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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS  
CONCERNING THE SECOND INSTALMENT OF "F4" CLAIMS

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### Introduction

1. The Governing Council of the United Nations Compensation Commission (the “Commission”), at its thirtieth session held from 14 to 16 December 1998, appointed the “F4” Panel of Commissioners (the “Panel”), composed of Messrs. Thomas A. Mensah (Chairman), José R. Allen and Peter H. Sand to review claims for direct losses relating to environmental damage and depletion of natural resources resulting from Iraq’s invasion and occupation of Kuwait. This is the second report of the “F4” Panel. It contains the recommendations of the Panel to the Governing Council on the second instalment of “F4” claims (“second ‘F4’ instalment”), pursuant to article 38(e) of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) (the “Rules”).

2. The second “F4” instalment originally consisted of 31 claims by the Governments of Australia, Canada, the Federal Republic of Germany (“Germany”), the Islamic Republic of Iran (“Iran”), the State of Kuwait (“Kuwait”), the Kingdom of the Netherlands (“the Netherlands”), the Kingdom of Saudi Arabia (“Saudi Arabia”), the Republic of Turkey (“Turkey”), the United Kingdom of Great Britain and Northern Ireland (“the United Kingdom”), and the United States of America (“the United States”) (collectively the “Claimants”). The claims were submitted to the Panel in accordance with article 32 of the Rules on 25 April 2001.

3. By Procedural Order No. 3 dated 31 December 2001, the Panel deferred the claim of Turkey to a future instalment. As a result, there are 30 claims for review in this report, with a total amount claimed of 872,760,534 United States dollars (USD).

4. Table 1 summarizes the claims reviewed in this report. Eleven of these claims are from countries in the Persian Gulf region (“Regional Claimants”) and 19 are from countries outside the region (“Non-regional Claimants”). The “amount claimed” column shows the amount of compensation sought by the Claimants (including amendments) expressed in United States dollars and corrected, where necessary, for computational errors.

Table 1. Summary of second instalment claims

<u>Country</u>	<u>Total number of claims</u>	<u>Amount claimed (USD)</u>
<u>Regional Claimants</u>		
Iran	4	64,315,474
Kuwait	1	715,344,545
Saudi Arabia	6	49,798,279
<u>Non-regional Claimants</u>		
Australia	2	20,099
Canada	2	1,252,329
Germany	4	28,717,109
Netherlands	1	1,974,055
United Kingdom	1	2,219,315
United States	9	9,119,329
<u>Total</u>	30	872,760,534

## I. OVERVIEW OF THE SECOND “F4” INSTALMENT

5. The second “F4” instalment consists of claims for expenses incurred for measures to abate and prevent environmental damage, to clean and restore the environment, to monitor and assess environmental damage, and to monitor public health risks alleged to have resulted from Iraq’s invasion and occupation of Kuwait.

6. Iran, Kuwait and Saudi Arabia seek compensation in the amount of USD 829,458,298 for measures to respond to environmental damage and human health risks from:

- (a) Mines, unexploded ordnance and other remnants of war;
- (b) Oil lakes formed by oil released from damaged wells in Kuwait;
- (c) Oil spills in the Persian Gulf caused by oil released from pipelines, offshore terminals and tankers; and
- (d) Pollutants released from oil well fires in Kuwait.

7. Australia, Canada, Germany, the Netherlands, the United Kingdom and the United States seek compensation in the total amount of USD 43,302,236 for expenses incurred in providing assistance to countries in the Persian Gulf region to respond to environmental damage, or threat of damage to the environment or public health, resulting from Iraq’s invasion and occupation of Kuwait.

## II. PROCEDURAL HISTORY

### A. Article 16 reports

8. Pursuant to article 16 of the Rules, significant factual and legal issues raised by the claims in the second “F4” instalment were included in the Executive Secretary’s twenty-ninth report, dated 28 October 1999, the thirty-third report, dated 6 October 2000, and the thirty-sixth report, dated 10 July 2001. These reports were circulated to the members of the Governing Council, all Governments that have filed claims with the Commission and to the Government of the Republic of Iraq (“Iraq”). In accordance with article 16(3) of the Rules, a number of Governments, including the Government of Iraq, submitted views and additional information in response to these reports. These views and information have been considered by the Panel during its review of the claims.

### B. Article 34 notifications

9. Pursuant to article 34 of the Rules, the secretariat of the Commission sent notifications in September 2000 to the Non-regional Claimants and June 2001 to the Regional Claimants requesting additional information and documentation to assist the Panel in reviewing the claims. The responses to the article 34 notifications have been considered by the Panel during its review of the claims.

### C. Procedural Order No.1

10. On 15 December 2000, the Panel issued Procedural Order No. 1, classifying the claims in the second “F4” instalment as “unusually large or complex”, within the meaning of article 38(d) of the

Rules. Procedural Order No. 1 directed the secretariat to send Iraq copies of the claim form, the statement of claim and associated exhibits for each of the second “F4” instalment claims.

11. The secretariat transmitted a copy of Procedural Order No. 1 to the Claimants on 15 December 2000. The secretariat transmitted a copy of Procedural Order No. 1 and copies of the other documents referred to in paragraph 10 above to Iraq on 26 December 2000 and 2 February 2001. Iraq submitted written responses on 12 October 2001 and 17 October 2001.

D. Oral proceedings

12. On 15 October 2001, the Commission received a request from Iraq for a “special hearing” on the claims in the second “F4” instalment.

13. By Procedural Order Nos. 7 and 8, both dated 1 February 2002, the Panel informed Iraq and the Regional Claimants that oral proceedings would be held on 19 March 2002. The procedural orders stated that the oral proceedings would focus on the following questions:

(a) May compensation be awarded for environmental damage or depletion of natural resources even if such damage or depletion may not have been caused solely as a result of Iraq’s invasion and occupation of Kuwait?

(b) Where environmental damage or depletion of natural resources may not have resulted solely from Iraq’s invasion and occupation of Kuwait, what factors should the Panel take into account in determining that: (i) a portion of the damage or depletion is compensable, or (ii) no portion of the damage or depletion is compensable?

(c) Does “environmental damage and the depletion of natural resources” under Security Council resolution 687 (1991) and Governing Council decision 7<sup>1</sup> include loss or damage to elements such as cultural property, human health, aesthetic values of landscapes, etc.?

(d) To what extent, if any, should the procedure and criteria used for selecting contractors to undertake the removal of mines and ordnance affect compensability of expenses arising from these activities?

14. Oral proceedings were held at the Palais des Nations in Geneva on 19 March 2002. Representatives of Iraq and the Regional Claimants participated in the proceedings.

III. LEGAL FRAMEWORK

A. Mandate of the Panel

15. The mandate of the Panel is to review the “F4” claims and, where appropriate, recommend compensation.

16. In discharging its mandate, the Panel has borne in mind the observations of the Secretary-General of the United Nations, in his report of 2 May 1991 to the Security Council, that:

“The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the Commissioners to provide this element.”<sup>2</sup>

B. Applicable law

17. Article 31 of the Rules sets out the applicable law for the review of claims. It reads:

“In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law.”

18. Paragraph 16 of Security Council resolution 687 (1991) affirms that Iraq is “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”.

C. Compensable losses or expenses

19. Governing Council decision 7 provides guidance regarding the losses or expenses that may be considered as “direct loss, damage, or injury” resulting from Iraq’s invasion and occupation of Kuwait, in accordance with paragraph 16 of Security Council resolution 687 (1991).

20. Paragraph 34 of Governing Council decision 7 provides that “direct loss, damage, or injury” includes 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.

21. Paragraph 35 of Governing Council decision 7 provides that the phrase “direct environmental damage and depletion of natural resources” includes losses or expenses resulting from:

- (a) Abatement and prevention of environmental damage, including expenses directly relating to fighting oil fires and stemming the flow of oil in coastal and international waters;
- (b) Reasonable measures already taken to clean and restore the environment or future measures which can be documented as reasonably necessary to clean and restore the environment;
- (c) Reasonable monitoring and assessment of the environmental damage for the purposes of evaluating and abating the harm and restoring the environment;
- (d) Reasonable monitoring of public health and performing medical screenings for the purposes of investigation and combating increased health risks as a result of the environmental damage; and
- (e) Depletion of or damage to natural resources.

22. Some of the losses or expenses for which compensation is sought are not included in the list of specific losses or expenses in paragraph 35 of Governing Council decision 7. The Panel notes that paragraph 35 of Governing Council decision 7 does not purport to give an exhaustive list of the activities and events that can give rise to compensable losses or expenses. This is borne out by the fact that the paragraph states that “environmental damage and depletion of natural resources ... include losses or expenses resulting from” the specific activities and events listed in its subparagraphs (a) to (e) (emphasis added). Hence, paragraph 35 of Governing Council decision 7 should be considered as providing guidance regarding the types of activities and events that can result in compensable losses or expenses, rather than as a limitative enumeration of such activities or events.

23. In the view of the Panel, the term “environmental damage” in paragraph 16 of Security Council resolution 687 (1991) is not limited to losses or expenses resulting from the activities and events listed in paragraph 35 of Governing Council decision 7, but can also cover direct losses or expenses resulting from other activities and events. A loss or expense may be compensable even if does not arise under any of the specific subparagraphs of paragraph 35 of Governing Council decision 7. For example, expenses of measures undertaken to prevent or abate harmful impacts of airborne contaminants on property or human health could qualify as environmental damage, provided that the losses or expenses are a direct result of Iraq’s invasion and occupation of Kuwait.

24. In its written response, Iraq contends that some of the environmental damage for which the Claimants seek compensation was “not related to the Gulf war”. Iraq asserts that the damage “existed before [the] war, since [it] resulted from digging wells in search [of] oil and gas, the existence of many refineries and petrochemical factories as well as a large number of oil tankers in the Gulf waters”. According to Iraq, “it is impossible to limit the causes of environmental pollution in a particular region to one cause and hold one state liable for that and oblige it to compensate the damages, especially when many factor[s] and states contributed to that pollution”.

25. The Panel notes that, pursuant to Security Council resolution 687 (1991), Iraq is “liable under international law” for any direct loss or damage that was a result of its invasion and occupation of Kuwait. Iraq is, of course, not liable for damage that was unrelated to its invasion and occupation of Kuwait nor for losses or expenses that are not a direct result of the invasion and occupation. However, Iraq is not exonerated from liability for loss or damage that resulted directly from the

invasion and occupation simply because other factors might have contributed to the loss or damage. Whether or not any environmental damage or loss for which compensation is claimed was a direct result of Iraq's invasion and occupation of Kuwait will depend on the evidence presented in relation to each particular loss or damage.

26. In any case, the Panel finds that the question of Iraq's liability for environmental damage resulting from parallel or concurrent causes is not an issue that needs to be addressed in relation to the claims in the second "F4" instalment. These claims are principally for losses or expenses allegedly incurred by the Claimants in undertaking measures to respond to the oil spills and oil fires or to remove and dispose of mines, unexploded ordnance and other remnants of war. According to the Claimants, the oil spills and oil fires as well as the presence of the mines, unexploded ordnance and other remnants of war were all the direct result of Iraq's invasion and occupation of Kuwait.

27. There is well-documented evidence showing that massive quantities of oil were released into the marine environment of the Persian Gulf and onto the territories of Kuwait and other countries of the region as a result of Iraq's invasion and occupation of Kuwait.<sup>3</sup> The evidence also shows that numerous oil fires which were deliberately caused by Iraqi forces in Kuwait resulted in the release of large volumes of contaminants into the atmosphere of the entire region.<sup>4</sup> It is also undeniable that a large number of mines and unexploded ordnance remained in the territory of Kuwait as a result of Iraq's invasion and occupation of Kuwait.<sup>5</sup>

28. Accordingly, the issue for determination in reviewing these claims is whether the evidence provided is sufficient to demonstrate that the losses or expenses for which the Claimants seek compensation are attributable to the oil spills and oil fires or the presence of mines, unexploded ordnance and other remnants of war that were a direct result of Iraq's invasion and occupation of Kuwait.

D. Expenses resulting from military operations

29. Governing Council decision 19 provides that "the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation".<sup>6</sup> However, the Panel considers that expenses resulting from activities undertaken by military personnel are compensable if there is sufficient evidence to demonstrate that the predominant purpose of the activities was to respond to environmental damage or threat of damage to the environment or to public health in the interest of the general population.<sup>7</sup>

E. Salaries and other personnel expenses

30. Some Claimants seek compensation for salaries and other expenses incurred in respect of personnel utilized by them in activities to respond to environmental damage or threat of environmental damage resulting from Iraq's invasion and occupation of Kuwait. In the view of the Panel, salaries and related expenses paid to regular employees of a claimant are not compensable if such expenses would have been incurred regardless of Iraq's invasion and occupation of Kuwait.<sup>8</sup> On the other hand, a claimant may be entitled to compensation if it incurs additional expenses to make up for the loss of the services of its regular personnel who have been assigned other duties or required to undertake additional tasks as a result of Iraq's invasion and occupation of Kuwait. However, the

salary of the personnel is not necessarily the appropriate measure of the compensation payable in each case. It is necessary to examine the nature of the expenses and the evidence provided in support of the claim. The Panel notes that this finding is consistent with the findings of other panels that have held that salaries and other expenses incurred by a claimant in respect of its personnel are compensable if the expenses were incurred as a direct result of Iraq's invasion and occupation of Kuwait and were extraordinary in nature (i.e. if they were over and above what would have been incurred by the claimant in the normal course of events).<sup>9</sup>

F. Damage outside Kuwait or Iraq

31. Some claims in the second "F4" instalment relate to environmental damage that occurred outside Kuwait or Iraq. As noted in the Panel's "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'F4' claims"<sup>10</sup> (the "first 'F4' report"), neither Security Council resolution 687 (1991) nor any decision of the Governing Council restricts eligibility for compensation to damage that occurred only in Kuwait or Iraq.<sup>11</sup> Accordingly, the Panel finds that losses or expenses that meet the criteria set forth in paragraph 35 of Governing Council decision 7 are compensable in principle, even if they occurred outside Kuwait or Iraq.<sup>12</sup>

G. Expenses for assistance to abate and prevent environmental damage

32. The Non-regional Claimants seek reimbursement of expenses for measures undertaken by them to assist countries in the Persian Gulf region in responding to environmental damage, or threat of damage to the environment or public health, resulting from Iraq's invasion and occupation of Kuwait. In some cases, such compensation is sought even where the countries to whom assistance was rendered have themselves not submitted claims for compensation to the Commission.

