



**Security Council**

Distr.  
GENERAL

S/AC.26/2003/13  
26 June 2003

Original: ENGLISH

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UNITED NATIONS  
COMPENSATION COMMISSION  
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS  
CONCERNING THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS

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### Introduction

1. At its thirtieth session, held on 14-16 December 1998, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed Messrs. Luiz Olavo Baptista (Chairman), Jean Naudet and Jianxi Wang as the second Panel of Commissioners (the "Panel") charged with reviewing category "E4" claims. The category "E4" population consists of claims, other than oil sector and environmental claims, submitted by Kuwaiti private-sector corporations and other entities eligible to file claims under the Commission's "Claim Forms for Corporations and Other Entities" ("Form E").
2. The twenty-third instalment, consisting of 18 "E4" claims, was submitted to the Panel on 31 January 2002, in accordance with article 32 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules"). One claimant, Independent Petroleum Group (K.S.C.), submitted a claim for losses in the amount of 5,760,972 Kuwaiti dinars (KWD) (approximately 19,934,159 United States dollars (USD)). These losses were similar to those asserted in claims reviewed by the category "E1" Panel in previous instalments of energy sector claims. Accordingly, the Panel requested that the Executive Secretary of the Commission transfer this claim to the "E1" claims category pursuant to article 32(3) of the Rules and the Panel has made no findings concerning this claim. In this report, subsequent references to the twenty-third instalment claims are to the remaining 17 claims listed in annex I below.
3. Pursuant to article 38 of the Rules, this report contains the Panel's recommendations to the Governing Council concerning the twenty-third instalment claims.

#### I. OVERVIEW OF THE TWENTY-THIRD INSTALMENT CLAIMS

4. The twenty-third instalment claims were selected from the population of approximately 2,750 "E4" claims on the basis of criteria that include, inter alia, the size, volume and complexity of the claims, the legal, factual and valuation issues raised by the claims, and the date of filing of the claims with the Commission.
5. The twenty-third instalment claimants filed losses aggregating KWD 134,711,413 (approximately USD 466,129,457). The claimants also asserted claims for interest totalling KWD 11,813,502 (approximately USD 40,877,170) and claim preparation costs aggregating KWD 599,240 (approximately USD 2,073,495). The Panel's first procedural order in respect of the twenty-third instalment (as described in paragraph 15 below) refers to total losses (including interest and claim preparation costs) aggregating KWD 152,649,942 (approximately USD 528,200,491). The differences between the amounts described in the first procedural order and the amounts set out here relate to the claims by three claimants: Independent Petroleum Group (K.S.C.) (see paragraph 2 above), Kuwait & Gulf Link Transport Co. (see paragraphs 81 to 82 below) and Kuwait Ports Authority (see paragraphs 103 to 107 below).

6. The twenty-third instalment claims are classified as “unusually large or complex” within the meaning of article 38(d) of the Rules. In other words, the amount claimed by each claimant is more than USD 10 million (approximately KWD 3 million) and, due to the nature of the legal and factual issues raised in the claims and the amount of documentation provided in support of the claimed losses, the Panel’s verification and valuation of the claims have been completed within 12 months of the date that the claims were submitted to the Panel.

7. All of the claimants in the twenty-third instalment operated in Kuwait prior to Iraq’s invasion and occupation of Kuwait. Most claimants were engaged in industries related to transportation, agriculture, manufacturing and construction. One claimant, Kuwait Ports Authority, was responsible for the management and operation of Kuwait’s commercial ports and the regulation of marine navigation in Kuwait.

8. The claimants in this instalment have sought compensation for all of the loss types identified on Form E. The two most common losses asserted are loss of tangible property (mainly stock, furniture, fixtures, equipment and vehicles) and loss of earnings or profits. The claimants have also sought compensation for contract losses, real property losses, business transactions or course of dealing losses, loss of income-producing properties, payment or relief to others, uncollectible receivables, restart costs, interest, claim preparation costs and “other losses”.

## II. THE PROCEEDINGS

9. Before the twenty-third instalment claims were submitted to the Panel, the secretariat of the Commission (the “secretariat”) undertook a preliminary assessment of the claims in accordance with the Rules. This review is described in paragraph 11 of the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘E4’ claims” (S/AC.26/1999/4) (the “First ‘E4’ Report”). The results of the review were entered into a centralized database maintained by the secretariat (the “Claims Database”).

10. Originally, one claim presented formal deficiencies and the secretariat issued a notification to the relevant claimant pursuant to article 15 of the Rules. This claimant corrected all formal deficiencies.

11. A substantive review of the claims was undertaken to identify significant legal, factual and valuation issues. The results of the review, including the significant issues identified, were recorded in the Claims Database.

12. The Executive Secretary of the Commission submitted report Nos. 33, 34, 35, 36 and 37 dated 6 October 2000, 10 January 2001, 12 April 2001, 10 July 2001 and 18 October 2001, respectively, to the Governing Council in accordance with article 16 of the Rules (“article 16 reports”). These reports covered, *inter alia*, the twenty-third instalment of “E4” claims. A number of Governments, including the Government of Iraq, submitted additional information and views in response to the Executive Secretary’s article 16 reports.

13. At the conclusion of the (a) preliminary assessment; (b) substantive review; and (c) article 16 reporting, the following documents were made available to, and were taken into account by, the Panel:

- (a) The claim documents submitted by the claimants;
- (b) The preliminary assessment reports prepared under article 14 of the Rules;
- (c) Information and views of Governments, including the Government of Iraq, received in response to the article 16 reports; and
- (d) Other information deemed, under article 32 of the Rules, to be useful to the Panel for its work.

14. For the reasons stated in paragraph 17 of the First “E4” Report, the Panel retained the services of an accounting firm and a loss adjusting firm as expert consultants. The Panel directed the expert consultants to review each claim in the twenty-third instalment in accordance with the verification and valuation methodology developed by the Panel. The Panel directed the expert consultants to submit to the Panel a detailed report for each claim summarizing the expert consultants’ findings.

15. By its first procedural order dated 31 January 2002, the Panel gave notice of its intention to complete its review of the twenty-third instalment claims and submit its report and recommendations to the Governing Council within 12 months of 31 January 2002. This procedural order was transmitted to the Government of Iraq and the Government of Kuwait.

16. By its second procedural order dated 31 January 2002, the Panel directed the transmittal to the Government of Iraq of a copy of the original claim file consisting of the claim form, the statement of claim and all supporting documents filed by four claimants whose claims include alleged losses relating to contracts with the Government of Iraq or alleged losses that occurred in Iraq, or the claims of which have been submitted for asserted losses in excess of USD 100 million. The Panel invited the Government of Iraq to submit its comments on these claims within 180 days of the date of the procedural order. The Government of Iraq’s comments were received on 2 September 2002 and were reviewed and considered by the Panel.

17. Pursuant to article 34 of the Rules, additional information and evidence were requested from the claimants in order to assist the Panel in its review of the claims (the “article 34 notifications”). All requests for additional information and evidence were directed through the Government of Kuwait’s Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression (“PAAC”). Claimants that were unable to submit the evidence requested were asked to provide reasons for their inability to comply with such requests. These requests were made in relation to the entire “E4” claims population and not just the twenty-third instalment claims. Pursuant to further article 34 notifications, the secretariat also sought specific information and evidence from all claimants in the twenty-third instalment. In making its recommendations, the Panel has considered the responses submitted by the claimants.

18. The requests for additional information and evidence are described in previous "E4" reports, e.g., paragraphs 19 to 24 of the "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E4' claims" (S/AC.26/1999/18) (the "Fourth 'E4' Report") and paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of 'E4' claims" (S/AC.26/2000/8) (the "Sixth 'E4' Report"). These requests are not restated in this report.

19. During the period from 19 to 24 March 2002, at the direction of the Panel, members of the secretariat and expert accounting and loss adjusting consultants travelled to Kuwait to obtain information for the Panel's assessment of the twenty-third instalment claims and to carry out on-site inspections and document reviews.

20. An additional level of verification was performed to determine if related claimants filed duplicate claims with the Commission. This review is described in paragraph 18 of the Fourth "E4" Report.

21. Based on its review of the documents submitted and the additional information obtained, the Panel concluded that the issues presented by the twenty-third instalment claims had been adequately developed and that oral proceedings were not required to assist with the Panel's review of the claims.

### III. LEGAL FRAMEWORK AND VERIFICATION AND VALUATION METHODOLOGY

22. The legal framework and the verification and valuation methodology applied to the evaluation of the claims in this instalment are the same as that used in earlier "E4" instalments. This framework and methodology are discussed in paragraphs 25 to 62 of the First "E4" Report. Subsequent "E4" reports discuss additional legal and verification and valuation issues that were encountered in later instalments of "E4" claims. These various elements of the Panel's review are not restated in this report. Instead, this report refers to sections in the previous "E4" reports where such issues have been addressed.

23. Where the Panel encountered new issues not addressed in prior "E4" reports, the Panel developed methodologies for verifying and valuing the losses. These new issues are discussed in the text of this report. The Panel's specific recommendations on the losses asserted in this instalment and the Panel's reasons for those recommendations are set out in the annexes to this report.

24. Before discussing the Panel's specific recommendations for compensating the twenty-third instalment claims, it is important to restate that the Panel's approach to the verification and valuation of these claims balances the claimant's inability to always provide best evidence against the "risk of overstatement" introduced by shortcomings in evidence. In this context, the term "risk of overstatement", defined in paragraph 34 of the First "E4" Report, is used to refer to cases in which claims contain evidentiary shortcomings that prevent their precise quantification and therefore present a risk that they might be overstated.

#### IV. THE CLAIMS

25. The Panel reviewed the claims according to the nature and type of loss identified. Therefore, the Panel's recommendations are set out by loss type. Reclassified losses have been dealt with in the section pertaining to the loss types into which the Panel reclassified the losses.

