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

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GLOSSARY

“claimant”	Any Ministry or other entity of the Government of Kuwait on whose behalf the Government of Kuwait has filed an “F3” claim
“Commission” or “UNCC”	United Nations Compensation Commission
“Corps”	The U.S. Army Corps of Engineers
“emergency period”	The period from 27 February 1991 to 31 May 1991, as used by the Government of Kuwait to denote the period during which reconstruction and repair work commenced
“expert consultants”	The expert accounting and loss adjusting consultants to the Panel (see paragraph 8 of the First “F3” Report (q.v.))
“‘F1’ Panel”	The Panel of Commissioners appointed to review the “F1” claims, being claims, other than environmental claims, of international organizations and all Governments other than the Governments of Jordan, Kuwait and Saudi Arabia
“‘F3’ claims”	The claims filed with the Commission under the Commission’s claim form entitled “Claim Form for Governments and International Organizations” by the Government of Kuwait, except those reviewed by the “F1” Panel and those which the Commission has classified as environmental claims (see paragraphs 1 and 2 below)

“Farah report”	“Report to the Secretary-General on the scope and nature of damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation” (S/22535)
“First ‘F3’ Report”	“Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘F3’ claims” (S/AC.26/1999/24)
“first instalment claims”	Those claims considered by the Panel in the First “F3” Report
“Form F”	The Commission’s claim form entitled “Claim Form for Governments and International Organizations”
“GCC” or “Gulf Cooperation Council”	Cooperation Council for the Arab States of the Gulf, comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates
“Governing Council decision”	A decision of the Governing Council of the Commission
“Government of Kuwait” or “Government”	Government of the State of Kuwait
“Government of Iraq” or “Iraq”	The Government of the Republic of Iraq
“KERO”	Kuwait Emergency Reconstruction Office
“KERP”	Kuwait Emergency and Recovery Program, a procurement programme set up in December 1990 and managed by the Council of Ministers
“level of materiality”	See paragraphs 120 to 123 of the First “F3” Report

“liberation”	The liberation on 26 February 1991 of Kuwait from Iraq’s invasion and occupation
“non-material items”	Those parts of the “F3” claims that fall below the level of materiality adopted by the Panel. See paragraph 120 of the First “F3” Report
“occupation period”	The period from 2 August 1990 to 26 February 1991
“PAAC”	Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression
“pre-paid rent”	See paragraph 83 of the First “F3” Report
“principal claim amount”	See paragraph 4 below
“relief paid to employees”	See paragraph 32 of the First “F3” Report
“Rules”	The Commission’s Provisional Rules for Claims Procedure, a text of which is annexed to Governing Council decision 10 (S/AC.26/1992/10)
“Second ‘F3’ Report	“Report and recommendations made by the Panel of Commissioners concerning the second instalment of ‘F3’ claims” (S/AC.26/2001/7)
“second instalment claims”	Those claims considered by the Panel in the Second “F3” Report
“secretariat”	The secretariat of the Commission
“Social Security Fund”	See paragraph 41 of the First “F3” Report and paragraph 45 of the Second “F3” Report
“third instalment part one claims”	See paragraph 3 below

“third instalment part two claims”

See paragraph 3 below

“USD”

United States dollars

“UNROP”

United Nations Return of Property
programme

Introduction

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

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

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

I. OVERVIEW OF PART TWO OF THE THIRD INSTALMENT CLAIMS

4. The third instalment part two claims seek compensation for losses totalling United States dollars (USD) 4,920,526,967 plus interest of USD 781,971,638. The amount claimed in each claim (after any amendments and withdrawals made by the claimants before the claims were submitted to the Panel) is set out in the table below. The Panel will refer to the total amount claimed in each claim (after amendments and withdrawals made by the claimants before the claims were submitted to the Panel), excluding interest, as the “principal claim amount”. The Panel’s findings in respect of the third instalment part two claims (in section VI below) include a tabular breakdown of each third instalment part two claim that sets out the principal claim amount, including interest, and the amounts recommended.

Table 1. Summary of the third instalment part two claims

<u>Claimant</u>	<u>Short name of claimant (if different)</u>	<u>UNCC claim No.</u>	<u>Government of Kuwait claim No.</u>	<u>Principal claim amount^a (USD)</u>	<u>Interest^b (USD)</u>	<u>Principal claim amount including interest (USD)</u>
Ministry of Defense – Ordnance Stockpile Losses		5000163	35	564,376,379	89,691,200	654,067,579
Ministry of Defense Navy Ships – Equipment and Facilities		5000181	52	383,970,593	61,020,640	444,991,233
National Guard		5000190	58	181,157,246	28,790,040	209,947,286
Ministry of Defense – Air Force Tangible Property, Mine Clearance Equipment, MEP Tangible Property, Land Forces, Communications Equipment, MEP Reconstruction Costs, MEP Contract Losses, Occupation Period Salaries, KERP Adjustment	Ministry of Defense – Air Force Tangible Property	5000192	60	3,791,022,749	602,469,758	4,393,492,507
<u>Total</u>				4,920,526,967	781,971,638	5,702,498,605

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

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

5. Having regard to the complexity of the issues raised, the volume of documentation, and the amount of compensation sought, the Panel has classified each of the third instalment part two claims as “unusually large or complex” within the meaning of article 38(d) of the Rules, thereby requiring the Panel to complete its review of such claims within a period of 12 months. The review period for part two of the third instalment has, however, been extended. The Executive Secretary advised the Governing Council at its forty-first session in September 2001 that the Panel would require additional time to complete the review of parts two and three of the third instalment claims beyond the date set out in article 38 (c) of the Rules.

II. PROCEDURAL HISTORY

6. In undertaking its review of the third instalment part two claims, the Panel has followed the procedures and applied the principles and decisions set out in sections II, III, IV and V of the First “F3” Report and section III of the Second “F3” Report. Mindful of the need of the reader to understand the basis of the Panel’s decisions, those procedures, principles and decisions are re-stated below, together with further procedures, decisions and principles that the Panel has applied during its review of the third instalment part two claims.

A. The nature and purpose of the proceedings

7. In undertaking its review of the “F3” claims, the Panel has borne in mind:

- (a) the status and functions of the Commission;
- (b) the Commission’s claims review processes, which are documentary rather than oral, and inquisitorial rather than adversarial; and
- (c) the Panel’s function to provide an element of due process in the review of claims filed with the Commission.

8. The Panel has, like other panels, carried out a thorough and detailed factual and legal review of the “F3” claims, performing the investigative role incumbent on the panels in the claims review process.

B. The procedural history of the claims

9. Prior to the formal submission of the third instalment part two claims to the Panel, the secretariat of the Commission (the “secretariat”) performed a detailed review of these claims and determined, in accordance with articles 14 and 15 of the Rules, that each of the claims complied with the formal and procedural requirements of the Commission. The Panel, as in previous instalments, and given the complex and technical nature of the third instalment part two claims, has made use of the independent loss adjusters and accountants as expert consultants (“expert consultants”). The expert consultants are those that assisted the Panel in its review of previous instalments of “F3” claims, and have worked closely with the Panel, preparing for the Panel’s consideration reports covering the verification and valuation issues raised by the claims.

10. Pursuant to article 32 of the Rules, the Panel was provided with claim summaries recording the significant legal and factual issues identified in the claims, as well as other information, such as legal briefing notes and research papers, to assist the Panel in its review of the claims.
11. The review of each claim by the Panel identified in many cases a need for further information and evidence. Each of the claimants was given the opportunity to provide the Panel with such further information and evidence.
12. The Executive Secretary of the Commission submitted a report dated 28 April 2000 to the Governing Council in accordance with article 16 of the Rules, which set out, *inter alia*, the third instalment part two claims and discussed the main factual and legal issues relating to them. A number of Governments, including the Government of Kuwait and the Government of Iraq, submitted additional information and views on the issues raised in response to that report. The Panel has duly considered those submissions.
13. Given the nature of the third instalment part two claims, the Panel determined that due process would require the provision to Iraq of copies of all of the claim files submitted by the claimants. These files were forwarded to Iraq pursuant to the authority described in paragraph 18 of Governing Council decision 114, and pursuant to Procedural Order 1 issued in respect of each claim, on 13 July 2000. Iraq submitted responses to each such claim.
14. Each response included a statement of its position regarding the Commission's procedures and operation and raised specific issues of law, verification, valuation or fact. The Panel has duly considered these responses and has investigated those issues of fact accompanied by sufficient information to make investigation possible. Details of the responses so investigated, and the Panel's findings in respect of them, are set out in the consideration of each of the claims below.
15. In accordance with the provisions of paragraph 38(d) of the Rules, and paragraph 21 of Governing Council decision 114, the Panel held oral proceedings regarding three of the third instalment part two claims⁵ on 3 April 2001. The Government of Kuwait and the Government of Iraq were each represented at the oral proceedings, and each presented their information and views concerning the issues raised by the claims and previously notified by the Panel to the participants. Further details of these issues and the information and views presented are set out in paragraphs 70 and 130 below.
16. At the direction of the Panel, technical missions were sent to Kuwait to investigate certain factual and valuation issues and to carry out on-site inspections. Two such missions took place in September 2000 and May 2001. The missions also included meetings with PAAC and the Government of Kuwait's advisers, interviews with certain claimant witnesses, inspection of documents and visits to sites of physical damage and reconstruction. The findings of each mission are set out in the relevant sections of this report.

III. THE LEGAL FRAMEWORK

17. The relevant legal principles contained in section III of the First “F3” and Second “F3” Reports are re-stated below, together with further legal principles that the Panel has applied during its review of the third instalment part two claims.

A. Applicable law

18. At paragraphs 16 to 18 of the First “F3” Report, the Panel set out the law generally to be applied by the Panel, as stated in article 31 of the Rules, as follows:

“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.”

19. The principal substantive rule applied by the Panel throughout its review of the “F3” claims is set out in paragraph 16 of Security Council resolution 687 (1991). In this paragraph, the Security Council declared Iraq to be liable under international law “for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq’s unlawful invasion and occupation of Kuwait”.

20. The Panel has taken note of certain findings contained in the reports of other panels of Commissioners, which have been approved by the Governing Council, regarding the interpretation of relevant Security Council resolutions and Governing Council decisions, as well as the reports of the Executive Secretary issued pursuant to article 16 of the Rules and the responses to them.

B. The directness requirement

21. At paragraphs 19-23 of the First “F3” Report, the Panel set out its considerations regarding the directness requirement. The Panel construed the requirements of paragraph 16 of Security Council resolution 687 (1991) as meaning that all loss or damage directly caused by Iraq’s invasion and occupation of Kuwait is in principle compensable and, correspondingly, that any loss or damage not so caused is not compensable. The Panel also took into account the Governing Council’s guidance on the interpretation of these requirements, notably as set out in Governing Council decisions 7⁶ and 15.⁷

22. The Panel noted that paragraph 34 of Governing Council decision 7 provides as follows:

“These payments are available with respect to any direct loss, damage, or injury to Governments or international organizations as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

- (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
- (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
- (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
- (d) The breakdown of civil order in Kuwait or Iraq during that period; or
- (e) Hostage-taking or other illegal detention”.

23. The Panel further noted that paragraph 6 of Governing Council decision 15 confirms that there “will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq’s unlawful invasion and occupation of Kuwait”, in relation to which claimants will have to prove that a loss is “direct”, and that paragraph 3 of Governing Council decision 15 emphasises that for any alleged loss or damage to be compensable, the “causal link must be direct”.

24. The Panel found that there is ample authority in international law, including the reports of other panels,⁸ to support the view that a “direct loss” in these circumstances is one which, as a matter of objective assessment, would have been expected as a normal and natural consequence of Iraq’s invasion and occupation of Kuwait. This is the test of causation that the Panel has applied to all the “F3” claims, including the third instalment part two claims.

C. Mitigation

25. In assessing the third instalment part two claims, the Panel has, continuing the approach set out in the First “F3” Report, considered the duty of the injured party to take all reasonable measures to avoid, diminish or mitigate the damage resulting from Iraq’s invasion and occupation of Kuwait,⁹ and, as first set out in paragraph 24 of the First “F3” Report, finds that the reasonable costs of so doing are themselves compensable.

IV. CONSIDERATION OF COMMON LEGAL ISSUES

A. Approach

26. Many of the legal issues raised in the “F3” claims arise more than once. The Panel has therefore found it appropriate to report first on issues common to several claims and then, in the light of these common considerations, to examine and report on each claim individually. The Panel’s considerations pertaining to common legal issues that have arisen in previous instalments of “F3” claims are re-stated in this section, together with the Panel’s conclusions regarding common legal issues that have arisen during its review of the third instalment part two claims.

B. Property losses

27. The Panel notes, as in the First “F3” Report and the Second “F3” Report, that some claimants assert that their premises were occupied by Iraq. All claimants provide evidence of loss, damage or destruction by way of witness statements, damage assessment reports and/or photographs or videotapes. Understandably, much of this evidence dates not from the occupation period itself, but rather from the period after liberation, when Ministry or other Government of Kuwait personnel were able to re-enter the premises of the various Ministries or other Government entities, as the case may be.

28. The Panel has again taken into consideration the Farah report,¹⁰ which sets out in detail¹¹ the level of damage and destruction found after liberation. The report noted that the damage, while generally minor from a structural point of view, included significant damage to walls and installations. It also noted widespread vandalism and looting of equipment and furnishings.

29. The Panel is accordingly satisfied that the evidence submitted in support of the third instalment part two claims for property losses is sufficient to demonstrate that the losses were direct, falling within the provisions of paragraph 34 of Governing Council decision 7¹² and those of paragraph 13 of Governing Council decision 9.¹³

30. Accordingly, the Panel recommends compensation for such losses, subject to their verification and valuation carried out in the manner described in section V below. As part of that verification and valuation review, the Panel has made adjustments for saved expenses, and notes that such adjustments usually comprise maintenance expenses. The period in respect of which expenses were saved extends from the date of loss until the date of repair, reinstatement or renewal, save as otherwise noted.

31. In relation to claims for vehicles, the Panel has, as previously, accepted and applied the values set out in a motor vehicle valuation table submitted by the Government of Kuwait that lists the value of a wide range of motor vehicles in Kuwait as at 1 August 1990.

32. At paragraph 138 of the First “F3” Report,¹⁴ the Panel found that compensation would be recommended for the additional cost incurred by entering into a contract in respect of repairs to property damage without recourse to competitive procurement procedures only if the contract was of

such urgency that resort to competitive procurement procedures could not reasonably be required in the circumstances. At paragraph 31 of the Second “F3” Report, the Panel found that compensation should be recommended for the additional cost incurred by undertaking repairs or procuring items when prices of goods and services were, in general, higher than the norm to the extent that the repairs or procurements were of such urgency that the claimant could not reasonably be required to wait until prices had returned to normal patterns to undertake such repairs or procurements. The Panel has applied these principles to the third instalment part two claims.

C. Return of property taken by Iraq through the United Nations Return of Property programme (“UNROP”)

33. The Panel has noted in its previous reports to the Governing Council that a number of items of tangible property has been returned by Iraq to the Government pursuant to UNROP. UNROP was set up after the liberation of Kuwait,¹⁵ and, pursuant thereto, property taken by Iraq from Kuwait during Iraq’s occupation of Kuwait was handed over in most cases at designated points on the Iraq-Kuwait border, under the supervision of co-ordinator designated by the Secretary-General of the United Nations or representatives of the co-ordinator.

34. A significant proportion of the property returned that is relevant to “F3” claims was noted as belonging to the Ministry of Defense,¹⁶ and the Panel therefore sets out its consideration of the issues that are raised by UNROP and returns of property pursuant thereto in the following paragraphs.

35. The first returns of property pursuant to UNROP took place in 1991, and continued with some regularity until 1995, after which time further occasional returns took place. Each return was evidenced by a “Border Receipt”, signed by a representative of UNROP, and by both the Governments of Iraq and Kuwait, at the time of the relevant hand-over. Each Border Receipt set out the items of property returned, the presumed owner, and in some cases information as to the condition of the items. The level of detail describing the items returned in each Border Receipt varies considerably, from that which allows the property returned to be identified exactly, to that which is so lacking in particularity that the property cannot now be identified at all. In many of those cases in which information as to the condition of the items was given, the condition was disputed between Iraq and Kuwait. The United Nations co-ordinator or his representatives’ mandate, being distinct from that of the Commission, specifically did not include the investigation of claims by Kuwait that certain items of property were removed by Iraq, assertions by Iraq that certain items were not removed or, if removed, were subsequently destroyed by military operations, nor the assessment as to the scope of any damage to the property in question. Such investigations and assessments fall within the mandate of the Panel so far as property claimed in the “F3” claims is concerned.

36. Such mandate requires the Panel to investigate whether all returns of property, whether made under UNROP or otherwise, have been adequately accounted for in the claims before it. The information available to the Panel to assist it in its investigations is derived from a variety of sources.

37. First, the Panel has considered four United Nations reports concerning UNROP.¹⁷ These reports provide lists of property returned, sorted by presumed owner, in some cases with information regarding the condition of the property returned, and a Border Receipt number for each batch of property returned, and/or details of missing equipment. The Border Receipts themselves are not attached.

38. Secondly, Kuwait's consultant accountants filed a report with the Commission in March 1999 ("Kuwait's UNROP Report"). Kuwait's UNROP Report set out all the UNROP returns that Kuwait had accounted for in compiling the "F3" claims and stated that the returns (summarized in a schedule thereto) had been so accounted for, though it did not provide significant detail as to the values of the property at any time, nor the calculations conducted for each item of property considered. Kuwait requested that the amount claimed in two claims be adjusted downwards so as to account for UNROP returned property not taken into account when the "F3" claims were originally filed. The first of these two claims was filed by the Ministry of Communications which, including the relevant UNROP adjustment, was considered by the Panel in the Second "F3" Report.¹⁸ The Panel's conclusions regarding the UNROP adjustment in the second of these two claims, one of those filed by the Ministry of Defense, is considered in the relevant individual claim section of this report.¹⁹

39. Thirdly, the Panel has considered copies of all Border Receipts that the Panel has identified as relevant to the "F3" claims. Such Border Receipts have been provided by Iraq, by Kuwait, or the Panel has retrieved them from the United Nations' archives.

