



Security Council

Distr.
GENERAL

S/AC.26/2003/3
13 March 2003

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS
CONCERNING THE TWENTY-SIXTH INSTALMENT OF "E3" CLAIMS

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Introduction	1	8
I. PROCEDURAL HISTORY	2 - 9	8
A. The nature and purpose of the proceedings	2 - 3	8
B. The procedural history of the claims in the twenty-sixth instalment.....	4 - 7	8
C. Amending claims after filing	8	9
D. The claims	9	9
II. LEGAL FRAMEWORK.....	10 - 32	10
A. Applicable law	10	10
B. Liability of Iraq.....	11	10
C. The “arising prior to” clause.....	12 - 13	10
D. Application of the “direct loss” requirement.....	14 - 15	11
E. Loss of profits	16 - 17	12
F. Date of loss	18	12
G. Interest.....	19 - 20	12
H. Currency exchange rate.....	21 - 23	13
I. Evacuation losses.....	24	13
J. Valuation	25 - 27	13
K. Formal requirements.....	28	13
L. Evidentiary requirements.....	29 - 32	14
III. CY.E.M.S. CO. LTD.....	33 - 65	14
A. Contract losses.....	37 - 48	15
1. Facts and contentions	37 - 41	15
2. Analysis and valuation	42 - 47	15
3. Recommendation.....	48	16
B. Loss of profits	49 - 53	16
1. Facts and contentions	49	16
2. Analysis and valuation	50 - 52	16
3. Recommendation.....	53	16
C. Loss of tangible property.....	54 - 58	17
1. Facts and contentions	54 - 55	17
2. Analysis and valuation	56 - 57	17
3. Recommendation.....	58	17
D. Financial losses.....	59 - 64	17
1. Facts and contentions	59 - 61	17
2. Analysis and valuation	62 - 63	17
3. Recommendation.....	64	17
E. Recommendation for CYEMS.....	65	18

IV. ENERGOPROJEKT ARCHITECTURE AND TOWN PLANNING COMPANY		
LTD.....	66 - 102	18
A. Contract losses.....	69 - 94	18
1. Facts and contentions	69 - 82	18
2. Analysis and valuation	83 - 93	20
3. Recommendation.....	94	22
B. Loss of tangible property.....	95 - 99	22
1. Facts and contentions	95	22
2. Analysis and valuation	96 - 98	22
3. Recommendation.....	99	22
C. Interest.....	100 - 101	22
D. Recommendation for Energoprojekt	102	23
V. AART INTERNATIONAL S. FARAH ET ASSOCIÉS.....	103 - 124	23
A. Loss of profits.....	107 - 123	24
1. Facts and contentions	107 - 116	24
2. Analysis and valuation	117 - 122	25
3. Recommendation.....	123	26
B. Recommendation for AART.....	124	26
VI. ANICE CONSTRUCTION SERVICES PVT. LTD.	125 - 163	26
A. Contract losses.....	131 - 151	27
1. Facts and contentions	131 - 141	27
2. Analysis and valuation	142 - 150	29
3. Recommendation.....	151	30
B. Loss of tangible property.....	152 - 155	30
1. Facts and contentions	152	30
2. Analysis and valuation	153 - 154	30
3. Recommendation.....	155	30
C. Other losses.....	156 - 161	30
1. Facts and contentions	156 - 158	30
2. Analysis and valuation	159 - 160	31
3. Recommendation.....	161	31
D. Interest.....	162	31
E. Recommendation for Anice.....	163	31
VII. GROVER TECHNICAL SERVICES PVT. LIMITED.....	164 - 197	32
A. Contract losses.....	166 - 189	32
1. Facts and contentions	166 - 176	32
2. Analysis and valuation	177 - 188	33
3. Recommendation.....	189	34
B. Loss of tangible property.....	190 - 194	34
1. Facts and contentions	190 - 191	34

2. Analysis and valuation	192 - 193	34
3. Recommendation	194	34
C. Interest.....	195 - 196	35
D. Recommendation for Grover.....	197	35
VIII. SUMITOMO HEAVY INDUSTRIES, LTD.....	198 - 221	35
A. Loss of tangible property	203 - 208	36
1. Facts and contentions	203 - 205	36
2. Analysis and valuation	206 - 207	36
3. Recommendation	208	37
B. Payment or relief to others	209 - 214	37
1. Facts and contentions	209 - 211	37
2. Analysis and valuation	212 - 213	37
3. Recommendation	214	37
C. Other losses.....	215 - 220	37
1. Facts and contentions	215 - 217	37
2. Analysis and valuation	218 - 219	38
3. Recommendation	220	38
D. Recommendation for Sumitomo	221	38
IX. TOA CORPORATION	222- 247	38
A. Loss of tangible property	225 - 229	39
1. Facts and contentions	225 - 226	39
2. Analysis and valuation	227 - 228	39
3. Recommendation	229	39
B. Payment or relief to others	230 - 240	40
1. Facts and contentions	230 - 232	40
2. Analysis and valuation	233 - 239	40
3. Recommendation	240	41
C. Other losses.....	241 - 246	41
1. Facts and contentions	241 - 243	41
2. Analysis and valuation	244 - 245	41
3. Recommendation	246	42
D. Recommendation for Toa	247	42
X. TOYO ENGINEERING CORPORATION.....	248 - 263	42
A. Contract losses.....	251 - 258	42
1. Facts and contentions	251 - 253	42
2. Analysis and valuation	254 - 257	43
3. Recommendation	258	43
B. Other losses.....	259 - 262	43
1. Facts and contentions	259	43
2. Analysis and valuation	260 - 261	43
3. Recommendation	262	43

C. Recommendation for Toyo	263	44
XI. BRITISH METRO CONSULTANTS GROUP	264 – 280	44
A. Contract losses	267 - 278	44
1. Facts and contentions	267 - 272	44
2. Analysis and valuation	273 - 277	45
3. Recommendation	278	46
B. Interest	279	46
C. Recommendation for Metro Consultants	280	46
XII. FRANKLIN HODGE INDUSTRIES LTD.	281 - 297	46
A. Payment or relief to others	286 - 292	47
1. Facts and contentions	286 - 288	47
2. Analysis and valuation	289 - 291	47
3. Recommendation	292	47
B. Other losses	293 - 296	48
1. Facts and contentions	293	48
2. Analysis and valuation	294 - 295	48
3. Recommendation	296	48
C. Recommendation for Franklin Hodge	297	48
XIII. HYDER CONSULTING LIMITED (FORMERLY ACER CONSULTANTS LIMITED)	298 - 351	48
A. Contract losses	306 - 314	50
1. Facts and contentions	306 - 308	50
2. Analysis and valuation	309 - 313	50
3. Recommendation	314	51
B. Loss of profits	315 - 320	51
1. Facts and contentions	315 - 316	51
2. Analysis and valuation	317 - 319	51
3. Recommendation	320	51
C. Loss of tangible property	321 - 327	52
1. Facts and contentions	321 - 323	52
2. Analysis and valuation	324 - 326	52
3. Recommendation	327	52
D. Payment or relief to other	328 - 333	52
1. Facts and contentions	328 - 330	52
2. Analysis and valuation	331 - 332	53
3. Recommendation	333	53
E. Financial losses	334 - 338	53
1. Facts and contentions	334 - 335	53
2. Analysis and valuation	336 - 337	53
3. Recommendation	338	53
F. Other losses	339 - 350	53

1. Facts and contentions/analysis and valuation	339 - 349	53
2. Recommendation	350	55
G. Recommendation for Hyder	351	55
XIV. MONTGOMERY WATSON LTD.....	352 - 380	55
A. Other losses	358 - 379	56
1. Facts and contentions	358 - 360	56
2. Analysis and valuation	361 - 378	57
3. Recommendation	379	59
B. Recommendation for Montgomery	380	59
XV. RECOMMENDATIONS.....	381	59

List of tables

	<u>Page</u>
1. CYEM's claim	15
2. Recommended compensation for CYEM's	18
3. Energoprojekt's claim	18
4. Recommended compensation for Energoprojekt.....	23
5. AART's claim	23
6. Recommended compensation for AART.....	26
7. Anice's claim.....	27
8. Anice's claim for contract losses (unpaid amounts for work performed).....	28
9. Recommended compensation for Anice.....	31
10. Grover's claim	32
11. Recommended compensation for Grover	35
12. Sumitomo's claim	36
13. Recommended compensation for Sumitomo	38
14. Toa's claim.....	39
15. Recommended compensation for Toa	42
16. Toyo's claim.....	42
17. Recommended compensation for Toyo.....	44
18. Metro Consultant's claim.....	44
19. Recommended compensation for Metro Consultants.....	46
20. Franklin Hodge's claim	47
21. Recommended compensation for Franklin Hodge.....	48
22. Hyder's claim	50
23. Recommended compensation for Hyder.....	55
24. Montgomery's claim	56
25. Recommended compensation for Montgomery.....	59

Introduction

1. The Governing Council of the United Nations Compensation Commission (the “Commission”) appointed the present Panel of Commissioners (the “Panel”), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the “Rules”) and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning the 12 claims that comprise the twenty-sixth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq’s 2 August 1990 invasion and subsequent occupation of Kuwait. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the “E3 Claims”) on the basis of criteria established under the Rules.

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

2. The status and functions of the Commission are set forth in the “Report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991)” dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

3. The Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Second, the Panel verifies whether the alleged losses are in principle compensable and had in fact directly resulted from Iraq’s invasion and occupation of Kuwait. Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

B. The procedural history of the claims in the twenty-sixth instalment

4. On 23 April 2002, the Panel issued a procedural order relating to the claims. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to classify them as “unusually large or complex” within the meaning of article 38(d) of the Rules. The Panel was thus required in accordance with article 38(c) of the Rules to complete its review of the claims within 180 days of the date of its procedural order of 23 April 2002.

5. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by the claimants in reply to requests for information and documents. It also considered the responses of Governments, including the Government of Iraq (“Iraq”), to the reports of the Executive Secretary issued in accordance with article 16 of the Rules.

6. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim with the assistance of the

Verification and Valuation Support Branch of the secretariat (the "VVSB"). The Panel then directed the VVSB to prepare comprehensive valuation reports on each of the claims.

7. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

C. Amending claims after filing

8. The Panel notes that the period for filing category "E" claims expired on 1 January 1996. The Governing Council permitted claimants up to and including 11 May 1998 to file unsolicited supplements to claims already filed (S/AC.26/SER.A/1, page 185). A number of the claimants included in the twenty-sixth instalment had submitted supplements to their claimed amount up to 11 May 1998. In this report, the Panel has taken into consideration such supplements submitted up to 11 May 1998. The Panel has only considered those losses contained in the original claim, as supplemented by the claimants, up to 11 May 1998, except where such losses have been withdrawn or reduced by the claimants. Where the claimants reduced the amount of their losses the Panel has considered the reduced amount. This, however, does not preclude the Panel from making corrections relating to arithmetical and typographical errors.

D. The claims

9. This report contains the Panel's findings for losses allegedly caused by Iraq's invasion and occupation of Kuwait with respect to the following 12 claims:

(a) CY.E.M.S. Co. Ltd., a corporation organised according to the laws of Cyprus, which seeks compensation in the amount of 2,356,765 United States dollars (USD);

(b) Energoprojekt Architecture and Town Planning Company Ltd., a corporation organised according to the laws of the Federal Republic of Yugoslavia, which seeks compensation in the amount of USD 1,032,472;

(c) AART International S. Farah et Associés, a corporation organised according to the laws of France, which seeks compensation in the amount of USD 506,944;

(d) Anice Construction Services Pvt. Ltd., a corporation organised according to the laws of India, which seeks compensation in the amount of USD 1,866,725;

(e) Grover Technical Services Pvt. Limited, a corporation organised according to the laws of India, which seeks compensation in the amount of USD 421,396;

(f) Sumitomo Heavy Industries, Ltd., a corporation organised according to the laws of Japan, which seeks compensation in the amount of USD 837,429;

(g) Toa Corporation, a corporation organised according to the laws of Japan, which seeks compensation in the amount of USD 2,245,496;

(h) Toyo Engineering Corporation, a corporation organised according to the laws of Japan, which seeks compensation in the amount of USD 5,425,575;

(i) British Metro Consultants Group, a consortium formed by 10 corporations organised according to the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the amount of USD 394,361;

(j) Franklin Hodge Industries Ltd., a corporation organised according to the laws of the United Kingdom, which seeks compensation in the amount of USD 34,836;

(k) Hyder Consulting Limited (formerly Acer Consultants Limited), a corporation organised according to the laws of the United Kingdom, which seeks compensation in the amount of USD 1,357,897; and

(l) Montgomery Watson Ltd., a corporation organised according to the laws of the United Kingdom, which seeks compensation in the amount of USD 190,000.