##### A. Contract

26. Five claimants in this instalment assert loss of contract claims aggregating KWD 6,022,295 (approximately USD 20,838,391). Claims for loss of contract in this instalment do not relate to contracts with the Government of Iraq or to contracts requiring performance in Iraq.

27. The Panel's approach to the compensability of loss of contract claims is stated in prior "E4" reports and the verification and valuation methodology adopted by the Panel for the loss of contract claims is discussed in paragraphs 77 to 84 of the First "E4" Report.

28. Three claimants, Gulf Engineering Company W.L.L. ("Gulf Engineering"), Refrigeration Industries Co. SAK ("Refrigeration Industries") and Al Towaijri Trading & Contracting Co. W.L.L. ("Al Towaijri"), submitted loss of contract claims relating to materials, labour and other expenses incurred but not billed to the owners of projects prior to 2 August 1990. In respect of these claims for unbilled contract expenses, the Panel applied the approach and methodology referred to in the preceding paragraph. The Panel found that, in each claim, these expenses were compensable in principle as direct losses resulting from Iraq's invasion and occupation of Kuwait, however adjustments to the claimed amounts were required to offset the risk of overstatement resulting from certain evidentiary shortcomings as more fully described below.

29. In respect of its claim for unbilled contract expenses, Gulf Engineering provided evidence that, pursuant to several contracts in effect as at 2 August 1990, it had supplied and installed air conditioning, plumbing, fire-fighting and electrical equipment to various customers' projects. The claimant stated that, in respect of each contract, a certain amount of the costs of the work performed had not been billed to the customers prior to Iraq's invasion and occupation of Kuwait. Approximately one half of Gulf Engineering's claimed losses for unbilled contract expenses related to a contract with the Kuwaiti Ministry of Electricity and Water to supply air-conditioning units to certain schools in Kuwait. The claimant provided evidence that the contract dated 13 March 1990 was to be completed by 15 August 1990. The claimant provided further evidence that although the air-conditioning units had been installed at the schools prior to 2 August 1990, the Kuwaiti Ministry had not yet inspected the units and, by the terms of the contract, the claimant could not invoice the costs of the units prior to such inspection.

30. The Panel finds that certain adjustments should be applied to the amount claimed by Gulf Engineering in respect of these contracts. In particular, the Panel noted that the claimant did not provide copies of all of the contracts under which work had been performed and therefore the Panel could not determine in all cases whether the claimed losses accorded with the terms of the contracts. In addition, certain of the claimant's evidence was internally generated, such as stock transfer

documents and labour expense records, and the Panel finds that such evidence results in the risk of overstatement. The claimant also admitted that it could not advance claims against its customers for the unbilled contract expenses because it did not have sufficient evidence to support the amount of such expenses. The Panel took that admission into account in assessing the sufficiency of the evidence provided by the claimant. In respect of the contract with the Ministry of Electricity and Water, the Panel further noted that the claimant entered into a new contract for the same work following the liberation of Kuwait and accordingly, the Panel finds that there is a risk that the claimant may have been able to recover some of its claimed losses.

31. In respect of the claim for unbilled contract expenses by Refrigeration Industries, the claimant provided evidence that it entered into two agreements with the Kuwaiti Ministry of Electricity and Water to supply air-conditioning units to the same schools project as described above in respect of Gulf Engineering. Refrigeration Industries provided evidence that, pursuant to two contracts dated 14 April 1990, the claimant had installed air-conditioning units at the school sites prior to 2 August 1990. As with the claim by Gulf Engineering, Refrigeration Industries also provided evidence that the Kuwait Ministry had not yet inspected these units prior to Iraq's invasion and occupation of Kuwait and, by the terms of the contracts, the claimant could not invoice the costs of the units prior to such inspection.

32. In respect of the claim by Refrigeration Industries, the Panel also finds that certain adjustments should be applied to the claimed amount to offset the risk of overstatement. The Panel noted that the claimant did not provide third-party evidence to support the number and value of air-conditioning units installed prior to 2 August 1990. In addition, the claimant confirmed that it could not provide evidence of certain transfers of the units from its stock to the projects.

33. In respect of the claim by Al Towaijri for unbilled contract expenses, the Panel notes that the claimant provided evidence that it was party to a contract with the Kuwaiti National Housing Authority (the "NHA") for the construction of houses at the Al-Qurain Housing Project. The claimant stated that the contract was dated 9 June 1987 and that work commenced in October 1987. The claimant further stated that the last payment certificate issued by the NHA prior to Iraq's invasion and occupation of Kuwait was dated 15 June 1990. The claimant's claimed loss for unbilled contract expenses was based on the difference between the work-in-progress account for this project, as recorded in the claimant's financial statements, and the amount of revenue received from the NHA, as evidenced by the last payment certificate. The claimant also provided evidence that although the NHA offered the claimant a new contract for the same work following the liberation of Kuwait, the claimant did not accept the terms proposed by the NHA.

34. In respect of this claim by Al Towaijri, the Panel finds that adjustments to the claimed amount are required as a result of certain evidentiary shortcomings. Based on its review of the claimant's evidence, including audited financial statements, the Panel determined that there was a risk that the claimant may not have been able to profitably complete the contract if Iraq's invasion and occupation of Kuwait had not occurred. The Panel also found that the claimant did not provide sufficient evidence to explain the level of unbilled contract expenses given that the contracts provided for

monthly payments to be made by the NHA to the claimant. In addition, the Panel noted that a new contract for the same work was offered to the claimant following the liberation of Kuwait, however the claimant made the business decision that it was not able to accept the terms of such contract.

35. In addition to its claim for unbilled contract expenses as discussed above, Gulf Engineering submitted a further claim for contract losses relating to the provision of air-conditioning units to various construction sites. The claimant stated that its practice was to deliver and install air-conditioning units while a customer's building was under construction. The claimant provided evidence that a certain percentage (usually 5 or 10 per cent) of the contract value would be withheld by the customer until construction was completed and the claimant could return to the site to complete the final commissioning of the air-conditioning units. The claimant provided further evidence that the final commissioning generally occurred within 12 months following the initial installation of the units.

36. The claimant claimed that, as at 2 August 1990, it had numerous contracts for which it had delivered and installed air-conditioning units but for which it had not yet completed the final commissioning. In response to the article 34 notifications, the claimant amended the value of its claim, confirming that certain amounts had been received from customers following the liberation of Kuwait. The claimant also stated that certain of these payments were made only after the claimant agreed to reduce the amounts owing from the customers. The claimant continued to claim before the Commission for the amount of these discounts.

37. The Panel reviewed the claimant's evidence and determined that the amounts withheld by the customers are compensable in principle as direct losses resulting from Iraq's invasion and occupation of Kuwait. However, in respect of the discounts granted to customers by the claimant, the Panel referred to paragraph 81 of the Fourth "E4" Report in which the Panel found that a claimant's decision to grant such discounts is the result of an independent business decision that breaks the causal link to Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no award of compensation in respect of such discounts.

38. In respect of the remaining claimed amounts under the contracts, the Panel noted that certain amounts related to contracts under which the initial installation of the units occurred as early as 1986. In addition, the claimant provided evidence that certain amounts had been collected following the liberation of Kuwait. The Panel determined that adjustments to the claimed amount were required to limit the claim to contracts under which the initial installation of the units occurred within a reasonable period prior to 2 August 1990. The Panel found that, based on the claimant's evidence as to when final commissioning would generally occur, 12 months was a reasonable period for the purposes of this claim. In addition, the Panel found that further adjustments were required to offset the risk of overstatement relating to the possibility that certain of these amounts were in fact uncollectible receivables.

39. Kuwait Ports Authority ("KPA") submitted loss of contracts claims in respect of six contracts under which it had retained contractors to complete certain construction works. KPA submitted evidence that each of these contracts was in the course of performance as at 2 August 1990. KPA

submitted loss of contract claims in respect of the increased costs to complete these six contracts following the liberation of Kuwait. In response to requests under article 34 of the Rules for further information in respect of these claims, the claimant provided evidence that four of the six contracts were not resumed following the liberation of Kuwait. Given that the claimant did not incur the increased costs on these four contracts, the Panel recommends no award of compensation for the claims for increased costs in respect of those contracts that were not resumed following the liberation of Kuwait.

40. In respect of the two contracts that were resumed following the liberation of Kuwait, the Panel refers to paragraphs 41 to 43 of the “Report and recommendations made by the Panel of Commissioners concerning the seventeenth instalment of ‘E4’ claims” (S/AC.26/2002/17) (the “Seventeenth ‘E4’ Report”). In that report, the Panel considered both paragraphs 67 to 76 of the First “E4” Report and paragraphs 59 to 64 of the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘F3’ claims” (S/AC.26/1999/24) (the “First ‘F3’ Report”). The Panel adopted the findings of the “F3” Panel that, in respect of increased prices of commodities and services in Kuwait, increases in only three types of costs have a direct causal link to Iraq’s invasion and occupation of Kuwait. These costs relate to transportation, insurance and site restoration costs, including costs related to the replacement of materials and equipment lost during the invasion that were necessary for the resumption of the construction works.

41. In the Seventeenth “E4” Report, the Panel also considered the findings of the “D1” Panel at paragraphs 14 to 16 of the “Report and recommendations made by the ‘D1’ Panel of Commissioners concerning the seventh instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2000/25). The Panel noted that the “D1” Panel recommended compensation for a claim for losses relating to increased construction costs but applied a discount factor to the claimed amount because the claimant had not “clearly distinguished the precise portion of the increased costs attributable to [the] three factors” identified by the “F3” Panel in the First “F3” Report. The Panel applied this approach of the “D1” Panel in the Seventeenth “E4” Report.