40. As noted at paragraphs 13 to 14 above, Iraq has provided a response to each of the third instalment part two claims. In respect of three of these claims, Iraq has stated that property, the loss of which is claimed by Kuwait, was returned to Kuwait through UNROP, and has filed copies of some 113 Border Receipts in support of its assertions. Recalling that, in considering Iraq's responses to the claims, the Panel investigates those issues of fact accompanied by sufficient information to make investigation possible, the Panel has considered each of the returns evidenced by Iraq, as part of its investigation of all relevant returns of property.

41. The Panel's investigations comprised the following steps. First, the Panel has sought to establish whether or not items of property that were returned are the subject of a claim before it. For those items returned and the subject of a claim, the Panel has then sought to establish whether Iraq and Kuwait were in agreement as to the condition of the property when returned. If so, the Panel has considered any claim for the costs of repair or replacement using its standard claims review procedures, which includes an investigation of the extent of the loss of or damage to the property claimed.

42. If there was no agreement as between Iraq and Kuwait as to the condition in which the property was returned, the Panel has taken note of the condition in which either or both parties assert it was returned, and has carried out its own investigations of that condition wherever possible. The Panel has then considered the claim in respect of the property concerned using its standard claims review procedures, which, as noted in the preceding paragraph, includes an investigation of the extent

of the loss of or damage to the property claimed. In some cases, the value so derived by the Panel indicates that the claimants have not adequately accounted for the property concerned, and the Panel has made an adjustment to the amounts claimed for “inadequate accounting for UNROP returned property”.

43. Certain aspects of the Panel’s investigation require amplification. First, the Panel sought information from Kuwait regarding the accounting for returned property beyond that stated in Kuwait’s UNROP Report, focussing particularly on whether the property was the subject of a claim before the Commission and, if so, the condition and value Kuwait ascribed to the returned property, as well as the steps taken by Kuwait to investigate such condition and value when the property was returned. The Panel then directed the secretariat, assisted by the Panel’s expert consultants, to conduct a technical mission to Kuwait to inspect returned property that was stored at various locations in Kuwait.²⁰ As part of that mission, the Panel’s representatives met officials from Government Ministries and those who had prepared the relevant claims. The delegation was provided with further information regarding the procedures followed by the Government in assessing the condition, potential future use and value of the returned equipment. The Panel’s representatives inspected a significant quantity and wide variety of returned property, being returned property that had not been put back into service by the receiving branches of the armed forces. The level of visible damage to the equipment varied considerably, from a level in some cases that may indicate that the property was damaged beyond repair to very modest visible damage in others.

44. The Panel subsequently issued further requests for information, including Procedural Order 59 on 29 August 2001, seeking further clarification of Kuwait’s procedures regarding the assessments of returned property. The Panel’s inquiries contained two main aspects: first, the Panel sought details of the accounting for a lengthy list of specific items, and, secondly, the Panel sought information as to the extent, if any, to which the claimants had taken into account anticipated and actual returns of property from Iraq when decisions to re-equip the armed forces and to replace the equipment and property lost during the period of Iraq’s occupation of Kuwait were taken.

45. Kuwait was able to provide some information regarding the first aspect, but was unable to clarify whether the losses of certain items of returned property were indeed claimed, nor the amount of damage to certain items.²¹ In many such cases, the difficulty arose from the lack of details on the Border Receipts themselves, as noted in paragraph 35 above. In such cases, the missing information relates to a part of a head of loss, and not to the entire head of loss, concerned. The Panel has assessed the sufficiency of the evidence submitted in respect of the head of loss concerned and has, in appropriate cases, made adjustments for “insufficient evidence” so as to reflect such missing information.²²

46. Kuwait’s response to Procedural Order 59 stated that returns of property under UNROP were largely not taken into account for the following reasons: first, because the earliest analyses of re-armament needs occurred before the liberation of Kuwait and no returns were anticipated at that time, secondly because the main re-armament decisions were taken before UNROP was under way and,

thirdly, because the condition of the property returned in the early stages was such that the returns were not taken into account.

47. As a result of its investigations, the Panel has concluded that property returned in serviceable condition was in some cases repaired and put back into service, and claims for the repairs were in some cases made. The Panel has assessed claims for repair costs in such cases in accordance with its standard claims review procedures. The Panel has also concluded that a significant percentage of the property returned was treated as a total loss, and stored, for the reasons given in the response to Procedural Order 59 and as set out above.

48. The Panel finds that the actions of Kuwait in treating certain property as a total loss, as set out above, were, in general terms, reasonable in the circumstances. The Panel notes that the replacement of armed forces' military equipment is usually carried out as part of an overall equipment strategy, pursuant to which the coherence of items of equipment is critical.

49. However, the Panel finds that the realisable salvage or scrap value of the property treated as a total loss and stored should have been set off against the claims and has made adjustments to the amounts claimed, for "inadequate accounting for UNROP returned property", accordingly. In some specific instances, the Panel finds that, notwithstanding that Kuwait's actions were generally reasonable, the property concerned should have been or indeed was treated other than as a total loss, and has made further adjustments in appropriate cases,²³ again for "inadequate accounting for UNROP returned property". Details of the application to individual loss elements are set out in the individual claim sections below.

50. Finally, and as a separate consideration, the Panel has borne in mind the existence of an agreement between Iraq and Kuwait relating to certain air force property. The basic terms of the agreement were set out in the documents submitted in support of the Ministry of Defense claim No. 5000192, as follows:

“[T]he Kuwait Air Force agreed to limit claims for testing and overhaul of components and parts to 20% of the value of the items ... No such agreement was entered into for returned aircraft. Also, no agreement was entered into to limit the claim for returned property that had been destroyed or damaged beyond repair”.

51. The claim refers to this agreement as the “UNROP agreement” and the Panel will do likewise.

52. As part of the UNROP agreement, there were to be specific procedures for the testing and overhaul of the property, including its transport to Kuwait, initial physical checking upon its return to Kuwait and further testing and re-certification for certain items. The procedures proposed also noted Iraq's right to have a representative present when the testing procedures were carried out, and Kuwait's obligation to report the results to the United Nations in a fixed time frame. It is not clear whether the procedures proposed were finally and formally agreed.

53. The Panel notes that the Border Receipts for significant numbers of returned property also set out the terms of the UNROP agreement and procedures proposed. Iraq referred to the existence of an agreement along the lines of that set out above in its responses to Procedural Order 1 for the Ministry of Defense claim (UNCC Claim No. 5000192). Kuwait has subsequently denied that a formal agreement was concluded, despite having claimed a maximum of 20 per cent of the value of certain items of property in accordance with the apparent terms thereof. The Panel also notes that the testing procedures for relevant property were not followed in any event. The evidence as to the extent of the agreement, and the extent to which it was followed, is therefore far from conclusive.

54. The Panel finds that to treat the entire UNROP agreement as non-existent would be too technical and rigid an approach in the circumstances. Bearing in mind that the burden of proof falls upon Kuwait to establish the amount as well as the fact of its losses, the Panel has concluded that the UNROP agreement was concluded in the terms set out in paragraph 50 above, and that Kuwait was under an obligation to restrict its claims for repairs and re-certification of air force components and parts to 20 per cent of the value of such items, unless they were destroyed or damaged beyond repair.

55. Further, as the UNROP agreement is silent as to the manner of establishing the relevant value, the Panel finds that compensation for any such items should be based on the lower of the actual repair cost and 20 per cent of the Panel's assessment of the property's value prior to Iraq's invasion and occupation of Kuwait. Where there is evidence that would allow the Panel to value the property using more than one method, the Panel has taken the lower of the resultant values. Details of the Panel's considerations are set out in the individual claim sections below.

56. In the cases in which the Panel's investigations have led to adjustments to the amounts claimed for the reasons set out in paragraphs 50 to 55 above, the Panel has described the adjustments as made for "amounts claimed in excess of those allowed under the UNROP agreement".

57. The evidence before the Panel indicates that the UNROP agreement may have been intended to cover a broader range of property, but the Panel finds that there is insufficient evidence to allow it to conclude that the arrangements or agreements went beyond those matters set out in paragraph 50 above.

58. The Panel's recommendations therefore account for the condition, value and repair costs (if any) of the items returned by Iraq to the Government of Kuwait pursuant to UNROP and the arrangements made between Iraq and Kuwait. The Panel's recommendations in the individual claim sections also set out the Panel's further conclusions regarding the relevant returns of property where relevant.

D. Losses of property caused by Allied Coalition Forces²⁴ bombing and those resulting from the breakdown of civil order

59. At paragraphs 29 and 30 above, the Panel has found that the evidence submitted in support of the property losses in the third instalment part two instalment claims was sufficient to demonstrate that the losses were "direct losses" and hence compensable, subject to verification and valuation.

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

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

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

61. At paragraphs 11 and 12 of the Second "F3" Report, the Panel set out its considerations relative to Iraq's assertions. The Panel noted that paragraph 34(a) of Governing Council decision 7 provides that Iraq is responsible for "any loss suffered as a result of [m]ilitary operations ... by either side during the period 2 August 1990 to 2 March 1991".²⁵ The Panel found that the Governing Council in its decision 7 has determined that losses arising out of the bombing of Kuwait by the Allied Coalition Forces during the period cited are "direct losses".

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

63. The Panel has applied the above principles to the third instalment part two claims.

E. Losses of military assets

64. Some of the third instalment part two claims seek compensation for the loss of, or damage to, the Government of Kuwait's military facilities and assets ("military assets").²⁶ Prima facie, such losses of property are compensable for the reasons set out in paragraphs 27 to 32 above.

65. However, Governing Council decision 19²⁷ provides that "[t]he Governing Council confirms that the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation". The Governing Council also decided at its 81st meeting that "claims for military costs of States that were not members of the Allied Coalition Forces are not eligible for compensation by the Commission".²⁸ In the light of this, the Panel now turns to consider whether the third instalment part two claims that seek compensation for the loss of, or damage to, military assets are compensable.

66. The third instalment part two claimants, the Ministry of Defense and the National Guard, seek compensation for, inter alia, the loss of military equipment, including equipment such as ammunition and missiles, that was expended during Kuwait's initial resistance to Iraq's invasion.

67. As was set out in paragraph 15 of the Second “F3” Report, the Panel finds that the costs to the Government of its preparation for, participation in, or provision of support in relation to, the activities of the Allied Coalition Forces and their military response to Iraq’s invasion and occupation of Kuwait fall within the ambit of Governing Council decision 19 and are accordingly not eligible for compensation.

68. As to the losses that arose after the formation of the Allied Coalition Forces, the Panel finds that the losses of some military assets arose as a result of Kuwait’s participation in the Allied Coalition Forces and are so excluded from compensation for the reason set out in the preceding paragraph. The Panel has examined the facts pertaining to each relevant claim and its findings are set out in the individual claim sections below.

69. As to the losses that arose prior to the formation of the Allied Coalition Forces, the Panel finds that, although such losses fall within the general notion of the costs of military operations, such losses do not prima facie fall within Governing Council decision 19. The Panel has therefore considered whether Governing Council decision 19 should be construed as applying to losses of military equipment incurred prior to the date upon which the Allied Coalition Forces were formed.

70. This issue was considered at the oral proceedings referred to in paragraph 15 above. Kuwait argued that Governing Council decision 19 and the decision made by the Governing Council at its 81st meeting would not operate so as to exclude the costs at issue from compensation, and that the equipment losses claimed did not relate to assets used by the Allied Coalition Forces or in military operations against Iraq. Iraq argued that military equipment inevitably runs the risk of being destroyed during military activities, and that losses due to such operations are covered by Governing Council decision 19.

71. The Panel has considered in particular the findings of the “B” and “D” Panels on analogous issues, arising in the context of Governing Council decision 11,²⁹ which decision operates so as to exclude compensation for losses of individuals who were members of the Allied Coalition Forces.³⁰ The “B” Panel stated that:

“The organization of the Allied Coalition Armed Forces began a few days after the occupation of Kuwait by Iraq, and continued with the placement of armed forces and air and naval military units from 28 countries, including Kuwait, in the Persian Gulf region.

Among the claims submitted for serious personal injury or death suffered by members of the Kuwaiti Armed Forces, several were put forward for events that occurred during the day of the invasion (2 August 1990) or during the days immediately following. The Panel concludes that the exclusion from compensation stated in Decision 11 is not applicable to these claimants because the Allied Coalition Armed Forces did not exist at that time. In the Panel's view, these claims are compensable

since the serious personal injury or death was the direct consequence of Iraq's invasion and occupation of Kuwait.

Claims were also submitted with respect to serious personal injury or death suffered by Kuwaiti military personnel, including members of the Kuwaiti resistance, at the end of the relevant time period. The Panel considers that the exclusion from compensation stated in Decision 11 of the Governing Council is applicable only to members of the Kuwaiti Armed Forces that were integrated as units under the command of the Allied Coalition Armed Forces. For this reason, Decision 11 is not applicable to Kuwaiti members of the resistance or other military personnel who remained within Kuwaiti territory and suffered personal injury or death due to the Iraqi invasion and occupation of Kuwait. Therefore, the Panel recommends the payment of compensation also in these cases”.³¹

72. Similarly, the “D” Panel stated:

“In respect of a deceased member of the Kuwaiti armed forces, the Panel is of the view that the deceased was not under the command of the allied forces at the time of death, therefore the exclusion set out in decision 11 does not apply”.³²

73. The Panel finds that there is existing authority within the Commission to support the proposition that the exclusion from compensation set out in Governing Council decision 19 does not apply to losses that arose before the formation of the Allied Coalition Forces. Accordingly, the Panel finds that the property losses claimed in the third instalment part two claims in relation to military assets that arose before the formation of the Allied Coalition Forces are “direct losses” and hence compensable.

F. Losses of property arising out of the activities of the members of the resistance in Kuwait and from sabotage

74. Two of the third instalment part two claimants seek compensation for losses arising from the activities of members of the resistance in Kuwait and from sabotage, as follows:

(a) the cost to repair Exocet missiles sabotaged by personnel of the Kuwait Navy before Iraq's forces reached Kuwait's navy base; and

(b) the loss of military equipment, such as arms and ammunition, that was expended by members of Kuwait's resistance during the occupation period.

75. The Panel finds that both the activities of members of the resistance in Kuwait and the sabotaging of equipment are to be viewed as a normal and natural consequence of the invasion of a country. Accordingly, the losses that arise as a result of both activities are “direct losses” and hence compensable unless they fall within the exclusion from compensation found in Governing Council decision 19 and the decision of the Governing Council at its 81st meeting.

76. Having considered the extract from the First “B” Report set out in paragraph 71 above, the Panel finds that the determining factor is whether the individual resistance members or saboteurs in fact formed part of the Allied Coalition Forces. The Panel finds that none of the resistance members or saboteurs in respect of whose activities losses are claimed in the third instalment part two claims was part thereof. Accordingly, the Panel finds that compensation should be provided for those direct losses that arose from their activities. The application of this principle to the facts of the relevant claims is set out in the individual claim sections below.

G. The Kuwait Emergency Reconstruction Office (“KERO”) and the Kuwait Emergency and Recovery Program (“KERP”)

77. The Government of Kuwait set up the Kuwait Emergency Reconstruction Office (“KERO”), a reconstruction programme, in early 1991. It was managed by the U.S. Army Corps of Engineers (the “Corps”), and its purpose was to perform emergency repairs to Kuwait’s infrastructure as soon as possible after the liberation of Kuwait.

78. Work under the programme commenced on 1 March 1991 and concentrated on hospitals and clinics, the water distribution system (including the sewerage system), roads, the electrical power network, airports, schools, and other facilities of the Government of Kuwait (including the National Assembly, the seat of Kuwait’s parliament). Work under the programme was substantially complete by August 1992. Costs were also incurred and are claimed by KERO for the air lift of equipment to fight the oil well fires.³³

79. The Government of Kuwait also set up the Kuwait Emergency and Recovery Program (“KERP”), a procurement programme, in December 1990. It was managed by the Council of Ministers. KERP was initially operated from an office in Washington, D.C., United States of America, and later moved to Dammam, Saudi Arabia. The purpose of KERP was to procure supplies of medicine, food, water, fire-fighting equipment, bomb disposal equipment, transportation vehicles and other goods and related services that the Government anticipated would be required following the liberation of Kuwait. The repair of some damaged facilities was also undertaken pursuant to KERP. The contracts for the vast majority of KERP’s procurements of goods and services were entered into before liberation. The remainder was entered into during the emergency period or shortly thereafter.

80. Kuwait sought compensation for the costs of KERO and KERP, and the Panel’s findings in respect of the claims are set out in paragraphs 131 to 173 and 52 to 122 of the First “F3” and Second “F3” Reports, respectively. For the ease of the reader, however, the Panel sets out the principles that it has applied to the review of the other “F3” claims arising from KERO and KERP below.

81. Many agencies of the Government received the goods and services from KERP (“Receiving Agencies”). The Government asserts that KERP’s procurements either:

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

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

(c) were purchases that the Government would not ordinarily have made but that were necessitated by Iraq's invasion and occupation of Kuwait (for example, a border control system). The Panel refers to such purchases as "Exceptional Purchases".

82. When considering "F3" claims other than KERO and KERP, the Panel has sought to establish whether any claimant, in most cases a Receiving Agency, has received goods or services from KERO or KERP and, if so, whether the value of such goods and/or services has been adequately accounted for. For this purpose, it has investigated:

(a) whether the Consumed Goods were in fact consumed and, if so, whether it was reasonable for them to be so consumed. If the Consumed Goods were not in fact consumed, the Panel has sought to ascertain the value (if any) they retained at the end of the emergency period;³⁴

(b) whether the Transferred Goods are accounted for in the claims of the Receiving Agencies³⁵ including the extent to which they replaced goods lost by the Receiving Agencies as a direct result of Iraq's invasion and occupation of Kuwait;

(c) whether the assertion that the Transferred Goods replaced goods of a similar nature lost by the Receiving Agencies as a direct result of Iraq's invasion and occupation of Kuwait is sufficiently supported by the evidence presented;³⁶ and

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

83. In order to ensure that the Commission recommends payment only once in respect of the Transferred Goods, the Panel has considered, in each case in which a claimant that was a Receiving Agency has accounted for the Transferred Goods in its claim, considered whether the claim of the Receiving Agency reflects the correct residual value of the Transferred Goods. If not, the Panel has made an adjustment, for "incorrect valuation of KERP assets", in the Receiving Agency's claim.³⁷ (The Panel notes that the Ministry of Defense and the National Guard were Receiving Agencies).³⁸ The Panel has also made equivalent adjustments in respect of Exceptional Purchases where warranted.