II. LEGAL FRAMEWORK

A. Applicable law

10. As set forth in paragraphs 16-18 and 23 of the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘E3’ claims” (S/AC.26/1998/13) (the “First ‘E3’ Report”), paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied to the claims under review Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. Liability of Iraq

11. As set forth in paragraph 16 of the “Report and recommendations made by the Panel of Commissioners concerning the third instalment of ‘E3’ claims” (S/AC.26/1999/1) (the “Third ‘E3’ Report”), “Iraq” as used in Governing Council decision 9 (S/AC.26/1992/9) means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq’s invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade.

C. The “arising prior to” clause

12. In paragraphs 79-81 of the First “E3” Report, the Panel adopted the following interpretation of the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) The phrase “without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms” was intended to have an exclusionary effect on the Commission’s jurisdiction, i.e. that such debts and obligations could not be brought before the Commission;

(b) The period described by “arising prior to 2 August 1990” should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq’s existing bad debts from the Commission’s jurisdiction;

(c) The terms “debts” and “obligations” should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) The use of a three-month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

13. The Panel finds that a claim relating to a “debt or obligation arising prior to 2 August 1990” means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

D. Application of the “direct loss” requirement

14. Governing Council decision 7 (S/AC.26/1991/7/Rev.1), decision 9 and decision 15 (S/AC.26/1992/15) each provide specific instructions to the Panel regarding the interpretation of the “direct loss” requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a “direct loss” - was present.

15. The Panel made the following findings regarding the meaning of “direct loss”:

(a) With respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the breakdown in civil order in those countries, which resulted from Iraq’s invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant’s physical assets;

(b) With respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defence to its obligations under the contract;

(c) With respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq’s invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) Costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq or Kuwait; and

(e) The loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorise the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

E. Loss of profits

16. In order to substantiate a claim for loss of profits, a claimant must prove that it had an existing contractual relationship at the time of the invasion. Second, a claimant must prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. Finally, profits should be measured over the life of the contract. A claimant must demonstrate that the contract would have been profitable as a whole. Thus, a claimant must demonstrate that it would have been profitable to complete the contract, not just that the contract was profitable at a single moment in time.

17. Calculations of a loss of profits claim should take into account the inherent risks of the particular project and the ability of a claimant to realise a profit in the past. The speculative nature of some projects requires the Panel to view the evidence submitted with a critical eye. In order to establish with "reasonable certainty" a loss of profits claim, the Panel requires that a claimant submit not only the contracts and invoices related to the various projects, but also detailed financial statements, including audited statements where available, management reports, budgets, accounts, time schedules, progress reports, and a breakdown of revenues and costs, actual and projected, for the project.

F. Date of loss

18. The Panel must determine the date the loss occurred for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars. Where applicable, the Panel has determined the date of loss for each claim.

G. Interest

19. According to Governing Council decision 16 (S/AC.26/1992/16), "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing a decision on the methods of calculation and payment of interest.

20. The Panel finds that interest shall run from the date of loss, which, unless otherwise specified, is determined as 2 August 1990.

H. Currency exchange rate

21. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore, the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

22. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

23. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, as of 2 August 1990.

I. Evacuation losses

24. In accordance with paragraph 21(b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

J. Valuation

25. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The Panel's valuation analysis ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

26. After receipt of all claim information and evidence, the Panel applied the verification program to each loss element. This analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a recommendation of no compensation for each loss element.

27. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

K. Formal requirements

28. Claims submitted to the Commission must meet certain formal requirements established by the Governing Council. Article 14 of the Rules sets forth the formal requirements for claims submitted by corporations and other legal entities. If it is determined that a claim does not meet the formal requirements as set forth in article 14 of the Rules, the claimant is sent a notification under article 15 of the Rules (the "article 15 notification") requesting the claimant to remedy the deficiencies.

L. Evidentiary requirements

29. Pursuant to article 35(3) of the Rules, corporate claims must be supported by evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there “will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury” in order to recommend compensation.

30. The category “E” claim form (the “‘E’ claim form”) requires all corporations and other legal entities that have filed claims to submit with their claim form “a separate statement explaining its claim (‘Statement of Claim’), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss”.

31. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant requesting specific information and documentation regarding the loss (the “article 34 notification”). In reviewing the subsequent submissions, the Panel noted that in many cases the claimant still did not provide sufficient evidence to support its alleged losses.

32. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. This requires the application of relevant principles of the Commission’s rules on evidence and an assessment of the loss elements according to these principles. The recommendations of the Panel are set forth below.

III. CY.E.M.S. CO. LTD.

33. CY.E.M.S. Co. Ltd. (“CYEMS”) is a corporation organised according to the laws of Cyprus, which provides electrical and mechanical services. CYEMS seeks compensation in the amount of USD 2,356,765 for contract losses, loss of profits, loss of tangible property, and financial losses. In the original “E” claim form, CYEMS claimed some of its alleged losses in Iraqi dinars (IQD) and some in United States dollars. It claimed losses in the amount of IQD 564,538 and USD 500,000, for a total amount claimed of USD 2,356,765.

34. CYEMS did not reply to the article 15 notification or the article 34 notification.

35. The Panel has reclassified elements of CYEMS’s claim for the purposes of this report. In the original “E” claim form, CYEMS sought compensation in the amount of IQD 392,418 for losses related to business transaction or course of dealing. The Panel has determined that this claimed loss is more appropriately reclassified as separate claims for contract losses, loss of tangible property, and financial losses.

36. The Panel therefore considered the amount of USD 2,356,765 for contract losses, loss of profits, loss of tangible property, and financial losses as follows:

Table 1. CYEMS's claim

<u>Claim element</u>	<u>Claim amount (USD)</u>
Contract losses	1,712,832
Loss of profits	500,000
Loss of tangible property	18,718
Financial losses	125,215
<u>Total</u>	<u>2,356,765</u>

A. Contract losses

1. Facts and contentions

37. CYEMS seeks compensation in the amount of IQD 520,776 (USD 1,712,832) for contract losses allegedly incurred in connection with a contract in Iraq.

38. In the original "E" claim form, CYEMS sought the amount of IQD 172,120 (USD 566,102) for contract losses. CYEMS also sought the amount of IQD 392,418 (USD 1,290,663) for losses related to business transaction or course of dealing. Of this amount, the Panel reclassified the amount of IQD 348,656 (USD 1,146,730) as contract losses. Thus, the reclassified claim for contract losses totals IQD 520,776 (USD 1,712,832).

39. CYEMS states that it entered into a contract with a company called Al Rasheed Contracting Co. concerning work on 50 schools in Baghdad. CYEMS did not provide a copy of the contract or any invoices.

40. CYEMS submitted a one-page document entitled "Appendix B, 50 Schools Contract Annex", signed on 10 March 1990, which refers to the contract concerning the 50 schools (but which was not provided). It also submitted a one-page Bill of Quantities concerning prices and quantities for various material.

41. CYEMS did not provide any documents containing necessary information such as the terms of the contract or the dates of performance.

2. Analysis and valuation

42. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

43. Because of the lack of information and evidence, it is unclear whether CYEMS' contract was with Iraq.

44. Because of the lack of information and evidence, the Panel finds that CYEMS also did not establish that the alleged contract losses relate to work that was performed subsequent to 2 May 1990.

45. For contracts that were not with Iraq, the Panel has found that a claimant must provide specific proof that the failure of a non-Iraqi debtor to pay was a direct result of Iraq's invasion and occupation of Kuwait. A claimant must demonstrate, for example, that such a business debtor was rendered unable to pay due to insolvency or bankruptcy caused by the destruction of its business during Iraq's invasion and occupation of Kuwait, or was otherwise entitled to refuse to pay the claimant.

46. If CYEMS's contract was with a non-Iraqi entity, CYEMS did not provide information or evidence to show that its loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

47. The Panel recommends no compensation for the alleged loss as CYEMS did not provide sufficient evidence to support its claim.

3. Recommendation

48. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

49. CYEMS seeks compensation in the amount of USD 500,000 for loss of profits. It did not identify the contract or contracts that allegedly support this claim.

2. Analysis and valuation

50. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17, supra.

51. CYEMS did not provide any contracts. The only evidence provided by CYEMS consists of a one-page balance sheet dated 31 August 1990, a one-page document entitled "Appendix B, 50 Schools Contract Annex", signed on 10 March 1990, and a one-page Bill of Quantities concerning prices and quantities for various material. CYEMS did not provide, for example, invoices, detailed financial statements, management reports, budgets, accounts, time schedules, progress reports, or a breakdown of revenues and costs for the projects.

52. The Panel finds that CYEMS failed to provide evidence to substantiate its claim or to establish with reasonable certainty ongoing and expected profitability.

3. Recommendation

53. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

1. Facts and contentions

54. CYEMS seeks compensation in the amount of IQD 5,691 (USD 18,718) for loss of tangible property. The basis of this claim is uncertain because CYEMS did not identify the property that was allegedly lost.

55. CYEMS originally classified the claim for loss of its tangible property as part of its claim for losses related to business transaction or course of dealing, but the Panel finds that it is more appropriately classified as a claim for loss of tangible property.

2. Analysis and valuation

56. CYEMS did not provide evidence regarding ownership, loss, or the cause of loss.

57. The Panel finds that CYEMS did not provide sufficient evidence to demonstrate its title to or right to use the assets, or the value and the presence of the tangible property located in Iraq.

3. Recommendation

58. The Panel recommends no compensation for loss of tangible property.

D. Financial losses

1. Facts and contentions

59. CYEMS seeks compensation in the amount of IQD 38,071 (USD 125,215) for financial losses.

60. CYEMS originally classified the claim for financial losses as part of its claim for losses related to business transaction or course of dealing, but the Panel finds that it is more appropriately classified as a claim for financial losses.

61. The basis of this claim is uncertain because of the lack of information, but it appears to be for loss of cash in the form of Iraqi dinars.

2. Analysis and valuation

62. CYEMS did not provide evidence of ownership, loss, or cause of loss of the Iraqi dinars.

63. The Panel finds that CYEMS did not provide sufficient evidence to support its claim.

3. Recommendation

64. The Panel recommends no compensation for financial losses.

E. Recommendation for CYEMS

Table 2. Recommended compensation for CYEMS

<u>Claim element</u>	<u>Claim amount (USD)</u>	<u>Recommended compensation (USD)</u>
Contract losses	1,712,832	nil
Loss of profits	500,000	nil
Loss of tangible property	18,718	nil
Financial losses	125,215	nil
<u>Total</u>	<u>2,356,765</u>	<u>nil</u>

65. Based on its findings regarding CYEMS's claim, the Panel recommends no compensation.

IV. ENERGOPROJEKT ARCHITECTURE AND TOWN PLANNING COMPANY LTD.

66. Energoprojekt Architecture and Town Planning Company Ltd. ("Energoprojekt") is a corporation organised according to the laws of the Federal Republic of Yugoslavia operating in the consulting engineering business.

67. Energoprojekt provided services on two projects in Iraq. This claim is for amounts allegedly owed to it on the two projects, and for loss of tangible property.

68. Energoprojekt seeks compensation in the amount of USD 1,032,472 for contract losses, loss of tangible property, and interest as follows:

Table 3. Energoprojekt's claim

<u>Claim element</u>	<u>Claim amount (USD)</u>
Contract losses	774,407
Loss of tangible property	40,546
Interest	217,519
<u>Total</u>	<u>1,032,472</u>

A. Contract losses

1. Facts and contentions

69. Energoprojekt seeks compensation in the amount of USD 774,407 for contract losses allegedly incurred in connection with two projects in Iraq, referred to as "Project 1050" and the "Basrah Project".

70. In the Statement of Claim, which was submitted at the same time as the original "E" claim form, Energoprojekt stated that it is owed USD 743,407 on Project 1050 and USD 30,484 on the Basrah Project. These two figures amount to USD 773,891, which is less than the amount of USD 774,407 that appears on the claim form. There is no explanation of the discrepancy between the two amounts. Because the Statement of Claim and the "E" claim form were submitted at the same time, the Panel has considered this claim as a claim in the higher amount of USD 774,407.

(a) Project 1050

71. Energoprojekt entered into the contract for Project 1050 with the Ministry of Planning Resident Engineer Office, Baghdad, Iraq, in December 1989. The work related to preliminary and final design of a number of items including installation of water supply and electrical systems on the project. However, the precise nature of the project is unknown because Energoprojekt asserts that the scope of work was "highly confidential".