42. In a similar manner as in the Seventeenth “E4” Report, the Panel here finds that the claimant has demonstrated that it incurred additional costs to complete the two contracts. The Panel considers, however, that the claimant did not clearly distinguish what portion of the increased costs is attributable to the three types of costs identified by the “F3” Panel as stated above. Accordingly, the Panel recommends an award of compensation for the claim by KPA for increased contract costs, subject to certain adjustments to offset the risk of overstatement resulting from the evidentiary shortcomings described above.

43. KPA also submitted loss of contract claims relating to the loss or destruction of materials held at certain project sites. In determining the compensability of these claims, the Panel referred to paragraphs 28 to 29 of the “Report and recommendations made by the Panel of Commissioners concerning the twenty-second instalment of ‘E4’ claims” (S/AC.26/2002/24). As stated in that report, the Panel considers whether the claimants provided sufficient evidence to establish with reasonable certainty:

(a) That the materials were in existence and on a particular contract site as at the date of Iraq's invasion and occupation of Kuwait;

(b) That the claimant had an interest in the materials as at the date of Iraq's invasion and occupation of Kuwait; and

(c) That the materials were lost or destroyed as a result of Iraq's invasion and occupation of Kuwait.

44. The Panel reviewed the evidence submitted by KPA in respect of its claim for materials lost from project sites and determined that, based on the three categories enumerated in the preceding paragraph, the claimant did not provide sufficient evidence to support its claimed loss. The Panel therefore recommends no award of compensation for the claim by KPA for the loss of these materials.

45. Musaad Al-Saleh and Sons Company (W.L.L.) ("Musaad Al-Saleh") submitted a claim for contract losses relating to facilities destroyed or lost in respect of three project sites. The claimant stated that these site facilities included site offices and stores, equipment, tools and other assets. The claimant further stated that, as result of damage to its project sites during Iraq's invasion and occupation of Kuwait, the claimant was unable to provide third-party documentary evidence in support of the acquisition cost of these site facilities, or to provide documents confirming the transfer of these assets to the projects. The Panel reviewed the evidence submitted by the claimant and determined that the claimant did not provide sufficient evidence to support the existence and loss of these site facilities. Accordingly, the Panel recommends no award of compensation for this claimed loss.

46. The Panel's recommendations on loss of contract claims are summarized in annex II below.

#### B. Real property

47. Ten claimants in this instalment filed claims aggregating KWD 16,368,963 (approximately USD 56,640,010) for loss of real property. These claims relate to damage to a number of owned and rented premises in Kuwait.

48. The compensability standards and the verification and valuation methodology adopted by the Panel for loss of real property claims are stated in paragraphs 89 to 101 of the First "E4" Report.

49. The nature of damage to the properties and the location of the affected properties in Kuwait established that the losses were a direct result of Iraq's invasion and occupation of Kuwait. Claims were either based on the actual costs incurred in repairing the properties or on estimates of such costs.

50. Most claimants submitted sufficient evidence to establish their interest in the affected properties and the loss claimed. However, as was the case in earlier "E4" instalments, claimants generally did not exclude regular maintenance or depreciation costs from their claims. The Panel adjusted the claims to account for these costs, which would have been incurred in the normal course of business and were not a direct result of Iraq's invasion and occupation of Kuwait. Similar adjustments were

made by the Panel in cases of unforced “betterment”, as explained in paragraph 97 of the First “E4” Report.

51. In claims based on estimated repair costs, the Panel sought a reasonable explanation for the claimant’s failure to repair or replace the affected property. Where such explanation was absent, the Panel adjusted the claim to offset the risk of overstatement created by this shortcoming.

52. KPA submitted a claim for the estimated costs to repair certain real property owned by KPA prior to Iraq’s invasion and occupation of Kuwait. The original claim in the amount of KWD 4,556,487 was based on repair estimates calculated by KPA’s damage assessment consultants in respect of over 50 buildings and warehouses. In response to the article 34 notifications, KPA reduced the claimed amount to KWD 4,075,987 and stated that this amount represented the cost of repairs to only 15 buildings as incurred by National Real Estate Company (“National”). KPA explained that it did not repair any of the real property following the liberation of Kuwait because such property was transferred to the Kuwaiti Ministry of Commerce for use as a “free trade zone”. The claimant provided further evidence that the Ministry of Commerce entered into an agreement with National whereby National agreed to manage the free trade zone on behalf of the Ministry of Commerce. The terms of the agreement provided that National would pay rent to the claimant for use of the land, but that such rent would be reduced by the value of repairs undertaken by National. KPA argued that it incurred the cost of the repairs to the 15 buildings as a result of the reduced rent payable by National. KPA did not provide evidence regarding whether any repairs had been undertaken in respect of the other buildings for which KPA had originally claimed.

53. The Panel noted that the only evidence provided by the claimant to support the value and nature of the repairs undertaken by National was in the form of letters from National and the Ministry of Commerce providing a general breakdown of the repair costs incurred. In response to a specific article 34 notification, KPA stated that it was not able to provide repair invoices, proof of payment or other documentary evidence to support its claim that the repairs were undertaken by National in the amounts asserted. In this further submission, KPA also confirmed that its claim is based on the repair estimates calculated by KPA’s damage assessment consultants as originally submitted by KPA, not on the amounts allegedly incurred by National. KPA stated the estimated repair costs for the 15 buildings was KWD 1,922,690. The Panel determined that the claim should be reviewed on the basis of such amount. The Panel assessed the claim for these estimated repair costs based on the compensability standards and the verification and valuation methodology as stated in paragraphs 89 to 101 of the First “E4” Report.

54. The United Agricultural Production Company. (S.A.K. Closed) submitted a claim for real property losses related to certain reclamation work completed prior to Iraq’s invasion and occupation of Kuwait. The claimant provided evidence that it had retained a contractor to prepare land for agricultural production by performing such works as removing desert sand, backfilling soil and preparing roads and tracks. The claimant further stated that the work was performed during the period from 1 November 1989 to 30 June 1990. The claimant submitted that the value of this reclamation work had been lost as a direct result of Iraq’s invasion and occupation of Kuwait. The claimant stated

that, during the period of Iraq's invasion and occupation of Kuwait, heavy equipment had been driven across the land, crops could not be planted in order to maintain the soil and the roads and tracks had been destroyed.

55. In assessing this claim, the Panel reviewed the evidence submitted by the claimant, including witness statements, photographs and post-liberation audited financial statements. The Panel also referred to the "Report to the Secretary-General on the scope and nature of damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation" (S/22535), prepared by former Under-Secretary-General Mr. Abdulrahim A. Farah which, *inter alia*, described damage to farming operations in Kuwait and discussed land degradation during Iraq's invasion and occupation of Kuwait. Based on the foregoing, the Panel determined that the claimed loss was a direct result of Iraq's invasion and occupation of Kuwait and, accordingly, recommends an award of compensation in respect of this claim. The Panel noted, however, that the claimant did not provide evidence to support the full value of the claimed amount, nor did it sufficiently explain why the reclamation work was not reinstated following the liberation of Kuwait. The Panel recommends that adjustments be applied to this claim in order to offset the risk of overstatement resulting from these evidentiary shortcomings.

56. The Panel's recommendations on real property losses are summarized in annex II below.

#### C. Tangible property, stock, cash and vehicles

57. Tangible property losses are claimed by all of the twenty-third instalment claimants. The asserted losses, relating to stock, furniture and fixtures, equipment, vehicles and cash, aggregate KWD 58,012,321 (approximately USD 200,734,675).

58. With regard to the compensability and the verification and valuation of these tangible property claims, the Panel applied the approach set out in paragraphs 108 to 135 of the First "E4" Report.

59. The claimants in this instalment submitted the same type of evidence encountered by the Panel when reviewing loss of tangible property claims in earlier "E4" instalments. This evidence is described in paragraphs 48 to 49 of the "Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of 'E4' claims" (S/AC.26/2000/7) (the "Fifth 'E4' Report").

60. Hilal Cement Company KSCC ("Hilal Cement") submitted a claim for loss of tangible property in respect of the claimant's primary asset, a barge that had been used by the claimant to off-load grain from ships. The claimant provided evidence that the barge was damaged as a result of Iraq's invasion and occupation of Kuwait and that the claimant entered into an agreement with a contractor in April 1991 to repair such damage at a cost of USD 8.3 million. The claimant stated that it paid USD 1.3 million to the repair contractor during the period from May to August 1991. The claimant provided further evidence that the barge had been insured for a value up to KWD 6.25 million (approximately USD 21 million), however the claimant's insurer initially denied the claimant's insurance claim under a war risks insurance policy. Following the initiation of legal proceedings against the insurer and the subsequent settlement negotiations, the claimant and its insurer entered into a settlement agreement

whereby the insurer agreed to pay the outstanding portion of the repair costs (i.e. USD 7 million). The claimant's insurer paid this amount directly to the repair contractor in July 1992. The claimant claimed before the Commission for the net present value of the repair costs of USD 1.3 million that it had incurred in 1991.

61. In reviewing the claim, this Panel referred to the "Report and recommendations made by the Panel of Commissioners concerning the fifteenth instalment of 'E4' claims" (S/AC.26/2002/16) (the "Fifteenth 'E4' Report"). In that report, the "E4" Panel reviewed the claim by Kuwait Airways Corporation ("KAC") for, inter alia, damage to or loss of certain of KAC's tangible property as a direct result of Iraq's invasion and occupation of Kuwait. The "E4" Panel noted that KAC received or became entitled to receive insurance recoveries in connection with insurance policies that covered certain of KAC's aircraft, aircraft spares, engines and ground equipment.