84. The Panel has also investigated all relevant claims in order to satisfy itself that there is no duplication between the claim of any claimant that received the benefit of KERO and/or KERP goods and/or services and the amounts claimed in KERO and/or KERP.

H. Buildings not intended to be rebuilt

85. The Government has presented a number of claims for compensation for damage to buildings, usually schools or mosques, which will not be rebuilt principally because of their location near the border between Kuwait and Iraq or on Failaka Island. The claim is usually made for the estimated cost of reconstructing the building.

86. The Panel set out its findings in respect of such claims at paragraphs 65 and 66 of the First "F3" Report. The Panel found that the damage to such buildings is, in principle, compensable. In particular, the Panel found that Iraq is liable for damage caused by it, even if the Government of Kuwait decides not to rebuild or repair the damage. However, the Panel has recommended as compensation the cost of reconstruction only in cases in which it is satisfied that the relevant building was incapable of repair. In other cases, only the cost of repair is recommended. In appropriate cases, the Panel has made adjustments for such items as depreciation, wear and tear, and reduced maintenance expenses arising from not having to maintain the building in the future. The compensation is measured by the cost at such time as it would be reasonable, in the ordinary course of events, to expect reconstruction or repair to have taken place.

87. The Panel has applied the above principles to the third instalment part two claims.

I. Buildings not repaired or rebuilt

88. The Government has presented a number of claims seeking compensation for destroyed or damaged buildings, for which the claimant has not yet commenced the necessary reconstruction or repair.³⁹

89. The Panel, applying the principles set out at paragraphs 85 and 86 above, set out its findings in respect of such claims at paragraphs 21 and 22 of the Second "F3" Report. The Panel found that Iraq is liable for the loss of or damage caused to the buildings as a direct result of Iraq's invasion and occupation of Kuwait, even if the claimant has not rebuilt the building or repaired the damage so caused. Accordingly, the loss of or damage to such buildings is compensable, subject to verification and valuation, and the Panel has recommended as compensation the cost of reconstruction or repair measured at such time as it would be reasonable, in all the circumstances, to expect the reconstruction or repair to have taken place.

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

91. The Panel has applied the above principles to the third instalment part two claims.

J. Temporary repairs followed by more permanent repairs

92. The Government of Kuwait has presented a number of claims for the cost of urgent work undertaken to effect temporary repairs (for example, the claim in relation to KERO).⁴⁰ The cost of subsequent and more permanent repair has also been claimed in many cases, to be found in some cases in the same claim as the temporary repairs and in others in a different claim.

93. The Panel set out its findings in respect of such claims at paragraphs 72 and 73 of the First “F3” Report. The Panel considered whether and to what extent the assessment of loss should take into account the cost of such temporary repairs. Many of the Government’s facilities and services suffered a considerable amount of damage as a result of Iraq’s invasion and occupation of Kuwait. In many cases, and particularly in the immediate post-liberation period, it was essential rapidly to restore these facilities and services to at least a minimum operating capacity. In other cases, temporary repairs prevented greater damage being caused to the Government’s facilities and services and thus helped to mitigate future damage. The Panel therefore considered that it was reasonable for the Government to address required emergency repairs as priorities and then to undertake permanent repairs at a later time. The Panel found that the cost of temporary repairs that were reasonably necessary in the circumstances is compensable and has proceeded on this basis.

94. The Panel has applied the above principles to the third instalment part two claims.

K. Temporary premises

95. The Government of Kuwait has presented a number of claims for the cost of renting residential or business premises in Kuwait during periods in which the construction of new premises or the repair of existing premises was delayed as a result of Iraq’s invasion and occupation of Kuwait. The claim for compensation is for the cost of renting alternative premises for varying periods following the liberation of Kuwait.

96. The Panel set out its findings in respect of such claims at paragraphs 74 to 77 of the First “F3” Report. The Panel determined that, in principle, such costs should be recommended for a reasonable period following liberation. In each specific case, consideration was given to the nature of the damage and to the time normally likely to be necessary to effect site restoration, repairs or to complete construction. Associated with the latter question was that of the attribution of the cause for the relevant delay. In this regard, the Panel found that the principles set out in paragraph 136 below are pertinent.

97. The Panel similarly found that the costs of providing temporary housing to employees who, before the invasion, were provided with accommodation by a Ministry, were compensable to the same extent as the costs of temporary premises.

98. The Panel has sought to ascertain the reasons for the delay in the construction of new buildings and has scrutinised the evidence to identify both the original contractual date for completion of the new premises and the date for completion under the resumed contract. It has done so to ensure

that delays arising other than from Iraq's invasion and occupation of Kuwait, including pre-invasion delays, are not considered in the ascertainment of the loss.

99. The Panel has applied the above principles to the third instalment part two claims.

L. Relief paid to employees

100. Thirty-six "F3" claimants, including two of the third instalment part two claimants⁴¹ seek compensation for relief payments made to the Kuwaiti and Gulf Cooperation Council ("GCC") employees of the Government of Kuwait. The payments amounted to the salaries the employees would have earned, but did not receive, in respect of the occupation and emergency periods. Each such claimant seeks compensation in respect of its own employees. These employees, some of whom remained in Kuwait during the occupation and emergency periods and some of whom left after Iraq's invasion and occupation of Kuwait, did not receive their regular salaries during those periods. The Government made the relief payments in a series of lump-sum payments commencing after liberation, and claims the amounts so paid. The total amount of the compensation sought for these payments in all the "F3" claims is USD 2.03 billion and the number of employees in respect of whom such claims are made is around 100,000.

101. In paragraphs 31 to 48 of the First "F3" Report, the Panel set out its considerations as to the compensability and valuation of the claims for such relief paid to employees. Those conclusions, and particular aspects concerning the claims that are the subject of this report, are set out below.

102. The Government supplemented each of the relevant claims by submitting in May 1998 additional information that included the following background:

"In 1991, Kuwait's Council of Ministers directed, in partial relief for the major losses suffered as a result of Iraq's invasion and occupation, that Government organizations should pay the salaries that their Kuwaiti and GCC employees would have earned during the seven-month occupation period ... and three-month recovery period".

103. Paragraph 36 of Governing Council decision 7 provides in part as follows:

"[P]ayments are ... available to reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

104. In paragraph 36 of the First "F3" Report, the Panel found, on the basis of the considerable evidence made available to it during the course of the review of the first instalment claims, that the payments for which the claimants seek compensation were made to compensate for the loss of the employees' financial support during the occupation and emergency periods. The Panel concluded that such payments constitute payments made or relief provided to others within the meaning of paragraph 36 of Governing Council decision 7 and that they are thus in principle compensable.

105. In assessing the amount of compensation to be paid, the Panel bore in mind the number of employees concerned and the impossibility of calculating the actual entitlement of each individual. It therefore proceeded on the basis of calculating the compensation to be recommended in respect of the employees by way of an average individual entitlement (the “entitlement”), using information provided by the claimants and the Government so as to ensure that the entitlement was as representative as possible.

106. The Panel found⁴² that the two main factors determining the entitlement were the length of the period for which payment of compensation may be justified and the amount of salary which would have been received by each individual during that period, less appropriate deductions as explained in paragraphs 107 to 119 below.

107. With respect to the first factor, the Panel found that compensation should be recommended based on the period that the employees were reasonably unable to work. Recalling that the positions of the employees were suspended, not terminated, the Panel concluded that it was usually not possible for the employees to resume their positions until the end of the emergency period. The employees in respect of which claims were made in the first, second and part one of the third instalments were thus reasonably unable to work during both the (seven-month) occupation period and the (three-month) emergency period, a total of ten months.⁴³

108. With respect to the second factor, the first step undertaken by the Panel was to compare the monthly amounts ordinarily received by way of salary by the employees and the amounts actually paid retrospectively.⁴⁴

109. The Panel noted that the Government of Kuwait operates a social security system which confers pensions and similar benefits on employees, and which is funded by contributions from employers and employees (the “Social Security Fund”). These contributions are calculated as a percentage of salary and the contributions of the employees, being 5 per cent of gross salary, are deducted at source from the salaries paid to them. As part of the first step described above, the Panel requested the Government to confirm whether the amounts paid to the employees and claimed as relief took into account the employees' contributions where necessary and whether there had been any loss of benefits to the employees. The Government responded that there had been no loss of benefits, and that some but not all claimants had accounted for the contributions by paying to the employees only their gross salary less the 5 per cent deduction. The Panel took the Government's response into consideration and reviewed it in the light of the evidence provided in support of each claim. The Panel found that suitable account had been taken in a number of claims. The Panel therefore determined that an adjustment should be made to the amounts claimed in cases in which the Panel was not satisfied that the social security contributions have been adequately accounted for.

110. In order to ensure that the entitlement accounted for the employees' true losses, as a second step the Panel considered and brought into account the employees' entire financial receipts (including the benefits received from relief programmes) and expenditures over the compensable period. Furthermore, the Panel applied the general principle that any incidental benefit or gain on the part of a

victim should be offset against his or her losses. In other words, “saved” expenses, that is, expenses that the employees would ordinarily have incurred if Iraq’s invasion and occupation of Kuwait had not taken place, but did not in fact incur during the period for which compensation is recommended, were deducted from the entitlement.

111. In order to ascertain what other relief payments were made and what expenses the employees might have “saved” during the period, the Panel issued Procedural Order 15 in respect of all relevant first instalment claims, seeking information in this connection. A comprehensive response was received, which provided a model of the average Government employee covering the amount and nature of his or her income and expenditure and the benefits obtained by him or her through policies implemented by the Government of Kuwait during the period.

112. This response showed that the mean pre-invasion levels of consumption in Kuwait were very high, exceeding the average Government employee’s monthly salary.⁴⁵ It also described a wide-ranging programme of relief payments.⁴⁶ The Panel took this information into account.⁴⁷

113. The Government submitted that only a few employees who left Kuwait could demonstrate that their costs outside Kuwait exceeded the relief received and that these employees have made individual claims before the Commission. With regard to those who did not leave Kuwait, the Panel assumed that any losses in respect of additional costs incurred could similarly have been the subject of claims before the Commission. Accordingly, the Panel assumed that additional living expenses and the relief paid in respect of them did not need to be taken into account when calculating the employees’ true losses.

114. In the light of the above considerations, the Panel found that deductions for “compensation received elsewhere for the same loss” should be made in respect of the free food and utility services provided in Kuwait over the period above.⁴⁸

115. The Panel further found, from the model provided by the Government of Kuwait, that the employees who were outside Kuwait during the period under consideration did indeed “save” certain expenses in Kuwait.⁴⁹ That is, they did not incur a proportion of ordinary and anticipated living expenses over the period under consideration.

116. On the basis of the matters noted in paragraphs 114 and 115 above, the Panel recommended a deduction of 60 per cent from the amounts claimed. That is, the Panel recommended a total award of 40 per cent of the relief paid to employees and claimed in each of the relevant “F3” claims, subject to verification of the amounts claimed and the Panel’s assessment of the evidence presented.⁵⁰ Accordingly, the Panel recommended an award to each respective claimant calculated in this manner.

117. The Panel has applied this percentage award to the claims for relief paid to employees in all instalments, though making certain adjustments to the amount claimed when calculating the award so as to reflect the work performed in respect of which the Government of Kuwait had received the relevant benefit, i.e. in those cases in which such work comprised the performance of the tasks for which the relevant employees were ordinarily employed. In certain other cases, in which the work did

not comprise such tasks, the Panel has recommended that claims for payments made in relation to such extraordinary work be compensated.

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

119. The Panel notes that, during its occupation of Kuwait, Iraq requested employees to exercise their normal functions and that certain employees did work during the occupation period. In calculating the percentage award, the Panel made allowance for a certain level of payments made by Iraq for work carried out during the occupation period. The Panel finds that the payments that Iraq asserts were made in respect of the third instalment part two claims fall within such allowance and therefore no further adjustment is warranted.

M. Relief paid to employees who carried out some or all of their ordinary duties

120. The Panel has noted, in paragraph 107 above, that compensation should be recommended for the period during which the employees were reasonably unable to work. Accordingly, the Panel has applied the principle that no compensation for the relief claimed should be recommended to the extent that the employees were able to perform, and did perform, the tasks for which they were employed.⁵¹

121. The Panel notes that the Ministry of Defense seeks compensation for the relief paid to its employees for the seven-month occupation period, but not for payments made to such employees for the three-month emergency period thereafter. The National Guard seeks compensation for equivalent relief paid during both the occupation and emergency periods.

122. The claims seek compensation for relief paid to civilian employees (such as administrators, secretaries and clerks), contract employees (such as doctors, engineers, technicians and instructors) and military employees (such as soldiers and National Guardsmen).

123. By way of background, the Panel has considered the functions of the Ministry of Defense and the National Guard, and that of their respective employees. The statement of claim for the Ministry of Defense claim No. 5000192 states that the Ministry "provides for the national defense of the State of Kuwait".

124. As to the National Guard, documents submitted in support of the claim describe the functions of the National Guard as follows:

"The National Guard is responsible for supporting and supplementing the regular forces of the Kuwait military against external threats. In addition, the National Guard serves as an auxiliary force to the Ministry of the Interior, when needed, for the purpose of maintaining public order within the State ... and [it] provide[s] a ready reserve of trained militiamen to assist in meeting national emergencies".⁵²

125. The Panel has therefore considered whether the Ministry of Defense and the National Guard employees in fact performed the tasks that they were employed to perform during the occupation and emergency periods.

126. The Panel notes from the statements of claim filed by the Ministry of Defense and the National Guard and information submitted during the claims development process that their personnel defended the nation against Iraq's invasion and occupation of Kuwait on 2 August 1990, including fighting at various locations on the day of the invasion and the following day until ordered by their joint command to disperse.⁵³

127. Thereafter, those National Guardsmen and Ministry of Defense employees who were unable to leave Kuwait formed resistance groups, worked as part of other armed force units or attempted to assist the civilian population in meeting the emergency posed by the occupation. Some 3,000 National Guardsmen and some 7,600 Ministry of Defense military employees were able to regroup outside Kuwait, mostly in Saudi Arabia. They were detached to the units of other member States of the Allied Coalition Forces and performed a variety of services, including debriefing Iraqi prisoners and providing intelligence and other services during Operation Desert Storm.

128. After liberation, National Guardsmen performed a range of emergency services in Kuwait, including security services, neutralisation and removal of mines and unexploded ordnance, maintaining order until civilian authorities were back in control and providing food, water and other necessary supplies to the civilian population. Specifically, Kuwait asserts that "in the first days after liberation the National Guard essentially served as a police force for Kuwait".

129. The Ministry of Defense notes that it "received no benefit from its payment of salaries to [civilian] employees who were unable to work as a direct result of the Iraqi aggression". The Ministry of Defense does not make the same argument regarding the military employees, but asserts that the exclusion from compensation contained in Governing Council decisions 11 and 19 should not apply.⁵⁴

130. The issue was also considered at the oral proceedings referred to in paragraph 15 above. Kuwait argued that the employees would be entitled to compensation for salaries under the criteria for losses of individuals and that some of the employees performed limited work overseas but it was not their "normal work". So far as those employees engaged in military activities are concerned, Iraq argued that the claims are not compensable, because the losses are covered by Governing Council decision 19. In respect of such employees, Iraq also argued that the employees carried out their ordinary work in that, in contrast with other Government employees or employees in the private sector, the normal business of a ministry of defence, waging war, continued. Further, so far as those employees not engaged in military activities are concerned, Iraq argued that the payments were ex gratia.

131. The Panel finds, on the basis of all the evidence before it, that a proportion of each of the Ministry of Defense and National Guard employees performed the functions that they were employed to perform, during both the occupation and emergency periods. Kuwait received the benefit of such

services. Accordingly, the relief paid to the employees who performed such tasks, for the period during which they performed such tasks, constituted the payment of salaries per se and, as such, does not constitute a loss. The Panel finds that the amounts claimed in respect thereof are therefore not compensable. Given this finding, the Panel does not find it necessary to make any further finding in respect of the effect of Governing Council decisions 11 and 19.

132. Accordingly, the Panel recommends an award to each respective claimant calculated in accordance with the principles set out above. Details of the application of such principles to the third instalment part two claims are set out in the individual claim sections below.

N. Contract interruption losses

133. The third instalment part two claims seek compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990.⁵⁵ In common with the claims considered in previous instalments, the contracts were concluded between a Government entity and third-party contractors, generally for the construction of a building or facility. The work contracted for was usually under way at the time of Iraq's invasion and occupation of Kuwait. In most cases, the relevant Government entity asserts that the contractor refused to complete the remaining contract work without extra payment to cover the costs of site restoration, increases in the cost of materials and other cost increases in the post-liberation period. The claimants usually negotiated a revised price with the contractors.

134. Such losses therefore encompass claims for the additional costs under re-negotiated contracts, including in certain cases site restoration work. In considering these losses, the Panel, having noted the obligation of each claimant arising from article 35(1) of the Rules to demonstrate that a particular loss is eligible for compensation, has continued to require claimants to demonstrate that the price increases were a direct result of Iraq's invasion and occupation of Kuwait if a recommendation for compensation is to be made.

135. The Panel has also considered the information sought during the review of the first, second and third instalment part one claims in arriving at its recommendations on the third instalment part two claims set out below. Such information included information as to the conditions pertaining in the construction and building industry both before and after the occupation period, including information as to the number and nationality of construction workers in both periods.

