UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/AC.26/2003/19
18 September 2003

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING PART ONE OF THE NINTH INSTALMENT OF "E1" CLAIMS

CONTENTS

List of claimants

Name	Defined
ABB Simcon-Houston Inc.	ABB
A.B.S. Apparecchiature E Bruciatori Speciali srl	ABS
Anadolu Uluslararasi Ticaret Ve Tasimacilik A.S.	Anadolu
A-N-D Group Plc	A-N-D
BP Oil International Limited	BP Oil
Coneco Limited	Coneco
De Dietrich & Cie	De Dietrich
Ferrostaal Aktiengesellschaft	Ferrostaal
Hydril Company	Hydril
IRI International Corp.	IRI
Inspekta S.A.	Inspekta
Inter Sea Limited	Inter Sea
Landmark Graphics Corporation	Landmark
Mobil Middle East Export Corporation	MMEE
SUPCO S.R.L.	SUPCO
Trym Trading Limited	Trym

List of currencies

Name	Defined
Deutsche Mark	DEM
French franc(s)	FRF
Iraqi dinar(s)	IQD
Italian lira (lire)	ITL
Koruna (Koruny)	CSK
Kuwaiti dinar(s)	KWD
Pound(s) sterling	GBP
United States dollar(s)	USD

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Introduction

1. At its sixteenth and thirty-sixth sessions, the Governing Council of the United Nations Compensation Commission (the "Commission"), pursuant to article 18 of the Provisional Rules for Claims Procedure (the "Rules") (S/AC.26/1992/10), appointed a panel of Commissioners (the "Panel") composed of Messrs Allan Philip (Chairman), Antoine Antoun and Michael Hwang to review energy sector claims submitted by corporations, other private legal entities and public-sector enterprises ("'E1' claims").

2. In view of the number of claims included in the ninth instalment of "E1" claims, the Panel considered that it would be administratively convenient to divide its report and recommendations concerning the claims into two parts. This report contains the determinations and recommendations of the Panel with respect to part one of the ninth instalment of "E1" claims, consisting of 16 claims submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules (the "ninth instalment" claims).

3. The Governments of the Czech Republic, the Federal Republic of Germany ("Germany"), the French Republic ("France"), the Italian Republic ("Italy"), the Republic of Turkey ("Turkey"), the United Kingdom of Great Britain and Northern Ireland (the "United Kingdom") and the United States of America ("United States") filed the claims reviewed in this report on behalf of firms operating in their respective countries.

4. The claimants in these 16 claims in part one of the ninth instalment advance claim elements arising from the disruption of their businesses, property damage and the cost of related mitigation efforts, all allegedly caused directly by Iraq's invasion and occupation of Kuwait.

5. The claims included in this report are listed in table 1 below. The claim amounts shown in this table are the aggregate of all amounts claimed in category "E" claim forms filed by the claimants less any amounts for severed or transferred claims. Moreover, these amounts are reflected net of any claims for interest or claims preparation costs (unless a claimant specifically quantified a claim for interest or claims preparation costs). In this report, the Panel has rounded figures to the nearest whole United States dollar (USD) amount.

Table 1. Part one of the ninth instalment of "E1" claims
(United States dollars)

Claimant	UNCC claim number	Original amount claimed[a]	Amended amount claimed[b]	Submitting Government
Inspekta S.A.	4000306	549,212	549,212	Czech Republic
De Dietrich & Cie	4001770	604,038	604,038	France
Ferrostaal Aktiengesellschaft	4000565	16,340,800	13,197,802	Germany
A.B.S. Apparecchiature E Bruciatori Speciali srl	4001061	56,930	56,930	Italy
SUPCO S.R.L.	4001300	162,465	162,465	Italy
Anadolu Uluslararasi Ticaret Ve Tasimacilik A.S.	4001661	227,337	227,337	Turkey
A-N-D Group Plc	4002014	118,775	116,728	United Kingdom
BP Oil International Limited	4002282	320,019	320,019	United Kingdom
Coneco Limited	4002197	192,976	192,976	United Kingdom
Inter Sea Limited	4002280	112,003	112,003	United Kingdom
Trym Trading Limited	4002339	81,048	81,048	United Kingdom
ABB Simcon-Houston Inc.	4002487	1,212,767	1,212,767	United States
Hydril Company	4002242	414,031	414,031	United States
IRI International Corp.	4002343	4,003,325	4,003,325	United States
Landmark Graphics Corporation	4002246	188,583	188,583	United States
Mobil Middle East Export Corporation	4000613	154,922	154,922	United States
Total	---	24,739,231	21,594,186	---

[a] The original amount claimed is the amount of compensation requested by the claimant on the original claim form filed with the Commission. If this amount was not expressed in United States dollars then, for the sole purpose of comparison, it is expressed in this table in United States dollars using the August 1990 mid-point rate of exchange as indicated in the United Nations Monthly Bulletin of Statistics, Vol. XLV, No. 4 (April 1991).

[b] The amended amount claimed is the original amount claimed as amended in a timeous manner by the claimant. It includes any reductions to claimed amounts or partial withdrawal of claims made by the claimant before the Panel finalized this report.

I. PROCEDURAL HISTORY OF THE CLAIMS

6. The role and functions of panels of Commissioners operating within the framework of the Commission and the nature and purpose of the proceedings conducted by the panels are discussed by the Panel in its report concerning the second instalment of "E1" claims.[1]

7. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported to the Governing Council the claims information and new significant factual and legal issues raised by the ninth instalment claims in his report Nos. 26 and 37 dated 11 January 1999 and 18 October 2001, respectively. These reports were circulated to all Governments and international organizations that filed claims before the Commission, and to the Government of the Republic of Iraq ("Iraq"). Pursuant to article 16(3) of the Rules, a number of Governments, including Iraq, submitted additional information and views concerning the Executive Secretary's reports. The Panel has taken these responses into consideration during its review of the claims.

8. By its first procedural order issued in respect of the ninth instalment claims on 29 May 2001, the Panel directed the transmittal to Iraq of a copy of the original claim file consisting of the category "E" claim form ("claim form"), the statement of claim and all supporting documents filed by each of the 16 claimants in part one of the ninth instalment of "E1" claims. The Panel invited Iraq to submit its comments on the claims together with any documentation on which Iraq might wish to rely in support of its comments. Iraq's comments were received on 24 December 2001.

9. By its second procedural order issued on 17 January 2002, the Panel gave notice of its intention to complete its review of the ninth instalment claims and submit its report and recommendations to the Governing Council within 12 months. This procedural order was transmitted to each of the claimants, through their respective Governments, and to Iraq.

10. In its review of the claims, the Panel has employed the full range of investigative procedures available to it under the Rules. Pursuant to article 34 of the Rules, notifications ("article 34 notifications") were transmitted to each of the claimants, through their respective Governments, requesting additional information in order to assist the Panel in its review of the claims. Because of the complexity of the claims, the Panel engaged consultants with expertise in accounting and asset valuation to assist it in its review and evaluation of those claim elements found to be compensable.

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

12. After reviewing the claims, the evidence submitted with the claims, the claimants' responses to the article 34 notifications and interrogatories and Iraq's written responses to the claims, the Panel now makes the recommendations outlined in this report.

II. LEGAL FRAMEWORK

A. Applicable law and criteria

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

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

B. Liability of Iraq

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

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

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

C. Evidentiary requirements

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

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991)."

17. Further discussion of the Panel's application of this standard to the evidence submitted with the claims may be found in the Second "E1" Report at paragraphs 30 to 32.

D. Exclusions

18. The Governing Council has made a number of determinations concerning the non-compensability of certain types of losses. In this respect, the Panel has also found guidance in the reports of other panels that have already been approved by the Governing Council.

1. Supplements or amended claims

19. The Governing Council has determined that, after 1 January 1997, the Commission will not accept any category "E" claims for filing[2] and that, after 11 May 1998, the Commission will not admit any unsolicited supplements to previously filed claims in category "E", with the exception of environmental claims. Accordingly, the Panel finds that new claims submitted after 1 January 1997, either for new types of loss or additional claim elements, are not admissible as they are time-barred. The Panel also finds that information or documentation submitted in response to article 34 notifications or procedural orders, or unsolicited supplements delivered after 11 May 1998, may amend, clarify or correct calculations regarding existing claim elements, as long as they do not introduce new loss elements or increase the total amount claimed.

2. The trade embargo and related measures

20. The Governing Council has decided, in paragraph 6 of decision 9 (S/AC.26/1992/9), that losses caused solely by the trade embargo and related measures are not compensable. However, where the full extent of a loss has arisen as a direct result of Iraq's invasion and occupation of Kuwait, it is compensable notwithstanding the fact that it may also be attributable to the trade embargo and related measures.

III. CLAIM OF INSPEKTA S.A.

A. Introduction

21. Inspekta S.A. ("Inspekta") is a company organized under the laws of the Czech Republic. It is in the business of inspecting the quality, quantity and technical standards of goods, as well as providing other trade inspection services.

22. Inspekta seeks compensation in the total amount of USD 549,212 for losses related to contracts that it entered into with various Iraqi entities prior to Iraq's invasion and occupation of Kuwait, tangible property losses and payment or relief to others. Inspekta's claim involves the same type of loss in several instances, but with respect to a number of different projects, and the terms of the contracts for these projects often vary. For convenience and clarity, the losses are discussed separately notwithstanding their similarities.

23. While Inspekta's claim form and statement of claim state the total amount claimed in United States dollars, various losses included in its claim were incurred in currencies other than United States dollars. Inspekta has converted these amounts to United States dollars using exchange rates it selected. Consistent with its practice in previous instalments, the Panel has assessed the losses in the currencies in which they were incurred. Inspekta's claim is summarized in table 2 below.

Table 2. Inspekta's claim
(United States dollars)

Claim element	Original amount claimed
Contract	456,893
- Trans-Iraq dry gas pipeline	21,137
- Central refinery project - Iraq	15,306
- Heat exchangers	12,800
- Central refinery project - Europe	64,800
- North Rumaila oil field project	74,332
- Various projects in southern Iraq	63,957
- Central refinery project - Italy	31,600
- Al-Shemal thermal power station	172,961
Other tangible property	81,024
- Various projects in southern Iraq	2,694
- Al-Shemal thermal power station	18,481
- Loss of fixed assets in Iraq	59,849
Payment or relief to others	11,295
- Central refinery project – Iraq	175
- Various projects in southern Iraq	5,523
- Al-Shemal thermal power station	5,597
Total	549,212

B. Iraq's response

24. In the light of the similarity of the types of losses included in Inspekta's claim, Iraq's response is summarized here.

(a) Iraq states that the losses claimed by Inspekta are not a direct result of Iraq's entry into Kuwait because Inspekta continued to work in Iraq until October 1990 and therefore the reason that it stopped working was the trade embargo.

(b) Iraq states that, in a number of instances, the invoices issued by Inspekta relate to work performed prior to Iraq's entry into Kuwait.

(c) Iraq states that, where a contract provided that Inspekta was to be paid in Iraqi dinars (IQD), the terms of payment were such that Inspekta was to be paid by direct deposit to Inspekta's bank account with an Iraqi bank and that funds on deposit were non-exchangeable and non-transferable.

(d) Iraq states that, where a contract provided that Inspekta was to be paid by a manufacturer, Inspekta has not demonstrated that it obtained the relevant Iraqi entity's approval for payment, or that it has not been paid by the manufacturer.

(e) Iraq also states that Inspekta has not provided any evidence of the letters of credit pursuant to which payment was to be effected under some of the contracts.

(f) Iraq further states that invoices Inspekta issued at the end of October 1990 after it ceased operations in Iraq could not be paid due to the trade embargo.

(g) With respect to any claim for loss of profits, Iraq states that Inspekta has not provided any evidence of its efforts to mitigate its losses, which Iraq says should not have been difficult to do owing to the nature of Inspekta's business and the stage of execution of the contracts.

(h) Iraq also states that Inspekta cannot claim the costs related to the departure of its inspectors from Iraq because these are costs that Inspekta would have incurred at the end of the contracts in any event.

(i) Iraq further states that Inspekta has not provided any evidence to support its ownership and the location in Iraq of the vehicles, furniture and furnishings which are the subject of its claim for tangible property losses, or that they were expropriated.

(j) Lastly, Iraq states that Inspekta has not provided any evidence of its efforts to mitigate its losses arising from pre-paid rent by subletting the premises, which was permissible under the terms of the lease.

C. Trans-Iraq dry gas pipeline project

1. Facts and contentions

25. Inspekta states that, on 19 March 1987, it entered into a contract with Iraq's State Organization for Oil Projects ("SOOP") to conduct technical inspections of pipes and equipment at various manufacturing locations in Europe and Iraq for a gas pipeline being built from North Rumaila to Al Mussaib, Iraq (the "Trans-Iraq dry gas pipeline project"). The contract stipulated rates for Inspekta's

inspectors in United States dollars. The contract further provided that, although the rates were expressed in United States dollars, Inspekta's invoices were to be split into United States dollars (60 per cent) and Iraqi dinars (40 per cent). The contract also provided that payment of the United States dollar portion of an invoice was to be effected under a letter of credit one year from the date of approval of each invoice by SOOP, whereas the Iraqi dinar portion of an invoice was payable by SOOP within one month after SOOP's receipt of the invoice. Inspekta claims USD 21,137 for the United States dollar portion of invoices for inspections conducted from January to July 1989.

2. Analysis and valuation

26. As noted by the Panel in paragraph 14 above, in paragraph 16 of resolution 687 (1991), the Security Council reaffirmed that Iraq was liable for any direct loss, damage or injury resulting from its invasion and occupation of Kuwait "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms". The "E2" Panel has previously interpreted the words "the debts and obligations of Iraq arising prior to 2 August 1990" in the context of construction and supply contracts, and has concluded that "where the performance giving rise to the original debt has been rendered by a claimant more than three months prior to 2 August 1990, that is prior to 2 May 1990, claims based on payments owed" are outside the jurisdiction of the Commission (the "'arising prior to' rule").[3] This Panel, as it has done previously, adopts this conclusion. Accordingly, the Panel recommends no award of compensation to Inspekta for unpaid invoices with respect to the Trans-Iraq dry gas pipeline project because the invoices relate to debts and obligations of Iraq arising prior to 2 August 1990.

D. Central refinery project – Iraq

1. Facts and contentions

27. Inspekta states that it entered into a contract with Iraq's Technical Corps for Special Projects ("Techcorp") to provide inspection services for pipes at the Central refinery project in Iraq. Although no date appears on the contract, Inspekta states that the contract was signed on 19 June 1990. The contract stipulated rates for Inspekta's inspectors in Iraqi dinars. The contract further provided that Inspekta's invoices were to be split into United States dollars (35 per cent) and Iraqi dinars (65 per cent). The contract also provided that the invoices were to be paid within 30 days after presentation to Techcorp. Inspekta claims USD 15,306 with respect to invoices for inspections conducted from June to September 1990. Inspekta states that it continued to work in Iraq after the trade embargo was imposed on 6 August 1990 because its inspectors required exit visas to leave Iraq, which Iraq would not issue until the work was completed.

28. Inspekta also claims USD 175 for the two days that it took its one of its inspectors to return to the Czech Republic from Iraq, which Inspekta states would otherwise have been work days for which it could have charged contract rates, as well as the costs to return the inspector to the Czech Republic.

2. Analysis and valuation

29. Based on the references in the invoices that Inspekta provided in support of its claim, the Panel finds that the contract was dated 19 June 1990. The Panel also finds that, based on inspection reports provided by Inspekta in support of its claim, the work was performed after 2 May 1990. The Panel considers that, where a claimant's employees were situated in Iraq as at 2 August 1990 and were required to continue working in order to obtain exit visas from Iraq, a claim for work performed after the trade embargo was imposed on 6 August 1990 is compensable in principle as a direct loss arising from Iraq's invasion and occupation of Kuwait.

30. Inspekta claims USD 4,653 for the United States dollar portion of Inspekta's invoices. This amount is based on the percentage of the work that was chargeable in Iraqi dinars, but payable in United States dollars, multiplied by an exchange rate that is stipulated on the invoices, although no mention of this exchange rate is made in the contract. The Panel finds that, since the contract provided for part of the work to be paid in United States dollars, but made no provision for the applicable exchange rate, the parties intended to use the rate of exchange as at the date of intended payment, and that the exchange rate applied by Inspekta in its invoices fairly represents such a rate.

31. Inspekta claims USD 10,653 for the Iraqi dinar portion of Inspekta's invoices. This amount is based on the percentage of the work payable in Iraqi dinars multiplied by an exchange rate of Inspekta's choosing. As stated previously, the Panel assesses losses in the currency in which they were incurred. The Iraqi dinar portion of these invoices totals IQD 3,303. The Panel notes that at all relevant times the Iraqi dinar was non-exchangeable and non-transferable.[4] The Panel also considers that many of the contracts Inspekta had with Iraqi parties, and which are the subject of Inspekta's claim, stipulated that a percentage of the payments due to Inspekta was to be paid in Iraqi dinars by direct deposit to Inspekta's bank account in Iraq. This would have enabled Inspekta to pay its Iraqi expenses in Iraqi dinars. Inspekta has provided no evidence that it brought funds into Iraq to pay such expenses or that it had an agreement which would have allowed it to exchange and transfer the Iraqi dinars. In these circumstances, and because the Iraqi dinar was non-transferable and non-exchangeable, the Panel finds that Inspekta has not proven any loss arising from non-payment of the Iraqi dinar portion of its invoices.

32. Based on the foregoing, the Panel recommends an award of compensation in the amount of USD 4,653 for unpaid invoices in United States dollars with respect to the Central refinery project - Iraq.

33. With respect to the balance of this part of Inspekta's claim (in the amount of USD 175), the Panel finds that Inspekta would not have been able to charge the contract rates for the time that it would have taken the inspector to return to the Czech Republic from Iraq at the end of the contract. The Panel further finds that, in any event, Inspekta would have incurred some expenses to return the inspector from Iraq to the Czech Republic. The Panel therefore recommends no award of compensation to Inspekta for this part of its claim with respect to the Central refinery project - Iraq.

E. Heat exchangers

1. Facts and contentions

34. Inspekta states that, on 18 September 1989, it entered into a contract with Iraq's State Enterprise of Fertilizer ("SEF") for the inspection of nine bundles for heat exchangers at the manufacturer's shop in Europe. The contract provided that Inspekta would be paid a lump sum of USD 11,600 for its inspection services and USD 600 per shipment. The contract further provided that Inspekta was to invoice SEF after each shipment. The amount of each invoice was to be calculated by pro rating the lump sum price against the number of bundles in the shipment, and adding the shipment fee. The invoices were to be paid within 30 days after receipt of the invoices by SEF. Inspekta claims USD 12,800 for inspections of two shipments conducted between December 1989 and April 1990.