72. Work on the project was to be completed within six months of the date of commencement. The invoices provided indicate that work commenced, at the latest, in February 1990. The work ceased when Energoprojekt's staff was evacuated on 14 August 1990.

73. Energoprojekt was to be paid the total amount of IQD 300,000 in six monthly instalments. Of this amount, 30 per cent (IQD 90,000) was payable in Iraqi dinars and 70 per cent was payable in United States dollars. The contract provided for an exchange rate of IQD 1 to USD 3.20888.

74. The employer also agreed to make an advance payment in the amount of IQD 50,000 in exchange for a guarantee in the same amount from Energoprojekt.

75. On 27 March 1990, the parties entered into "Annex I" to the contract, which extended the completion date to the end of September 1990 (two months after the original completion date of the contract).

76. Pursuant to "Annex I", the employer agreed to pay Energoprojekt a further amount of IQD 165,000 in two instalments.

77. Energoprojekt asserts that approximately 90 per cent of the work on Project 1050 had been completed by 14 August 1990, the date on which its staff was evacuated from Iraq.

78. According to Energoprojekt, the procedure for submission of invoices was as follows. Energoprojekt's staff and the employer's staff would agree on the value of the work to be included in each invoice, based on the progress of the work as reflected by a jointly prepared work progress report. The employer's staff would then approve the issued invoices and forward the invoice with the progress report to the office that handled payments.

(b) Basrah Project

79. Energoprojekt entered into the contract for the Basrah Project on 27 May 1990 with the Ministry of Planning Resident Engineer Office, Baghdad, Iraq. The contract called for Energoprojekt to provide consulting engineering services in connection with two villas in Basrah.

80. Work on the project commenced upon the signing of the contract on 27 May 1990, and was completed in July 1990.

81. Energoprojekt asserts that it is owed USD 30,484 for unpaid work on this project.

82. Under the contract, the employer agreed to pay Energoprojekt the amount of IQD 95,000. Of that amount, 90 per cent was to be paid on 10 June 1990 and 10 per cent on 15 July 1990. Furthermore, 30 per cent of the contract amount was to be paid in Iraqi dinars and 70 per cent in United States dollars at the exchange rate of IQD 1 to USD 3.20888.

2. Analysis and valuation

83. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

84. The Panel finds that for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), Energoprojekt had, in each case, a contract with Iraq.

(a) Project 1050

85. In support of its claim, Energoprojekt provided a copy of the contract, payroll records, and affidavits from its project manager and finance manager.

86. Energoprojekt also submitted copies of the following invoices:

(a) Invoice No. 1, with bank transfer statement and bank statement, showing that the advance payment in the amount of IQD 50,000 (divided into IQD 15,000 and USD 112,311) was billed on 20 January 1990. Payment was received on 2 May 1990 for the Iraqi dinar portion and on 3 March 1990 for the United States dollar portion;

(b) Invoice No. 2, with bank transfer statement and bank statement, showing that the first instalment in the amount of IQD 12,000 and USD 89,849 was billed on 18 February 1990. Payment was received on 2 June 1990 for the Iraqi dinar portion and on 18 April 1990 for the United States dollar portion;

(c) Invoice No. 3, with bank transfer statement and bank statement, showing that the second instalment in the amount of IQD 12,000 and USD 89,849 was billed on 18 March 1990. Payment was received on 2 June 1990 for the Iraqi dinar portion and on 15 May 1990 for the United States dollar portion;

(d) Invoice No. 4, with bank transfer statement and bank statement, showing that the third instalment in the amount of IQD 12,000 and USD 89,849 was billed on 18 April 1990. Payment was received on 15 July 1990 for the Iraqi dinar portion and on 21 June 1990 for the United States dollar portion;

(e) Invoice No. 5 showing that the fourth instalment in the amount of IQD 12,000 and USD 89,849 was billed on 18 May 1990;

(f) Invoice No. 7 showing that the fifth instalment in the amount of IQD 12,000 and USD 89,849 was billed on 18 June 1990;

(g) Invoice No. 8 showing that the sixth instalment in the amount of IQD 15,000 and USD 112,311 was billed on 18 June 1990;

(h) Documents showing payment of IQD 11,763 on 24 December 1990, and a document from the employer stating that this payment was made with respect to Invoice Nos. 5 and 7 (after certain deductions);

(i) Invoice No. 10 showing that the first instalment under "Annex I" in the amount of IQD 30,000 and USD 224,622 was billed on 10 September 1990;

(j) Invoice No. 11 showing that the second instalment under "Annex I" in the amount of IQD 19,500 and USD 146,004 was billed on 10 October 1990.

87. Energoprojekt seeks compensation for amounts owed on Invoice Nos. 5, 7, 8, 10 and 11.

88. With respect to Invoice Nos. 5 and 7, the Panel finds that payment toward the Iraqi dinar portion of these invoices evidences performance and acceptance of the work. The Panel finds that Energoprojekt provided sufficient evidence to support its claim for compensation of the United States dollar portion in the amount of USD 179,698 with respect to Invoice Nos. 5 and 7.

89. The Panel finds that Energoprojekt did not provide sufficient evidence to support its claim for compensation with respect to Invoice Nos. 8, 10, and 11.

(b) Basrah Project

90. In support of its claim, Energoprojekt provided a copy of the contract, payroll records, and affidavits from its project manager and finance manager.

91. Energoprojekt also submitted evidence showing that its Invoice No. 6 dated 8 June 1990 for 90 per cent of the contract value was paid in July 1990.

92. It also submitted a copy of Invoice No. 9 dated 10 July 1990 for IQD 2,850 (USD 9,145) and USD 21,339 (for a total of USD 30,484). Energoprojekt seeks compensation for the amounts billed in Invoice No. 9.

93. The Panel finds that Energoprojekt provided sufficient evidence to support its claim for compensation in the amount of USD 30,484 with respect to Invoice No. 9.

3. Recommendation

94. The Panel recommends compensation in the amount of USD 210,182 for contract losses.

B. Loss of tangible property

1. Facts and contentions

95. Energoprojekt seeks compensation in the amount of USD 40,546 for loss of tangible property. The claim is for the alleged loss of an automobile, a television, and assorted office computer equipment, all of which were allegedly abandoned at the project site when Energoprojekt's staff was evacuated from Iraq.

2. Analysis and valuation

96. Energoprojekt provided as evidence of its alleged losses an itemised inventory of the property, an invoice and proof of payment and transportation for a 1990 Toyota Corona automobile, proof of purchase of a television in Iraq, and invoices and other documents showing shipment of computer equipment from Yugoslavia to Iraq.

97. The Panel finds that Energoprojekt did not provide sufficient evidence to support its claim relating to the computer equipment. In particular, Energoprojekt did not provide evidence relating to the date or cost of purchase.

98. The Panel finds that Energoprojekt did provide sufficient evidence to support its claim with respect to the automobile and the television. The Panel applied depreciation rates appropriate to these assets, and finds that Energoprojekt is entitled to compensation in the amount of USD 10,819 for the automobile and USD 430 for the television.

3. Recommendation

99. The Panel recommends compensation in the amount of USD 11,249 for loss of tangible property.

C. Interest

100. Energoprojekt seeks compensation in the amount of USD 217,519 for interest on its contract losses.

101. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20, supra, of this report.

D. Recommendation for Energoprojekt

Table 4. Recommended compensation for Energoprojekt

<u>Claim element</u>	<u>Claim amount (USD)</u>	<u>Recommended compensation (USD)</u>
Contract losses	774,407	210,182
Loss of tangible property	40,546	11,249
Interest	217,519	-
<u>Total</u>	<u>1,032,472</u>	<u>221,431</u>

102. Based on its findings regarding Energoprojekt's claim, the Panel recommends compensation in the amount of USD 221,431. The Panel determines the date of loss to be 14 August 1990, the date of evacuation of Energoprojekt's staff.

V. AART INTERNATIONAL S. FARAH ET ASSOCIÉS

103. AART International S. Farah et Associés ("AART") is a corporation organised according to the laws of France, providing architectural and consulting engineering services. AART seeks compensation in the amount of 146,405 Kuwaiti dinars (KWD) (USD 506,944) for loss of profits.

104. In its reply to the article 15 notification, AART added a claim for interest at an annual rate of 5 per cent for 11 years on unpaid amounts allegedly owed to it. The Panel has only considered those losses and amounts contained in the original claim (except for correction of arithmetical errors or where such losses have been withdrawn or reduced by the claimant), and refers in this respect to paragraph 8, supra.

105. AART did not submit a reply to the article 34 notification requesting it to provide further information and evidence to support its claim.

106. The Panel considered the amount of KWD 146,405 (USD 506,944) for loss of profits.

Table 5. AART's claim

<u>Claim element</u>	<u>Claim amount (USD)</u>
Loss of profits	506,944
<u>Total</u>	<u>506,944</u>

A. Loss of profits

1. Facts and contentions

107. AART seeks compensation in the amount of KWD 146,405 (USD 506,944) for loss of profits. This claim is based on two projects in Kuwait. At the time of Iraq's invasion and occupation of Kuwait, AART had a contract with the Ministry of Public Works, Kuwait, to provide design work on the Failaka Hospital and Health Centre (the "Failaka Project"). At the same time, AART had also submitted a proposal to the Ministry of Public Health, Kuwait, on a project involving the Farwaniya and Al-Jahra Hospitals (the "Hospitals Project").

108. AART seeks compensation for loss of profits in the amount of KWD 36,703 (USD 127,087) relating to the Failaka Project and KWD 109,702 (USD 379,857) relating to the Hospitals Project.

(a) Failaka Project

109. In August 1983, AART and the Ministry of Public Works, Kuwait, entered into Agreement No. EF/252 in which AART agreed to provide its services in connection with the design and supervision of the work on the Failaka Project, which was located on the island of Failaka. The original total value of the contract was KWD 296,430 (USD 1,026,420). The total value of the contract was later increased to KWD 519,382 (USD 1,798,414) pursuant to Variation Order No. 1 dated 26 November 1984 and Variation Order No. 2 dated 15 December 1988.

110. AART states that the project was not completed after the liberation of Kuwait because the island was abandoned due to dangerous conditions created by Iraq's invasion and occupation of Kuwait.

111. AART seeks compensation for the profits it allegedly would have earned during the construction phase of the project.

(b) Hospitals Project

112. In April 1990, AART was invited by the Ministry of Public Health of Kuwait (the "Ministry") to submit a proposal for work relating to the Hospitals Project. On 16 June 1990, AART submitted an initial design concept for the Hospitals Project. On 28 June 1990, the Ministry sent a memorandum to AART, which stated: "Generally, the design concept ... is acceptable." The Ministry then requested five revisions to the proposal. AART submitted a revised proposal.

113. On 16 July 1990, the Ministry sent a letter to AART, which approved in principle AART's proposal and requested an additional five revisions. The last paragraph of the letter stated: "Please review and re-submit your technical and financial proposals for both hospitals within ten days taking into consideration all the above. Further more you should note that construction cost estimate for each hospital should not exceed KD.3,500,000/-."

114. On 27 July 1990, AART submitted a revised proposal. AART's submission to the Commission does not reflect any response from the Ministry to its revised proposal.

115. Iraq's invasion and occupation of Kuwait commenced less than one week after the submission of AART's revised proposal. AART states that the project was not resumed after the liberation of Kuwait.

116. AART seeks compensation for the profits it allegedly would have earned from the project; that is, if AART had been awarded the contract and if the project thereafter had proceeded to conclusion. It also seeks compensation for the value of the services it allegedly provided, and its direct costs incurred, in preparing its proposals on the project from April to 1 August 1990.

2. Analysis and valuation

117. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17, supra.

(a) Failaka Project

118. In support of its claim, AART provided a copy of the contract for the project, the Variation Orders, and a letter of confirmation of receipt of tender of documents dated 26 July 1990.

119. AART did not provide invoices, detailed financial statements, management reports, budgets, accounts, time schedules, progress reports, or a breakdown of revenues and costs (actual and projected) for the project.

120. The Panel finds that AART did not provide sufficient evidence to support its claim. The Panel finds that AART did not provide sufficient evidence to substantiate its claim, and to establish with reasonable certainty ongoing and expected profitability.

(b) Hospitals Project

121. In support of its claim, AART provided copies of its correspondence with the Ministry mentioned above, including correspondence dated 2 April 1990, 28 June 1990, and 16 July 1990.