136. On the basis of such information, the Panel determined in the First "F3" Report that the causal link was "direct" in the case of price rises shown to be linked specifically to:

(a) site restoration costs (including those related to the replacement of materials and equipment taken during Iraq's invasion and occupation of Kuwait and that were needed for the resumption of construction contracts);

(b) additional transportation costs (including double-handling costs); and

(c) additional insurance costs.⁵⁶

137. Accordingly, the Panel determined that price increases caused by these factors are compensable. As regards other causes of price increases, the Panel was unable to conclude that they were a direct result of Iraq's invasion and occupation of Kuwait. The Panel has not found evidence during its review of the third instalment part two claims that would cause it to revise its earlier conclusions, and so has made its recommendations in respect of such claims in accordance with those earlier conclusions.

V. VERIFICATION AND VALUATION

138. Paragraphs 103 to 125 of the First "F3" Report and paragraphs 47 to 51 of the Second "F3" Report set out the principles that the Panel has applied to its review of the "F3" claims and the evidence submitted in support of them. Those principles are re-stated, together with further principles that the Panel has applied during its review of the third instalment part two claims, below.

A. The importance of evidence

139. The Rules direct that each claim must be supported by sufficient evidence. Thus, article 35(1) of the Rules prescribes that:

"Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

140. In relation specifically to governmental claims, article 35(3) provides that:

"... such claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss".

141. Pursuant to these provisions, each claimant has submitted a considerable body of documentary and other evidence in support of its claim. Some of this material was filed with the statement of claim itself; substantial further material has been provided in response to questions raised by the Panel; and still other material has been submitted to the Commission and reviewed (in some cases during on-site inspections) in Kuwait and elsewhere.

142. The evidence submitted by the claimants, including that additionally requested by the Panel, comprises, in most cases, a sample of the documents available. The size of the sample has been determined by reference to the nature of the loss and the character and quantity of the evidence available.

143. The Panel has addressed a number of specific requests to various Ministries and other Government entities for additional information and documents in their possession. These requests

took the form of procedural orders, and other requests issued pursuant to procedural orders, of which some 30 were issued in respect of the third instalment part two claims. The responses to each such order or request, and their accompanying documents, have been duly considered by the Panel and its expert consultants.

144. The Panel has noted the claimants' general assertions that physical damage and destruction during Iraq's invasion and occupation of Kuwait included the destruction of a large number of documentary records, although the degree of destruction varied from claimant to claimant. As a result, certain elements of the claims are supported only by witness statements or by reports without underlying primary documentation. The Panel, in the observance of due process and by the issue of procedural orders to claimants, has on occasion requested further evidence from the claimants in order to ascertain the degree of destruction of records with a view to assessing the evidence as a whole.

B. The procedures adopted by the Panel to verify and value the "F3" claims

145. The principal tasks of the Panel are to assess the evidence with a view to determining whether the claimed loss or damage has in fact occurred and, in the light of that determination, to assess the amount of compensation to be recommended in respect thereof.

146. In carrying out these tasks, one of the prime objectives of the Panel is to ensure consistency in the examination of the material and the resulting recommendations. This cannot be achieved other than by a systematic approach rigorously pursued in accordance with the requirements of the Rules. For this purpose the Panel has established three series of steps.

147. The first is a general verification and valuation programme applicable to all claims. This sets out procedures for the verification and valuation of the claims, including an initial assessment of the character and probative value of all the evidence originally submitted in support of each claim.

148. The second series of steps comprises specific verification and valuation programmes. These set out more detailed procedures for certain loss types, namely, contract, real property and tangible property losses. They include the identification of particular documents needed to establish the existence and terms of contracts and the title and character of real and tangible property as well as those needed to value the losses claimed.

149. The third series of steps comprises supplemental verification and valuation programmes. These programmes set out further detailed procedures for each loss element and were designed at an early stage of the review of a claim to meet its particular character. The programmes identify any additional evidence and other information beyond that originally submitted by the claimant that the Panel considers necessary for a proper review of the claim. This step has not been carried out if the loss element under review falls below the level of materiality which is described below.

150. In applying these programmes the Panel has systematically scrutinised the evidence according to its type, date,⁵⁷ quality and quantity and has made consistent adjustments to reflect the extent to which the evidence is not sufficient.

151. Any attempt by the Panel to set out in detail in relation to the individual claims before it the precise manner in which it has found that the evidence is sufficient or not sufficient would involve it in a complex exposition of a very large volume of material and would not be feasible within the confines of a panel report. Moreover, the weighing of evidence is not an exact science but necessarily involves some exercise of judgement or discretion by the Panel. The Panel has, therefore, normally not gone beyond a statement of its conclusions in each case.

C. Evidential status of the reports of the claimants' accountants and engineers

152. Each claim contains an accountant's report and a number of them contain an engineer's report, in all cases commissioned by the Government of Kuwait.

153. The accountant's reports include descriptions of the claimed losses, summaries of the valuation methodologies adopted and schedules showing the derivation of the amounts claimed.

154. The engineer's reports contain evaluations of the repair and restoration works, commenting on the extent to which the works were required to repair invasion-related damage, the scope of works including enhancements, the degree of documentary support for the work said to have been done, the avoidance of duplication within the "F3" claims and, where contract interruption losses are claimed, a comparison of the work done under the pre-invasion and post-liberation contracts.

155. The Panel notes that all of the reports have been commissioned by the Government of Kuwait for the purpose of the submission of its claims to the Commission. They do not, therefore, constitute original or primary evidence, in contrast to, for example, written contracts, receipts and invoices. As such, the Panel has treated these accountant's and engineer's reports as supporting documents and not as primary evidence of the matters of fact asserted in them.

D. Materiality

156. The sheer bulk of the claims before the Panel obliged it to focus on those parts of the claims⁵⁸ that carry a greater risk of significant overstatement. The line between these parts and others is called the "level of materiality", with those parts of the claims above the level of materiality being called "material" and those below it "not material".

157. The Panel has set the level of materiality at USD 500,000. However, the Panel has reduced the level of materiality in the following cases:

(a) where it is necessary to ensure the examination in sufficient detail of at least 80 per cent of the total value of any loss element across the "F3" claims, the level of materiality has been reduced accordingly, but not below USD 100,000;

(b) for claims with a value below USD 5,000,000 (excluding interest, claims preparation costs and any other part of the claim that the Panel finds not to be a direct loss) the level of materiality has been reduced to 10 per cent of the total value of the claim, but not below USD 100,000; and

(c) in exceptional instances in which the Panel has found it appropriate to do so.

158. The Panel has determined that the use of these materiality levels will ensure a detailed review of over 99 per cent of the principal claim amount of the “F3” claims. The Panel considers this to be a necessary and therefore suitable approach to achieving its objective: that is, properly to review the “F3” claims within the time allotted for that task. In reporting on the verification and valuation of the third instalment part two claims, the Panel has confirmed, by way of note to the relevant claim or part thereof, whether some or all parts of the claims fall below the level of materiality adopted by the Panel.

159. While the general and (where relevant) specific verification and valuation programmes have been carried out in the review of all loss elements, a supplemental verification and valuation programme has been designed and followed only for material loss elements. Further, so far as the non-material loss elements are concerned, the Panel has not requested any documentation other than that originally submitted by the claimant. In assessing the sufficiency of the evidence submitted in support of these loss elements, the Panel has regard to the fact that the claimant has not been requested to submit additional evidence and that to conclude that the evidence submitted is insufficient may unfairly penalise the claimant concerned. The Panel therefore assesses the sufficiency of the evidence in support of these loss elements in two stages; first, by applying the criteria described at paragraphs 150 and 151 above in the usual manner and, second, by adjusting its conclusions to reflect the average sufficiency of all the evidence submitted in support of the claim concerned and/or the relevant loss element, as appropriate.

E. Reporting on the verification and valuation of the “F3” claims

160. As in previous instalments of “F3” claims, the expert consultants have provided the Panel with comprehensive reports on the results of the verification and valuation programmes for the third instalment part two claims, indicating their opinions as to the extent that each is supported by the evidence and the value to be given to each. The Panel has considered these reports in detail prior to reaching its conclusions and recommendations. These are set out in section VI below. The Panel is satisfied that each of the recommendations that it has made is reasonable in all the circumstances.

161. For the third instalment part two claims, the claimants often valued their tangible property losses based on historic cost, with such adjustments as the claimants found appropriate. One significant adjustment in some cases was made in respect of inflation, i.e. the measure of inflation to be applied to the historic cost on an annual basis so as to derive a replacement cost at a particular time. Inflation is merely the term given to the process of steadily rising prices, and it is commonly measured as the index of a series of prices paid for various items. Noting that there is no, and cannot be, any such universal index of inflation, and that various inflation indices give markedly different measures of inflation, the Panel has examined in some detail those indices used by the claimants in each case. In so doing, the Panel has considered:

(a) the items that form the index chosen by the claimants;

(b) whether these items are representative of the items claimed;⁵⁹ and

(c) whether, by reference to the items that form other indices, there is any other index that would give a better or more representative measure of the rate of inflation to be applied to any such item.

162. In cases in which the Panel has concluded that an index other than that chosen by the claimants would give a more representative measure of the rate of inflation to be applied to an item, or that there is no measure of inflation to be taken into account, the Panel refers to its consequent adjustment as being made for an overstatement in the rate of inflation applied by the claimant. Finally, the Panel notes, given the high cost of some of the items at issue and the periods of time under consideration, that such adjustments are in some cases considerable.

163. Another significant adjustment in some cases was made in respect of depreciation. The Panel recalls that an adjustment for depreciation is made in order to account for the age and remaining useful life of an asset at the date of loss. The Panel has considered, in each relevant case, the age and remaining useful life as well as the rate of depreciation used. The Panel notes, in particular, that the claimants have applied estimated ages and useful lives, notably in the absence of specific information, and/or have estimated average ages and useful lives so far as items grouped into loss elements or claim items are concerned. In common with its approach regarding inflation rates set out at paragraphs 161 to 162 above, the Panel has in some cases made adjustments to the claimants' estimates, which, again, are in some cases considerable.⁶⁰

164. In explaining in any given case why a claim or part thereof has been reduced or rejected, the Panel has sometimes used one or more of the following shorthand expressions, the weight of which will necessarily vary from case to case:

(a) "amounts claimed in excess of those allowed under the UNROP agreement" is used where the Panel considers that compensation for loss of tangible property has been claimed contrary to the terms of an agreement concluded between Iraq and Kuwait regarding the return of certain property from Iraq to Kuwait under UNROP;⁶¹

(b) "enhancement" is used where the Government, in replacing damaged or lost items, has obtained an asset that is better than the one previously used, but has failed to give adequate credit for the improvement;

(c) "inadequate accounting for depreciation" is used where the Government has not properly considered the age or the remaining useful life of the asset as at the date of the loss or has used an inappropriate rate of depreciation;

(d) "inadequate accounting for residual value" is used where an amount is likely to be received from the disposal of an asset at the end of its useful life, and that amount is not adequately taken into account;

(e) “inadequate accounting for UNROP returned property” is used where the Government has not adequately accounted for the value of property returned by Iraq to Kuwait pursuant to UNROP;⁶²

(f) “inadequate procurement process” is used where the Government has failed to use an appropriate procurement process to ensure that the loss is kept to a minimum. In many cases, the appropriate procurement process would involve resort to competitive tendering, but such procedures may not be appropriate in the context of urgent or emergency repair work, for example;

(g) “incorrect valuation of KERP assets” means that the amount claimed has been reduced because the assessment of residual value applied by the claimant to assets received pursuant to the Kuwait Emergency and Recovery Program⁶³ is incorrect;

(h) “insufficient evidence” is used where the Panel considers that the claim must be reduced or rejected because it is not supported by sufficient evidence;⁶⁴

(i) “method of valuation” means that the amount claimed has been reduced because the valuation method used by the Government of Kuwait is not appropriate under the circumstances of the loss or the Panel has used an alternative method of valuation (such as the use of book value rather than the use of depreciated replacement cost);

(j) “overstatement” is used where an error of fact or of calculation is discovered; and

(k) “saved expenses” is used where the Government has not incurred expenses that it would ordinarily have incurred had Iraq’s invasion and occupation of Kuwait not occurred, or has incurred reduced expenses as a result of the invasion and occupation, and the claim has not been correspondingly reduced.⁶⁵

VI. THE THIRD INSTALMENT PART TWO CLAIMS

A. Introduction

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

166. The Panel has considered, and made where appropriate, all adjustments that it considers necessary to the amounts claimed for one or more of the reasons set out in section V above. In reporting on the verification and valuation of the third instalment part two claims, however, the Panel has reported only those adjustments that fall above a de minimis level, which the Panel has established as 1 per cent of the total adjustments made by the Panel for each claim or part thereof.

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

B. Ministry of Defense – Ordnance Stockpile Losses
Government of Kuwait Claim No. 35, UNCC Claim No. 5000163

Table 2. Summary table for Ministry of Defense – Ordnance Stockpile Losses

<u>Loss type/Loss element</u>	<u>Principal claim</u>	<u>Amount</u>	<u>Paragraph</u>
	<u>amount</u>	<u>recommended</u>	<u>references</u>
	<u>USD</u>	<u>USD</u>	
<u>Other tangible property</u>			
a) Losses supported by the Control Form printout	419,746,367	279,131,000	172-175
b) Losses supported by the Status Report printout	59,683,753	39,690,000	176-179
c) Losses supported by the Order Receipt Report	<u>84,946,259</u>	<u>43,971,000</u>	180-184
<u>Total</u>	<u>564,376,379</u>	<u>362,792,000</u>	
Interest	<u>89,691,200</u>		

1. Other tangible property – USD 564,376,379

(a) Introduction

168. The Panel notes that much of the property claimed under this head comprises military assets. The Panel, applying its findings set out in paragraphs 64 to 73 above, finds that the losses of such property are compensable, as none falls within the provisions of Governing Council decision 19. In particular, therefore, losses of those military assets that were located in Kuwait during the occupation period are, prima facie, compensable.

169. MoD asserts that, in the two decades preceding Iraq's invasion and occupation of Kuwait, it stockpiled significant quantities of arms, ammunition and other ordnance. These items were stored in four depots in Kuwait and in the armouries of individual MoD units.

170. MoD seeks compensation for loss of almost all of this inventory of military ordnance. MoD asserts that the military ordnance was taken by Iraq during the occupation period and never returned.

171. MoD calculated its losses by reference to four databases – the three set out below (which record the quantities of different types of ordnance) and a database containing historic ordnance prices.⁶⁶

(b) Losses supported by the Control Form printout – USD 419,746,367

172. MoD seeks compensation for the ordnance listed on that part of its “Control Form” printout that survived Iraq’s invasion and occupation of Kuwait. This printout recorded the receipt of ordnance into depot storage and its subsequent issue to units of MoD.

173. MoD calculated its loss as historic cost, adjusted for inflation. The Panel agrees with the figures used by MoD for historic cost and the inflation adjustment.

174. MoD did not adjust the amount claimed in respect of the relevant ordnance to account for costs that would have been incurred in the absence of Iraq’s invasion and occupation of Kuwait, but that were not in fact incurred. The Panel finds that an adjustment for such saved expenses is warranted, notably in respect of savings in general maintenance costs, including those that would have been incurred in obtaining certification for munitions stability.

175. The Panel finds that an adjustment should also be made for insufficient evidence, and recommends compensation in the amount of USD 279,131,000 out of the USD 419,746,367 claimed.

(c) Losses supported by the Status Report printout – USD 59,683,753

176. As set out at paragraph 172 above, not all of the “Control Form” printout survived Iraq’s invasion and occupation of Kuwait. For the ordnance listed on that part of the “Control Form” printout that did not so survive, MoD has relied on the “Status Report” printout. This document records the order and receipt of stock, but not its subsequent issue to units of MoD.

177. MoD calculated its loss as historic cost, adjusted for inflation. MoD estimated that half of the ordnance considered in this section had been issued to units of MoD at the time of Iraq’s invasion and occupation of Kuwait. MoD made an adjustment for depreciation to reflect that the latter ordnance had been placed in service.

178. The Panel finds that MoD understated the deduction required for depreciation and understated the adjustment required for inflation, but is satisfied that MoD has not overstated its loss.

179. The Panel finds, however, that adjustments should be made for saved expenses and insufficient evidence, and recommends compensation in the amount of USD 39,690,000 out of the USD 59,683,753 claimed.

(d) Losses supported by the Order Receipt Report – USD 84,946,259

180. MoD seeks compensation for the loss of ammunition purchased in 1984 from the Government of the former Socialist Federal Republic of Yugoslavia. MoD asserts that this ammunition was not recorded on the “Control Form” printout or the “Status Report” printout, and therefore relies on its “Order Receipt Report”. This latter document records the order and receipt of stock, although in less detail than the “Status Report” printout. In addition, the price of the ammunition was not recorded in the database of historic ordnance prices set out at paragraph 171 above.

181. MoD calculated its loss as historic cost, adjusted for inflation. MoD estimated that a quarter of the ammunition considered in this section had been issued to units of MoD at the time of Iraq's invasion and occupation of Kuwait, and excluded this ammunition from its claim entirely.

182. The Panel finds that MoD's calculation of the quantity of ammunition lost was overstated. MoD assumed that all of the ammunition that was ordered from the Government of the former Socialist Federal Republic of Yugoslavia had been delivered at the time of Iraq's invasion and occupation of Kuwait. The evidence before the Panel indicates that this was not the case, and the Panel recommends an adjustment accordingly.

183. In addition, the prices used by MoD as the historic cost of the ammunition were in fact prices applying in the post-liberation period. The Panel therefore finds that an adjustment should be made to remove the inflation adjustment set out in paragraph 181 above.

184. The Panel finds that adjustments should also be made for saved expenses and insufficient evidence, and recommends compensation in the amount of USD 43,971,000 out of the USD 84,946,259 claimed.