33. Paragraph 16 of Security Council resolution 687 (1991) states clearly that Iraq is liable for direct environmental damage and the depletion of natural resources as a result of its invasion and occupation of Kuwait. Paragraph 35 of Governing Council decision 7 specifically states that payments are available for "losses or expenses resulting from . . . [a]batement and prevention of environmental damage". The Panel finds that neither of these provisions restricts eligibility for compensation to losses or expenses incurred by the countries in which the environmental damage occurs or by countries located in the Persian Gulf region.

34. In the view of the Panel, expenses resulting from assistance rendered to countries in the Persian Gulf region to respond to environmental damage, or threat of damage to the environment or public health, qualify for compensation pursuant to Security Council resolution 687 (1991) and Governing Council decision 7. Furthermore, the Panel recalls that specific appeals for assistance in dealing with the environmental damage caused by Iraq's invasion and occupation of Kuwait were made by the United Nations General Assembly and by other organizations and bodies of the United Nations system as well as by the countries affected by environmental damage or threat of such damage resulting from Iraq's invasion and occupation of Kuwait.<sup>13</sup>

35. However, compensation paid to an assisting country should not duplicate any compensation paid or to be paid to any country in the Persian Gulf region. The Panel has taken the necessary steps to avoid any such duplication.

H. Evidentiary requirements

36. Article 35(1) of the Rules provides that “[e]ach 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)”. Article 35(1) also provides that it is for each panel to determine “the admissibility, relevance, materiality and weight of any documents and other evidence submitted”.

37. Article 35(3) of the Rules provides that category “F” claims “must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss”. The Governing Council emphasizes this requirement in paragraph 37 of decision 7 which states: “Since [category “F”] claims will be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss”. In addition, Governing Council decision 46 states that, for category “F” claims, “no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant”. In decision 46, the Governing Council also reaffirmed that, pursuant to article 31 of the Rules, the amounts recommended by the panels of Commissioners “can only be approved when they are in accordance with this decision”.

38. Where a claimant has presented evidence that, in the Panel’s view, is sufficient to demonstrate the circumstances and amount of the claimed losses or expenses, compensation has been recommended for the full compensable amount. Where the evidence presented demonstrates that compensable losses or expenses were incurred but the evidence does not enable the Panel to substantiate the full amount of the claimed losses or expenses, the Panel has recommended a lesser amount. Where the information presented is not sufficient to demonstrate that any compensable losses or expenses were in fact incurred, the Panel has recommended that no compensation be awarded.

39. In response to requests for appropriate evidence, several Claimants have stated that some of the evidence relating to the claims has been destroyed in accordance with their standard internal record management practices. The Panel notes that, pursuant to article 35(1) of the Rules, it is the responsibility of the Claimant to provide sufficient evidence to demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation. A Claimant is not relieved of this responsibility because evidence has been destroyed or is not available for any other reason.

40. In reviewing the claims in the second “F4” instalment, the Panel has given careful consideration to the evidence provided by the Claimants, together with evidence or information available from Iraq or other sources, in order to determine the circumstances and amount of the loss for which compensation is sought. Due account has also been taken of any evidence or other information suggesting that the damage or loss was caused by, or could have resulted from, factors unrelated to Iraq’s invasion and occupation. Compensation has been recommended only if the evidence available is sufficient to support the assertion that the damage or loss in question was a direct result of Iraq’s invasion and occupation of Kuwait.

41. When recommending compensation for environmental damage found to be a direct result of Iraq's invasion and occupation of Kuwait, the Panel has in every case assured itself that the applicable evidentiary requirements regarding the circumstances and amount of the damage or loss claimed have been satisfied.

#### IV. REVIEW OF THE SECOND "F4" INSTALMENT CLAIMS

42. Article 36 of the Rules provides that a panel of Commissioners may "(a) in unusually large or complex cases, request further written submissions and invite individuals, corporations or other entities, Governments or international organizations to present their views in oral proceedings" and "(b) request additional information from any other source, including expert advice, as necessary". Article 38(b) of the Rules provides that a panel of Commissioners "may adopt special procedures appropriate to the character, amount and subject-matter of the particular types of claims under consideration".

43. In view of the complexity of the issues raised by the claims and the need to consider scientific, legal, social, commercial and accounting issues in evaluating the claims, the Panel was assisted by a multi-disciplinary team of independent experts retained by the Commission. Experts were retained, inter alia, in the fields of oil spill response, ordnance removal and disposal, accounting, civil engineering, electric power system operations, fisheries, marine biology and oceanography.

44. In addition, the Panel requested further information from the Claimants, where necessary, in order to clarify their claims.

45. In reaching its findings and formulating its recommendations on the claims, the Panel has taken due account of all the information and evidence made available to it, including the material provided by the Claimants in the claim documents and in response to requests for additional information; Iraq's written responses to the claims; and the views presented by Iraq and the Claimants during the oral proceedings.

46. In order to avoid multiple recovery of compensation, the Panel instructed the secretariat to carry out cross-claim and cross-category checks. These checks have not revealed any duplication of compensation recommended.

47. The Panel's analysis of the second "F4" instalment claims is set forth in sections V and VI of this report. There are separate sections for each Claimant beginning with the Regional Claimants.

#### V. REGIONAL CLAIMS

##### A. Iran

##### 1. Overview

48. There are four claims by Iran in the second "F4" instalment. One claim is for expenses incurred by its Civil Aviation Organization to clean and restore airport facilities damaged by airborne pollutants and acid rain. A second claim, on behalf of its Ministry of Energy, is for expenses of cleaning and restoring electrical installations affected by airborne pollutants, losses arising from

reduced energy sales, costs of materials and equipment damaged or destroyed by the airborne pollutants, and other losses. Iran asserts that the oil fires in Kuwait resulted in the “movement and persistence of smoke over Iran ... particularly over the provinces of Bushehr, Khuzestan, and over the coastal zone” and that the smoke and associated pollutants caused the losses for which it seeks compensation.

49. A third claim is for expenses incurred by the Ports and Shipping Organization of Iran to operate two dredgers to respond to the oil spills resulting from Iraq’s invasion and occupation of Kuwait. The fourth claim is for expenses incurred by the Iranian Fishery Company to replace fishing nets damaged by oil from the spills resulting from Iraq’s invasion and occupation of Kuwait.

50. The Panel’s recommendations for these claims do not include recommendations for a portion of the Civil Aviation Organization claim (No. 5000283), which has been transferred to category “E2” by the Executive Secretary, nor for a portion of the Iranian Fishery Company claim (No. 5000379), which has been deferred to a future “F4” instalment.<sup>14</sup>

51. The total amount of compensation claimed by Iran in the second instalment is USD 64,315,474.

2. Claim No. 5000283

52. Iran seeks compensation in the amount of USD 13,271,375 for expenses incurred by the Civil Aviation Organization to clean and restore airport facilities damaged by airborne pollutants and acid rain from the oil fires resulting from Iraq’s invasion and occupation of Kuwait.

53. According to Iran, airborne pollutants from the oil fires were deposited on the surfaces of airport facilities, causing the damage that is the subject of the cleaning activities. Iran claims that damage to airport facilities occurred because “when SO<sub>2</sub> in the form of gas combines with oxygen in proximity of humidity, it forms sulphuric acid and as a result of acid rainfall, destructive corrosion affects surfaces and metal parts of the buildings”.

54. In its response, Iraq contends that Iran has not provided evidence that the pollution reached the regions where the alleged environmental damage occurred. Iraq also contends that “the quantity of soot and acid gases which [Iran claims] to have reached [the] airports is highly exaggerated” and “cannot be the prime cause for fouling these airports”. Iraq asserts that “the south and southwestern provinces of the Islamic Republic of Iran ... are located in one of the major sand and dust storm regions of the world”, and it “is not surprising, therefore, to see in these areas discolored buildings, lawns, gardens, or even, some parts of highways, and runways in airports buried with precipitated dust and/or sand”. Iraq argues that airport cleaning expenses “have nothing to do with ‘environmental damage’”. Further, Iraq contends that the “only method used for cleaning discoloured buildings and lawns is to wash them with water”.

55. The Panel has previously found that there is evidence that pollutants from the oil fires resulting from Iraq’s invasion and occupation of Kuwait reached some parts of Iran.<sup>15</sup> As stated in paragraph 23 above, “environmental damage” within the meaning of paragraph 16 of Security Council resolution 687 (1991) and paragraph 35 of Governing Council decision 7 includes expenses incurred

in respect of damage to or loss of property where such damage or loss was a direct result of Iraq's invasion and occupation of Kuwait.

56. However, the Panel finds that Iran has not provided sufficient evidence to demonstrate the circumstances and amount of the loss claimed. In particular, Iran has not provided the minimum technical information and documents necessary to evaluate the appropriateness of the actions alleged to have been taken and the associated expenses.

57. The Panel, therefore, finds that Iran has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules. Accordingly, the Panel recommends no compensation for this claim.

58. This recommendation does not apply to claimed losses of airline and airport income originally included in claim No. 5000283. These parts of the claim have been severed and, pursuant to article 32(3) of the Rules, transferred to subcategory "E2".

### 3. Claim No. 5000284

59. Iran seeks compensation in the amount of USD 41,372,625 for losses and expenses incurred by its Ministry of Energy.

60. Of this total amount, Iran claims USD 41,257,625 for losses caused by airborne pollutants from the oil fires in Kuwait. Iran alleges that it incurred expenses to clean and restore electrical installations affected by the pollutants. Iran also alleges that it suffered losses from reduced energy sales. Further, Iran claims compensation for the cost of materials and equipment that were damaged or destroyed by the airborne pollutants.

61. In its written response, Iraq contends that airborne pollutants from the oil fires did not reach the south and south-west regions of Iran, and that any such pollutants that might have reached Iran could not have caused the kind of damage claimed.

62. As previously noted by the Panel, there is evidence that pollutants from the oil fires resulting from Iraq's invasion and occupation of Kuwait reached some parts of Iran.<sup>16</sup> However, the Panel finds that Iran has not provided sufficient evidence to demonstrate the circumstances and amount of the loss claimed. In particular, Iran has not provided evidence to substantiate the claim that the losses and expenses for which compensation is sought were attributable to the oil fires in Kuwait.

63. The Panel finds, therefore, that Iran has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules for this portion of the claim.

64. Claim No. 5000284 includes costs in the amount of USD 115,000 to rebuild a power transmission tower at an airport in Iran. Iran states that an Iraqi plane, landing on the airport taxiway, caused a lorry driver to lose control and hit the tower, thereby damaging it. In the view of the Panel, the circumstances described in the claim do not establish that the damage to the tower was a direct result of Iraq's invasion and occupation of Kuwait.

65. Accordingly, the Panel recommends no compensation for this claim.

4. Claim No. 5000285

66. Iran seeks compensation in the amount of USD 189,993 for expenses incurred by its Ports and Shipping Organization for activities to trace, combat and clean oil spills resulting from Iraq's invasion and occupation of Kuwait. The expenses consist of the cost of operating two dredgers to respond to oil spills in May and June 1991, and an amount of USD 60,000 for the "cost of preparation of these claims including attorney fees".

67. In its written response, Iraq asserts that no evidence has been provided that the dredgers actually carried out the tasks that they are alleged to have undertaken. Iraq states that the "oil slick coming from Kuwait" did not reach the Iranian coast and that "the only source of oil pollution along the Iranian shores was the traffic to the Iranian ports".

68. As previously noted by the Panel, there is evidence that Iran was exposed to oil spills in the Persian Gulf that resulted from Iraq's invasion and occupation of Kuwait.<sup>17</sup> In the view of the Panel, the fact that the dredgers might not have encountered any oil spills resulting from the conflict does not in any way make their deployment inappropriate in the circumstances. Consequently, the Panel finds that deployment of the dredgers in May and June 1991 was a reasonable response to a credible threat of environmental damage.

69. The Panel finds that the expenses resulting from this response qualify for compensation in accordance with paragraph 35(a) and (b) of Governing Council decision 7, except as indicated below.

70. The Panel has made an adjustment to the costs of operating the dredgers to reflect an amount that it considers reasonable. This adjustment brings the compensable costs to USD 67,587.