122. In this case, no contract was entered into between AART and the Ministry. Moreover, AART failed to provide evidence to establish to the Panel's satisfaction that there was a sufficient likelihood that the contract would have been awarded, such that a claim for lost profits could be considered a compensable loss suffered as a direct result of Iraq's invasion and occupation of Kuwait. There is no indication, for example, of how many other bidders were involved, or any response from the Ministry on AART's last proposal. Finally, AART did not provide any evidence to support its claim that it is entitled to compensation for the value of the services it allegedly provided, or its direct costs incurred, in preparing its proposals. It did not provide any invoices or receipts relating to its alleged costs, or any documents to show the value of its services.

3. Recommendation

123. The Panel recommends no compensation for loss of profits.

B. Recommendation for AART

Table 6. Recommended compensation for AART

<u>Claim element</u>	<u>Claim amount (USD)</u>	<u>Recommended compensation (USD)</u>
Loss of profits	506,944	nil
<u>Total</u>	<u>506,944</u>	<u>nil</u>

124. Based on its findings regarding AART's claim, the Panel recommends no compensation.

VI. ANICE CONSTRUCTION SERVICES PVT. LTD.

125. Anice Construction Services Pvt. Ltd. ("Anice") is a corporation organised according to the laws of India operating in the business of supplying labour on construction projects. Anice seeks compensation in the amount of USD 1,866,725 for contract losses, loss of tangible property, other losses, and interest.

126. The Panel has reclassified elements of Anice's claim for the purposes of this report. In the original "E" claim form, Anice sought compensation in the amount of USD 1,299,111 for contract losses and USD 14,350 for loss of tangible property. Under other losses, Anice also sought compensation in the amount of USD 98,994 for "amount held up" (which is retention monies), USD 546,283 for interest, USD 325,600 for "office expenditure claim" in Baghdad, Iraq, and USD 26,935 for "office expenditure claim" in India.

127. The Panel has reclassified the claim for "amount held up" as a claim for contract losses, as the amount in question relates to retention monies, and the claimed amount for interest to a separate interest category. The claim for "office expenditure claims" remains classified as other losses.

128. In its reply to the article 15 notification, Anice increased the claimed amounts for "office expenditure – India" and interest. The Panel has considered only those amounts contained in the original claim with respect to "office expenditure – India" and interest, and refers in this respect to paragraph 8, supra.

129. In the same reply, Anice reduced the amounts sought for unpaid invoices under the contract and for withheld retention monies. Anice reduced the claim for unpaid invoices from USD 1,299,111 to USD 916,318, and the claim for withheld retention monies from USD 98,994 to USD 37,239. The Panel has considered these reduced amounts because they were reduced by the claimant, and refers in this respect to paragraph 8, supra.

130. The Panel therefore considered the amount of USD 1,866,725 for contract losses, loss of tangible property, other losses, and interest as follows:

Table 7. Anice's claim

<u>Claim element</u>	<u>Claim amount</u> <u>(USD)</u>
Contract losses	953,557
Loss of tangible property	14,350
Other losses	352,535
Interest	546,283
<u>Total</u>	<u>1,866,725</u>

A. Contract losses

1. Facts and contentions

131. Anice seeks compensation in the amount of USD 953,557 for contract losses allegedly incurred in connection with a contract in Iraq.

132. This claim is for unpaid invoices and withheld retention monies. In the original "E" claim form, Anice sought compensation in the amount of USD 1,299,111 for contract losses for unpaid invoices. Under other losses, Anice sought compensation in the amount of USD 98,994 for "amount held up" (retention monies). The Panel has reclassified the claim for "amount held up" (retention monies) as contract losses.

133. In its reply to the article 15 notification, Anice reduced the amounts sought for unpaid invoices and withheld retention monies. Anice reduced the claim for unpaid invoices from USD 1,299,111 to USD 916,318, and reduced the claim for withheld retention monies from USD 98,994 to USD 37,239.

134. Anice signed a contract on 22 August 1988 with the Technical Corps for Special Project, which later changed its name to Al Fao General Establishment. As reflected in the contract, Anice was awarded the job of supplying and managing workers for a project called special project P-395 in Iraq. There was no fixed contract sum.

135. The term of the contract was for 12 months from the date of arrival of Anice's employees. Anice states that the term of the contract was extended by mutual agreement, but that no formal contract extension was executed.

136. Anice supplied 826 workers for the project, the first of which commenced work on 23 December 1988. Anice's workers continued working on the project until October 1990, when they were forced to abandon work due to the hostilities resulting from Iraq's invasion and occupation of Kuwait.

(a) Unpaid invoices

137. Under the contract, 60 per cent of the invoiced amount was payable in Iraqi dinars and 40 per cent in United States dollars. Payments in Iraqi dinars were due within 10 days after submission of monthly invoices to the employer, and payments in United States dollars were due 45 days after submission of monthly invoices to the employer.

138. Anice asserts that its invoices were paid by the employer through September 1989 (with the exception of an invoice for work performed in June 1989, which was not paid). Anice asserts that its invoices for work performed since October 1989 have remained unsatisfied.

139. Table 8, infra, sets forth the amounts claimed by Anice as they relate to the month in which the work was performed:

Table 8. Anice's claim for contract losses (unpaid amounts for work performed)

<u>Month in which work performed</u>	<u>Amount claimed (USD)</u>
June 1989	111,475
October 1989	144,158
November 1989	112,871
December 1989	95,304
January 1990	73,399
February 1990	71,366
March 1990	49,447
April 1990	26,721
May 1990	16,794
June 1990	45,332
July 1990	52,081
August 1990	43,377
September 1990	37,540
October 1990	36,453
<u>Total</u>	<u>916,318</u>

140. In support of its claim, Anice provided a copy of the contract with the employer, a list of the employees hired by it, receipts signed by individual employees acknowledging payment of wages, and payroll ledgers. It also provided cover letters forwarding its monthly invoices, confirmations of remittances showing that some of the pre-October 1989 monthly invoices were paid, and correspondence from Anice to the employer making demand on overdue amounts. It also provided letters from the employer acknowledging the amounts payable for work performed in May, June, July, August, September, and October 1990.

(b) Withheld retention monies

141. Anice asserts that the employer withheld 5 per cent of the monthly invoiced amounts as retention monies to support a performance bond. It seeks compensation for monies withheld for the months from December 1988 to May 1989 and from July to September 1989 in the total amount of USD 37,239.

2. Analysis and valuation

142. The Panel has defined the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

143. The Panel finds that for the purposes of the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991), Anice had a contract with Iraq. The Panel has made a finding in its previous reports and recommendations that Al Fao State Establishment was an agency of the Government of Iraq.

(a) Unpaid invoices

144. Part of this claim is based on invoices for work performed from June 1989 to April 1990. The Panel finds that the contract losses based on these invoices relate entirely to work that was performed prior to 2 May 1990.

145. The Panel recommends no compensation for contract losses based on the invoices from June 1989 to April 1990 as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

146. With respect to the invoices for work performed from June to October 1990, the Panel finds that Anice provided sufficient information and evidence to establish that it is entitled to compensation in the amount of USD 214,783 for work that was performed after 2 May 1990.

147. With respect to the invoice for May 1990, the Panel finds that Anice provided sufficient information and evidence to establish that it is entitled to compensation in the amount of USD 15,912 for work that was performed after 2 May 1990. The total amount of the invoice has been reduced to take into account work that was performed prior to 2 May 1990.

148. Therefore, Panel finds that Anice is entitled to compensation in the total amount of USD 230,695 for its unpaid invoices.

(b) Withheld retention monies

149. Anice asserts that its entitlement to the withheld retention monies is based upon the terms of its contract with the employer. However, the Panel finds that there is no language in the document

provided by Anice which sets forth the terms under which withheld monies were to be released. The difficulty is compounded, in part, by the fact that the contract was extended without any formal documentation. In its reply to the article 15 notification, Anice stated that the intended date for completion of the contract was not fixed. Like the open nature of the completion date, the Panel finds that the terms under which any retention monies would be released are also open and that Anice did not provide sufficient evidence to show that it had fulfilled all conditions to the release of any withheld monies.

150. The Panel recommends no compensation for the withheld retention monies as Anice did not provide sufficient evidence to support its claim.

3. Recommendation

151. The Panel recommends compensation in the amount of USD 230,695 for contract losses.

B. Loss of tangible property

1. Facts and contentions

152. Anice seeks compensation in the amount of USD 14,350 for loss of tangible property. The claim is for the alleged loss of furniture, and office, kitchen and consumer electronics equipment that was abandoned when Anice's staff departed Iraq. The property includes typewriters, a photocopier, furniture, refrigerators, and a stereo system.

2. Analysis and valuation

153. Anice did not provide sufficient evidence to support its alleged losses. It did not provide evidence of ownership, fact of loss, or the cause of loss.

154. The Panel finds that Anice did not provide sufficient evidence to demonstrate its title to or right to use the assets, the value, or the presence of the tangible property in Iraq.

3. Recommendation

155. The Panel recommends no compensation for loss of tangible property.

C. Other losses

1. Facts and contentions

156. Anice seeks compensation in the amount of USD 352,535 for other losses. The claim is for office and administrative expenses allegedly incurred by it in Iraq and India from 1 August 1990 to 31 March 1994.

157. Anice asserts that it incurred office and administrative expenses in Baghdad in the amount of USD 325,600 from 1 January 1992 to 31 March 1994. The expenses allegedly included salary, rent, transportation, telephone charges, fax charges, postage, and electricity.

158. It also asserts that it incurred office and administrative expenses in its New Delhi office in the amount of USD 26,935 from 1 August 1990 to 31 March 1994. The expenses allegedly included salary, rent, transportation, telephone charges, fax charges, postage, printing costs, electricity, and depreciation on fixed assets.

2. Analysis and valuation

159. To support its claim, Anice provided as evidence two separate sets of financial statements dated 31 March 1989 and 31 March 2000, respectively. However, it did not provide any information or evidence to explain how these alleged losses, particularly the losses allegedly incurred in India and those allegedly incurred after the liberation of Kuwait, were the direct result of Iraq's invasion and occupation of Kuwait. Anice also did not provide evidence to demonstrate that it incurred the claimed expenses.

160. The Panel finds that Anice did not provide sufficient evidence to support its claim for other losses.

3. Recommendation

161. The Panel recommends no compensation for other losses.

D. Interest

162. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20, supra, of this report.

E. Recommendation for Anice

Table 9. Recommended compensation for Anice

<u>Claim element</u>	<u>Claim amount (USD)</u>	<u>Recommended compensation (USD)</u>
Contract losses	953,557	230,695
Loss of tangible property	14,350	nil
Other losses	352,535	nil
Interest	546,283	nil
<u>Total</u>	<u>1,866,725</u>	<u>230,695</u>

163. Based on its findings regarding Anice's claim, the Panel recommends compensation in the amount of USD 230,695. The Panel determines the date of loss to be 31 October 1990 as the last of Anice's staff members departed Iraq in that month.

VII. GROVER TECHNICAL SERVICES PVT. LIMITED

164. Grover Technical Services Pvt. Limited (“Grover”) is a corporation organised according to the laws of India. Grover provided technical staffing at a liquified petroleum gas (“LPG”) storage and loading terminal in Iraq.

165. Grover seeks compensation in the amount of USD 421,396 for contract losses, loss of tangible property, and interest as follows:

Table 10. Grover’s claim

<u>Claim element</u>	<u>Claim amount</u> <u>(USD)</u>
Contract losses	309,228
Loss of tangible property	10,000
Interest	102,168
<u>Total</u>	<u>421,396</u>

A. Contract losses

1. Facts and contentions

166. Grover seeks compensation in the amount of USD 309,228 for contract losses allegedly incurred in connection with two contracts in Iraq.

167. Grover entered into two contracts with the State Establishment of Pipelines, Ministry of Oil, Iraq, (“SEPL”) to provide technical staffing at an LPG storage and loading terminal in Iraq.

168. The first contract was entered into on 25 November 1989 and had an end date of 31 October 1990. The project was referred to as “Job 701”. The estimated contract value was IQD 142,775 plus USD 458,000.

169. The second contract was entered into on 19 April 1990 with a contract period from 1 May 1990 to 30 April 1991. The project was referred to as “Job 702”. It is unclear as to the estimated value of this contract.

170. Pursuant to the first contract, the parties subsequently agreed that Grover would also provide maintenance services at the Daura refinery in Baghdad. This work was referred to as “Job 801”.

171. Grover obtained staffing for these contracts through subcontracts dated 28 February 1990 and 18 June 1990 with Indu Construction & Technical Services Pvt. Ltd., an Indian company. Grover also entered into contracts with an Iraqi individual, who agreed to provide consulting services in exchange for 5 per cent of the contract values.

172. The terms of payment under the two contracts with SEPL were similar. Payments under each contract were to be made in part in Iraqi dinars, with the balance to be paid in United States dollars.