C. Ministry of Defense Navy Ships – Equipment and Facilities

Government of Kuwait Claim No. 52, UNCC Claim No. 5000181

Table 3. Summary table for Ministry of Defense Navy Ships – Equipment and Facilities

<u>Loss type/Loss element</u>	<u>Principal claim amount USD</u>	<u>Amount recommended USD</u>	<u>Paragraph references</u>
Other tangible property			
a) Lost or damaged navy vessels	20,361,505	7,255,000	186-196
b) Technical branch inventory losses and ammunition depot losses	158,668,638	87,506,000	197-200
c) Exocet missiles and support equipment lost or damaged	56,253,415	19,466,000	201-208
d) Losses of equipment and inventory in workshops and stores areas	136,586,734	43,506,000	209-212
e) Losses equipment and inventory of other Navy Base divisions	<u>10,762,710</u>	<u>4,707,000</u>	213-216
Sub-total	<u>382,633,002</u>	<u>162,440,000</u>	
Real property	<u>1,337,591</u>	<u>867,000</u>	217-218
<u>Total</u>	<u>383,970,593</u>	<u>163,307,000</u>	
Interest	<u>61,020,640</u>		

1. Other tangible property – USD 382,633,002

(a) Introduction

185. The Panel notes that much of the property claimed under this head comprises military assets. The Panel, applying its findings set out in paragraphs 64 to 73 above, finds that the losses of such property are compensable, as none falls within the provisions of Governing Council decision 19. In particular, therefore, losses of those military assets that were located in Kuwait during the occupation period are, prima facie, compensable.

(b) Lost or damaged navy vessels – USD 20,361,505

186. MoD asserts that two fire-fighting tugs were lost in Kuwait during the occupation period, presumed to have been taken to Iraq during the occupation period or to have been destroyed, and were not recovered. MoD valued its loss as estimated depreciated replacement cost. The Panel finds that MoD's estimate of the replacement cost of the vessels was overstated, and recommends an adjustment accordingly. The Panel finds that adjustments should also be made for saved expenses and insufficient evidence.

187. MoD states that it lost three landing craft in Kuwait during the occupation period. MoD asserts that two landing craft were lost, presumed to have been taken to Iraq during the occupation period or to have been destroyed, and were not recovered, and that one further landing craft, which was located by Kuwait after liberation, was damaged to such a degree that the cost to repair it would have been greater than the depreciated replacement cost for a new landing craft (that is, that it was uneconomical to repair). MoD thus valued its loss of the three vessels as their estimated depreciated replacement cost.

188. The Panel finds that MoD overstated the extent of damage to the landing craft located by Kuwait after liberation. The Panel therefore recommends compensation in the amount of its estimate of the cost to repair that vessel. In relation to the two landing craft that were not recovered, the Panel finds that MoD's estimate of the replacement cost of the vessels was overstated, and recommends an adjustment accordingly. The Panel finds that adjustments should also be made for saved expenses and insufficient evidence in relation to all three landing craft.

189. MoD also seeks compensation in respect of a further landing craft that was located in Kuwait after liberation and could be repaired. MoD valued its loss as the estimated cost to repair that vessel. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

190. MoD asserts that eight patrol boats were lost in Kuwait during the occupation period. MoD valued its loss as estimated depreciated replacement cost. MoD estimated the replacement cost of the vessels by doubling their 1985 purchase price. The Panel finds that this method provides a reasonable estimate of the true replacement cost. However, the Panel finds that adjustments should be made for saved expenses and insufficient evidence.

191. MoD asserts that it lost six service launches in Kuwait during the occupation period. MoD asserts that five service launches were lost, presumed to have been taken to Iraq during the occupation period or to have been destroyed, and were not recovered, and that one further service launch, which was located by Kuwait after liberation, was damaged to such a degree that it was uneconomical to repair. MoD valued its loss as estimated depreciated replacement cost. The Panel finds that MoD's estimate of the replacement cost of the vessels was overstated, and recommends an adjustment accordingly. The Panel finds that adjustments should also be made for saved expenses and insufficient evidence.

192. MoD asserts that five servicing boats were damaged and seeks compensation for the estimated cost to repair them. In its supplemental submission of claim, MoD stated that the cost incurred to repair the hulls of these boats was less than the amount claimed. The Panel recommends that an adjustment be made accordingly. The Panel finds that adjustments should also be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

193. MoD asserts that three servicing boats were lost in Kuwait during the occupation period, presumed to have been taken to Iraq during the occupation period or to have been destroyed, and were not recovered. MoD valued its loss as estimated depreciated replacement cost. The Panel finds that

MoD's estimate of the replacement cost of the vessels was overstated, and recommends an adjustment accordingly. The Panel finds that adjustments should also be made for saved expenses and insufficient evidence.

194. MoD asserts that sixteen rubber dinghies and three wooden boats were lost in Kuwait during the occupation period, presumed to have been taken to Iraq during the occupation period or to have been destroyed, and not recovered. MoD valued its loss as estimated depreciated replacement cost. The Panel finds that MoD's estimate of the replacement cost of the vessels was overstated, and recommends an adjustment accordingly. The Panel finds that adjustments should also be made for saved expenses and insufficient evidence.

195. The Panel notes that a number of navy vessels was returned after liberation pursuant to UNROP. The Panel finds that MoD's claim reflects such returns and recommends no further adjustment in this regard.

196. In light of the above, the Panel recommends compensation in the amount of USD 7,255,000 out of the USD 20,361,505 claimed.

(c) Technical branch inventory losses and ammunition depot losses – USD 158,668,638

197. MoD seeks compensation for losses of equipment and spare parts from the warehouses and stores of its Technical Supply Branch, and for losses of naval ordnance stored at its Naval Base and on board its ships during the occupation period.

198. MoD calculated its claim in relation to the equipment and spare parts by reference to incomplete purchase order files since its inventory status and utilisation records were not available after liberation. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

199. In relation to the claim for naval ordnance, and notwithstanding that Kuwait's actions in relation to the return of property pursuant to UNROP were generally reasonable (see paragraphs 48 to 49 above), the Panel finds that MoD should not have treated certain returned property as a total loss. In its response to questions issued following the September 2000 technical mission to Kuwait, MoD stated that it had contracted for the inspection of some of the returned ordnance. Subsequently, MoD provided a copy of a report produced by the contractor. This report disclosed that the ordnance covered by the report was undamaged and could be returned to inventory. The Panel finds that this conclusion should also apply to certain other ordnance not covered by the report (but also included within MoD's claim) and has accordingly made an adjustment for inadequate accounting for UNROP returned property. The Panel also finds that an adjustment to the claim for naval ordnance should be made for insufficient evidence.

200. In light of the above, the Panel recommends compensation in the amount of USD 87,506,000 out of the USD 158,668,638 claimed.

(d) Exocet missiles and support equipment lost or damaged – USD 56,253,415

201. MoD asserts that it suffered the loss of, and damage to, 48 Exocet MM40 missiles and related test, calibration, training and maintenance support equipment located in Kuwait during the occupation period.

202. MoD employees disabled the motors of 14 of the Exocet missiles before Iraq's occupation of MoD's Navy Base. This sabotage was performed in order to deny Iraq the use of the missiles. On the basis of the considerations set out at paragraphs 74 to 76 above, the Panel finds that the saboteurs were not part of the Allied Coalition Forces at the time of the sabotage and therefore that compensation should be provided for the loss of such sabotaged equipment.

203. MoD valued its loss as the cost to repair the missiles, adjusted for depreciation. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

204. MoD asserts that 28 Exocet missiles were taken to Iraq during the occupation period and were returned after liberation, pursuant to UNROP. MoD asserts that 27 of these missiles were damaged but repairable, and valued its loss as the estimated cost of inspecting and repairing the missiles, adjusted for depreciation. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

205. MoD asserts that one of the Exocet missiles that was returned after liberation pursuant to UNROP was so badly damaged as to be uneconomical to repair. In addition, MoD asserts that 6 of the Exocet missiles have not yet been accounted for.⁶⁷ MoD valued its loss of these seven missiles as estimated depreciated replacement cost. MoD estimated the replacement cost by reference to the amount paid for Exocet missiles that were purchased in September 1990 to rearm two of MoD's fast attack craft that had travelled to Bahrain shortly after Iraq's invasion and occupation of Kuwait.⁶⁸ The Panel finds that MoD's estimate of the replacement cost of the missiles was overstated, and recommends an adjustment accordingly. The Panel finds that further adjustments should be made for saved expenses and insufficient evidence.

206. In relation to the test, calibration, training and maintenance support equipment, MoD valued its loss as the replacement cost, adjusted for depreciation (if the item had been replaced at the time of the claim) or historic cost, adjusted for depreciation or utilization (if the item had not been replaced at the time of the claim). The Panel finds that an adjustment should be made to reflect an overstatement in the value of part of this equipment.⁶⁹ The Panel finds that a further adjustment should be made for insufficient evidence.

207. The Panel notes that a quantity of Exocet missiles and support equipment was returned after liberation pursuant to UNROP. The Panel finds that MoD's claim reflects such returns and recommends no further adjustment in this regard.

208. In light of the above, the Panel recommends compensation in the amount of USD 19,466,000 out of the USD 56,253,415 claimed.

(e) Losses of equipment and inventory in workshops and stores areas – USD 136,586,734⁷⁰

209. MoD asserts that the equipment and inventory of the following 16 workshops and supply centres at MoD's Navy Base were lost or damaged during the occupation period: fire control workshop, communication workshop, gunnery workshop, electronic warfare workshop, engine test bed workshop, engine workshop, electrical workshop, carpenter workshop, fabrication workshop, production workshop, naval base services stores, paint and fibreglass workshop, covered berth workshop, foundry workshop, air conditioning workshop, and battery and electroplating workshop. MoD valued its loss as estimated depreciated replacement cost.

210. The Panel finds that adjustments should be made for overstatement (in relation to the replacement cost of the equipment and inventory of the communication workshop, the engine test bed workshop, the engine workshop, the electrical workshop, the carpenter workshop, the fabrication workshop, the production workshop, the paint and fibreglass workshop, the covered berth workshop, the foundry workshop, the air conditioning workshop and the battery and electroplating workshop), inadequate accounting for depreciation (in relation to the equipment and inventory of the fire control workshop and the electronic warfare workshop, and the guns in the gunnery workshop) and saved expenses (in relation to the equipment and inventory of the fire control workshop, the electronic warfare workshop, the communication workshop, the engine test bed workshop, the engine workshop, the electrical workshop, the carpenter workshop, the fabrication workshop, the production workshop, the paint and fibreglass workshop, the covered berth workshop, the foundry workshop, the air conditioning workshop and the battery and electroplating workshop, and the guns in the gunnery workshop).

211. The Panel finds that as a result of the overstatement in the replacement cost of the equipment and inventory discussed at paragraph 210 above, MoD has also overstated the relevant deductions required for depreciation. The Panel has therefore recalculated the relevant deductions to be applied for depreciation.

212. The Panel finds that an adjustment should also be made for insufficient evidence, and recommends compensation in the amount of USD 43,506,000 out of the USD 136,586,734 claimed.

(f) Losses equipment and inventory of other Navy Base divisions – USD 10,762,710⁷¹

213. MoD seeks compensation for losses from the following branches of its Navy Base during the occupation period: Naval Base Services, Logistics, Divers Section, Harbour Master and Naval Training School. The losses include the loss of vehicles, machinery, diving equipment and furniture.

214. The losses also include the cost of sea mine clearance equipment purchased after liberation.⁷² The Panel finds that some of the equipment replaced the lost diving equipment that is also claimed. The Panel therefore recommends that an adjustment be made to the claim for lost diving equipment to reflect the fact that part of that claim duplicates the claim for sea mine clearance equipment. In relation to the sea mine clearance equipment that did not replace lost diving equipment, the Panel finds that an adjustment should be made for inadequate accounting for residual value.

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

216. In light of the above, the Panel recommends compensation in the amount of USD 4,707,000 out of the USD 10,762,710 claimed.

2. Real property – USD 1,337,591

217. MoD seeks compensation for the cost of minor repair work carried out to the buildings, equipment and systems at its Navy Base.

218. The Panel finds that adjustments should be made for saved expenses and insufficient evidence, and recommends compensation in the amount of USD 867,000 out of the USD 1,337,591 claimed.

D. National Guard

Government of Kuwait Claim No. 58, UNCC Claim No. 5000190

Table 4. Summary table for National Guard

<u>Loss type/Loss element</u>	<u>Principal claim amount USD</u>	<u>Amount recommended USD</u>	<u>Paragraph references</u>
Other tangible property			
a) General inventory and military ordnance	74,751,992	34,513,000	220-224
b) Merchandise stolen from National Guard cooperative and supermarket	5,816,655	3,429,000	225
c) Adjustment for KERP replacements	<u>-27,806,426</u>	<u>-27,806,426</u>	226
Sub-total	<u>52,762,221</u>	<u>10,135,574</u>	
Real property	<u>1,141,615</u>	<u>351,000</u>	227-228
Contract			
a) The sixth ring road project	9,853,071	9,453,000	231
b) Fintas officers club	1,542,611	1,301,000	232
c) Disrupted projects at the Mubarakiya camp	<u>795,033</u>	<u>634,000</u>	233
Sub-total	<u>12,190,715</u>	<u>11,388,000</u>	
Payment or relief to others			
a) Relief paid to employees	<u>115,062,695</u>	<u>10,789,000</u>	234-241
<u>Total</u>	<u>181,157,246</u>	<u>32,663,574</u>	
Interest	<u>28,790,040</u>		

1. Other tangible property – USD 52,762,221

(a) Introduction

219. The Panel notes that much of the property claimed under this head comprises military assets. The Panel, applying its findings set out in paragraphs 64 to 73 above, finds that the losses of such property are compensable, as none falls within the provisions of Governing Council decision 19. In particular, therefore, losses of those military assets that were located in Kuwait during the occupation period are, prima facie, compensable.

(b) General inventory and military ordnance – USD 74,751,992⁷³

220. The National Guard (“NG”) is one of the armed forces of Kuwait, and, among other things, is responsible for defending Kuwait from external and internal threats.

221. NG asserts that its premises were stripped of nearly all of NG’s movable property during Iraq’s occupation of Kuwait. It seeks compensation for a variety of items including audio-visual

equipment, computers, military equipment and supplies, supermarket and kitchen equipment, and library books.

222. NG valued its loss as replacement cost, adjusted for depreciation. In calculating the adjustment for depreciation, NG assumed that the property was on average two years old at the time of Iraq's invasion and occupation of Kuwait (with the exception of armoured transporters, for which an estimated age of three years was used). The Panel agrees with NG's estimation as to the age of the armoured transporters. However, so far as the majority of the rest of the property is concerned, the Panel finds that the items were gradually replaced and has therefore assumed that the such property as a whole was, on average, halfway through its useful life.⁷⁴ The Panel recommends an adjustment accordingly.

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

224. In light of the above, the Panel recommends compensation in the amount of USD 34,513,000 out of the USD 74,751,992 claimed.

(c) Merchandise stolen from National Guard cooperative and supermarket – USD 5,816,655⁷⁵

225. NG seeks compensation for losses from its supply store and supermarket. The Panel finds that adjustments should be made for saved expenses and insufficient evidence, and recommends compensation in the amount of USD 3,429,000 out of the USD 5,816,655 claimed.

(d) Adjustment for KERP replacements – USD -27,806,426

226. The Panel notes that military equipment and supplies were purchased for NG pursuant to KERP, that the costs of those items are claimed separately,⁷⁶ and that MoD adjusted its claim for "other tangible property" to take account of its estimate of the residual value of those items. The Panel finds that NG has correctly estimated the total residual value of these items and therefore that NG has correctly deducted the amount of USD 27,806,426 from its claim in respect of "other tangible property".

2. Real property – USD 1,141,615⁷⁷

227. NG seeks compensation for damage to its Mubarakiya Camp and for amounts paid to assess the damage to, and prepare drawings for site restoration works in relation to, its 6th Ring Road Camp.⁷⁸

228. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence, and recommends compensation in the amount of USD 351,000 out of the USD 1,141,615 claimed.

3. Contract – USD 12,190,715

(a) Introduction

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

230. The Panel, continuing its approach set out at paragraph 136 above, finds that the losses claimed are compensable⁷⁹ in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs,⁸⁰ additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

(b) The sixth ring road project – USD 9,853,071

231. NG asserts that a contract for the construction of its new 6th Ring Road Camp was interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 136 above, and recommends compensation in the amount of USD 9,453,000 out of the USD 9,853,071 claimed.

(c) Fintas officers club – USD 1,542,611

232. NG asserts that the construction of a new officers' club complex in the Fintas area of Kuwait City was interrupted by Iraq's invasion and occupation of Kuwait. The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 136 above, and recommends compensation in the amount of USD 1,301,000 out of the USD 1,542,611 claimed.

(d) Disrupted projects at the Mubarakiya camp – USD 795,033⁸¹

233. NG asserts that three contracts for the construction of buildings at its Mubarakiya Camp were interrupted by Iraq's invasion and occupation of Kuwait.⁸² The Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 136 above, and recommends compensation in the amount of USD 634,000 out of the USD 795,033 claimed.

4. Payment or relief to others – USD 115,062,695

(a) Relief paid to employees – USD 115,062,695

234. NG seeks compensation in the amount of USD 115,062,695 for relief paid to employees.

235. In its response to Procedural Order 8, issued in October 2000, NG disclosed that its claim overstated the amount of the relief paid to employees. The Panel has made an adjustment equal to the amount of this overstatement.

236. The evidence shows that the amount for which compensation is sought is based upon the employees' salaries after deduction of the social security contribution.

237. The amount claimed includes salaries that NG asserts it paid to those employees who were able to regroup outside Kuwait, mostly in Saudi Arabia, and to those who provided emergency services in Kuwait during the emergency period (see paragraph 127 above). On the basis of the considerations set out at paragraph 131 above, the Panel finds that the relief paid to the employees who performed such tasks, for the period during which they performed such tasks, constituted the payment of salaries per se and, as such, does not constitute a loss. The Panel therefore finds that the amounts claimed in respect thereof are not compensable, and has made an adjustment accordingly.

238. In response to enquiries from the Panel, NG has also confirmed that the amount claimed for relief paid to employees included a "liberation allowance" paid to all employees who participated in the resistance within Kuwait during the occupation period and who participated in the liberation of Kuwait. The Panel finds that the amount of such "liberation allowance" cannot be considered as compensation for the loss of the employees' financial support during the occupation and emergency periods, because such allowances were not part of the employees' earnings before Iraq's invasion and occupation of Kuwait.⁸³ The Panel therefore recommends a deduction equal to its estimate of the amount of the "liberation allowance" paid to those employees in respect of whom the Panel has recommended compensation for relief paid to employees.