62. In reviewing the claim by KAC, the "E4" Panel initially determined the value of KAC's compensable losses of tangible property before taking into account any insurance recoveries received by KAC. At paragraphs 73 and 85 of the Fifteenth "E4" Report, the "E4" Panel "recommended an award of compensation for the actual value of the loss suffered by KAC, rather than the value of the loss as agreed or contractually defined for insurance purposes." This Panel notes that this approach is consistent with the "E/F" Panel's valuation of insurers' claims for payments made under insurance policies, as described in paragraphs 37 to 43 of the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E/F' claims" (S/AC.26/2001/6).

63. Following the determination of KAC's compensable losses, the "E4" Panel then considered paragraph 25 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1), which states that "[a]ny compensation, whether in funds or in kind, already received from any source will be deducted from the total amount of losses suffered." The "E4" Panel found that KAC's insurance recoveries constituted "compensation" from another source for the purposes of Governing Council decision 7 and, accordingly, that the total amount of the insurance recoveries should be deducted from the total amount of compensable losses suffered by KAC.

64. In respect of the claim by Hilal Cement, this Panel adopts the approach of the "E4" Panel described in the preceding two paragraphs. The Panel finds that the total cost of the repairs to the barge (i.e. USD 8.3 million) should be reviewed in order to determine the total amount of compensable losses suffered by the claimant in respect of such barge. With respect to the compensability and the verification and valuation of these repair costs, the Panel applied the approach set out in paragraphs 108 to 135 of the First "E4" Report, in particular noting paragraph 113, which refers to adjustments required where a claim does not reflect maintenance costs that would have been incurred in the ordinary course of events. Based on this approach, the Panel determined that USD 6.64 million of the total repair costs of USD 8.3 million are compensable as direct losses resulting from Iraq's invasion and occupation of Kuwait.

65. After determining the value of the claimant's compensable losses in respect of its barge, the Panel noted that the insurance recoveries of USD 7 million exceeded the amount of such compensable losses by USD 360,000 (approximately KWD 104,040). The Panel then found that, based on the

reasoning described above, the insurance recoveries received by Hilal Cement constitute “compensation” from another source for the purposes of the application of Governing Council decision 7. Accordingly, the Panel recommends that no award of compensation be made for the claimant’s claimed loss of tangible property relating to the barge. In addition, the Panel recommends that the amount by which the insurance recoveries exceeds the claimant’s claimed loss of tangible property relating to the barge (i.e. KWD 104,040), should be deducted from the total amount of all compensable losses suffered by the claimant.

66. Kuwait & Gulf Link Transport Co. (“KGL”) submitted a claim for the loss of tangible property in respect of the joint venture known as “Zarslink”. The claimant provided evidence that it held a 51 per cent interest in Zarslink and that a Russian entity, Zarubezstroy, held the remaining 49 per cent interest. Zarubezstroy provided a written confirmation to the Commission that it authorized the claimant to submit a claim for the losses of Zarslink, including loss of tangible property, on behalf of the Zarslink joint venture partners. The claimant provided evidence that Zarslink had imported equipment into Kuwait during July 1990. The Panel noted that the only evidence provided by the claimant as to the cost of the equipment was an agreement between the claimant and Zarubezstroy. Given that the claimant did not provide any third party confirmation of the acquisition cost of the equipment, the Panel recommends an adjustment to the claim to offset any risk of overstatement resulting from this evidentiary shortcoming.

67. With respect to the claims for loss of stock, most of the claimants provided evidence of the existence, ownership and value of the stock losses by providing copies of their audited accounts, original inventory purchase invoices and “roll-forward” calculations, as defined in paragraph 119 of the First “E4” Report. Where the fact of loss of stock was not supported by sufficient evidence, such as the showing of extraordinary losses in the claimant’s audited post-liberation financial statements, the Panel has recommended no award of compensation for such losses. The claims for loss of stock in this instalment did not raise any new legal or verification and valuation issues.

68. The claims for loss of cash in this instalment did not raise any new legal or verification and valuation issues. Cash losses are asserted by four claimants in this instalment. Where claims for cash losses were not supported by sufficient contemporaneous evidence establishing the possession and amount of cash held on 2 August 1990, the Panel has recommended no award of compensation.

69. The claims for vehicles in this instalment did not raise any new legal or verification and valuation issues. Most claimants with loss of vehicle claims were able to establish their losses by submitting copies of deregistration certificates and additional documents such as post-liberation audited accounts and witness statements that substantiated the fact and the circumstances of their loss. The asserted values of the lost vehicles were separately verified by the Panel against vehicle values contained in the Motor Vehicle Valuation Table (“M.V.V. Table”), as defined at paragraph 135 of the First “E4” Report, or, for vehicles not listed in the M.V.V. Table, against other third-party estimates.

70. The Panel’s recommendations on tangible property, stock, cash and vehicle losses are summarized in annex II below.

D. Payment or relief to others

71. Six claimants in this instalment submitted claims for payment or relief to others aggregating KWD 890,049 (approximately USD 3,079,754).

72. The claims for payment or relief to others in this instalment did not raise any new legal or verification and valuation issues. When reviewing these claims for payment or relief to others, the Panel applied the approach and the verification and valuation methodology described in earlier "E4" reports, such as in paragraphs 155 to 157 of the First "E4" Report and paragraphs 61 to 63 of the Fourth "E4" Report.

73. Five claimants sought compensation for termination indemnities that were paid to their non-Kuwaiti employees in respect of the termination of their employment. Generally, the claimants submitted evidence to show that the employees were in Kuwait and were employed by the claimant prior to Iraq's invasion and occupation of Kuwait. To the extent that there was inadequate documentation concerning the employment or identification of the employees, the Panel made adjustments to offset the risk of overstatement resulting from this particular evidentiary shortcoming. With respect to proof of payment, the claimants provided voucher payments and signed receipts from employees as well as auditor's certifications stating that a sample of such payment documentation had been verified by them. Adjustments were made by the Panel in instances where there was insufficient proof of payment.

74. The Panel's recommendations on payment or relief to others claims are summarized in annex II below.

E. Loss of profits

75. Sixteen of the claimants in this instalment submitted claims for loss of profits aggregating KWD 36,455,617 (approximately USD 126,144,003).

76. Four significant legal and factual issues raised in the first instalment claims were also relevant to the claims in this instalment. These relate to the impact and assessment of (a) benefits received under the Government of Kuwait's post-liberation debt settlement programme, (b) windfall or exceptional profits earned by claimants in the period immediately following the liberation of Kuwait, (c) the indemnity period for loss of profits claims, and (d) claims for loss of profits selectively based on profitable lines of business. The conclusions reached by the Panel in relation to these issues are set forth in paragraphs 161 to 193 of the First "E4" Report. The Panel has applied these conclusions in its considerations and recommendations for the loss of profit claims in this instalment.

77. Despite specific requests, some claimants in the twenty-third instalment did not provide annual accounts for the three financial years preceding and following the period of Iraq's invasion and occupation of Kuwait. Loss of profits claims by claimants that failed to provide annual audited accounts for the relevant period were regarded as presenting a risk of overstatement, unless the failure to submit such accounts was sufficiently explained.

78. The verification and valuation methodology adopted by the Panel for loss of profit claims is stated in paragraphs 194 to 202 of the First "E4" Report.

79. In respect of the loss of profits claim by Kuwait Shipbuilding and Repairyard Co. (S.A.K.), the claimant submitted that its losses in certain periods prior to Iraq's invasion and occupation of Kuwait were the result of mismanagement of the claimant's operations by a third party. The claimant provided evidence that it had contracted the management of its operations to a German company during the period from 1975 to 1987. The claimant further provided evidence that it commenced legal proceedings against the German company following the liberation of Kuwait and that a settlement of such proceedings was reached in 1996. The claimant stated that the German company agreed to pay KWD 5.5 million to the claimant pursuant to the settlement agreement. The claimant confirmed that it had recorded losses in the three years immediately prior to Iraq's invasion and occupation of Kuwait. The claimant submitted, however, that the Panel should take into consideration the management dispute when assessing the claimant's underlying historical profitability.

80. Based on its review of all of the evidence submitted by the claimant, the Panel finds that the claimant did not provide sufficient evidence for the Panel to determine that the settlement amount should be allocated to the claimant's losses in the three years immediately prior to Iraq's invasion and occupation of Kuwait. Given that the claimant incurred losses in those three years, the Panel recommends no award of compensation for the claimant's loss of profits claim.

81. Further to paragraph 66 above, KGL submitted a claim for the loss of profits of the Zarslink joint venture in the amount of KWD 108,240 (approximately USD 374,533). A claim for the losses of tangible property and profits of the Zarslink joint venture had previously been submitted to the Commission by Zarslink, but that claim was subsequently withdrawn on the basis that KGL would claim for all of the losses of Zarslink. The written confirmation provided to the Commission by Zarubezstroy, as referred in paragraph 66 above, authorized KGL to submit a claim for Zarslink's loss of profits on behalf of the Zarslink joint venture partners. Although the loss of profits claim of Zarslink had not originally been included in KGL's claim filed with the Commission, following the withdrawal of the claim by Zarslink, KGL requested that the claim for Zarslink's loss of profits be transferred to KGL's claim. The Commission consented to this request and KGL filed an amended Form "E" reflecting the transfer.

82. The claimant provided evidence that although Zarslink had imported certain equipment into Kuwait during July 1990, it had not yet commenced operations as at 2 August 1990. The Panel considered recommendations made in previous reports in relation to similarly-situated claimants, including in paragraph 53 of the "Report and recommendations made by the Panel of Commissioners concerning the nineteenth instalment of 'E4' claims" (S/AC.26/2002/4). In light of its recommendations in previous cases, the Panel recommends no award of compensation for the claimant's loss of profits claim in respect of Zarslink because the claimant did not provide any evidence as to the historical profitability of Zarslink.

