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COMPENSATION COMMISSION
GOVERNING COUNCIL

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

CONTENTS

List of claimants

| Name | Defined |
|---|---|
| Arabian Chevron, Inc. | Arabian Chevron |
| British Electricity International Limited | BEI |
| Caleb Brett UAE (PVT) Ltd. | Caleb Brett |
| Chevron International Oil Company, Inc. | Chevron International |
| Chevron U.S.A. Inc. | Chevron U.S.A. |
| CRC-Evans Pipeline International, Inc. | CRC-Evans |
| Entec Europe Limited | Entec |
| Facet Industrial UK Limited | Facet |
| Ferguson & Timpson Limited | F & T |
| Galileo Vacuum Tec S.p.A. | Galileo |
| Kuwait Petroleum Europoort B.V. | KPE |
| Saybolt United Kingdom Limited | Saybolt |
| Technip-Geoproduction S.A. | TPG |

List of currencies

| Name | Defined |
|---|---|
| Deutsche Mark | DEM |
| French franc(s) | FRF |
| Guilder(s) | NLG |
| Iraqi dinar(s) | IQD |
| Italian lira (lire) | ITL |
| Kuwaiti dinar(s) | KWD |
| Pound(s) sterling | GBP |
| United Arab Emirates dirham(s) | AED |
| United States dollar(s) | USD |

List of tables

## 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 two of the ninth instalment of "E1" claims, consisting of 15 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 French Republic ("France"), the Italian Republic ("Italy"), the Kingdom of the Netherlands (the "Netherlands"), the United Kingdom of Great Britain and Northern Ireland (the "United Kingdom") and the United States of America (the "United States") filed, with one exception, the claims reviewed in this report on behalf of firms operating in their respective countries. Pursuant to paragraph 26 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1), one of the claimants in the ninth instalment filed its claim directly with the Commission.

4. The claimants in these 15 claims in part two 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 two of the ninth instalment of "E1" claims
(United States dollars)

| Claimant | UNCC claim number | Original amount claimed[a] | Amended amount claimed[b] | Submitting Government |
|---|---|---|---|---|
| Technip-Geoproduction S.A. | 4001838 | 25,433,302 | 19,081,726 | France |
| Galileo Vacuum Tec. S.p.A. | 4001056 | 1,345,107 | 1,345,107 | Italy |
| Kuwait Petroleum Europoort B.V. | 4001443 | 6,700,000 | 6,700,000 | Netherlands |
| British Electricity International Limited | 4001958 | 1,328,840 | 1,328,840 | United Kingdom |
| Caleb Brett UAE (PVT) Ltd. | 4002041 | 473,675 | 473,675 | United Kingdom |
| Entec Europe Limited | 4001851 | 63,486 | 63,486 | United Kingdom |
| Facet Industrial UK Limited | 4002039 | 12,378 | 12,378 | United Kingdom |
| Ferguson & Timpson Limited | 4001798 | 70,888 | 70,888 | United Kingdom |
| Saybolt United Kingdom Limited | 4002003 | 312,000 | 312,000 | United Kingdom |
| Arabian Chevron, Inc. | 4002490 | 2,185,419 | 1,972,098 | United States |
| Chevron International Oil Company, Inc. | 4002497 | 67,820 | 44,791 | United States |
| Chevron U.S.A. Inc. (loss of catalyst sales) | 4002499 | 6,248,846 | 5,964,728 | United States |
| Chevron U.S.A. Inc. (payments to employees) | 4002500 | 118,747 | 118,747 | United States |
| Chevron U.S.A. Inc. (increased insurance premiums) | 4002501 | 3,924,000 | 3,924,000 | United States |
| CRC-Evans Pipeline International, Inc. | 4002387 | 2,497,736 | 2,497,736 | (directly submitted) |
| Total | --- | 50,782,243 | 43,910,200 | --- |

[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. 34, 37 and 38 dated 10 January 2001, 18 October 2001 and 11 January 2002, 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 claimants in part two of the ninth instalment of "E1" claims (with the exception of Kuwait Petroleum Europoort B.V.). 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. By this procedural order, the Panel also directed the transmittal to Iraq of a copy of the original claim file consisting of the statement of claim and all supporting documents filed by Kuwait Petroleum Europoort B.V. The procedural order was transmitted to each of the claimants, through their respective Governments, and to Iraq. Iraq's comments on the claim of Kuwait Petroleum Europoort B.V. were received on 23 October 2002.

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. In addition, the Panel directed a technical mission to the premises of a claimant in the Netherlands to review documents and other evidence and to interview witnesses. During this technical mission, the claimant produced numerous witnesses for interview and many hundreds of documents for review.

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 TECHNIP-GEOPRODUCTION S.A.

### A. Introduction

21. At the time of Iraq's invasion and occupation of Kuwait, Technip-Geoproduction S.A. ("TPG") was a company organized under the laws of France. In 1995, TPG filed a claim form with the Commission in which it sought compensation for a number of losses allegedly incurred as direct result of Iraq's invasion and occupation of Kuwait.

22. In March 2002, Technip France S.A. ("TPF") advised and demonstrated that it is the successor to TPG, further to a merger in 1999 by absorption between TPG and Technip S.A. and a subsequent asset contribution (including this claim) by Technip S.A. to TPF. As the claim arose from events involving TPG and was originally filed in the name of that company, the Panel refers to the claimant as TPG.

23. In its claim form dated 29 September 1995, TPG requested compensation in the amounts of 116,775,998 French francs (FRF), 899,450 Iraqi dinars (IQD) and 76,350 Kuwaiti dinars (KWD). However, in its July 2002 response to the article 34 notification, TPG reduced the total amount of its claim to the amounts of FRF 98,916,238 and IQD 332,223.[3] The reduction was due, in large part, to TPG's withdrawal of those elements of the original claim relating to the expansion of the West Kuwait Oil Field, the proposed development of the Luhais Oil Field in Iraq, "income-producing property", and compensation for the pain and suffering of employees. TPG's claim is summarized in table 2 below.

Table 2. TPG's claim

| Claim element | Original amount claimed | Amended amount claimed |
|---|---|---|
| Unpaid work and retention money | FRF 39,660,186<br>IQD 96,253 | FRF 39,660,186<br>IQD 96,253 |
| Other tangible property | FRF 6,695,492 | FRF 6,695,492 |
| Income-producing property | FRF 5,152,578 | Withdrawn |
| Bank guarantees | FRF 16,451,750<br>IQD 803,197 | FRF 525,750<br>IQD 225,997 |
| Salaries and other expenses [a] | FRF 3,120,186 | FRF 3,090,106 |
| Requests for additional costs | FRF 44,623,254 | FRF 44,623,254 |
| Unpaid West Kuwait Oil Field project costs | KWD 76,350 | Withdrawn |
| Luhais Oil Field proposal costs | FRF 1,072,552 | Withdrawn |
| Pain and suffering | Not quantified | Withdrawn |
| Total[b] | FRF 116,775,998<br>IQD 899,450<br>KWD 76,350 | FRF 94,594,788<br>IQD 322,250 |

[a] A claim for this element was included in the statement of claim filed at the same time as TPG's claim form. Accordingly, the Panel considers that the claim for salaries and other expenses is timeous and that its value should be considered part of the original amount claimed by TPG.

[b] In its claim form, TPG stated that the total value of its claim is FRF 129,906,158. However, the losses listed in the claim form total the amounts of FRF 113,655,812, IQD 899,450 and KWD 76,350. When the amount of FRF 3,120,186 for salaries and other expenses is added to FRF 113,655,812, the sum is the original amount claimed figure of FRF 116,775,998.

24. In its claim, as amended, TPG seeks compensation for losses relating to the development of the Khabaz Oil Field in northern Iraq (the "project").

25. On 23 July 1988, TPG entered into a contract with Iraq's North Oil Company ("NOC") for the turnkey development of the Khabaz Oil Field at a price of FRF 390,000,000 and IQD 1,843,000. The work to be performed by TPG under the contract included the construction of a degassing station and the construction of a pipeline network connecting the oil field wells to the degassing station.

26. Under the contract, the project's facilities were to be constructed, commissioned and tested within 20 months of the contract's signing (i.e. by 23 March 1990). However, this contractual deadline was not achieved because of a number of changes made to the work originally contemplated under the contract. Nevertheless, by 25 July 1990, TPG had completed 96.35 per cent of the construction work required under the contract. By 25 August 1990, this figure had risen to 97.15 per cent.

27. On 2 August 1990, NOC issued the last of 35 "Complete and Ready for Commissioning Certificates" under the contract, thereby certifying that the project's facilities were ready for commissioning. However, according to TPG, it was unable to perform all of the necessary commissioning activities because some vital spare parts and key vendor specialists were unable to arrive in Iraq as a direct result of Iraq's invasion and occupation of Kuwait.

28. On 17 August 1990, TPG requested that NOC terminate the contract under a provision giving NOC the right, at any time after an outbreak of war that materially affected the contract, to terminate the contract. NOC rejected this request, but agreed in a letter dated 22 August 1990 to meet with TPG to review the steps required for it to continue the necessary commissioning and start-up activities.

29. On 31 August 1990, TPG wrote to NOC and advised it that TPG considered the contract to be frustrated. TPG also requested that NOC arrange for the immediate release of all its employees and those of its subcontractors in Iraq. NOC rejected TPG's assertion that the contract was frustrated and refused to arrange for the release of those employees that remained in Iraq at that time. According to TPG, it therefore continued to perform commissioning and start-up activities until 10 October 1990, at which time the project was, with the agreement of NOC, placed in "standstill condition" until further notice. The remaining employees were eventually permitted to leave Iraq at varying times prior to the end of 1990, and NOC was left in possession of the project.

30. According to TPG, the Khabaz Oil Field went into production in 1992.

## B. Unpaid work and retention money

### 1. Facts and contentions

31. TPG originally sought compensation in the amounts of FRF 39,660,186 and IQD 96,253 for unpaid work and retention money. However, in its response to the article 34 notification, TPG amended parts of its claim for unpaid work and retention money and introduced a claim for the balance of the contract price in the amounts of FRF 3,563,000 and IQD 44,825. For the reasons set out in paragraph 19 above, the Panel considers that the new claim for the balance of the contract price is not admissible.

32. TPG asserts that, as a direct result of Iraq's invasion and occupation of Kuwait, NOC has not paid a number of invoices issued to it for work performed under the contract. TPG seeks the amounts of FRF 24,367,569 and IQD 11,993 as compensation for these invoices, which cover construction work, materials and spare parts, as well as retention money that was to be released under the contract following NOC's issuance of the last "Complete and Ready for Commissioning Certificate" on 2 August 1990. TPG also seeks the amounts of FRF 15,114,492 and IQD 84,260 as compensation for retention money that had been withheld from its invoices issued between 4 April 1989 and 15 September 1990 but was not due to be released under the contract until additional contractual milestones were reached. A further amount of FRF 178,125 is sought by TPG as compensation for retention money amounting to 5 per cent of the balance of the contract price.

33. The claim for unpaid invoices in the amounts of FRF 24,367,569 and IQD 11,993 is, according to the evidence provided in support of the claim, comprised of unpaid construction work, materials and spare parts totalling FRF 20,613,194 and IQD 11,305, and retention money totalling FRF 3,754,375 and IQD 688. The unpaid invoices were issued between 2 November 1989 and 15 September 1990.

34. Under the contract, TPG's invoices were to be paid within one month of their receipt by NOC or its representative. The contract also provided that 5 per cent of the contract price (excluding the down payment) was to be withheld from TPG's invoices as retention money. Upon issue of the last "Complete and Ready for Commissioning Certificate" under the contract, 20 per cent of the retention money was to be released by NOC to TPG. The remaining 80 per cent was to be released as follows: (a) 30 per cent upon issue of the "Taking Over Certificate"; and (b) 50 per cent upon issue of the "Final Acceptance Certificate" or upon settlement of all outstanding matters arising out of the execution of the contract, whichever was the later.

### 2. Iraq's response

35. Iraq states that the claim for unpaid work relates to work that was performed prior to 2 August 1990. Accordingly, Iraq contends that this claim falls outside the jurisdiction of the Commission.

36. Iraq states that the claim for unpaid retention money relates to an old contractual commitment dating back to July 1988. Accordingly, Iraq contends that this claim falls outside the jurisdiction of

the Commission. Iraq further states that TPG did not submit the required clearance certificate from the tax authorities or the other documents legally required as a prerequisite for the release of the retention money.

3. Analysis and valuation

37. The Panel finds, as it has in previous reports, that the purpose of the "arising prior to" language in paragraph 16 of Security Council resolution 687 (1991) is to exclude from the jurisdiction of the Commission debts or obligations of Iraq that are based on work performed or services rendered prior to 2 May 1990. Accordingly, the Panel considers it necessary to determine what, if any, portion of the amounts claimed for unpaid construction work, materials and spare parts totalling FRF 20,613,194 and IQD 11,305 concerns work performed prior to 2 May 1990.

38. Based on its review of the evidence, the Panel finds that FRF 6,194,375 of the claim for unpaid work relates to invoices issued in respect of work performed and/or materials and spare parts delivered prior to 2 May 1990. Accordingly, the Panel finds that the claim for these amounts is outside the jurisdiction of the Commission.

39. The remaining balance of the claim for unpaid work is broken up into the amounts of FRF 14,418,819 and IQD 11,305 respectively, and these amounts relate to work performed and/or materials and spare parts delivered between 2 May and 25 August 1990. The Panel finds that the claim relating to these amounts is within the jurisdiction of the Commission and that the amounts have not been paid to TPG as a direct result of Iraq's invasion and occupation of Kuwait. However, with respect to the Iraqi dinar amount of IQD 11,305, the Panel finds that, in view of the fact that the Iraqi dinar has at all relevant times been non-exchangeable and non-transferable, TPG has not proved any loss arising from the non-payment of this Iraqi dinar amount. The Panel therefore recommends only an award of compensation in the amount of FRF 14,418,819 for unpaid work invoices.

40. With respect to the claim for retention money invoiced for release in the amounts of FRF 3,754,375 and IQD 688 (see paragraph 33 above), the Panel finds that Iraq's invasion and occupation of Kuwait directly caused these amounts not to be paid. However, since the Panel finds that TPG has not proved any loss arising from the non-payment of the Iraqi dinar amount of IQD 688, the Panel recommends only an award of compensation in the amount of FRF 3,754,375 for retention money invoiced but not paid.

41. With respect to the claim for retention money not yet contractually due for release in the amounts of FRF 15,114,492 and IQD 84,260, the Panel finds that Iraq's invasion and occupation of Kuwait rendered it impossible for TPG to complete the project and therefore to satisfy the conditions precedent to the release of the money retained by NOC. Based on the evidence provided, the Panel finds that the project would have reached a conclusion by the end of 1990 but for Iraq's invasion and occupation of Kuwait, and it concludes that TPG's claim for withheld retention money is, in principle, compensable in full. However, since the Panel finds that TPG has not proved any loss arising from the non-payment of the Iraqi dinar amount of IQD 84,260, the Panel recommends only an award of compensation in the amount of FRF 15,292,617 for unreleased retention money.

42. Lastly, with respect to the claim in the amount of FRF 178,125 for retention money amounting to 5 per cent of the balance of the contract price, the Panel finds that this claim is not supported by sufficient evidence.

43. Based on the foregoing, the Panel recommends an award of compensation for unpaid work and retention money in the total amount of FRF 33,287,686.

## C. Other tangible property

### 1. Facts and contentions

44. TPG seeks compensation in the amount of FRF 6,695,492 for the value of tangible property such as office equipment and motor vehicles that it imported to Iraq in order to perform the contract and lost as a result of Iraq's invasion and occupation of Kuwait. TPG states that, as a result of the invasion, it lost the ability to dispose freely of the tangible property. It further states that the Iraqi authorities "officially" confiscated the tangible property in October 1992.

45. In support of its claim for tangible property losses, TPG provided a list of the tangible property that it imported to Iraq in order to perform the contract, as well as copies of purchase invoices and TPG debit notes relating to the property. TPG also provided copies of correspondence from October and December 1992 which indicate that all materials, equipment and furniture of TPG were confiscated from the project site by the Iraqi authorities in 1992.