239. As set out at paragraph 104 above, and subject to the percentage adjustment set out at paragraph 116 above, the Panel accepts the compensability of such relief paid to employees (subject to the adjustments set out at paragraphs 235 to 238 above).

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

241. In light of the above, the Panel recommends compensation in the amount of USD 10,789,000 out of the USD 115,062,695 claimed.

E. Ministry of Defense – Air Force Tangible Property

Government of Kuwait Claim No. 60, UNCC Claim No. 5000192

Table 5. Summary table for Ministry of Defense – Air Force Tangible Property

<u>Loss type/Loss element</u>	<u>Principal claim</u> <u>amount</u> <u>USD</u>	<u>Amount</u> <u>recommended</u> <u>USD</u>	<u>Paragraph</u> <u>references</u>
Other tangible property			
a) Air Force tangible property (spare parts and armaments)	46,406,584	32,543,000	243-247
b) Air Force tangible property (bombs and missiles)	12,731,717	5,888,000	248-250
c) Air Force tangible property (aircraft and aircraft engines)	122,018,489	59,131,000	251-256
d) Air Force tangible property (air defense systems)	898,922,383	445,998,000	257-265
e) Air Force tangible property (command, control and communications systems)	233,745,984	75,302,000	266-269
f) Air Force tangible property (automated supply system)	70,628,113	25,353,000	270-271
g) Air Force tangible property (ground equipment)	10,758,308	5,455,000	272-274
h) Air Force tangible property (technical books and manuals)	5,518,874	1,046,000	275
i) Mine clearance equipment	8,382,197	1,212,000	276
j) MEP tangible property	18,017,724	4,505,000	277-278
k) Land Forces (vehicles)	182,534,161	30,850,000	279-282
l) Land Forces (tanks and armoured vehicles)	577,809,795	190,669,000	283-293
m) Land Forces (artillery)	117,587,631	14,611,000	294-299
n) Land Forces (other equipment)	498,498,963	332,162,000	300-303
o) Wire and wireless communications equipment	107,248,666	41,069,000	304-307
p) Communications projects equipment, spare parts, towers and inspection testing equipment	65,425,806	42,149,000	308-314
q) KERP adjustment	<u>-33,354,747</u>	<u>-33,354,747</u>	315
Sub-total	<u>2,942,880,648</u>	<u>1,274,588,253</u>	
Real property			

<u>Loss type/Loss element</u>	<u>Principal claim</u> <u>amount</u> <u>USD</u>	<u>Amount</u> <u>recommended</u> <u>USD</u>	<u>Paragraph</u> <u>references</u>
a) MEP reconstruction costs (Air Force bases)	313,255,402	164,420,000	316-321
b) MEP reconstruction costs (other MEP repairs)	<u>125,771,157</u>	<u>63,991,000</u>	322-327
Sub-total	<u>439,026,559</u>	<u>228,411,000</u>	
Contract	<u>1,559,897</u>	<u>558,000</u>	328-330
Payment or relief to others			
a) Relief paid to employees	<u>407,555,645</u>	<u>41,142,000</u>	331-338
<u>Total</u>	<u>3,791,022,749</u>	<u>1,544,699,253</u>	
Interest	<u>602,469,758</u>		

1. Other tangible property – USD 2,942,880,648

(a) Introduction

242. The Panel notes that much of the property claimed under this head comprises military assets. The Panel, applying its findings set out in paragraphs 64 to 73 above, finds that the losses of such property are compensable, as none falls within the provisions of Governing Council decision 19. In particular, therefore, losses of those military assets that were located in Kuwait during the occupation period are, prima facie, compensable.

(b) Air Force tangible property (spare parts and armaments) – USD 46,406,584⁸⁴

243. MoD seeks compensation for the loss of, and damage to, spare parts and armaments, including those used for the maintenance, repair and operation of Skyhawk A-4,⁸⁵ Mirage F-1 and Hawk 2000 aeroplanes. MoD asserts that these items were stored at Kuwait's three Air Bases and were found to be missing after liberation.

244. A number of spare parts for the Skyhawk A-4 aeroplanes was returned after liberation pursuant to UNROP. The Panel notes that MoD generally retained items returned pursuant to UNROP and that some twenty-three Skyhawk aircraft, together with spare parts, were sold after liberation. During the September 2000 technical mission to Kuwait, MoD stated that the returned spare parts were not available for inspection. The Panel has therefore not been able to assess the condition of the returned spare parts nor, indeed, whether or not they were included in the spare parts sold after liberation. The Panel has therefore made an adjustment accordingly, and does not recommend any compensation in respect of the spare parts for the Skyhawk A-4 aeroplanes claimed.

245. A number of the remaining spare parts and armaments was subject to the UNROP agreement and, as set out at paragraph 53 above, MoD calculated its claim accordingly. Having considered the value of such items prior to Iraq's invasion and occupation of Kuwait, the Panel does not recommend any further adjustment in respect of property returned after liberation pursuant to UNROP.

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

247. In light of the above, the Panel recommends compensation in the amount of USD 32,543,000 out of the USD 46,406,584 claimed.

(c) Air Force tangible property (bombs and missiles) – USD 12,731,717

248. MoD seeks compensation for the loss of bombs and missiles and parts thereof that it asserts were taken to Iraq during the occupation period and returned in an "unusable condition" pursuant to UNROP.

249. The Panel finds that adjustments should be made for saved expenses and insufficient evidence, and recommends compensation in the amount of USD 5,888,000 out of the USD 12,731,717 claimed.

250. The Panel notes that a number of such items was returned after liberation pursuant to UNROP. The Panel has considered the value of such items and is satisfied that the amount of compensation recommended by the Panel (that is, including the adjustments set out above) accounts for the limited value of such property. Accordingly, the Panel does not recommend any further adjustment in respect of the property returned after liberation pursuant to UNROP.

(d) Air Force tangible property (aircraft and aircraft engines) – USD 122,018,489

251. MoD seeks compensation for the loss of, and damage to, aircraft and aircraft engines. MoD asserts that:

(a) two Super Puma helicopters were damaged in Kuwait during the occupation period and were subsequently repaired;

(b) one Puma helicopter, one Gazelle helicopter and one DC-9 aeroplane were destroyed in Kuwait during the occupation period;

(c) one A-4KU aeroplane and one TA-4KU aeroplane were taken to Iraq during the occupation period, were returned in an unserviceable condition pursuant to UNROP, and were thus scrapped;

(d) three A-4KU aeroplanes were taken to Iraq during the occupation period, portions of the aeroplanes were returned after liberation pursuant to UNROP, and the aeroplanes were scrapped;

(e) eight Mirage F-1 aeroplanes were taken to Iraq during the occupation period and have not been returned;⁸⁶

(f) one C-130 aeroplane was taken to Iraq during the occupation period, was returned in pieces after liberation pursuant to UNROP, and was scrapped; and

(g) nine A-4 aeroplane engines were taken to Iraq during the occupation period and were returned pursuant to UNROP.

252. The loss of the items set out at sub-paragraphs 251(a) to (f) above was valued by MoD as the historic cost of each item, adjusted upwards for inflation and downwards for depreciation. Such historic cost was taken from values included in a post-liberation ground risks insurance policy covering similar items. However, these values represented estimated replacement costs. In response to questions issued by the Panel following the September 2000 technical mission to Kuwait, MoD conceded that the calculation of the loss related to the items set out at sub-paragraphs 251(a) to (f) above should not include the upwards inflation adjustment. The Panel has therefore excluded that upwards inflation adjustment.

253. In its claim, MoD stated that the engines set out at sub-paragraph 251(g) above were subject to the UNROP agreement. MoD valued the loss as 20 per cent of the replacement cost of the engines (since that amount was less than MoD's assertion as to their repair cost). As set out at paragraph 55 above, the Panel finds that compensation for property subject to the UNROP agreement should be based on the lower of the actual repair cost and 20 per cent of the Panel's assessment of the property's value prior to Iraq's invasion and occupation of Kuwait. The Panel finds that the repair cost of the engines is greater than 20 per cent of the Panel's assessment of the value of the engines prior to Iraq's invasion and occupation of Kuwait.⁸⁷ Consequently, the Panel recommends an appropriate adjustment for amounts claimed in excess of those allowed under the UNROP agreement.

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

255. The Panel notes that a quantity of aircraft and aircraft engines was returned after liberation pursuant to UNROP. The Panel finds that MoD's claim reflects such returns and recommends no further adjustment in this regard.

256. In light of the above, the Panel recommends compensation in the amount of USD 59,131,000 out of the USD 122,018,489 claimed.

(e) Air Force tangible property (air defence systems) – USD 898,922,383

257. MoD seeks compensation for the loss of, or damage to, four air defence systems, being an I-Hawk air defence system, an Amoun air defence system, a Strela air defence system and a LASS air defence system.⁸⁸ Each is discussed separately below.

258. MoD asserts that the components of its I-Hawk air defence system were lost: either destroyed during the occupation period or taken to Iraq and returned in scrap condition. MoD valued its loss as the historic cost of the I-Hawk air defence system, adjusted for inflation and depreciation. MoD's calculation of historic cost included amounts referable to spare parts, technical assistance and maintenance costs. The Panel recommends an adjustment so as to exclude such amounts from the calculation of historic cost. On the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that MoD's adjustment for inflation was overstated and recommends an adjustment accordingly. The Panel further finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

259. MoD asserts that components of its Amoun air defence system were taken to Iraq during the occupation period and not returned. MoD valued its loss as the historic cost of those components. It made no adjustments for inflation or depreciation because it asserted that the system was essentially new at the time of Iraq's invasion and occupation of Kuwait, and had never been used. The Panel finds, however, that the system had been installed and was in use for training at the time of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends an adjustment for inadequate accounting for depreciation. The Panel also finds that adjustments should be made for saved expenses and insufficient evidence.

260. MoD asserts that components of its Strela air defence system were lost: either taken to Iraq and not returned, or were returned in an unusable condition. MoD valued its loss as the historic cost of these components. It made no adjustments for inflation or depreciation because it asserted that the system had not been used at the time of Iraq's invasion and occupation of Kuwait. The Panel finds, however, that the system was purchased in 1988 and therefore that an adjustment should be made for inadequate accounting for depreciation. The Panel also finds that adjustments should be made for saved expenses and insufficient evidence.

261. MoD asserts that components of its LASS air defence system and twenty-seven missile reloaders used in conjunction with the system were taken to Iraq and not returned. MoD valued its loss of the components as the post-liberation cost of replacing the LASS air defence system, adjusted for depreciation. This cost included an amount for training in the use of the system. The Panel notes that the lost system was purchased in 1987 and that the replacement system was substantially the same as the lost system. The Panel finds that Kuwait has failed to demonstrate that a need for such training was a direct result of Iraq's invasion and occupation of Kuwait and therefore recommends an adjustment, for overstatement, equal to the cost of that training. However, the Panel finds that as a result of such overstatement, MoD has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation.

262. MoD valued its loss of the missile reloaders as the estimated cost of replacing them. It made no adjustment for depreciation because it asserted that the missile reloaders were new at the time of Iraq's invasion and occupation of Kuwait and had never been used. The Panel finds, however, that the same depreciation factor applied to the components of the LASS air defence system should be applied to the missile reloaders and recommends an adjustment accordingly.

263. The Panel finds that adjustments to the claim for the LASS air defence system and the missile reloaders should also be made for saved expenses and insufficient evidence.

264. The Panel finds that some parts, including missiles, of the I-Hawk and Strela air defence systems were returned after liberation pursuant to UNROP in a salvageable condition and the Panel has made an adjustment in this regard for inadequate accounting for UNROP returned property.

265. In light of the above, the Panel recommends compensation in the amount of USD 445,998,000 out of the USD 898,922,383 claimed.

(f) Air Force tangible property (command, control and communications systems) – USD 233,745,984

266. MoD seeks compensation for the loss of an air defence command, control and communication system purchased in 1983 from a French contractor and for the loss of a communication system purchased in 1985 from the United States. These items were lost or destroyed in Kuwait during the occupation period.

267. MoD valued its loss of the French sourced system as the historic cost of the system, adjusted for inflation and depreciation. MoD's calculation of historic cost was derived from the pre-invasion contract for the system and included amounts referable to training, initial technical assistance, initial spare parts, a "management reserve" and the cost to repair defects. The Panel recommends an adjustment so as to exclude such amounts from the calculation of historic cost. Further, the calculation of historic cost included an amount referable to an option to purchase further equipment that was contained in the pre-invasion contract. In its response to Procedural Order 49 issued in June 2001, MoD stated that this option had never been exercised. The Panel therefore recommends an adjustment so as to exclude the amount referable to that option. On the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that MoD's adjustment for inflation was overstated and recommends an adjustment accordingly. The Panel finds that, as a result of the overstatements set out in this paragraph, MoD has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation. The Panel further finds that adjustments should be made for saved expenses and insufficient evidence.

268. MoD valued its loss of the United States sourced system as the historic cost of the system, adjusted for inflation and depreciation. On the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that MoD's adjustment for inflation was overstated and recommends an adjustment accordingly. However, the Panel finds that as a result of this overstatement, MoD has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation. The Panel further finds that adjustments should be made for saved expenses and insufficient evidence.

269. In light of the above, the Panel recommends compensation in the amount of USD 75,302,000 out of the USD 233,745,984 claimed.

(g) Air Force tangible property (automated supply system) – USD 70,628,113

270. MoD seeks compensation for the loss of its automated supply system, a computerised information system that performed maintenance, personnel, finance and administration related functions. MoD asserts that the system was lost or destroyed in Kuwait during the occupation period. MoD valued its loss as the historic cost of the system, adjusted for inflation and depreciation. On the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that there is no measure of inflation to be taken into account and recommends an adjustment accordingly. The Panel further finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

271. In light of the above, the Panel recommends compensation in the amount of USD 25,353,000 out of the USD 70,628,113 claimed.

(h) Air Force tangible property (ground equipment) – USD 10,758,308

272. MoD seeks compensation for the loss of ground equipment from its Air Force bases in Kuwait during the occupation period such as communication equipment, electrical equipment, mechanical

equipment, furniture and vehicles. MoD valued its loss as the historic cost of the items, adjusted for inflation and depreciation. On the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that MoD's adjustment for inflation was overstated and recommends an adjustment accordingly. However, the Panel finds that as a result of this overstatement, MoD has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation. The Panel further finds that adjustments should be made for saved expenses and insufficient evidence.

273. In light of the above, the Panel recommends compensation in the amount of USD 5,455,000 out of the USD 10,758,308 claimed.

274. The Panel notes that a number of such items was returned after liberation pursuant to UNROP. The Panel has considered the value of such items and is satisfied that the amount of compensation recommended by the Panel (that is, including the adjustments set out above) accounts for the limited value of such property. Accordingly, the Panel does not recommend any further adjustment in respect of the property returned after liberation pursuant to UNROP.

(i) Air Force tangible property (technical books and manuals) – USD 5,518,874

275. MoD seeks compensation for the loss of books and manuals from its Air Force technical library in Kuwait during the occupation period. The Panel notes that a number of such books and manuals was returned after liberation pursuant to UNROP. The Panel finds that, given the damage to such books and manuals, MoD acted reasonably in discarding them, and recommends no adjustment in this regard. The Panel finds, however, that MoD has overstated the cost of restoring that library to the position it had been in prior to Iraq's invasion and occupation of Kuwait, and recommends an adjustment accordingly. The Panel finds that an adjustment should also be made for insufficient evidence, and recommends compensation in the amount of USD 1,046,000 out of the USD 5,518,874 claimed.

(j) Mine clearance equipment – USD 8,382,197

276. MoD seeks compensation for the cost of heavy earth moving equipment, vehicles and vehicle spare parts, communications equipment and office equipment purchased after liberation for the purposes of mine clearance and ordnance disposal work.⁸⁹ MoD valued its loss as the cost of purchasing the equipment. MoD asserted that no deduction for residual value was appropriate because the equipment was to be used for mine clearance and ordnance disposal for its entire useful life. The Panel finds, however, that some of the equipment did retain a value after its use for mine clearance and ordnance disposal and therefore recommends that an adjustment be made for inadequate accounting for residual value. The Panel finds that an adjustment should also be made for insufficient evidence, and recommends compensation in the amount of USD 1,212,000 out of the USD 8,382,197 claimed.

(k) MEP tangible property – USD 18,017,724⁹⁰

277. The Military Engineering Projects Department (“MEP”) supervises military construction projects and provides maintenance for all military facilities. MoD seeks compensation for the loss of, or damage to, tangible property in its facilities including furniture, fixtures, equipment, spare parts, lumber, sheet iron rolls and vehicles, lost or damaged in Kuwait during the occupation period.

278. The Panel finds that adjustments should be made for saved expenses and insufficient evidence, and recommends compensation in the amount of USD 4,505,000 out of the USD 18,017,724 claimed.

(l) Land Forces (vehicles) – USD 182,534,161

279. MoD seeks compensation for the loss of over thirty-five different types of vehicles owned by the Land Forces including jeeps, water tankers, buses, ambulances, petrol tankers, cargo vehicles, fire trucks, fork lifts, pick-up trucks, tank carriers and motorcycles, lost in Kuwait during the occupation period.

280. MoD valued its loss as the historic cost of the vehicles, adjusted for inflation and depreciation. The Panel finds that this method overstated MoD’s loss when compared with vehicle values included in the motor vehicle valuation table discussed at paragraph 31 above and, for those vehicles not included in that motor vehicle valuation table, the values ascertained by the Panel when considering the claim of the Ministry of Interior (UNCC Claim No. 5000137).⁹¹ The Panel therefore recommends that an adjustment be made for overstatement. The Panel further finds that adjustments should be made for saved expenses and insufficient evidence.

281. In light of the above, the Panel recommends compensation in the amount of USD 30,850,000 out of the USD 182,534,161 claimed.