71. In a letter dated 6 May 1998, the Executive Secretary informed all panels of Commissioners that the Governing Council intends to resolve the issue of the compensability of claims preparation costs in the future. The Panel, therefore, makes no recommendation with respect to Iran's claim for claim preparation costs.

72. Accordingly, the Panel recommends compensation in the amount of USD 67,587 for this claim. The Panel determines that the date of loss for this claim is 31 May 1991.

5. Claim No. 5000379

73. Iran seeks compensation in the amount of USD 9,481,481 for expenses incurred by the Iranian Fishery Company to replace damaged fishing nets for Iranian fishermen. Iran states that the nets were damaged by the oil spills resulting from Iraq's invasion and occupation of Kuwait.

74. The compensation sought is for the costs of replacing 160,000 nets. Iran states that the amount claimed is based on the total number of nets owned by each fisherman and the average price of the nets.

75. In its response, Iraq asserts that no evidence was submitted regarding the number, type and characteristics of the nets alleged to have been replaced.

76. The Panel finds that Iran has not provided sufficient evidence to demonstrate the circumstances and amount of the loss claimed. In particular, the information presented by Iran provides no basis for a determination of the condition and number of nets that were actually replaced. Accordingly, the Panel is unable to determine whether or not the replacement of 160,000 nets was reasonable.

77. The Panel, therefore, finds that Iran has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules for this portion of the claim.

78. Accordingly, the Panel recommends no compensation for this claim.

79. This recommendation does not apply to losses that Iran claims resulted from its inability to realize fishing production increases from a proposed fisheries development project. The Panel finds that this portion of claim No. 5000379 should properly be considered a claim for losses resulting from “depletion of or damage to natural resources”, pursuant to paragraph 35 (e) of Governing Council decision 7. Claims for depletion of or damage to natural resources will be reviewed in a future “F4” instalment. The Panel has, therefore, deferred this portion of the claim.

## B. Kuwait

### 1. Overview

80. Claim No. 5000381 from Kuwait comprises four claim units representing claims for expenses incurred by certain public entities in Kuwait in responding to environmental damage or the threat of environmental damage resulting from Iraq’s invasion and occupation. After considering several communications from Kuwait, the Panel decided to treat claim No. 5000381 as a single claim but to review the four claim units separately. Accordingly, the recommendations of the Panel on the different claim units are presented separately in this report.

81. Two of the claim units relate to expenses incurred by the Kuwait Ministry of Defence and the Kuwait Oil Company (“KOC”) for removing and disposing of mines, unexploded ordnance and other remnants of war (“ordnance”) in Kuwait.

82. The third claim unit is for expenses incurred by KOC for the recovery of oil from oil lakes. According to Kuwait, these expenses were incurred to recover and remove large quantities of oil that were released onto its territory from the oil wells that were destroyed or damaged by Iraqi troops during the invasion and occupation of Kuwait.

83. The fourth claim unit is for expenses for the remediation and rehabilitation of the Ja’aidan Garden incurred by four entities: KOC; the Environmental Protection Council (now the Environmental Protection Authority); the Public Authority for Agriculture and Fisheries; and the Kuwait Institute of Scientific Research.

84. The total compensation claimed in the four units of claim No. 5000381 is USD 715,344,545.

### 2. Claim No. 5000381 (Ministry of Defence: ordnance removal and disposal)

85. Kuwait seeks compensation in the amount of USD 696,165,032 for expenses incurred by its Ministry of Defence for the removal and disposal of ordnance left in the territory of Kuwait as a result

of Iraq's invasion and occupation ("ordnance disposal"). Kuwait alleges that, as a result of Iraq's invasion and occupation of Kuwait, over 1.6 million mines and more than 109,000 metric tons of other unexploded ordnance were scattered in cities and towns, oil facilities, beaches, coastal waters and desert areas of Kuwait.

86. There is abundant evidence that Iraqi forces fortified the country against military action by the Allied Coalition Forces, inter alia, by laying minefields across potential routes and around installations and positions considered to be of strategic significance. There is also evidence that the aerial attacks by the Allied Coalition Forces on the Iraqi military in Kuwait, and the military operations in Kuwait, involved the use of considerable amounts of ordnance by both sides. A significant proportion of the ordnance did not explode and much of it remained after the conflict.<sup>18</sup>

87. The serious threat posed by landmines to civilian populations is widely recognized. Landmines and other unexploded ordnance can also have severe deleterious impacts on the environment as a whole, including the risk of death and serious injury to wildlife; degradation of soils; deforestation; pollution of water resources with heavy metals; and possible alterations in the populations of different species as a result of the degradation of habitats and consequential changes in food chains.

88. For the purposes of ordnance disposal, the Ministry of Defence divided the territory of Kuwait into eight sectors. Ordnance disposal in seven of the sectors was assigned by the Ministry on contract to foreign government agencies and private firms (the "Contractors"). Compensation is sought for the costs of ordnance disposal in these seven sectors.

89. The Contractors for ordnance disposal were selected from seven countries designated by Kuwait. The countries were Bangladesh, Egypt, France, Pakistan, Turkey, the United Kingdom and the United States. Kuwait states that these countries were chosen "to recognize the contributions of seven members of the coalition in winning Kuwait's liberation".

90. According to Kuwait, the procurement process for concluding the contracts consisted of several stages. First, specifications for ordnance disposal were prepared and a list of eligible entities in the designated countries from which proposals were to be requested was compiled. The proposals were then evaluated and the technical aspects of the contracts were negotiated by the Kuwait Foreign Supply Department, the Ministry of Defence and the Contractors. The Kuwait Ministry of Finance negotiated the terms of payment of each contract. Finally, the Department of Counselling and Legislation reviewed the contracts to ensure that they complied with the laws of Kuwait.

91. The Contractors were subject to quality control before payment was made. For example, before a sub-sector was certified as cleared, it had to pass an inspection by representatives of Kuwait to determine whether the required confidence levels (98 per cent for mines and 85 per cent for other ordnance) had been achieved. Where a sub-sector failed the inspection, it had to be cleared again.

92. Iraq argues that the "contractors were not well selected from among several competitors that offered to carry out this specific job", and that Kuwait awarded the contracts on a "generous" and "purely political" basis to those countries that helped it during the crisis. Accordingly, Iraq questions whether the contracts were negotiated in order to obtain the lowest price or with due regard to the required expertise and resources.

93. Kuwait points out that the ordnance disposal contracts for three of the seven sectors (France, Turkey and the United States) were awarded through a process of competitive bidding and the contractor selected in each case was the qualified contractor that submitted the lowest bid. The Contractor for the United Kingdom sector was chosen on the basis of its previous performance of ordnance disposal work for KOC and also because its personnel were already present and fully mobilized in Kuwait. Kuwait also states that the contract price for the United Kingdom sector was justified because the sector had the highest mine density. In addition, the ordnance disposal work in that sector was very complex because of the presence of two particularly dangerous mine fields. Furthermore, there were increased health and equipment maintenance costs because of the large number of oil fires in that sector. Kuwait also explains that the ordnance disposal contracts for the sectors assigned to Bangladesh, Egypt and Pakistan were awarded to military units from those countries without competitive bidding because the Ministry of Defence concluded that the military forces of those countries were best qualified to perform the tasks involved.

94. The Panel finds that the decision to select contractors from a limited number of specially designated countries was within the legitimate discretion of Kuwait as a sovereign State and was not unreasonable, particularly in view of the special circumstances in which the decision was taken. The presence of large quantities of ordnance in Kuwait following the expulsion of Iraqi forces created a dangerous and unstable situation, and there was urgent need for quick action to deal with the danger.

95. The Panel also finds that the terms of the contracts and the quality control procedures applied were appropriate in the circumstances, having regard to the many different considerations that had to be taken into account.

96. As noted above, some of the Contractors were units of military forces. In the view of the Panel, this does not necessarily preclude compensation for expenses resulting from those contracts. Expenses resulting from activities of military entities can qualify for compensation if the evidence shows that the predominant purpose of the activities was to respond to environmental damage or threat of damage to the environment or to public health in the interests of the general population (see paragraph 29 above). The Panel finds that this is the case in the present claim. The ordnance disposal for which Kuwait seeks compensation was conducted after Iraq had been expelled from Kuwait and for the purpose of eliminating the very real danger posed by ordnance to the population and natural environment of Kuwait.

97. Iraq contends that the presence of some of the ordnance in Kuwait resulted from the operations of the Allied Coalition Forces, and that the losses and expenses for the disposal of such ordnance are not compensable.

98. Pursuant to paragraph 34(a) of Governing Council decision 7, "direct loss, damage, or injury" includes any loss suffered as a result of "military operations by either side during the period 2 August 1990 to 2 March 1991". Accordingly, losses or expenses incurred in ordnance disposal are compensable regardless of whether they resulted from military operations by Iraq or the Allied Coalition Forces.<sup>19</sup>

99. Iraq notes that some ordnance was neutralized and removed to appropriate storage facilities, while some was blown up where it was found. It asserts that the procedure of blowing up the ordnance did not take into consideration the damage that this procedure might cause to the environment, and suggests that alternative procedures could have been followed to minimize damage to the environment.

100. The Panel notes that ordnance disposal is a dangerous, painstaking and expensive activity. While some ordnance might have been recovered rather than blown up, this would have unnecessarily increased the risk for the ordnance disposal teams and could have jeopardized the success of the operation. In this connection, the Panel observes that the ordnance disposal resulted in hundreds of casualties among the personnel involved, including many fatalities.

101. The Panel considers that the ordnance disposal techniques employed by the Contractors were appropriate in the circumstances. It finds, therefore, that the activities undertaken by the Contractors constitute reasonable measures to clean and restore the environment. Consequently, expenses resulting from the contracts qualify for compensation in accordance with paragraph 35(b) of Governing Council decision 7, except as indicated below.

102. Some of the contracts for the ordnance disposal involved the purchase of equipment which reverted to Kuwait upon completion of the work. Kuwait states that the amount it has claimed takes into account the residual value of this equipment. The Panel's examination leads to the conclusion that the residual value as calculated by Kuwait is reasonable.

103. An adjustment has been made to the costs claimed for the work done by the Contractors in the sectors assigned to Turkey and the United Kingdom because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

104. An adjustment has also been made to the costs claimed for ordnance disposal work undertaken by the Contractor in the sector assigned to France. A dispute between the Ministry of Defence and the Contractor regarding the payment due for this work was submitted to arbitration under the auspices of the International Chamber of Commerce in Paris, in accordance with the terms of the contract. The arbitral tribunal decided, inter alia, that the Ministry of Defence should pay to the Contractor (a) an amount of 80,000,000 French francs over and above the original contract price to compensate the Contractor for "the prejudice and loss [the Contractor] has suffered as a result of ... additional costs, to the extent that [the Ministry's] own actions and behavior contributed to causing such costs" and (b) interest on the 80,000,000 French francs, as well as on a portion of the contract price that the Ministry of Defence had withheld from the final payment to the Contractor. The Panel recommends no compensation for these two items because it finds that they were not a direct result of Iraq's invasion and occupation of Kuwait.

105. These adjustments reduce the compensable expenses to USD 681,055,719.

106. Accordingly, the Panel recommends compensation in the amount of USD 681,055,719 for this claim unit. The Panel determines that the date of loss for this claim unit is 31 October 1992.

3. Claim No. 5000381 (KOC: ordnance disposal)

107. Kuwait seeks compensation in the amount of USD 6,979,571 for expenses incurred by the Kuwait Oil Company (“KOC”) for ordnance disposal within its operational areas. According to Kuwait, the ordnance scattered throughout KOC’s oil facilities as a result of Iraq’s invasion and occupation of Kuwait posed a danger to KOC personnel and was a hindrance to the efforts to combat oil fires, repair damaged oil wells and resume oil production. The compensation claimed consists of the costs of the contracts; the expenses of personnel seconded to KOC; the expenses resulting from the use of vehicles, equipment and services; and the costs of mine-detecting equipment.

108. Immediately after the liberation of Kuwait in February 1991, KOC engaged contractors to clear corridors to enable firefighting vehicles and personnel to reach the oil wells to extinguish the oil fires and install firefighting equipment. Subsequently, KOC directly commissioned firms to inspect its land and marine operational areas in order to locate and clear ordnance. The firms were also requested to undertake emergency survey and ordnance disposal within and around KOC’s Sea Island Loading Terminal and Single Point Mooring Facility, and to demolish and remove sunken boats and debris from KOC’s Small Boat Harbour.

109. In May 1993, an affiliated company of KOC seconded ordnance disposal specialists to coordinate KOC’s ongoing activities for ordnance disposal in its operational areas.

110. As noted in paragraphs 85 to 106 above, there is evidence that a large quantity of ordnance was scattered throughout KOC’s operational areas as a result of Iraq’s military activities and the operations of the Allied Coalition Forces. There is also evidence that Iraq’s forces damaged a large number of oil well heads with explosives and that more than 700 oil wells were set ablaze.<sup>20</sup>

111. In its written response, Iraq states that contractors engaged by KOC duplicated the work of the Ministry of Defence Contractors discussed in paragraphs 85 to 106 above. According to Iraq, ordnance disposal commissioned from January 1992 was “in excess of reasonable measures” because the ordnance disposal to facilitate firefighting had been completed, and the work undertaken by the Ministry of Defence Contractors covered the entire country. Consequently, it contends that expenses incurred after December 1991 are not compensable.

