been impossible to remove the oil from the tank.

41/ See, for example, “Report and recommendations made by the Panel of Commissioners concerning the third instalment of ‘E1’ claims”, S/AC.26/1999/13, para. 318.

42/ The terms “ton” and “metric tons” are used in this section of the report to designate 1,000 kilograms of weight.

43/ PIC subsequently clarified that other factors motivated the decision not to restart its ammonia I and III units. This clarification is discussed in paragraph 268.

44/ The Panel made use of the term “no-invasion” in its Fourth “E1” Report, paragraph 6, as follows: “As used by the claimants, as well as by the Panel in this report, the use of the term ‘no-invasion’ to describe a figure means that the figure described is an estimate of what that figure would have been if Iraq had not invaded and occupied Kuwait in 1990/91.” The same methodology was applied in the current report.

45/ PIC’s claim (in KWD) was calculated as follows:

No-invasion sales	162,199,112
<u>Less: no-invasion cost of sales</u>	<u>117,203,394</u>
No-invasion profits	<u>44,995,718</u>

To no-invasion profits, PIC added its actual losses, which were calculated as follows:

Actual Sales	:	67,792,000
<u>Less: actual cost of sales</u>	:	<u>75,986,267</u>
Actual loss	:	<u>8,194,267</u>

PIC then deducted saved expenses of KWD 3,131,474 and arrived at its estimated loss of profit of KWD 50,062,526 for the fertilizer plant. (PIC rounded its no-invasion sales figures by KWD 4,015.)

46/ Sixth "E1" Report, paragraph 56.

47/ See paragraph 273

48/ PIC's claim (in KWD) was calculated as follows:

No-invasion sales	24,798,994
<u>Less: No-invasion cost of sales</u>	<u>20,379,000</u>
No-invasion profits	<u>4,419,994</u>

To no-invasion profits, PIC added its actual losses, which were calculated as follows:

Actual sales	8,782,000
<u>Less: Actual cost of sales</u>	<u>13,740,000</u>
Actual loss	<u>4,958,000</u>

PIC then deducted saved expenses of KWD 1,540,526 and arrived at its estimated loss of profit of KWD 7,836,474 for the salt and chlorine plant (PIC rounded its no-invasion sales figures by KWD 994).

49/ PIC projected its annual production volumes of chlorine, caustic soda, salt, hydrochloric acid, sodium hypochlorite and compressed hydrogen to be 21,900 metric tons, 26,300 metric tons, 11,000 metric tons, 1,000,000 gallons, 4,000,000 litres and 100,000 cubic meters, respectively, during the S&C claim period. The Panel adjusted the values to the following: 13,171 metric tons, 16,800 metric tons, 8,034 metric tons, 988,028 gallons, 1,484,581 litres, and 42,775 cubic metres, respectively.

50/ PIC projected its cost of sales to be KWD 20,379,000 during the S&C claim period. The Panel adjusted PIC's projected costs of sales to KWD 17,333,823.

51/ PIC gave the results of the stocktaking and the pre-invasion stock records to a firm of auditors mandated to calculate the value of the missing items. PIC then provided the auditor's report to its loss-adjusting consultants. The consultants tested the mathematical accuracy of the moving average cost of the missing items and stated that, in their view, the results were satisfactory,

52/ In the revised agreement the purchase price was expressed as USD 388,416. The initial agreement specified a purchase price of KWD 115,600. PIC calculated the loss using an exchange rate of USD 1.00 = KWD 0.2962.

53/ "Report and recommendations made by the Panel of Commissioners appointed to review the Well Blowout Control claim", S/AC.26/1996/5/Annex, para.162.

54/ The Panel applied an exchange rate of 0.300 KWD to 1 USD, in accordance with the rate established in the United Nations Monthly Bulletin of Statistics for November 1992.

55/ In the 'Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E2' claims', (S/AC.26/1998/7), para. 90, the "E2" Panel interpreted the

provisions of paragraph 16 of Security Council Resolution 687 (1991) to impose a jurisdictional exclusion on the Commission. The relevant portion of the “E2” Panel ruling is as follows:

“In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990.”

56/ S/AC.26/1998/7, paras. 276-287.