2. Analysis and valuation

35. The Panel finds that, while the two invoices submitted by Inspekta to SEF are dated after 2 May 1990, the inspection reports provided by Inspekta in support of its claim confirm that the inspections were conducted prior to 2 May 1990. Based on the "arising prior to" rule, which is discussed in paragraph 26 above, the Panel recommends no award of compensation to Inspekta for unpaid invoices with respect to the heat exchangers.

F. Central refinery project – Europe

1. Facts and contentions

36. Inspekta states that, on 3 June 1990, it entered into a contract with Techcorp for the inspection of equipment and materials manufactured in the Czech Republic and other European countries for the Central refinery project. The value of the contract was USD 216,000, which was payable as follows: (a) USD 21,600 for the down payment of 10 per cent, payable immediately after a letter of credit was issued; (b) USD 108,000 for inspection services provided inside the Czech Republic, payable after one year; and (c) USD 86,400 for inspection services provided outside the Czech Republic, payable within 30 days after receipt of the invoices by Techcorp. The contract provided that Inspekta would issue an invoice for the down payment in the second quarter of 1990 and invoices for inspections both inside and outside of the Czech Republic in the last quarter of 1990 and each quarter of 1991. However, the only invoice issued by Inspekta was an invoice for the down payment dated 30 October 1990. Inspekta claims USD 64,800, which includes the down payment that was not paid and an amount for loss of profits which Inspekta calculates as 20 per cent of the contract value.

2. Analysis and valuation

37. With respect to the claim for the 10 per cent down payment, the Panel finds that Inspekta has not demonstrated that the down payment was payable at the time of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that the claim for the 10 per cent down payment should be analysed as part of Inspekta's claim for loss of profits, rather than as a claim for an unpaid receivable.

38. Inspekta states that its claim for loss of profits is based on the profits that it earned in the previous financial year (which was 40 per cent), and that it limited its claim to 20 per cent of the contract value for this project because of contingencies that might have occurred. Documents entitled "State Economical Result Statement" for the financial years ended 1988 and 1989 and for the second half of 1990, which Inspekta provided in support of its claim, confirm that Inspekta's gross profit rate was more than 20 per cent for the company as a whole. In support of its claim, Inspekta provided reports which confirm that inspections were conducted in June and July 1990 in the Czech Republic, and that such inspections were due to be invoiced in the last quarter of 1990 under the terms of the contract. Inspekta confirms that no other work was conducted under the contract.

39. The Panel finds that the performance of contracts for the supply of services to Iraq from 2 August 1990 to 2 March 1991 was rendered impossible as a direct result of Iraq's invasion and occupation of Kuwait. The Panel further finds that the performance of such contracts continued to be impossible until 2 August 1991.[5] However, the Panel considers that, beyond 2 August 1991, Iraq's invasion and occupation of Kuwait can no longer be deemed to be the direct cause of Iraq's non-payment of its obligations.[6] Accordingly, the Panel finds that Inspekta's claim for loss of profits under the contract with Techcorp should be apportioned over the period during which they would have been earned, and only amounts payable up to 2 August 1991 should be compensated. Accordingly, the Panel recommends an award of compensation in the amount of USD 18,320 for loss of profits.

G. North Rumaila oil field project

1. Facts and contentions

40. Inspekta states that, on 7 August 1989, it entered into a contract with Iraq's State Company for Oil Projects ("SCOP") with respect to inspection in Japan of pipes for the North Rumaila oil field project. The contract provided that Inspekta would present its invoices to SCOP for approval and SCOP, within 14 days after receipt of the invoices, would in turn approve the invoices and forward them to the manufacturer for payment. Inspekta claims USD 74,332 for inspections conducted in March and April 1990.

2. Analysis and valuation

41. The Panel finds that, while the two invoices submitted by Inspekta to SCOP are dated after 2 May 1990, the inspection reports provided by Inspekta in support of its claim confirm that the inspections were conducted prior to 2 May 1990. Based on the "arising prior to" rule discussed in paragraph 26 above, the Panel recommends no award of compensation to Inspekta for unpaid invoices with respect to the North Rumaila oil field project.

H. Various projects in southern Iraq

1. Facts and contentions

42. Inspekta states that, on 26 October 1988, it entered into a contract with SCOP for inspection services with respect to various projects in the southern part of Iraq, but that the contract was lost

when Inspekta evacuated its office in Baghdad after Iraq's invasion and occupation of Kuwait. Inspekta claims the amount of USD 63,957 for inspections conducted from March to September 1990. This amount is comprised of unpaid United States dollar invoices totalling USD 40,183 and unpaid Iraqi dinar invoices totalling IQD 7,372 (converted by Inspekta to USD 23,774). Inspekta states that it continued to work in Iraq after the trade embargo was imposed on 6 August 1990 because its inspectors required exit visas to leave Iraq, which Iraq would not issue until the work was completed.

43. Inspekta additionally claims USD 2,694 for a motor vehicle that it states was expropriated by Iraq.

44. Lastly, Inspekta also claims USD 5,523 for the number of days between the last day each of its three inspectors worked in Iraq and the day they returned to the Czech Republic, which Inspekta states would otherwise have been work days for which it could have charged contract rates, as well as the costs of returning the inspectors to the Czech Republic.

2. Analysis and valuation

45. Based on the documentary evidence of an amendment to a letter of credit issued pursuant to the contract, the Panel finds that there was a contract between Inspekta and SCOP for inspection services dated 26 October 1988. Based on the invoices Inspekta provided in support of this claim, the Panel finds that, like other contracts that Inspekta had with Iraqi entities, the contract stipulated rates for Inspekta's inspectors in United States dollars. The Panel finds that, based on the inspection reports provided by Inspekta in support of its claim, the inspection work was performed both before and after 2 May 1990. As discussed in paragraph 29 above, the Panel finds that work performed after the trade embargo is compensable in principle when a claimant's employees were required to continue working in order to obtain exit visas from Iraq.

46. Inspekta claims USD 40,183 for the United States dollar portion of its invoices. Inspekta's invoices are dated from 7 May to 30 October 1990. The Panel finds that the invoices do not specify the payment terms stipulated in the contract except to note that payment is to be effected in United States dollars through an irrevocable letter of credit. The amendment to the letter of credit is dated shortly after 2 August 1990 and relates to both an extension to the term of the letter of credit and an increase in the value of the letter of credit. The Panel finds that USD 11,085 of the amount claimed relates to work performed prior to 2 May 1990 and is therefore not compensable because of the "arising prior to" rule discussed in paragraph 26 above.

47. Inspekta claims USD 23,774 for the Iraqi dinar portion of its invoices. This amount is based on the percentage of the work that was chargeable in United States dollars, but payable in Iraqi dinars, multiplied by an exchange rate that is stipulated on the invoices. In the absence of the contract, it is unclear whether this exchange rate was mentioned in the contract or is one that Inspekta chose. The Panel considers that, since the parties intended part of the work to be paid for in Iraqi dinars, they also intended to use the rate of exchange as of the date of the payment, and that the exchange rate applied by Inspekta in its invoices fairly represents such a rate. As discussed previously, the Panel assesses losses in the currency in which they were incurred. The Iraqi dinar portion of these invoices totals

IQD 7,372. Inspekta's invoices are dated from 1 August to 30 October 1990. The Panel finds that all of the invoices relate to work performed after 2 May 1990. The invoices specify that they are to be paid by direct deposit to Inspekta's account at Rafidain Bank in Iraq within one month after receipt. Applying the considerations discussed in paragraph 31 above, the Panel finds that Inspekta has not proved any loss arising from non-payment of the Iraqi dinar portion of its invoices.

48. Based on the foregoing, the Panel recommends an award of compensation in the amount of USD 29,098 for unpaid invoices in United States dollars with respect to the various projects in southern Iraq.

49. The documentation provided by Inspekta in support of its claim for the motor vehicle relates to proceedings instituted on Inspekta's behalf to recover the motor vehicle, which were successful. The Panel therefore finds that Inspekta has not demonstrated that it suffered any loss, and recommends no award of compensation to Inspekta for the motor vehicle.

50. With respect to the balance of this part of Inspekta's claim (in the amount of USD 5,523), the Panel finds that Inspekta would not have been able to charge the contract rates for the time that it would have taken the inspectors to return to the Czech Republic from Iraq at the end of the contract. The Panel further finds that Inspekta has not demonstrated that its inspectors would have continued to work on the project if Iraq had not invaded and occupied Kuwait. The Panel considers that it would have taken two days for each inspector to return to the Czech Republic from Iraq. As it took longer than two days for the inspectors to return to the Czech Republic because they were unable to leave Iraq, the Panel recommends an award of compensation in the amount of 2,692 Koruny (CSK) for unproductive labour, which is based on Inspekta's actual salary costs as opposed to the contract rates that would have been chargeable under the contract. With respect to the costs of returning the inspectors from Iraq to the Czech Republic, the Panel finds that Inspekta would have incurred some expenses in this regard, in any event, and that Inspekta has not demonstrated that the costs claimed were higher than they would have been absent Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation to Inspekta for the costs of returning the inspectors.

I. Central refinery project – Italy

1. Facts and contentions

51. Inspekta states that it entered into a contract with Techcorp for the inspection of equipment and materials manufactured in Italy for the Central refinery project. Although the contract is undated, Inspekta states that the contract was entered into on 3 June 1990. The value of the contract was USD 158,000 and was payable in 10 equal instalments of USD 15,800 as follows: (a) the first instalment two months after the contract was signed; (b) the next eight instalments every two months after the first instalment; and (c) the last instalment after presentation of the final inspection report. The payments were to be secured by a letter of credit that was to be issued within two months of the date the contract was signed. Inspekta states that all documentation with respect to the letter of credit was lost when it evacuated its office in Baghdad after Iraq's invasion and occupation of Kuwait. Inspekta claims USD 31,600 for loss of profits based on 20 per cent of the contract's value.

2. Analysis and valuation

52. Based on the evidence provided by Inspekta in support of its claim, the Panel finds that the contract was entered into on or about 3 June 1990. The Panel further finds that no work was conducted before Iraq's invasion and occupation of Kuwait because the contract had not yet reached the stage of execution. Inspekta has again based its claim for loss of profits on the profits that it earned on other projects in the previous financial year (which were 40 per cent), and claimed 20 per cent to allow for contingencies that might have occurred. Documents entitled "State Economical Result Statement" for the financial years ended 1988 and 1989 and for the second half of 1990, which Inspekta provided in support of its claim, confirm that Inspekta's gross profit rate was more than 20 per cent.

53. For the reasons discussed in paragraph 39 above, the Panel finds that Inspekta's claim for loss of profits under the contract with Techcorp should be apportioned over the period during which they would have been earned, and finds that only amounts payable up to 2 August 1991 should be compensated. Accordingly, the Panel recommends an award of compensation in the amount of USD 18,960 for loss of profits (based on a gross profit rate of 20 per cent).

J. Al-Shemal thermal power station

1. Facts and contentions

54. Inspekta states that, on 24 September 1988, it entered into a contract with Iraq's Ministry of Industry and Military Manufacturing Al-Shemal Thermal Power Station Committee ("MI") for inspection and related services for a power station in Iraq. The contract value was IQD 338,560. IQD 172,480 of the contract's value was allocated for shop inspection work in Europe and the remaining IQD 166,080 for site inspection work in Iraq. The contract further provided that 100 per cent of the shop inspection work and 60 per cent of the site inspection work was payable in Deutsche Mark (DEM) and that the balance was payable in Iraqi dinars. Inspekta claims USD 197,039 for unpaid invoices, payment or relief to others and tangible property losses as discussed below.

55. Inspekta claims USD 172,961 (converted by Inspekta from DEM 257,655 and IQD 6,791) for unpaid invoices for inspection work conducted from March to September 1990. Inspekta states that it continued to work in Iraq after the trade embargo was imposed on 6 August 1990 because its inspectors required exit visas to leave Iraq, which Iraq would not issue until the work was completed.

56. Inspekta additionally claims USD 18,481 (converted by Inspekta from CSK 553,815) for three motor vehicles that it states were expropriated by Iraq.

57. Lastly, Inspekta also claims USD 5,597 (converted by Inspekta from IQD 1,160 and an unspecified amount of Koruny) for the number of days between the last day each of its three inspectors worked in Iraq and the day they returned to the Czech Republic from Iraq, which Inspekta states would otherwise have been work days for which it could have charged contract rates, as well as the costs of returning the inspectors to the Czech Republic.

2. Analysis and valuation

58. Inspekta's claim for unpaid invoices for inspection work is in United States dollars. As discussed previously, the Panel assesses losses in the currencies in which they were incurred.

59. With respect to site inspection work, the invoices total DEM 54,960 and IQD 6,791. Applying the "arising prior to" rule discussed in paragraph 26 above, the Panel deducts DEM 10,444 and IQD 1,290 for work performed prior to 2 May 1990. The balance of the claimed amount, including work performed after the trade embargo (which is compensable in principle when a claimant's employees were required to continue working in order to obtain exit visas from Iraq as discussed in paragraph 29 above) is DEM 44,516 and IQD 5,501. The Panel recommends an award of compensation in the amount of DEM 44,516 for unpaid invoices in Deutsche Mark for inspection work. As discussed in paragraph 31 above, the Panel finds that Inspekta has not proved any loss arising from non-payment of the Iraqi dinar portion of its invoices.

60. With respect to shop inspection work, the invoices total DEM 159,532. Under the contract, the shop inspection work was to be paid in seven instalments of DEM 106,355, the first of which was to be invoiced and presented to MI at the beginning of the shop inspections and the balance every following three months so that the seventh instalment would be payable 18 months after the shop inspections commenced. Inspekta's claim is for the fourth instalment covering the period from 1 April to 30 June 1990, for which an invoice was issued on 20 July 1990, and for half of the fifth instalment covering the period from 1 July to 15 August 1990, for which an invoice was issued on 29 October 1990. Based on the evidence provided by Inspekta, the Panel recommends an award in the amount of DEM 122,717 for the shop inspection work performed after 2 May 1990.

61. Inspekta also claims DEM 43,163 for additional inspection work that it invoiced on 7 May 1990. Inspekta states that the amendment to the contract for this work was lost when Inspekta evacuated its office in Baghdad after Iraq's invasion and occupation of Kuwait. Correspondence that Inspekta received from the manufacturer, which Inspekta provided in support of its claim, shows that the work was performed between November 1989 and July 1990. The Panel finds, however, that since the invoice is dated 7 May 1990, the claim must relate to work performed prior to 2 May 1990, which is not compensable based on the "arising prior to" rule discussed in paragraph 26 above. The Panel therefore recommends no award of compensation to Inspekta for this unpaid invoice.

62. The documentation provided by Inspekta in support of its claim for three motor vehicles relates to proceedings instituted on Inspekta's behalf to recover the motor vehicles, which were successful. The Panel therefore finds that Inspekta has not demonstrated that it suffered any loss, and recommends no award of compensation to Inspekta for the motor vehicles.

63. With respect to the balance of this part of Inspekta's claim (in the amount of USD 5,597), the Panel finds that Inspekta would not have been able to charge the contract rates for the time that it would have taken the inspectors to return to the Czech Republic from Iraq at the end of the contract. The Panel further finds that Inspekta has not demonstrated that its inspectors would have continued to work on the project if Iraq had not invaded and occupied Kuwait. The Panel considers that it is

reasonable to assume that it would have taken two days for each inspector to return to the Czech Republic from Iraq. As it took longer than two days for the inspectors to return to the Czech Republic because they were unable to leave Iraq, the Panel recommends an award of compensation in the amount of CSK 1,746 for unproductive labour, which is based on Inspekta's actual salary costs as opposed to the contract rates that would have been chargeable under the contract. With respect to the costs of returning the inspectors from Iraq to the Czech Republic, the Panel finds that Inspekta would have incurred some expenses in this regard, in any event, and that Inspekta has not demonstrated that the costs claimed were higher than they would have been absent Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation to Inspekta for the costs of returning the inspectors.

K. Loss of fixed assets in Iraq

1. Facts and contentions

64. Inspekta claims USD 59,849 for pre-paid rent for two premises located in Iraq that it states it was unable to use from October 1990 onwards because it could not resume work on its projects in Iraq, as well as for furniture and furnishings located at these premises.

2. Analysis and valuation

65. Inspekta has provided evidence that it pre-paid rent for both premises that includes the period of Iraq's invasion and occupation of Kuwait. This Panel, like other panels, considers pre-paid rent to be compensable, in principle, for the period from 2 August 1990 to 2 March 1991. However, the Panel considers that to award any compensation for pre-paid rent here would be duplicative of the loss of profits awards that have been recommended for Inspekta previously in this report. The Panel therefore recommends no award of compensation to Inspekta for pre-paid rent.

66. With respect to furniture and furnishings, the documentation provided by Inspekta in support of its claim relates to proceedings instituted on Inspekta's behalf to recover the furniture and furnishings, which were successful. The Panel therefore finds that Inspekta has not demonstrated that it suffered any loss, and recommends no award of compensation to Inspekta for furniture and furnishings.

L. Recommendations

67. The Panel's recommendations with respect to the claim of Inspekta are summarized in table 3 below.

Table 3. Inspekta's claim - recommended compensation

Claim element	Original amount claimed (USD)	Amount of compensation recommended
Contract	456,893	USD 71,031 DEM 167,233
- Trans-Iraq dry gas pipeline	21,137	Nil
- Central refinery project – Iraq	15,306	USD 4,653
- Heat exchangers	12,800	Nil
- Central refinery project - Europe	64,800	USD 18,320
- North Rumaila oil field project	74,332	Nil
- Various projects in southern Iraq	63,957	USD 29,098
- Central refinery project – Italy	31,600	USD 18,960
- Al-Shemal thermal power station	172,961	DEM 167,233
Other tangible property	81,024	Nil
- Various projects in southern Iraq	2,694	Nil
- Al-Shemal thermal power station	18,481	Nil
- Loss of fixed assets in Iraq	59,849	Nil
Payment or relief to others	11,295	CSK 4,438
- Central refinery project - Iraq	175	Nil
- Various projects in southern Iraq	5,523	CSK 2,692
- Al-Shemal thermal power station	5,597	CSK 1,746
Total (USD)	549,212	178,375

IV. CLAIM OF DE DIETRICH & CIE

A. Facts and contentions

1. Introduction

68. The claimant is De Dietrich & Cie ("De Dietrich"), a company organized under the laws of France. De Dietrich carries on business as a manufacturer of glass-lined steel pipes (for use in the chemical and pharmaceutical industries), household appliances, heating equipment and railway equipment.