173. Each of the contracts contained an identical provision concerning the invoicing and timing of payments. The provision stated: “[Grover] shall invoice SEPL on a monthly basis for services provided during the preceding month. SEPL shall pay all such invoices, in Iraqi Dinars not later than 7 days after the date of submission to SEPL, and in U.S. dollars not later than 30 days.”

174. The contracts did not contain a provision requiring the employer to certify or accept the work performed as a condition to payment.

175. Grover asserts that it wanted to evacuate its staff from Iraq because of the danger created by the military hostilities, but that its staff was forced by the Government of Iraq to continue work at the project site without compensation in September and October 1990. It also asserts that it was not paid for work performed prior to September 1990.

176. Grover seeks compensation for unpaid work that was performed from January 1990 to October 1990.

2. Analysis and valuation

177. The Panel has defined the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

178. The Panel finds that for the purposes of the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991), Grover had a contract with Iraq.

179. To support its claim, Grover provided the contracts with SEPL for Jobs 701 and 702, and monthly billing invoices for Jobs 701, 702, and 801.

180. With reference to Job 701, Grover provided the monthly billing invoices for work performed from January to October 1990. Each of the invoices was supported by the monthly time sheets.

181. With reference to Job 702, Grover provided the monthly billing invoices for work performed from June to October 1990. Each of the invoices was supported by the monthly time sheets.

182. With reference to Job 801, Grover provided the monthly billing invoices for work performed from April to October 1990. Each of the invoices was supported by the monthly time sheets.

183. The Panel finds that the monthly invoices clearly indicate the time period when the invoiced work was performed, and finds that Grover is not entitled to compensation on the invoices for work performed prior to 2 May 1990.

184. With regard to work that was performed after 2 May 1990, an issue has been raised by the fact that Grover was forced by the Government of Iraq to work at the project site without compensation in

September and October 1990. The issue is whether the work performed is compensable as a direct loss resulting from Iraq's invasion and occupation of Kuwait. The issue was reported as a significant factual and legal issue in the report of the Executive Secretary to the Governing Council pursuant to article 16 of the Rules (report No. 35).

185. Several Governments submitted their views on this issue, and the Panel has taken those views into consideration.

186. The Panel's decision is that such unpaid work is a direct loss resulting from Iraq's invasion and occupation of Kuwait.

187. The Panel finds that Grover provided sufficient evidence to show that it is entitled to compensation in the amount of USD 154,522 with respect to Job 701 and USD 57,824 with respect to Job 702 (these amounts are net of the Iraqi consultant's 5 per cent commission).

188. With respect to Job 801, Grover did not provide the contract for that job. However, the Panel finds that Grover regularly invoiced the employer for its work on the job, and that the act of regular invoicing constitutes evidence of a course of dealing and the existence of a contractual relationship. The Panel finds that Grover provided sufficient evidence to show that it is entitled to compensation in the amount of USD 25,804 for Job 801 (which is net of the Iraqi consultant's 5 per cent commission).

3. Recommendation

189. The Panel recommends compensation in the amount of USD 238,150 for contract losses.

B. Loss of tangible property

1. Facts and contentions

190. Grover seeks compensation in the amount of USD 10,000 for loss of tangible property. The claim is for the alleged loss of consumer electronics and kitchen equipment, such as televisions, VCRs, cooking utensils, and cutlery.

191. Grover states that the property was abandoned at the work site.

2. Analysis and valuation

192. Grover did not provide any evidence to support this claim. It did not provide any receipts, invoices, or documents of any kind.

193. The Panel finds that Grover did not provide sufficient evidence to support this claim.

3. Recommendation

194. The Panel recommends no compensation for loss of tangible property.

C. Interest

195. Grover seeks compensation for interest in the amount of USD 102,168 from December 1990 to July 1993 for its contract losses.

196. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20, supra, of this report.

D. Recommendation for Grover

Table 11. Recommended compensation for Grover

<u>Claim element</u>	<u>Claim amount (USD)</u>	<u>Recommended compensation (USD)</u>
Contract losses	309,228	238,150
Loss of tangible property	10,000	nil
Interest	102,168	-
<u>Total</u>	<u>421,396</u>	<u>238,150</u>

197. Based on its findings regarding Grover's claim, the Panel recommends compensation in the amount of USD 238,150. The Panel determines the date of loss to be 1 December 1990.

VIII. SUMITOMO HEAVY INDUSTRIES, LTD.

198. Sumitomo Heavy Industries, Ltd. ("Sumitomo") is a corporation organised according to the laws of Japan operating in the construction industry. Sumitomo seeks compensation in the amount of 120,799,122 Yen (JPY) (USD 837,429) for loss of tangible property, payment or relief to others, and other losses.

199. Sumitomo states that it was working on two projects in Iraq at the time of Iraq's invasion and occupation of Kuwait. The first was Phase 1, Stage 2 of the Khor Al-Zubair Port Facilities under a contract with the General Establishment of Iraqi Ports, Ministry of Transport and Communications, Iraq. The second was for the construction of three berths at the same port under a contract with the same employer.

200. Sumitomo submitted a reply to the article 15 notification, which addressed the formal requirements as set forth in article 14 of the Rules. However, it did not submit a reply to the article 34 notification requesting it to provide further information and evidence to support its claim.

201. The Panel has reclassified elements of Sumitomo's claim for the purposes of this report. In the "E" claim form, Sumitomo sought compensation for loss of real property in the amount of JPY 35,108,634 (USD 243,388). On the basis of the description of the loss in the Statement of Claim, the Panel has reclassified this loss as a loss of tangible property. Sumitomo also sought compensation for other losses in the amount of JPY 81,605,293 (USD 565,721). On the basis of the description of

this loss in the Statement of Claim, the Panel has reclassified JPY 73,083,860 (USD 506,647) of that amount as a claim for payment or relief to others.

202. The Panel therefore considered the amount of JPY 120,799,122 (USD 837,429) for loss of tangible property, payment or relief to others, and other losses as follows:

Table 12. Sumitomo's claim

<u>Claim element</u>	<u>Claim amount (USD)</u>
Loss of tangible property	271,708
Payment or relief to others	506,647
Other losses	59,074
<u>Total</u>	<u>837,429</u>

A. Loss of tangible property

1. Facts and contentions

203. Sumitomo seeks compensation in the amount of JPY 39,193,829 (USD 271,708) for loss of tangible property. The claim is for the alleged loss of equipment, machinery and other items from its project sites in Iraq.

204. In the "E" claim form, Sumitomo originally sought compensation in the amount of JPY 4,085,195 (USD 28,320) for loss of tangible property and JPY 35,108,634 (USD 243,388) for loss of real property. On the basis of the description of the loss in the Statement of Claim, the Panel has reclassified the entire amount of the original claim for loss of real property as loss of tangible property. Thus, the claim for loss of tangible property amounts to JPY 39,193,829 (USD 271,708).

205. Sumitomo states that it ceased work on the projects on 9 August 1990 as a result of Iraq's invasion and occupation of Kuwait, and that it was forced to abandon three trucks, two cranes, and 10 walkie-talkies. It also states that it abandoned unspecified hand-over items with a value of JPY 35,108,634 (USD 243,388) relating to an office, some accommodations, and a canteen.

2. Analysis and valuation

206. Sumitomo did not provide any evidence of ownership of the claimed items. It did not provide any purchase invoices, certificates of ownership or title, or any other documents. It also did not provide any evidence to show that the claimed items were in Iraq at the time of Iraq's invasion and occupation of Kuwait, or to support the asserted valuation.

207. The Panel finds that Sumitomo did not provide sufficient evidence to demonstrate its title to or right to use the assets, the value of the assets, or the presence of the tangible property in Iraq.

3. Recommendation

208. The Panel recommends no compensation for loss of tangible property.

B. Payment or relief to others

1. Facts and contentions

209. Sumitomo seeks compensation in the amount of JPY 73,083,860 (USD 506,647) for payment or relief to others.

210. In the “E” claim form, Sumitomo sought compensation for other losses in the amount of JPY 81,605,293 (USD 565,721). On the basis of the description of this loss in the Statement of Claim, the Panel has reclassified JPY 73,083,860 (USD 506,647) of that amount as a claim for payment or relief to others.

211. The claim is for salaries and benefits paid by Sumitomo to its staff after 9 August 1990 (the day it ceased work on the projects) and for food provided to its staff. Sumitomo states that it provided food, and paid salaries and benefits to its local and expatriate staff from 9 August 1990 until they were evacuated from Iraq. The last expatriate staff member was evacuated in December 1990.

2. Analysis and valuation

212. The Panel finds that Sumitomo did not provide any evidence to show that the alleged payments were made to or received by the staff members. It did not provide evidence of any food purchases. It did not provide any employment contracts for any of the employees, which would have addressed the issue whether the payments were extraordinary in nature.

213. The Panel finds that Sumitomo did not provide sufficient evidence to support its claim.

3. Recommendation

214. The Panel recommends no compensation for payment or relief to others.

C. Other losses

1. Facts and contentions

215. Sumitomo seeks compensation in the amount of JPY 8,521,433 (USD 59,074) for other losses.

216. In the “E” claim form, Sumitomo sought compensation for other losses in the amount of JPY 81,605,293 (USD 565,721). This amount was reduced to JPY 8,521,433 (USD 59,074) as a result of the Panel’s reclassification of the amount of JPY 73,083,860 (USD 506,647) as payment or relief to others.

217. The claim is for electricity, water, and fuel costs incurred at the project sites from August to December 1990.

2. Analysis and valuation

218. Sumitomo did not provide any evidence to show that the alleged costs were incurred or paid. It also did not provide any evidence relating to causation.

219. The Panel finds that Sumitomo did not provide sufficient evidence to support its claim.

3. Recommendation

220. The Panel recommends no compensation for other losses.

D. Recommendation for Sumitomo

Table 13. Recommended compensation for Sumitomo

<u>Claim element</u>	<u>Claim amount (USD)</u>	<u>Recommended compensation (USD)</u>
Loss of tangible property	271,708	nil
Payment or relief to others	506,647	nil
Other losses	59,074	nil
<u>Total</u>	<u>837,429</u>	<u>nil</u>

221. Based on its findings regarding Sumitomo's claim, the Panel recommends no compensation.

IX. TOA CORPORATION

222. Toa Corporation ("Toa") is a corporation organised according to the laws of Japan. It is a civil engineering and architectural firm, which was working on one project in Iraq and one in Kuwait at the time of Iraq's invasion and occupation of Kuwait. Toa seeks compensation in the amount of JPY 323,912,792 (USD 2,245,496) for loss of tangible property, payment or relief to others, and other losses.

223. The Panel has reclassified elements of Toa's claim for the purposes of this report. In the original "E" claim form, Toa sought compensation for loss of tangible property, payment or relief to others, and other losses. Under the category of other losses, it sought compensation in the amount of JPY 86,739,681 (USD 601,315). However, the Panel has reclassified JPY 75,159,181 (USD 521,034) of this amount as a claim for payment or relief to others.

224. The Panel therefore considered the amount of JPY 323,912,792 (USD 2,245,496) for loss of tangible property, payment or relief to others, and other losses as follows:

Table 14. Toa's claim

<u>Claim element</u>	<u>Claim amount (USD)</u>
Loss of tangible property	1,578,343
Payment or relief to others	586,872
Other losses	80,281
<u>Total</u>	<u>2,245,496</u>

A. Loss of tangible property

1. Facts and contentions

225. Toa seeks compensation in the amount of JPY 227,675,925 (USD 1,578,343) for loss of tangible property. The claim is for the alleged loss of property from its project sites in Iraq and Kuwait.

226. In Iraq, Toa was working on a project involving the construction of three berths at the Khor Al-Zubair Port facilities on behalf of the General Establishment of Iraqi Ports, Ministry of Transport and Communications. In Kuwait, Toa was working on a project for the Government of Kuwait involving the construction of breakwaters. Toa states that its work on both projects was suspended as a result of Iraq's invasion and occupation of Kuwait, and that its property was abandoned at the project sites.

2. Analysis and valuation

227. In its claim submission, Toa mentioned the loss of furniture, a boat, and some electrical equipment. However, it did not identify or list all the property that was allegedly lost. Toa did not provide an itemised list of lost property, or any evidence to establish ownership or value of the property that it did not identify. In response to questions in the article 34 notification regarding the loss of tangible property, Toa responded: "No document related thereto is available at the present time".

228. The Panel finds that Toa did not submit sufficient evidence to demonstrate its title to or right to use the assets, the value of the assets, or the presence of the assets in Iraq and Kuwait as of 2 August 1990.