83. The Panel's recommendations on loss of profits claims are summarized in annex II below.

F. Receivables

84. Seven claimants in this instalment submitted claims for uncollectible receivables or “bad debts” aggregating KWD 10,646,576 (approximately USD 36,839,363). The majority of these claims were for amounts owed by businesses or individuals located in Kuwait prior to Iraq’s invasion.

85. As was the case in previous instalments of “E4” claims, most claimants sought compensation for debts that remained uncollected because debtors had not returned to Kuwait after liberation or were otherwise unable or unwilling to pay the debts. The Panel reiterates the determination on this matter as set out in paragraphs 208 to 210 of the First “E4” Report. Claims for debts that have become uncollectible as a result of Iraq’s invasion and occupation of Kuwait must demonstrate, by documentary or other appropriate evidence, the nature and amount of debt in question and the circumstances that caused the debt to become uncollectible.

86. The twenty-third instalment claims for uncollectible receivables were verified and valued in the manner described in paragraphs 211 to 215 of the First “E4” Report. As discussed in that report, the Panel recommends no award of compensation for claims that relied on the mere assertion that uncollected debts were ipso facto uncollectible because the debtors did not return to Kuwait or were otherwise unable or unwilling to pay the debts. Most claimants failed to provide evidence to demonstrate that their debtors’ inability to pay was a direct result of Iraq’s invasion and occupation of Kuwait. This shortcoming was brought to the attention of the claimants, in the context of the additional information requested from claimants (see paragraph 17 above). While a number of responses were received from claimants, few satisfied the above criteria.

87. Hilal Cement submitted two claims under loss of contract which the Panel reclassified as loss of bad debts. These claims relate to a contract dated 12 February 1989, as extended on 1 February 1990, between the claimant and the Grain Board of Iraq. The contract provided that the claimant would receive and unload grain from ships using the claimant’s barge. The first claim relates to seven shipments processed during the period from April to June 1990. The claimant stated that it did not receive payment for these shipments from the Grain Board of Iraq. The second claim relates to a shipment of grain received on 14 April 1989. The claimant provided evidence that such grain had been contaminated with iron rust fragments from the holds of the transporting ship. The claimant stated that it incurred certain expenses and experienced lost production time as a result of its efforts to remove the iron from the shipment of grain. The claimant submitted an invoice dated 25 June 1989 to the shipper for amount of these costs. The claimant stated that the shipper refused to pay the costs and that the claimant considers the Grain Board of Iraq, as the owner of the grain, to be responsible for these costs. The claimant submitted that, as a result of Iraq’s invasion and occupation of Kuwait, the amounts owing for the seven grain shipments during the period from April to June 1990 and the costs of cleaning the contaminated grain became uncollectible.

88. The Panel notes that the Governing Council has approved numerous reports by the Panel and other category “E” panels in which it was determined that the Commission does not have jurisdiction over a debt or obligation of Iraq that is based on work performed or services rendered more than three months prior to 2 August 1990, i.e. prior to 2 May 1990. (See, e.g., the Seventeenth “E4” Report,

paragraph 88; “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘E2’ claims” (S/AC.26/1998/7) (the “First ‘E2’ Report”), paragraph 90; and “Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of ‘E3’ claims” (S/AC.26/1999/14) (the “Fourth ‘E3’ Report”), paragraphs 21 to 23.)

89. In respect of the claim for outstanding receivables for the seven shipments of grain during the period from April to June 1990, the Panel finds that the Commission does not have jurisdiction over the receivables related to shipments received prior to 2 May 1990 and, accordingly, recommends no award of compensation for those shipments. The Panel does recommend an award of compensation in respect of shipments received during May and June 1990.

90. In respect of the claim for the amounts owing related to the contaminated grain shipment, the Panel notes that this claim relates to work performed in April 1989 and, accordingly, the Commission does not have jurisdiction over these debts. The Panel does not recommend an award of compensation for this claim.

91. The Panel’s recommendations on claims for receivables are summarized in annex II below.

#### G. Restart costs

92. Five claimants in this instalment submitted claims for restart costs aggregating KWD 3,745,017 (approximately USD 12,958,536). The amounts claimed as restart costs have been reviewed using the methodology described in paragraphs 221 to 223 of the First “E4” Report, paragraphs 93 to 96 of the “Report and recommendations made by the Panel of Commissioners concerning the second instalment of ‘E4’ claims” (S/AC.26/1999/17) (the “Second ‘E4’ Report”) and paragraphs 87 to 89 of the Fourth “E4” Report.

93. The claims for restart costs in this instalment did not raise any new legal or verification and valuation issues. The Panel’s recommendations on restart costs are summarized in annex II below.

#### H. Other losses

94. Six claimants in this instalment submitted claims for other losses aggregating KWD 2,570,575 (approximately USD 8,894,723).

95. Claims for “other losses” that have been dealt with in prior “E4” instalments were reviewed in the manner stated in earlier “E4” reports. (See, for example, paragraph 108 of the Second “E4” Report, paragraph 103 of the Fourth “E4” Report and paragraph 105 of the Fifth “E4” Report, dealing with the treatment of prepaid expenses. In addition, see paragraphs 93 to 94 of the Fourth “E4” Report, dealing with cancelled Kuwaiti dinar currency notes, and paragraphs 106 to 107 of the Fifth “E4” Report, dealing with refundable deposits.)

96. Hilal Cement submitted a claim for loss of profits in respect of interest payable on certain loans for the period from 2 August 1990 to 30 November 1993. The claimant submitted evidence that it had

nine loans outstanding as at 2 August 1990 of which five were from Kuwaiti creditors and four were from non-Kuwaiti creditors. The claimant's original claim stated that it had elected to settle its debt pursuant to the Difficult Debt Settlement Programme (as described in detail in paragraphs 162 to 174 of the First "E4" Report). As at the date of filing its claim, however, the claimant was uncertain whether it would be successful in restructuring its debt. The claimant claimed for the accrued interest that it may have been obligated to pay on the nine loans.

97. In response to the article 34 notifications, the claimant advised the Commission that the interest on the Kuwaiti debts had been waived pursuant to the Difficult Debt Settlement Programme. The claimant further advised the Commission that three of the four non-Kuwaiti debts had been settled in September 1997 and that one non-Kuwaiti debt remained outstanding. The claimant stated that it wished to revise its claim to be comprised of the interest paid or payable on the four non-Kuwaiti debts for the period from 2 August 1990 to September 1997.

98. The Panel first reclassified the claim from loss of profits to other losses. The Panel then noted that each of the loans had been outstanding prior to Iraq's invasion and occupation of Kuwait. The Panel determined that the interest which accrued on these loans was a regular and ongoing expense of the claimant. The Panel finds that the claimant did not provide sufficient evidence to prove that the obligation to pay this interest during the period from 2 August 1990 to September 1997 was a direct result of Iraq's invasion and occupation of Kuwait. The Panel recommends no award of compensation for this claim.

99. As described in paragraph 60 above, Hilal Cement commenced legal proceedings in Kuwait against its insurer in relation to its loss of tangible property. The claimant provided evidence that its insurer contested liability under the war risks insurance policy that covered the claimant's barge. The claimant stated that it attempted to negotiate with its insurer in connection with the costs of repairing damage to the barge, but that such negotiations were not successful. The claimant provided further evidence that it commenced legal proceedings against its insurer in the Kuwaiti courts in March 1992. The claimant and its insurer entered into a settlement of these proceedings in July 1992 and, pursuant to the settlement agreement, the insurer agreed to pay USD 7 million of the repair costs. The claimant filed a claim before the Commission for the non-refundable court fees as well as legal expenses incurred in the course of the legal proceedings and the settlement negotiations. Although the claimant originally claimed for these fees and expenses under loss of tangible property, the Panel reclassified these amounts as other losses.

100. The Panel notes the findings of the "E4" Panel at paragraphs 150 to 157 of the Fifteenth "E4" Report in respect of mitigation and legal costs. In that report, the "E4" Panel found that legal costs incurred in connection with the mitigation of losses are compensable in principle provided that the underlying loss in respect of which the legal costs have been incurred is compensable and the steps taken by the claimant were reasonable in the circumstances. The Panel adopts these findings of the "E4" Panel.

101. As described in paragraph 64 above, the Panel initially determined that certain of the underlying losses relating to the damage to the claimant's barge are compensable as direct losses resulting from

Iraq's invasion and occupation of Kuwait. The Panel accordingly finds that non-refundable court fees and legal expenses in connection with the claimant's dispute with its insurer were incurred in order to mitigate the claimant's further compensable losses in respect of its barge. In addition, the Panel finds that the claimant acted reasonably in commencing legal proceedings against its insurer as the evidence indicates that such proceedings contributed to a settlement of the dispute. Accordingly, the Panel finds that the non-refundable court fees and legal expenses claimed by the claimant are compensable in principle as direct losses resulting from Iraq's invasion and occupation of Kuwait.

102. In valuing this claim, the Panel notes that the claimant provided insufficient evidence to support the claimed losses relating to legal expenses. The Panel therefore recommends no award of compensation in respect of such legal expenses. In respect of the non-refundable court fees, the Panel recommends an award of compensation for the full amount of such fees.

103. In order to provide infrastructure and services in Kuwait in the immediate post-liberation period, the Government of Kuwait instituted the Kuwait Emergency and Recovery Program ("KERP"). (See the "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'F3' claims" (S/AC.26/2001/7) (the "Second 'F3' Report") at paragraph 52.) This was a procurement programme that, inter alia, supplied vehicles to KPA.