### 2. Iraq's response

46. Iraq states that the furniture and equipment imported by TPG for the purpose of implementing the contract was subject to the laws and regulations valid in Iraq at that time, as well as the terms of the contract. Iraq further states that, because such furniture and equipment was originally exempted from customs and duties, it could not be disposed of until after settlement of accounts. In addition, Iraq states that the actual value of the furniture and equipment should be ascertained since those items were in use for almost two years prior to Iraq's entry into Kuwait.

### 3. Analysis and valuation

47. The Panel finds that TPG has demonstrated that it lost the ability to dispose freely of its tangible property in Iraq as a direct result of Iraq's invasion and occupation of Kuwait. However, the evidence does not demonstrate that TPG suffered a loss because the cost of the items of tangible property was fully accounted for in TPG's costs of completing the project and the items had no value to TPG at the relevant time. The Panel therefore recommends no award of compensation to TPG for tangible property losses.

## D. Bank guarantees

### 1. Facts and contentions

48. TPG originally sought compensation in the amounts of FRF 16,451,750 and IQD 803,197 for losses relating to bank guarantees issued on its behalf in connection with the project. In its response to the article 34 notification, TPG reduced its claim for these losses to the amounts of FRF 525,750 and IQD 225,997.

49. TPG seeks the amounts of FRF 525,750 and IQD 25,997 as compensation for the value of two advance payment guarantees issued in September 1988 through Iraq's Rafidain Bank to support the down payment made to TPG under the contract. At TPG's request, a counter-guarantee was issued by Union de Banques Arabes et Françaises ("UBAF").

50. Notwithstanding that the advance payment guarantees were, on their face, valid only until 23 March 1990, TPG has not been (as of the date of TPG's response to the article 34 notification) released of its liabilities under the counter-guarantee. According to TPG, although no actual losses have been incurred with respect to the advance payment guarantees, there is a risk that the guarantees will be called in the future.

51. TPG also seeks the amount of IQD 200,000 as compensation for the value of a bank overdraft guarantee issued in February 1989 through UBAF to cover the non-repayment by TPG of an overdraft facility issued to it by Rafidain Bank for a maximum amount of IQD 200,000. TPG states that, due to the invoices in Iraqi dinars that remain unpaid under the contract, additional costs caused by delays in the project and expenses incurred with respect to personnel detained in Iraq, its bank account with Rafidain Bank has reached a debit balance in excess of IQD 200,000. TPG further states that Rafidain Bank has requested that UBAF honour its guarantee as soon as the trade embargo against Iraq is lifted.

52. According to TPG, although no actual loss has been incurred with respect to the bank overdraft guarantee, there is a risk that the guarantee will be called in the future. This is apparently so because UBAF has not released TPG of its liabilities under the bank overdraft guarantee.

### 2. Iraq's response

53. Iraq states that Iraqi banks have not drawn on the bank guarantees. Iraq further states that TPG owes certain amounts of money to NOC due to TPG's non-completion of the work under the contract and its failure to settle its outstanding accounts.

### 3. Analysis and valuation

54. The Panel finds that TPG's claim for the value of the two advance payment guarantees and the bank overdraft guarantee is too contingent and remote to constitute a direct loss resulting from Iraq's invasion and occupation of Kuwait. TPG admits that it has not yet incurred a loss with respect to the guarantees, and it is uncertain, in the Panel's view, whether a loss will be incurred in the future. Accordingly, the Panel recommends no award of compensation to TPG for bank guarantees.

## E. Salaries and other expenses

### 1. Facts and contentions

55. TPG seeks compensation for salaries and other expenses that it allegedly incurred in respect of three of its employees and 30 of its subcontractors' employees. These employees were working on the project as at 2 August 1990, and could not leave Iraq until they were granted exit visas. The required exit visas were eventually granted to the employees at varying times between the end of August and the end of December 1990. According to TPG, NOC required TPG to continue with the commissioning and start up of the project after 2 August 1990 and would only assist TPG in securing exit visas for people working on the project as and when their services were no longer required. TPG further states that the project was brought to a standstill by mutual agreement in October 1990 when it was no longer possible to continue with the project.

56. TPG originally claimed the amount of FRF 3,120,186 as compensation for salaries and other expenses. However, in its response to the article 34 notification, TPG reduced the total amount of its claim for salaries and other expenses to FRF 3,090,106.

57. The claim for salaries and other expenses is comprised of three components: (a) salaries and social security costs paid in respect of its employees; (b) payments for the services of its subcontractors' employees; and (c) living allowances and other local expenses of its employees and those of its subcontractors.

58. TPG claims FRF 543,897 for salaries and social security costs that it paid in respect of three employees who were working on the project as at 2 August 1990, and who remained in Iraq until they were granted exit visas at the end of October 1990. TPG states that these employees continued to work at the project site after 2 August 1990, but not necessarily in their normal capacities and not for the entire period of their detention. In support of its claim for the salaries and social security costs, TPG has provided copies of contemporaneous internal reports by its project manager, correspondence with NOC relating to the status of the project, requests to NOC for assistance in obtaining exit visas and payroll records.

59. TPG claims FRF 1,508,924 for payments made to its subcontractors for the services of certain employees who were working on the project as at 2 August 1990 and who remained in Iraq until they were granted exit visas at varying times during between the end of August and the end of December 1990. TPG states that these employees had been, prior to Iraq's invasion and occupation of Kuwait,

scheduled to leave Iraq at the beginning of August 1990. In support of its claim for the payments for the services of its subcontractors' employees, TPG has provided copies of contemporaneous internal reports and correspondence with NOC, as well as invoices and proof of payment for most of the payments claimed.

60. TPG claims FRF 1,037,285 for living allowances and other local expenses (including food and medical expenses) that it incurred in supporting both its, and its subcontractors', employees in Iraq until they were granted exit visas. In support of its claim for these expenses, TPG has provided copies of some relevant invoices, as well as its cash account summary for the months of August to October 1990 for the project site.

2. Iraq's response

61. Iraq states that the allegation by TPG that its employees were held as hostages is untrue, since the employees chose to stay at the project site and to continue to work with NOC. Iraq further states that these employees actually carried out some work that enabled TPG to achieve mechanical completion.

3. Analysis and valuation

62. TPG's claim for salaries and other expenses is in French francs. However, some of the losses included in this claim were incurred in currencies other than French francs. Consistent with its practice in previous instalments, the Panel has assessed the losses in the currencies in which they were incurred.

63. The Panel finds that the majority of the claim for salaries and social security costs is compensable, in principle, as a claim for costs incurred for unproductive labour. The Panel finds, however, that the evidence does not support the full amount claimed. As to the remainder of the claim, the Panel finds that compensation will be duplicated if TPG is compensated for salaries and social security costs in respect of a period for which it is claiming for unpaid work.[4] The Panel therefore recommends an award of compensation for salaries and social security costs incurred after 25 August 1990 in the amount of FRF 153,119.[5]

64. With respect to the claim for payments made to subcontractors, the Panel finds that the majority of the claim is compensable, in principle, as a claim for costs incurred for unproductive labour. The Panel finds, however, that the evidence does not support the full amount claimed. As to the remainder of the claim, the Panel finds that compensation will be duplicated if TPG is compensated for payments made to its subcontractors in respect of a period for which it is claiming for unpaid work. The Panel therefore recommends an award of compensation for payments for services received from the subcontractors' employees after 25 August 1990 in the amounts of FRF 270,603 and GBP 3,488.

65. With respect to the claim for living allowances and other local expenses, the Panel finds that the claim is for direct losses resulting from Iraq's invasion and occupation of Kuwait. However, the evidence shows that all of the living allowances and local expenses were incurred in Iraqi dinars and

were paid in Iraq by cheque or cash. Accordingly, since TPG has not demonstrated that it brought funds into Iraq pay for these costs, and because the Panel considers that at all relevant times the Iraqi dinar was non-exchangeable and non-transferable, the Panel finds that TPG has not proved any loss arising from the payment of the living allowances and other local expenses in Iraqi dinars. The Panel therefore recommends no award of compensation to TPG for these costs.

66. Based on the foregoing, the Panel recommends an award of compensation for salaries and other expenses in the total amounts of FRF 423,722 and GBP 3,488.

## F. Requests for additional costs

### 1. Facts and contentions

67. TPG originally sought compensation in the amount of FRF 44,623,254 for additional costs that it had requested from NOC for changes to the work originally contemplated under the contract. However, in its response to the article 34 notification, TPG introduced a new claim relating to the cancellation of "water-flood" protection work in the amounts of FRF 1,262,825 and IQD 7,445. For the reasons set out in paragraph 19 above, this new claim is not admissible.

68. TPG states that it filed three requests for additional compensation with NOC in November and December 1989 to recover the additional costs totalling FRF 44,623,254.

69. TPG states that, on 9 November 1989, it wrote to NOC and requested compensation in the amount of FRF 1,167,984 for additional engineering, equipment and construction costs that TPG had incurred and/or estimated that it would incur in relation to changes that it was directed to make to the design, equipment and layout of the "control room". TPG also requested an extension of time to complete the contract of four months, arguing that it should not be penalized in respect of the delay caused by the changes.

70. TPG states that, on 20 November 1989, it wrote to NOC and requested compensation in the amount of FRF 3,710,278 for additional engineering and equipment costs that TPG had incurred in relation to a change in the type of compressors needed for service in the Khabaz oil field. TPG also requested a three-month extension of time to complete the contract, arguing that it should not be penalized in respect of the delay caused by the changes.

71. TPG states that, on 18 December 1989, it wrote to NOC and requested compensation in the amount of FRF 39,744,992 for additional supervision, financing and delay costs that TPG had incurred and/or estimated that it would incur in relation to changes in the design, equipment and layout of various installations. TPG also requested an extension of time to complete the contract of 145 days (i.e. from 23 March to 14 August 1990), arguing that it should not be penalized in respect of the delay caused by the changes.

72. Although NOC did not approve TPG's requests for the additional costs and an extension of time, it did agree in a letter dated 4 January 1990 to extend the 90-day period provided under the contract for TPG to make a written request for arbitration (and thereby avoid NOC's decision

regarding the requests to become "final and binding"). In a letter dated 13 February 1990, TPG was advised by NOC that it was willing to discuss outstanding issues related to the project after TPG had successfully completed and handed over the project. According to TPG, it had no alternative (in view of the position being taken by NOC) but to complete the project as a matter of priority and to postpone all discussion about the outstanding requests for the additional costs. TPG contends that, as a direct result of Iraq's invasion and occupation of Kuwait, it has been prevented from resolving the outstanding requests for the additional costs either through negotiation or arbitration under the contract.

### 2. Iraq's response

73. Iraq states that the claim relating to TPG's requests for additional costs dates back to 1989 and has no relation whatsoever to the events of 2 August 1990. According to Iraq, the requests for additional costs were not settled prior to 2 August 1990 because NOC was not convinced that any "additional" work had been performed according to the terms of the contract.

### 3. Analysis and valuation

74. The Panel finds that the claim for the additional costs requested from NOC is not compensable. Although the evidence indicates that TPG's requests for the additional costs were the subject of discussions and negotiations between TPG and NOC that began in 1989 and continued in 1990, TPG has failed to establish that NOC owes the additional costs. More specifically, TPG has not shown that, but for Iraq's invasion and occupation of Kuwait, any portion of its outstanding requests would ultimately have been resolved in its favour or agreed to by NOC. In addition, even if TPG had established that NOC is liable for the additional costs, it does not appear that any portion of the additional costs relates to work performed after 2 May 1990. Rather, based on the evidence provided, the Panel considers that the alleged changes and consequent delays that form the basis of the requests for the additional costs occurred in 1989. The claim for any payments owed by NOC in respect of these changes and delays is therefore outside the jurisdiction of the Commission.

75. Based on the foregoing, the Panel recommends no award of compensation for the additional costs requested from NOC.

## G. Recommendations

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

Table 3. TPG's claim – recommended compensation

| Claim element | Original amount claimed | Amended amount claimed | Amount of compensation recommended |
|---|---|---|---|
| Unpaid work and retention money | FRF 39,660,186<br>IQD 96,253 | FRF 39,660,186<br>IQD 96,253 | FRF 33,287,686 |
| Other tangible property | FRF 6,695,492 | FRF 6,695,492 | Nil |
| Income-producing property | FRF 5,152,578 | Withdrawn | Nil |
| Bank guarantees | FRF 16,451,750<br>IQD 803,197 | FRF 525,750<br>IQD 225,997 | Nil |
| Salaries and other expenses | FRF 3,120,186 | FRF 3,090,106 | FRF 423,722<br>GBP 3,488 |
| Requests for additional compensation | FRF 44,623,254 | FRF 44,623,254 | Nil |
| Unpaid West Kuwait Oil Field project costs | KWD 76,350 | Withdrawn | Nil |
| Luhais Oil Field proposal costs | FRF 1,072,552 | Withdrawn | Nil |
| Pain and suffering | Not quantified | Withdrawn | Nil |
| Total | FRF 116,775,998<br>IQD 899,450<br>KWD 76,350 | FRF 94,594,788<br>IQD 322,250 | FRF 33,711,408<br>GBP 3,488 |

# IV. CLAIM OF GALILEO VACUUM TEC S.P.A.

## A. Facts and contentions

### 1. Introduction

77. At the time of Iraq's invasion and occupation of Kuwait, Galileo Vacuum Tec S.p.A. ("Galileo") was a company organized under the laws of Italy. Galileo's business was the research, design and manufacture of vacuum equipment and components. In February 1993, Galileo filed a claim form with the Commission in which it sought compensation for losses allegedly incurred as a direct result of Iraq's invasion and occupation of Kuwait.

78. In 1999, Galileo merged with the FATA Group S.p.A. ("FATA"). As the claim arose from events involving Galileo and was originally filed in the name of that company, the Panel refers to the claimant as Galileo even though FATA is the successor to Galileo.

79. Galileo seeks compensation in the amount of 1,559,383,164 Italian lire (ITL) for losses related to three contracts that it entered into with Iraq's State Company for Oil Projects ("SCOP") prior to Iraq's invasion and occupation of Kuwait. Although the claim is stated in Italian lire, the Panel has, consistent with its practice in previous instalments, assessed the losses in the currencies in which they were incurred. Galileo's claim is summarized in table 4 below.

Table 4. Galileo's claim
(Italian lire)

| Claim element | Original amount claimed |
|---|---|
| Contract | 1,559,383,164 |
| Total | 1,559,383,164 |

### 2. Contract

80. Galileo states that, as at 2 August 1990, it received three purchase orders from SCOP for various vacuum components.

(a) Purchase order number 3999

81. Galileo provided a copy of purchase order number 3999 dated 22 January 1990 in the amount of 128,000 Deutsche Mark (DEM), which provided that the delivery period for the components was four months. Payment was to be effected by an irrevocable letter of credit negotiable against the shipping documents. The letter of credit that Galileo provided in support of its claim was issued on 15 February 1990, and contemplated shipment not later than 5 July 1990. The shipping date and the letter of credit were later extended to 5 August 1990. Galileo provided a copy of the invoice dated 19 July 1990 and the waybill dated 25 July 1990 which, together with the certificate of origin on the invoice, were the documents required under the letter of credit. Galileo states that the components were

expected to leave on a flight on or about 28 July 1990, but they did not. According to Galileo, Iraq's invasion and occupation of Kuwait prevented the components from being shipped.

(b) Purchase order number 3967

82. Galileo provided a copy of purchase order number 2967 dated 3 January 1990 in the amount of DEM 2,068,644, which provided that the delivery period for the components was seven months. Payment was to be effected by an irrevocable letter of credit negotiable against the shipping documents. The letter of credit Galileo provided in support of its claim was issued on 23 January 1990, and contemplated shipment not later than 16 August 1990. Galileo provided a copy of the invoice dated 26 July 1990 and the waybills dated 1 August 1990 which, together with the certificate of origin on the invoice, were the documents required under the letter of credit. Galileo states that the components were scheduled to leave on a flight on 2 August 1990, but they did not because Iraq's invasion and occupation of Kuwait intervened.

(c) Purchase order number 4038

83. Galileo also provided a copy of purchase order number 4038 dated 22 February 1990 in the amount of DEM 2,360,752, which provided that the delivery period for the components was six months. Payment was to be effected by an irrevocable letter of credit negotiable against the shipping documents. The letter of credit was issued on 18 March 1990, and contemplated shipment not later than 4 September 1990. Galileo states that Iraq's invasion and occupation of Kuwait intervened before it had taken steps to ship the components.