112. Iraq also states that the procedures for awarding contracts did not follow “international regulations and rules concerning the advertisement ... of the works that needed to be implemented so as to guarantee ... legitimate compensation and to get the best prices and offers”. In addition, Iraq argues that Kuwait did not submit evidence to support “the achievement of the work and the implementation by the contractor of his obligations ...”

113. In the view of the Panel, while the Ministry of Defence Contractors might have undertaken some work in the operational areas, the tasks carried out by KOC contractors were intended to address specific needs. Although the Ministry of Defence Contractors were commissioned to operate throughout the whole of Kuwait, there was no guarantee that they could respond adequately to the specific and urgent requirements of KOC in its operational areas. Accordingly, the work of KOC contractors did not duplicate the work of the Ministry of Defence Contractors.

114. The Panel considers that the direct appointment of firms for ordnance disposal in KOC's operational areas was reasonable in light of the urgent need to resume oil production.

115. The Panel finds that the presence of ordnance in the operational areas of KOC was a direct result of Iraq's invasion and occupation of Kuwait. The Panel also finds that ordnance disposal and the removal of sunken vessels and barges constitute reasonable measures to clean and restore the environment. Consequently, expenses resulting from these activities qualify for compensation in accordance with paragraph 35(b) of Governing Council decision 7.

116. The Panel finds that sufficient evidence has been provided to demonstrate the circumstances and amount of the loss, and that the amount claimed is reasonable.

117. Accordingly, the Panel recommends compensation in the amount of USD 6,979,571 for this claim unit. The Panel determines that the date of loss for this claim unit is 31 March 1996.

#### 4. Claim No. 5000381 (KOC: oil recovery)

118. Kuwait seeks compensation in the amount of USD 9,327,717 for expenses incurred by KOC to recover or remove large quantities of oil released from the many oil wells in Kuwait that were damaged or destroyed by Iraqi troops during their invasion and occupation of Kuwait. The compensation sought is for expenses resulting from the oil recovery programme up to 31 December 1992. These include labour costs and the costs in respect of materials and facilities such as pumps, piping, catalysts and chemicals, tanks and storage facilities, instrumentation and electrical equipment.

119. As noted by the Panel in its first report, "[t]here is abundant evidence in the scientific literature of the extensive contamination of Kuwait's environment by the oil lakes that were directly caused by the actions of Iraqi forces".<sup>21</sup>

120. According to Kuwait, KOC was able to begin rebuilding its operational network after the oil-well fires had been extinguished and the oilfields stabilized. An essential part of this process was the recovery or removal of oil from the affected parts of KOC's operational areas. KOC estimated that oil lakes, composed of weathered crude oil, water and sludge, covered approximately 49.15 square kilometres of its operational areas.

121. At the beginning of the oil recovery programme in 1991, it was anticipated that approximately 80 per cent of the weathered crude oil recovered could be treated, and that 20 per cent would be pumped directly to a gathering centre. However, because of the poor quality of the crude oil recovered, substantially smaller volumes than originally projected could feasibly be pumped directly to the gathering centre. Furthermore, although it was originally thought that the oil would need to be treated before it could be sold, markets for the untreated crude were found which made it possible to sell a large part of the weathered crude oil that was recovered. Thus, by December 1992, 50 per cent of the crude had been exported untreated; 33 per cent had been treated; and 17 per cent had been pumped directly to the gathering centre.

122. The total amount of weathered crude oil recovered from the oil lakes in KOC's oil fields was 20.8 million barrels, 18.3 million of which was sold for USD 85,944,204. This amount was taken into

account by the "E1" Panel in its recommendation regarding the amount of compensation to be paid to KOC in respect of its Fluid Loss Claim.<sup>22</sup>

123. In its written response, Iraq contends that "[t]he soil of the region originally suffers from oil pollution as a result of digging oil wells and gas fields in addition to the existence of refineries". It argues therefore that "[i]f such pollution exists in the region, it is the result of factors and circumstances other than Kuwait's events of 1990-1991".

124. In the view of the Panel, the oil lakes were a direct result of Iraq's invasion and occupation of Kuwait. There is no indication that the oil lakes are attributable to causes other than the invasion and occupation. In any case, as previously noted, Iraq is not exonerated from liability for direct loss or damage resulting from its invasion and occupation of Kuwait by the fact that other causes unrelated to the invasion and occupation might have contributed to the loss or damage.

125. Iraq also claims that some of the oil spills resulted from the operations of the Allied Coalition Forces.

126. Pursuant to paragraph 34(a) of Governing Council Decision 7, "direct loss damage or injury" includes any loss suffered as a result of "military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991". Accordingly, Iraq is liable for any direct loss, damage or injury regardless of whether it resulted from military operations of Iraq or the Allied Coalition Forces (see paragraph 98 above).

127. Iraq argues "that there was mismanagement in the whole process of oil recovery". In particular, the "change of policy" in the oil recovery programme "reduced the projected effort of crude oil treatment dramatically minimizing accordingly the sense of implementing these refineries, which constituted a major portion of the cost claimed". According to Iraq, the "cost of the oil recovery program can therefore be seriously reduced on considering real evaluation of the value of work accomplished and dual use of materials and manual labor. Furthermore, the cost of partial failure of any operation such as oil treatment due to initial mis-judgment should not be thrown on the burden of Iraq."

128. The Panel considers that, under the circumstances, KOC acted reasonably. The situation in which KOC found itself was difficult and unprecedented. Because of the complexity and urgency of the oil recovery programme, it is neither reasonable nor realistic to expect that KOC could have anticipated all possible contingencies at the outset of the programme. By taking decisions and applying them in the field, and modifying them as necessary, KOC was able to recover large quantities of oil while it still had some value.

129. The Panel finds that the activities undertaken by KOC to recover and remove oil from its operational areas constituted abatement and prevention of environmental damage, and reasonable measures to clean and restore the environment. Consequently, the expenses resulting from these activities qualify for compensation in accordance with paragraph 35(a) and (b) of Governing Council decision 7, except as indicated below.

130. Some of the costs claimed relate to maintenance work. No adequate explanation has been provided to explain the nature of the maintenance work. Accordingly, an adjustment has been made to account for normal maintenance costs that might have been incurred regardless of Iraq's invasion and occupation of Kuwait.

131. An adjustment has also been made to take account of the residual value of equipment used in the oil recovery programme as of 31 December 1992. Costs incurred after that date have been included in Kuwait's claim relating to the oil lakes and will be reviewed by the Panel in a future instalment. Kuwait requested that the Panel defer any adjustment for the residual value of the equipment until the review of the claim relating to the oil lakes. The Panel considers it more appropriate to make an adjustment at this stage for the period up to 31 December 1992.

132. These adjustments reduce the compensable expenses to USD 5,084,751.

133. Accordingly, the Panel recommends compensation in the amount of USD 5,084,751 for this claim unit. The Panel determines that the date of loss for this claim unit is 31 January 1992.

5. Claim No. 5000381 (restoration and remediation of the Ja'aidan Garden)

134. Kuwait seeks compensation in the amount of USD 2,872,225 for expenses incurred by KOC, the Public Authority for Agriculture and Fisheries ("PAAF"), the Environmental Protection Council, now re-named the Environmental Protection Authority ("EPC"), and the Kuwait Institute for Scientific Research ("KISR") to restore and remediate the Ja'aidan Garden (the "Garden").

135. The Garden covers approximately 50 hectares within the Burgan Oil Field in south-west Kuwait. Prior to Iraq's invasion and occupation of Kuwait, the Garden was the private retreat of the Emir of Kuwait. It had within it water reservoirs and a number of buildings, including a villa, mosque, storage buildings and greenhouses. The vegetation of the Garden included date palms, wind breaker trees, shrubs, vegetable garden plots, grazing grasses and fruit trees. A number of livestock and bird species were kept in the Garden.

136. According to Kuwait, Iraqi troops used the Garden as a military headquarters and constructed numerous fortifications within it during their occupation. In addition, oil released under high pressure from wells in the Burgan Oil Field created more than 140 oil lakes covering an area of 25.6 square kilometres. The Garden was affected by these oil lakes and by airborne contaminants from the oil fires in general. As a result, most of the vegetation, soil, buildings and other infrastructure within the Garden were contaminated or destroyed.

137. After the departure of the Iraqi forces, the Garden was converted into a national garden by a decree of the Emir of Kuwait, "to be used as a model for restoration efforts and research". In 1991, the Government of Kuwait created the Ja'aidan Garden Environmental Emergency Committee to assess and quantify damages to the Garden and to propose restoration and remediation activities.

138. In 1992, Kuwait initiated restoration and remediation work within the Garden. In order to compare different remediation strategies, the Garden was divided into four sections, one of which was

left untreated. Kuwait seeks compensation for the costs of the restoration and remediation work done by the four government entities referred to in paragraph 134 above.

139. In its written response, Iraq contends that the Garden “is a private Garden annexed to the palace of the [Emir]” and that the work done consisted in the refurbishment of the Garden and its conversion into “a better look[ing] place”. Iraq also states that the work undertaken was not for the restoration of the Garden, but to convert it into an experimental research station for remediation activities.

140. The Panel considers that the work undertaken constituted restoration and remediation of the Garden. The Panel does not consider that ownership of the Garden affects the compensability of expenses incurred in responding to environmental damage caused to it. This is because the damage to the Garden was a direct result of Iraq’s invasion and occupation of Kuwait, and the expenses claimed were incurred by the Government of Kuwait, which is a claimant before the Commission.

141. The Panel finds that the activities undertaken by the four government entities were reasonable measures to clean and restore the environment, and expenses resulting from them qualify for compensation in accordance with paragraph 35(b) of Governing Council decision 7, with the exceptions noted below.

(a) KOC expenses

142. The Panel has recommended no compensation for expenses alleged to have been incurred by KOC relating to the restoration and remediation of the Garden because the evidence provided was not sufficient to demonstrate the circumstances and amount of the loss. In particular, the Panel was unable to determine whether the activities duplicated measures for which compensation is being sought in other claim units of claim No. 5000381.

(b) PAAF expenses

143. The expenses incurred by PAAF were for contract costs, the supply or rental of heavy equipment and vehicles, the cost of chemical and organic fertilizers and the installation of a spray irrigation system.

144. The Panel has recommended no compensation for certain contract costs because the evidence presented was not sufficient to demonstrate the circumstances and amount of the loss. For certain other contract costs, an adjustment has been made because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

145. The Panel has also adjusted the costs of the vehicle rental because it considers the amount claimed to be excessive. An adjustment has also been made to the amount claimed for the installation of the irrigation system to take account of residual value.

146. These adjustments reduce the compensable expenses of PAAF to USD 627,546.

(c) EPC expenses

147. The expenses incurred by EPC were for the provision of a water tanker, commissioning of soil sample analyses, and part of the costs of a joint project with KISR for the remediation and rehabilitation of the Garden.

148. The Panel has recommended no compensation for the costs of hiring a water tanker and undertaking soil sample analysis because the evidence presented was not sufficient to demonstrate the circumstances and amount of the loss. This reduces the compensable expenses of EPC to USD 251,155.

(d) KISR expenses

149. The expenses incurred by KISR were for its share of the costs of the joint project with EPC for the remediation and rehabilitation of the Garden. The Panel finds that sufficient evidence has been provided to demonstrate the circumstances and amount of the loss, and that the amounts claimed are reasonable. The compensable expenses of KISR amount to USD 376,539.

150. The total compensable expenses for the restoration and remediation of the Garden amount to USD 1,255,240.

151. Accordingly, the Panel recommends compensation in the amount of USD 1,255,240 for this claim unit. The Panel determines that the date of loss for this claim unit is 30 June 1993.

C. Saudi Arabia

1. Overview

152. The six claims of Saudi Arabia are for expenses of a co-ordinated national response to oil spills resulting from Iraq's invasion and occupation of Kuwait.<sup>23</sup> The response included measures to combat and clean up the oil spills and to protect environmental resources and vital infrastructure such as water desalination plants, cooling water intakes, and port facilities from contamination.

153. According to Saudi Arabia, Iraq deliberately released millions of barrels of oil from tankers and storage facilities into the Persian Gulf during its invasion and occupation of Kuwait, and the oil spills resulting from these releases contaminated or threatened to contaminate Saudi Arabia's marine and coastal environment.

154. The total compensation claimed by Saudi Arabia in the second "F4" instalment is USD 49,798,279.

2. Claim No. 5000380

155. Saudi Arabia seeks compensation in the amount of USD 38,722,344 for expenses incurred by its Meteorology and Environmental Protection Administration ("MEPA") to protect Saudi Arabia's infrastructure and environmental resources from the oil spills in the Persian Gulf that resulted from Iraq's invasion and occupation of Kuwait. As the central environmental agency of Saudi Arabia,

MEPA had primary responsibility for implementation of the National Contingency Plan for oil spill response.

156. According to Saudi Arabia, a number of different techniques were used to protect vital infrastructure, such as desalination plants, and high-priority environmental resources. Where possible, floating booms were used to prevent oil from reaching the shore or coming into contact with these facilities and resources. In other cases, the oil was entrapped and held against the shoreline to prevent it from reaching other areas where it could cause more damage. Skimmers and vacuum trucks were used to remove floating oil.