104. The Government of Kuwait submitted a claim to the Commission for the funds it expended through KERP, including the vehicles that it provided to KPA. These amounts were found by the "F3" Panel to be USD 379,000 (approximately KWD 109,531) for the vehicles and USD 60,255 (approximately KWD 17,414) for related interest charges. KPA submitted a loss of tangible property claim to the Commission in relation to the vehicles that it alleged were lost as a result of Iraq's invasion and occupation of Kuwait.

105. In order to avoid potential duplication between KPA's claim for vehicles and the Government of Kuwait's claim for vehicles provided to KPA through KERP, the "F3" Panel of Commissioners severed the portion of the Government of Kuwait's claim in respect of these vehicles from its "F3" claim and requested that the Executive Secretary transfer the severed portion to the "E4" claims category (see paragraph 93 of the Second "F3" Report). Following the transfer of the severed portion of the "F3" claim, the claimed amount in respect of such vehicles was consolidated with the original "E4" claim of KPA. The Panel therefore determined that the transferred portion of the claim should be assessed under other losses.

106. KPA's original claim for vehicles under loss of tangible property was based on the market and net book values of such vehicles as at 2 August 1990. In respect of the vehicles provided to KPA by the Government of Kuwait through KERP, KPA stated that the capital contribution payable by the Government of Kuwait to KPA was reduced by the value of such vehicles. KPA also confirmed that it submitted no claim to the Commission in respect of such vehicles.

107. On the basis of the evidence submitted, the Panel finds that the claimant suffered a compensable loss in relation to its original claim for loss of vehicles. The Panel also finds, however, that KPA

cannot be compensated both on the basis of its original claim and on the basis of the value of the vehicles received from KERP, as this would result in double recovery. The Panel determined that KPA's claim for vehicles should be assessed and an award of compensation be recommended on the basis of its original claim under loss of tangible property, as described in paragraphs 57 to 70 above. The Panel recommends no award of compensation in relation to the vehicles supplied to KPA through KERP.

108. Musaad Al-Saleh submitted a claim in respect of the estimated costs of shipping certain replacement tangible property to Kuwait. The claimant calculated the claimed amount as a percentage of the estimated replacement cost of such property, including estimated insurance and import duties. The claimant originally classified this claim under loss of tangible property, however the Panel reclassified this claim as other losses. In response to the article 34 notifications, the claimant confirmed that the tangible property had not been replaced following the liberation of Kuwait and therefore that the claimed costs relating to shipping such tangible property had not been incurred by the claimant. Accordingly, the Panel recommends no award of compensation for this claim.

109. Al Abdeen Int. Trade & Const. Co. submitted a claim in respect of interest charges incurred as a result of the late payment for a shipment of goods. The claimant provided evidence that it imported a shipment of cigarettes in May 1990 under a letter of credit and that these goods were received by the claimant and shipped to its customer. The claimant stated that its payment for the cigarettes was not due until 75 days following receipt and accordingly, payment was not due until after 2 August 1990. The claimant provided further evidence that the bank did not settle the letter of credit until July 1991. The claimant stated that, at that time, the bank deducted both the cost of the shipment and the interest charges for the period from August 1990 to July 1991.

110. The Panel considered the "Report and recommendations made by the Panel of Commissioners concerning the twelfth instalment of 'E4' claims" (S/AC.26.2001/14) (the "Twelfth 'E4' Report") in which a similar claim for interest costs was considered. In that claim, the claimant ordered a shipment of pipes under a letter of credit and, as a result of Iraq's invasion and occupation of Kuwait, the pipes could not be delivered to Kuwait. The claimant's bank contested its liability to make payment for the pipes but was ordered by the courts in the United States to pay the value of the goods plus interest to the seller. The bank deducted such amounts from the claimant's account and the claimant submitted a claim to the Commission for the interest charges. The "E4" Panel recommended no award of compensation for the claim for interest charges finding that such charges were incurred as a result of an independent business decision by the bank to contest payment and not as a direct result of Iraq's invasion and occupation of Kuwait.

111. In respect of the present claim, the Panel accepts the findings of the "E4" Panel in the Twelfth "E4" Report in respect of the interest charges. In addition, the Panel determined that the claimant did not provide sufficient evidence to explain why its bank did not settle the amounts until July 1991 nor did it explain whether it earned any interest on the purchase price during the period from August 1990 to July 1991. Accordingly, the Panel recommends no award of compensation for this claim.

112. The Panel's recommendations on other losses are summarized in annex II below.

## V. OTHER ISSUES

### A. Applicable dates for currency exchange rate and interest

113. In relation to the applicable dates for currency exchange rate and interest, the Panel has adopted the approach discussed in paragraphs 226 to 233 of the First “E4” Report.

### B. Claim preparation costs

114. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel has made no recommendation with respect to compensation for claim preparation costs.

## VI. RECOMMENDED AWARDS

115. Based on the foregoing, the awards recommended by the Panel for claimants in the twenty-third instalment of “E4” claims are set out in annex I to this report. The underlying principles behind the Panel’s recommendations on claims in this instalment are summarized in annex II to this report. All sums have been rounded to the nearest Kuwaiti dinar and therefore the amounts may vary from the amount stated on Form E by KWD 1.

Geneva, 12 December 2002

(Signed) Luiz Olavo Baptista  
Chairman

(Signed) Jean Naudet  
Commissioner

(Signed) Jianxi Wang  
Commissioner

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF “E4” CLAIMS  
REPORTED BY UNSEQ AND UNCC CLAIM NUMBER AND CLAIMANT NAME

<u>UNSEQ</u> <u>claim No.</u> <sup>a</sup>	<u>UNCC</u> <u>claim No.</u>	<u>Claimant's name</u>	<u>Amount</u> <u>claimed</u> <u>(KWD)</u>	<u>Net amount</u> <u>claimed (KWD)</u> <sup>b</sup>	<u>Amount</u> <u>recommended</u> <u>(KWD)</u>	<u>Amount</u> <u>recommended</u> <u>(USD)</u>
E-00057	4003179	Kuwait Shipbuilding and Repairyard Co. (S.A.K.)	8,638,587	7,864,967	3,842,440	13,295,640
E-00122	4003282	Ibrahim Al-Yaqout & Hussain Odah Trading & Contracting Co.	3,089,406	3,087,606	2,258,297	7,814,176
E-00216	4003368	Khalifa Al-Jassim General Trading & Contracting Company	5,265,802	5,130,775	2,051,608	7,097,291
E-00266	4003401	Gulf Engineering Company W.L.L.	3,544,353	3,039,650	771,415	2,668,046
E-00312	4003445	Hilal Cement Company KSCC	6,844,460	6,077,174	480,890	1,663,979
E-00457	4003566	Kuwait Ports Authority (Formerly Ports Public Authority)	45,381,930	43,032,435	14,742,776	51,013,066
E-00519	4003632	Baddah and Musaire Trading and Contracting Company WLL	2,960,537	2,954,537	1,739,263	6,014,789
E-00768	4003885	Jassim Transport & Stevedoring Company	6,995,076	6,368,548	1,554,455	5,378,161
E-01231	4004339	Kuwait & Gulf Link Transport Co.	6,349,705	6,344,705	2,921,677	10,109,609
E-01374	4004482	Kuwait Pre -fabricated Building Company – K.S.C.	3,513,340	3,109,422	1,619,533	5,603,920
E-01421	4004529	The Public Warehousing Company K.S.C.	5,717,698	5,116,113	2,132,209	7,376,563
E-01539	4004622	Refrigeration Industries Co. SAK	11,341,970	11,335,490	5,386,636	18,636,730
E-01595	4004703	Kuwait Metal Pipe Industries Co. (K.S.C.)	6,138,991	5,566,356	2,633,590	9,100,193
E-01596	4004704	Musaad Al-Saleh and Sons Company (W.L.L.)	19,707,674	14,065,009	361,648	1,251,377
E-01928	4005026	The United Agricultural Production Company. (S.A.K. Closed)	3,916,499	3,906,499	1,941,516	6,717,913
E-01987	4005095	Al Towaijri Trading & Contracting Co. W.L.L.	3,750,719	3,744,719	1,009,466	3,492,962
E-02200	4005309	Al Abdeen Int. Trde & Const. Co.	3,967,408	3,967,408	529,472	1,832,083
TOTAL			147,124,155	134,711,413	45,976,891	159,066,498

<sup>a</sup> The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

<sup>b</sup> The “Net amount claimed” is the original amount claimed less the amount claimed for claim preparation costs and interest. As set forth in paragraphs 113 and 114 above, the Panel has made no recommendation with regard to these items.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Kuwait Shipbuilding and Repairyard Co. (S.A.K.)  
UNCC claim number: 4003179  
UNSEQ number: E-00057

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of real property	2,047,488	563,049	Claim adjusted for maintenance, depreciation, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 47-56 above.
Loss of tangible property	3,366,505	2,390,336	Original loss of tangible property claim reclassified to loss of tangible property, stock, cash and vehicles. Tangible property claim adjusted for maintenance, depreciation and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of stock	906,293	568,241	Claim adjusted for stock build-up and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of cash	9,150	nil	Insufficient evidence to substantiate claim. See paragraphs 57-70 above.
Loss of vehicles	198,175	160,386	Claim adjusted per paragraph 69 above. See paragraphs 57-70 above.
Payment or relief to others	65,601	37,836	Original claim for payment or relief to others reclassified to payment or relief to others and loss of profits. Payment or relief to others claim adjusted for evidentiary shortcomings. See paragraphs 71-74 above.
Loss of profits	804,306	nil	Original claim for restart costs reclassified to loss of profits and restart costs. Profits claim adjusted to nil to reflect historical results. See paragraphs 75-83 above.
Restart costs	467,449	122,592	Claim adjusted for evidentiary shortcomings. See paragraphs 92-93 above.
<b>TOTAL</b>	<b>7,864,967</b>	<b>3,842,440</b>	
Claim preparation costs	76,111	n.a.	Governing Council determination pending. See paragraph 114 above.
Interest	697,509	n.a.	Governing Council determination pending. See paragraph 113 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Ibrahim Al-Yaqout & Hussain Odah Trading & Contracting Co.  
UNCC claim number: 4003282  
UNSEO number: E-00122