3. Recommendation

229. The Panel recommends no compensation for loss of tangible property.

B. Payment or relief to others

1. Facts and contentions

230. Toa seeks compensation in the amount of JPY 84,656,367 (USD 586,872) for payment or relief to others. The claim is for payments allegedly made by Toa in relation to eight of its Japanese expatriate staff and approximately 40 of its non-Japanese expatriate staff.

231. In the original "E" claim form, Toa sought compensation in the amount of JPY 9,497,186 (USD 65,838) for payment or relief to others and in the amount of JPY 86,739,681 (USD 601,315) for other losses. However, the Panel determined that JPY 75,159,181 (USD 521,034) of the claim for other losses is more appropriately classified as a claim for payment or relief to others.

232. Toa states that during Iraq's invasion and occupation of Kuwait, two of its Japanese staff members were taken hostage and its other expatriate staff members (including employees from India and Thailand) were unable to work. Toa states that it continued to pay salaries and certain benefits to its staff, such as insurance, special allowances, and refunds of pension contributions. It also states that it paid the costs of evacuating its staff (including hotel and bus charter expenses for the non-Japanese staff), and for its staff's living expenses until they were evacuated.

2. Analysis and valuation

(a) Non-Japanese employees

233. With regard to its non-Japanese employees, the evidence provided by Toa included a list of its employees, including nationalities and passport numbers, a sample employment contract for one of its non-Japanese employees, two receipts signed by 29 of its Thai employees acknowledging receipt of USD 100 by each for travel expenses and completion of assignment, internal documents concerning evacuation expenses, and copies of airline tickets.

234. With regard to the claimed salaries and benefits unrelated to completion of assignment, Toa did not provide any evidence to establish that payments were made to or received by its non-Japanese employees. It also did not provide any evidence of the hotel and bus charter expenses.

235. There is evidence to support the claim that Toa paid the evacuation costs of its non-Japanese staff members to their home countries, and that some Thai workers received USD 100 each for travel expenses and completion of assignment. However, the sample employment contract for one of the non-Japanese staff members (which is the only evidence of the terms of the employment relationship provided by Toa) may be construed as requiring Toa to bear such expenses. Thus, it appears that Toa was contractually obliged to incur such costs regardless of Iraq's invasion and occupation of Kuwait. In any event and although requested, Toa did not submit any evidence to address that interpretation of the employment contract.

236. The Panel therefore finds that Toa did not submit sufficient evidence to support its claim with respect to the payment of salaries, benefits unrelated to completion of assignment, and hotel and bus charter expenses. With respect to evacuation costs, completion of assignment benefits, and travel

expenses, the Panel finds that Toa did not submit sufficient information or evidence to establish that the claimed losses were a direct result of Iraq's invasion and occupation of Kuwait.

(b) Japanese employees

237. With regard to the Japanese employees, Toa provided copies of the passports for each of its employees and an internally-prepared summary of expenses.

238. Toa did not provide an employment contract for any of its Japanese employees. It also did not present any evidence to show that any of its Japanese employees were taken hostage or that any salaries and benefits were paid to or received by them.

239. The Panel finds that Toa did not submit sufficient evidence to establish that it actually incurred the claimed losses, nor that the claimed losses were a direct result of Iraq's invasion and occupation of Kuwait. Because Toa did not provide an employment contract for any of its Japanese employees, it did not fulfil the requirement to establish what payments were or were not contractually required with respect to its employees. By not doing so, Toa did not address the possibility that it would have been liable for all such claimed payments notwithstanding Iraq's invasion and occupation of Kuwait.

3. Recommendation

240. The Panel recommends no compensation for payment or relief to others.

C. Other losses

1. Facts and contentions

241. Toa seeks compensation in the amount of JPY 11,580,500 (USD 80,281) for other losses.

242. In the original "E" claim form, Toa sought compensation in the amount of JPY 86,739,681 (USD 601,315) for other losses. However, the Panel determined that JPY 75,159,181 (USD 521,034) of that amount is more appropriately classified as payment or relief to others, which reduced the amount of the claim for other losses to JPY 11,580,500 (USD 80,281).

243. Toa's claim for other losses is for costs incurred in maintaining its offices in Iraq after 2 August 1990, including the cost of utilities.

2. Analysis and valuation

244. Toa did not provide specific information or an itemisation of losses to support its claim. It did not provide any evidence to show that any expenses were incurred or paid in maintaining its offices in Iraq. It also did not explain how such alleged costs were the direct result of Iraq's invasion and occupation of Kuwait.

245. The Panel finds that Toa did not submit sufficient evidence to support its claim for other losses.

3. Recommendation

246. The Panel recommends no compensation for other losses.

D. Recommendation for Toa

Table 15. Recommended compensation for Toa

<u>Claim element</u>	<u>Claim amount (USD)</u>	<u>Recommended compensation (USD)</u>
Loss of tangible property	1,578,343	nil
Payment or relief to others	586,872	nil
Other losses	80,281	nil
<u>Total</u>	<u>2,245,496</u>	<u>nil</u>

247. Based on its findings regarding Toa's claim, the Panel recommends no compensation.

X. TOYO ENGINEERING CORPORATION

248. Toyo Engineering Corporation ("Toyo") is a corporation organised according to the laws of Japan operating in the engineering design and construction businesses. Toyo seeks compensation in the amount of USD 5,425,575 for contract losses and other losses.

249. Toyo did not reply to the article 15 notification or the article 34 notification.

250. The Panel considered the amount of USD 5,425,575 for contract losses and other losses as follows:

Table 16. Toyo's claim

<u>Claim element</u>	<u>Claim amount (USD)</u>
Contract losses	3,690,802
Other losses	1,734,773
<u>Total</u>	<u>5,425,575</u>

A. Contract losses

1. Facts and contentions

251. Toyo seeks compensation in the amount of USD 3,690,802 for contract losses allegedly incurred in connection with a contract in Iraq.

252. Toyo states that it entered into a contract with the State Company for Oil Projects, Iraq, under which it provided services on a restoration project concerning the Storage Terminal, Receiving

Terminal and Pumping Station for the South LPG Project in Iraq. Toyo did not state the date of the contract or the dates on which it performed work under the contract.

253. Toyo seeks compensation for amounts allegedly owed to it for unpaid work on the project.

2. Analysis and valuation

254. The Panel has defined the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

255. The Panel finds that for the purposes of the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991), Toyo had a contract with Iraq.

256. Toyo provided little information and no evidence to support its claim. Specifically, it provided no evidence of loss or causation. It did not provide evidence to establish the dates of performance of the contract. It was given an opportunity to present information and evidence in response to the notifications sent under articles 15 and 34 of the Rules, but it did not reply to them.

257. The Panel finds that Toyo did not provide sufficient information and evidence to support the claim for contract losses.

3. Recommendation

258. The Panel recommends no compensation for contract losses.

B. Other losses

1. Facts and contentions

259. Toyo seeks compensation in the amount of USD 1,734,773 for other losses. It asserts that it incurred office expenses while its staff members were detained in Baghdad from 15 August to 12 December 1990.

2. Analysis and valuation

260. Toyo provided little information and no evidence to support its claim. It provided no evidence of loss or causation. It was given an opportunity to present information and evidence in response to the article 15 and 34 notifications, but it did not reply to them.

261. The Panel finds that Toyo did not provide sufficient information and evidence to support the claim for other losses.

3. Recommendation

262. The Panel recommends no compensation for other losses.

C. Recommendation for Toyo

Table 17. Recommended compensation for Toyo

<u>Claim element</u>	<u>Claim amount (USD)</u>	<u>Recommended compensation (USD)</u>
Contract losses	3,690,802	nil
Other losses	1,734,773	nil
<u>Total</u>	<u>5,425,575</u>	<u>nil</u>

263. Based on its findings regarding Toyo's claim, the Panel recommends no compensation.

XI. BRITISH METRO CONSULTANTS GROUP

264. British Metro Consultants Group ("Metro Consultants") was a consortium formed by 10 British consulting engineering companies organised according to the laws of the United Kingdom. Metro Consultants was formed on 1 April 1981 for the express purpose of soliciting and obtaining work in connection with the Baghdad Metro Project.

265. Of the 10 companies that formed Metro Consultants, two submitted their own category "E" claims with the Commission. The Panel has determined that those claims do not overlap with or relate to the claim of Metro Consultants.

266. Metro Consultants seeks compensation in the amount of 207,434 Pounds sterling (GBP) (USD 394,361) for contract losses and an unspecified amount for interest.

Table 18. Metro Consultants' claim

<u>Claim element</u>	<u>Claim amount (USD)</u>
Contract losses	394,361
Interest (no amount specified)	-
<u>Total</u>	<u>394,361</u>

A. Contract losses

1. Facts and contentions

267. Metro Consultants seeks compensation in the amount of GBP 207,434 (USD 394,361) for contract losses allegedly incurred in connection with a contract to provide consulting engineering services on the Baghdad Metro Project in Iraq (the "Project").

268. On 4 May 1981, Metro Consultants and the Baghdad Rapid Transit Authority (the "Employer") entered into a contract under which Metro Consultants was retained to provide consulting engineering

services on the Project. The contract provided for Metro Consultants to complete all services by 31 December 1989, and Metro Consultants acknowledges that its services came to an end by that date.

269. Under the contract, payment was partly to be made in Iraqi dinars and partly in Pounds sterling. Metro Consultants alleges that it received all of the Iraqi dinar component of the payments, but was not paid the final Pound sterling component in the amount of GBP 207,434. This is the basis of the claim for contract losses.

270. Metro Consultants states that it received the final payment of Iraqi dinars on 19 January 1992. It asserts that this was also the date on which the final payment in Pounds sterling was due.

271. Metro Consultants provided a copy of its contract with the Employer. The copy of the contract does not specify the dates or timing of payments, but instead refers to another document on this subject. However, the document referenced by the contract was not provided.

272. According to Metro Consultants, the original date for the final payment in Iraqi dinars was 31 January 1990 and the final payment in Pounds sterling was originally due by 31 March 1990. It further states that there were post-contract negotiations which deferred the final payments in Iraqi dinars and Pounds sterling to 19 January 1992.

2. Analysis and valuation

273. The Panel has defined the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

274. The Panel finds that for the purposes of the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991), Metro Consultants had a contract with Iraq.

275. The Panel finds that the contract losses alleged by Metro Consultants relate entirely to work that was performed prior to 2 May 1990. Metro Consultants states that its services came to an end by 31 December 1989.

276. The Panel recommends no compensation for contract losses as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

277. With respect to the assertion that the payment in Pounds sterling was originally due by 31 March 1990 and later deferred to 19 January 1992, it appears that Metro Consultants is suggesting that the deferral of payment may bring the claim within the Commission’s jurisdiction. However, the Panel finds that for the purposes of Security Council resolution 687 (1991), the alleged deferred payments agreement did not have the effect of novating the debts or otherwise bringing the claim within the jurisdiction of the Commission.

3. Recommendation

278. The Panel recommends no compensation for contract losses.

B. Interest

279. As the Panel recommends no compensation for contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for Metro Consultants

Table 19. Recommended compensation for Metro Consultants

<u>Claim element</u>	<u>Claim amount (USD)</u>	<u>Recommended compensation (USD)</u>
Contract losses	394,361	nil
Interest (no amount specified)	-	nil
<u>Total</u>	<u>394,361</u>	<u>nil</u>

280. Based on its findings regarding Metro Consultants' claim, the Panel recommends no compensation.

XII. FRANKLIN HODGE INDUSTRIES LTD.

281. Franklin Hodge Industries Ltd. ("Franklin Hodge") is a corporation organised according to the laws of the United Kingdom. Franklin Hodge seeks compensation in the amount of GBP 18,324 (USD 34,836) for payment or relief to others and other losses.

282. At the time of Iraq's invasion and occupation of Kuwait, Franklin Hodge was working on a project to erect a series of water tanks on the Baghdad to Akashat railway system in Iraq. One of its employees was taken hostage by Iraqi authorities, and it is seeking compensation for losses related to the hostage-taking.

283. The employee filed his own individual category "C" claim with the Commission. However, the Panel has determined that there is no overlap between Franklin Hodge's claim and the employee's category "C" claim. The employee sought compensation for losses that were personal to the employee, and Franklin Hodge's claim is limited to its own corporate losses.

284. The Panel has reclassified elements of Franklin Hodge's claim for the purposes of this report. In the original "E" claim form, Franklin Hodge claimed all of its losses under other losses. However, the alleged losses included the amount of GBP 10,677 (USD 20,298) for salary payments to the employee who was taken hostage. Given the context in which this payment was made, the Panel has reclassified this amount as a claim for payment or relief to others.