69. De Dietrich claims compensation for contract and other losses in the amount of 3,166,369 French francs (FRF). Its claim is summarized in table 4 below.

Table 4. De Dietrich's claim
(French francs)

Claim element	Original amount claimed
Contract	3,100,000
Other	66,369
Total	3,166,369

2. Contract

70. De Dietrich alleges that, on 28 October 1988, it concluded a contract ("the contract") with Iraq's State Establishment for Oil Refinery and Gas Processing ("SORG"). Under the contract De Dietrich sold to SORG a quantity of custom manufactured glass lined steel pipes and fittings to be used in chemical or pharmaceutical plants ("the goods") for a total price of FRF 3,100,000. Delivery of the goods was to be effected no later than 31 October 1990. The purchase price was secured by a letter of credit opened by SORG in favour of De Dietrich and dated 17 February 1990. The letter of credit was due to expire (after certain extensions) on 31 October 1990, corresponding to the latest date for delivery of the goods.

71. De Dietrich alleges that it undertook the manufacture of the goods at its plant in Zinswiller, France, following the execution of the contract. On 25 July 1990 it undertook a partial shipment of goods worth FRF 2,450,000 overland via Poland to Baghdad. De Dietrich alleges that, following Iraq's invasion and occupation of Kuwait on 2 August 1990, Iraq closed its borders. De Dietrich states that its shipping agent therefore decided to stop the shipment of the goods at Slubice, Poland. De Dietrich states that it thereafter instructed its shipping agent to return the goods to its plant at Zinswiller. De Dietrich received no payment under the letter of credit. De Dietrich also alleges that the remaining goods worth FRF 650,000 were manufactured and ready to be shipped in mid-August 1990, but that these goods were never despatched.

72. De Dietrich alleges that the goods were custom built according to specifications provided by SORG. Accordingly, De Dietrich alleges that it was able only to realize a minimal fraction of the value of the goods upon their sale as scrap in 1993. De Dietrich claims compensation for the entire sale price of FRF 3,100,000 under this category of the claim.

3. Other

73. Under this category, De Dietrich claims the amount of FRF 28,369, being the freight costs it paid for the return of the goods from Slubice to Zinswiller, and the amount of FRF 38,000 for the cost of storage of the goods at De Dietrich's plant from 14 September 1990 to 15 November 1993. The storage cost was estimated by De Dietrich to have been FRF 1,000 per month for a period of 38 months, calculated by multiplying the estimated cost per square metre of storage space by the number of square metres required to house the goods.

B. Iraq's response

74. Iraq's written response to the claim may be summarized as follows.

(a) Iraq alleges that the order for the goods was issued on 25 October 1988 but the letter of credit was not made operative until 20 March 1990 due to De Dietrich's delay in furnishing a bank guarantee.

(b) Iraq states that partial shipment of the goods was commenced on 25 July 1990 and the relevant invoices were submitted to De Dietrich's bank for payment. Iraq states that, due to the trade embargo, the goods were returned to De Dietrich and the bank refused to pay under the letter of credit.

(c) Iraq states that it extended the letter of credit in the hope of receiving the goods.

(d) Iraq alleges that the loss to De Dietrich is not a direct loss, but rather is due to the decision of another country not to allow the goods to proceed to Iraq as a result of the trade embargo. Iraq states that it is not liable for the loss under paragraph 3 of Governing Council decision 15 (S/AC. 26/1992/15).

(e) Iraq alleges that De Dietrich failed to properly mitigate its damages, as the goods were "general engineering material" which could have been sold to various customers in the ordinary course of business, instead of incurring storage charges. Iraq states that De Dietrich should indicate the fate of the goods and the method by which they were disposed.

(f) Iraq alleges that the claim is not compensable as the losses are not direct and De Dietrich has failed to mitigate its damages.

C. Analysis and valuation

1. Contract

75. De Dietrich provided a copy of a telex from SORG dated 25 October 1988 reflecting the purchase price of the goods in the amount of FRF 3,100,000, a copy of the letter of credit opened by SORG, a copy of the invoice issued by De Dietrich for goods worth FRF 2,450,000, a certificate of origin and a packing list in respect of the invoiced goods.

76. The Panel finds that De Dietrich established that it manufactured and attempted to deliver goods worth FRF 2,450,000 to SORG, and that it was unable to effect delivery. With respect to the remainder of the goods worth FRF 650,000, De Dietrich was not able to substantiate, with any documentary evidence, that it had completed the manufacture of these goods. As a result of De Dietrich's inability to substantiate this portion of its claim with the appropriate evidence, the Panel finds that De Dietrich has not demonstrated that it manufactured the remainder of the goods worth FRF 650,000.

77. The Panel examined De Dietrich's product catalogue in respect of standard products manufactured at the relevant time. The product catalogue confirmed that the goods were custom made according to specifications provided by SORG, and deviated from De Dietrich's standard specifications in numerous respects.

78. In response to the Panel's enquiries, De Dietrich alleged that it had disposed of the goods as scrap in 1993 because, due to their customized nature, the goods were not readily marketable. The goods had been bundled with other scrap goods and De Dietrich had retained no record of the exact realized value of the goods. The Panel found that a value of 10 per cent of the purchase price, or FRF 245,000, should reasonably have been realized for the goods on the scrap market.

79. The Panel calculated that De Dietrich saved transportation expenses that it would otherwise have incurred had the entire transaction been completed in the ordinary course. Based upon an extrapolation of the actual transportation costs incurred for the conveyance of the goods from Zinzwiller to Slubice and back to Zinzwiller, the Panel calculated the saved transportation expenses to be FRF 85,107.

80. For the reasons described above, the Panel finds that De Dietrich has established that it suffered a loss in relation to its contract with SORG in the amount of FRF 2,119,893. The Panel recommends an award of compensation in this amount.

2. Other

81. De Dietrich provided the bill of lading issued by its freight forwarder indicating that the goods were to be transported from France to Baghdad via Turkey by truck on a cost and freight ("C&F") basis. De Dietrich alleged that the freight forwarder had stopped the goods in Slubice as a result of the closure by Iraq of its frontiers. De Dietrich stated that it requested the freight forwarder to return the goods to its plant in France. The goods were returned to De Dietrich in France in September 1990.

De Dietrich furnished the Panel with the freight forwarder's invoice in the amount of FRF 56,739 in respect of this round trip journey. De Dietrich contended that 50 per cent of this amount represented the wasted cost of returning the goods to France.

82. The Panel finds that De Dietrich has accurately stated this element of its claim and that the loss was appropriately documented. For these reasons the Panel recommends an award of compensation in the amount of FRF 28,369.

83. With respect to the additional storage costs, De Dietrich estimated a monthly rate per square metre multiplied by the number of square metres required for the storage of the goods. Notwithstanding the Panel's request for documentary evidence in support of the actual costs incurred, De Dietrich did not provide these documents. As a result of De Dietrich's inability to substantiate the claimed amount with appropriate evidence, the Panel recommends no award of compensation to De Dietrich for storage costs.

D. Recommendations

84. The Panel's recommendations with respect to the claim of De Dietrich are summarized in table 5 below.

Table 5. De Dietrich's claim - recommended compensation
(French francs)

Claim element	Original amount claimed	Amount of compensation recommended
Contract	3,100,000	2,119,893
Other	66,369	28,369
- Transportation charges	28,369	28,369
- Storage costs	38,000	Nil
Total	3,166,369	2,148,262

V. CLAIM OF FERROSTAAL AKTIENGESELLSCHAFT

A. Facts and contentions

1. Introduction

85. The claimant is Ferrostaal Aktiengesellschaft ("Ferrostaal"), a company organized under the laws of Germany. Ferrostaal is a wholly-owned subsidiary of MAN Aktiengesellschaft, an industrial conglomerate having operations in Germany. At all times material to its claim, Ferrostaal carried on business, inter alia, as a shipbuilder.

86. Ferrostaal claims compensation in the amount of DEM 25,524,331 for business transaction or course of dealing losses. Pursuant to the Panel's enquiries, and as discussed in paragraphs 90 and 93 below, Ferrostaal reduced the total amount of compensation sought as set out in table 6 below.

Table 6. Ferrostaal's claim
(Deutsche Mark)

Claim element	Original amount claimed	Amended amount claimed
Business transaction or course of dealing	25,524,331	20,614,966
Total	25,524,331	20,614,966

2. Business transaction or course of dealing

87. Ferrostaal alleges that it entered into a contract with Iraq's State Company of Oil Projects ("SCOP") on 5 May 1989 ("the contract"). Ferrostaal alleges that under the contract it was obliged to manufacture and deliver nine "harbour vessels" to SCOP at the port of Yanbu on the Red Sea coast of Saudi Arabia for a total price of DEM 56,317,230. The harbour vessels were intended for use by SCOP in the port of Yanbu during crude oil loading operations from the oil pipeline originating in Iraq and terminating at Yanbu. Ferrostaal states that it had already delivered four of the vessels and was in the process of delivering the remaining five vessels. Ferrostaal alleges that, after Iraq's invasion and occupation of Kuwait, the delivery of crude oil through the pipeline was prohibited by the Government of the Kingdom of Saudi Arabia. Ferrostaal states that the prohibition of oil delivery by the Saudi Arabian Government made the fulfilment of the contract impossible, because the five vessels remaining for delivery could no longer be "handed over".

88. Ferrostaal states that it had received payments from SCOP amounting to DEM 41,707,899 for the completed portion of the contract. This amount was comprised of 100 per cent of the purchase price in respect of the four delivered vessels, 70 per cent of the purchase price in respect of the five undelivered vessels and a portion of an amount payable for a guarantee in respect of all of the vessels.

89. Ferrostaal states that neither it nor SCOP formally cancelled the contract, and that it never delivered the five undelivered vessels to SCOP.

90. Ferrostaal states that one amount of DEM 14,609,331 under the contract remained unpaid. Additionally, Ferrostaal alleges that it incurred monthly storage costs comprised of costs relating to spares and fuel, crew costs, harbour costs, agency fees, insurance costs, interest and banking costs. It originally claimed that such costs were DEM 295,000 per month for 37 months, amounting to the sum of DEM 10,915,000. However, in its response to the article 34 notification, Ferrostaal reduced the total amount of its claim for monthly storage costs to DEM 6,005,635. Ferrostaal seeks compensation for the unpaid amount and the storage costs in the aggregate amount of DEM 20,614,966.

B. Iraq's response

91. Iraq's written response to the claim can be summarized as follows.

(a) Iraq states that Ferrostaal entered into a contract with SCOP for the supply of nine harbour vessels, of which four were delivered and for which payment was made. Iraq alleges that the value of the remaining five vessels was DEM 48,697,770, out of which Ferrostaal received DEM 34,088,439 upon the completion of their manufacture. Iraq states that Ferrostaal did not receive the remaining DEM 14,609,331 because it had not delivered the vessels to the Yanbu port in accordance with the contract, although the vessels were ready for delivery prior to 2 August 1990. Iraq states that the contract required Ferrostaal to deliver the vessels by 5 June 1990 at the latest, and that Ferrostaal failed to perform its contractual obligations.

(b) Iraq states that Ferrostaal took a unilateral decision to store the five vessels in Malta and to pay for the storage, maintenance and insurance for a long period of time without the approval of the owner of the vessels.

(c) Iraq refers to a letter from Ferrostaal dated 4 December 2000 informing SCOP that it had sold four of the five remaining vessels: three tugboats on 28 September 1993 for DEM 22,000,000 and an oil water separation barge on 14 February 1996 for DEM 1,450,000. Iraq contends that only one vessel, a fire-fighting vessel, remained unsold.

(d) Iraq alleges that Ferrostaal caused Iraq excessive losses by its delay in the execution of the contract as well as through subsequent mismanagement. Iraq states that Ferrostaal should compensate Iraq for these losses and reserves the right to claim them through proceedings against Ferrostaal.

C. Analysis and valuation

92. In response to the Panel's article 34 notification, Ferrostaal stated that in September 1993 it resold three of the remaining vessels (all tug boats) to an Australian firm for DEM 22,000,000 and in February 1996 it sold an oil/water separation barge to a South African firm for DEM 1,450,000. Ferrostaal stated that the only vessel that it had been unable to resell, despite its efforts, was a fire-fighting vessel, which remained moored at Cuxhaven, Germany as at July 2002.

93. As noted above, Ferrostaal also reduced its claim for storage costs to the amount of DEM 6,005,635 on the basis that it had originally made use of estimates, which it sought to replace with actual costs.

94. The Panel finds that Ferrostaal's sale of the four vessels described in paragraph 92 above resulted in it realizing a windfall profit in excess of its claim, as amended. The Panel also finds that the windfall profit realized by Ferrostaal was directly caused by Iraq's invasion and occupation of Kuwait and must be set off against the losses claimed by Ferrostaal. Accordingly, the Panel recommends no award of compensation to Ferrostaal for unpaid amounts and storage costs.

D. Recommendations

95. The Panel's recommendations with respect to the claim of Ferrostaal are summarized in table 7 below.

Table 7. Ferrostaal's claim - recommended compensation
(Deutsche Mark)

Claim element	Original amount claimed	Amended amount claimed	Amount of compensation recommended
Business transaction or course of dealing	25,524,331	20,614,966	Nil
- Balance of contracted amount	14,609,331	14,609,331	Nil
- Storage costs	10,915,000	6,005,635	Nil
Total	25,524,331	20,614,966	Nil

VI. CLAIM OF A.B.S. APPARECCHIATURE E BRUCIATORI SPECIALI S.R.L.

A. Facts and contentions

1. Introduction

96. A.B.S. Apparecchiature E. Bruciatori Speciali s.r.l. ("A.B.S.") is a company organized under the laws of Italy. Its business is the design and manufacture of special heat-engineering installations. A.B.S. seeks compensation in the amount of 66,000,000 Italian lire (ITL) for goods that it manufactured, but could not ship, as a result of Iraq's invasion and occupation of Kuwait. A.B.S.'s claim is summarized in table 8 below.

Table 8. A.B.S.'s claim
(Italian lire)

Claim element	Original amount claimed
Contract	66,000,000
Total	66,000,000

2. Contract

97. A.B.S. states that, prior to 2 August 1990, it entered into a purchase order with a third party for two air blown-in combustion systems that the third party contracted to provide to Iraq's State Company for Oil Projects ("SCOP"). A.B.S. provided a copy of the purchase order in support of its claim.

B. Iraq's response

98. Iraq states that A.B.S.'s dispute is with the third party with which A.B.S. contracted. Iraq also states that A.B.S. cannot claim the full value of the purchase order because it has retained the goods. Iraq further states that A.B.S.'s losses are solely attributable to the trade embargo.

C. Analysis and valuation

99. This Panel, like other panels, considers that claims relating to interrupted contracts for the manufacture and supply of goods to Iraqi parties, where delivery was to have taken place between 2 August 1990 and 2 August 1991, are compensable in principle if payment for such goods was to have taken place on or before 2 August 1991.[7] The Panel further considers this to be the case when the claim relates to an interrupted contract between a subcontractor and main contractor for the supply of goods to an Iraqi end-user.

100. In the article 34 notification issued to A.B.S., a number of substantial deficiencies in the claim were noted including the absence of supporting evidence. A.B.S. has not responded to this notification nor a subsequent follow-up notification.

101. The Panel finds that there is insufficient evidence to support A.B.S.'s claim. The Panel therefore recommends no award of compensation to A.B.S. for the claimed contract losses.

D. Recommendations

102. The Panel's recommendations with respect to the claim of A.B.S. are summarized in table 9 below.

Table 9. A.B.S.'s claim – recommended compensation
(Italian lire)

Claim element	Original amount claimed	Amount of compensation recommended
Contract	66,000,000	Nil
Total	66,000,000	Nil

VII. CLAIM OF SUPCO S.R.L.

A. Facts and contentions

1. Introduction

103. The claimant is SUPCO S.R.L. ("SUPCO"), a company organized under the laws of Italy. Among other businesses, SUPCO supplies specialty chemicals to the petroleum refining industry.

104. SUPCO claims a total of USD 162,465 for loss of profits. Its claim is summarized in table 10 below.

Table 10. SUPCO's claim
(United States dollars)

Claim element	Original amount claimed
Loss of profits	162,465
Total	162,465

2. Loss of profits

105. The claim for loss of profits derives from a purchase order for the bulk sale of a chemical additive to gasoline issued to SUPCO by Iraq's State Enterprise for Oil Refining Central Area ("SEOR") (the "SEOR purchase order").

106. The SEOR purchase order, dated 9 July 1990, concerned 1,000 metric tons of tetraethyl lead, or T.E.L., to be delivered C&F Baghdad (Daura Refinery) by one or more truck shipments, with the product to be contained in "tank tainers" for a total price of USD 4,290,000. The SEOR purchase order further provided that payment would be made under an irrevocable letter of credit to be established in favour of SUPCO, and that delivery was to take place as soon as possible following issuance of the letter of credit.

107. On 24 July 1990, an Italian bank opened an irrevocable letter of credit in favour of SEOR's Daura Refinery in the amount of the purchase price, listing SUPCO as the beneficiary. The letter of credit had a termination date of 31 January 1991, giving SUPCO approximately six months in which to complete its delivery of the T.E.L.

108. SUPCO states that, on 10 July 1990, the day following the issue of the SEOR purchase order, it issued its own purchase order (the "SUPCO purchase order") to a third party manufacturer/supplier, whereby SUPCO arranged to purchase the necessary volume of T.E.L. to fill the SEOR purchase order, for the lower price of USD 3,960,000.

109. SUPCO states that, in accordance with the SEOR purchase order, tank tainers containing a portion of the order of T.E.L. were delivered to the Italian port of La Spezia by SUPCO's third party supplier, destined for Daura. SUPCO states that the goods were not subsequently shipped out of the

Italian port because their export was blocked by the Italian authorities. SUPCO contends that one week later it cancelled the SUPCO purchase order and the containers of T.E.L. were sent back to the manufacturer.

110. SUPCO states that, if it had been able to make delivery of the full volume of T.E.L. ordered by SEOR, then it would have enjoyed a sales margin of USD 330,000, this being the difference between the sales price of USD 4,290,000 in the SEOR purchase order and the purchase price of USD 3,960,000 in the SUPCO purchase order.