## B. Iraq's response

84. Iraq states that Galileo made no efforts to mitigate its losses and, since the goods are standard goods manufactured by Galileo, they could easily have been resold to another purchaser without losing anything except, at most, the anticipated profit. Iraq further states that Galileo's losses are solely attributable to the trade embargo.

## C. Analysis and valuation

85. 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.

86. The Panel finds that shipment of the various vacuum components became impossible after 2 August 1990 as a direct result of Iraq's invasion and occupation of Kuwait. However, Galileo did not provide sufficient evidence of the costs incurred under the purchase orders prior to Iraq's invasion and occupation of Kuwait. Moreover, Galileo did not provide sufficient evidence regarding the steps taken to mitigate its losses. Further, the financial statements that Galileo provided in respect of its financial years ended 31 December 1990 and 31 December 1991 do not assist the Panel to assess the

reasonableness of the claimed losses. In view of such evidentiary deficiencies, the Panel is unable to verify and value Galileo's claim for losses arising from the interrupted purchase orders. The Panel therefore recommends no award of compensation to Galileo for contract losses.

## D. Recommendations

87. The Panel's recommendations with respect to the claim of Galileo are summarized in table 5 below.

Table 5. Galileo's claim – recommended compensation
(Italian lire)

| Claim element | Original amount claimed | Amount of compensation recommended |
|---|---|---|
| Contract | 1,559,383,164 | Nil |
| Total | 1,559,383,164 | Nil |

# V. CLAIM OF KUWAIT PETROLEUM EUROPOORT B.V.

## A. Facts and contentions

### 1. Introduction

88. Kuwait Petroleum Europoort B.V. ("KPE") is a company organized under the laws of the Netherlands. It is an affiliate of Kuwait Petroleum Corporation ("KPC"), and it operates an oil refinery in Rotterdam, the Netherlands, which includes a lube oil manufacturing plant.

89. KPE seeks compensation in the total amount of USD 6,700,000 for loss of profits relating to the non-availability of Kuwait export crude oil following Iraq's invasion and occupation of Kuwait. Its claim is summarized in table 6 below.

Table 6. KPE's claim
(United States dollars)

| Claim element | Claim amount |
|---|---|
| Loss of profits | 6,700,000 |
| Total | 6,700,000 |

### 2. Loss of profits

90. KPE states that its oil refinery in Rotterdam consists of two crude oil processing units referred to as crude units 1 and 2. Crude unit 1 processes mostly Kuwait export crude oil, although it is capable of processing other crude oils as well.[6] Crude unit 2, on the other hand, is designed to process Kuwait export crude oil to prepare feedstock for its lube oil manufacturing plant. KPE states that, prior to Iraq's invasion and occupation of Kuwait, it had an established arrangement with KPC for the supply of Kuwait export crude oil, as well as an established customer base for its lubricating oils originating from certain crude types including Kuwait export crude oil.

91. Following Iraq's invasion and occupation of Kuwait, the supply of Kuwait export crude oil to KPE was abruptly halted. Consequently, KPE needed to find an alternative crude oil for the continued manufacturing of lubricating oils at its plant in Rotterdam. Based on studies and tests carried out prior to 1990, KPE decided that Arabian Light crude oil was the only feasible alternative available in terms of base oil quality. KPE therefore entered into an agreement with the Saudi Arabian Oil Company to purchase Arabian Light crude oil as from 1 October 1990.

92. Beginning in October 1990, Arabian Light, Medium and Heavy crude oils, as well as other crude oils, were substituted as feedstock at crude unit 1 for Kuwait crude oils, but this did not, according to KPE in its statement of claim, yield a significant loss of revenue. KPE did not, therefore, include the economic consequences of the substitution of crude oil feedstock at crude unit 1 in its original calculation of the claim.

93. KPE states that, following the depletion of its stock of Kuwait export crude oil, Arabian Light crude oil was introduced for processing at its crude unit 2 on 23 January 1991. KPE further states that, as a result of this introduction of Arabian Light crude oil at crude unit 2, it suffered a loss of profits totalling USD 6,700,000 during the period from 1 February to 30 September 1991.[7]

94. The amount of KPE's claim for loss of profits is based on pricing differences between Arabian Light crude oil and Kuwait export crude oil, as well as production yield differences between these two crude oils. KPE has calculated the amount of its claim using linear programme ("LP") model runs comparing the expected economic results from its processing of crude oils at its crude unit 2 and downstream units, including the lube oil plant, during the period from 1 February to 30 September 1991. The difference in gross margins between the expected (Kuwait export crude oil) case and the expected (Arabian Light crude oil) case results in the claim for loss of profits in the amount of USD 6,700,000 (the "original loss calculation").[8]

95. KPE states that, although KPC resumed production of Kuwait export crude oil in September 1991, the available volume was not yet sufficient to supply all of its customers. In order to restore its former marketing position as soon as possible, KPC allegedly decided to give priority to the supply of its other customers ahead of its European affiliates such as KPE. KPE therefore continued to process Arabian Light crude oil at its crude unit 2 and lube oil plant beyond 30 September 1991. However, KPE states that it does not consider that it is appropriate to claim the resulting loss of profits that it suffered after 30 September 1991 as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, its claim for loss of profits does not extend beyond 30 September 1991.

96. The LP model upon which the original claim submission is based was not provided to the Panel, as it could not be found by KPE. However, in preparation for the technical mission to its premises in September 2002, KPE reviewed its original claim and reconstructed the original LP model using its current LP computer technology. This exercise produced a recalculated loss totalling USD 6,427,243 (the "reconstructed loss calculation").

97. As both the original and reconstructed LP runs covered the period from 1 February to 30 September 1991 as one period only, KPE was requested at the end of the technical mission to recalculate its loss on the basis of monthly LP runs for this period. The results of the monthly LP runs provided by KPE in response to this request indicate a loss totalling USD 7,375,000 (the "third loss calculation").

98. KPE was also requested at the end of the technical mission to perform additional monthly LP runs designed to assess the economic consequences of the exchange of crude oil feedstock at crude unit 1 during the period of the claim. The results of the monthly LP runs provided by KPE in response to this request indicate a loss totalling USD 9,789,000 (the "fourth loss calculation").

99. KPE contends that the scope of the monthly LP runs is exactly the same as it was in the single LP run supporting the original claim. It further contends that the third and fourth loss calculations, which are based on monthly LP runs, are more accurate than the original and reconstructed loss

calculations, and that the lost earnings of USD 6,700,000 reported in the original claim should therefore be considered as extremely conservative.

B. Iraq's response

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

(a) Iraq states that the export of crude oil from Kuwait was interrupted as a result of the trade embargo imposed on Kuwait and Iraq and not by reason of Iraq's entry into Kuwait. Therefore, according to Iraq, any negative results incidental to the trade embargo are not subject to compensation under paragraph 3 of Governing Council decision 15 (S/AC.26/1992/15).

(b) Iraq contends that the work of KPE's oil refinery in Rotterdam was not delayed by the events in Kuwait. It states that, as noted by KPE, Arabian Light crude oil was available immediately following the depletion of the stock of Kuwait export crude oil at the refinery. Iraq argues that no loss in production was therefore incurred by KPE as a result of its using the alternative crude oil.

(c) Iraq states that refineries are normally designed to receive different qualities of crude oil, and that they operate on commercial foundations and purchase crude oil from the world market at the prices quoted. Accordingly, refineries usually have adequate flexibility to face variations in the sources and qualities of the crude oil available to meet their needs. Iraq contends that, if refineries such as KPE's oil refinery in Rotterdam do not pursue flexibility, but rather confine themselves to a certain quality of crude oil or a definite source of crude oil, then losses resulting from such an approach are the fault of those refineries.

(d) Iraq states that the pricing of crude oil depends on its quality, i.e. a higher priced crude oil indicates a better quality and brings about greater revenues than does a lower priced crude oil. Accordingly, there is always a balance between price and quality. Iraq contends, therefore, that the allegation by KPE that it incurred a loss because Kuwait export crude oil is cheaper in price and better in quality is not valid. Rather, according to Iraq, since the price of Arabian Light crude oil is higher than Kuwait export crude oil, the revenue from the derivatives of Arabian Light crude oil is greater than from the derivatives of Kuwait export crude oil.

(e) Iraq states that Arabian Light crude oil was previously used by KPE for its lube oil plant in 1982, that the required tests for its use were accomplished and that the refinery was basically designed for this quality of crude. Therefore, according to Iraq, the allegation (included in KPE's original claim) that, of the lost earnings of USD 6,700,000, a loss of USD 2,200,000 was due to a lower throughput in the initial production of lubricating oils using Arabian Light crude oil because of what KPE called "the learning process" with this feedstock, is baseless.

(f) Iraq states that light crude oils are the most appropriate crude oils for producing lubricating oils, and that Arabian Light crude oil is considered one of the best qualities of crude oil for this purpose. Iraq further states that, contrary to what is set out in KPE's claim, Arabian Light crude oil provides a higher rate of extraction of lubricating oils than does Kuwait "Middle" crude.

(g) Iraq states that it is a well-known fact that light crude oils, such as Arabian Light crude oil, produce larger quantities of light and middle products of higher prices, such as gasoline, kerosene and gas oil, and consequently provide greater revenues than middle crude oils, such as Kuwait export crude oil, which produce larger quantities of heavy products of lower prices. Iraq contends that KPE's claim entirely neglects this fact, and that the refinery in Rotterdam must have realized large additional profits as a result of using the Arabian light crude oil. Iraq estimates that KPE realized additional profits exceeding USD 10,000,000 during the period from 23 January to 30 September 1991 when it used Arabian Light crude oil. Therefore, according to Iraq, KPE seeks to be unjustly compensated at the expense of Iraq.

(h) Lastly, Iraq states that the claim is not based on scientific foundations and real facts, and that it does not include any probative evidence. Rather, according to Iraq, the claim is based on false arguments and incomplete information intended to justify the claim for compensation in circumstances where KPE actually realized additional profits far in excess of the alleged losses as a consequence of the events in Kuwait.

## C. Analysis and valuation

101. The Panel considers that, in principle, compensation should be awarded to a claimant for the profits which, in the ordinary course of events, it would have expected to earn and which were lost as a direct result of Iraq's invasion and occupation of Kuwait. However, the Panel also considers that compensation should only be awarded if the loss can be ascertained with reasonable certainty.

102. In this case, the Panel finds that KPE has failed to present and support a consistent and verifiable claim for loss of profits. Although the various loss calculations appear, at first glance, to be of the same order of magnitude, the details and explanations of each calculation reveal, upon comparison, a number of major inconsistencies. By way of an example, the Panel notes that in the original loss calculation, the value of the production yield loss for lubricating oils is said to total USD 4,328,500. However, in the reconstructed loss calculation, there is no production yield loss indicated for lubricating oils.

103. By way of a further example, the Panel notes that, in the third and fourth loss calculations, the greater part of the total loss is comprised of increased input costs in the amounts of USD 6,595,000 and USD 9,373,000 respectively. By contrast, in the original and reconstructed loss calculations, there are saved input costs shown in the amounts of USD 702,000 and USD 3,305,000 respectively. The difference between the highest and lowest of these four input costs figures is USD 12,678,000.

104. The Panel additionally notes that the total production yield losses shown in the original, reconstructed, third and fourth loss calculations are the widely varying amounts of USD 7,799,500, USD 9,969,344, USD 915,000 and USD 608,000 respectively.

105. Lastly, the Panel notes that, contrary to what it alleged in the statement of claim, KPE now contends (based on its fourth loss calculation) that the processing of Arabian crude oils instead of Kuwait export crude oil in its crude unit 1 resulted in a significant additional loss of USD 2,414,000.

106. The Panel finds that KPE was unable to provide LP runs with sufficiently similar details and explanations as those upon which it asserts that it based its original loss calculation. As a result, the Panel is unable to ascertain or verify with reasonable certainty that KPE incurred a loss of profits as alleged in its claim.

107. In view of the foregoing, the Panel recommends no award of compensation to KPE for loss of profits.

## D. Recommendations

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

Table 7. KPE's claim – recommended compensation
(United States dollars)

| Claim element | Original amount claimed | Amount of compensation recommended |
|---|---|---|
| Loss of profits | 6,700,000 | Nil |
| Total | 6,700,000 | Nil |

# VI. CLAIM OF BRITISH ELECTRICITY INTERNATIONAL LIMITED

## A. Facts and contentions

### 1. Introduction

109. British Electricity International Limited ("BEI") is a company organized under the laws of the United Kingdom. BEI claims compensation for contract, other tangible property and other losses in the amount of GBP 698,970. Its claim is summarized in table 8 below.

Table 8. BEI's claim
(Pounds sterling)

| Claim element | Original amount claimed |
|---|---|
| Contract | 661,071 |
| Other tangible property | 2,211 |
| Other | 35,688 |
| Total | 698,970 |

### 2. Contract

110. BEI alleges that, since 1978, it had been engaged by the Kuwaiti Ministry of Electricity and Water ("MEW") as a provider of electrical engineering and technical staff for deployment at MEW's various facilities in Kuwait. BEI alleges that its contract with MEW had been renewed on various occasions since its commencement, and was in the process of renewal in June 1990. BEI states that, as a direct result of Iraq's invasion and occupation of Kuwait, MEW failed to pay all amounts owing under the contract from 1 August 1990 to 3 March 1991. BEI states that, after 11 March 1991, it was invited to return to Kuwait in order to assist in the restoration of power supplies in Kuwait. BEI states that a new contract was negotiated with MEW, which commenced on 4 March 1991.

111. BEI alleges that, from 2 August to 11 December 1990, 24 of its staff members were held against their will in Kuwait and Iraq. BEI alleges that, during this period, it paid the staff members their regular salaries and allowances. Additionally, BEI states that one staff member was on leave in the United Kingdom on 2 August 1990, and was unable to return to Kuwait in order to perform his duties as a direct result of Iraq's invasion and occupation of Kuwait. BEI states that the employee concerned was paid his full salary for the period from 2 August 1990 to 3 March 1991.

112. BEI claims that it suffered a loss of earnings as a result of these events, which BEI quantifies as being the aggregate of the salaries and allowances paid to the employees referred to in paragraph 111 above for the period from 2 August 1990 to 3 March 1991.

3. Other tangible property

113. BEI claims compensation in the amount of GBP 2,211 for the destruction and theft of office equipment in Kuwait.

4. Other

114. BEI claims two separate amounts under the loss type "other". The first amount of GBP 12,450 was paid by BEI on 8 August 1990 to the Foreign and Commonwealth Office ("the Foreign Office") of the United Kingdom pursuant to a request for contributions to cover the cost of evacuating British nationals from Kuwait and Iraq. BEI responded by paying the requested amount of GBP 415 in respect of each of its 30 employees then located in Kuwait.

115. The second amount of GBP 23,238 is alleged to comprise financial support to families in the United Kingdom of BEI staff taken hostage, as well as medical and rehabilitation services supplied to returning staff and their families.

B. Iraq's response

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

(a) Iraq contends that the contract between BEI and MEW terminated on 31 October 1990, and that BEI has no entitlement to compensation for the period from 31 October 1990 to 3 March 1991. Iraq states that there is nothing to demonstrate that the contract would have been extended, as alleged by BEI. Iraq states that the exchange of letters dealing with the extension of the contract, which is relied upon by BEI, contains a further condition which BEI sought to impose upon MEW during the course of the negotiations to extend the contract. Iraq states that there is no evidence that MEW accepted the new condition notwithstanding the lapse of approximately one and a half months between the transmission of the letter and 2 August 1990, and that it cannot be inferred that the contract would have been extended.

(b) Iraq contends that the payment for evacuation costs was in the nature of a donation for which Iraq is not liable.

(c) Iraq points out that it should be established whether BEI's employees themselves, MEW or the Foreign Office made claims for compensation for the same losses, which may be duplicative of the claim in question.

(d) Iraq is critical of the absence of any supporting evidence for the losses associated with office equipment and furniture and states that it is not possible to deal with the claim in these circumstances.

## C. Analysis and valuation

117. On 16 January 2001, the Panel issued an article 34 notification to BEI. In the article 34 notification, BEI was requested to provide numerous items of supporting evidence in relation to the allegations made in its statement of claim, as well as certain explanations. BEI failed to respond to the article 34 notification as well as to numerous additional requests. At the time of the Panel's final consideration of the claim in November 2002, no response had been received.