282. The Panel notes that a number of such vehicles was returned after liberation pursuant to UNROP. The Panel has considered the value of such vehicles and is satisfied that the amount of compensation recommended by the Panel (that is, including the adjustments set out above) accounts for the limited value of such property. Accordingly, the Panel does not recommend any further adjustment in respect of the property returned after liberation pursuant to UNROP.

(m) Land Forces (tanks and armoured vehicles) – USD 577,809,795

283. MoD seeks compensation for the loss of various items as set out below, either lost or destroyed in Kuwait, or taken to Iraq and returned pursuant to UNROP, or taken to Iraq and not returned, as noted. All were valued by MoD as historic cost, adjusted for inflation and depreciation.

284. MoD seeks compensation for 165 Chieftan tanks and 70 Vickers tanks. In its response to a request from the Panel, MoD provided documentation indicating a lower historic cost for both types of tanks than that included by MoD in its claim. In its supplemental response to Procedural Order 49,

MoD stated that these lower historic costs did not include the cost of ammunition and spare parts for the tanks.⁹² The Panel finds that these lower historic costs should be used for the purposes of valuing the tanks, and recommends that an adjustment for overstatement be made accordingly. On the basis of the considerations set out at paragraphs 161 to 162 above, the Panel further finds that MoD's adjustment for inflation was overstated and recommends an adjustment accordingly. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

285. MoD seeks compensation for spare parts for the Chieftan tanks. The Panel finds that no compensation should be recommended in respect of this claim because it is duplicated by the claim for "Land Forces (other equipment)" discussed below.

286. MoD initially sought compensation for the loss of six Centurion tanks, six T72 tanks and 10 M88 tanks. As noted in paragraph 38 above, Kuwait's UNROP Report amended the claim filed by MoD, in this case so as to account for the value of eight of the M88 tanks that were returned pursuant to UNROP and the cost to repair them. The amount of the downwards adjustment applied to this loss element was the historic cost of the tanks. The Panel finds that MoD's UNROP deduction was overstated in that the amount should have been adjusted for inflation and depreciation, and the Panel has made a consequential adjustment in this regard.

287. In addition, and on the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that MoD's adjustment for inflation was itself overstated and recommends an adjustment accordingly. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

288. MoD seeks compensation for 288 armoured vehicles and soldier carriers. The Panel finds that MoD overstated the quantity of armoured vehicles and soldier carriers, but understated their historic cost and the inflation adjustment to be applied, and recommends that an adjustment be made accordingly. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

289. MoD seeks compensation for 245 BMP2 armoured personnel carriers, 173 M113 armoured vehicles and 56 armoured rocket launching vehicles. The Panel obtained information regarding the 1993 purchase cost of similar vehicles and finds that this cost is less than the amount derived by using the historic costs and inflation factors used by MoD. The Panel recommends that these 1993 purchase costs should be used to value the vehicles (before the adjustment for depreciation discussed below), and recommends that an adjustment for overstatement be made accordingly. However, the Panel finds that as a result of this overstatement and the use of assumed (rather than actual) ages, MoD has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation. In addition, the Panel finds that adjustments should be made for saved expenses and insufficient evidence.

290. MoD seeks compensation for 100 Fahd armoured vehicles. On the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that there is no measure of inflation to be taken into account and recommends an adjustment accordingly. However, the Panel finds that as a result of this overstatement, and the use of assumed (rather than actual) age, MoD has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation. In addition, the Panel finds that adjustments should be made for saved expenses and insufficient evidence.

291. MoD seeks compensation for 3,750 anti-tank rockets. On the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that there is no measure of inflation to be taken into account and recommends an adjustment accordingly. However, the Panel finds that as a result of this overstatement, and the use of assumed (rather than actual) age, MoD has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation. In addition, the Panel finds that an adjustment should be made for insufficient evidence.

292. In light of the above, the Panel recommends compensation in the amount of USD 190,669,000 out of the USD 577,809,795 claimed.

293. The Panel notes that a number of such tanks and armoured vehicles was returned after liberation pursuant to UNROP. The Panel has considered the value of such tanks and armoured vehicles and is satisfied that the amount of compensation recommended by the Panel (that is, including the adjustments set out above) accounts for the return of such property. Accordingly, the Panel does not recommend any further adjustment in respect of the property returned after liberation pursuant to UNROP.

(n) Land Forces (artillery) – USD 117,587,631

294. MoD seeks compensation for the loss of various items as set out below, either lost or destroyed in Kuwait, or taken to Iraq and returned pursuant to UNROP, as noted. All were valued by MoD as historic cost, adjusted for inflation and depreciation.

295. MoD seeks compensation for the loss of 18 Type 155 guns. In its response to Procedural Order 49, MoD provided documentation showing that MoD had originally overstated the historic cost of the guns. On the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that there is no measure of inflation to be taken into account and recommends an adjustment accordingly. In relation to the adjustment made by MoD for depreciation, the Panel has applied an assumption that the guns were halfway through their useful life, as set out at paragraph 163 above, and recommends an adjustment accordingly.⁹³ The Panel also finds that adjustments should be made for saved expenses and insufficient evidence.

296. MoD initially sought compensation for the loss of 33 Type 159 guns, 18 120mm mortars, 48 81mm mortars, 12 launchers for “Luna” rockets and 120 “Luna” rockets. As noted in paragraph 38 above, Kuwait’s UNROP Report amended the claim filed by MoD, in this case so as to account for the

value of 20 of the Type 159 guns that were returned pursuant to UNROP and the cost to repair them. The amount of the downwards adjustment applied to this loss element was the historic cost of the guns. The Panel finds that MoD's UNROP deduction was overstated in that the amount should have been adjusted for inflation and depreciation, and the Panel has made a consequential adjustment in this regard.

297. In addition, and on the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that there is no measure of inflation to be taken into account and recommends an adjustment accordingly. In relation to the adjustment made by MoD for depreciation, the Panel has applied an assumption that the items were halfway through their useful lives, as set out at paragraph 163 above, and recommends an adjustment accordingly.⁹⁴ The Panel also finds that adjustments should be made for saved expenses⁹⁵ and insufficient evidence.

298. In light of the above, the Panel recommends compensation in the amount of USD 14,611,000 out of the USD 117,587,631 claimed.

299. The Panel notes that a quantity of such artillery was returned after liberation pursuant to UNROP. The Panel has considered the value of such artillery and is satisfied that the amount of compensation recommended by the Panel (that is, including the adjustments set out above) accounts for the return of such property. Accordingly, the Panel does not recommend any further adjustment in respect of the property returned after liberation pursuant to UNROP.

(o) Land Forces (other equipment) – USD 498,498,963

300. MoD seeks compensation for the loss of other equipment owned by the Land Forces such as vehicle spare parts, bulldozers, graders, chemical defence equipment, computers, furniture, office equipment, and general supplies, either lost or destroyed in Kuwait, or taken to Iraq and returned pursuant to UNROP, as noted. The loss of all such items was valued by MoD as their historic cost, adjusted for inflation and depreciation. On the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that MoD's adjustment for inflation was overstated and recommends an adjustment accordingly. However, the Panel finds that as a result of this overstatement, MoD has also overstated the deduction required for depreciation. The Panel has therefore recalculated the deduction to be applied for depreciation.

301. Almost USD 440,000,000 of this head of claim is asserted in respect of the loss of vehicle spare parts. In response to questions issued by the Panel following the September 2000 technical mission to Kuwait, MoD stated that this claim for vehicle spare parts includes spare parts for all types of vehicles owned by the Land Forces. MoD provided a schedule of 65 types of vehicles owned and operated by the Land Forces and a list of 1,032 types of spare parts held by MoD. The Panel, having considered the totality of the evidence in relation to the existence of the vehicle spare parts, and the other items set out at paragraph 300 above, before Iraq's invasion and occupation of Kuwait, and the totality of the evidence in relation to MoD's loss, finds that such evidence is not sufficient so as to

provide the degree of confirmation that the Panel requires in relation to existence and loss. Accordingly, the Panel has made an adjustment to reflect the insufficiency of the evidence concerned.

302. In light of the above, the Panel recommends compensation in the amount of USD 332,162,000 out of the USD 498,498,963 claimed.

303. The Panel notes that a quantity of such equipment was returned after liberation pursuant to UNROP. The Panel has considered the value of such equipment and is satisfied that the amount of compensation recommended by the Panel (that is, including the adjustments set out above) accounts for the limited value of such property. Accordingly, the Panel does not recommend any further adjustment in respect of the property returned after liberation pursuant to UNROP.

(p) Wire and wireless communications equipment – USD 107,248,666

304. MoD seeks compensation for wire and wireless communications equipment including equipment built into vehicles (such as tanks, trucks and armoured personnel carriers), backpack and hand-held radios, antennas, communications vehicles and trucks, and field telephones and exchanges, either lost or destroyed in Kuwait, or taken to Iraq and returned pursuant to UNROP, as noted.

305. MoD valued its loss as the items' estimated depreciated replacement costs. The Panel finds that MoD's estimate of the replacement cost of the items was overstated and recommends an adjustment accordingly. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

306. In light of the above, the Panel recommends compensation in the amount of USD 41,069,000 out of the USD 107,248,666 claimed.

307. The Panel notes that a quantity of such equipment was returned after liberation pursuant to UNROP. The Panel has considered the value of such equipment and is satisfied that the amount of compensation recommended by the Panel (that is, including the adjustments set out above) accounts for the limited value of such property. Accordingly, the Panel does not recommend any further adjustment in respect of the property returned after liberation pursuant to UNROP.

(q) Communications projects equipment, spare parts, towers and inspection testing equipment – USD 65,425,806

308. MoD seeks compensation for the loss of six fixed installation communications projects, spare parts, inspection testing equipment, a mobile workshop and communications towers, either lost or destroyed in Kuwait, or taken to Iraq and returned pursuant to UNROP, as noted.

309. MoD valued the loss of the communications projects as the historic cost of those projects, adjusted for inflation and depreciation. On the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that MoD's adjustment for inflation was overstated and recommends an

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

310. MoD valued the loss of the spare parts as their historic cost with no adjustment for inflation or depreciation. Although the Panel finds that this method of valuation is appropriate in the circumstances, the Panel finds that an adjustment should be made for saved expenses and insufficient evidence.

311. MoD valued the loss of the inspection testing equipment as the estimated depreciated replacement cost. The Panel finds that an adjustment should be made for saved expenses and insufficient evidence.

312. MoD valued the loss of the mobile workshop and communications towers as their historic cost, adjusted for inflation and depreciation. On the basis of the considerations set out at paragraphs 161 to 162 above, the Panel finds that MoD's adjustment for inflation was overstated and recommends an adjustment accordingly. The Panel finds that further adjustments should be made for saved expenses and insufficient evidence.

313. In light of the above, the Panel recommends compensation in the amount of USD 42,149,000 out of the USD 65,425,806 claimed.

314. The Panel notes that a number of such items was returned after liberation pursuant to UNROP. The Panel has considered the value of such items and is satisfied that the amount of compensation recommended by the Panel (that is, including the adjustments set out above) accounts for the limited value of such property. Accordingly, the Panel does not recommend any further adjustment in respect of the property returned after liberation pursuant to UNROP.

(r) KERP adjustment – USD -33,354,747

315. The Panel notes that military equipment and supplies were purchased for MoD pursuant to KERP, that the costs of those items are claimed separately,⁹⁶ and that MoD adjusted its claim for “other tangible property” to take account of its estimate of the residual value of those items. The Panel finds that MoD has correctly estimated the total residual value of these items and therefore that MoD has correctly deducted the amount of USD 33,354,747 from its claim in respect of “other tangible property”.

2. Real property – USD 439,026,559

(a) MEP reconstruction costs (Air Force bases) – USD 313,255,402⁹⁷

316. MoD asserts that its three Air Force bases suffered damage, including damage caused by the bombing of runways, the bombing of underground aircraft shelters, and that arising from looting, vandalism and lack of maintenance. Following its findings set out at paragraphs 59 to 73 above, the Panel finds that all such losses are compensable in principle.

317. MoD seeks compensation for costs incurred pursuant to a contract with the Corps. The Corps acted as the project manager for repairs to two of the Air Force Bases. The Panel finds that the selection of the Corps as project manager was reasonable in all the circumstances. The repair work itself was performed by independent contractors pursuant to agreements made with the Corps. The Panel finds that although the amount paid to the Corps was reasonable for the work performed, adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

318. MoD also seeks compensation for costs incurred pursuant to 22 contracts and work orders awarded directly by MoD for repairs to all three Air Bases. One of these contracts, entered into in February 1993, was for the supply and installation of prefabricated houses for military forces of the United States. The Panel finds that this work was not required as a direct result of Iraq's invasion and occupation of Kuwait and thus recommends that no compensation be awarded for the cost of it.

319. Another of the contracts was for the construction, completion and maintenance of 18 temporary aircraft hangars. The Panel finds that it was reasonable, given the nature and extent of the damage to MoD's permanent aircraft hangars, that temporary hangars be built in place of them.⁹⁸ Compensation should therefore be awarded for the cost of constructing the temporary hangars. However, a deduction should be made to reflect the residual value of the temporary hangars at the time it would be reasonable, in all the circumstances, to expect the reconstruction or repair of the permanent hangars to have taken place. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

320. MoD also seeks compensation for the estimated cost of repairing and replacing further structures at the Air Bases (with adjustments for depreciation in relation to those structures to be replaced). MoD's estimates included a 5 per cent contingency allowance. The Panel recommends an adjustment equal to the amount of this allowance because MoD has failed to show that this allowance was directly related to Iraq's invasion and occupation of Kuwait. MoD's estimates also included a 13 per cent increase over the 1991 prices on which the estimates were based to account for inflation. The Panel finds that the 1991 prices reflect the prices applying at the time when it would be reasonable, in all the circumstances, to expect the repairs and replacements to have taken place, and therefore recommends an adjustment equal to the amount of this increase for inflation. The Panel finds that further adjustments should be made to reflect that one of the structures required repairs rather than replacement, inadequate accounting for depreciation,⁹⁹ saved expenses and insufficient evidence.

321. In light of the above, the Panel recommends compensation in the amount of USD 164,420,000 out of the USD 313,255,402 claimed.

(b) MEP reconstruction costs (other MEP repairs) – USD 125,771,157

322. MoD seeks compensation for costs incurred in repairing numerous facilities in Kuwait, and the cost of purchasing temporary facilities and generators to provide housing and office space while the permanent facilities were undergoing repairs.

323. Some of the repair contracts awarded in 1991 were not awarded using competitive procurement procedures and were performed in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the tests set out at paragraph 32 above, the Panel finds that some of these works were of such urgency that MoD could not reasonably be required to resort to competitive procurement procedures nor wait until prices had returned to normal patterns. However, some of the works were not of such urgency. Accordingly, the Panel recommends an adjustment in this respect.

324. In relation to the claimed cost of repairs, the Panel finds that adjustments should also be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

325. In relation to the claimed cost of purchasing temporary facilities and generators, the Panel finds that it was reasonable, given the nature and extent of the damage to MoD's permanent facilities, that temporary facilities be provided in place of them.¹⁰⁰ Compensation should therefore be awarded for the cost of purchasing the temporary facilities and generators. The temporary facilities and generators were not acquired pursuant to competitive procurement procedures and were acquired in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the tests set out at paragraph 32 above, the Panel finds that, in the light of Kuwait's need rapidly to restore its defence capabilities, the purchases were of such urgency that MoD could not reasonably be required to resort to competitive procurement procedures nor wait until prices had returned to normal patterns. Accordingly, the Panel does not recommend an adjustment in this respect. However, a deduction should be made to reflect the residual value of the temporary facilities and generators at the time the relevant permanent facilities were repaired.

326. In relation to the claimed cost of purchasing temporary facilities and generators, the Panel finds that an adjustment should also be made for insufficient evidence.

327. In light of the above, the Panel recommends compensation in the amount of USD 63,991,000 out of the USD 125,771,157 claimed.

3. Contract – USD 1,559,897¹⁰¹

328. MoD seeks compensation for losses sustained due to the interruption of two contracts (one for the construction of warehouses and one for the construction of roads and support facilities) that were in existence on 2 August 1990.¹⁰² Such losses included the additional costs of completing the contracts. MoD asserts that the additional costs are to cover increased costs in the post-liberation period.

329. The Panel, continuing its approach set out at paragraphs 136 above, finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed is attributable to these factors.

330. In light of the above, the Panel recommends compensation in the amount of USD 558,000 out of the USD 1,559,897 claimed.

4. Payment or relief to others – USD 407,555,645

(a) Relief paid to employees – USD 407,555,645

331. MoD seeks compensation in the amount of USD 407,555,645 for relief paid to employees. MoD's claim is limited to the seven-month occupation period.¹⁰³

332. MoD's claim includes relief paid to "Special Contractors" and "Technicians". These persons were employed pursuant to contracts. MoD's claim also includes relief paid to bedouns, being stateless persons. The Panel finds that, subject to the considerations and adjustments set out at paragraphs 333 to 336 below, the relief paid to these persons is compensable, because the payments were made to compensate for the loss of their financial support during the occupation period. Such payments, subject to the considerations and adjustments set out at paragraphs 333 to 337 below, constitute payments made or relief provided to others within the meaning of paragraph 36 of Governing Council decision 7 and are thus in principle compensable.

333. In its response to Procedural Order 9, issued in October 2000, and in response to other inquiries of the Panel, MoD has disclosed that its claim overstated the amount of the relief paid to employees.¹⁰⁴ The Panel has made an adjustment equal to the amount of this overstatement.

334. The evidence shows that the amount for which compensation is sought is based upon the employees' salaries after deduction of the social security contribution.

335. The amount claimed includes salaries that MoD asserts it paid to those employees who were able to regroup outside Kuwait, mostly in Saudi Arabia (see paragraph 127 above). On the basis of the considerations set out at paragraph 131 above, the Panel finds that the relief paid to the employees who performed such tasks, for the period during which they performed such tasks, constituted the payment of salaries per se and, as such, does not constitute a loss. The Panel therefore finds that the amounts claimed in respect thereof are not compensable, and has made an adjustment accordingly.