111. SUPCO contends that, aside from the price paid to its third party supplier for the T.E.L., its only other cost of performance would have been the amount spent for transporting the T.E.L. from Italy to Baghdad, a cost that it was to bear under the C&F delivery terms in the SEOR purchase order. SUPCO estimates that its freight cost would have been USD 167,535. In support of this cost estimate, it submits a copy of a facsimile-transmitted memo dated 10 May 1990 from an Italian freight forwarding company in which that company offered to move containerized chemicals to Baghdad for a rate of USD 135 per metric ton. SUPCO estimates that the loaded weight of the goods (inclusive of the tank tainers) would have been 1,241 metric tons.[8]

B. Iraq's response

112. Iraq's written response to the claim can be summarized as follows.

(a) Iraq contends that SUPCO's inability to deliver the first cargo of T.E.L. was due to the trade embargo imposed on Iraq and not because of Iraq's entry into Kuwait.

(b) Iraq further contends that there was ample demand for T.E.L. and that SUPCO could have easily avoided any real loss on the SEOR purchase order by selling this same volume of T.E.L. to another buyer.

C. Analysis and valuation

113. Based upon its review of the SEOR purchase order and the supporting letter of credit, the Panel finds that, on 2 August 1990, a contract existed for SUPCO's supply to SEOR of 1,000 metric tons of T.E.L. for a price of USD 4,290,000. On that date, there was an ample amount of time remaining under the letter of credit during which SUPCO could have made delivery of the goods to SEOR.

114. Iraq argues that Italy's adoption of the Security Council's resolution 661 (1990) imposing a trade embargo on the shipment of goods destined for Iraq, effective as of 6 August 1990, was the primary cause of SUPCO's inability to perform. The Panel recognizes that the trade embargo would have prevented SUPCO's performance under the contract after that date. However, the Panel finds that SUPCO could not have performed under the contract after that date for the further reason that it could not have arranged for truck transportation of the T.E.L. from the port of discharge in Turkey to the buyer's premises in Baghdad within the six-month period allowed by the letter of credit. The Panel finds that this lack of land transportation was a direct result of Iraq's invasion and occupation of Kuwait and an independent cause of SUPCO's failure to perform, and that these conditions would

have been encountered by SUPCO, even in the absence of the trade embargo. This Panel has previously found that in circumstances of such parallel causation the imposition of the trade embargo will not be deemed to have been the primary cause of a claimant's impossibility of performance.[9] While SEOR (an Iraqi, State-owned company) did not itself breach the contract, the Panel finds that the continuation of the contract became impossible after 2 August 1990 as a direct result of Iraq's invasion and Kuwait and, in such circumstances, Iraq is liable for any direct loss suffered by SUPCO as a result of this impossibility of its performance, including loss of profits.[10]

115. Paragraphs 8 and 9 of Governing Council decision 9 provide that future lost profits may be compensable in a case involving a contract with Iraq where contract performance becomes impossible as a result of Iraq's invasion and occupation of Kuwait. However, a claimant can prevail in such a claim only if its loss of profits can be calculated under the contract with reasonable certainty.

116. SUPCO did not actually manufacture T.E.L., but instead intended to acquire the requisite volume of this chemical from a third party, for a follow-on sale to SEOR. SUPCO quotes an acquisition cost from the SUPCO purchase order, but it has not produced independent evidence (by written acknowledgement or otherwise) of the third party's willingness to supply the necessary volume of this chemical at the price quoted by SUPCO. SUPCO contends that an initial quantity of T.E.L. was delivered by its third-party supplier to the embarkation port, and it relies on this delivery as being proof of the third party's willingness to sell the product on the terms stated in the SUPCO purchase order. However, SUPCO has not presented shipping documents proving this delivery by the third party. Neither has SUPCO presented a copy of the third-party supplier's invoice or proof of SUPCO's payment for the product.

117. The copy of the freight forwarder's facsimile quote (see paragraph 111 above) was the only evidence presented by SUPCO with respect to its avoided freight cost. The Panel notes that the facsimile predates the SEOR purchase order and that it is not addressed to SUPCO. SUPCO did not offer any proof of the historic cost of transportation of similar goods on any prior sales to SEOR Daura refinery.

118. Without a reasonable assessment of the two avoided costs (of the T.E.L. acquisition price and transportation cost), the amount of lost profits cannot be calculated. In these circumstances, the Panel recommends no award of compensation to SUPCO for loss of profits.

D. Recommendations

119. The Panel's recommendations with respect to the claim of SUPCO are summarized in table 11 below.

Table 11. SUPCO's claim – recommended compensation
(United States dollars)

Claim element	Original amount claimed	Amount of compensation recommended
Loss of profits	162,465	Nil
Total	162,465	Nil

VIII. CLAIM OF ANADOLU ULUSLARARASI TICARET VE TASIMACILIK A.S.

A. Facts and contentions

1. Introduction

120. Anadolu Uluslararasi Ticaret Ve Tasimacilik A.S. ("Anadolu") is a company organized under the laws of Turkey. Its operations include the importing and exporting of petroleum products to and from Turkey.

121. Anadolu seeks compensation in the total amount of USD 227,337 for termination costs and storage and vessel charter costs allegedly incurred as a direct result of Iraq's invasion and occupation of Kuwait. Its claim is summarized in table 12 below.

Table 12. Anadolu's claim
(United States dollars)

Claim element	Original amount claimed
Termination costs	102,737
Storage and vessel charter costs	124,600
Total	227,337

122. Anadolu states that, prior to Iraq's invasion and occupation of Kuwait, it had contractual dealings with Iraq to purchase and transport petroleum products from Iraq. According to Anadolu, the last of the contracts that it made for the purchase and transport of petroleum products from Iraq was a contract signed with Iraq's State Oil Marketing Organization ("SOMO") on 26 November 1989 for the lifting of vacuum gas oil from a depot in Iraq for a period of six months beginning 1 December 1989.

2. Termination costs

123. Anadolu asserts that, approximately one year prior to 2 August 1990, Iraq made the decision to invade and occupy Kuwait and began to make "war arrangements". Anadolu further asserts that, as a consequence of Iraq's decision and so-called "war arrangements", Iraq began gradually to decrease its sales of petroleum products to Anadolu during the one-year period immediately preceding Iraq's invasion and occupation of Kuwait on 2 August 1990. This gradual decrease in sales by Iraq allegedly resulted in a loss of work for Anadolu and caused it to incur "termination costs" in the form of redundancy payments and end-of-service indemnity payments to employees.

124. Anadolu seeks compensation for the termination costs that it allegedly incurred in the amount of USD 102,737. It states that these costs relate to the period from 30 August 1989 to 30 July 1990 (USD 58,882) and the period from 30 August to 30 December 1990 (USD 43,855).

3. Storage and vessel charter costs

125. Anadolu alleges that, on 30 July 1990, it entered into a contract with Toros Gubre Ve Kimya Endustrisi A.S. ("Toros") for the rental of gas oil storage tanks in Turkey. Under this contract, Anadolu agreed to pay a monthly fee of USD 4,200 to Toros for use of the storage tanks in the period from 1 August to 31 December 1990.

126. Anadolu further alleges that, pursuant to a contract dated 1 January 1990, it agreed (on 2 February 1990) to charter a ship from Karaveli Tanker Isletmeciligi Ilhan Kravelioglu Ve Ortaklari Sirketi ("Karaveli") for the period from 1 August to 31 December 1990 for purposes of transporting fuel oil and gas oil from storage tanks in Turkey to vessels anchored in Turkish ports. Under this contract, Anadolu agreed to pay a daily chartering fee of USD 700 to Karaveli for the use of the ship.

127. Anadolu asserts that its purchases of gas oil from Iraq were cut off as result of Iraq's invasion and occupation of Kuwait, and that it was therefore unable to deliver gas oil to the Toros storage tanks during the period from 2 August to 31 December 1990. It seeks the amount of USD 21,000 as compensation for the cost of renting the storage tanks for the months of August to December 1990. Anadolu further asserts that it was unable to use the ship chartered from Karaveli during that same period, due to the absence of any gas oil purchases from Iraq. It seeks the amount of USD 103,600 as compensation for the cost of chartering the ship from Karaveli during the period from 2 August to 31 December 1990.

128. In the article 34 notification, Anadolu was asked whether, during the period from August to December 1990, it made any use of the storage tanks rented from Toros or the ship chartered from Karaveli. In its response, Anadolu states that it used both the storage tanks and the ship during that period.

4. Evidence

129. In support of its claim, Anadolu has provided copies of payroll records, two contracts signed with SOMO for the lifting of vacuum gas oil and straight run fuel oil, the storage contract made with Toros, the charter contract made with Karaveli, a letter sent to Karaveli in February 1990, invoices and receipts relating to the storage and vessel charter costs, and year-end "income statements" and balance sheets for the calendar years 1988 to 1992.

B. Iraq's response

130. Iraq's written response to the claim can be summarized as follows.

(a) Iraq asserts that the alleged losses are not directly related to Iraq's entry into Kuwait. According to Iraq, the trade embargo imposed upon Iraq made it impossible for Iraq to export or for Anadolu or any other company to import petroleum products from Iraq. Iraq contends that the alleged losses are therefore not eligible for compensation.

(b) According to Iraq, Anadolu's allegations that Iraq gradually began to decrease its sales of petroleum products to Anadolu one year prior to Iraq's entry into Kuwait and that, as a result, Anadolu suffered some work losses, is irrelevant to the Commission's mandate and is not supported by any evidence. Iraq states that its records show that Anadolu lifted petroleum products from Iraq until 31 December 1989, at which time all of its contracts with Iraq expired, with the exception of the contract for vacuum gas oil referred to by Anadolu in its claim. Iraq further states that this contract for vacuum gas oil became effective on 1 December 1989 and that Anadolu continued lifting vacuum gas oil until the letter of credit issued in respect of the contract expired on 30 July 1990. Iraq contends that the contract for vacuum gas oil was therefore fully executed by both sides and that there are no outstanding obligations arising from this contract.

(c) Iraq states that the contract for the rental of the gas oil storage tanks is undated and that the word "Iraq" does not appear anywhere in the contract. According to Iraq, based on the terms of the contract, the storage tanks could have been rented for products "transported from abroad by land and/or sea". Iraq questions whether a trading company such as Anadolu depends on a single supplier to execute a successful and profitable operation.

(d) Iraq states that the contract to charter the ship from Karaveli is undated and makes no mention of any operation related to Iraq. Iraq contends that the alleged losses relating to this contract and the contract for the rental of gas oil storage tanks therefore have nothing to do with Iraq.

C. Analysis and valuation

131. In respect of the claim for termination costs, the Panel finds that Anadolu has failed to demonstrate that it lost work and needed to make redundancy payments or additional end-of-service indemnity payments to its employees as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no award of compensation to Anadolu for termination costs.

132. In respect of the claim for storage and vessel charter costs, the Panel finds that Anadolu has failed to demonstrate that its purchases of gas oil from Iraq were cut off as a direct result of Iraq's invasion and occupation of Kuwait, as alleged. Moreover, the Panel notes that, in its response to the article 34 notification, Anadolu states that it used both the storage tanks rented from Toros and the ship chartered from Karaveli during the period in respect of which compensation is sought. Accordingly, the Panel finds that Anadolu did not demonstrate that it incurred any loss in connection with either its rental of the storage tanks or chartering of the ship. The Panel therefore recommends no award of compensation to Anadolu for storage and vessel charter costs.

D. Recommendations

133. The Panel's recommendations with respect to the claim of Anadolu are summarized in table 13 below.

Table 13. Anadolu's claim – recommended compensation
(United States dollars)

Claim element	Original amount claimed	Amount of compensation recommended
Termination costs	102,737	Nil
Storage and vessel charter costs	124,600	Nil
Total	227,337	Nil

IX. CLAIM OF A-N-D GROUP PLC

A. Facts and contentions

134. A-N-D Group Plc ("A-N-D") is a company organized under the laws of the United Kingdom. It provides engineering services with respect to communications systems.

135. A-N-D states that, as at 2 August 1990, two of its engineers were in Iraq to commission a telemetry link on the east Baghdad oilfield project pursuant to a subcontract with a third party. A-N-D further states that the two engineers were detained by Iraq as hostages until 24 November 1990 and 10 December 1990 respectively. A-N-D claims 57,876 Pounds sterling (GBP) for loss of revenue[11] for the period that its engineers were detained and therefore unavailable for work on other projects and GBP 3,523 for the engineers' living expenses during the period of their detention. Its claim is summarized in table 14 below.

Table 14. A-N-D's claim
(Pounds sterling)

Claim element	Original amount claimed	Amended amount claimed
Loss of revenue	57,876	57,876
Living expenses	4,600	3,523
Total	62,476	61,399

136. A-N-D calculated its claim for loss of revenue by multiplying the number of days each of its engineers was detained by a rate it determined by taking the average of the number of hours each engineer had worked in the preceding 12 months, multiplied by the charge-out rate applicable during that time and divided by the total available working days in a year.

137. A-N-D provided copies of the credit card receipts signed by the engineers and the corresponding credit card statements of account with respect to its claim for living expenses.

B. Iraq's response

138. Iraq's written response to the claim can be summarized as follows.

(a) Iraq states that, since A-N-D did not have a direct contract with an Iraqi entity, A-N-D has no right to seek compensation from the Commission.

(b) Iraq further states that A-N-D should seek compensation from the third party that it contracted with based on the terms and conditions of that contract. Iraq also states that the Commission should ensure that no claim has been made by the third party for the same losses claimed by A-N-D.

(c) Iraq further states that there is no evidence that A-N-D's engineers were detained in Iraq. Iraq also states that, without the contract between A-N-D and the third party, it is not possible to verify the accuracy of the claim.

(d) Iraq lastly states that the claimed living expenses seem exaggerated and have not been substantiated.

C. Analysis and valuation

139. With respect to A-N-D's claim for loss of revenue, the Panel finds that the number of hours A-N-D claims each engineer had worked in the preceding 12 months is not borne out by the evidence A-N-D provided in support of this part of its claim. The Panel also considers that A-N-D has not adequately demonstrated what projects the engineers would otherwise have been working on if Iraq had not invaded and occupied Kuwait.

140. The Panel finds, however, that the costs A-N-D incurred in continuing to pay its engineers, when they were no longer covered by the contract with the third party but were detained as hostages, are losses directly caused by Iraq's invasion and occupation of Kuwait that are compensable under the loss type "payment or relief to others".[12] The Panel therefore recommends an award of compensation in the amount of GBP 7,515 for the salary payments.

141. The Panel considers, as it has previously, that the costs of support provided to detained employees, such as accommodation and food, are compensable in principle.[13] The Panel therefore recommends an award of compensation in the amount of GBP 3,523 for the engineers' living expenses during the period of their detention.

D. Recommendations

142. The Panel's recommendations with respect to the claim of A-N-D are summarized in table 15 below.

Table 15. A-N-D's claim – recommended compensation
(Pounds sterling)

Claim element	Original amount claimed	Amended amount claimed	Amount of compensation recommended
Loss of revenue	57,876	57,876	7,515
Living expenses	4,600	3,523	3,523
Total	62,476	61,399	11,038

X. CLAIM OF BP OIL INTERNATIONAL LIMITED

A. Facts and contentions

143. The claimant is BP Oil International Limited ("BP Oil"), a company organized under the laws of the United Kingdom.

144. BP Oil claims compensation in the amount of USD 320,019 for business transaction or course of dealing losses. The claimed amount constitutes the aggregate of a total of 15 separate unpaid invoices for marine lubricant products sold to the Iraqi Oil Tankers Enterprise ("IOTE"). Table 16 below reflects BP Oil's claim.

Table 16. BP Oil's claim
(United States dollars)

Claim element	Original amount claimed
Business transaction or course of dealing	320,019
Total	320,019

B. Iraq's response

145. Iraq states that most invoiced amounts relate to supplies sold to IOTE prior to Iraq's entry into Kuwait on 2 August 1990. Iraq also contends that two invoices were issued in October 1990, after the imposition of the embargo, and that one of these invoices relates to the supply of products on 5 March 1990. Iraq contends that the entire claim falls outside of the jurisdiction of the Commission, as the trade embargo imposed on Iraq in August 1990 was the reason for the non-payment of the invoices.

C. Analysis and valuation

146. BP Oil provided a copy of a "Marine Lubricants Agreement" between itself and IOTE dated 27 November 1987, operative until 30 November 1990, as well as copies of the 15 invoices, together with 14 delivery receipts. The invoices and delivery receipts were printed on the stationery of a company styled "BP Marine". In response to the Panel's enquiries, BP Oil demonstrated that BP Marine had acted as its agent in regard to the sale and delivery of the products to IOTE. The port of delivery and the delivered quantities reflected on 14 invoices corresponded with the particulars appearing on the 14 delivery receipts. The 14 delivery receipts all bore the signature of a representative of IOTE and additionally indicated the date upon which delivery of the products had commenced. In all instances except one, delivery of the products had commenced after 2 May 1990 and had been completed prior to 6 August 1990. The single invoice outside of this range related to a sale in the amount of USD 672. This invoice was dated 19 March 1990 and referred to a supply date of 5 March 1990. BP Oil alleges that it has been unable to locate the fifteenth delivery receipt relating to an invoice dated 13 June 1990 in the amount of USD 94,531.

147. The Panel finds that the claim for USD 672 in respect of a debt arising prior to 2 May 1990 falls outside of the Commission's jurisdiction.[14] The Panel finds that BP Oil provided acceptable substantiating evidence in respect of 14 sales of products to the value of USD 224,816. The Panel finds that one sale of products to the value of USD 94,531 was not supported by adequate evidence. The Panel accordingly recommends the payment of compensation in the amount of USD 224,816.

D. Recommendations

148. The Panel's recommendations with respect to the claim of BP Oil are summarized in table 17 below.

Table 17. BP Oil's claim - recommended compensation
(United States dollars)

Claim element	Original amount claimed	Amount of compensation recommended
Business transaction or course of dealing	320,019	224,816
Total	320,019	224,816

XI. CLAIM OF CONECO LIMITED

A. Facts and contentions

1. Introduction

149. Coneco Limited ("Coneco") is a company organized under the laws of the United Kingdom. Coneco filed its claim with the Commission in May 1994.

150. In response to an article 34 notification dated 25 March 2002, the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations in Geneva filed the following response with the Commission on behalf of Coneco:

> "… This company was dissolved in 1995. The UK Government Treasury Solicitors are now our point of contact. They have informed us that they are not able to pursue/answer the notification questions as this can only be done if a member of the company was to have it restored to the Register. We would request that the claim be addressed on the 'as is' basis. The UK Government Treasury Solicitor is not in a position to satisfy the UNCC enquiries."