157. As part of the response to the oil spills, selected sensitive environmental areas and resources were cleaned. Aerial and ground-level assessments of oil spill impacts were used to determine priority areas for preventive and clean-up measures. For example, on Karan Island, where the nesting season of green turtles, hawksbill turtles and terns was imminent, sand polluted by oil was physically removed and replaced with clean sand. On Qurmah Island, mangroves were flushed with high-volume low-pressure water, and oil was collected using skimmers.

158. Saudi Arabia states that members of MEPA's planning, administrative and operations staff provided a variety of services needed to implement oil spill response measures, including the maintenance of round-the-clock oil spill centres.

159. In addition, MEPA concluded contracts with three companies to provide assistance for the oil spill response measures: Saudi Bechtel Company; Crowley Maritime Corporation; and VECO Arabia Limited. Saudi Bechtel Company was responsible for the overall management of the oil spill response. Crowley Maritime Corporation was responsible for oil spill operations, providing experts, equipment, logistics and personnel. VECO Arabia Limited was responsible for the later stages of the oil spill response operations.

160. The Panel finds that the activities undertaken by MEPA to respond to the oil spills, including implementation of protective measures, removal and disposal of oil and restoration of sites, constitute abatement and prevention of environmental damage and reasonable measures to clean and restore the environment. Consequently, expenses resulting from these activities qualify for compensation in accordance with paragraph 35(a) and (b) of Governing Council decision 7, except as indicated below.

161. As part of its contribution to the liberation of Kuwait, the Government of Japan donated funds to the Cooperation Council for the Arab States of the Gulf in September 1990 ("Gulf Peace Fund"). The Panel notes that part of this fund was distributed to Saudi Arabia for the prevention of physical damage and pollution to marine resources and environment. On 31 December 2001, the Panel issued Procedural Order No. 4 requesting information from the Ministry of Finance and National Economy of Saudi Arabia concerning disbursements made from the Gulf Peace Fund.

162. In its response to Procedural Order No. 4, the Ministry of Finance and National Economy stated that funds were disbursed from the Gulf Peace Fund to reimburse costs of work carried out by VECO Arabia Limited, Saudi Bechtel Company and Crowley Maritime Corporation to combat the oil spills. A total of USD 1,165,869 was disbursed for work by VECO Arabia Limited. A total of

USD 38,500,000 was disbursed for work by Saudi Bechtel Company and Crowley Maritime Corporation.

163. The Panel considers that the relevant amounts reimbursed from the Gulf Peace Fund should be deducted from the amount claimed by MEPA in respect of the contractors.<sup>24</sup> The amounts deducted are: USD 1,165,869 in respect of VECO Arabia Limited; and USD 37,289,228, the total amount claimed in respect of Saudi Bechtel Company and Crowley Maritime Corporation.

164. The remaining expenses are the cost of MEPA overtime labour and the non-reimbursed portion of the VECO Arabia Limited contract. The overtime labour costs have been adjusted because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

165. These adjustments reduce the compensable expenses to USD 249,393.

166. Accordingly, the Panel recommends compensation in the amount of USD 249,393 for this claim. The Panel determines that the date of loss for this claim is 30 November 1992.

### 3. Claim No. 5000307

167. Saudi Arabia seeks compensation in the amount of USD 505,406 for expenses incurred by the Saudi Ports Authority (“SPA”) in taking measures to contain oil spills in the Persian Gulf and to clean up areas in Saudi Arabia that were polluted as a result of Iraq’s invasion and occupation of Kuwait.

168. SPA is the entity that controls and administers all commercial ports in Saudi Arabia. Saudi Arabia states that, in response to the oil spills in the Persian Gulf, it sent equipment and experts from Jeddah Islamic Port (“JIP”), a commercial port on Saudi Arabia’s Red Sea coast, to Dammam and Jubail on the Persian Gulf coast. Saudi Arabia also alleges that SPA purchased oil boom equipment and propeller spare parts for use in the measures to protect harbour installations of King Abdul Aziz Port (“KAAP”) from the oil spills.

169. The expenses claimed are: (a) costs of the Director of the JIP pollution centre’s participation in the Persian Gulf emergency team; (b) extra wage and transport costs of an oil spill expert sent to KAAP; (c) KAAP’s purchase of oil boom equipment and propeller spare parts; and (d) JIP’s costs of maintenance, storage, repair, replacement and transport of pollution control equipment.

170. In its written response, Iraq contends that the activities for which Saudi Arabia seeks compensation “... form part of a daily and routine work between ports in combating all types of pollution”. Iraq argues that the activities that are the subject of this claim are not a direct result of Iraq’s invasion and occupation of Kuwait. It asserts that “[n]othing has been provided to support that the claimed amounts of compensation have a direct causal relationship with the Gulf events ...”.

171. In the view of the Panel, the activities described in the claim were not routine operations but were a response to environmental damage or threat of environmental damage that directly resulted from Iraq’s invasion and occupation of Kuwait. The Panel finds that the activities constitute abatement and prevention of environmental damage and reasonable measures to clean and restore the

environment. Consequently, the expenses resulting from these activities qualify for compensation in accordance with paragraph 35(a) and (b) of Governing Council decision 7, except as indicated below.

172. The Panel recommends no compensation for items (a) to (c) as described in paragraph 169 above because the evidence presented is not sufficient to demonstrate the circumstances and amount of the loss. In particular, the Panel was unable to determine from the evidence presented by Saudi Arabia the nature of the work performed by the Director of the JIP pollution centre and the oil spill expert sent to KAAP. In addition, the Panel was unable to determine whether the oil pollution equipment that was purchased by KAAP was actually used for the oil spill response. The Panel has adjusted the amount claimed for item (d) in paragraph 169 because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

173. The adjustments reduce the compensable expenses to USD 4,740.

174. Accordingly, the Panel recommends compensation in the amount of USD 4,740 for this claim. The Panel determines that the date of loss for this claim is 15 July 1991.

#### 4. Claim No. 5000308

175. Saudi Arabia seeks compensation in the amount of USD 535,311 for expenses incurred by Saline Water Conversion Corporation ("SWCC") to contribute to the co-ordinated measures to protect the Jubail desalination plant from the oil spills in the Persian Gulf resulting from Iraq's invasion and occupation of Kuwait.

176. SWCC is the entity that controls and administers desalination plants in Saudi Arabia. SWCC took the following measures to protect the Jubail desalination plant from the oil spills in the Persian Gulf:

(a) Procurement of a contractor to undertake the technical work required to protect the sea-water intakes from contamination by oil;

(b) Purchase of two "Zodiac" boats to take water samples periodically around the sea-water intakes;

(c) Purchase of barriers, chains and floaters to set up a protection mechanism for the sea-water intakes;

(d) Installation of rubber barriers around the sea-water intakes; and

(e) Commissioning of an hydraulic and engineering study for the permanent protection of the sea-water intakes.

177. In its written response, Iraq contends that the measures that are the subject of this claim cannot be regarded as being direct environmental damage.

178. The Panel finds that the measures to protect the Jubail desalination plant were in response to environmental damage or threat of environmental damage that directly resulted from Iraq's invasion and occupation of Kuwait. The Panel also finds that, with one exception, the activities undertaken by

SWCC were appropriate and constitute abatement and prevention of environmental damage. Consequently, the expenses resulting from the activities qualify for compensation in accordance with paragraph 35(a) of Governing Council decision 7, except as indicated below.

179. The Panel finds that the costs of the contract for an hydraulic and engineering study are not compensable because the study was not a measure to abate and prevent environmental damage resulting from Iraq's invasion and occupation of Kuwait, but was a measure to ensure that Saudi Arabia is better prepared to respond to oil spills in the future.

180. An adjustment has been made to the costs of equipment to take account of its residual value. An adjustment has also been made with regard to the construction costs of concrete supports to take account of the long-term benefits that Saudi Arabia will realize from them.

181. The Panel has also made adjustments to expenses claimed for the travel and transport of experts and equipment and the purchase of an oil skimmer system because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

182. These adjustments reduce the compensable expenses to USD 271,413.

183. Accordingly, the Panel recommends compensation in the amount of USD 271,413 for this claim. The Panel determines that the date of loss for this claim is 15 April 1991.

#### 5. Claim No. 5000310

184. Saudi Arabia seeks compensation in the amount of USD 1,794,839 for the cost of measures taken by the Royal Commission for Jubail and Yanbu (the "Royal Commission") to contribute to the co-ordinated measures to protect sea-water intakes for the desalination plants and the sea-water cooling system in Jubail from the oil spills in the Persian Gulf resulting from Iraq's invasion and occupation of Kuwait. The Royal Commission was responsible for pollution response activities within the marine and coastal areas of Jubail.

185. According to Saudi Arabia, the measures taken by the Royal Commission at Jubail included placing booms across the sea-water intake channels; positioning oil skimmers at strategic locations; establishing holding pits for recovered oil; installing canvas and filter cloth screens to protect equipment; and purchasing spare parts for equipment. The Royal Commission also took measures to prevent oil from reaching Jubail by placing oil booms, constructing tidal oil traps and deploying oil skimmers north of Jubail. In addition, the Royal Commission assisted the National Commission for Wildlife Conservation and Development to establish a wildlife rescue centre.

186. The expenses claimed by the Royal Commission include the costs of labour, oil spill response equipment and materials, television sets and related equipment, and a contract for consultancy services.

187. In its written response, Iraq contends that other government agencies were already carrying out the same work, and argues that this resulted in unnecessary duplication of effort. Iraq also argues that certain items for which compensation is claimed are not related to environmental damage.

188. The Panel notes that evidence provided by Saudi Arabia indicates that its pollution response programme was a co-ordinated, collaborative project involving several entities. In addition, the Panel has taken necessary steps to avoid duplication in the compensation recommended in respect of the various entities involved.

189. The Panel finds that the activities undertaken by the Royal Commission to respond to the oil spills constitute abatement and prevention of environmental damage and reasonable measures to clean and restore the environment. Consequently, expenses resulting from these activities qualify for compensation in accordance with paragraph 35(a) and (b) of Governing Council decision 7, except as indicated below.

190. The costs of television sets and related equipment are not compensable because they were not necessary for the activities in question. The costs of spare parts are not compensable because they were not used in the oil spill response operations, and there is no evidence that their purchase involved extraordinary expenditure by the Royal Commission.

191. An adjustment has been made to the costs of oil spill response materials and equipment that were deployed at Jubail to take account of their residual value. An adjustment has also been made to the costs of consultancy services to take account of the fact that these services would provide continuing benefit to the Royal Commission. A further adjustment has been made to some of the labour costs because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

192. These adjustments reduce the compensable expenses to USD 1,089,796.

193. Accordingly, the Panel recommends compensation in the amount of USD 1,089,796 for this claim. The Panel determines that the date of loss for this claim is 30 June 1991.

#### 6. Claim No. 5000311

194. Saudi Arabia seeks compensation in the amount of USD 372,222 for expenses incurred by the Ministry of Municipal and Rural Affairs, Water and Sewerage Authority in the Eastern Province of Saudi Arabia ("Water and Sewerage Authority") in assisting MEPA to respond to the oil spills in the Persian Gulf resulting from Iraq's invasion and occupation of Kuwait.

195. Saudi Arabia states that the Water and Sewerage Authority supplied personnel and equipment to MEPA. In support of this claim, the Water and Sewerage Authority has submitted a list of the personnel and equipment that it made available to MEPA.

196. The information supplied by Saudi Arabia does not show that MEPA used any personnel or equipment supplied by the Water and Sewerage Authority. No evidence has been submitted to show that the Water and Sewerage Authority incurred any extraordinary personnel costs, as described in paragraph 30 above.

197. The Panel, therefore, finds that Saudi Arabia has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules.

198. Accordingly, the Panel recommends no compensation for this claim.

7. Claim No. 4002633

199. Saudi Arabia seeks compensation in the amount of USD 7,868,157 for expenses incurred by the Saudi Arabian Oil Company (“Saudi Aramco”) to combat and clean up the oil spills in the Persian Gulf that resulted from Iraq’s invasion and occupation of Kuwait.

200. Saudi Aramco is a limited liability company wholly owned by the Government of Saudi Arabia. Saudi Arabia states that, to contain and clean up the oil spill in the Persian Gulf, Saudi Aramco activated its Oil Spill Contingency Plan and deployed its Oil Spill Response Team to protect vital facilities along the Saudi Arabian coast. Saudi Aramco also concluded a number of contracts for the supply of labour, equipment and services to assist in its efforts to combat the oil spills. Through a subsidiary in the United States, Saudi Aramco obtained technical know-how and materials needed to combat the oil spills. Compensation is also sought for the costs of bus transportation.

201. In its written response, Iraq contends that no documentary evidence has been presented to show that the alleged damage to offshore installations “was in any way related to environmental issues or the Gulf Crisis”.

202. The Panel finds that that the oil spills that are the subject of the activities undertaken by Saudi Aramco were a direct result of Iraq’s invasion and occupation of Kuwait. The Panel further finds that the activities constituted abatement and prevention of environmental damage and reasonable measures to clean and restore the environment. Consequently, the expenses resulting from these activities qualify for compensation in accordance with paragraph 35(a) and (b) of Governing Council decision 7.