118. The available evidence indicates that BEI was engaged by MEW under a contract that was due to expire on 2 September 1990. It is apparent from certain correspondence between the parties that a renewal to the existing contract was being negotiated but that, as at 20 June 1990, no final agreement had yet been reached. Notwithstanding this, and in view of BEI's long-standing contractual relationship with MEW (which relationship existed from 1978), the Panel finds that BEI had a reasonable expectation that a further renewal of the existing contract would be concluded, and that BEI would continue to provide staff to MEW after 2 September 1990. However, BEI did not provide the financial statements and other accounting records requested by the Panel in order to verify the accounting treatment of the losses and expenses in respect of which compensation is sought. BEI also did not respond to the Panel's enquiry concerning the recovery of compensation from any other sources.

119. As a result of the absence of necessary evidence and explanations, the Panel finds that BEI has failed to substantiate its claim. Accordingly, the Panel recommends no award of compensation to BEI for its claim.

## D. Recommendations

120. The Panel's recommendations with respect to the claim of BEI are summarized in table 9 below.

Table 9. BEI's claim - recommended compensation
(Pounds sterling)

| Claim element | Original amount claimed | Amount of compensation recommended |
|---|---|---|
| Contract | 661,071 | Nil |
| Other tangible property | 2,211 | Nil |
| Other | 35,688 | Nil |
| Total | 698,970 | Nil |

# VII. CLAIM OF CALEB BRETT UAE (PVT) LTD.

## A. Introduction

121. Caleb Brett UAE (PVT) Ltd. ("Caleb Brett") is a company organized under the laws of the United Arab Emirates. At the time of the claim's filing, Caleb Brett was a member of the Inchcape plc group of companies. Caleb Brett's primary business is the inspection of oil cargoes and chemical analysis of petroleum products and crude oil. As at 2 August 1990, Caleb Brett had branch offices in Kuwait and Saudi Arabia.

122. Caleb Brett claims 1,738,863 United Arab Emirates dirhams (AED) for losses related to contracts, other tangible property, payment or relief to others, pre-paid rent, petty cash and bad debts. Its claim is summarized in table 10 below.

Table 10. Caleb Brett's claim
(United Arab Emirates dirhams)

| Claim element | Original amount claimed |
|---|---|
| Contract | 883,000 |
| Other tangible property | 25,663 |
| Payment or relief to others | 380,037 |
| Pre-paid rent | 6,600 |
| Petty cash | 26,405 |
| Bad debts | 417,158 |
| Total | 1,738,863 |

123. While the claim form and the statement of claim stated the total amount claimed in United Arab Emirates dirhams, various parts of the claim were incurred in currencies other than United Arab Emirates dirhams. Caleb Brett converted these amounts to United Arab Emirates dirhams using exchange rates that it selected. Consistent with its practice in previous instalments, the Panel has assessed these parts of the claim in the currencies in which the expenses were incurred.

## B. Contract

### 1. Facts and contentions

124. Caleb Brett claims AED 883,000 for loss of profits from both its Kuwaiti and Saudi Arabian operations.

125. With respect to its Kuwaiti operations, Caleb Brett states that the operations ceased immediately after Iraq invaded Kuwait, and did not resume until November 1991 because its employees had fled Kuwait. Caleb Brett calculated this part of its claim by taking its average monthly profit (USD 9,000) in 1989 based on the financial statements for the financial year ended 31 December 1989 and

multiplying that profit figure by the number of months making up the loss period (15 months) for a total claim amount of AED 496,600.[9]

126. With respect to its Saudi Arabian operations, Caleb Brett states that the revenue from its operations, which were conducted from its two offices located in the Eastern Province of Saudi Arabia, was significantly reduced during the first three months of 1991 because of the Allied Coalition Forces' military operations in Iraq and Kuwait. Caleb Brett calculated this part of its claim by taking its average monthly profit (USD 91,473) from April to December 1991 (based on income statements as at 31 March and 31 December 1991) and multiplying that profit margin by the number of months making up the loss period (three months) to estimate its sales from January to March 1991 (USD 274,419), and then deducting the actual sales (USD 139,786) it earned. Caleb Brett converted the total loss of USD 105,000 to United Arab Emirates dirhams to arrive at its claimed amount of AED 386,400.[10]

2. Iraq's response

127. Iraq's written response to the claim for loss of profits can be summarized as follows.

(a) With respect to Caleb Brett's claim for loss of profits arising from its Kuwaiti operations, Iraq states that the claim in respect of the period between August 1990 and March 1991 is not compensable because it relates to the trade embargo. Iraq further states that, since Caleb Brett says that it had a successful business in Kuwait prior to 2 August 1990, it should have resumed its business in Kuwait before November 1991. Iraq also says that Caleb Brett's Kuwait operations had been losing money for some time prior to 1990, which contradicts Caleb Brett's "assumption" in calculating its claim for loss of profits that its profits were USD 9,000 per month on average.

(b) With respect to Caleb Brett's claim for loss of profits arising from its Saudi Arabian operations, Iraq states that the claim is based on Caleb Brett's reduced business in the first quarter of 1991, which is contrary to the well-established fact that oil production in Saudi Arabia increased substantially during this period and therefore Caleb Brett's business should likewise have increased.

3. Analysis and valuation

128. Caleb Brett calculated its claim for loss of profits separately for its Kuwaiti and Saudi Arabian operations. Notwithstanding that the evidence provided by Caleb Brett shows that the Kuwaiti operations suffered a loss, the Panel must assess the loss by looking at Caleb Brett as a single, whole entity. The information provided by Caleb Brett in support of its claim consisted of financial statements for the financial year ended 31 December 1990 for the Kuwait operations and income statements at two different points in time in 1991 for the Saudi Arabian operations. The Panel finds that there is insufficient evidence to determine what, if any, loss was suffered by Caleb Brett as a whole. The Panel therefore recommends no award of compensation to Caleb Brett for loss of profits.

## C. Other tangible property

### 1. Facts and contentions

129. Caleb Brett claims AED 25,663 for household and office furniture and equipment as well as a motor vehicle. Caleb Brett states that these items were left behind when its personnel left Kuwait following Iraq's invasion and occupation of Kuwait. In support of its claim, Caleb Brett provided a list detailing the cost, depreciation and net book value of the equipment, furniture and motor vehicle that were in Kuwait at the time of Iraq's invasion and occupation of Kuwait.[11]

### 2. Iraq's response

130. Iraq states that Caleb Brett has not demonstrated that it owned the furniture, equipment and motor vehicle which are the subject of its claim for lost tangible property, nor has it provided any evidence of its efforts to recover the property after it returned to Kuwait.

### 3. Analysis and valuation

131. The financial statements for the Kuwaiti operations for the financial year ended 31 December 1990, which were prepared on a break-up basis as a result of the cessation of business, indicate that all fixed assets were written off as at 2 August 1990. The profit and loss statement in the financial statements record a loss for fixed assets based on the net book value of KWD 2,815 which, when converted to United Arab Emirates dirhams, is higher than the amount claimed. Caleb Brett explained that the difference is because Kuwaiti tax depreciation rates were used in the financial statements, which are different from the depreciation rates applied by Caleb Brett, and claims only the lower amount. Based on its review of the evidence, the Panel recommends an award of compensation in the amount of AED 25,663 for lost tangible property.

## D. Payment or relief to others

### 1. Facts and contentions

132. Caleb Brett claims AED 380,037 for payment or relief to others, which is comprised of Caleb Brett's costs to terminate employment contracts in Kuwait, bonuses paid to employees who continued to work in Ras Tunura and Jubail, Saudi Arabia, payments in lieu of leave to the same employees who continued to work when their replacements did not arrive after the Allied Coalition Forces began its military operations in January 1991 and evacuation costs.

133. Caleb Brett claims AED 231,835[12] for termination payments paid to nine employees who worked in its Kuwait operations. The termination payments, with one exception, consisted of the employees' salaries and local allowances for August 1990 plus one month's salary in lieu of notice. The other employee was only paid his salary for the month of August 1990. In support of its claim, Caleb Brett provided internal documents called "paysheets", copies of letters to the employees explaining their final salary payments, directions to its bank directing payment to the employees'

respective bank accounts and bank drafts. While Caleb Brett provided some of these documents for each employee, it could only provide all of these documents for one of the employees.

134. Caleb Brett claims AED 111,230[13] for bonuses and payments in lieu of leave paid to six employees who remained in Ras Tunura and Jubail, Saudi Arabia, in January and February 1991. In support of its claim, Caleb Brett provided internal documents called "paysheets" that were signed by the employees.

135. Caleb Brett claims AED 36,972 for airfares for dependants of employees who were evacuated from the Persian Gulf area in January 1991. It states that "these were mainly extraordinary airfares". In support of its claim, Caleb Brett provided invoices from various travel agents for the airfares.

2. Iraq's response

136. Iraq states that there is no evidence of Caleb Brett's contractual obligations to its nine employees in Kuwait whose employment Caleb Brett alleges it had to terminate as a result of Iraq's entry into Kuwait, or how Caleb Brett calculated the amounts it paid to these employees. Iraq also states that any payments Caleb Brett made to employees who continued to work in Saudi Arabia were not a direct result of Iraq's entry into Kuwait. Lastly, Iraq states that the costs Caleb Brett claims for evacuating employees from Ras Tanura to Yanbu, Saudi Arabia, should be set off against the increased revenues Caleb Brett earned.

3. Analysis and valuation

137. The Panel considers, as it has done previously, that termination payments made as a direct result of Iraq's invasion and occupation of Kuwait should be compensated to the extent that they are adequately supported by evidence.[14] Although Caleb Brett has not provided copies of employment contracts, the Panel considers that the terms of such contracts, whether written or implied by law, required payment in lieu of notice. The Panel further considers that one month's salary in addition to the employees' August 1990 pay is reasonable. The Panel finds that Caleb Brett has provided sufficient evidence with respect to payment of the claimed amounts to its employees. Accordingly, the Panel recommends an award of compensation to Caleb Brett in the amounts of GBP 25,211 and KWD 4,437 for termination payments.

138. The Panel finds that Caleb Brett has provided insufficient evidence to demonstrate that the bonuses and payments made in lieu of leave were necessary to allow it to continue its regular operations in Saudi Arabia or that the amounts were reasonable.[15] Therefore, the Panel recommends no award of compensation to Caleb Brett for bonuses and payments in lieu of leave for employees in Saudi Arabia.

139. The Panel finds that Caleb Brett has provided insufficient evidence to support its claim for airfares for dependants of employees who were evacuated because, among other things, the Panel cannot determine from where the dependants were evacuated or if the costs were extraordinary. Accordingly, the Panel recommends no award of compensation to Caleb Brett for evacuation costs.

## E. Pre-paid rent

### 1. Facts and contentions

140. Caleb Brett claims AED 6,600 for rent it pre-paid for August 1990 in respect of premises located in Kuwait that it says its personnel vacated during the first two weeks of August 1990 because of Iraq's invasion and occupation of Kuwait. In support of this part of its claim, Caleb Brett provided a copy of the lease, the bank draft voucher and a letter of direction to its bank. The lease provides that the monthly rent of KWD 500, which equals the amount cla imed in United Arab Emirate dirhams, was payable quarterly in advance.

### 2. Iraq's response

141. Iraq states that Caleb Brett's claim for pre-paid rent for August 1990 should be rejected because Caleb Brett's employees continued to use the rental property for an unknown period of time in August 1990 and that Caleb Brett would have paid rent for the month in any event.

### 3. Analysis and valuation

142. The Panel considers, as it has previously, that pre-paid rent is compensable, in principle, where a claimant has not been able to use the premises. In this case, the Panel finds that Caleb Brett did not use the rented premises after mid-August 1990, and therefore Caleb Brett obtained no benefit from the premises during the second half of that month. Accordingly, the Panel recommends an award of compensation in the amount of KWD 250, which is the amount of pre-paid rent that the Panel considers to be referable to the second half of August 1990.

## F. Petty cash

### 1. Facts and contentions

143. Caleb Brett claims AED 26,405 for lost petty cash. It states that it always maintained KWD 2,000 in its office in Kuwait, which is equal to the amount claimed by Caleb Brett in United Arab Emirates dirhams. Caleb Brett further states that the petty cash was left behind when its personnel evacuated its premises in Kuwait because the currency had become worthless. In support of this part of its claim, Caleb Brett provided extracts from its "petty cash book" to confirm the amount of the petty cash on hand and that it subsequently wrote off the petty cash. Caleb Brett further states that trial balances as at 30 June 1990 and 31 July 1990 are unavailable because records older than seven years have been destroyed.

2. Iraq's response

144. Iraq states that Caleb Brett has not demonstrated that it had petty cash in the amount claimed in its Kuwaiti office. Iraq also notes that Caleb Brett says that it left the cash behind because the currency became worthless.

3. Analysis and valuation

145. The Panel finds that, without the trial balances, it cannot corroborate the information contained in the extracts from the "petty cash book" Caleb Brett provided in support of its claim. The Panel therefore recommends no award of compensation to Caleb Brett for lost petty cash.

G. Bad debts

1. Facts and contentions

146. Caleb Brett claims AED 417,158 for unpaid receivables owed to it as well as to several of its affiliates. The unpaid receivables relate to services provided from 1988 to 1992. Caleb Brett states that payment terms were generally 60 to 90 days. With the exception of USD 38,102, Caleb Brett provided copies of the invoices in support of this part of its claim. Caleb Brett provided no evidence with respect to the amount of USD 38,102 that it claims as unpaid receivables other than some handwritten notes. Caleb Brett states that it made every effort to collect the outstanding amounts from the two Kuwaiti corporations that owed the majority of the receivables, but that both corporations lost records during Iraq's invasion and occupation of Kuwait and were unable to agree on the outstanding amounts. Caleb Brett further states that it has continued to do business with both corporations since Iraq's invasion and occupation of Kuwait.

2. Iraq's response

147. Iraq states that the majority of the bad debts claimed by Caleb Brett were owed by Kuwait Petroleum Corporation, and that Caleb Brett has not demonstrated what efforts it made to collect the unpaid receivables. Iraq further states that, in a number of instances, the invoices date back to 1987, 1988 and 1989 and are not related to Iraq's entry into Kuwait. Lastly, Iraq states that the few invoices outstanding from Iraqi entities are dated from April to July 1990 and were not paid because of the trade embargo.

3. Analysis and valuation

148. The Panel first considers that unpaid receivables owed to affiliates of Caleb Brett are not compensable because the affiliates appear to be separate legal entities and Caleb Brett has provided no evidence to demonstrate that it was entitled to seek compensation on their behalf. With respect to the unpaid receivables owed to Caleb Brett, the Panel finds that Caleb Brett has not demonstrated that their non-payment was a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation to Caleb Brett for unpaid receivables.

## H. Recommendations

149. The Panel's recommendations with respect to the claim of Caleb Brett are summarized in table 11 below.

Table 11. Caleb Brett's claim – recommended compensation

| Claim element | Original amount claimed | Amount of compensation recommended |
|---|---|---|
| Contract | AED 883,000 | Nil |
| Other tangible property | AED 25,663 | AED 25,663 |
| Payment or relief to others | AED 380,037 | GBP 25,211<br>KWD 4,437 |
| Pre-paid rent | AED 6,600 | KWD 250 |
| Petty cash | AED 26,405 | Nil |
| Bad debts | AED 417,158 | Nil |
| Total | AED 1,738,863 | AED 25,663<br>GBP 25,211<br>KWD 4,687 |

# VIII. CLAIM OF ENTEC EUROPE LIMITED

## A. Facts and contentions

### 1. Introduction

150. The claimant is Entec Europe Limited ("Entec"), an environmental and engineering consultancy company organized under the laws of the United Kingdom. In November 1991, Entec acquired Exploration Associates Limited ("EA"), a company also organized under the laws of the United Kingdom.

151. The claim, which was filed by Entec in 1993, arises from losses allegedly suffered by EA as a direct result of Iraq's invasion and occupation of Kuwait. For ease of reference, Entec's name will be used in this report in place of EA.

152. Entec seeks compensation in the amount of GBP 33,394 for business transaction or course of dealing and other losses. Its claim is summarized in table 12 below.