336. In response to enquiries from the Panel, MoD has also confirmed that the amount claimed for relief paid to employees included a "liberation allowance" paid to all employees who participated in the resistance within Kuwait during the occupation period and who participated in the liberation of Kuwait. The Panel finds that the amount of such "liberation allowance" cannot be considered as compensation for the loss of the employees' financial support during the occupation period, because such allowances were not part of the employees' earnings before Iraq's invasion and occupation of Kuwait.¹⁰⁵ The Panel therefore recommends a deduction equal to its estimate of the amount of the "liberation allowance" paid to those employees in respect of whom the Panel has recommended compensation for relief paid to employees.

337. As set out at paragraphs 104 and 332 above, and subject to the percentage adjustment set out at paragraph 116 above and a further adjustment for insufficient evidence, the Panel accepts the compensability of such relief paid to employees (subject to the adjustments set out at paragraphs 333 to 336 above).¹⁰⁶

338. In light of the above, the Panel recommends compensation in the amount of USD 41,142,000 out of the USD 407,555,645 claimed.

VII. SUMMARY OF RECOMMENDATIONS

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

Table 6. Summary of the principal claim amount and the Panel's recommendation for each third instalment part two claim

<u>Claimant</u>	<u>UNCC claim No.</u>	<u>Principal claim amount (USD)</u>	<u>Recommendation (USD)</u>
Ministry of Defense – Ordnance Stockpile Losses	5000163	564,376,379	362,792,000
Ministry of Defense Navy Ships – Equipment and Facilities	5000181	383,970,593	163,307,000
National Guard	5000190	181,157,246	32,663,574
Ministry of Defense – Air Force Tangible Property, Mine Clearance Equipment, MEP Tangible Property, Land Forces, Communications Equipment, MEP Reconstruction Costs, MEP Contract Losses, Occupation Period Salaries, KERP Adjustment	5000192	3,791,022,749	1,544,699,253
<u>Total</u>		4,920,526,967	2,103,461,827

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

Geneva, 14 December 2001

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

(Signed) Andrew Jacovides
Commissioner

(Signed) Reiner Soll
Commissioner

Notes

¹ The Government of Kuwait filed 62 “F3” claims. Following the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘F3’ claims” (S/AC.26/1999/24) (the “First ‘F3’ Report”), the Commission has split one “F3” claim into two separate claims, such that there are now 63 “F3” claims. (See paragraph 340 of the First “F3” Report.)

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

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

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

⁵ Claim Nos. 5000163, 5000181 and 5000192.

⁶ S/AC.26/1991/7/Rev.1.

⁷ S/AC.26/1992/15.

⁸ Notably, “Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US\$100,000 (category ‘C’ claims)” (S/AC.26/1994/3), at part II, section D.

⁹ Paragraph 9 of Governing Council decision 15 states that: “The duty to mitigate applies to all claims”.

¹⁰ “Report of the Secretary-General on the scope and nature of the damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation” (S/22535).

¹¹ At paragraphs 370 and following.

¹² Quoted in paragraph 21.

¹³ Section II of Governing Council decision 9 (S/AC.26/1992/9) provides at paragraph 13 that “[i]n a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from the invasion and occupation”. The Panel finds this statement to be equally applicable to the Government of Kuwait’s property left unguarded.

¹⁴ In discussing the KERO claim.

¹⁵ Following the letter dated 19 March 1991 (S/22361) from the President of the Security Council to the Secretary-General, in which the President of the Security Council stated that the members of the Security Council were of the view that the modalities for the return of property from Iraq in accordance with Security Council resolution 661 (1990) should be arranged.

¹⁶ That is, the claimant that submitted three of the four third instalment part two claims.

¹⁷ S/1994/243, S/1994/243Add.1, S/1996/1042 and S/2000/575.

¹⁸ UNCC Claim No. 5000173. See footnote 152 of the Second “F3” Report, and paragraphs 593 to 596 thereof.

¹⁹ UNCC Claim No. 5000192. See paragraphs 286 and 296 of this report.

²⁰ That mission took place in May 2001.

²¹ Including a wide variety of items such as missiles, ammunition, guns, a variety of spare parts, aircraft components, rocket launchers, communications, camera and computer equipment, books and manuals.

²² See further paragraph 164(h) of this report.

²³ The Panel notes that this circumstance may arise if no decision as to the replacement of particular equipment taken by Iraq had been made when the relevant UNROP return took place.

²⁴ Being the coalition of States assembled in response to Iraq’s invasion and occupation of Kuwait.

²⁵ In the “Report and recommendations of the Panel of Commissioners appointed to review the well blowout control claim (the “WBC Claim”)” (S/AC.26/1996/5/Annex) (the “WBC Report”), the Panel of Commissioners, in interpreting this phrase, found that any bombing of oil wells by the Allied Coalition Forces did not break the chain of causation between Iraq’s invasion and occupation of Kuwait and the losses claimed in relation to the damage to those wells (see paragraph 86 of the WBC Report).

²⁶ See, for example, paragraphs 168 to 184, 185 to 218, 219 to 233 and 242 to 330 of this report.

²⁷ S/AC.26/Dec.19 (1994).

²⁸ S/AC.26/SER.A/1 at page 187.

²⁹ S/AC.26/1992/11.

³⁰ It provides, in material part, “members of the Allied Coalition Armed Forces are not eligible for compensation for loss or injury arising as a consequence of their involvement in Coalition military operations against Iraq”.

³¹ See page 15 of the “Recommendations made by the Panel of Commissioners concerning individual claims for serious personal injury or death (category ‘B’ claims)” (S/AC.26/1994/1).

³² See paragraph 241 of the “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).

³³ For a description of the oil well fires see the WBC Report at paragraphs 36-37.

³⁴ The Panel notes that certain Consumed Goods, such as food, that were not in fact consumed by the end of the emergency period, retained no value.

³⁵ That is, that:

- (a) the Receiving Agency has deducted the residual value of the Transferred Goods from its real and/or other tangible property loss claim; or
- (b) the Receiving Agency has deducted the value of its post-liberation inventory (which includes the goods received pursuant to KERP) from the value of its pre-invasion inventory; or
- (c) if the Receiving Agency received Transferred Goods of greater value, or a longer remaining useful life, than those lost as a direct result of Iraq’s invasion and occupation of Kuwait, an appropriate adjustment has been made in the present claim.

³⁶ The Panel issued Procedural Orders 6, 45 and 46 in September 1999, March 2000 and May 2000, respectively, in this regard.

³⁷ See further the explanation of the shorthand expression “incorrect valuation of KERP assets” at paragraph 164(g) of this report.

³⁸ Where the Receiving Agency has not accounted for the Transferred Goods in its claim, the Panel has sometimes found it necessary to make adjustments in respect thereof in the KERP claim, reported in the Second “F3” Report.

³⁹ The Panel requested information from relevant claimants as to the reconstruction and repair work undertaken since the submission of their claims and has taken account of the responses received.

⁴⁰ See paragraph 164(g) of this report.

⁴¹ Being the Ministry of Defense (UNCC Claim No. 5000192), and the National Guard (UNCC Claim No. 5000190).

⁴² Paragraph 38 of the First “F3” Report.

⁴³ But see further paragraph 131 of this report.

⁴⁴ As a result of Iraq’s response to Procedural Order 1 in relation to the claim of the Ministry of Interior (UNCC Claim No. 5000137), the Panel made enquiries in relation to the extent to which the employees had received payment of their salaries in advance prior to the invasion. The Panel also notes that a few employees who received relief payments retrospectively also received payment for work done during the relevant period. The Panel has, in arriving at the percentage deduction to the

claims for relief paid to employees set out in paragraph 116 of this report, taken into account the advance payments and the payments for work done.

⁴⁵ The Panel has considered the nature of economic activity in Kuwait and has concluded that this situation is explained by the fact that many Kuwaitis are owners or part-owners of businesses from which they derive income in addition to their salaried employment.

⁴⁶ The relief provided by the Government of Kuwait covered such items as living expenses while outside Kuwait, the provision of free utilities within Kuwait (by the forgiveness of payment therefore), the forgiveness of consumer debt, the forgiveness of certain rental payments, the distribution of free food, and the payment of a grant to each Kuwaiti individual who remained in Kuwait during the occupation period.

⁴⁷ The Panel notes that the response was compiled applying Government of Kuwaiti national accounts and statistics and on the basis of certain assumptions regarding income and expenditure patterns, and has made suitable allowance for the use of such techniques in quantifying its findings.

⁴⁸ Amounts provided for living expenses outside Kuwait during the period (under a programme set up by the Ministry of Finance and the subject of UNCC Claim No.5000112) were paid in respect of additional living expenses and do not comprise “compensation received elsewhere”. Further, the Panel has not included in its consideration any relief provided for losses other than loss of income, such as relief in respect of loss of amenity, again to ensure that compensation is based upon the employees’ true financial losses.

⁴⁹ See paragraph 110 of this report.

⁵⁰ A large percentage of the 60 per cent deduction arises in respect of “saved expenses”.

⁵¹ In such cases, payments made to the employees comprise payments of salaries, duly earned, and not relief payments, even where the payments were made retroactively.

⁵² Paragraph 8 of the statement of claim and paragraph 9 of Exhibit 3 to the statement of claim of the National Guard (UNCC Claim No. 5000190).

⁵³ The Panel notes that a total of 17 National Guardsmen were killed in action.

⁵⁴ MoD submitted that: “The salary payments to MOD military personnel may be reimbursable as well since they are government employees entitled to be compensated just as other government employees harmed as a direct result of the Iraqi aggression. While [Governing Council decision 11 and Governing Council decision 19] may exclude compensation for certain costs of the allied coalition forces, that should not be interpreted to distinguish Kuwait’s military personnel from the civilian personnel who all got the same relief payments from the Kuwaiti government, whether or not they provided services during the occupation. The military exclusion would not apply to the 20% of MOD’s military employees who remained in Kuwait during the occupation period ... Moreover, under the criteria of [Governing Council decision 7 paragraph 36], MOD should be reimbursed for all payments to others directly resulting from the Iraqi invasion and occupation of Kuwait, including

salary payments to all MOD military employees, whether or not they assisted the allied coalition forces in Saudi Arabia” (emphasis in original).

⁵⁵ Where the formation of a formal contract was not complete at the time of the invasion, the Panel finds that there ought to be compensation for contract interruption losses only when there is evidence of consensus at the time of the invasion as to the essential provisions of the contract (being the identification of the parties, the principal undertakings and the price to be paid).

⁵⁶ Increased transport costs arise because some of Kuwait’s ports of entry remained closed until October 1991, during which time shipments were landed elsewhere and goods then transported to Kuwait over land. The types of insurance costs include all risks and public liability insurance.

⁵⁷ The Panel has considered the three periods during which a document may have come into existence: prior to Iraq’s invasion of Kuwait; during the occupation and emergency periods; and thereafter. The Panel accepts that the number and quality of documents which may be expected to exist will vary according to each such period.

⁵⁸ Within the loss types (that is, those appearing on the Form F) the claimants have further subdivided the losses into categories to which the Panel will refer as “loss elements”. For example, “loss of revenue” is a loss element within the “business transaction or course of dealing” loss type. The Panel has approached its review of the claims and their supporting evidence by reference to loss elements as opposed to the more general loss types.

⁵⁹ The Panel notes, in particular, that the price of any item may vary according to the location of the buyer (and, perhaps, seller). The Panel has considered therefore both the nature of the items concerned and whether the country in which the index is compiled gives a reasonable measure of the seller’s price in any particular case.

⁶⁰ The Panel notes, in particular, that it has applied an assumption that assets that are regularly replaced are on average half-way through their useful lives at any given point.

⁶¹ See paragraphs 50 to 57 of this report.

⁶² This programme is described at paragraph 33 of this report.

⁶³ This programme is described at paragraph 77 of this report.

⁶⁴ See paragraph 151 of this report.

⁶⁵ Where it can be established that expenses were saved as a result of damage to or destruction of assets, adjustments should be made to reflect this (see also paragraph 90 of this report in relation such expenses).

⁶⁶ MoD estimated the prices of some ordnance not listed in the price database.

⁶⁷ The six missiles have not been recovered, and the evidence suggests that it is unclear how their loss in fact occurred, including the possibilities that they were fired by MoD before the formation

of the Allied Coalition Forces, retained by Iraq or destroyed by Allied Coalition Forces during Operation Desert Storm.

⁶⁸ See paragraphs 265 and 266 of the Second “F3” Report.

⁶⁹ Being spare parts for depot test equipment.

⁷⁰ Part of this amount claimed is non-material.

⁷¹ Part of this amount claimed is non-material.

⁷² The Panel finds that this cost does not fall within the ambit of Governing Council decision 19 because it was not a cost to the Government of Kuwait of its preparation for, participation in, or provision of support in relation to, the activities of the Allied Coalition Forces and their military response to Iraq’s invasion and occupation of Kuwait (see paragraph 67 of this report).

⁷³ Part of this amount claimed is non-material.

⁷⁴ As set out at paragraph 163 of this report. The adjustment represents a finding by the Panel that the average age of the property exceeded two years or, alternatively, that the useful life of such property was overstated.

⁷⁵ Part of this amount claimed is non-material.

⁷⁶ See further the discussion of the KERP claim commencing at paragraph 52 of the Second “F3” Report.

⁷⁷ Part of this amount claimed is non-material.

⁷⁸ The claim for compensation for the damage to the 6th Ring Road Camp is considered at paragraphs 229 to 231 of this report.

⁷⁹ The Panel notes that some of the contracts were entered into by MoD rather than NG. The Panel recognises that part of the loss from the interruption of the contracts will thus be borne by NG and part by MoD. However, to require NG and MoD to each claim for its portion of the loss would be too technical and rigid an approach, given that both parties are political subdivisions of the Government (this is the same rationale as that applied by the Panel to claims by tenants for repairs performed by them which were properly the responsibility of the landlord (see paragraph 68 of the First “F3” Report). The Panel therefore recommends that compensation be awarded to NG as set out in this paragraph.

⁸⁰ The site restoration costs claimed include amounts for lost contractors’ materials on site. Such materials had been delivered to the relevant project site as at the date of Iraq’s invasion and occupation of Kuwait, but had not yet been incorporated into the project concerned. The Panel, continuing its approach set out paragraph 36 of the Second “F3” Report, finds that the Government was liable for such losses, and accordingly has recommended compensation for lost contractors’ materials on site (subject to verification and valuation). The Panel has instructed the secretariat to provide details of its recommendations to those Panels of Commissioners that are reviewing the contractors’ claims.

⁸¹ Part of this amount claimed is non-material.

⁸² The contracts had been formally concluded at the time of Iraq's invasion and occupation of Kuwait, although work pursuant to two of them had not yet commenced.

⁸³ See paragraph 104 of this report.

⁸⁴ Part of this amount claimed is non-material.

⁸⁵ MoD asserts that it has claimed only for those Skyhawk A-4 spare parts that were returned by Iraq after liberation in an "unusable condition".

⁸⁶ The "Report of the Secretary-General on the return of Kuwaiti property seized by Iraq" (S/1996/1042) also refers to the non return of eight Mirage F-1 aeroplanes.

⁸⁷ The Panel has taken into account depreciation in computing such value.

⁸⁸ The Panel notes that MoD utilised its air defence systems during Kuwait's initial resistance to Iraq's invasion and that equipment (such as missiles) was lost as a result of such utilisation. Applying the principles set out at paragraphs 69 to 73 of this report, the Panel finds that the loss of such equipment is prima facie compensable.

⁸⁹ The Panel finds that this cost does not fall within the ambit of Governing Council decision 19 because it was not a cost to the Government of Kuwait of its preparation for, participation in, or provision of support in relation to, the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait (see paragraph 67 of this report).

⁹⁰ Part of this amount claimed is non-material.

⁹¹ See paragraphs 212 to 214 of the First "F3" Report.

⁹² The Panel notes the claim for spare parts for the Chieftan tanks discussed at paragraph 285 of this report and the claims for military ordnance discussed at paragraphs 168 to 184 of this report.

⁹³ The Panel notes that, as a result of the overstatement of the historic cost adjusted for inflation, MoD in fact overstated the deduction required for depreciation.

⁹⁴ The Panel notes that, as a result of the overstatement of the historic cost adjusted for inflation, MoD in fact overstated the deduction required for depreciation.

⁹⁵ Except for the "Luna" rockets.

⁹⁶ See further the discussion of the KERP claim commencing at paragraph 52 of the Second "F3" Report.

⁹⁷ Part of this amount claimed is non-material.

⁹⁸ Applying the Panel's approach to claims for the cost of temporary repairs and for the cost of renting temporary premises (see paragraphs 92 to 99 of this report).

⁹⁹ The Panel notes that, in respect of the structures to be replaced, and as a result of the inclusion of the inflation factor, MoD in fact overstated the deduction required for depreciation. However, in

respect of the structures to be repaired, MoD understated the deduction required for depreciation. The net effect is that the Panel recommends a deduction for inadequate accounting for depreciation.

¹⁰⁰ Applying the Panel's approach to claims for the cost of temporary repairs and for the cost of renting temporary premises (see paragraphs 92 to 99 of this report).

¹⁰¹ Part of this amount claimed is non-material.

¹⁰² The contracts had been formally concluded at the time of Iraq's invasion and occupation of Kuwait, although work pursuant to them had not yet commenced.

¹⁰³ During the oral proceedings discussed at paragraph 15 of this report, a representative of the Government of Kuwait suggested that MoD had so limited its claim because its employees were undertaking their normal duties during the emergency period.

¹⁰⁴ In its response to Procedural Order 9, MoD specifically withdrew its claim for amounts paid to bedoun "Special Contractors".

¹⁰⁵ See paragraph 104 of this report.

¹⁰⁶ The Panel notes that this claim may include relief paid in respect of employees asserted by the Government of Kuwait to be missing (see paragraphs 326 to 330 of the First "F3" Report). The Panel finds that its percentage award in respect of claims for relief paid to employees (see paragraphs 105 to 117 of this report) adequately accounts for any adjustment that may be required to take account of relief paid in respect of such employees and therefore that no further adjustment is warranted.