203. Iraq contends that Saudi Aramco realized a financial gain from the oil spill cleanup operations. Iraq bases this contention on a statement made by Saudi Arabia in its claim to the effect that during the course of oil spill response operations Saudi Aramco recovered over 1 million barrels of floating oil from the Persian Gulf and stored it in onshore holding pits. On the basis of this statement Iraq contends that Saudi Aramco sold the recovered oil and realized a profit from the sale.

204. There is no evidence that Saudi Aramco either sold the recovered oil or realized any financial gain. On the contrary, Saudi Aramco states that it entered into a contract with a third party to remove all recovered oil from the holding pits and to clean up the pits after the oil had been removed. Saudi Aramco also points out that the contract stipulated that the recovered oil was to be disposed of in a manner that would not cause further environmental damage or be detrimental to the reputation of Saudi Aramco.

205. The Panel therefore finds that the expenses claimed are compensable, except as indicated below.

206. The Panel finds that the expenses claimed for bus transportation are not compensable because Saudi Arabia has not provided sufficient evidence to demonstrate a link between the bus transportation and the oil spill response.

207. The Panel has recommended no compensation for some of the costs claimed for labour, equipment and services because the evidence presented is not sufficient to demonstrate the circumstances and amount of the loss.

208. The Panel has made an adjustment to some of the contract costs and to the labour costs claimed in respect of the Oil Spill Response Team because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

209. The adjustments reduce the compensable expenses to USD 6,675,879.

210. Accordingly, the Panel recommends compensation in the amount of USD 6,675,879 for this claim. The Panel determines that the date of loss for this claim is 15 May 1991.

## VI. NON-REGIONAL CLAIMS – ASSISTANCE TO ABATE AND PREVENT ENVIRONMENTAL DAMAGE

### A. Overview

211. Australia, Canada, Germany, the Netherlands, the United Kingdom and the United States seek compensation for expenses incurred for assistance to abate and prevent environmental damage resulting from Iraq's invasion and occupation of Kuwait. The expenses are for measures to respond to the oil spills, oil fires and other environmental damage or threats of environmental damage resulting from the invasion and occupation, including monitoring and assessment of the impacts of the oil spills and oil fires.

212. The total amount of compensation sought in the non-regional claims is USD 43,302,236.

### B. Australia

#### 1. Claim No. 5000048

213. Australia seeks compensation in the amount of USD 11,330 for expenses incurred by the Australian Maritime Safety Authority to assist in monitoring and assessing environmental damage in the Persian Gulf region that resulted from Iraq's invasion and occupation of Kuwait.

214. Australia seeks compensation for the salary and travel expenses of an oil spill response specialist who provided technical assistance to Saudi Arabia to monitor and assess the effects of the oil spills.

215. In its written response, Iraq argues that the evidence does not show that the trip was related to "direct damage" from the oil spills.

216. The Panel finds that the activities described in the claim constitute reasonable monitoring and assessment, and expenses resulting from these activities qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7, except as indicated below.

217. No compensation is recommended for the salary of the specialist because Australia has not provided sufficient evidence to demonstrate that the salary was of an extraordinary nature, in the sense that it was over and above what would have been incurred in the normal course of events.

218. This adjustment reduces the compensable expenses to USD 7,777.

219. Accordingly, the Panel recommends compensation in the amount of USD 7,777 for this claim. The Panel determines that the date of loss for this claim is 31 March 1991.

2. Claim No. 4000015

220. The Australian Institute of Petroleum Limited (the "Institute") seeks compensation in the amount of USD 8,769 for expenses incurred to provide assistance to Saudi Arabia's response to the oil spills in the Persian Gulf resulting from Iraq's invasion and occupation of Kuwait.

221. According to the Institute, at the request of the Australian Maritime Safety Authority, it sent two experts to assist in the clean-up of the oil spills along the coastline in Saudi Arabia in early 1991. The Institute seeks compensation for the travel and accommodation expenses of these experts.

222. In its written response, Iraq argues that the Institute did not present evidence to confirm that the travel was related to "direct damage" from the oil spills.

223. The Panel finds that the Institute did not provide sufficient evidence to demonstrate that the activities were undertaken. By Procedural Order No. 2, dated 2 August 2001, the Panel requested that the Institute provide, *inter alia*, documentary and other appropriate evidence of the activities undertaken by the experts. To date, no response has been received.

224. The Panel, therefore, finds that the Institute has failed to provide sufficient evidence to enable the Panel to determine the circumstances of the loss. Consequently, the Institute has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules.

225. Accordingly, no compensation is recommended for this claim.

C. Canada

1. Claim No. 5000300

226. Canada seeks compensation in the amount of USD 633,936 for expenses incurred by its Department of Environment ("Environment Canada") for activities undertaken as part of the international effort to respond to the oil spills in the Persian Gulf region that resulted from Iraq's invasion and occupation of Kuwait.

227. According to Canada, Environment Canada provided experts, technical assistance and equipment to assist the Governments of the State of Bahrain ("Bahrain") and the State of Qatar ("Qatar") in responding to the oil spills. Canada also states that Environment Canada established an Ottawa-based Gulf Operations Centre from which it provided additional technical and administrative support.

228. The Panel finds that the activities described in the claim constitute abatement and prevention of environmental damage, reasonable measures already taken to clean the environment, and reasonable monitoring and assessment in accordance with paragraph 35 of Governing Council decision 7.

229. Consequently, the Panel finds that expenses resulting from these activities qualify for compensation in accordance with paragraph 35(a), (b) and (c) of Governing Council decision 7, except as indicated below.

230. An adjustment has been made to the cost of certain equipment and supplies to take account of their residual value. An adjustment has also been made to all remaining costs because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses. These adjustments reduce the compensable expenses to USD 252,559.

231. Accordingly, the Panel recommends compensation in the amount of USD 252,559 for this claim. The Panel determines that the date of loss for this claim is 31 March 1991.

## 2. Claim No. 5000328

232. Canada seeks compensation in the amount of USD 618,393 for expenses incurred by its Department of Transport (“Transport Canada”) for activities undertaken as part of the international effort to combat the oil spills in the Persian Gulf resulting from Iraq’s invasion and occupation of Kuwait.

233. According to Canada, Transport Canada provided experts, equipment and training to Bahrain and Qatar in responding to the oil spills. Canada also states that, in March 1991, Transport Canada made a contribution to the Persian Gulf Oil Pollution Disaster Fund established by the International Maritime Organization (“IMO”) to combat the oil spill in the Persian Gulf.

234. The expenses sought are for personnel and operating costs, equipment and the contribution to IMO.

235. The Panel finds that the activities described in the claim constitute abatement and prevention of environmental damage, reasonable measures already taken to clean the environment, and reasonable monitoring and assessment in accordance with paragraph 35 of Governing Council decision 7. Consequently, the expenses resulting from these activities qualify for compensation in accordance with paragraph 35(a), (b) and (c) of Governing Council decision 7, except as indicated below.

236. No compensation is recommended for the portion of the contribution to the IMO Persian Gulf Oil Pollution Disaster Fund that was not used for the oil spill response efforts and was, consequently, returned by IMO to Canada.

237. An adjustment has been made to the cost of equipment to take account of its residual value. A further adjustment has been made to the expenses for personnel and operating costs and equipment because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

238. These adjustments reduce the compensable expenses to USD 277,364.

239. Accordingly, the Panel recommends compensation in the amount of USD 277,364 for this claim. The Panel determines that the date of loss for this claim is 15 August 1991.

D. Germany

1. Claim No. 5000011

240. Germany seeks compensation in the amount of USD 7,122,711 for expenses incurred by the Federal Ministry of Transport, Building and Housing (the "Federal Ministry") for activities undertaken as part of the international effort to respond to the oil spills in the Persian Gulf resulting from Iraq's invasion and occupation of Kuwait.

241. According to Germany, at the request of the Governments of Bahrain and Qatar, the Federal Ministry dispatched an oil pollution control vessel to the Persian Gulf from 15 March to 7 June 1991 to search for drifting oil along the coasts of Bahrain, Qatar and Saudi Arabia. Germany states that it supplied oil pollution control equipment to Bahrain and Qatar, and that German experts trained local operators in the use of the equipment.

242. Germany seeks compensation for the operating expenses of the vessel including salaries of the crew, the costs of the oil pollution control equipment, and payments for the repair and replacement of the equipment. Germany also seeks compensation for expenses incurred as a result of a serious injury sustained by a member of the crew of the vessel.

243. In its written response, Iraq contends that the German vessel did not carry out work related to environmental damage.

244. The Panel finds that the activities described in the claim constitute abatement and prevention of environmental damage, reasonable measures already taken to clean the environment, and reasonable monitoring and assessment in accordance with paragraph 35 of Governing Council decision 7. Consequently, the Panel finds that the expenses resulting from these activities qualify for compensation in accordance with paragraph 35(a), (b) and (c) of Governing Council decision 7, except as indicated below.

245. No compensation is recommended for the salaries of the crew of the oil pollution control vessel because Germany has not provided evidence to demonstrate that the salaries were of an extraordinary nature as described in paragraph 30 above. No compensation is recommended for the expenses relating to the injury of the crew member because the Panel finds that the accident which caused the injury was not a direct result of Iraq's invasion and occupation of Kuwait.

246. An adjustment has been made to certain operating expenses of the vessel to take account of maintenance and depreciation costs that would have been incurred in any event. An adjustment has also been made to certain costs in respect of oil pollution control equipment to take account of residual value as well as maintenance costs that would have been incurred in any event. A further adjustment has been made with respect to expenses of the vessel and the oil pollution control equipment because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

247. These adjustments reduce the compensable expenses to USD 1,843,956.

248. Accordingly, the Panel recommends compensation in the amount of USD 1,843,956 for this claim. The Panel determines that the date of loss for this claim is 30 April 1991.

2. Claim No. 5000108

249. Germany seeks compensation in the amount of USD 184,787 for expenses incurred by the Ministry of Environment of Lower Saxony and five other German public entities for activities undertaken as part of the international effort to respond to the oil spills in the Persian Gulf resulting from Iraq's invasion and occupation of Kuwait.

250. According to Germany, the entities provided equipment, technical assistance and training to Bahrain and Qatar in connection with efforts to protect drinking water supplies from the oil spills.

251. Germany seeks compensation for the salaries and related expenses of personnel; the costs of travel, communications and materials; and costs of administrative support.

252. In its written response, Iraq contends that no evidence was submitted to confirm that the services carried out were related to environmental damage resulting from the "Gulf crisis".

253. The Panel finds that the evidence presented is adequate to demonstrate that the activities described in the claim were part of the response to the oil spills that resulted from Iraq's invasion and occupation of Kuwait. Therefore, these activities constitute measures to abate and prevent environmental damage, and expenses resulting from them qualify for compensation in accordance with paragraph 35(a) of Governing Council decision 7, except as indicated below.

254. No compensation is recommended for the salaries of personnel, because Germany has not provided sufficient evidence to demonstrate that the salaries were of an extraordinary nature as described in paragraph 30 above.

255. An adjustment has been made to the expenses claimed for communications, materials and contracted services because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

256. These adjustments reduce the compensable expenses to USD 12,324.

257. Accordingly, the Panel recommends compensation in the amount of USD 12,324 for this claim. The Panel determines that the date of loss for this claim is 15 April 1991.

3. Claim No. 5000280

258. Germany seeks compensation in the amount of USD 32,773 for expenses incurred by the Federal Environmental Agency in sending two experts to Saudi Arabia in June 1991 to survey and monitor clean-up efforts with regard to the environmental damage caused by the oil spills resulting from Iraq's invasion and occupation of Kuwait. Germany seeks compensation for travel expenses and administrative costs related to the experts' travel.

259. In its written response, Iraq argues that the work was purely academic and unrelated to “direct damage” resulting from the oil spills.

260. The Panel finds that the activities described in the claim constitute reasonable monitoring and assessment, and expenses resulting from these activities qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7, except as indicated below.

261. No compensation is recommended for the claimed administrative costs because the evidence presented is not sufficient to demonstrate the circumstances and amount of the loss.

262. An adjustment has been made to the travel expenses because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

263. These adjustments reduce the compensable expenses to USD 14,531.

264. The Panel therefore recommends compensation in the amount of USD 14,531 for this claim. The Panel determines that the date of loss for this claim is 30 June 1991.

#### 4. Claim No. 5000305

265. Germany seeks compensation in the amount of USD 21,376,838 for expenses incurred by the German Ministry of Defence for activities undertaken as part of the international effort to respond to the oil spills and large quantity of mines in the Persian Gulf resulting from Iraq’s invasion and occupation of Kuwait.

266. According to Germany, the Ministry of Defence supplied marine pollution control equipment, including oil skimmers, anti-oil barriers and containers to Saudi Arabia. Germany also states that the Ministry deployed a “Mine Countermeasures Force” in the Persian Gulf to assist in minesweeping operations to clear waterways of approximately 1,200 mines laid in the Gulf during Iraq’s invasion and occupation of Kuwait.

267. The Panel finds that the supply of the marine pollution control equipment contributed to abatement and prevention of environmental damage. Consequently, the expenses related to the supply of the equipment qualify for compensation in accordance with paragraph 35(a) of Governing Council decision 7, except as indicated below.

268. An adjustment to the expenses for the equipment supplied has been made to take account of its residual value. A further adjustment has been made because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses. These adjustments reduce the compensable expenses for this portion of the claim to USD 167,445.