285. The Panel therefore considered the amount of GBP 18,324 (USD 34,836) for payment or relief to others and other losses, as follows:

Table 20. Franklin Hodge's claim

<u>Claim element</u>	<u>Claim amount</u> <u>(USD)</u>
Payment or relief to others	20,298
Other losses	14,538
<u>Total</u>	<u>34,836</u>

A. Payment or relief to others

1. Facts and contentions

286. Franklin Hodge seeks compensation in the amount of GBP 10,677 (USD 20,298) for payment or relief to others. The claim is for salary payments allegedly made to the employee who was taken hostage by the Iraqi authorities.

287. Franklin Hodge originally classified the claim for payment or relief to others as other losses, but the Panel finds that it is more appropriately classified as a claim for payment or relief to others.

288. Franklin Hodge's employee was taken hostage by Iraqi authorities on 1 September 1990, and was not allowed to leave Iraq until 30 November 1990. Franklin Hodge seeks compensation for salary payments it made to the employee during the period while he was unable to work.

2. Analysis and valuation

289. Franklin Hodge provided as evidence a signed statement from the employee describing the circumstances of his detention in Iraq. However, it did not provide any evidence to show that it paid the claimed amount to the employee or that the employee received the claimed amount. It also did not provide the employment contract or any payroll records to support this claim.

290. The Panel finds that in the absence of the employment contract, it is unable to determine whether the alleged payments were extraordinary or whether Franklin Hodge was obliged to make the payments regardless of the hostage-taking.

291. The Panel finds that Franklin Hodge therefore did not submit sufficient evidence to establish its loss or to show that any alleged payments were extraordinary in nature. The Panel notes that, due to the evidentiary shortcomings, the result would be the same even if this claim were to be analysed as a claim for contract losses (unproductive salary payments).

3. Recommendation

292. The Panel recommends no compensation for payment or relief to others.

B. Other losses

1. Facts and contentions

293. Franklin Hodge seeks compensation in the amount of GBP 7,647 (USD 14,538) for other losses. The claim is for the cost of hiring replacement labour for the employee who was taken hostage, and other incidental and overhead expenses incurred during the time of the employee's detention. Franklin Hodge described the losses as "sundry site expenses", "temporary extra site employee", and "incidental extra overhead costs".

2. Analysis and valuation

294. Franklin Hodge did not provide any records, receipts, invoices, or third-party documents to support its claim. In fact, it stated the following in its reply to the article 34 notification: ". . . we explained that it had not been possible to furnish you with additional information due to a number of internal changes, most especially a Management Buyout in early December 2000. Even prior to the Buyout there were very few people able to substantiate the contents of the claims, not alone provide details, and now there are even fewer."

295. The Panel finds that Franklin Hodge did not submit sufficient evidence to support its claim.

3. Recommendation

296. The Panel recommends no compensation for other losses.

C. Recommendation for Franklin Hodge

Table 21. Recommended compensation for Franklin Hodge

<u>Claim element</u>	<u>Claim amount (USD)</u>	<u>Recommended compensation (USD)</u>
Payment or relief to others	20,298	nil
Other losses	14,538	nil
<u>Total</u>	<u>34,836</u>	<u>nil</u>

297. Based on its findings regarding Franklin Hodge's claim, the Panel recommends no compensation.

XIII. HYDER CONSULTING LIMITED (FORMERLY ACER CONSULTANTS LIMITED)

298. Hyder Consulting Limited (formerly Acer Consultants Limited) ("Hyder") is a corporation organised according to the laws of the United Kingdom involved in the consulting engineering business. Hyder seeks compensation in the amount of KWD 387,970 (USD 1,357,897) for contract losses, loss of profits, loss of tangible property, payment or relief to others, financial losses, and other losses.

299. Hyder was formed in 1987 through the merger of two consulting engineering firms, one of which was part of a consortium that filed its own category “E” claim. The Panel has determined that there is no overlap between Hyder’s claim and the other claim. Hyder’s claim relates to losses allegedly incurred in Kuwait, while the other claim relates to losses allegedly incurred in Iraq.

300. The Panel has reclassified several elements of Hyder’s claim for the purposes of this report.

301. Hyder originally sought compensation in the amount of KWD 226,296 (USD 792,037) for contract losses related to its work on two motorway projects in Kuwait. Of this amount, the amount of KWD 154,299 (USD 540,047) is for loss of profits on the projects, and the Panel has reclassified that amount as a claim for loss of profits. An additional amount of KWD 4,342 (USD 15,196) is for losses related to bank guarantees and insurance costs, and the Panel has reclassified this amount as a claim for financial losses. The balance of KWD 67,655 (USD 236,794) is for costs allegedly incurred in connection with the projects, and this amount remains classified as a claim for contract losses.

302. Hyder originally sought compensation in the amount of KWD 83,183 (USD 291,141) for losses relating to business transaction or course of dealing. Of this amount, KWD 47,313 (USD 165,596) is for alleged liability to the Kuwaiti taxing authority. The Panel has reclassified this amount as a claim for other losses. The balance of KWD 35,870 (USD 125,545) is for alleged costs in restarting Hyder’s business in Kuwait, and the Panel also reclassified this amount as a claim for other losses.

303. Hyder originally sought compensation in the amount of KWD 65,410 (USD 228,935) for real property losses. These alleged losses are for loss of or damage to tangible property located in Hyder’s offices and staff quarters. The Panel has reclassified this amount as a claim for loss of tangible property.

304. Hyder originally sought compensation in the amount of KWD 13,081 (USD 45,784) for payment or relief to others. Of this amount, Hyder asserts that it paid KWD 1,196 (USD 4,186) to satisfy the bank debt of one of its employees. The Panel has reclassified this amount as a claim for other losses. The balance of KWD 11,885 (USD 41,598) is a claim for payments to staff, and this amount remains classified as a claim for payment or relief to others.

305. The Panel therefore considered the amount of KWD 387,970 (USD 1,357,897) for contract losses, loss of profits, loss of tangible property, payment or relief to others, financial losses, and other losses as follows:

Table 22. Hyder's claim

<u>Claim element</u>	<u>Claim amount (USD)</u>
Contract losses	236,794
Loss of profits	540,047
Loss of tangible property	228,935
Payment or relief to others	41,598
Financial losses	15,196
Other losses	295,327
<u>Total</u>	<u>1,357,897</u>

A. Contract losses

1. Facts and contentions

306. Hyder seeks compensation in the amount of KWD 67,655 (USD 236,794) for contract losses allegedly incurred in connection with two contracts in Kuwait.

307. Hyder originally sought compensation in the amount of KWD 226,296 (USD 792,037) for contract losses related to its work on two motorway projects in Kuwait. Of this amount, the Panel reclassified the amount of KWD 154,299 (USD 540,047) as loss of profits and the amount of KWD 4,342 (USD 15,196) as financial losses. The remaining amount of KWD 67,655 (USD 236,794) is for costs allegedly incurred in connection with the projects, and this amount remains classified as contract losses.

308. In 1990, prior to Iraq's invasion and occupation of Kuwait, Hyder entered into two contracts with the Ministry of Public Works, Kuwait, for the supervision of two projects related to the As Safr Motorway. According to Hyder, it anticipated the award of the contracts to it, and thus incurred expenses on staff and equipment in connection with the contracts before they were actually awarded. Hyder asserts that its pre-contract expenditures were to be recovered through the operation of the contracts. Iraq's invasion and occupation of Kuwait prevented further work on the contracts, and Hyder claims that it was unable to recover its already expended costs.

2. Analysis and valuation

309. Hyder did not provide the contracts with the Ministry of Public Works, or any other documents to show that the claimed expenditures were recoverable under the contracts.

310. The Panel finds that Hyder did not submit sufficient evidence to establish that its claimed expenditures were required under the terms of the contracts.

311. In addition, Hyder acknowledges that it sought payment from the Ministry of Public Works, but that its request was rejected. Hyder made no attempt to show that the refusal to pay was a direct result of Iraq's invasion and occupation of Kuwait.

312. The Panel has found that a claimant must provide specific proof that the failure of a non-Iraqi debtor to pay was a direct result of Iraq's invasion and occupation of Kuwait. A claimant must demonstrate, for example, that such a business debtor was rendered unable to pay due to insolvency or bankruptcy caused by the destruction of its business during Iraq's invasion and occupation of Kuwait, or was otherwise entitled to refuse to pay the claimant.

313. The Panel finds that Hyder did not establish that the Ministry of Public Works' failure to pay was a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

314. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

315. Hyder seeks compensation in the amount of KWD 154,299 (USD 540,047) for loss of profits. The claim is for the profits Hyder allegedly would have generated under the two contracts with the Ministry of Public Works, Kuwait, related to the As Safr Motorway Project.

316. Hyder originally classified the claim for loss of profits as contract losses, but the Panel finds that it is more appropriately classified as a claim for loss of profits.

2. Analysis and valuation

317. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17, supra.

318. In support of its claim, Hyder provided a document entitled "Financial Proposal Summary". It did not provide the contracts with the Ministry of Public Works. It did not provide invoices, detailed financial statements, management reports, budgets, accounts, time schedules, progress reports, or a breakdown of revenues and costs for the projects.

319. The Panel recommends no compensation as Hyder failed to provide evidence to substantiate its claim or to establish with reasonable certainty ongoing and expected profitability.

3. Recommendation

320. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

1. Facts and contentions

321. Hyder seeks compensation in the amount of KWD 65,410 (USD 228,935) for loss of tangible property. The claim is for the alleged loss of office equipment, appliances and furniture from its project sites in Kuwait.

322. Hyder originally classified the claim for loss of its tangible property as loss of real property, but the Panel finds that it is more appropriately classified as a claim for loss of tangible property.

323. Hyder asserts that property, consisting of office equipment, appliances and furniture located in its offices and staff quarters, was lost or damaged during Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

324. Hyder provided a statement by an employee who was present in Kuwait at the time of Iraq's invasion and occupation of Kuwait relating to loss of property.

325. However, Hyder did not provide any evidence of ownership or value of the property. In fact, Hyder stated in its reply to the article 34 notification that it has no such evidence.

326. The Panel finds that Hyder did not submit sufficient evidence to demonstrate its title to or right to use the assets, or the value of the assets.

3. Recommendation

327. The Panel recommends no compensation for loss of tangible property.

D. Payment or relief to others

1. Facts and contentions

328. Hyder seeks compensation in the amount of KWD 11,885 (USD 41,598) for payment or relief to others. The claim is for salaries and reimbursements allegedly paid to three employees from August to December 1990.

329. Hyder originally sought compensation in the amount of KWD 13,081 (USD 45,784) for payment or relief to others. Of this amount, the Panel reclassified the amount of KWD 1,196 (USD 4,186) as other losses.

330. Hyder asserts that three of its employees (two British nationals and one Indian national) were in hiding, detained, or otherwise unable to work from August to December 1990. Hyder states that it continued to pay their salaries during this time and reimbursed certain expenses. It seeks compensation in the amount of KWD 4,437 (USD 15,530) for the first employee, KWD 7,048 (USD 24,668) for the second, and KWD 400 (USD 1,400) for the third.

2. Analysis and valuation

331. The only evidence provided consisted of a one-page financial record dated January 1991 and a one-page financial record dated February 1991 for certain disbursements, and a letter to the Indian employee regarding certain payments. However, the Panel was unable to reconcile the figures in these documents with the amounts claimed for each individual employee, and it is uncertain as to how they relate to the claim. The Panel also finds that this evidence does not establish which amounts, if any, were actually expended by Hyder, or that any of the expenditures were extraordinary in nature.

332. The Panel finds that Hyder did not provide sufficient evidence to support its claim.

3. Recommendation

333. The Panel recommends no compensation for payment or relief to others.

E. Financial losses

1. Facts and contentions

334. Hyder seeks compensation in the amount of KWD 4,342 (USD 15,196) for financial losses. The claim is for alleged losses related to bank guarantees and insurance costs.

335. Hyder originally classified the claim for financial losses as contract losses, but the Panel finds that it is more appropriately classified as a claim for financial losses.

2. Analysis and valuation

336. There is little explanation as to the nature of this claim. It is unclear as to what facts, if any, give rise to the alleged loss. The only attempted explanation is an ambiguous reference to Hyder's guarantee of a loan to an employee. However, this alleged loss was included by Hyder in the original claim for payment or relief to others, which was reclassified by the Panel as other losses.

337. The Panel finds that Hyder did not provide sufficient information or evidence to explain the nature or cause of the alleged loss. Therefore, the Panel finds that Hyder did not provide sufficient information or evidence to support this claim.

3. Recommendation

338. The Panel recommends no compensation for financial losses.

F. Other losses

1. Facts and contentions/analysis and valuation

339. Hyder seeks compensation in the amount of KWD 84,379 (USD 295,327) for other losses. This claim comprises three separate alleged losses relating to tax liability, restart costs, and a loan guarantee.