Table 12. Entec's claim
(Pounds sterling)

| Claim element | Original amount claimed |
|---|---|
| Business transaction or course of dealing | 17,710 |
| Other | 15,684 |
| Total | 33,394 |

### 2. Business transaction or course of dealing

153. Entec states that, on 11 April 1990, it entered into an agreement with Middle East Surveys of Kuwait ("MES") for the secondment of an experienced marine drilling supervisor (the "supervisor") to oversee drilling work undertaken by MES crews at the Subiyah and Bubiyan Islands in Kuwait for a period of approximately three months. According to Entec, the supervisor worked on the project from 4 May to 2 August 1990.

154. Following Iraq's invasion of Kuwait, the supervisor was held captive in Kuwait and Iraq until his return to the United Kingdom on 11 December 1990. Entec states that it invoiced MES for the work of the supervisor for the period of 4 May to 31 July 1990 for a total of GBP 17,710. However, in a letter to Entec dated 20 July 1991, MES advised that its operations had "ceased" on 2 August 1990 as a result of Iraq's invasion and occupation of Kuwait, and that it could not honour the outstanding invoices.

155. Entec seeks compensation for the unpaid invoices relating to the work of the supervisor from 4 May to 31 July 1990 in the amount of GBP 17,710.

### 3. Other

156. Entec states that it continued to pay the supervisor's salary, health insurance and pension contribution costs (collectively "the payroll costs") during his detention in Kuwait and Iraq from 2 August to 11 December 1990. Entec seeks compensation for the payroll costs in the amount of GBP 13,070. Additionally, Entec claims a "nominal mark up to cover general overhead" in the amount of GBP 2,614. The total amount of Entec's claim for the payroll costs and the nominal mark up is GBP 15,684.

### 4. Evidence

157. In support of its claim, Entec provided, inter alia, the original letter of offer to MES, copies of general correspondence to and from MES, copies of the invoices issued to MES, the supervisor's employment contract and payslips for the period of his detention in Kuwait and Iraq. The Panel has also been furnished with a copy of the supervisor's passport indicating his departure from Iraq on 11 December 1990.

## B. Iraq's response

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

(a) Iraq states that the unpaid receivables relate to services rendered before its entry into Kuwait and are therefore outside the Commission's jurisdiction.

(b) Iraq alleges that Entec's calculation of the supervisor's salary and payroll costs is inaccurate and is not supported by sufficient evidence.

## C. Analysis and valuation

159. In respect of the claim for business transaction or course of dealings, the Panel finds, based on the evidence provided, that Entec had a contractual relationship with MES, and that MES owed Entec GBP 17,710 in outstanding invoices. However, in the Panel's view, the evidence does not demonstrate that the non-payment of the invoices by MES was directly caused by Iraq's invasion and occupation of Kuwait. Although the evidence suggests that MES ceased operations on 2 August 1990, it does not demonstrate that payment of the invoices was no longer possible because MES ceased to exist or was rendered bankrupt or insolvent as a result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation to Entec for the unpaid invoices.

160. In respect of the claim for other losses, the Panel finds that the payroll costs incurred by Entec for the period of the supervisor's detention are direct losses caused by Iraq's invasion and occupation of Kuwait. Entec has substantiated these costs in the amount of GBP 13,070, but it has failed to present evidence corroborating the general overhead costs of GBP 2,614. The Panel therefore recommends an award of compensation to Entec in the amount of GBP 13,070 for the payroll costs for the period of the supervisor's detention in Kuwait and Iraq.

## D. Recommendations

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

Table 13. Entec's claim – recommended compensation
(Pounds sterling)

| Claim element | Original amo unt claimed | Amount of compensation recommended |
|---|---|---|
| Business transaction or course of dealing | 17,710 | Nil |
| Other | 15,684 | 13,070 |
| Total | 33,394 | 13,070 |

# IX. CLAIM OF FACET INDUSTRIAL UK LIMITED

## A. Facts and contentions

### 1. Introduction

162. Facet Industrial UK Limited ("Facet") is a company organized under the laws of the United Kingdom. Its business operations include the sale of industrial equipment to the petroleum refining industry.

163. Facet seeks compensation in the total amount of GBP 6,511 for losses comprised of two elements: GBP 4,883 for contract losses relating to non-payment for sale of goods plus an additional GBP 1,628 in interest on the unpaid principal amount of this overdue receivable. Its claim is summarized in table 14 below.

Table 14. Facet's claim
(Pounds sterling)

| Claim element | Original amount claimed |
|---|---|
| Contract | 4,883 |
| Interest | 1,628 |
| Total | 6,511 |

### 2. Contract

164. Facet contends that it entered into a contract with the State Establishment for Oil Refining and Gas Processing ("SRGP"), a company wholly owned by the State of Iraq, for the delivery of a certain quantity of industrial filters (the "goods") worth GBP 4,883. It states that it delivered the goods in accordance with the contract, and it has not been paid. As proof of this agreement, Facet submitted a copy of SRGP's purchase order for the goods dated 16 December 1989 (the "purchase order") which provided that the goods were to be delivered to the shipping warehouse of Iraqi Airways at Heathrow Airport in London and that payment was to be made under an irrevocable letter of credit to be established by telegram in favour of the seller and to remain valid for three months.

165. Facet contends that it delivered the goods to Iraqi Airways on 4 July 1990 in accordance with the provisions of the purchase order. However, it did not produce a copy of a warehouse receipt or other documentation establishing receipt of the goods by the air carrier. As proof of its performance Facet provided the Panel with a copy of its invoice to SRGP for the goods, in the amount claimed, also dated 4 July 1990.

166. Facet contends that SRGP arranged for a letter of credit with a bank as security for its payment obligation. However, Facet did not provide the Panel with a copy of the letter of credit nor did it identify the issuing bank.

167. Facet states that it made a demand on the bank for payment under the letter of credit, but states that "the Bank refused to honour the document on the basis of Force Majeure". Again, Facet failed to produce for the Panel's inspection copies of any written communications between itself and the bank with respect to the letter of credit.

168. Facet further states that "communication with Iraq was severed and all attempts to obtain payment have proved unsuccessful." Facet has not, however, explained what those recovery efforts were.

### 3. Interest

169. Facet seeks compensation of GBP 1,628 as interest on the principal amount of the unpaid receivable owed by SRGP. The amount of the claim is based upon a 10 per cent overdue rate on the principal debt, measured from its due date to the date of Facet's execution of its claim form in 1993.

## B. Iraq's response

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

(a) Iraq contends that Facet did not make a timely delivery of the goods, since "the materials were not dispatched and invoiced until July 4 1990" and the "l/c was opened on December 20, 1989 and the delivery should have been completed within 3 months".

(b) Iraq argues that SRGP's obligation to pay for the goods arose before 6 August 1990 and "therefore should be considered an old debt which is not eligible for compensation".

(c) Finally, Iraq states that SRGP's failure to pay for the goods was due to "the embargo imposed on Iraq".

## C. Analysis and valuation

### 1. Contract

171. The Panel has received copies of SRGP's purchase order and Facet's follow-on invoice, but not a warehouse or shipping receipt from the air carrier. Therefore, in respect of the claim for non-payment there is insufficient evidence of shipment of the goods to SRGP. Additionally, as noted above, Facet did not provide the Panel with a copy of the letter of credit mentioned in the purchase order. Although Iraq appears to acknowledge that the letter of credit was in fact issued, it asserts that Facet did not comply with the terms of the contract. The Panel requested, through the article 34 notification procedure, that Facet provide a copy of the letter of credit and any warehouse receipt or other documentation establishing receipt of the goods by the air carrier, but received no response from Facet.

172. The Panel considers that, in the absence of the documentary evidence mentioned in paragraph 171 above, it is unable to conclude that Facet performed all of its obligations under the contract. The Panel therefore recommends no award of compensation to Facet for contract losses.

### 2. Interest

173. For the reasons set out in paragraphs 311-315 below, the Panel makes no recommendation with respect to the claim for interest.

## D. Recommendations

174. The Panel's recommendations with respect to the claim of Facet are summarized in table 15 below.

Table 15. Facet's claim – recommended compensation
(Pounds sterling)

| Claim element | Original amount claimed | Amount of compensation recommended |
|---|---|---|
| Contract | 4,883 | Nil |
| Interest | 1,628 | No recommendation |
| Total | 6,511 | Nil |

# X. CLAIM OF FERGUSON & TIMPSON LIMITED

## A. Facts and contentions

### 1. Introduction

175. Ferguson & Timpson Limited ("F&T") is a company organized under the laws of the United Kingdom. F&T's business operations include the sale of industrial products to the petroleum refining industry.

176. F&T seeks compensation in the amount of GBP 37,287 for a loss under the category "business transaction or course of dealing". Its claim is summarized in table 16 below.

Table 16. F&T's claim
(Pounds sterling)

| Claim element | Original amount claimed |
|---|---|
| Business transaction or course of dealing | 37,287 |
| Total | 37,287 |

### 2. Business transaction or course of dealing

177. F&T states that it entered into a contract with the State Company for Oil Projects ("SCOP"), a state-owned Iraqi company, for the sale of industrial products used in the petroleum refining industry classified under the generic name of "spiral wound" (the "goods"). F&T further states that it delivered the goods to SCOP and performed all of its obligations under the contract but that it has not been paid. It claims that the non-payment by SCOP is a direct result of Iraq's invasion and occupation of Kuwait.

178. F&T provided the Panel with a copy of a SCOP purchase order for the goods in the amount of GBP 37,287 dated 10 March 1990 (the "purchase order"). The purchase order provided that delivery would be C&F Baghdad by truck (via Turkey) within six to eight weeks and that payment would be made under an irrevocable letter of credit.

179. F&T also provided the Panel with a copy of the letter of credit issued on 22 March 1990 by Rafidain Bank and delivered to Standard Chartered Bank as the negotiating bank for F&T. The letter of credit corresponded with the amount and terms of the purchase order and states that it was to remain open until 14 June 1990. In a subsequent letter to F&T from Standard Chartered Bank, the expiry date for the letter of credit was extended to 12 August 1990.

180. F&T states that, on 21 June 1990, it shipped the goods to SCOP by air carrier from London[16] and thereby satisfied all of its obligations under its contract with SCOP. As evidence of that shipment, F&T provided the Panel with a copy of an "air waybill" dated 21 June 1990 issued by Middle East Express Ltd. (as carrier) to F&T (as shipper) pertaining to the goods. The air waybill refers to the purchase order. F&T states that "SCOP acknowledged receipt of the consignment" but it offered no evidence in support of that assertion.

181. F&T states that it then made demand for payment under the letter of credit through the services of the negotiating bank. F&T provided the Panel with a copy of its demand draft, issued to Rafidain Bank on 25 July 1990 and drawn for the full amount of the purchase price. It also supplied the Panel with a copy of F&T's invoice to SCOP pertaining to this transaction, which bears a date of presentation of 26 July 1990.

182. The negotiating bank refused payment under the letter of credit against Rafidain Bank's account, because F&T's demand was made more than 21 days after the delivery date of the goods. F&T states that SCOP had routinely waived similar discrepancies in F&T's performance under other letters of credit for prior sales and that, on the basis of this prior course of dealing, it was reasonable for F&T to expect that it would have received similar treatment in this transaction. F&T explains that, as at 2 August 1990, its negotiating bank was in the process of seeking such a waiver of the late demand under the letter of credit. It states that the negotiating bank continued this collection effort on its behalf after that date through a number of subsequently issued telexes, all of which went unanswered. Copies of those telexes, and of explanatory letters from Standard Chartered Bank to F&T, concerning its failed effort were also supplied to the Panel.

### B. Iraq's response

183. Iraq states that, while the letter of credit did not provide a specific time limit for negotiation by F&T following its delivery of the goods, customary commercial law sets a 21-day deadline for valid presentment under a letter of credit. It argues that, because F&T did not tender its demand draft and supporting documents to the negotiating bank within that period, it violated the terms of the purchase order.

### C. Analysis and valuation

184. Iraq's argument rests on the presumption that termination of the letter of credit would have extinguished SCOP's obligation to pay F&T. However, the Panel finds that while the letter of credit secured SCOP's payment obligation, the failure of the letter of credit did not relieve SCOP of its obligation to pay for the goods, if received. Iraq did not, in its written response, deny SCOP's receipt of the goods, and F&T provided the Panel with evidence of its delivery of the goods to an air carrier for consignment to SCOP.

185. The Panel finds that F&T performed its obligations under the purchase order by delivering the goods to SCOP on 21 June 1990 (a date which was less than 90 days prior to 2 August 1990) and that it has not been paid for that delivery. While delivery was not by the mode nor within the period specified in the purchase order, SCOP did not reject the goods nor file any contemporaneous protest with F&T. In the circumstances, the Panel finds that SCOP waived this discrepancy in F&T's performance. The Panel further finds that, but for Iraq's invasion and occupation of Kuwait, SCOP would have paid for the goods in due course. The Panel therefore recommends an award of GBP 37,287 to F&T for business transaction or course of dealing losses.

## D. Recommendations

186. The Panel's recommendations with respect to the claim of F&T are summarized in table 17 below.

Table 17. F&T's claim – recommended compensation
(Pounds sterling)

| Claim element | Original amount claimed | Amount of compensation recommended |
|---|---|---|
| Business transaction or course of dealing | 37,287 | 37,287 |
| Total | 37,287 | 37,287 |

# XI. CLAIM OF SAYBOLT UNITED KINGDOM LIMITED

## A. Facts and contentions

### 1. Introduction

187. Saybolt United Kingdom Limited ("Saybolt") is a company organized under the laws of the United Kingdom. At all times material to its claim, Saybolt conducted business as a supplier of tank calibration, metrology and prover loop verification services.

188. Saybolt claims compensation in the amount of GBP 164,112 in respect of losses allegedly arising as a direct result of Iraq's invasion and occupation of Kuwait. Its claim is summarized in table 18 below.

Table 18. Saybolt's claim
(Pounds sterling)

| Claim element | Original amount claimed |
|---|---|
| Contract | 70,888 |
| Other tangible property | 46,345 |
| Income-producing property | 46,879 |
| Total | 164,112 |

### 2. Contract

189. Saybolt alleges that it concluded a contract (the "contract") with Kuwait National Petroleum Company ("KNPC") on 1 January 1988. Under the contract, Saybolt was to provide tank calibration, metrology and prover loop verification services [17] to KNPC in accordance with agreed specifications and rates of remuneration for a period of four years.

190. Saybolt alleges that Iraq's invasion and occupation of Kuwait prevented the completion of the contract, and that Saybolt suffered a loss of the profits that it expected to earn in the performance of the contract for the period from 2 August 1990 until 31 December 1991. Saybolt measured its expected profits under the contract by reference to a monthly schedule of profit and loss relating specifically to the contract for the 1990 calendar year. Saybolt contended that it expected to earn the amount of GBP 52,396 from the contract for the 1990 calendar year, but that, due to the cessation of work on 2 August 1990, it earned only GBP 33,904 in this period. Saybolt alleges that the difference of GBP 18,492 represents its loss of profit for the remainder of the 1990 calendar year. Saybolt alleges that it would have earned the same amount in the 1991 calendar year as it had earned in the 1990 calendar year and seeks compensation for loss of profits of GBP 52,396 for the 1991 calendar year. Saybolt accordingly claims compensation for lost profits of GBP 70,888 for the unfulfilled portion of the contract.

3. Other tangible property

191. Saybolt alleges that numerous items of material and equipment relating to the performance of its work under the contract, certain furniture and household effects situated in an apartment used by staff members, and cash held in a safe at its office, were lost or destroyed during Iraq's invasion and occupation of Kuwait. The total value of all of these items is alleged to amount to GBP 23,449.

192. Under this same category of loss, Saybolt alleges that a retention of 5 per cent, amounting to KWD 10,836 (converted by Saybolt to GBP 22,896), was withheld by KNPC on all invoices paid by KNPC between January 1988 and July 1990. Saybolt alleges that this amount could not be recovered from KNPC due to Saybolt's inability to procure a tax certificate from the Kuwaiti authorities. Saybolt contends that it could not procure the relevant tax certificate as all of the documents required to substantiate its application for the certificate were lost or destroyed during the period of Iraq's invasion and occupation of Kuwait.

4. Income–producing property

193. Saybolt alleges that it incurred costs of GBP 46,879 relating to the repair of a "trailer mounted master prover" damaged and stripped of certain components during Iraq's invasion and occupation of Kuwait. Saybolt alleges that it performed the repairs between March and September 1992 at Mina Abdulla in Kuwait.

B. Iraq's response

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

(a) Saybolt did not provide a copy of its contract with KNPC. In the absence of the contract the claim is inadequately substantiated.

(b) The profit and loss account included with the statement of claim indicates that eleven seventeenths of the contract was completed by July 1990 and was implemented in six months. This is indicative that it was possible to complete the work in its entirety by the end of 1990 and not the end of 1991.

(c) Saybolt has provided no evidence to substantiate the claim for "other tangible property".

(d) The cash allegedly lost cannot be proved and is not compensable.

(e) The amount of GBP 22,896 concerns the debt of a third party and there is no legal justification or support for seeking compensation from Iraq for this amount.

(f) In regard to the loss of "income-producing property", Saybolt has provided insufficient particularity of the nature of the damage allegedly inflicted on the equipment, save for a list of materials purchased and travel and residence bills pertaining to persons allegedly connected with its repair. The period of eight months required by Saybolt for the repair was unreasonable. A fair

possibility exists that the repair was routine maintenance and is therefore undeserving of compensation.

## C. Analysis and valuation

### 1. Contract

195. Saybolt alleged that it was unable to provide a copy of the contract with KNPC as a result of the loss of the original from its office in Kuwait due to the destruction of the office during Iraq's invasion and occupation of Kuwait. Saybolt did, however, provide a copy of the tender documentation and copies of invoices issued to KNPC under the contract from January to August 1990. Saybolt also provided a schedule specifying monthly revenues and expenses relating to the contract from January to July 1990 as described in paragraph 190 above ("the profit and loss schedule"). The tender documentation and the invoices reflect that Saybolt was engaged by KNPC to provide certifications in respect of 17 prover loops per year at a rate of KWD 5,040 per certification. During the period from 1 January to 2 August 1990 Saybolt provided 11 certifications for which it earned a gross profit of GBP 33,904. Based upon these results, Saybolt extrapolated its gross profit for the provision of the remaining six certifications for 1990 and the 17 certifications for 1991 to be GBP 70,888.

196. The Panel finds that Saybolt has established that it was engaged by KNPC to provide proving services under the contract until 31 December 1991, and that it was unable to fulfil its contractual obligations from 2 August 1990 to 31 December 1991 as a direct result of Iraq's invasion and occupation of Kuwait.

197. With respect to the valuation of the loss of profits suffered by Saybolt, the profit and loss schedule indicates that Saybolt's gross profit from the contract in the period from 1 January to 2 August 1990 amounted to 27.8 per cent. Saybolt's audited financial statements for the financial years ended 31 December 1989, 1990 and 1991 reflected a gross profit from operations of 36.3 per cent, 35.3 per cent and 42.4 per cent respectively. The Panel therefore finds that the claimed gross profit rate of 27.8 per cent for the remainder of the 1990 calendar year and the entire 1991 calendar year are reasonable.

198. Accordingly, the Panel recommends an award of compensation to Saybolt for loss of profits in the amount of KWD 32,226, Kuwaiti dinars being the currency in which the loss was incurred.

### 2. Other tangible property

199. With respect to the claim for material, equipment, furniture and household effects, the Panel finds that Saybolt has established that these items were lost or destroyed as a direct result of Iraq's invasion and occupation of Kuwait. Saybolt provided copies of its audited financial statements reflecting the net book value of the assets in question to be GBP 4,461 as at 31 July 1990. Net book value was calculated depreciating the assets at the rate of 25 per cent per year from their original cost. Additionally, the net book value of the assets had been entirely written off in the financial statements for the financial year ended 31 December 1990. The Panel accordingly recommends an award of

compensation to Saybolt for material, equipment, furniture and household effects in the amount of GBP 4,461.

200. The Panel finds that Saybolt was unable to provide evidence to substantiate its claim for lost cash. The Panel therefore recommends no award of compensation to Saybolt for lost cash.

201. In regard to the retention monies of GBP 22,896 allegedly withheld by KNPC, the Panel finds that this amount constitutes an unpaid debt owed by KNPC to Saybolt. Saybolt has not demonstrated that it made the necessary efforts to collect the debt from KNPC. The Panel accordingly recommends no award of compensation to Saybolt for retention monies.

### 3. Income-producing property

202. This claim element relates to the cost of spare parts used to repair a trailer-mounted master prover as well as the salary, travel and subsistence costs of a calibration engineer and his assistant incurred from 5 March to 29 October 1992 in order to perform the repairs. The Panel finds that Saybolt provided supporting evidence in the form of extracts from payroll records, airline tickets and supplier invoices.

203. Saybolt's audited financial statements reflect that, as at 31 July 1990, the net book value of the trailer-mounted prover was GBP 10,006. This amount was calculated by subtracting accumulated depreciation of GBP 18,246 from the original cost of the unit of GBP 28,252. The unit had been depreciated at a rate of 25 per cent per year, in accordance with the duration of the contract under which it was being used. The net book value was confirmed by the fact that Saybolt wrote off the entire net book value of the unit in its financial statements for the financial year ended 31 December 1990. On the other hand, the Panel finds that the claimed repair costs were unreasonable in comparison to the net book value of the unit. The Panel therefore recommends an award of compensation to Saybolt for income-producing property in the amount of GBP 10,006.

## D. Recommendations

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

Table 19. Saybolt's claim – recommended compensation

| Claim element | Original amount claimed | Amount of compensation recommended |
|---|---|---|
| Contract | GBP 70,888 | KWD 32,226 |
| Other tangible property | GBP 46,345 | GBP 4,461 |
| Income-producing property | GBP 46,879 | GBP 10,006 |
| Total | GBP 164,112 | KWD 32,226<br>GBP 14,467 |

# XII. CLAIM OF ARABIAN CHEVRON, INC.

## A. Facts and contentions

### 1. Introduction

205. The claimant is Arabian Chevron, Inc. ("Arabian Chevron"), a corporation organized under the laws of the State of Delaware, United States. As at the date of the filing of its claim, Arabian Chevron was a wholly-owned subsidiary of Chevron Corporation, a publicly held State of Delaware corporation.[18]

206. Arabian Chevron originally sought compensation in the amount of USD 2,185,419 for business expenses that it categorized as "payment or relief to others". In April 2002, Arabian Chevron reduced the total amount of its claim to USD 1,972,098.

207. The amount claimed by Arabian Chevron relates to personnel expenses for certain of its, or its affiliates', employees who were working in Saudi Arabia on 2 August 1990, or who were subsequently assigned to work in that country before 1 March 1991. The period of the claim commences on 2 August 1990 and ends on 28 February 1991 (the "claim period"). Arabian Chevron's claim is summarized in table 20 below.

Table 20. Arabian Chevron's claim
(United States dollars)

| Claim element | Original amount claimed | Amended amount claimed |
|---|---|---|
| Payment or relief to others | | |
| - Evacuation costs for dependants | 137,165 | 137,165 |
| - Temporary living allowance for dependants | 857,217 | 857,217 |
| - Employee evacuation contingency plan | 750,755 | 750,755 |
| - Relocation costs for dependent families | 123,254 | 123,254 |
| - Hazard pay and pay during home leave | 317,028 | 103,707[19] |
| Total | 2,185,419 | 1,972,098 |

### 2. Payment or relief to others

208. Arabian Chevron contends that 60 of its, and its affiliated companies', employees were working in Saudi Arabia during the claim period. These employees were engaged in the provision of services to the Saudi Arabian Oil Company ("Saudi Aramco") pursuant to an "Agreement for Technical Services" between Saudi Aramco and Saudi International Services Company ("SISCO") dated 10 June 1990 (the "service agreement").

209. Saudi Aramco is a Saudi Arabian corporation that is wholly-owned by the Government of Saudi Arabia. SISCO is a State of Delaware partnership comprised of Chevron Worldwide Services, Inc. and three other United States-based oil companies (Exxon International Services Company, Mobil International Petroleum Services Inc., and Texaco Arabian Services Company). The four partners, in accordance with their partnership agreement, shared all costs and profits. As of the date of the claim's filing, Chevron Worldwide Services Inc., like Arabian Chevron, was a wholly-owned subsidiary of Chevron Corporation. Thus, Chevron Worldwide Services, Inc. and Arabian Chevron were affiliated companies.

210. Under the service agreement, SISCO (through its partners) provided technical services and seconded employees (the "loaned employees") to Saudi Aramco to assist it in the performance of its business operations in Saudi Arabia. Chevron Worldwide Services, Inc., the SISCO partner, was not registered to do business in Saudi Arabia. The claimant, Arabian Chevron, on the other hand, was registered to do business, and maintained a business office, in that country. For this reason, the two affiliates established an intra-company practice under which Arabian Chevron seconded employees into Saudi Aramco's service, as Chevron Worldwide Service, Inc.'s contribution to the SISCO partnership's obligations under the service agreement.[20] As further explained below, reimbursement for personnel costs was made by SISCO directly to Arabian Chevron, and not to the partner, Chevron Worldwide Services, Inc. In the circumstances, the Panel agrees that Arabian Chevron is the proper claimant for these personnel related costs.[21]

211. While the loaned employees were required to relocate to Saudi Arabia (the principal place of business of Saudi Aramco), they remained the employees of the SISCO partners (or their affiliates) while in that location and they received all of their salary and other compensation from their separate employers rather than from Saudi Aramco. The service agreement describes the range of services that were to be performed by the loaned employees as follows:

> "SISCO shall provide … to Saudi Aramco … a broad range of managerial, administrative, operational, maintenance and technological services and support in connection with the conduct in Saudi Arabia of crude oil and gas exploration, production, refining and terminalling operations by Saudi Aramco and its Affiliates …"

212. Under the service agreement, Saudi Aramco agreed to reimburse SISCO for its costs in providing these technical services and loaned employees (the "reimbursement payments"). Arabian Chevron states that the reimbursement payments were intended to cover those actual personnel costs (including payroll and burden) incurred by the SISCO partners with respect to their loaned employees, multiplied by an uplift factor that was intended to cover indirect costs. In addition, Saudi Aramco agreed to pay SISCO a fixed monthly fee for its services (the "lump sum fee"). The two types of payments received by SISCO under the service agreement were thus owned by, and subject to distribution amongst, the partners.

213. At the direction of Chevron Worldwide Services, Inc., SISCO paid its partnership share of the reimbursement payments received from Saudi Aramco directly to Arabian Chevron, as it had incurred the personnel expenses under the service agreement on behalf of Chevron Worldwide Services, Inc.

Chevron Worldwide Services, Inc. received the remainder of all other partnership distributions allocated to its 25 per cent interest in SISCO, including any profits on revenues earned on the lump sum fee.

214. The service agreement lists those types of expenses that were intended for inclusion in the reimbursement payments. Notably, this description does not specifically cover expenses of the sort claimed by Arabian Chevron, and Arabian Chevron states that SISCO did not invoice Saudi Aramco for those expenses. Arabian Chevron further states that neither SISCO, Chevron International Services itself, nor any of its affiliates, have received reimbursement from Saudi Aramco (or any other party) for the expenses that have been included in this claim.

215. Arabian Chevron has not revealed the amount of the monthly lump sum fee that Saudi Aramco paid to SISCO under the service agreement during the claim period, despite the Panel's specific request for this information. It has, however, offered its certification that neither it, nor any of its affiliates, were paid compensation by Saudi Aramco during the claim period that was dependent upon, or measured by, the level of hydrocarbon production in Saudi Arabia.

216. Arabian Chevron states that 51 of its, or its affiliates', employees were in Saudi Arabia, working for Saudi Aramco as loaned employees, under the service agreement, on 2 August 1990.[22] Arabian Chevron states that an additional nine of its employees were seconded to SISCO, and likewise were relocated to Saudi Arabia and became loaned employees during the claim period. Arabian Chevron states that, during the claim period, it incurred extraordinary expenses with respect to these employees as a direct result of Iraq's invasion and occupation of Kuwait for which it did not receive reimbursement under the service agreement.

217. Arabian Chevron states that all of its employees who were working in Saudi Aramco's service under the service agreement on 2 August 1990 were assigned to offices and facilities in Dahran, Saudi Arabia (the headquarters for Saudi Aramco), and that both they and their dependants resided in that city. Dahran is located in the Eastern Province of Saudi Arabia, on the Persian Gulf, in the northeast of the country, some 300 kilometres from the border with Kuwait. Arabian Chevron submitted an annotated map, showing the close proximity of its employees' residences to a site where it states a scud missile landed during the period of the hostilities, causing substantial property damage. It said that several other scud missiles landed in adjacent areas, causing significant loss of life. It further states that the area of Dhahran served as the military headquarters for the Allied Coalition Forces during the "Gulf War", and as a forward "staging" area for those forces, prior to 17 January 1991, and that a military base was located immediately adjacent to some of its employees' homes. Arabian Chevron contends that these factors increased the likelihood of the city being targeted by Iraqi forces.

218. Arabian Chevron states that Iraq's invasion and occupation of Kuwait "created a credible and imminent threat that Iraq would thereafter invade Saudi Arabia" and that, because of this and the factors elaborated upon in paragraph 217 above, its employees were placed in jeopardy. It further states that this threat was not only to Saudi Aramco's facilities and its employees in or near Dahran but also to the dependants of those employees who resided near those facilities. Arabian Chevron states that these threats justified its taking the following actions (and in so doing, incurring the following

expenses) in an effort to protect the welfare of its employees and their dependants who were in Dhahran while working for Saudi Aramco.

(a) Evacuation costs for dependants

219. Arabian Chevron claims USD 137,165 for the costs of evacuating certain of its employees and their dependants from Dhahran during the month of August 1990. The dependants were ultimately flown to the countries of their residence (primarily to the United States and Canada, after short stops in London while en route), where they were expected to stay for the duration of the hostilities, while the employees remained in Saudi Aramco's service. The costs in this category included: (a) a proportionate part of the charter cost of two commercial airline flights to London (the costs being shared with another of the SISCO partners); (b) ground transportation, overnight accommodation and meals in London; (c) service gratuities; and (d) the cost of commercial airline tickets for the evacuees from London to their final destinations in North America.

(b) Temporary living allowance for dependants

220. Arabian Chevron claims USD 857,217 for temporary living allowances paid to those evacuees who left a family member behind in Saudi Arabia in the continued service of Saudi Aramco. The claim period for this component of personnel expenses is August 1990 to February 1991 (inclusive). The claim includes payments made to families of employees who were first assigned to work in Saudi Arabia under the service agreement during the claim period (but whose families were not part of the August evacuation). Arabian Chevron states that it was justified in making this payment to its employees (or to their families) because the necessary evacuation caused its employees to face increased personal living expenses, due to their need to maintain two residences simultaneously, one in Saudi Arabia and the other in their home country. In other words, the circumstances of the evacuation converted the conditions of Arabian Chevron's employment of its Saudi-based employees from that of an "accompanied" overseas tour, to that of an "unaccompanied" tour. Arabian Chevron states that the evacuated families were allowed to return to Saudi Arabia after the cessation of hostilities, and it separately claims the expenses entailed in their return travel to Saudi Arabia. According to Arabian Chevron, the following payments were made: (a) a one-time "settling in" allowance for each family of USD 1,000; (b) a monthly payment of USD 2,500 to each family with two or less children; and (c) a monthly payment of USD 3,000 to each family with more than two children.

(c) Employee evacuation contingency plan

221. Arabian Chevron claims expenses totalling USD 750,755 for its employee evacuation contingency plan. These expenses represent Arabian Chevron's proportionate share (also shared with a SISCO partner) of chartering a Boeing 737 aircraft, which was kept on standby in Saudi Arabia for approximately 150 days. Arabian Chevron contends that it was prudent in agreeing to share the charter costs of this airplane because, after 2 August 1990, there was a real risk that Saudi Arabia, and in particular the area of Dhahran, would eventually be overrun by Iraqi forces, in which event the evacuation of Arabian Chevron's work force would have been required on very short notice. On this

basis, Arabian Chevron says that it was reasonable to incur costs to ensure the means to evacuate its employees.

222. The initial charter agreement for this aircraft began on 28 September 1990 and concluded on 9 February 1991. The first charter was replaced by a second charter, which continued until 24 February 1991. Arabian Chevron claims its proportionate share of the payments made under both charters during the period 28 September 1990 to 24 February 1991. These payments included a one-time positioning fee of USD 30,000, plus daily charter hire rates varying from a high of USD 9,350 per day to a low of USD 6,610 per day. Arabian Chevron submitted a copy of the initial charter agreement, but it was unable to locate a copy of the replacement charter agreement. It states that the charter rates in the second agreement were identical to those in the original agreement. The Panel was able to substantiate that the amount claimed was in conformity with the rental rates as provided in the original agreement.

(d) Relocation costs for dependent families

223. Arabian Chevron claims USD 123,254 for relocation costs for dependent families. Included in this claim are the following types of expense: (a) travel costs for employees travelling from Saudi Arabia to North America to visit their evacuated families; (b) long distance telephone charges between the two groups; (c) air freight for transportation of personal belongings between Saudi Arabia and North America; and (d) the cost of transportation of the evacuated families from North America back to Saudi Arabia, after the cessation of hostilities.

(e) Hazard pay and pay during home leave

224. Finally, Arabian Chevron claims USD 103,707 for hazard pay to employees and salaries paid to employees while on home visits. The hazard pay expense represents a 15 per cent pay premium (as applied to "base pay", after tax) that Arabian Chevron paid to its employees in Saudi Arabia during the pay periods encompassed within the months from August 1990 to March 1991. The home visit expense pertains to pay earned by Arabian Chevron employees on those days when they were authorized to travel and visit their families in North America. Arabian Chevron's authorization for these home visits was such that each employee was entitled to a total of nine days leave (including travel time) after each 90 days he remained on the job in Saudi Arabia following 2 August 1990. This home leave policy was in addition to regularly earned vacation time. Arabian Chevron contends that it was forced to temporarily alter its compensation package for its workers in Saudi Arabia by making these two types of payments as an incentive for its employees to remain on the job in Saudi Aramco's service during the period of the hostilities, at a time when there was increased risk to safety. Arabian Chevron also points out that, from a comparative standpoint, Saudi Aramco's employees (who in many cases were involved in the same work and served in the same job descriptions as its employees) were receiving this kind of supplemental payment from their employer; thus harmony of the work force dictated that Arabian Chevron also institute these payments.

B. Iraq's response

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

(a) Iraq contends that the evacuation of the dependants of Arabian Chevron's employees from Saudi Arabia was unnecessary, as their physical welfare was never placed in jeopardy as a result of Iraq's entry into Kuwait on 2 August 1990.

(b) Iraq contends that certain of the expenses claimed by Arabian Chevron are "highly exaggerated and contradict with the principle of loss mitigation". Specifically, Iraq states that it was unreasonable for Arabian Chevron to hold a chartered jet airliner on standby for the whole of the time of the hostilities, and that in no event was the charter justified beyond a four-month period.

(c) Iraq contends that Arabian Chevron may have received compensating payments from Saudi Aramco covering these expenses under the terms of the service agreement, and it suggests that these expenses were a cost of doing business for which Arabian Chevron received compensation through the lump sum fee.

(d) Iraq contends that Arabian Chevron may have received some equity compensation relating to Saudi Aramco's crude oil production during the claim period whether through the service agreement or by other means and, if so, Iraq argues that any of Arabian Chevron's extraordinary expenses should be set off against the extraordinary profits that it earned on its equity compensation pertaining to that crude oil production.

C. Analysis and valuation

226. The Panel finds that Arabian Chevron incurred the claimed personnel expenses because it was contractually required to maintain a viable work force in Saudi Arabia during the time of Iraq's invasion and occupation of Kuwait. Given the close proximity of Dhahran to the Kuwaiti border, the Panel finds that Arabian Chevron's payments to employees were reasonable measures taken as a result of the threats to employee safety created as a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore finds that Arabian Chevron's payments were a legitimate and proportionate incentive to keep their work force intact during the claim period, and that they are compensable in principle, subject to Arabian Chevron's provision of adequate proof that they were, in fact, incurred and paid.

227. In response to the Panel's article 34 notifications, Arabian Chevron submitted copies of trial balances for its Saudi Arabian office, which recorded the total of personnel expenses that it incurred during several quarters before and after the claim period. Using the figures in these trial balances, the Panel was able to determine the average monthly personnel expenses incurred by Arabian Chevron in its Saudi Arabian operations, excluding the seven months of the claim period. By applying this average monthly expense rate to the claim period, the Panel found that, but for Iraq's invasion and occupation of Kuwait, Arabian Chevron could reasonably have expected to incur a total of USD 4,098,955 in personnel expenses. In fact, the total of Arabian Chevron's actual personnel expenses

during the claim period were USD 6,519,805, a difference of USD 2,420,850, which was more than a 50 per cent increase over expected normal costs, while the number of workers that it seconded to Saudi Aramco's service decreased slightly. Notably, the total amount claimed by Arabian Chevron is some USD 450,000 less than the level of these excess costs.

228. The Panel notes that Arabian Chevron was unable to provide documents, such as invoices and expense account receipts, directly establishing its payment for some of the claimed personnel expenses. With respect to those expenses where direct proof of payment could not be provided, the Panel has accepted the calculations described in the preceding paragraph as an alternative methodology for proof of payment. The Panel finds that Arabian Chevron has proved that it incurred extraordinary personnel expenses of the types and amounts that it has claimed, subject to the adjustments indicated below.

229. Based on its review of the evidence, the Panel finds that there was not a substantial variation in the amount of revenue received by Arabian Chevron in the year 1990, as compared to subsequent years. This finding supports Arabian Chevron's representation that the amount of the lump sum fee remained constant throughout the term of the services agreement. The Panel therefore rejects Iraq's argument that Arabian Chevron was compensated for its extraordinary personnel expenses through increases in the amount of the lump sum fee. Similarly, the Panel is satisfied that the total compensation paid to SISCO under the service agreement bore no relationship to Saudi Aramco's profitability or to the level of its hydrocarbon production during the claim period.

230. The Panel notes that, while the service agreement contained a force majeure clause, Saudi Aramco's business operations continued during this period. Therefore, it is doubtful that Saudi Aramco would have recognized Iraq's invasion and occupation of Kuwait as an excuse for SISCO's, and thus for Arabian Chevron's, non-performance under that agreement.

### 1. Evacuation costs for dependants

231. Arabian Chevron's claim in the amount of USD 137,165 for "evacuation costs of dependants" consists of a proportionate part of the total price of two airline charters from Saudi Arabia to London, plus other travel expenses incurred by dependants during their evacuation to North America. The Panel has previously held that this type of employer expense is compensable in principle, subject to the claimant's provision of adequate proof.[23]

232. The Panel recommends that adjustments totalling USD 27,812 be made to this grouping for the following reasons. A portion of the claim pertains to the travel expenses of families of certain employees who were repatriated during the claim period, meaning that Arabian Chevron would have incurred these costs, regardless of the occurrence of Iraq's invasion and occupation of Kuwait. Another component of the claim relates to the travel expenses of an individual whose family name did not appear on Arabian Chevron's list of air passengers. Finally, value added tax, as applied to these two adjustments, should likewise be disallowed. Accordingly, the Panel recommends an award of compensation to Arabian Chevron for evacuation costs for dependants in the amount of USD 109,353.

2. Temporary living allowance for dependants

233. Arabian Chevron claims USD 857,217 for "temporary living allowance for dependants", which relates to the additional compensation paid to those of its employees who worked in Saudi Arabia during the claim period and who had families in North America, to compensate them for the necessary cost of maintaining two residences.

234. The Panel recommends that adjustments totalling USD 159,555 be made to this claim element for the following reasons. Some of the employee allowances were noted as being "overpayments", for which reimbursements to Chevron should have been made by the recipient employees. Additionally, some of the allowances do not appear to have been calculated in accordance with company policy. Finally, it appears that, in some cases, Chevron sought compensation for payments made under its standard compensation packages for employees on loan assignment to Saudi Arabia that would have been due in any event, and thus these were not additional expenses caused by Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends an award of compensation to Arabian Chevron for temporary living allowance for dependants in the amount of USD 697,662.

3. Employee evacuation contingency plan

235. Arabian Chevron claims USD 750,755 for its proportionate share of the cost of hiring a commercial jet airliner that was placed in immediately serviceable condition, and held on standby, on the ground in Saudi Arabia as a means for evacuating its employees. In its responses to the Panel's article 34 notifications, Arabian Chevron notes that the airplane was chartered purely as a precautionary measure, and it did not use the aircraft to evacuate and/or transport its own employees nor for any other purpose. As with other parts of this claim, the Panel finds that the evacuation plan implemented by Arabian Chevron was a reasonable measure taken as a direct consequence of Iraq's invasion and occupation of Kuwait, the cost of which is compensable in principle.

236. The threat of hostilities in the geographic area covered by this claim was not substantially reduced until after 24 February 1991. The Panel therefore finds that it was reasonable for Arabian Chevron and another SISCO partner to maintain a chartered airplane on standby in Dhahran for the evacuation of its employees for the full claim period. Accordingly, the Panel recommends an award of compensation to Arabian Chevron for the employee evacuation contingency plan in the amount of USD 750,755.

4. Relocation costs for dependent families

237. Arabian Chevron claims USD 123,254 under this category, the largest component of which pertains to expenses that were reimbursed to its employees for their cost of travel on home leave visits. Those visits were, as explained above, a personnel benefit that was instituted during the claim period as a result of the evacuation of employees' dependent families from Saudi Arabia. The Panel finds that it was reasonable for Arabian Chevron to reimburse its employees for their cost of occasional home visits during the period of their forced separation from families.

238. The Panel recommends that adjustments totalling USD 20,662 be made to this grouping for a variety of reasons, including the following. Certain of the expenses appear to relate to the normal (once per year) annual travel allowance to which each employee and his or her dependants were ordinarily entitled, an expatriate personnel benefit that was in place before 2 August 1990. On several occasions, employee airline expenses were erroneously accounted for twice in the loss claim. Other expenses relate to normal travel expenses for final repatriation of employees that would have been payable in any event. Finally, some of the expenses do not appear to be related to employee travel on home leave visits. Accordingly, the Panel recommends an award of compensation to Arabian Chevron for relocation costs for dependent families in the amount of USD 102,592.

### 5. Hazard pay and pay during home leave

239. Arabian Chevron claims an amended amount of USD 103,707 for a combination of two claims for supplemental salary benefits for those of its employees who worked in Saudi Arabia during the claim period, under the service agreement. The Panel has determined that the USD 213,321 downward adjustment that Arabian Chevron made to this component of its claim[24] represents full reimbursement (from Saudi Aramco, through the SISCO partnership) for all of the 15 per cent hazard payments incurred by Arabian Chevron, save for the hazard payments made during time when the employees were on extraordinary home leave. However, Saudi Aramco refused to reimburse the SISCO partners for the salary expenses that were incurred during periods when their seconded employees were on extraordinary home leave, to the extent that these leave periods exceeded normal vacation entitlements. The Panel finds that neither the temporary home leave policy, nor the 15 per cent premiums paid during these periods of leave, were directly caused by Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation to Arabian Chevron for hazard pay and pay during home leave.

## D. Recommendations

240. The Panel's recommendations with respect to the claim of Arabian Chevron are summarized in table 21 below.

Table 21. Arabian Chevron's claim – recommended compensation
(United States dollars)

| Claim element | Original amount claimed | Amended amount claimed | Amount of compensation recommended |
|---|---|---|---|
| Payment or relief to others | | | |
| - Evacuation costs for dependants | 137,165 | 137,165 | 109,353 |
| - Temporary living allowance for dependants | 857,217 | 857,217 | 697,662 |
| - Employee evacuation contingency plan | 750,755 | 750,755 | 750,755 |
| - Relocation costs for dependent families | 123,254 | 123,254 | 102,592 |
| - Hazard pay and pay during home leave | 317,028 | 103,707[a] | Nil |
| Total | 2,185,419 | 1,972,098 | 1,660,362 |

[a] See note 19 of this report.

## XIII. CLAIM OF CHEVRON INTERNATIONAL OIL COMPANY, INC.

### A. Facts and contentions

#### 1. Introduction

241. Chevron International Oil Company, Inc. ("Chevron International") is a corporation organized under the laws of the State of Delaware, United States. Chevron International claims USD 44,791[25] with respect to the increased insurance premiums that it allegedly paid as a result of Iraq's invasion and occupation of Kuwait for cargo war risk insurance and hull and machinery insurance for a single tanker shipment of crude oil from Ras Tanura, Saudi Arabia. Chevron International's claim is set out in table 22 below.

Table 22. Chevron International's claim
(United States dollars)

| Claim element | Original amount claimed | Amended amount claimed |
|---|---|---|
| Other | 67,820 | 44,791 |
| Total | 67,820 | 44,791 |

242. Chevron International states that it purchased the crude oil from a third party, and shipped the oil to Portugal in December 1990 where it was processed for its own account.

#### 2. Other

(a) Cargo war risk insurance

243. Chevron International states that, as a result of Iraq's invasion and occupation of Kuwait, its policy for cargo war risk insurance was cancelled with effect from 14 August 1990. Chevron International states that its premium increased from .0035 per cent to .1734 per cent of the value of the cargo shipped. Chevron International claims USD 30,421 based on the difference in premiums for the cargo shipped that was valued at USD 17,905,260. Chevron International provided copies of the original insurance policy, notice of cancellation, premium statement for the replacement insurance and proof of payment.

(b) Hull and machinery insurance

244. Chevron International further states that its policy for hull and machinery insurance was cancelled with effect from 2 August 1990. Chevron International states that the premium prior to that date had been a flat rate of USD 55,000 annually for an estimated 40 Persian Gulf voyages. The additional per voyage premium for replacement insurance for the shipment was USD 14,370. Chevron International provided copies of the original insurance policy, notice of cancellation, premium statement for the replacement insurance and proof of payment.

B. Iraq's response

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

(a) Iraq states that the increase in the cost of insurance in the Persian Gulf after 2 August 1990 was not a direct result of Iraq's entry into Kuwait, but rather of the build-up of the Allied Coalition Forces in preparation for action against Iraq.

(b) Iraq further states that a transport company would not suffer a loss due to an increase in the cost of the insurance because the transport company would pass on the increase to its customer.

(c) Iraq also states that Chevron International must have benefited from the worldwide increase in the price of crude oil so that any loss would be offset by additional profits.

(d) Lastly, Iraq states that a claim for insurance premiums is not compensable based on the conclusions of the "E3A" Panel as set out in paragraph 98 of Annex to the "Report and recommendations made by the Panel of Commissioners concerning the tenth instalment of 'E3' claims", (S/AC.26/2000/18), (the "Tenth 'E3' Report").

C. Analysis and valuation

246. Based on the evidence provided by Chevron International in support of its claim, the Panel finds that Chevron International incurred increased insurance premiums of USD 44,791. The Panel further finds that the increase in the insurance premiums charged by Chevron International's insurers was a direct result of Iraq's invasion and occupation of Kuwait and therefore compensable.[26] Accordingly, the Panel recommends an award of compensation to Chevron International for increased insurance premiums in the amount of USD 44,791.

D. Recommendations

247. The Panel's recommendations with respect to the claim of Chevron International are summarized in table 23 below.

Table 23. Chevron International's claim – recommended compensation
(United States dollars)

| Claim element | Original amount claimed | Amended amount claimed | Amount of compensation recommended |
|---|---|---|---|
| Other | 67,820 | 44,791 | 44,791 |
| Total | 67,820 | 44,791 | 44,791 |

## XIV. CLAIM OF CHEVRON U.S.A. INC.

## (LOSS OF CATALYST SALES)

### A. Facts and contentions

#### 1. Introduction

248. Chevron U.S.A. Inc. ("Chevron U.S.A.) is a corporation organized under the laws of the State of Pennsylvania, United States. In 1992, Chevron U.S.A. was merged with Chevron Research and Technology Company ("Chevron Research"), a corporation organized under the laws of the State of Delaware, United States. As a consequence of the merger, Chevron U.S.A. became the successor in title to all of the claims of Chevron Research, including the claim which is more fully described in the following paragraphs of this report, and Chevron Research ceased to exist.

249. Chevron U.S.A. originally sought compensation in the total amount of USD 6,248,846 for the loss of future profits relating to expected sales of catalyst by Chevron Research to Kuwait National Petroleum Company ("KNPC"). However, in its February 2001 response to the article 34 notification, Chevron U.S.A. reduced the total amount of the claim to USD 5,964,728. Chevron U.S.A.'s claim for loss of catalyst sales is summarized in table 24 below.