151. Coneco seeks compensation in the amount of GBP 101,505 for loss of profits, as summarized in table 18 below.

Table 18. Coneco's claim
(Pounds sterling)

Claim element	Original amount claimed
Loss of profits	101,505
Total	101,505

2. Loss of profits

152. Coneco's claim derives from a contract dated 1 August 1989 (the "contract") under which it was to provide certain engineering services for Foxboro Great Britain Limited ("Foxboro"). Coneco did not submit a copy of the contract (this was one of the several documents that the Panel attempted to procure through the article 34 notification sent to Coneco).

153. Coneco states that "[u]nder the 'umbrella' of [the contract], we signed service orders direct with Foxboro Intercontinental Ltd. for work in connection with a project in Kuwait".

154. Coneco submitted a copy of one such service order, dated 11 March 1990, which was for an estimated total project value of GBP 55,941. An hourly rate schedule was attached to that service order which states, in part, that Coneco was to receive GBP 48.50 for each hour worked by a project manager, and GBP 43 for each hour worked by a senior engineer. Coneco states that a portion of its

loss was also incurred with respect to work ordered by Foxboro under a second service order, but it did not produce a copy of this second service order.

155. From its review of the first service order, the Panel has concluded that Coneco was retained as a subcontractor to Foxboro in connection with Foxboro's construction of a compressor for Petrochemical Industries Company, a Kuwaiti, State-owned chemical manufacturer. Notably, the service order states that the work was to be done in the United Kingdom (presumably where the compressor was being constructed) and not in Kuwait. The services were to be provided between 2 March and 26 May 1990.

156. Despite the wording of the first service order with respect to the place of performance, Coneco states that it was also engaged to "provide engineering and installation services to Kuwait PIC compressor project in Kuwait" during the months of July to 10 December 1990.

157. Coneco states that two of its engineers were in Kuwait on 2 August 1990, providing services to Foxboro, at which time "they were detained by the Iraqis". Coneco states that the two engineers were unable to return to the United Kingdom until 10 December 1990, and that Coneco paid these employees their normal salaries during this period. Coneco states that it "invoiced [Foxboro] … for the time [the two engineers] spent in captivity in Kuwait … and they refused to pay".

158. Coneco submitted a copy of a facsimile-transmitted memorandum to it from Foxboro dated 19 August 1990 in which Foxboro offered Coneco payment in the amount of GBP 25,090 for services rendered prior to, in and after the month of July 1990. Foxboro does not make reference to a task or contract, but the Panel considers that the settlement offer was made with respect to services provided (or to be provided) under one, or both, of the service orders to which Coneco has made reference. In its memorandum, Foxboro makes the following declaration:

> "[This payment] … will finalize our agreement with your Company and no additional work to be performed in Kuwait".

159. The memorandum also states that, of the total amount offered, GBP 10,456 represented "advance payment … [for] work [that] will be performed in future upon force majeure situation clearance".

160. Coneco does not indicate whether it accepted Foxboro's offer, as stated in the memo of 19 August 1990. However, by its facsimile-transmitted memo to Foxboro dated 31 August 1990 it acknowledges receipt of payment of GBP 25,090 on 23 August 1990 for those of its services that were rendered for Foxboro prior to July 1990.

161. Coneco also submitted copies of a series of telexes between itself and Foxboro that were sent subsequent to the exchanges of 19 and 23 August 1990 between the parties. These exchanges show a dispute between the two concerning hourly billings made by Coneco for work done in England in July 1990 (during the one month prior to Iraq's invasion and occupation of Kuwait), as well as for hourly rates accrued after that date by Coneco's two employees while they remained in the custody of Iraqi

military forces. Coneco does not indicate which portion of its claim relates to services that it contends it provided for Foxboro prior to 2 August 1990, and which portion pertains to the period of its employees' captivity after that date. Whatever the division between the two periods, it is clear that Foxboro rejected Coneco's charges for both, as was stated in its final communication with Coneco on the matter, its telefax message dated 23 May 1991, which reads as follows:

> "We have informed you in [sic] two occasions that the services of your engineers are no longer required and that PIC project is closed. Pls see the attached copies of two faxes sent to you earlier, which are self explanatory."

B. Iraq's response

162. In its written response to the claim, Iraq points out that Foxboro contested Coneco's contractual claim, and it states that Coneco has failed to prove that any additional amount is due under the contract. Iraq contends that Foxboro had the right to cancel its subcontract with Coneco on grounds of force majeure, effective as of 2 August 1990; therefore no contractual service charges should have accrued after this date. Iraq further contends that, by accepting partial payment from Foxboro for services rendered prior to 2 August 1990, Coneco finally settled its claim against Foxboro. Accordingly, Coneco cannot now renew its claim against Foxboro by bringing it before the Commission.

C. Analysis and valuation

163. The Panel finds that Coneco has failed to prove that Foxboro owes the amount claimed for loss of profits, and that Coneco has also failed to establish that Foxboro's past refusal to pay Coneco's invoices is in any way related to Iraq's invasion and occupation of Kuwait. In addition, the Panel notes that it has conducted a cross check to determine whether the two Coneco employees filed claims with the Commission in their own right. In fact they did, and each individual was paid compensation for his separate loss of wages for a period, at least a portion of which corresponds with the period of Coneco's claim. Specifically, each of the two Coneco employees was awarded the equivalent of seven months' wages, with one receiving USD 53,232 and the other USD 74,392. Since Coneco failed to submit documentation proving that it paid these employees during the claim period, the Panel finds that Coneco's claim may be duplicative of claims already paid.

164. For all of these reasons, the Panel recommends no award of compensation to Coneco for loss of profits.

D. Recommendations

165. The Panel's recommendations with respect to the claim of Coneco are summarized in table 19 below.

Table 19. Coneco's claim – recommended compensation
(Pounds sterling)

Claim element	Original amount claimed	Amount of compensation recommended
Loss of profits	101,505	Nil
Total	101,505	Nil

XII. CLAIM OF INTER SEA LIMITED

A. Facts and contentions

1. Introduction

166. Inter Sea Limited ("Inter Sea") is a company organized under the laws of the United Kingdom. Inter Sea filed its claim with the Commission in July 1994. A representative of Inter Sea later filed responses to the Panel's article 34 notifications in which he stated that, subsequent to the filing of its claim, "the company went into liquidation because of the events in Iraq and all documents were surrendered". No court orders or other legal documentation were filed with the Commission in support of the representative's assertion concerning the liquidation of Inter Sea.

167. Inter Sea seeks compensation in the amount of USD 112,003 for losses allegedly incurred as a direct result of Iraq's invasion and occupation of Kuwait. Its claim is summarized in table 20 below.

Table 20. Inter Sea's claim
(United States dollars)

Claim element	Original amount claimed
Contract	84,000
Business transaction or course of dealing	14,503
Other tangible property	9,000
Payment or relief to others	4,500
Total	112,003

168. Inter Sea states that its primary business was the provision of marine survey services in Iraq (and in other locations) for buyers taking delivery of crude oil in petroleum tankers nominated to their sellers. These services involved the gauging of the volume of liquids in a tanker's cargo holds (both before and after loading) and the identification of the type or quality of those liquids (i.e. water, sediments, oil, and/or emulsion).

169. Inter Sea states that, as at 2 August 1990, it was conducting its business in Iraq through a small, two-man office that it had established at the port of Mina Al Bakr, where a marine crude oil loading terminal was located.

170. Inter Sea states that it provided regular survey services at the Mina Al Bakr terminal for several large, integrated oil companies. It says that one such company was Chevron International Oil Company, Inc. ("Chevron International").

171. Inter Sea contends that its representation of certain of these major oil companies, including Chevron International, was on a "permanent" basis. By its use of the term "permanent", Inter Sea implies that it had, in fact, on a number of occasions prior to Iraq's invasion and occupation of Kuwait, been retained by these major oil companies, and it had reason to believe that these companies

would continue to use its services. However, Inter Sea did not have a contractual relationship with these oil companies whereby they promised the use of Inter Sea for future loadings of Iraqi crude oil.

172. Inter Sea states that it also accepted appointments as a marine surveyor for other crude oil buyers on a "spot" basis. It says that, under such retainers, it agreed to provide measurement and inspection services for the loading of a single vessel for a crude buyer with which it did not have an established business relationship.

173. Inter Sea explains that it was typically engaged by the cargo purchaser (usually an oil refining company or crude trader) on the basis of a telex request, and without having first signed a written contract or work order. It states that the purchaser's appointment was subject to confirmation by the crude seller which was, in all transactions involving the loading of Iraqi crude oil at the Mina Al Bakr terminal, Iraq's State Oil Marketing Organization ("SOMO").

174. Inter Sea contends that, despite the fact that it often provided marine survey services for its customers without the benefit of a written contract, the commercial terms of its engagement were customarily known. It states that, in the case of those anticipated loadings for which it had been retained by Chevron International, the commercial terms of its engagement were set forth in a printed document prepared and distributed by that customer which set out Chevron International's "standard terms and conditions" for the hiring of marine surveyors. Inter Sea further contends that the fee charged by marine surveyors for the inspection of oil tankers was customarily shared equally between the buyer and seller of the cargo.

175. Inter Sea states that it was forced to evacuate its personnel from Iraq following Iraq's invasion and occupation of Kuwait and, as a consequence of their evacuation, it could not thereafter continue its business operations in Iraq. Inter Sea states that its two employees in the Mina Al Bakr office were evacuated from Mina Al Bakr by taking passage on the "last tanker to load in Iraq" (following 2 August 1990), after which they disembarked at Fujairah, United Arab Emirates and made their way across land to Dubai, United Arab Emirates. From there, the two flew to their home countries in England and India respectively. Inter Sea's office in Iraq never reopened, and Inter Sea states that it did not subsequently conduct business in that country.

2. Contract

176. Inter Sea claims USD 84,000 in lost profits, this being the amount that it estimates it would have earned for services it contends that it would have provided to Chevron International during the one-year period following 2 August 1990 but for Iraq's invasion and occupation of Kuwait. Despite the request of the Panel that it clarify the basis or method used to calculate its estimated loss of profits, Inter Sea did not provide an explanation.

177. As stated above, Inter Sea did not have an exclusive contract with Chevron International covering multiple loadings. Nevertheless, it describes its business relationship with Chevron International as being of a "permanent" nature. As evidence of its loss of future profits, Inter Sea submitted a copy of Chevron's standard "terms and conditions" with respect to marine surveyors.

Notably, this document does not specify the method or manner for calculation of the surveyor's inspection fee. Inter Sea also submitted copies of three telex communications from Chevron International through which Inter Sea had, prior to 2 August 1990, received appointments to inspect three vessels that were scheduled for loading at Mina Al Bakr after that date. Presumably those vessels did not thereafter load cargo at that port during the one-year claim period.

178. Inter Sea contends that its claim should not be subject to set-off for "saved expenses"(the expenses not incurred by virtue of it being unable to provide survey services in Iraq during the claim period). This is because it says that its two employees remained on salary after their evacuation, but could not be reassigned to other work during the relevant period. It further states that all of the other expenses of its operation in Iraq had been paid in advance. Thus, it contends that its claim for USD 84,000 is for both lost revenue and lost profits.

3. Business transaction or course of dealing

179. Inter Sea claims USD 14,503 under the loss type "business transaction or course of dealing" in its claim form. Inter Sea explains that this represents an amount that is currently owed it by SOMO and that was also outstanding on 2 August 1990. Specifically, Inter Sea states that this account receivable represents SOMO's 50 per cent share (as cargo seller) of Inter Sea's fee for past cargo measurement/inspection services rendered for 10 separate vessels that were loaded prior to 2 August 1990 at the marine terminals, either at Mina Al Bakr or at the terminus of the Iraqi/Turkish crude oil pipeline in Iskenderun, Turkey.

180. In support of this component of its claim, Inter Sea submitted copies of five original sales invoices to SOMO which total less than USD 7,000. One of those invoices is undated, but all refer to different vessels and the respective loading times at Mina Al Bakr during the months of June and July 1990. Inter Sea was unable to provide any supporting documentation with respect to the loadings of Iraqi crude oil that were purportedly made in Turkey.

181. Inter Sea did not indicate whether the buyer in these transactions had paid its 50 per cent share of these bills. Inter Sea did not indicate what actions, if any, it had taken to recover these overdue accounts from SOMO following the closure of Inter Sea's office in Iraq.

4. Other tangible property

182. Inter Sea claims USD 9,000 under the loss type "other tangible property" in its claim form. Inter Sea says that this amount is the value of certain technical equipment used for measuring and sampling cargo that its employees were forced to leave behind in the Mina Al Bakr office when they fled the country. Inter Sea states that, because of intervening events in Iraq, it was prevented from thereafter returning to that country to reclaim its property.

183. In support of this component of its claim, Inter Sea filed a response to the Panel's article 34 notification, which provided a partial list of the equipment that was lost some 12 years before. By generic description, that equipment included: "MMC electronic measuring tape with water interface

detector; gauging tapes; water finding paste; basic analysis equipment; and, small pocket computers for use in making calculations".

184. Inter Sea's valuation of the lost equipment is based on its estimate of original acquisition cost. It was unable to provide the relevant accounting records, or any other documentation substantiating its ownership of the items of equipment, the date of purchase or its payment of the amount claimed. Inter Sea states that equipment of this type does not significantly deteriorate with usage or time, and that its valuation should not therefore be subject to adjustment for depreciation.

5. Payment or relief to others

185. Inter Sea claims USD 4,500 under the loss type "payment or relief to others" in its claim form. Inter Sea states that this component of its claim represents those expenditures that it made on behalf of its two employees in the Mina Al Bakr office for certain relocation costs and for salaries paid to them while awaiting job reassignments. Despite being requested to do so by the Panel, Inter Sea has not provided a detailed breakdown of the costs that it incurred. Further, it has failed to submit any documentary proof of payment in support of this component of its claim.

B. Iraq's response

186. Iraq's written response to the claim can be summarized as follows.

(a) Iraq states that SOMO did not have any contractual relationship with Inter Sea and accordingly Iraq denies that SOMO owed any future obligation to Inter Sea to use its marine measurement and inspection services for vessels loading at the Mina Al Bakr marine terminal. Similarly, Iraq argues that Inter Sea failed to establish that Chevron International undertook any obligation to use its services during the one-year claim period.

(b) Iraq states that Inter Sea failed to produce any documentation supporting its claim that SOMO owed it for services rendered prior to 2 August 1990.

(c) Iraq states that Inter Sea failed to provide any documentation supporting its ownership, or the acquisition cost, of the tangible property that it claims was lost.

(d) Iraq states that Inter Sea failed to provide any documentation supporting its payment of the expenses claimed for payment or relief to others.

C. Analysis and valuation

1. Contract

187. While Inter Sea did provide evidence of its appointment by Chevron International to perform three marine surveys on vessels that presumably could not thereafter load at the Mina Al Bakr terminal due to the commencement of hostilities, Inter Sea did not provide evidence of the commercial terms

on which these engagements were made. Without this information, the Panel is unable to determine any quantification of the revenue that might have been paid to Inter Sea.

188. Further, despite the Panel's request to provide documentation of its earnings in the years prior to 1990, Inter Sea did not provide this documentation. Again, without this information, there is no reasonable basis upon which the Panel could calculate the amount of profits that Inter Sea might have earned during the one-year claim period, had it not been forced to discontinue its business operations in Iraq.

189. Accordingly, the Panel recommends no award of compensation to Inter Sea for contract losses or for loss of profits.

2. Business transaction or course of dealing

190. In addition to the copies of the five invoices mentioned above, Inter Sea provided the Panel with copies of telex communications between itself and SOMO in which reference was made to surveys it performed at Mina Al Bakr during the months of June and July 1990 for the vessels "Knock More" and "British Resource". Inter Sea also submitted to the Panel a "Report of Survey" which it had prepared with respect to its inspection of the vessel "Chevron Perth", performed at Mina Al Bakr during the month of July 1990. Thus, there is some documentary evidence in support of Inter Sea's contention that it performed joint surveys for Chevron International and SOMO with respect to these three vessels.

191. Iraq contends that SOMO has no record of ever having received prior invoices from Inter Sea with respect to services for the 10 loadings claimed. By implication, therefore, it admits that SOMO has not paid any of the amounts claimed and, as stated in the preceding paragraph, Inter Sea has provided some evidence supporting its contention that it communicated with SOMO regarding its prior inspection of three of the vessels. The total amount charged by Inter Sea for its inspection of those three vessels was USD 10,500, half of which, according to Inter Sea, was owed by SOMO, as the seller of the cargo.

192. The Panel finds that the obligation to pay for the services is compensable in principle. The Panel finds that the evidence presented by Inter Sea supports its contention that SOMO owes 50 per cent of the service charges pertaining to loading of the three vessels, but the Panel further finds that there is insufficient evidence to support Inter Sea's claim for the charges with respect to the other seven cargo loadings. Therefore, the Panel recommends that an adjustment of USD 9,253 be made to Inter Sea's claim for business transaction or course of dealing losses and that it be awarded the amount of USD 5,250 for this claim.

3. Other tangible property

193. Inter Sea did not provide any documentary evidence in support of its claim for its loss of the trade equipment that it contends it was forced to leave behind in Iraq when its office staff evacuated

Mina Al Bakr. The Panel accepts Inter Sea's argument that it could not have performed inspection services in this office without having equipment of the sort for which it seeks compensation.

194. However, an award for loss of tangible property cannot be based solely on a claimant's contention of ownership. Absent any supporting documentation, the Panel finds that Inter Sea has failed to prove its claim for tangible property losses. Accordingly, the Panel recommends no award of compensation to Inter Sea for tangible property losses.

4. Payment or relief to others

195. Similarly, Inter Sea failed to submit any cost documentation supporting its claim for its expenditures made as payment or relief to others, such as copies of airline tickets or extracts from its payroll register. Absent any supporting documentation, the Panel is unable to verify any of these expenditures. Accordingly, the Panel recommends no award of compensation to Inter Sea for payments made to employees.

D. Recommendations

196. The Panel's recommendations with respect to the claim of Inter Sea are summarized in table 21 below.

Table 21. Inter Sea's claim - recommended compensation
(United States dollars)

Claim element	Original amount claimed	Amount of compensation recommended
Contract	84,000	Nil
Business transaction or course of dealing	14,503	5,250
Other tangible property	9,000	Nil
Payment or relief to others	4,500	Nil
Total	112,003	5,250

XIII. CLAIM OF TRYM TRADING LIMITED

A. Facts and contentions

1. Introduction

197. The claimant, Trym Trading Limited ("Trym "), was a company organized under the laws of the United Kingdom. On 6 May 1992, pursuant to a petition by Trym, the Bristol County Court granted a winding-up order placing Trym in liquidation. On 18 October 1996, the liquidator was released from his duties, and on 18 January 1999 Trym was dissolved.