340. Hyder originally classified these alleged losses as business transaction or course of dealing and payment or relief to others, but the Panel finds that they are more appropriately classified as other losses.

(a) Tax liability

341. Hyder alleges that it may be liable in the amount of KWD 47,313 (USD 165,596) for taxes owed to the Kuwaiti taxing authority. However, Hyder expressly states that this alleged liability is merely a potential one. Moreover, the potential liability is for the financial years 1987/88, 1988/89, 1989/90, and 1990/91.

342. The Panel finds that Hyder did not establish that it suffered a loss because the alleged liability is merely a potential one. The Panel also finds that Hyder did not establish that this claim is related to Iraq's invasion and occupation of Kuwait, particularly with respect to the years preceding it.

(b) Restart costs

343. Hyder alleges that it incurred KWD 35,870 (USD 125,545) to restart its operations after Iraq's invasion and occupation of Kuwait.

344. Hyder provided a breakdown of its expenses, and numerous invoices and receipts to support its claim. The Panel finds, however, that the evidence does not establish which, if any, of the expenditures are restart costs and which are normal operating costs.

345. The Panel finds that Hyder did not provide sufficient evidence to support its claim, or to establish that the alleged costs were incurred as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Loan guarantee

346. Hyder asserts that it guaranteed a bank loan to one of its employees, and incurred a loss of KWD 1,196 (USD 4,186) when it paid the loan balance.

347. Hyder provided a letter dated 21 July 1992 from the bank to Hyder demanding payment on the guarantee, and two other documents also dated July 1992 relating to the demand. The letter describes the guarantee as a "personal guarantee" executed by a Hyder employee.

348. Hyder did not provide an explanation as to how the satisfaction of a loan guarantee in July 1992 is a direct result of Iraq's invasion and occupation of Kuwait. Hyder also did not provide any evidence to show that the primary obligor was unable to pay, and rendered unable to pay as a direct result of Iraq's invasion and occupation of Kuwait. It also did not explain why Hyder made payment on a guarantee described as a "personal guarantee" executed by an individual.

349. The Panel finds that Hyder did not establish that the alleged loss was a direct result of Iraq's invasion and occupation of Kuwait. The Panel also finds that because the alleged loss occurred at the earliest in July 1992, it is outside the jurisdiction of the Commission.

2. Recommendation

350. The Panel recommends no compensation for other losses.

G. Recommendation for Hyder

Table 23. Recommended compensation for Hyder

<u>Claim element</u>	<u>Claim amount (USD)</u>	<u>Recommended compensation (USD)</u>
Contract losses	236,794	nil
Loss of profits	540,047	nil
Loss of tangible property	228,935	nil
Payment or relief to others	41,598	nil
Financial losses	15,196	nil
Other losses	295,327	nil
<u>Total</u>	<u>1,357,897</u>	<u>nil</u>

351. Based on its findings regarding Hyder's claim, the Panel recommends no compensation.

XIV. MONTGOMERY WATSON LTD.

352. Montgomery Watson Ltd. ("Montgomery") is a consulting engineering company organised according to the laws of the United Kingdom. Montgomery seeks compensation in the amount of USD 190,000 for other losses.

353. Montgomery was part of a joint venture with a Kuwaiti consulting engineering company called Gulf Consult. The joint venture entered into a contract with the Ministry of Public Works, Kuwait, under which the joint venture was to provide engineering consulting services on a sewer renovation project. The Panel has determined that Montgomery's claim does not include losses incurred by the joint venture or Montgomery's joint venture partner.

354. This claim is the result of a consolidation of two claims, one of which was filed as a category "C" claim and the other as a category "D" claim. A company called Watson Hawksley Ltd. filed a category "C" claim in March 1992, which was transferred from category "C" to subcategory "E3" in 1997. A company called Montgomery Watson Ltd. filed a category "D" claim in October 1994, which was transferred from category "D" to subcategory "E3" in 2000.

355. Watson Hawksley Ltd. and Montgomery Watson Ltd. are the same entity. Watson Hawksley Ltd. changed its name to Montgomery Watson Ltd. in 1993. Accordingly, the Commission consolidated the two claims under the name of Montgomery Watson Ltd.

356. Montgomery used the category "C" claim form to claim part of its alleged losses (in the amount of USD 100,000) and the category "D" claim form to claim the balance of its alleged losses (in the

amount of USD 90,000). In each of those claim forms, Montgomery sought compensation under the category called “business losses”. Montgomery did not submit a category “E” claim form.

357. The Panel has reclassified Montgomery’s claim for the purposes of this report. Because Montgomery did not classify its losses in a category “E” claim form, the Panel has reclassified all of the claimed losses as other losses. The Panel therefore considered the amount of USD 190,000 for other losses.

Table 24. Montgomery’s claim

<u>Claim element</u>	<u>Claim amount</u> <u>(USD)</u>
Other losses	190,000
<u>Total</u>	<u>190,000</u>

A. Other losses

1. Facts and contentions

358. Montgomery seeks compensation in the amount of USD 190,000 for other losses allegedly incurred in Kuwait.

359. Montgomery originally submitted its claim on category “C” and “D” claim forms, and the Panel has classified the asserted losses as other losses for the purposes of review under category “E”.

360. The Statement of Claim identified the following six types of losses for which Montgomery seeks compensation:

(a) “Cost of Hostages”. Montgomery states that four of its employees were taken hostage by the Iraqi authorities. It seeks compensation for the salaries paid to the employees while they were held. It also seeks compensation for evacuation costs. The individual employment contracts state that Montgomery is obliged to pay for travel from Kuwait to the home country of each employee at the end of employment, and Montgomery states that each employee had an open return airline ticket. Montgomery asserts that the open return tickets could not be used in the evacuation, and that it paid GBP 1,660 to the Government of the United Kingdom to cover the costs of evacuation.

(b) “Management of Crisis and Hostage Family Support”. Montgomery seeks compensation for the labour cost of its personnel who were assigned to deal with the hostage crisis.

(c) “Delayed Settlement of Invoices”. Montgomery asserts that as at 1 August 1990, the employer owed the joint venture in excess of GBP 51,000 on contract invoices. The amounts due were settled and paid in June 2000 without interest. Montgomery seeks compensation for interest charges allegedly incurred in financing the unpaid amounts until June 2000.

(d) “Bank Charges for Guarantees”. The joint venture was required to provide bank guarantees to cover an advance payment made to it. The guarantees were issued on 14 October 1989.

According to Montgomery, the guarantees should have been released on 10 October 1991, but the employer did not return the guarantees until March 1992. Montgomery seeks compensation for bank charges on the guarantees it allegedly incurred until March 1992.

(e) “Recruitment and Mobilisation of Replacement Staff”. Montgomery seeks compensation for costs incurred in replacing the employees who were taken hostage.

(f) “Lost Marketing Costs in Kuwait”. Montgomery asserts that it incurred marketing costs in 1990 as part of the process of preparing bids on three additional contracts in Kuwait, and seeks compensation for such costs.

2. Analysis and valuation

(a) Cost of hostages

361. Montgomery provided as evidence of its alleged losses a copy of the contract with the Ministry of Public Works, Kuwait, copies of the employment contracts for the four employees who were taken hostage, undated internal calculations of amounts to be paid to the employees taken hostage, correspondence with the British Foreign and Commonwealth Office regarding and confirming payment of GBP 1,660 for evacuation costs, and copies of the passports for the employees taken hostage.

362. Montgomery states that it has no payroll records and no evidence to show that the claimed amounts were actually received by the employees.

363. With regard to the claim for salaries and benefits paid to the employees taken hostage, the Panel finds that there is no evidence to show that the claimed amounts were received by the employees, or to reconcile the payment of GBP 1,660 for evacuation costs reflected in the correspondence with the British Foreign and Commonwealth Office. The Panel also finds that Montgomery did not provide evidence regarding the time period during which the employees were held hostage.

364. The Panel also determined that all four employees filed individual category “C” claims with the Commission. Two of the employees received compensation for loss of income. A review of the individual claims confirmed that the two employees were compensated for loss of income related to their employment with Montgomery. Thus, the Panel finds that the individual category “C” claims overlap and duplicate Montgomery’s claim, in part, and that two of the employees have already been compensated for loss of income.

365. As for evacuation costs, the employment contracts state that Montgomery is obliged to pay for travel from Kuwait to the home country of the employee at the end of employment. The Panel finds that Montgomery did not demonstrate that this obligation is limited to or satisfied simply by providing an open return airline ticket. The contractual obligation is open to the interpretation that Montgomery was obliged to pay evacuation costs regardless of whether each employee had an open return airline ticket. Thus, the Panel finds that Montgomery did not establish that such costs were extraordinary in nature.

(b) Management of crisis and hostage family support

366. Montgomery did not provide any evidence to support this claim.

367. The Panel finds that Montgomery did not provide sufficient evidence to support its claim relating to labour costs allegedly incurred to deal with the hostage situation.

(c) Delayed settlement of invoices

368. To support its claim for interest charges allegedly incurred in financing the unpaid invoice amounts, Montgomery provided as evidence of its alleged losses copies of invoices from Montgomery to the joint venture, copies of invoices from the joint venture to the employer for the period February to July 1990, and copies of credit invoices showing that payments by the employer were interrupted from July 1990 to October 1991.

369. Montgomery did not provide any evidence that the delay in payment by the Kuwaiti employer was the direct result of Iraq's invasion and occupation of Kuwait, that it actually incurred the interest expense claimed, or the interest rate at which it allegedly incurred interest costs.

370. The Panel finds that Montgomery did not provide sufficient evidence to support its claim for interest charges.

(d) Bank charges for guarantees

371. To support its claim for bank charges on guarantees, Montgomery provided as evidence copies of debit notes from Lloyds Bank for bank charges on guarantees from June 1990 to March 1992, a copy of a letter of guarantee (valid from 11 October 1989 to 10 October 1991) issued by The Gulf Bank, correspondence from Lloyds Bank demanding payment of bank charges, and debit notes from Lloyds Bank recording debits to Montgomery's account for payment of bank charges.

372. The guarantees were issued in favour of the joint venture, but Montgomery did not provide an explanation as to why it was paying bank charges on its own for guarantees issued to the joint venture. Montgomery also did not provide any evidence to demonstrate the relationship among the documents issued by Lloyds Bank and The Gulf Bank. The documents do not indicate the relationship between the two banks or that they are necessarily related to the same transaction.

373. The Panel finds that Montgomery did not provide sufficient evidence to support its claim for bank charges.

(e) Recruitment and mobilisation of replacement staff

374. Montgomery did not provide any evidence to support its claim that it incurred costs in replacing the employees who were taken hostage.

375. The Panel finds that Montgomery did not provide sufficient evidence to support its claim for recruitment and mobilisation costs.

(f) Lost marketing costs in Kuwait

376. To support its claim that it incurred marketing costs in preparing bids on three additional contracts, Montgomery provided as evidence of its alleged losses costs ledgers dated 18 September 1990 reflecting certain marketing costs.

377. Montgomery did not provide any evidence to show that it would have been awarded any of the three additional contracts. It also did not provide any invoices or other third-party documents to support its claim.

378. The Panel finds that Montgomery did not provide sufficient evidence to support its claim or to establish that its alleged loss was a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

379. The Panel recommends no compensation for other losses.

B. Recommendation for Montgomery

Table 25. Recommended compensation for Montgomery

<u>Claim element</u>	<u>Claim amount (USD)</u>	<u>Recommended compensation (USD)</u>
Other losses	190,000	nil
<u>Total</u>	<u>190,000</u>	<u>nil</u>

380. Based on its findings regarding Montgomery's claim, the Panel recommends no compensation.

XV. RECOMMENDATIONS

381. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

- (a) CY.E.M.S. Co. Ltd.: Nil;
- (b) Energoprojekt Architecture and Town Planning Company Ltd.: USD 221,431;
- (c) AART International S. Farah et Associés: Nil;
- (d) Anice Construction Services Pvt. Ltd.: USD 230,695;
- (e) Grover Technical Services Pvt. Limited: USD 238,150;
- (f) Sumitomo Heavy Industries Ltd.: Nil
- (g) Toa Corporation: Nil;

- (h) Toyo Engineering Corporation: Nil;
- (i) British Metro Consultants Group: Nil;
- (j) Franklin Hodge Industries Ltd.: Nil;
- (k) Hyder Consulting Limited (formerly Acer Consultants Limited): Nil; and
- (l) Montgomery Watson Ltd.: Nil.

Geneva, 15 October 2002

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner