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of tangible property	13,443	11,169	Original loss of tangible property claim reclassified to loss of tangible property and vehicles. Tangible property claim adjusted for evidentiary shortcomings. See paragraphs 57-70 above.
Loss of vehicles	2,674,800	2,247,128	Claim adjusted to reflect M.V.V. Table values, per paragraph 69 above and for evidentiary shortcomings. See paragraphs 57-70 above.
Bad debts	399,363	nil	Original loss of contract claim reclassified to bad debts. Insufficient evidence to substantiate bad debts claim. See paragraphs 84-91 above.
<b>TOTAL</b>	<b>3,087,606</b>	<b>2,258,297</b>	
Claim preparation costs	1,800	n.a.	Governing Council determination pending. See paragraph 114 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Khalifa AlJassim General Trading & Contracting Company  
UNCC claim number: 4003368  
UNSEQ number: E-00216

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of real property	4,579	nil	Original restart costs claim reclassified to loss of real property and restart costs. Insufficient evidence to substantiate real property claim. See paragraphs 47-56 above.
Loss of tangible property	1,250,488	668,080	Original loss of tangible property claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for maintenance, depreciation, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of stock	482,510	369,120	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of vehicles	921,603	845,452	Claim adjusted to reflect M.V.V. Table values, per paragraph 69 above and for evidentiary shortcomings. See paragraphs 57-70 above.
Payment or relief to others	87,416	3,726	Claim adjusted for evidentiary shortcomings. See paragraphs 71-74 above.
Loss of profits	2,359,779	155,223	Claim adjusted to reflect historical results for a 12-month indemnity period and for windfall profits. See paragraphs 75-83 above.
Restart costs	24,400	10,007	Claim adjusted for evidentiary shortcomings. See paragraphs 92-93 above.
<b>TOTAL</b>	<b>5,130,775</b>	<b>2,051,608</b>	
Claim preparation costs	7,165	n.a.	Governing Council determination pending. See paragraph 114 above.
Interest	127,862	n.a.	Governing Council determination pending. See paragraph 113 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Gulf Engineering Company W.L.L.  
UNCC claim number: 4003401  
UNSEQ number: E-00266

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of contract	202,925	83,960	Claim adjusted for evidentiary shortcomings. See paragraphs 26-46 above.
Loss of tangible property	80,209	59,673	Original loss of tangible property claim reclassified to loss of tangible property, stock, vehicles and bad debts. Tangible property claim adjusted for depreciation. See paragraphs 57-70 above.
Loss of stock	556,307	348,182	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of vehicles	92,551	86,877	Claim adjusted to reflect M.V.V. Table values. See paragraphs 57-70 above.
Payment or relief to others	2,737	nil	Insufficient evidence to substantiate claim. See paragraphs 71-74 above.
Loss of profits	414,334	110,577	Claim adjusted to reflect historical results for a 12-month indemnity period and for windfall profits. See paragraphs 75-83 above.
Bad debts	1,580,396	nil	Original other loss not categorized claim reclassified to bad debts and restart costs. Insufficient evidence to substantiate bad debts claim. See paragraphs 84-91 above.
Restart costs	110,191	82,146	Claim adjusted for evidentiary shortcomings. See paragraphs 92-93 above.
TOTAL	3,039,650	771,415	
Claim preparation costs	53,442	n.a.	Governing Council determination pending. See paragraph 114 above.
Interest	451,261	n.a.	Governing Council determination pending. See paragraph 113 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Hilal Cement Company KSCC  
UNCC claim number: 4003445  
UNSEQ number: E-00312

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of tangible property	417,241	51,383	Original loss of tangible property claim reclassified to loss of tangible property, stock, cash, vehicles and profits, restart costs and other loss not categorized. Tangible property claim adjusted for maintenance and depreciation. See paragraphs 57-70 above.
Loss of stock	198,113	89,289	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of cash	2,026	nil	Insufficient evidence to substantiate claim. See paragraphs 57-70 above.
Loss of vehicles	14,945	14,872	Claim adjusted to reflect M.V.V. Table values. See paragraphs 57-70 above.
Loss of profits	574,266	nil	Claim adjusted to nil to reflect historical results. See paragraphs 75-83 above.
Bad debts	2,415,011	398,136	Original loss of contract claim reclassified to bad debts. Bad debts claim adjusted for evidentiary shortcomings. See paragraphs 84-91 above.
Restart costs	121,616	nil	Insufficient evidence to substantiate claim. See paragraphs 92-93 above.
Other loss not categorized	2,333,956	31,250	Claim adjusted for evidentiary shortcomings. See paragraphs 94-112 above.
Sub-total	6,077,174	584,930	See paragraphs 60-65 above.
Set-off amount		(104,040)	See paragraphs 60-65 above.
TOTAL	6,077,174	480,890	See paragraphs 60-65 above.
Claim preparation costs	61,414	n.a.	Governing Council determination pending. See paragraph 114 above.
Interest	705,872	n.a.	Governing Council determination pending. See paragraph 113 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Kuwait Ports Authority (Formerly Ports Public Authority)  
UNCC claim number: 4003566  
UNSEQ number: E-00457

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of contract	550,616	81,704	Claim adjusted for evidentiary shortcomings. See paragraphs 26-46 above.
Loss of real property	9,911,203	4,612,445	Claim adjusted for maintenance, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 47-56 above.
Loss of tangible property	15,474,022	7,225,322	Original loss of tangible property claim reclassified to loss of tangible property, stock and vehicles and other loss not categorized. Tangible property claim adjusted for maintenance, depreciation, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of stock	2,443,596	753,919	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of vehicles	99,898	73,755	Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings. See paragraphs 57-70 above.
Loss of profits	11,422,208	nil	Claim adjusted to nil to reflect historical results. See paragraphs 75-83 above.
Restart costs	3,021,361	1,995,631	Original other loss not categorized claim reclassified to restart costs. Restart costs claim adjusted for evidentiary shortcomings. See paragraphs 92-93 above.
Other loss not categorized	109,531	nil	Insufficient evidence to substantiate claim. See paragraphs 94-112 above.
<b>TOTAL</b>	<b>43,032,435</b>	<b>14,742,776</b>	
Claim preparation costs	240,000	n.a.	Governing Council determination pending. See paragraph 114 above.
Interest	2,109,495	n.a.	Governing Council determination pending. See paragraph 113 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Baddah and Musaire Trading and Contracting Company WLL  
UNCC claim number: 4003632  
UNSEQ number: E-00519

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of real property	101,203	93,428	Original loss of tangible property claim reclassified to loss of real property, tangible property and vehicles. Real property claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 47-56 above.
Loss of tangible property	119,154	71,542	Claim adjusted for depreciation. See paragraphs 57-70 above.
Loss of vehicles	1,821,895	1,180,284	Claim adjusted to reflect M.V.V. Table values and per paragraph 69 above. See paragraphs 57-70 above.
Loss of profits	912,285	394,009	Claim adjusted to reflect historical results. See paragraphs 75-83 above.
<b>TOTAL</b>	<b>2,954,537</b>	<b>1,739,263</b>	
Claim preparation costs	6,000	n.a.	Governing Council determination pending. See paragraph 114 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Jassim Transport & Stevedoring Company  
UNCC claim number: 4003885  
UNSEQ number: E-00768

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of tangible property	1,153,516	486,059	Original loss of tangible property claim reclassified to loss of tangible property, stock, cash and vehicles and other loss not categorized. Tangible property claim adjusted for maintenance, depreciation, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of stock	211,053	96,506	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of cash	52,767	nil	Insufficient evidence to substantiate claim. See paragraphs 57-70 above.
Loss of vehicles	1,645,069	923,647	Claim adjusted for depreciation, to reflect M.V.V. Table values, per paragraph 69 above and for evidentiary shortcomings. See paragraphs 57-70 above.
Loss of profits	2,253,591	48,243	Original restart costs claim reclassified to loss of profits. Profits claim adjusted to reflect historical results, for windfall profits and for evidentiary shortcomings. See paragraphs 75-83 above.
Bad debts	1,031,040	nil	Insufficient evidence to substantiate claim. See paragraphs 84-91 above.
Other loss not categorized	21,512	nil	Insufficient evidence to substantiate claim. See paragraphs 94-112 above.
<b>TOTAL</b>	<b>6,368,548</b>	<b>1,554,455</b>	
Claim preparation costs	47,986	n.a.	Governing Council determination pending. See paragraph 114 above.
Interest	578,542	n.a.	Governing Council determination pending. See paragraph 113 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Kuwait & Gulf Link Transport Co.  
UNCC claim number: 4004339  
UNSEQ number: E-01231

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of tangible property	2,679,065	1,347,826	Original loss of tangible property claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for maintenance, depreciation, insufficient evidence of reinstatement and evidentiary shortcomings. Of the total amount recommended, KWD 96,182 relates to the loss of tangible property claim of the Zarslink joint venture. See paragraphs 57-70 above.
Loss of stock	241,525	111,078	Claim adjusted for evidentiary shortcomings. See paragraphs 57-70 above.
Loss of vehicles	2,298,726	1,284,259	Claim adjusted to reflect M.V.V. Table values, per paragraph 69 above and for evidentiary shortcomings. See paragraphs 57-70 above.
Loss of profits	1,125,389	178,514	Original loss of contract claim reclassified to loss of profits. Profits claim adjusted to reflect historical results. Of the total amount recommended, nil relates to the loss of profits claim of the Zarslink joint venture. See paragraphs 75-83 above.
<b>TOTAL</b>	<b>6,344,705</b>	<b>2,921,677</b>	
Claim preparation costs	5,000	n.a.	Governing Council determination pending. See paragraph 114 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Kuwait Pre-fabricated Building Company - K.S.C.  
UNCC claim number: 4004482  
UNSEQ number: E-01374