198. Trym conducted business from 1 March 1989 to 1 October 1991 in Bristol, United Kingdom, as a consultant to oil and gas industry firms. Trym's two directors, who were also its only two employees, owned all of the shares in the capital of Trym in equal proportions, the first performing the function of managing director and the second the function of secretarial assistant.

199. Trym claimed compensation for contract losses in the amount of GBP 42,632 allegedly arising as a direct result of Iraq's invasion and occupation of Kuwait. The evidence provided in support of the claim demonstrated that the alleged losses in question were unpaid debts owed by two Kuwaiti firms. Trym's claim is summarized in table 22 below.

Table 22. Trym's claim
(Pounds sterling)

Claim element	Original amount claimed
Contract	42,632
Total	42,632

2. Contract

200. Trym alleges that it concluded a contract at some unspecified time between February and April 1989 with a joint venture (the "joint venture") comprised of two Kuwaiti firms, Kuwait Foreign Petroleum Exploration Company, KSC ("KFPE") and Middle East Gas and Petrochemical Company ("MEGP"). Under the contract, Trym would procure options to supply manpower, services and equipment to the joint venture in relation to a specific project referred to as "project 1349". Trym alleges that it received the signed contract from KFPE on 21 November 1989. Trym further alleges that, in the period from 7 October 1989 to 9 June 1990, it performed work in fulfilment of its contractual obligations to the joint venture. Trym issued two invoices to KFPE and two invoices to MEGP (the "invoices") reflecting a combined total of 891 hours of work performed at the rate of GBP 35 per hour, plus expenses of GBP 5,886 and value added tax of GBP 5,561.

201. Trym alleges that approval of the invoices was given at an unspecified date by an unspecified individual, and that Trym was due to receive payment of the invoices at the end of August 1990 and monthly thereafter in respect of further work. Trym alleges that its managing director undertook site

visits to the Middle East "at the end of the Gulf War" to locate KFPE and MEGP and the individuals with whom he had previously dealt in order to pursue the payment of the outstanding invoices. The managing director stated that KFPE and MEGP had ceased to exist, and that the representatives with whom he had previously dealt were "either dead or still in captivity". Trym accordingly alleges that it was unable to collect the debts as a direct result of Iraq's invasion and occupation of Kuwait.

B. Iraq's response

202. Iraq's written response to the claim can be summarized as follows.

(a) Iraq states that the contract in question was not signed by Trym, contains no agreed price or method in terms of which Trym's charges were to be determined, is effective only for a one-year period and contains no effective information. Iraq contends that, for these reasons, the contract should not be considered valid and effective.

(b) Iraq states that the invoices relate to man-hours alleged to have been worked in the period from 7 October 1989 to 17 March 1990 and living costs for the same period. Iraq states that the invoices were not approved by the Kuwaiti contracting parties and therefore cannot be regarded as sufficient evidence to support the claim.

(c) Iraq alleges that the debts are old debts incurred prior to 2 August 1990 and are therefore not compensable.

(d) Iraq states that Trym did not pursue the matter with the Kuwaiti debtors and suggests that the reason may be that KFPE rejected the matter or concluded a new contract with Trym.

C. Analysis and valuation

203. Trym provided a copy of a document entitled "Contract". This document is dated 13 November 1989, is printed on the stationery of KFPE and is signed by the purchasing coordinator of KFPE. It records that Trym would procure "options for services engineering, equipment and manpower for project 1349". Trym also provided the four invoices in question together with documents styled "job cost record sheet" purporting to record the 891 hours worked by the managing director under the contract from 7 October 1989 to 9 June 1990. Notwithstanding the Panel's requests, Trym did not provide any evidence substantiating the contention that KFPE, MEGP or the joint venture had ceased to exist, save for the unsubstantiated assertion by its managing director referred to in paragraph 201 above. Trym also provided no additional evidence that the disbursements and hourly charge rate reflected in the invoices had been approved or agreed to by the debtors. Trym did not demonstrate that it had made any debt collection efforts in addition to the site visits referred to in paragraph 201 above. Trym's liquidator did not take any steps to realize the outstanding debts as the directors had informed him that the debts were unrealizable.

204. The Panel finds that Trym has failed to demonstrate with adequate evidence that the debtors became unable to perform, or that any inability to perform was directly caused by Iraq's invasion and occupation of Kuwait.[15] In view of this finding, the Panel does not deal with the validity of the

contract, the question of whether Trym has standing to pursue the claim and the further points raised by Iraq.

205. Based on the foregoing, the Panel recommends no award of compensation to Trym for contract losses.

D. Recommendations

206. The Panel's recommendations with respect to the claim of Trym are summarized in table 23 below.

Table 23. Trym's claim - recommended compensation
(Pounds sterling)

Claim element	Original amount claimed	Amount of compensation recommended
Contract	42,632	Nil
Total	42,632	Nil

XIV. CLAIM OF ABB SIMCON-HOUSTON INC.

A. Facts and contentions

1. Introduction

207. The claimant is ABB Simcon-Houston Inc. ("ABB"), a corporation organized under the laws of the State of Delaware, United States. Its operations include the provision of engineering, project management and investment consultancy services to the petrochemical and refining industries.

208. ABB's affiliated company, ABB Simcon Inc., assigned the claim to ABB. For ease of reference, ABB's name will be used in this report in place of all corporate predecessors.

209. ABB seeks compensation in the amount of USD 1,212,767 for loss of profits, other tangible property and payment or relief to others. Its claim is summarized in table 24 below.

Table 24. ABB's claim
(United States dollars)

Claim element	Original amount claimed
Loss of profits	1,117,152
- Under the agreement	385,211
- Under the proposed extension of the agreement	731,941
Other tangible property	34,461
- Office equipment	23,717
- Cash and deposits	10,744
Payment or relief to others	61,154
Total	1,212,767

210. ABB's claim pertains to its performance under a contract with the Kuwait National Petroleum Company ("KNPC") dated 3 January 1987, formally entitled the "Agreement for Engineering and Consultancy Service for Contract No. CT –3630" (the "agreement"). The agreement was awarded to ABB after public tender by KNPC. The original lump sum of the award was KWD 890,000, but this lump sum price was later revised downward to KWD 546,966. The work scope of the agreement calls for ABB's provision of engineering and consulting services for a project involving the modernization of the central control room at KNPC's Shuaiba refinery in Kuwait (the "project"). ABB describes its role in the project as being that of a "project manager", and in that role it was to oversee the work of the primary construction contractor.

211. ABB states that the agreement called for it to perform its work at its United States headquarters during the initial months of the project, but that the bulk of its services in the final two years of the agreement was to be in the nature of "site-office monitoring and supervision of the client-selected main contractor for the duration of the modernization project." For that reason, in 1988, ABB

established a small project field office at the Shuaiba refinery. The office was manned by one ABB employee and three contract workers who had been retained under separate consulting agreements.

212. ABB contends that its project field office was open and that its personnel were engaged in the performance of the agreement on 2 August 1990, but that its personnel were unable to continue work on the project after that date due to Iraq's invasion and occupation of Kuwait. Six days later, on 8 August 1990, ABB issued a formal letter to KNPC in which it stated that its performance under the agreement would be suspended due to circumstances of force majeure.[16] ABB states that it claimed this force majeure excuse of performance when it became apparent that it would be unable to complete its work under the agreement within its stated term due to the presence of Iraqi troops at the Shuaiba refinery, the detention of ABB's personnel by Iraqi forces, and its belief that the state of hostilities would not end in the near term. ABB did not work on the project after 2 August 1990.

213. In May 1992, at the request of KNPC, ABB conducted a site investigation for the purpose of advising KNPC on the extent of the damage and on the timing of its possible recommencement of work on the project. ABB states that it found that the refinery and, in particular, the central control room (which was the subject of the agreement) had been heavily damaged. It states that it presented its finding to KNPC and, in so doing, stated that the project could not be restarted before other major restorative work was done to the refinery, such as the repair or replacement of the central crude unit.

214. ABB states that KNPC then made the decision (based on surveys by ABB and others) to discontinue the project for the near term because the need to repair other critical components of the Shuaiba refinery had a greater priority. As a result, KNPC elected to terminate the agreement,[17] effective as of 2 August 1990, following which ABB prepared its formal "close out" report for the project and sent its final invoice to KNPC for work conducted up to that date.[18]

215. Though awarded on a lump sum basis, the agreement called for KNPC to make partial payments to ABB over the expected full term of the agreement, with the payments being tied to ABB's completion of designated performance "milestones".

216. The estimated term of the agreement was 154 weeks, beginning on 3 January 1987 and ending on 22 October 1990. On 2 August 1990, the agreement had been in force for 998 days out of an expected full term of 1078 days. As measured by this time line, on 2 August 1990, there were only 80 days remaining in the term of the agreement.

2. Loss of profits

(a) Under the agreement

217. ABB claims a total of KWD 111,943[19] in lost profits under the agreement, this being the amount of additional profits that it contends it would have earned, had Iraq's invasion and occupation of Kuwait not occurred and, as a result, KNPC had been able to complete the project by continuing its performance for the full term of the agreement. It computes its loss by subtracting the total of all payments received from KNPC from the lump sum price of the agreement and further subtracting the

additional amount it would have (but for the early termination of the agreement) invoiced KNPC for its services after 2 August 1990. This final deduction is ABB's estimate of the value of future billing for work not yet performed, a sum that it equates to its costs savings in not performing its contractual obligations for the full term of the agreement. ABB's calculation of its loss of profits on the agreement is summarized in table 25 below.

Table 25. ABB's calculation of loss of profits under the agreement

Claim element	Original amount claimed (USD)	Original amount claimed (KWD)
Lump sum price of the agreement	1,882,195	546,966
Less ABB's estimate of future billings	(63,011)	(18,311)
Subtotal	1,189,184	528,655
Less payments received from KNPC for work to 2 August 1990		
- Payments made before 2 August 1990	(1,279,406)	(371,795)
- Payments made after 2 August 1990	(154,567)	(44,917)
Total	385,211	111,943

218. ABB states that, as of 2 August 1990, it had provided services to KNPC to a value of KWD 528,655, this being some 97 per cent of the lump sum price of KWD 546,966. ABB further states that, as of that date, it had received payments from KNPC totalling KWD 371,795, and that it was still owed an amount of KWD 156,860. ABB computed its KWD 18,311 estimate of its future billing for work not yet performed by subtracting its estimate of the contract value of its services to 2 August 1990 (KWD 528,655) from the lump sum price of the agreement (KWD 546,966).

219. In due course, ABB presented its invoice to KNPC for the additional KWD 156,860 in charges for contract services rendered prior to the 2 August 1990 termination date of the agreement. KNPC made unilateral adjustments totalling KWD 111,943[20] to this invoice, and it ultimately made a final payment to ABB of KWD 44,917. ABB did not agree to the adjustment, but it also did not seek recovery of this amount from KNPC (beyond the presentation of the original invoice and its follow-on negotiations with KNPC regarding the amount of the invoice). It ultimately accepted payment of the lesser amount, and it states that it did not pursue further legal action against KNPC for the difference.

(b) Under the proposed extension of the agreement

220. ABB states that, but for Iraq's invasion and occupation of Kuwait, it would have reached agreement with KNPC for the expansion of the work scope under the agreement to include "consultancy services for the CCR Modification Project" at the Shuaiba refinery. ABB contends that this expansion of the work scope would have resulted in its receipt of KWD 512,296[21] in revenue, against which would have been offset its estimate of a KWD 299,594 cost of performance, resulting in profits of KWD 212,702.[22] ABB claims this amount as an additional loss of future profits. ABB's

calculation of its loss of profits on the proposed extension of the agreement is summarized in table 26 below.

Table 26. ABB's calculation of loss of profits under the proposed extension of the agreement

Claim element	Original amount claimed (USD)	Original amount claimed (KWD)
Lump sum price for the proposed extension of the agreement	1,762,891	512,296
Less ABB's estimated cost of performance	(1,030,950)	(299,594)
Total	731,941	212,702

221. To support this part of its loss of profits claim, ABB submitted a copy of a written proposal that it made to KNPC under cover of a letter dated 31 July 1990. ABB states that its proposal was made at the invitation of KNPC, and followed informal discussions between the two concerning the possible expansion of the work scope of the project. Under its proposal, ABB offered to perform this work during the period commencing on 22 October 1990[23] and ending on 30 September 1991.

222. Iraq's invasion and occupation of Kuwait occurred two days after ABB submitted its proposal. ABB admits that, as of 2 August 1990, KNPC had not made a binding formal commitment with respect to the proposal, but it argues that KNPC had given its informal assurance of the probable award of its proposal. ABB contends that, but for Iraq's invasion and occupation of Kuwait, KNPC would have ultimately awarded it a contract extension (or a new contract) for the work contained in its proposal and, in due course, it would have performed the work and earned the claimed profits.

223. As support for its contention with respect to the probable award on its proposal, ABB submitted copies of its internal minutes of a meeting between the two parties held at the Shuaiba refinery on 18 July 1990. In those minutes, ABB's representative made the following statement:

> "Commitment is not firm from KNPC. There is a three-month review of 80% certainty and a one-month prior of 90% certainty. Early next week a decision will be formally issued."

224. ABB argues that this wording from the minutes should be read to mean that there was a 90 per cent certainty that ABB would award it the work set out in its proposal. In the event, the parties neither amended the agreement nor signed a new contract. ABB states that it did not subsequently contract with KNPC for any of the work contained in its proposal.

3. Other tangible property

225. ABB states that it was unable to inspect its field office in Kuwait for an extended period due to the threat of unexploded ordnance on the refinery premises. When its representatives conducted a damage survey of the work site in May 1992 (see paragraph 213 above), they found that the interior of the field office had been extensively vandalized and most of the valuable contents looted. It surmises

that the damage occurred during the period of Iraq's invasion and occupation of Kuwait, but it cannot be certain of this due to the absence of its personnel from the work site after 2 August 1990.

(a) Office equipment

226. ABB contends that the following items of tangible property in its field office were lost or destroyed: computer, printer, software files and other office furniture. ABB states that it lacks any receipts, accounting records or other documentation that would establish its ownership of these items, as all of its records were held in its field office and were destroyed. As an alternative method of proof of ownership, ABB offers an inventory list that was prepared by its project manager during the period of his detention by Iraqi forces (see paragraph 232 below) on the basis of his memory. As support for the accuracy of this list, ABB also attached the affidavit of its senior control engineer for the project in which he states that the list prepared by the resident manager was an accurate statement of office inventory as of 2 August 1990.

227. ABB claims that the value of its lost tangible property was USD 23,717 based on its estimate of replacement cost net of salvage value (as of the date of the claim) without discount for depreciation. It has not provided any documentation supporting its estimate.

(b) Cash and deposits

228. ABB states that it lost KWD 3,147 (USD 10,744) in currency due to its forced abandonment of bank accounts, loss of a telephone deposit and the theft of cash from its personnel while they were "in transit". ABB did not submit bank statements, deposit receipts or other documents establishing that it owned any deposits on account in Kuwait (either with the bank or the telephone company), nor did it offer proof that cash was taken from its personnel.

4. Payment or relief to others

229. ABB states that it incurred extra personnel costs totalling USD 118,366 as a result of Iraq's invasion and occupation of Kuwait. The expenses were of two types. ABB states that it paid USD 26,253 to its single employee on the project as reimbursement for the personal effects that he was forced to leave behind when he fled Kuwait. ABB states that it paid the balance of USD 92,113 to its three contract workers, presumably either because of ABB's humanitarian concern for their welfare during the period of their detention in Iraq, or because it was required to do so under the terms of their consulting agreements or under Kuwaiti law.

230. From the total of USD 118,366 that ABB claims it paid to its employee and contract workers, ABB has subtracted USD 57,212 that it would have received from KNPC had the agreement continued for its full term, leaving the balance of USD 61,154 claimed under "payment or relief to others".

231. ABB divides its total payment of USD 92,113 to its contract employees into three categories: humanitarian expenses, contractual expenses and statutory expenses. ABB states that each is an extraordinary category of expense that it would not have incurred but for Iraq's invasion and occupation of Kuwait.

232. Regarding the category of humanitarian payments, ABB states that it continued to pay the contract workers their normal monthly fees (including living allowances), as set out in the consulting agreements, during the period of their detention.[24] ABB refers to these expenses as being ex gratia payments and, in so doing, indicates that it made the payments as a humanitarian gesture and not because it was legally required to do so under the provisions of the consulting agreements.

233. ABB states that, as a result of the early termination of the agreement, it was forced to terminate its consulting agreements with the three contract workers following their repatriation to their home countries. It says that, because of its termination of the consulting agreements, it was required to make three types of additional contractual payments to theses workers. First, ABB states that it paid "repatriation payments" to the three contract workers, this being the equivalent of a one-month payment of the base consulting fee, plus one month's living allowance, for each of the contract workers, as calculated under their separate consulting agreements. ABB states that it made these repatriation payments in lieu of giving the 30-day termination notice to the contract workers, presumably in compliance with the provisions of the separate consulting agreements. Second, ABB states that it paid one of the contract employees a completion bonus as was required under his individual consulting agreement. Third, ABB states that it paid benefit allowances to the contract workers (such as accrued vacation, accrued living allowance and medical expense reimbursement). These payments were alleged to be for amounts that had accrued up to the date of ABB's termination of the consulting agreements.

234. Finally, ABB states that it was required by Kuwaiti law to make severance payments to the three contract workers. ABB did not offer copies of or provide references to the statute on which it relied in determining its legal obligation to make these payments.

5. Evidence

235. In support of its claim, ABB has provided, inter alia, copies of the following documents: a narrative summary and copies of the agreement, the contract extension proposal, the close-out report, the settlement proposals to KNPC, the tangible property inventory list, the consulting agreement for the resident manager, the settlement proposals to the contract employees and a cheque showing amounts paid to one of the discharged contract workers.

B. Iraq's response

236. Iraq's written response to the claim can be summarized as follows.

(a) Iraq states that the agreement was terminable at the will of KNPC, without penalty, and that ABB was paid for all it earned under the agreement. Iraq states that the loss of prospective earnings under the agreement (after termination) was not therefore a direct result of the hostilities.