269. With regard to the minesweeping activities by the Ministry of Defence, the Panel notes that the deployment of the Mine Countermeasures Force in the Persian Gulf region was described by the Government of Germany as a humanitarian gesture “serving the abatement of risks to people, the environment, and navigation”.<sup>25</sup> The Government stated that “[s]ecure sea lanes in the gulf area are an indispensable prerequisite for starting the process of economic recovery in the region”.<sup>26</sup> The

Panel also notes that the announcement of the deployment was made in March 1991, after the cessation of hostilities.

270. As stated in paragraph 29 above, expenses resulting from the activities of military entities can qualify for compensation if there is sufficient evidence to demonstrate that the predominant purpose of the activities was to respond to environmental damage or threat of damage to the environment or to public health in the interest of the general population.

271. The Panel finds that the evidence available is sufficient to demonstrate that the minesweeping activities described in the claim satisfy this requirement. Consequently, expenses resulting from the minesweeping activities qualify for compensation in accordance with paragraph 35 of Governing Council decision 7.

272. However, the evidence presented by Germany was not sufficient to demonstrate the circumstances and amount of the losses claimed. In particular, no information has been provided to enable the Panel to substantiate any of the expenses for which compensation is claimed. The Panel, therefore, finds that Germany has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules. Consequently, no compensation is recommended for this portion of the claim.

273. The Panel therefore recommends compensation in the amount of USD 167,445 for this claim. The Panel determines that the date of loss for this claim is 15 April 1991.

E. Netherlands – Claim No. 5000306

274. The Netherlands seeks compensation in the amount of USD 1,974,055 for the cost of hiring two tugboats to provide “emergency firefighting, towing, rescue and salvage services” from 2 January to 5 April 1991. According to the Netherlands, these services were provided to prevent “damage to vessels and – as a result – to the environment ... in the Gulf”.

275. Iraq argues that the two tugboats were sent to provide services to the Allied Coalition Forces.

276. The evidence submitted in support of the claim shows that the assistance provided by the Netherlands was “in support of Operation Desert Shield”, and that such assistance was “a very useful addition to [Allied] Coalition capabilities in the Gulf”.

277. The Panel finds that the expenses claimed were incurred to support the military activities of the Allied Coalition Forces and are, therefore, barred from compensation in accordance with Governing Council decision 19. Consequently, it recommends no compensation for this claim.

F. United Kingdom – Claim No. 5000075

278. The United Kingdom seeks compensation in the amount of USD 2,219,315 for expenses incurred for activities undertaken as part of the international effort to respond to the oil spills resulting from Iraq’s invasion and occupation of Kuwait. According to the United Kingdom, it provided six oil skimmers to Bahrain to protect its coastal areas against the oil spills. The United Kingdom also states that it made financial contributions to IMO for the Persian Gulf Oil Pollution Disaster Fund, and to

the International Council for Bird Preservation for a study of oil spill impacts on migratory wading birds in the Persian Gulf.

279. The expenses sought are for purchase and transport of the oil skimmers, the portion of its contribution to IMO that was used for Persian Gulf clean-up operations, and the contribution to the International Council for Bird Preservation.

280. The Panel finds that the activities described in the claim constitute abatement and prevention of environmental damage, reasonable measures already taken to clean the environment, and reasonable monitoring and assessment in accordance with paragraph 35 of Governing Council decision 7. Consequently, the expenses resulting from these activities qualify for compensation in accordance with paragraph 35(a), (b) and (c) of Governing Council decision 7, except as indicated below.

281. An adjustment has been made to the cost of the oil skimmers to take account of their residual value. The adjustment reduces the compensable expenses to USD 1,891,857.

282. Accordingly, the Panel recommends compensation in the amount of USD 1,891,857 for this claim. The Panel determines that the date of loss for this claim is 15 November 1991.

#### G. United States

##### 1. Overview

283. The United States seeks compensation for the costs incurred by several agencies of the United States Government in providing technical and other assistance to countries in the Persian Gulf region in connection with international, regional and national efforts to monitor and assess the impacts of the oil spills and oil fires resulting from Iraq's invasion and occupation of Kuwait.

284. Four of the claims relate to travel expenses and other costs incurred by four agencies in providing personnel to assist in monitoring and assessment activities. Two claims relate to expenses incurred by two agencies in tracking the oil spills. Two other claims relate to expenses incurred by two agencies in connection with the collection and analysis of air quality data and the development of computer models to predict the impact of air pollution resulting from Iraq's invasion and occupation of Kuwait on public health and the environment. The final claim relates to expenses incurred by one agency to conduct an assessment of health risks posed to military personnel by exposure to emissions from the oil fires in Kuwait.

285. The total compensation claimed by the United States for these activities is USD 9,119,329.

##### 2. Claim No. 5000289

286. The United States seeks compensation in the amount of USD 32,928 for expenses incurred by the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry for environmental monitoring and assessment activities undertaken as part of the international effort to assess public health impacts of the oil fires resulting from Iraq's invasion and occupation of Kuwait.

287. The expenses incurred by the Centers for Disease Control and Prevention were for the travel of a senior epidemiologist to assist in the development of plans to address public health risks associated with the oil fires.

288. The expenses incurred by the Agency for Toxic Substances and Disease Registry were for the travel of personnel in connection with long-term studies of the health effects of air, water and soil contamination in Kuwait resulting from the oil fires, oil spills and military operations. The expenses also include “hazard duty wages” paid to a medical officer who participated in public health response efforts in the Persian Gulf.

289. In its written response, Iraq argues that the evidence presented does not demonstrate the nature or extent of the tasks alleged to have been undertaken.

290. In the view of the Panel, the activities described in the claim were part of the response to the oil spills and oil fires that resulted from Iraq’s invasion and occupation of Kuwait. Therefore, these activities constitute reasonable monitoring of public health, and expenses resulting from them qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7, except as indicated below.

291. No compensation is recommended for travel expenses related to the studies of the health risks to military personnel, because they were incurred in connection with military operations and are, therefore, barred from compensation by Governing Council decision 19.<sup>27</sup> No compensation is recommended for travel expenses that were not directly related to planning and implementation of public health monitoring activities. No compensation is recommended for certain other travel expenses because the United States has failed to provide sufficient evidence to demonstrate the circumstances and amount of the loss.

292. These adjustments reduce the compensable expenses to USD 19,298.

293. Accordingly, the Panel recommends compensation in the amount of USD 19,298 for this claim. The Panel determines that the date of loss for this claim is 31 January 1992.

### 3. Claim No. 5000290

294. The United States seeks compensation in the amount of USD 16,150 for expenses incurred by the Department of Energy (“DOE”) to retain experts to advise the United States Secretary of Energy on technical issues relating to the means and methods to cap burning oil wells in Kuwait that were damaged or destroyed as a result of Iraq’s invasion and occupation of Kuwait and the effect of the oil fires on current and future oil production. According to the United States, the advice of the experts “facilitated consultation between DOE and responsible Kuwaiti officials on the best means of bringing the fires under control and mitigating their short-term and long-term damage”.

295. In the view of the Panel, the evidence provided by the United States is not sufficient to demonstrate the circumstances of the loss. In particular, the United States failed to respond to a request for information on how the advice of the experts assisted countries in the Persian Gulf region.

The Panel, therefore, finds that the United States has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules.

296. Accordingly, the Panel recommends no compensation for this claim.

4. Claim No. 5000291

297. The United States seeks compensation in the amount of USD 611,701 for expenses incurred by the Environmental Protection Agency in providing technical support to and co-ordinating the efforts of various United States government agencies to monitor and assess the impact of the oil spills and oil fires resulting from Iraq's invasion and occupation of Kuwait. The expenses were for travel of personnel to the Persian Gulf region and for participation in meetings and conferences in the United States and Europe related to the response efforts; payments for hazard duty and overtime; payments for scientific and technical expertise provided under inter-agency agreements; and costs of contracts for support services.

298. In its written response, Iraq contends that the nature of the work alleged to have been undertaken and the travel expenses are inadequately documented.

299. In the view of the Panel, the United States has provided adequate evidence, such as a report to the United States Congress on "United States Gulf Environmental Technical Assistance", which demonstrates the nature of the activities undertaken. The Panel, therefore, finds that these activities constitute reasonable monitoring and assessment of environmental damage and reasonable monitoring of public health risks, and expenses resulting from them qualify for compensation in accordance with paragraph 35(c) and (d) of Governing Council decision 7, except as indicated below.

300. No compensation is recommended for certain travel expenses because the evidence presented is not sufficient to demonstrate the circumstances and amount of the loss. No compensation is recommended for the costs of contracts for support services and the expenses of data analysis and computer modelling that, in the Panel's view, were not directly related to the planning and implementation of monitoring and assessment activities.

301. With respect to certain other travel expenses and certain expenses incurred under interagency agreements, adjustments have been made because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

302. These adjustments reduce the compensable expenses to USD 226,214.

303. Accordingly, the Panel recommends compensation in the amount of USD 226,214 for this claim. The Panel determines that the date of loss for this claim is 15 September 1991.

5. Claim No. 5000292

304. The United States seeks compensation in the amount of USD 133,423 for expenses incurred by the National Oceanic and Atmospheric Administration ("NOAA") to investigate the smoke plume from the oil fires resulting from Iraq's invasion and occupation of Kuwait and to develop models to predict the human and environmental impact of the air pollution. The expenses are for the travel of

personnel from NOAA's Air Resources Laboratory and for communication, equipment and rental costs.

305. In its written response, Iraq argues that some of the activities were carried out for the benefit of the United States military and are, therefore, not compensable.

306. The Panel finds that the predominant purpose of the activities described in the claim was for the benefit of the general population. Accordingly, the Panel finds that the activities constitute reasonable monitoring and assessment of environmental damage and reasonable monitoring of public health. Consequently, the expenses resulting from these activities qualify for compensation in accordance with paragraph 35(c) and (d) of Governing Council decision 7, except as indicated below.

307. No compensation is recommended for the costs of telephone calls made on a card that was reported stolen because these expenses are not a direct result of Iraq's invasion and occupation of Kuwait.

308. Adjustments have been made to other telecommunication expenses, certain travel expenses and rental costs because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses. An adjustment has also been made to the purchase costs of the data-gathering equipment to take account of its residual value; and a further adjustment has been made to the resulting costs because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

309. These adjustments reduce the compensable expenses to USD 99,913.

310. Accordingly, the Panel recommends compensation in the amount of USD 99,913 for this claim. The Panel determines that the date of loss for this claim is 15 October 1991.

#### 6. Claim No. 5000293

311. The United States seeks compensation in the amount of USD 697,937 for expenses incurred by NOAA to provide technical, policy and logistics support for the international response to the oil spills and oil fires resulting from Iraq's invasion and occupation of Kuwait. The expenses are for travel, contracts for data management and chemical analysis, and the purchase and rental of equipment and supplies.

312. In its written response, Iraq argues that the documents presented do not establish a link between the activities carried out by NOAA and the pollution in the Persian Gulf.

313. In the view of the Panel, there is adequate evidence to demonstrate that the activities described in the claim were part of the response to the pollution in the Persian Gulf resulting from Iraq's invasion and occupation of Kuwait. The Panel, therefore, finds that the activities constitute reasonable monitoring and assessment, and expenses resulting from them qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7, except as indicated below.

314. No compensation is recommended for certain travel expenses, certain contract costs and certain rental expenses which, in the view of the Panel, were not directly related to the planning and

implementation of monitoring and assessment activities. No compensation is recommended for certain other travel expenses because the United States claimed these expenses in claim No. 5000292. No compensation is recommended for certain other travel expenses because the evidence presented is not sufficient to demonstrate the circumstances and amount of the loss.

315. In respect of certain travel expenses, contractual costs, and certain purchase or rental costs for equipment and supplies, adjustments have been made because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses. An adjustment has also been made to the costs of certain equipment to take account of its residual value.

316. These adjustments reduce the compensable expenses to USD 551,957.

317. Accordingly, the Panel recommends compensation in the amount of USD 551,957 for this claim. The Panel determines that the date of loss for this claim is 15 January 1992.

#### 7. Claim No. 5000294

318. The United States seeks compensation in the amount of USD 2,049,385 for expenses incurred by NOAA to provide a research ship, the "Mt. Mitchell", for a four-month expedition to track the oil spills resulting from Iraq's invasion and occupation of Kuwait and to assess their impact on the marine environment. According to the United States, these activities were undertaken as part of the international programme developed by the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization. The data collected were made available to the Governments of Saudi Arabia, Kuwait and other Persian Gulf countries to assist them in assessing the extent of the environmental damage and the efforts needed to respond to the damage.

319. The expenses claimed are for contract services; supplies, materials and equipment; food; travel of officers posted to or from the "Mt. Mitchell"; and salaries, benefits, overtime and hazard duty pay.

320. In its written response, Iraq argues that the expedition was purely academic in nature, and that the "motive behind [NOAA's] participation [in the project] was not a response to an urgent call by a certain government in the Gulf to take measures for remediating ... pollution ... but rather for the scientific credit".

321. The Panel finds that the evidence presented demonstrates that the activities described in the claim were undertaken as part of the response to the oil spills that resulted from Iraq's invasion and occupation of Kuwait. In addition, the activities were undertaken in response to the special appeals referred to in paragraph 34 above.