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of tangible property	429,945	312,719	Original loss of tangible property claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for maintenance, depreciation and insufficient evidence of reinstatement. See paragraphs 57-70 above.
Loss of stock	1,912,759	662,736	Claim adjusted for stock build-up and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of vehicles	205,426	142,692	Claim adjusted to reflect M.V.V. Table values, per paragraph 69 above and for evidentiary shortcomings. See paragraphs 57-70 above.
Payment or relief to others	534,719	501,386	Claim adjusted for evidentiary shortcomings. See paragraphs 71-74 above.
Loss of profits	26,573	nil	Original restart costs claim reclassified to loss of profits. Profits claim adjusted to nil to reflect historical results. See paragraphs 75-83 above.
<b>TOTAL</b>	<b>3,109,422</b>	<b>1,619,533</b>	
Claim preparation costs	8,000	n.a.	Governing Council determination pending. See paragraph 114 above.
Interest	395,918	n.a.	Governing Council determination pending. See paragraph 113 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: The Public Warehousing Company K.S.C.  
UNCC claim number: 4004529  
UNSEQ number: E-01421

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of real property	1,920,100	1,500,500	Claim adjusted for maintenance and depreciation. See paragraphs 47-56 above.
Loss of tangible property	137,167	137,167	Original loss of tangible property claim reclassified to loss of tangible property, vehicles and profits. Tangible property claim recommended in full. See paragraphs 57-70 above.
Loss of vehicles	130,181	88,279	Claim adjusted to reflect M.V.V. Table values and per paragraph 69 above. See paragraphs 57-70 above.
Payment or relief to others	45,168	37,473	Original payment or relief to others claim reclassified to payment or relief to others and loss of profits. Payment or relief to others claim adjusted for evidentiary shortcomings. See paragraphs 71-74 above.
Loss of profits	2,883,497	368,790	Claim adjusted to reflect historical results and for windfall profits. See paragraphs 75-83 above.
<b>TOTAL</b>	<b>5,116,113</b>	<b>2,132,209</b>	
Claim preparation costs	34,549	n.a.	Governing Council determination pending. See paragraph 114 above.
Interest	567,036	n.a.	Governing Council determination pending. See paragraph 113 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Refrigeration Industries Co. SAK  
UNCC claim number: 4004622  
UNSEQ number: E-01539

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of contract	1,448,027	1,154,506	Claim adjusted for evidentiary shortcomings. See paragraphs 26-46 above.
Loss of real property	1,582,337	872,986	Claim adjusted for maintenance, depreciation and evidentiary shortcomings. See paragraphs 47-56 above.
Loss of tangible property	2,538,980	189,310	Original loss of tangible property claim reclassified to loss of tangible property, stock, cash and vehicles and other loss not categorized. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of stock	4,107,955	2,262,002	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of cash	8,732	nil	Insufficient evidence to substantiate claim. See paragraphs 57-70 above.
Loss of vehicles	9,758	8,294	Claim adjusted for evidentiary shortcomings. See paragraphs 57-70 above.
Payment or relief to others	154,408	89,634	Claim adjusted for evidentiary shortcomings. See paragraphs 71-74 above.
Loss of profits	1,391,345	808,454	Original other loss not categorized reclassified to loss of profits claim. Profits claim adjusted to reflect historical results and for windfall profits. See paragraphs 75-83 above.
Bad debts	92,498	nil	Insufficient evidence to substantiate claim. See paragraphs 84-91 above.
Other loss not categorized	1,450	1,450	Claim recommended in full. See paragraphs 94-112 above.
TOTAL	11,335,490	5,386,636	
Claim preparation costs	6,480	n.a.	Governing Council determination pending. See paragraph 114 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Kuwait Metal Pipe Industries Co. (K.S.C.)  
UNCC claim number: 4004703  
UNSEQ number: E-01595

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of real property	10,450	7,468	Original loss of real property claim reclassified as loss of real property and profits. Real property claim adjusted for maintenance. See paragraphs 47-56 above.
Loss of tangible property	1,683,579	344,774	Original loss of tangible property claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of stock	2,462,625	1,058,810	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of vehicles	260,300	73,136	Claim adjusted to reflect M.V.V. Table values and per paragraph 69 above. See paragraphs 57-70 above.
Loss of profits	1,149,402	1,149,402	Original loss of contract claim reclassified to loss of profits. Profits claim recommended in full. See paragraphs 75-83 above.
<b>TOTAL</b>	<b>5,566,356</b>	<b>2,633,590</b>	
Claim preparation costs	16,000	n.a.	Governing Council determination pending. See paragraph 114 above.
Interest	556,635	n.a.	Governing Council determination pending. See paragraph 113 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Musaad Al-Saleh and Sons Company (W.L.L.)  
UNCC claim number: 4004704  
UNSEQ number: E-01596

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of contract	454,997	nil	Original loss of contracts claim reclassified to loss of contracts and loss of profits. Contracts claim adjusted to nil for evidentiary shortcomings. See paragraphs 26-46 above.
Loss of tangible property	468,885	294,817	Original loss of tangible property claim reclassified to loss of tangible property and vehicles and other loss not categorized. Original other loss not categorized reclassified to loss of tangible property, stock and profits and bad debts. Tangible property claim adjusted for depreciation, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of stock	92,338	nil	Insufficient evidence to substantiate claim. See paragraphs 57-70 above.
Loss of vehicles	124,058	66,831	Claim adjusted to reflect M.V.V. Table values, per paragraph 69 above and for evidentiary shortcomings. See paragraphs 57-70 above.
Loss of profits	10,812,262	nil	Claim adjusted to nil reflect historical results. See paragraphs 75-83 above.
Bad debts	2,048,815	nil	Insufficient evidence to substantiate claim. See paragraphs 84-91 above.
Other loss not categorized	63,654	nil	Insufficient evidence to substantiate claim. See paragraphs 94-112 above.
<b>TOTAL</b>	<b>14,065,009</b>	<b>361,648</b>	
Claim preparation costs	19,293	n.a.	Governing Council determination pending. See paragraph 114 above.
Interest	5,623,372	n.a.	Governing Council determination pending. See paragraph 113 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: The United Agricultural Production Company. (S.A.K. Closed)  
UNCC claim number: 4005026  
UNSEQ number: E-01928

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of real property	562,305	447,045	Original other loss not categorized reclassified to loss of real property and tangible property. Real property claim adjusted for maintenance, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 47-56 above.
Loss of tangible property	2,882,486	1,297,196	Original loss of tangible property claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of stock	274,850	136,376	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of vehicles	68,190	45,257	Claim adjusted to reflect M.V.V. Table values and per paragraph 69 above. See paragraphs 57-70 above.
Loss of profits	118,668	15,642	Original loss of income-producing property claim reclassified to loss of profits. Profits claim adjusted to reflect historical results, for windfall profits and for evidentiary shortcomings. See paragraphs 75-83 above.
<b>TOTAL</b>	<b>3,906,499</b>	<b>1,941,516</b>	
Claim preparation costs	10,000	n.a.	Governing Council determination pending. See paragraph 114 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Al Towajri Trading & Contracting Co. W.L.L.  
UNCC claim number: 4005095  
UNSEO number: E-01987

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of contract	3,365,730	841,432	Claim adjusted for evidentiary shortcomings. See paragraphs 26-46 above.
Loss of real property	74,939	50,743	Original real property claim reclassified to loss of real property and profits. Original other loss not categorized claim reclassified to loss of real property and claim preparation costs. Real property claim adjusted for maintenance, depreciation and evidentiary shortcomings. See paragraphs 47-56 above.
Loss of tangible property	55,205	31,791	Original loss of tangible property claim reclassified to loss of tangible property and stock. Tangible property claim adjusted for depreciation. See paragraphs 57-70 above.
Loss of stock	156,915	85,500	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of profits	91,930	nil	Claim adjusted to nil to reflect historical results. See paragraphs 75-83 above.
<b>TOTAL</b>	<b>3,744,719</b>	<b>1,009,466</b>	
Claim preparation costs	6,000	n.a.	Governing Council determination pending. See paragraph 114 above.

RECOMMENDED AWARDS FOR THE TWENTY-THIRD INSTALMENT OF "E4" CLAIMS  
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Al Abdeen Int. Trde & Const. Co.  
UNCC claim number: 4005309  
UNSEQ number: E-02200

<u>Category of loss</u>	<u>Amount asserted (KWD)</u>	<u>Amount recommended (KWD)</u>	<u>Comments</u>
Loss of real property	154,359	135,960	Claim adjusted for depreciation and maintenance. See paragraphs 47-56 above.
Loss of tangible property	325,637	140,738	Original loss of tangible property claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation. See paragraphs 57-70 above.
Loss of stock	225,562	140,586	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 57-70 above.
Loss of vehicles	26,143	20,278	Claim adjusted to reflect M.V.V. Table values and per paragraph 69 above. See paragraphs 57-70 above.
Loss of profits	115,782	91,910	Claim adjusted to reflect historical results for a seven-month indemnity period. See paragraphs 75-83 above.
Bad debts	3,079,453	nil	Original business transaction or course of dealing claim reclassified to bad debts. Insufficient evidence to substantiate claim. See paragraphs 84-91 above.
Other loss not categorized	40,472	nil	Original loss of contract claim reclassified to other loss not categorized. Insufficient evidence to substantiate claim. See paragraphs 94-112 above.
TOTAL	3,967,408	529,472	

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