(b) Iraq states that the contract extension had not been agreed to by KNPC prior to 2 August 1990, and that ABB has not presented proof that the extension would have been agreed to after that date.

(c) Iraq contends that ABB has calculated its claim for lost tangible assets using an incorrect methodology in that the claim is made for acquisition costs for replacement with new assets while the items that were lost were used.

(d) Iraq states that ABB paid amounts to its contract employees in excess of the amounts of their contractual entitlements.

C. Analysis and valuation

1. Loss of future profits

(a) Under the agreement

237. The Governing Council has concluded that Iraq is liable for all contractual losses resulting from its invasion and occupation of Kuwait, even where it was not a party to the contract to which the losses pertain.[25] The "E3A" Panel has determined that a claim for the loss of prospective profits on a contract that was being performed on 2 August 1990 is compensable, provided the claimant can prove (a) that "it had an existing contractual relationship at the time of the invasion"; (b) that "the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait; and (c) that "the contract would have been profitable as a whole".[26] The Panel adopts this determination.

238. The Panel finds that the agreement was in force on 2 August 1990. The Panel further finds that the circumstances arising from Iraq's invasion and occupation of Kuwait made it impossible for ABB to continue to perform after that date and ultimately led to KNPC's termination of the agreement. KNPC's performance was nearly finished on that date, and it is reasonable to conclude that, but for this event, ABB would have completed its performance before the end of the estimated term of the agreement. Thus, the first two requirements referred to by the "E3" Panel have been satisfied. It remains to be determined whether or not sufficient and appropriate evidence has been presented to prove that the contract would have been profitable as a whole.

239. Table 25 above sets out ABB's analysis of the profits it would have earned on the agreement had it run for the full term. On closer inspection, the Panel has concluded that this analysis is not a calculation of ABB's loss of profits, but is instead ABB's statement of the additional revenues that it stood to receive under the agreement had it continued for the entire 154-week period. ABB did not present evidence of the actual costs that it incurred in its performance under the agreement up to the date of termination. Neither did it provide an analysis of the likely additional costs it would have incurred had it been able to perform during the period from 2 August to 22 October 1990.

240. ABB's loss of profits claim includes the KWD 111,943 of adjustments made by KNPC to ABB's invoice for contract services rendered prior to the 2 August 1990 termination date. ABB accepted these adjustments when it reached a final settlement with KNPC with respect to amounts due for its services up to the date of termination. By that settlement, ABB agreed to accept a total of KWD 416,712 for all services rendered prior to 2 August 1990. Since the KWD 111,943 in KNPC

adjustments pertain to services provided by ABB before that date, the Panel will not consider this amount in ABB's loss of profits claim.

241. Because of this settlement, ABB's claim for loss of profits under the agreement should be limited to the amount of profits that ABB could have earned during the 80-day portion of the term that fell after the termination date. The calculation of the loss of profits over this shorter period must be based on a comparison of probable revenue with probable cost. ABB did not provide an estimate of either.

242. For the reasons stated above, the Panel finds that ABB has failed to establish, by sufficient and appropriate evidence, that (but for the termination of the agreement) it would have earned a profit on its performance during the final 80 days of the term of the agreement. The Panel therefore recommends no award of compensation to ABB for loss of profits under the agreement.

(b) Under the proposed extension of the agreement

243. KNPC did not agree to amend the agreement in response to ABB's proposal for an expanded work scope for the project. The day rates that ABB had proposed for the period of the extension of the agreement were greater than those in the agreement. In the absence of ABB's proof of agreement by the parties on such fundamental terms as price (and despite ABB's assertion of a 90 per cent probability of award), the Panel finds that ABB's claim for lost profits under the proposed extension of the agreement is speculative and therefore non-compensable.[27] Accordingly, the Panel recommends no award of compensation to ABB for loss of profits under the proposed extension of the agreement.

2. Other tangible property

244. ABB was unable to provide any documentation substantiating its ownership of the items of office equipment that it contends were stolen or destroyed, other than the inventory list that was prepared (after the fact) by its resident manager. ABB did not provide any documentation supporting its valuation of these items. Accordingly, the Panel finds that this component of ABB's claim for tangible property losses fails for lack of proof and recommends no award of compensation to ABB for office equipment.

245. ABB did not submit any documentary evidence establishing its ownership of the deposits on account in Kuwait, nor did it explain why it made no effort to recover these deposits from the bank or the telephone company following the liberation of Kuwait. Similarly, it offered no proof of its ownership of the cash on hand and gave no explanation of the circumstances of this alleged loss. Accordingly, the Panel finds that this component of ABB's claim for tangible property losses fails for lack of proof and recommends no award of compensation to ABB for cash and deposits.

3. Payment or relief to others

246. The Panel has confirmed that ABB's single employee did not file a claim with the Commission with respect to his loss of personal belongings. The Panel finds that this reimbursement payment by ABB to its employee is compensable in principle. ABB submitted the affidavit of the employee in

which he confirmed his receipt of a reimbursement payment from ABB for USD 26,253. The Panel finds this proof of payment adequate and recommends that compensation be awarded to ABB in this amount.

247. The Panel has confirmed that none of the three contract workers filed claims with the Commission with respect to salary losses during the period of their detention. The Panel finds that the humanitarian payments that ABB contends it made to these contract workers during the periods of their unlawful detention are compensable in principle. However, as ABB was unable to provide any documentary evidence of these payments, the Panel recommends no award if compensation to ABB for salary payments.

248. ABB contends that it was contractually obligated to pay each of the three contract workers a one-month "repatriation payment" as a result of its early termination of their consulting agreements. However, it was able only to submit a copy of one of the three consulting agreements calling for this payment. As ABB provided proof that it made a repatriation payment of USD 3,952 to the contractor who was working under this consulting agreement, the Panel recommends an award in this amount.

249. The Panel finds that ABB would have been required to pay one contract worker his completion bonus and would have been required to pay all three contract workers for their accrued benefits, even if the consulting agreements had not been prematurely terminated. The Panel further finds that these components of ABB's claim for payment or relief to others are lacking because of its failure to produce two of the three consulting agreements or proof of payment. Accordingly, the Panel finds that these expenses did not arise as a result of Iraq's invasion and occupation of Kuwait and recommends no award of compensation to ABB for these items.

250. Finally, the Panel finds that ABB provided insufficient proof of both the underlying legal obligation and payment of statutory payments to the three contract workers. Accordingly, the Panel recommends no award of compensation to ABB for statutory payments to contract workers.

D. Recommendations

251. The Panel's recommendations with respect to the claim of ABB are summarized in table 27 below.

Table 27. ABB's claim – recommended compensation
(United States dollars)

Claim element	Original amount claimed	Amount of compensation recommended
Loss of profits	1,117,152	Nil
- Under the agreement	385,211	Nil
- Under the proposed extension of the agreement	731,941	Nil
Other tangible property	34,461	Nil
- Office equipment	23,717	Nil
- Cash and deposits	10,744	Nil
Payment or relief to others	61,154	30,205
Total	1,212,767	30,205

XV. CLAIM OF HYDRIL COMPANY

A. Facts and contentions

1. Introduction

252. Hydril Company ("Hydril") is a corporation organized under the laws of the State of Delaware, United States. Its operations include the manufacture and supply of products such as pressure control valves and tubular threaded connections to petroleum companies. Although Hydril's headquarters is in Houston, in the United States, it also maintains sales and service offices and manufacturing plants at various other locations inside and outside of the United States.

253. Hydril seeks compensation in the total amount of USD 414,031 for contract losses related to six contracts that it entered into with the Iraq National Oil Company ("INOC") prior to Iraq's invasion and occupation of Kuwait. Its claim is summarized in table 28 below.

Table 28. Hydril's claim
(United States dollars)

Claim element	Original amount claimed
Contract	414,031
- Loss of profits	406,603
- Contract performance costs	7,428
Total	414,031

2. Contract

254. Hydril's claim is for losses related to six contracts with INOC for the sale of items to be used in oil field operations in Iraq. The particulars of these contracts are summarized below.

(a) On 10 March 1990, Hydril received a purchase order from INOC for blow-out preventer spare parts at a price of USD 77,693 (the "first contract"). On 8 June 1990, the price of the order was amended to USD 78,215. Under the terms of the first contract, an irrevocable letter of credit was to be placed by INOC for the purchase price, and the spare parts were to be delivered four weeks after Hydril's receipt of notice of issuance of the letter of credit. The letter of credit was posted and Hydril arranged for the spare parts to be shipped to INOC on 27 July 1990. However, the United States Customs Service seized the shipment following Iraq's invasion and occupation of Kuwait and the spare parts were returned to Hydril in January 1991. Hydril returned the spare parts to its inventory and subsequently resold them to third parties.

(b) On 8 June 1990, Hydril received a purchase order from INOC for pulsation dampener spare parts at a price of USD 9,479 (the "second contract"). Hydril acknowledged receipt of the order on 20 June 1990. Under the terms of the second contract, the purchase price was to be paid by "cash in

advance" and the spare parts were to be delivered "as soon as possible". However, Hydril was never paid for the spare parts and it did not ship them to INOC.

(c) On 8 June 1990, Hydril received a purchase order from INOC for blow-out preventer spare parts at a price of USD 162,388 (the "third contract"). Hydril acknowledged receipt of the order the following day. Under the terms of the third contract, an irrevocable letter of credit was to be placed by INOC for the purchase price and the spare parts were to be delivered four weeks after Hydril's receipt of notice of issuance of the letter of credit. The letter of credit was posted in July 1990, but Hydril did not receive notice of its issuance until 1 August 1990. Hydril did not arrange for the spare parts to be shipped to INOC.

(d) On 10 June 1990, Hydril received a purchase order from INOC for pulsation dampener spare parts at a price of USD 10,702 (the "fourth contract"). Hydril acknowledged receipt of the order on 28 June 1990. Under the terms of the fourth contract, an irrevocable letter of credit was to be placed by INOC for the purchase price and the spare parts were to be delivered four weeks after Hydril's receipt of notice of issuance of the letter of credit. However, Hydril never received notice of any letter of credit being posted in respect of the fourth contract, and it did not ship the spare parts.

(e) On 2 July 1990, Hydril received a purchase order from INOC for blow-out preventer packing units at a price of USD 60,325 (the "fifth contract"). Hydril acknowledged receipt of the order the following day. Under the terms of the fifth contract, an irrevocable letter of credit was to be placed by INOC for the purchase price and the packing units were to be delivered four to six weeks after Hydril's receipt of notice of issuance of the letter of credit. However, Hydril never received notice of any letter of credit being posted in respect of the fifth contract, and it did not ship the packing units.

(f) On 8 July 1990, Hydril received a purchase order from INOC for blow-out preventer spare parts at a price of USD 142,430 (the "sixth contract"). Hydril acknowledged receipt of the order the following day. Under the terms of the sixth contract, an irrevocable letter of credit was to be placed by INOC for the purchase price and the spare parts were to be delivered two weeks after Hydril's receipt of notice of issuance of the letter of credit. However, Hydril never received notice of any letter of credit being posted in respect of the sixth contract, and it did not ship the spare parts.

255. Hydril asserts that performance of the six contracts was made impossible by Iraq's invasion and occupation of Kuwait. It argues that Iraq caused INOC to fail to perform the contracts by proceeding with the invasion and occupation of Kuwait. According to Hydril, such an intentional act by a contracting party, which puts performance of a contract beyond its power, is a breach of contract.

256. Hydril claims that, as a result of INOC's failure to perform the contracts, it incurred lost profits under each of the six contracts, as well as production and freight costs under the first contract. More specifically, it claims that it lost profits of USD 70,787, USD 6,804, USD 146,724, USD 7,155, USD 48,789 and USD 126,344 respectively under the six contracts. It also claims that it incurred production and freight costs totalling USD 7,428 in performance of its obligations under the first contract. Hydril seeks compensation for these lost profits and contract performance costs.

257. Hydril contends that it maintains an inventory of goods like those ordered by INOC and that, since it could have filled the INOC orders and all other orders which it received for such goods from inventory, the proceeds of sales to third parties cannot be used to reduce Hydril's losses. It claims that it was a "lost volume seller", having had the intent and capacity to earn the benefit of both the original contracts breached by INOC and the resale contracts with third parties.

258. In support of its claim, Hydril has provided copies of the purchase orders received from INOC, the purchase order acknowledgements sent by Hydril, an invoice, packing list and bill of lading relating to the first contract, the letters of credit posted in respect of the first and third contracts, an inventory analysis by month for 1990, two affidavits sworn by Hydril's Controller, and audited financial statements of Hydril for the years 1988 to 1992.

B. Iraq's response

259. Iraq's written response to the claim can be summarized as follows.

(a) Iraq contends that letters of credit were not opened in respect of the fifth and sixth contracts when the events of 2 August 1990 took place and that this fact renders these two contracts invalid. Iraq considers that a claim for compensation therefore cannot be based on either the fifth or the sixth contract.

(b) According to Iraq, the amounts claimed as lost profits are unreasonably high, representing some 77 to 96 per cent of the value of the purchase orders (after freight costs are deducted). Iraq states that the claim therefore lacks credibility.

(c) Iraq asserts that the alleged losses were caused solely by the trade embargo imposed against Iraq. Iraq contends that these losses are therefore not within the Commission's jurisdiction.

C. Analysis and valuation

260. Paragraphs 8 and 9 of Governing Council decision 9 provide that Iraq is liable for losses arising from contracts with Iraqi parties that were interrupted as a direct result of Iraq's invasion and occupation of Kuwait. This liability extends to costs incurred by a claimant in performing the contract prior to its interruption, the loss of future profits that the claimant expected to earn under the contract, and additional costs incurred as a result of the interruption.

261. The Panel finds that the performance of the six contracts was interrupted as a direct result of Iraq's invasion and occupation of Kuwait. The Panel further finds that the proper measure of damage in this case is the profits that Hydril would have made from full performance of each of the contracts, rather than the difference (if any) between the original contract price and the resale or market value of the subject goods.

262. The evidence demonstrates that Hydril incurred lost profits totalling USD 116,731 under the six contracts. This loss of profits amount is based on the gross profit percentage reflected in Hydril's

audited financial statements for the financial year ended 31 December 1990. Accordingly, the Panel recommends compensation in this amount.

263. The evidence fails, however, to demonstrate that Hydril incurred or paid the production and freight costs allegedly incurred under the first contract. The Panel therefore recommends no award of compensation to Hydril for contract performance costs.

264. Based on the foregoing, the Panel recommends an award of compensation to Hydril for contract losses in the total amount of USD 116,731.

D. Recommendations

265. The Panel's recommendations with respect to the claim of Hydril are summarized in table 29 below.

Table 29. Hydril's claim – recommended compensation
(United States dollars)

Claim element	Original amount claimed	Amount of compensation recommended
Contract	414,031	116,731
- Loss of profits	406,603	116,731
- Contract performance costs	7,428	Nil
Total	414,031	116,731

XVI. CLAIM OF IRI INTERNATIONAL CORPORATION

A. Facts and contentions

1. Introduction

266. IRI International Corporation ("IRI") is a corporation organized under the laws of the State of Delaware, United States. IRI conducted business as a manufacturer of equipment used in the exploration and production of oil and gas, including mobile drilling and workover rigs.

267. IRI claims compensation for contract losses in the amount of USD 4,003,325, as well as interest "at a rate deemed appropriate by the Commission" and unquantified legal fees incurred to prepare its claim, allegedly arising as a direct result of Iraq's invasion and occupation of Kuwait.[28] IRI's claim is summarized in table 30 below.

Table 30. IRI's claim
(United States dollars)

Claim element	Original amount claimed
Contract	4,003,325
Total	4,003,325

2. Contract

268. IRI alleges that, on 6 March 1990, it entered into an agreement with the Iraqi South Oil Company ("South Oil") (the "contract"). Under the contract, IRI agreed to supply two workover rigs (the "rigs") and related equipment as well as commissioning and training services to South Oil for a price of USD 4,483,244. Delivery of the rigs was scheduled for no later than 25 April 1991 by sea at the port of Basrah, Iraq.

269. IRI states that, at the time of Iraq's invasion and occupation of Kuwait, it was engaged in the construction of the rigs. It states that, after Iraq's purported repudiation of its foreign debts and obligations on 16 September 1990 (by way of Iraqi Law No. 57 (1990)), IRI began scaling back its work in terms of the contract. IRI states that it eventually ceased work altogether and instead began to sell those portions of the rigs that were saleable. IRI states that it was able to realize only USD 479,919 for the saleable portions of the rigs due to their uniqueness. IRI claims compensation for the difference between the contract price and the amount it was able to realize for the saleable portions of the rigs.

B. Iraq's response

270. Iraq's written response to the claim can be summarized as follows.

(a) Iraq states that IRI has not specified the amount of work completed by August 1990. Iraq alleges that the scheduled completion of the contract works in April 1991 suggests that the

implementation of the contract was still in its primary stage, was probably limited to material purchase and acquisition and had not yet entered the fabrication stage. Iraq alleges that the claim for 90 per cent of the contract value is accordingly false and illogical. Iraq states that the maximum loss that can be claimed is IRI's expected profits, since any materials purchased could have been put to alternative uses at no additional cost.

(b) Iraq states that the claim lacks information, accuracy and evidence and cannot form the basis of an award of compensation.

(c) Iraq alleges that the alleged loss resulted from the trade embargo and is therefore not subject to the jurisdiction of the Commission.

C. Analysis and valuation

271. In its statement of claim, IRI alleges that it began scaling back work under the contract from about 16 September 1990, and eventually ceased work altogether. In its response to the article 34 notification issued to it in January 2001, IRI alleged that the contract was substantially complete at the time of Iraq's invasion and occupation of Kuwait, and that there were no significant costs still to be incurred to complete the contract.

272. Under the contract, IRI was obliged to notify South Oil in writing 90 days in advance of the starting rig-up[29] date in order to allow for final inspection and testing of the rigs by four representatives of South Oil at IRI's rig-up yard in the United States. IRI produced no evidence indicating that the work under the contract had advanced to the stage contemplated by this provision of the contract.

273. IRI was also requested in the article 34 notification to provide contemporaneously-produced estimates or budgets of the anticipated costs, expenses, income and profits related to the contract, as well as contemporaneously-produced contract progress reports and operational management documents reflecting the status of the contract at the time of suspension. IRI alleged that it did not have any of these records. IRI also failed to answer the Panel's specific question as to the exact date of termination of the work.