322. The Panel, therefore, finds that these activities constitute reasonable monitoring and assessment, and expenses resulting from them qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7, except as indicated below.

323. No compensation is recommended for claimed travel expenses, certain costs of contractual services, supplies, materials and equipment, and certain salaries, overtime and other benefits of regular NOAA employees which, in the opinion of the Panel, are not directly related to environmental damage resulting from Iraq's invasion and occupation of Kuwait. These expenses include costs of the

seventh leg of the expedition, which were incurred after the field research activities had already been completed.

324. An adjustment has been made to other costs of contractual services, supplies, materials and equipment to take account of normal maintenance costs and the long-term benefits that NOAA will realize. A further adjustment has been made to the remaining expenses because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

325. These adjustments reduce the compensable expenses to USD 451,456.

326. Accordingly, the Panel recommends compensation in the amount of USD 451,456 for this claim. The Panel determines that the date of loss for this claim is 31 January 1992.

8. Claim No. 5000295

327. The United States seeks compensation in the amount of USD 1,122,806 for two grants provided by the National Science Foundation to the University of Washington to fund a research team to collect and analyze air quality data to determine the effects of the oil fires resulting from Iraq's invasion and occupation of Kuwait. The research team collected and analyzed data on the dispersion, chemical composition, radiative properties and emission rates of smoke particles contained in the plume created by the oil fires.

328. According to the United States, these activities were undertaken in response to requests from the United Nations and the World Meteorological Organization. The research provided valuable data for use by response planners in understanding the extent of the environmental damage and in developing strategies for its abatement.

329. In the view of the Panel, the evidence presented demonstrates that the activities described in the claim were undertaken in response to the oil fires and requests from international organizations that resulted from Iraq's invasion and occupation of Kuwait. The Panel, therefore, finds that these activities constitute reasonable monitoring and assessment, and expenses resulting from these activities qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

330. The Panel finds that sufficient evidence has been provided to demonstrate the circumstances and amount of the loss and that the amounts claimed are all reasonable.

331. Accordingly, the Panel recommends compensation in the amount of USD 1,122,806 for this claim. The Panel determines that the date of loss for this claim is 31 August 1993.

9. Claim No. 5000296

332. The United States seeks compensation in the amount of USD 2,805,257 for expenses incurred by the Army Center for Health Promotion and Preventive Medicine to monitor and assess health risks to United States military personnel who may have been exposed to hazardous substances as a result of Iraq's invasion and occupation of Kuwait. According to the United States, the study was carried out

as part of “its congressionally mandated responsibility of determining the exposure of U.S. Forces to the emissions from burning oil wells”.

333. In its written response, Iraq argues that the activities were implemented solely for the benefit of United States military personnel.

334. As stated in paragraph 29 above, expenses resulting from activities of military entities can qualify for compensation if there is sufficient evidence to demonstrate that the predominant purpose of the activities was to respond to environmental damage or threat of damage to the environment or to public health in the interest of the general population. The Panel finds that the evidence presented does not show that the activities described in this claim satisfy this requirement.

335. The Panel finds that the expenses claimed were incurred in connection with military operations and are, therefore, barred from compensation by Governing Council decision 19. Consequently, it recommends no compensation for this claim.

10. Claim No. 5000297

336. The United States seeks compensation in the amount of USD 1,649,742 for expenses incurred by the United States Coast Guard to provide aircraft to track the oil spills resulting from Iraq’s invasion and occupation of Kuwait and to assess impacts on the marine environment. According to the United States, these activities were undertaken in response to a request by Saudi Arabia, through IMO, for assistance with the oil spills. The expenses are for the costs of aircraft fuel and maintenance; supplies, equipment and apartment rental; and travel, accommodation and subsistence.

337. The Panel finds that the activities described in this claim constitute reasonable monitoring and assessment, and expenses resulting from them qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7, except as indicated below.

338. No compensation is recommended for certain expenses for accommodation, subsistence and travel because the evidence presented is not sufficient to demonstrate the circumstances and amount of the loss. No compensation is recommended for certain other travel expenses because they were incurred in connection with military operations and are, therefore, barred from compensation by Governing Council decision 19. Finally, no compensation is recommended for travel expenses in connection with “public relations” activities because, in the view of the Panel, these expenses are not directly related to monitoring and assessment of environmental damage.

339. An adjustment has been made to certain aircraft expenses to take account of maintenance costs that would have been incurred in any event. An adjustment has also been made to the expenses for clothing and equipment to take account of their residual value. A further adjustment has been made to apartment rental expenses because the evidence presented does not enable the Panel to substantiate the full amount of the claimed losses or expenses.

340. These adjustments reduce the compensable expenses to USD 1,414,191.

341. Accordingly, the Panel recommends compensation in the amount of USD 1,414,191 for this claim. The Panel determines that the date of loss for this claim is 31 March 1991.

## VII. RELATED ISSUES

### A. Currency exchange rate

342. The Commission issues awards in United States dollars. However, some losses were claimed in other currencies, and some in United States dollars after conversion from other currencies. The Panel, in keeping with the practice of other panels of Commissioners, has used the currency exchange rate reported in the United Nations Monthly Bulletin of Statistics for the date of loss as stated with respect to each claim, except as indicated below. For losses which occurred over time, the Panel uses a rate which is the mean of the monthly rates for the months in which claimed losses occurred.

343. Some of the Claimants converted claimed expenditures to United States dollars at specified rates. The Panel compared rates used by these Claimants to rates reported in the United Nations Monthly Bulletin of Statistics and made appropriate adjustments.

344. When rates in the United Nations Monthly Bulletin of Statistics do not reflect the actual market value of Iranian rials, market rates from other sources are applied. For the period from April 1991 to March 1993 (inclusive), averages of two rates defined by the International Monetary Fund are appropriate. For the period from August 1990 to March 1991 (inclusive), relevant International Monetary Fund rates are unavailable, and an average rate of 1,350 Iranian rials to 1 United States dollar is appropriate.

### B. Interest

345. Governing Council decision 16 provides that “[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award”.<sup>28</sup> It also provides that the Governing Council will consider the methods of calculation and payment of interest at the appropriate time, and that interest will be paid after the principal amount of awards. Accordingly, the Panel must determine the date from which interest will run, where relevant.

346. In general, the Panel has selected the approximate mid-point of the period during which compensable expenses occurred as the date of loss for each claim.

VIII. SUMMARY OF RECOMMENDATIONS

347. Based on the foregoing, the Panel recommends that the amounts set out in Table 2 below be awarded in respect of the claims included in the second "F4" instalment.

Table 2. Summary of recommended awards for second "F4" instalment

<u>Country</u>	<u>Total number of claims</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>
<u>Regional Claimants</u>			
Iran	4	64,315,474	67,587
Kuwait	1	715,344,545	694,375,281
Saudi Arabia	6	49,798,279	8,291,221
<u>Non-Regional Claimants</u>			
Australia	2	20,099	7,777
Canada	2	1,252,329	529,923
Germany	4	28,717,109	2,038,256
Netherlands	1	1,974,055	0
United Kingdom	1	2,219,315	1,891,857
United States	9	9,119,329	3,885,835
<u>Total</u>	30	872,760,534	711,087,737

Geneva, 22 May 2002

(Signed) Thomas A. Mensah  
Chairman

(Signed) José R. Allen  
Commissioner

(Signed) Peter H. Sand  
Commissioner

Notes

<sup>1</sup> S/AC.26/1991/7/Rev.1.

<sup>2</sup> “Report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991)” (S/22559) (2 May 1991), para. 20.

<sup>3</sup> See, for example, the report of the first meeting of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, “Working Group on Oceanographic Co-operation in the ROPME Sea Area” (IOC/WGOOCR-I/3 rev.) (12-14 June 1991); and “Report to the Secretary-General by a United Nations mission assessing the scope and nature of damage inflicted on Kuwait’s infrastructure during the Iraqi occupation of the country” (S/22535) (29 April 1991) (the “Farah report”), paras. 155-166.

<sup>4</sup> See, for example, the Farah report, paras. 136-150.

<sup>5</sup> See, for example, the Farah report, paras. 186-203, 538.

<sup>6</sup> S/AC.26/Dec.19(1994).

<sup>7</sup> In considering whether expenses resulting from activities are excluded from compensation by virtue of decision 19, other panels have focused on the nature and purpose of the activities involved rather than the persons or entities undertaking the activities. For example, certain expenses resulting from activities of military entities have been held eligible for compensation where the purpose was to benefit the civilian population in general (see “Report and recommendations made by the Panel of Commissioners concerning the second instalment of ‘F2’ claims”, S/AC.26/2000/26 (the “second ‘F2’ report”), para. 41). On the other hand, certain costs incurred by civilian entities to provide support for military operations have been held to be ineligible for compensation (see “Report and recommendations made by the Panel of Commissioners concerning the second instalment of ‘E2’ claims”, S/AC.26/1999/6, para. 107). See also “Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of ‘F1’ claims”, S/AC.26/2000/15 (the “fifth ‘F1’ report”), paras. 23-25.

<sup>8</sup> See, for example, “Report and recommendations made by the Panel of Commissioners appointed to review the Well Blowout Control Claim (the ‘WBC Claim’)” (S/AC.26/1996/5/Annex) (the “WBC report”), para. 162; “Report and recommendations made by the Panel of Commissioners concerning the second instalment of ‘F1’ claims” (S/AC.26/1998/12), para. 115; “Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of ‘E3’ claims” (S/AC.26/1999/2), para. 205; “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘F2’ claims” (S/AC.26/1999/23) (the “first ‘F2’ report”), para. 101; and “Report and recommendations made by the panel of Commissioners concerning part one of the third instalment of ‘F3’ claims” (S/AC.26/2002/8), paras. 11, 244.

<sup>9</sup> See, for example, “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘E3’ claims” (S/AC.26/1998/13), paras. 274-281; the first “F2” report, paras. 100-105, 255, and 257; the second “F2” report, paras. 51-53, 58; “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘C’ claims” (S/AC.26/1994/3), p. 190; and “Report and recommendations made by the Panel of Commissioners concerning the third instalment of ‘E2’ claims” (S/AC.26/1999/22), para. 100.

<sup>10</sup> S/AC.26/2001/16.

<sup>11</sup> The first “F4” report, paragraphs 53-54.

<sup>12</sup> See, for example, the fifth “F1” report, para. 18; and the first “F2” report, para. 22.

<sup>13</sup> See General Assembly resolutions 46/216 (20 December 1991) and 47/151 (18 December 1992) (both entitled, “General Assembly resolution concerning international cooperation to mitigate the environmental consequences on Kuwait and other countries in the region resulting from the situation between Iraq and Kuwait”). See also the report of the United Nations Environment Programme entitled “Introductory report of the Executive Director: environmental consequences of the armed conflict between Iraq and Kuwait” (UNEP/GC.16/4/Add.1); Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization Assembly resolution XXI-14 (1991) entitled “Oceanographic Co-operation within the ROPME sea area”; decision 16/11/A of the Governing Council of the United Nations Environment Programme at its sixteenth session entitled “The environmental consequences of the armed conflict in the Gulf area” (31 May 1991); and International Maritime Organization Circular letter No. 1492, 5 March 1991. A number of international agreements and declarations recognize the obligation to provide assistance to respond to environmental emergencies. For example, principle 18 of the “Declaration of the United Nations Conference on Environment and Development (Rio de Janeiro), 1992” (A/CONF.151/26 (Vol. I)), provides that “States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted”. See also article 194 of the United Nations Convention on the Law of the Sea (1982), 10 December 1982.

<sup>14</sup> See, respectively, paragraphs 58 and 79 of this report.

<sup>15</sup> The first “F4” report, paragraphs 61 and 63.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> The Farah report, paras. 186-188. See also “Recommendations made by the Panel of Commissioners concerning individual claims for serious personal injury or death (category ‘B’ claims)” (S/AC.26/1994/1), p. 13; and “Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above US\$100,000 (category ‘D’ claims)” (S/AC.26/1998/1), para. 22.

<sup>19</sup> See the WBC report, paras. 85-86.

<sup>20</sup> Ibid.

<sup>21</sup> The first “F4” report, paragraph 456.

<sup>22</sup> “Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of ‘E1’ claims” (S/AC.26/2000/16), paras. 267-268, 406 and 408.

<sup>23</sup> The Panel notes that a claim in the “E1” subcategory currently under review by the “E1” Panel of Commissioners contains an element relating to the oil spill response in the Jubail area. Review of the relevant documents does not reveal duplication between the “E1” claim element and the recommended awards in this report.

<sup>24</sup> Paragraph 39 of Governing Council decision 7 provides that “[a]ny compensation, whether in funds or in kind, already received from any source will be deducted from the total amount of losses suffered”.

<sup>25</sup> Bundestags-Drucksache (Federal Parliamentary Records) No. 12/478 (1991, Reply by the Federal Government to a Parliamentary Question); summarized in T. Marauhn, “International Law Practice of the Federal Republic of Germany during the Year 1991”, Heidelberg Journal of International Law, vol. 53 (1993), p. 1080.

<sup>26</sup> Statement by German Government spokesman D. Vogel, 6 March 1991; Journal of Commerce (7 March 1991), Maritime Section, p. 8B.

<sup>27</sup> See note 7 above.

<sup>28</sup> S/AC.26/1992/16, para. 1.

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