274. IRI's assertion that no additional significant costs were still to be incurred is not borne out by the specific provisions of the contract. Article 19.1 specifies that IRI would, at its own expense, send specialists to Iraq to supervise and assist in the commissioning and testing of the rigs for a period of 30 days. Article 20 provides that IRI would provide training for a period of one month for six South Oil personnel for each rig for familiarization and training in the operation of the rig. Article 21.2 provides that IRI would back up and support the rigs for 10 years. Article 5.1 establishes a guarantee of the equipment for a period of 12 months from the date of commissioning or 15 months from the date of the arrival of the rigs in Iraq (whichever came first).

275. Based on the foregoing, the Panel finds that IRI has failed to substantiate its claim with the appropriate evidence. The Panel accordingly recommends no award of compensation to IRI for contract losses.

D. Recommendations

276. The Panel's recommendations with respect to the claim of IRI are summarized in table 31 below.

Table 31. IRI's claim - recommended compensation
(United States dollars)

Claim element	Original amount claimed	Amount of compensation recommended
Contract	4,003,325	Nil
Total	4,003,325	Nil

XVII. CLAIM OF LANDMARK GRAPHICS CORPORATION

A. Facts and contentions

1. Introduction

277. Landmark Graphics Corporation ("Landmark") is a corporation organized under the laws of the State of Delaware, United States. Its operations include the supply of computer-aided exploration and production systems to petroleum companies.

278. Landmark seeks compensation in the total amount of USD 188,583 for contract losses related to a contract that it entered into with the Iraq Oil Exploration Company ("IOEC") prior to Iraq's invasion and occupation of Kuwait. Its claim is summarized in table 32 below.

Table 32. Landmark's claim
(United States dollars)

Claim element	Original amount claimed
Contract	188,583
Total	188,583

2. Contract

279. On 15 November 1989, Landmark entered into a contract with IOEC for the provision of a three-dimensional Seismic Interpretation Interactive System consisting of computer hardware, software, spare parts, accessories and consumable items (the "system"), initial training and installation services, and additional on-site training to IOEC personnel. The total value of the contract was USD 787,238, consisting of the price of the system (USD 607,225), the price of the initial training and installation (USD 53,288) and the price of the additional on-site training (USD 126,725).

280. The contract specified that the price of the system and the initial training and installation services would be covered by two payments. The first payment of USD 485,780, covering 80 per cent of the price of the system, was due prior to shipment of the system to IOEC. The second payment of USD 174,733, covering 20 per cent of the price of the system and 100 per cent of the price of the initial training and installation services, was due "on handover" of the system to IOEC and one-and-a-half months after installation and execution by Landmark of system startup and initial on-the-job training, evidenced by issuance of a final acceptance certificate by IOEC. Execution of the first and second payments was secured by a letter of credit issued in December 1989 by the Central Bank of Iraq in favour of Landmark.

281. The contract also specified that payment for the additional on-site training, which was to be provided during the start-up and operation phases of the contract, would be made in monthly amounts following Landmark's issuance of an invoice for the same.

282. The system was shipped to IOEC on 25 May 1990 and Landmark received the first payment of USD 485,780. Landmark asserts that the installation of the system was completed prior to 2 August 1990. It further asserts that the initial training of IOEC personnel was substantially completed by 2 August 1990 and that it was scheduled for final completion in the first week of August 1990. Landmark cancelled its plans to complete the initial training following Iraq's invasion and occupation of Kuwait. Moreover, on 8 August 1990, Landmark notified IOEC by telex that it was prevented from fulfilment of its obligations under the contract by circumstances of force majeure that commenced on 2 August 1990.

283. IOEC responded to Landmark in a telex dated 12 August 1990. It disputed the justification of Landmark's reliance on force majeure and advised Landmark that it would not issue a final acceptance certificate until certain "pending points" concerning the implementation of the contract were resolved by Landmark.

284. Landmark claims that IOEC owes it the second payment under the contract, comprising USD 121,445 for the system and USD 53,288 for the initial training and installation services. Landmark also claims that IOEC owes it USD 13,850 for additional on-site training that it provided to IOEC personnel prior to 2 August 1990. According to Landmark, it was unable to complete its performance under the contract and to collect these amounts as a direct result of Iraq's invasion and occupation of Kuwait.

285. In support of its claim, Landmark has provided a copy of the contract, the letter of credit issued in favour of Landmark, the invoice for the system, an air waybill dated 25 May 1990, a certificate of origin, an initial acceptance certificate, a "detail aged trial balance" dated 4 March 1991, telex correspondence exchanged between Landmark and IOEC in August 1990, and audited financial statements for the years 1987 to 1992.

B. Iraq's response

286. Iraq's written response to the claim can be summarized as follows.

(a) Iraq asserts that Landmark did not complete the installation of software or training under the contract. Iraq contends that Landmark is therefore not entitled to receive the second payment of USD 174,733.

(b) According to Iraq, Landmark did not submit sufficient evidence to prove its entitlement to compensation.

C. Analysis and valuation

287. In its report concerning the sixth instalment of "E2" claims, the "E2A" Panel concluded that the actions of Iraq's officials during Iraq's invasion and occupation of Kuwait, the military operations by Iraq and by the Allied Coalition Forces to liberate Kuwait, and the ensuing breakdown of civil order in Iraq, directly caused the non-performance of contractual obligations of Iraqi purchasers and Iraqi banks in respect of goods or services provided before the invasion.[30]

288. Applying this conclusion, as well as the Governing Council's conclusion that Iraq is liable for losses arising from contracts that were interrupted as a direct result of its invasion and occupation of Kuwait,[31] the Panel finds that Landmark's claim is compensable in principle. However, Landmark did not provide sufficient evidence to support the full amount of the claim and did not account for any future warranty costs on the system that it saved as a result of the contract's suspension.

289. Based on its review of the evidence provided, the Panel finds that Landmark incurred losses in the amounts of USD 117,879 and USD 50,694 for the unpaid price of the system and the initial training and installation services. From the total of these amounts, the Panel makes a deduction of USD 30,183 for saved costs.

290. Based on the foregoing, the Panel recommends an award of compensation to Landmark for contract losses in the amount of USD 138,390.

D. Recommendations

291. The Panel's recommendations with respect to the claim of Landmark are summarized in table 33 below.

Table 33. Landmark's claim – recommended compensation
(United States dollars)

Claim element	Original amount claimed	Amount of compensation recommended
Contract	188,583	138,390
Total	188,583	138,390

XVIII. CLAIM OF MOBIL MIDDLE EAST EXPORT CORPORATION

A. Facts and contentions

1. Introduction

292. Mobil Middle East Export Corporation ("MMEE") is a corporation incorporated under the laws of the State of Delaware, United States. Its claim, as summarized in table 34 below, is for other tangible property losses in the amount of USD 154,922.

Table 34. MMEE's claim
(United States dollars)

Claim element	Original amount claimed
Other tangible property	154,922
Total	154,922

2. Other tangible property

293. MMEE states that, prior to 2 August 1990, it shipped jet oil lubricants by ocean freight to the Kuwait Aviation Fuelling Company ("KAFCO") in Kuwait under arrangements that had been in place since the early 1970s. MMEE further states that, pursuant to these arrangements, KAFCO took delivery of the jet oil lubricants, and in turn supplied the lubricants to MMEE's customers at the Kuwait International Airport as required in exchange for a commission, and that MMEE, who retained title to the jet oil lubricants, invoiced its customers. MMEE claims USD 154,922 for the cost of its inventory of 11,204.5 gallons of jet oil lubricants that it states was held for sale by KAFCO at the Kuwait International Airport as at 2 August 1990, and which was lost or destroyed during Iraq's invasion and occupation of Kuwait.

294. In support of its claim, MMEE has provided a letter dated 29 November 1972 from KAFCO to it confirming the arrangements between the parties, an analysis of its claim, copies of invoices for deliveries and sales, various accounting records, and a letter dated 28 September 1992 from KAFCO to MMEE's auditors confirming the volume of the lubricants that was lost during Iraq's invasion and occupation of Kuwait.

B. Iraq's response

295. Iraq's written response to the claim can be summarized as follows.

(a) Iraq states that it is unclear from the documents provided by MMEE in support of its claim whether MMEE or KAFCO is the proper party to make the claim.

(b) Iraq further states that the documents provided by MMEE in support of its claim are inadequate to demonstrate the opening inventory, the subsequent receipts and sales and the closing inventory.

C. Analysis and valuation

296. MMEE states that the inventory of jet oil lubricants held for sale as at 2 August 1990 represented KAFCO's physical count of the inventory as at 31 December 1989 to which, for the period from 1 January to 1 August 1990, receipts were added and sales deducted. The Panel finds that MMEE's methodology is reasonable. The Panel finds, however, that since no evidence was available for sales that were made from 16 July to 2 August 1990, half of MMEE's average monthly sales for the preceding six months should be deducted from the claim. The Panel therefore deducts 850 gallons. The Panel finds that no adjustment is necessary in relation to deliveries as no lubricants were received by KAFCO on behalf of MMEE between 16 July and 2 August 1990. The Panel finds that the jet oil lubricants should be valued using the average cost of MMEE's last deliveries as a reasonable estimate of the replacement value, which is USD 13.68 per gallon, and not the cost used by MMEE, which is the average cost of the deliveries comprising the opening inventory.

297. The Panel considers that a claim for the loss of tangible property is compensable in principle if a claimant can show (a) that the tangible property assets were in Kuwait as at 2 August 1990, and (b) that such assets were lost or destroyed during the period of Iraq's invasion and occupation of Kuwait. Based on the evidence provided, the Panel finds that the jet oil lubricants were owned by MMEE and not KAFCO as at 2 August 1990, and were lost or destroyed as alleged. Accordingly, the Panel recommends an award of compensation in the amount of USD 141,650 for the jet oil lubricants.

D. Recommendations

298. The Panel's recommendations with respect to the claim of MMEE are summarized in table 35 below.

Table 35. MMEE's claim - recommended compensation
(United States dollars)

Claim element	Original amount claimed	Amount of compensation recommended
Other tangible property	154,922	141,650
Total	154,922	141,650

XIX. INCIDENTAL ISSUES

A. Currency exchange rate

299. The Panel notes that several of the claimants have advanced claims in currencies other than United States dollars. The Panel has assessed all such claims, and performed all claim calculations, in the original currencies claimed. However, the Commission issues its awards in United States dollars. Accordingly, the Panel is required to determine the appropriate United States dollar exchange rate to apply to losses expressed and assessed in currencies other than United States dollars.

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

301. In the circumstances, the Panel finds that the appropriate currency exchange rate to be applied to the claims advanced in the part one of the ninth instalment in currencies other than the United States dollar is the rate prevailing on the date of loss, as outlined in table 36 below.

B. Interest

302. All claim figures in this report are net of any individual interest claims advanced by the claimants.

303. In accordance with Governing Council decision 16, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". The Governing Council further specified in decision 16 that "[i]nterest will be paid after the principal amount of awards", while postponing a decision on the methods of calculation, and the rate and the details of payment of interest.

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

305. In each instance where a precise date of loss is apparent or discernible, the Panel recommends that precise date to be the date from which interest will run. In some instances, a precise date of loss cannot be established. In those cases, the Panel has been guided by relevant principles set forth in paragraphs 276 to 288 of the First "E2" Report. In particular, where the claim is for a loss of profits or payment or relief to others, and that loss was incurred over a period of time, the Panel has selected the mid-point of the period. Further, where the claim is for a loss of tangible assets, the Panel has selected 2 August 1990 (the date of Iraq's invasion of Kuwait) as the date of the loss, as that coincides with the claimant's date of loss of control over the assets in question.

306. In accordance with these determinations, table 36 below summarizes the dates of loss from which interest will run for those claims in respect of which the Panel has recommended an award of compensation.

Table 36. Dates of loss

Claimant and loss element	Date of loss
Inspekta SA	
- Contract - unpaid receivables	2 August 1990
- Contract - loss of profits	1 February 1991
- Payment or relief to others	15 September 1990
De Dietrich & Cie	
- Contract	31 October 1990
- Other - transportation charges	15 September 1990
A-N-D Group Plc	
- Loss of revenue	6 November 1990
- Living expenses	10 August 1990
BP Oil International Limited	
- Business transaction or course of dealing	4 August 1990
Inter Sea Limited	
- Business transaction or course of dealing	2 August 1990
ABB Simcon-Houston Inc.	
- Payment or relief to others	15 December 1990
Hydril Company	
- Contract	2 August 1990
Landmark Graphics Corporation	
- Contract	2 August 1990
Mobil Middle East Export Corporation	
- Other tangible property	2 August 1990

C. Claims preparation costs

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

XX. SUMMARY OF RECOMMENDATIONS

308. Table 37 below summarizes the Panel's recommended awards of compensation.

Table 37. Panel's recommended awards of compensation

Claimant	Original amount claimed (original currency)	Amount of compensation recommended (original currency)	Original amount claimed (USD)	Amended amount claimed (USD)	Amount of compensation recommended (USD)
Inspekta S.A.	USD 549,212	USD 178,355	549,212	549,212	178,375
De Dietrich & Cie	FRF 3,166,369	FRF 2,148,262	604,038	604,038	422,064
Ferrostaal Aktiengesellschaft	DEM 25,524,331	Nil	16,340,800	13,197,802	Nil
A.B.S. Apparecchiature E Bruciatori Speciali srl	ITL 66,000,000	Nil	56,930	56,930	Nil
SUPCO S.R.L.	USD 162,465	Nil	162,465	162,465	Nil
Anadolu Uluslararasi Ticaret Ve Tasimacilik A.S.	USD 227,337	Nil	227,337	227,337	Nil
A-N-D Group Plc	GBP 62,476	GBP 11,038	118,775	116,728	21,262
BP Oil International Limited	USD 320,019	USD 224,816	320,019	320,019	224,816
Coneco Limited	GBP 101,505	Nil	192,976	192,976	Nil
Inter Sea Limited	USD 112,003	USD 5,250	112,003	112,003	5,250
Trym Trading Limited	GBP 42,632	Nil	81,048	81,048	Nil
ABB Simcon-Houston Inc.	USD 1,212,767	USD 30,205	1,212,767	1,212,767	30,205
Hydril Company	USD 414,031	USD 116,731	414,031	414,031	116,731
IRI International Corp.	USD 4,003,325	Nil	4,003,325	4,003,325	Nil
Landmark Graphics Corporation	USD 188,583	USD 138,390	188,583	188,583	138,390
Mobil Middle East Export Corporation	USD 154,922	USD 141,650	154,922	154,922	141,650
Total (USD)	---	---	24,739,231	21,594,186	1,278,743

309. The Panel respectfully submits this report, pursuant to article 38(3) of the Rules, through the Executive Secretary to the Governing Council.

Geneva, 23 January 2003

(Signed) Mr. Allan Philip
Chairman

(Signed) Mr. Antoine Antoun
Commissioner

(Signed) Mr. Michael Hwang
Commissioner

Notes

[1] "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'E1' claims" (S/AC.26/1999/10), (the "Second 'E1' Report"), paras. 3-4.

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

[3] "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"), para. 90.

[4] Ibid., paragraphs 136-140.

[5] The "E2A" Panel has also made such a finding. See, for example, "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E2' claims", (S/AC.26/2000/2), (the "Fourth 'E2' Report"), paras. 117-119.

[6] See also the Fourth "E2" Report, paragraphs 117-119, where the "E2A" Panel found that, although it is difficult to assess with precision the time that Iraq would have needed to restore its capacity to resume payment of its obligations, absent the trade embargo, such period would not have exceeded five months beyond 2 March 1991.

[7] See, for example, "Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of 'E2' claims", (S/AC.26/2001/1), (the "Sixth 'E2' Report"), para. 81.

[8] 1,241 tons x USD 135/ton = USD 167,535.

[9] See "Report and recommendations made by the Panel of Commissioners concerning the second instalment of "E2 claims", (S/AC.26/1999/6), para. 97.

[10] See "Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of "E1" claims", (S/AC.26/2001/18), paras. 128-129.

[11] This claim has been characterized as a claim for loss of revenue rather than loss of profits because A-N-D has incurred all the related staff and administration costs.

[12] See the Second "E1" Report, paragraphs 479-481.

[13] See "Report and recommendations made by the Panel of Commissioners concerning the seventh instalment of 'E2' claims", (S/AC.26/2001/11), para. 107.

[14] See paragraph 26 above.

[15] See paragraph 89 of the First "E2" Report, which sets out the applicable principles for such claims.

[16] Article 15 of the agreement represents a standard force majeure clause.

[17] Article 11 of the agreement afforded KNPC unilateral termination rights without corresponding penalty for its exercise of that right. ABB did not present evidence that a formal termination letter was ever sent by KNPC.

[18] Article 11 of the agreement further provided that, upon the exercise of its right of early termination, KNPC was to pay for all services rendered by ABB up to the date of the termination. In addition, KNPC was required to reimburse ABB for all of those third-party expenses that ABB had paid, or to which it had committed to pay, prior to the termination date.

[19] ABB has claimed for its loss of profits in United States dollars; however, the currency of the agreement is Kuwaiti dinars. ABB contends that its loss of profits of KWD 111,943 equals USD 385,213, based on an exchange rate of KWD .2906 per USD 1. ABB used this exchange rate in all of its loss of profits calculations.

[20] The total of KWD 111,943 claimed by ABB for lost profits under the agreement appears to be the same amount as was the total of KNPC's adjustments to ABB's final invoice.

[21] ABB made a lump sum price proposal to KNPC of KWD 512,296 for the expansion of the work scope of the agreement. In its statement of claim, ABB states that this equates to USD 1,762,891.

[22] This equates to the USD 731,941 claimed by ABB, again using a conversion rate of KWD .2906 equals USD 1.

[23] The recommended start date for ABB's work on the project expansion coincided with the end date of the term under the agreement.

[24] ABB's project manager (a contract employee and a British national) and his spouse were reportedly detained by Iraqi forces and were released on 12 December 1990 after some 4 months of captivity. The other two contract workers, both Indian nationals, were detained for some two months after 2 August 1990.

[25] See paragraph 10 of Governing Council decision 9.

[26] See "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E3' claims", (S/AC.26/1999/14), paras. 133-138.

[27] Ibid., paragraph 139. Claims for estimated profits on future projects for which contracts had not been awarded on 2 August 1990 were considered to be too remote for compensation.

[28] The Panel deals with interest in relation to all of the claims in this report at paragraphs 302 to 306 and with claims preparation costs at paragraph 307.

[29] The term "rig-up" as used in the contract denotes the process of preparing the drilling rig for operations prior to the commencement of drilling.

[30] The Sixth "E2" Report, paragraph 39.

[31] See paragraphs 9 and 10 of Governing Council decision 9.