Table 24. Chevron U.S.A.'s claim for loss of catalyst sales
(United States dollars)

| Claim element | Original amount claimed | Amended amount claimed |
|---|---|---|
| Loss of profits | 6,248,846 | 5,964,728 |
| Total | 6,248,846 | 5,964,728 |

#### 2. Loss of profits

250. Chevron U.S.A. states that, prior to Iraq's invasion and occupation of Kuwait, Chevron Research and KNPC entered into technology licensing agreements, service agreements and catalyst supply agreements relating to three hydrocracking units (the "units") at KNPC's refineries in Shuaiba, Mina Ahmadi and Mina Abdulla, Kuwait. The units were, at all times relevant to the claim, refining plants designed to convert, with the assistance of catalysts, low value fuel oil into higher value products such as jet fuel or diesel fuel.

251. According to Chevron U.S.A., each of the units had two stages for refining different types of input and each was operational at the time of Iraq's invasion and occupation of Kuwait. Chevron U.S.A. further states that both stages of the units required the use of different types of catalyst and needed, depending on the unit operating conditions, to be recharged with fresh catalysts every few years.[27]

252. Chevron U.S.A. alleges that, as from 2 August 1990, the units were damaged and rendered inoperative as a result of Iraq's invasion and occupation of Kuwait. The units required repair

following the liberation of Kuwait and remained out of operation for many months beyond 2 March 1991. According to Chevron U.S.A., stage 1 of the unit at the Shuaiba refinery did not become operational until November 1993, and stage 2 of this unit did not resume operations until February 2001. It also states that stages 1 and 2 of the unit at the Mina Ahmadi refinery did not start again until November 1993, and that stages 1 and 2 of the unit at the Mina Abdulla refinery did not become operational until April 1993 and May 1993 respectively. Chevron U.S.A. alleges that, as a result of the damage and interruption of operations at the units, Chevron Research did not make any sales of catalyst to KNPC during the period August 1990 to January 1992.

253. Chevron U.S.A. claims that Chevron Research would have supplied the entirety of KNPC's needs for catalyst during the periods in which the units were rendered inoperative. It bases this claim on the following five assertions:

(a) That Chevron Research and KNPC entered into catalyst supply agreements relating to each of the units prior to Iraq's invasion and occupation of Kuwait;

(b) That KNPC continued to turn to Chevron Research for its catalyst needs following the first catalyst supply agreement between them in 1975;

(c) That KNPC has purchased catalysts for each of the units exclusively from Chevron Research since they were installed;

(d) That the hydrocracking technology used in the units is Chevron U.S.A.'s proprietary technology, which Chevron Research licensed to KNPC; and

(e) That, when the units were restored to operation following the liberation of Kuwait, KNPC purchased catalysts exclusively from Chevron Research for use in the units.

254. Chevron U.S.A. seeks compensation in the amount of USD 5,964,728 for the loss of profits from expected sales of catalysts to KNPC that Chevron U.S.A. is "reasonably certain" would have occurred had the units not been rendered inoperative as a result of Iraq's invasion and occupation of Kuwait. It ascertains the amount of its claim for loss of profits by calculating the monthly profits that Chevron Research expected to earn from catalyst sales to KNPC after 1 August 1990, and then by multiplying the monthly profits figure applicable to each unit stage by the number of months that the unit stage was out of operation. The monthly profit figures are based on annual profit figures that Chevron U.S.A. calculates, first by estimating the annual catalyst requirements of each unit stage, and then by calculating the profits that Chevron Research would have earned on each pound of these catalysts, using Chevron Research's costs, trade prices and margins for the catalysts as at 1 August 1990. Chevron U.S.A. ascertains its estimates of the annual catalyst requirements of each unit stage first by determining, based on prior sales of catalysts to KNPC, the volumes of the catalysts required by the unit stages when they were being loaded with fresh catalysts, and then by dividing the total volumes (in pounds) of the catalysts by the average useful life expectancies (in years) of those catalysts.

255. Chevron U.S.A. contends that Chevron Research was unable to mitigate its loss of profits by selling catalysts to buyers other than KNPC. It states that, based on the principle of "lost volume", even if Chevron Research could have sold the catalysts that it expected to supply to KNPC to another buyer, it still would have lost the sales of catalysts to KNPC as a result of Iraq's invasion and occupation of Kuwait.

256. As part of its February 2001 response to the article 34 notification, Chevron U.S.A. provided a schedule of monthly sales of catalysts made by Chevron Research to KNPC's three refineries in Kuwait during the period from 1 January 1987 to 31 December 1994. This schedule indicates that the total revenues earned by Chevron Research from its sales of catalysts to KNPC was approximately USD 7.81 million in 1988, USD 2.13 million in 1989, nil in 1990, nil in 1991, USD 290,000 in 1992, nil in 1993 and USD 14.08 million in 1994. The schedule further indicates that the majority of the catalysts delivered to KNPC in 1989 were supplied at a reduced price that was approximately half of the normal price and that, in March 1990, Chevron Research delivered to KNPC, at no cost to the latter, catalysts valued at approximately USD 4.53 million.

257. Chevron U.S.A. states that the deliveries in 1989 and 1990 were made in order to settle claims by KNPC alleging that certain catalysts that had been supplied by Chevron Research for the units at the Shuaiba refinery and the Mina Abdulla refinery did not provide satisfactory performance. Chevron U.S.A. further states that the principal evidentiary value of the schedule of monthly sales is to show that the catalyst supply relationship with KNPC resumed following the interruption caused by Iraq's invasion and occupation of Kuwait, rather than to demonstrate the volume and frequency of catalyst sales that would have occurred under "normal operating conditions".

258. In support of its claim, Chevron U.S.A. has provided copies of hydrocracking licence agreements and catalyst supply agreements relating to the units, invoices for sales of catalysts to KNPC during the period from 1 January 1987 to 30 June 1999, Chevron Research catalyst pricing memoranda and catalyst production cost reports, and memoranda and correspondence relating to the restart dates of the units.

### B. Iraq's response

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

(a) Iraq contends that refiners normally carry a spare charge of catalysts and that, therefore, it should not be surprising that KNPC did not buy or would not have considered buying new catalysts until 1993.

(b) Iraq notes that the original licensing agreements for the hydrocracking process are dated 1975, 1982 and 1984 respectively. Iraq further notes that there is no clause in these agreements obligating KNPC to purchase catalysts from Chevron Research except for the first charge. According to Iraq, KNPC could therefore at any point in time replace the catalysts with those sold by a competitor of Chevron Research for technical or economic reasons.

(c) Iraq contends that Chevron U.S.A. did not provide any evidence to show that its catalyst manufacturing facilities actually suffered because they could not sell the catalysts to other buyers or because they worked at less than capacity.

(d) Iraq contends that Chevron Research did not have a contract to supply catalysts to KNPC that was frustrated by Iraq's entry into Kuwait.

(e) Iraq contends that Chevron U.S.A.'s calculation of the alleged loss of profits is nothing more than a simple stacking of figures deliberately made to exaggerate the amount of the claim. According to Iraq, the average useful life expectancies of the catalysts used by Chevron U.S.A. in its calculation of the monthly profits figures are probably the guaranteed life expectancies, rather than the actual service life expectancies (which are often far longer). Iraq states that the profits per pound of catalyst figures used by Chevron U.S.A. are very high and are not supported by the evidence. Moreover, Iraq notes that, according to Chevron U.S.A., Chevron Research's total revenue from catalyst sales to KNPC between 1987 and 1989 was USD 10.17 million. Iraq claims that this revenue probably yielded profits of approximately USD 2.5 to 3.0 million. However, according to Iraq, Chevron U.S.A. is nonetheless claiming lost profits totalling almost USD 6.5 million for a similar period of time.

(f) Finally, Iraq contends that, if Chevron Research did incur a loss of profits, it cannot be related directly to Iraq's entry into Kuwait. Iraq states that there were many intervening events, some of them being of an unforeseen nature, that broke the causal link.

### C. Analysis and valuation

260. The Panel finds that, as at the date of Iraq's invasion and occupation of Kuwait, Chevron Research had a well-founded expectation of further catalyst sales to KNPC under readily ascertainable terms. The Panel further finds that, although the approach used by Chevron U.S.A. to calculate the claim for loss of profits is reasonable, the evidence fails to support the full amount claimed. In particular, the Panel finds that Chevron U.S.A.'s estimates of the annual catalyst requirements of the units at the Mina Ahmadi refinery and the Mina Abdulla refinery are higher than those supported by the evidence. The Panel finds, based on the evidence provided, that the average useful life expectancies of the catalysts used at the Mina Ahmadi refinery and the Mina Abdulla refinery are 1 year and 1.5 years longer respectively than the useful life expectancies used by Chevron U.S.A. in its loss of profits calculation. Additionally, the Panel finds that Chevron U.S.A. has failed to demonstrate that stage two of the unit at the Shuaiba refinery remained inoperative beyond the end of June 1994 for reasons directly linked to Iraq's invasion and occupation of Kuwait.[28] The Panel therefore concludes, based on its review of the evidence, that Chevron U.S.A. has demonstrated that, as a direct result of Iraq's invasion and occupation of Kuwait, it incurred a loss of profits relating to expected sales of catalysts to KNPC in the amount of USD 3,972,492.

261. Based on the foregoing, the Panel recommends an award of compensation to Chevron U.S.A. for loss of profits on catalyst sales in the amount of USD 3,972,492.

## D. Recommendations

262. The Panel's recommendations with respect to the claim of Chevron U.S.A. for loss of catalyst sales are summarized in table 25 below.

Table 25. Chevron U.S.A.'s claim for loss of catalyst sales – recommended compensation (United States dollars)

| Claim element | Original amount claimed | Amended amount claimed | Amount of compensation recommended |
|---|---|---|---|
| Loss of profits | 6,248,846 | 5,964,728 | 3,972,492 |
| Total | 6,248,846 | 5,964,728 | 3,972,492 |

# XV. CLAIM OF CHEVRON U.S.A INC.

# (PAYMENTS TO EMPLOYEES)

## A. Facts and contentions

### 1. Introduction

263. Chevron U.S.A. Inc. ("Chevron U.S.A.") is a corporation organized under the laws of the State of Pennsylvania, United States. In 1992, Chevron U.S.A. was merged with Chevron Research and Technology Company ("Chevron Research"). As a consequence of the merger, Chevron U.S.A. became the successor in title to all of the claims of Chevron Research, including the claim which is more fully described in the following paragraphs of this report, and Chevron Research ceased to exist.

264. Under the category "payment or relief to others" Chevron U.S.A. claims compensation in the amount of USD 118,747 for the payment of costs and expenses in respect of two employees working in Kuwait at the time of Iraq's invasion and occupation of Kuwait. Chevron U.S.A.'s claim for payments to employees is summarized in table 26 below.

Table 26. Chevron U.S.A.'s claim for payments to employees
(United States dollars)

| Claim element | Original amount claimed |
|---|---|
| Payment or relief to others | |
| - Salaries | 36,392 |
| - Overhead and burden | 14,812 |
| - Hazard pay | 20,000 |
| - Project overtime pay | 12,784 |
| - Tax gross-up | 10,959 |
| - Foreign service premium | 16,438 |
| - Travel and living expenses | 7,362 |
| Total | 118,747 |

### 2. Payment or relief to others

265. Chevron U.S.A. alleges that two employees of Chevron Research had been deployed in Kuwait to provide technical assistance to the Kuwait National Petroleum Company ("KNPC") in the operation of a hydrocracking unit licensed by Chevron Research to KNPC at the Mina Abdulla refinery, south of Kuwait City.

266. Chevron U.S.A. alleges that Iraq's invasion and occupation of Kuwait prevented both employees from continuing with the performance of their respective employment duties from 2 August to 1 September 1990 in the case of one employee (the "first employee"), and to 9 December 1990 in the case of the other (the "second employee"). The first employee fled Kuwait on 28 August

1990 and returned to work in the United States on 1 September 1990. The second employee was taken hostage by the Iraqi army from 19 August to 9 December 1990. During his captivity, he was moved to a locality in Kuwait as part of the "human shield". On 26 November 1990, he was again moved, on this occasion to a locality approximately 80 miles north of Baghdad and held at an industrial complex near Samara. The second employee finally returned to the United States on 9 December 1990 and returned to work on 9 January 1991, after being granted extraordinary leave of one month.

267. Chevron U.S.A. alleges that Chevron Research was deprived of the services of both employees, in the case of the first employee from 2 August to 1 September 1990, and in the case of the second from 2 August 1990 to 9 January 1991 (collectively the two periods are referred to as the "remuneration period"), while it continued to pay their respective salaries and entitlements. Chevron U.S.A. seeks compensation for the loss of service of both employees, measured by the salary and entitlements paid to both employees during the remuneration period. The entitlements due to both employees include the items described as "project overtime pay", "tax gross-up" and "foreign service premium". Chevron U.S.A. described the tax gross-up as a payment to employees operating overseas, made in order to compensate them for the effects of foreign taxes. Chevron U.S.A. described the foreign service premiums as standard increased entitlements, expressed as a percentage of base salary and determined by the location of a particular assignment. The foreign service premium was intended to provide an incentive to employees to accept overseas assignments and compensate for associated hardships.

268. In addition to their regular entitlements, Chevron Research also paid the two employees amounts of USD 5,000 and USD 15,000 respectively, which it described as "hazard pay". These payments were made after the return of the employees to work in order to compensate them for the dangers presented by Iraq's invasion and occupation of Kuwait during the remuneration period. The aggregate salary and entitlements paid to the two employees are accordingly alleged to amount to USD 96,573.

269. Under the description "overhead and burden costs", Chevron U.S.A. claims compensation for fixed operating costs associated with maintaining the two employees in Kuwait. These costs comprise rent, utility costs, staffing and other support services, medical insurance and life insurance expenses paid in respect of the employees during the remuneration period. Chevron U.S.A. calculated this amount by determining that Chevron Research's overhead and burden costs in respect of its operations in Kuwait represented 40.7 per cent of Chevron Research's total operating costs (the "overhead and burden ratio"). Chevron U.S.A. thereafter multiplied the overhead and burden ratio by the salary paid to both employees during the remuneration period. The aggregate of these costs is alleged to amount to USD 14,812.

270. Chevron U.S.A. alleges that Chevron Research reimbursed the employees for otherwise unnecessary travel and living expenses incurred in their efforts to avoid capture and escape the region, and seeks compensation for these costs in the aggregate sum of USD 7,362.

B. Iraq's response

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

(a) Iraq states that Chevron U.S.A. has produced no document to support the contention that the second employee was detained until December 1990.

(b) Iraq states that the first employee was never detained, but stayed in Kuwait until 28 August of his own accord and thereafter returned to work in the United States on 1 September 1990, via Jordan. Iraq contends that there is therefore no evidence that the first employee was detained for one month.

(c) Iraq is critical of the absence of a document, such as a contract, demonstrating the nature of the activities undertaken by the two employees in Kuwait. Additionally, Iraq states that the payroll register computer printout is illegible and, in any event, does not constitute proof of payment to the employees.

(d) Iraq states that the "summary of expense" document furnished by Chevron U.S.A. does not bear Chevron Research's name and refers only to the second employee. Iraq points out that no receipts or copies of airline tickets have been attached to the document. Iraq contends that the expenses would have been incurred whether there had been a detention or not.

(e) Iraq contends that it sees no justification for including overheads in the list of alleged losses especially when these represent 40.7 per cent of salary. Iraq alleges that "hazard pay" should similarly be excluded as these payments are in substance donations by Chevron Research to the employees decided upon after the fact.

C. Analysis and valuation

272. Chevron U.S.A. provided a contemporaneous internal employee expense report in respect of both of the employees. In the case of the first employee, the report does not specify the reason for the delay of 26 days to return the employee to the United States after 2 August 1990. The nature of the expenses specified in the report shows that the first employee remained in Kuwait until 26 August 1990. He then made his way overland to Amman, Jordan, on 28 August 1990 and from there to the United States. The second employee's expense report indicates that he was detained by Iraq from 19 August to 9 December 1990, travelled from Baghdad to Frankfurt on 9 December 1990, to Andrews Air Force Base on 10 December 1990, to Washington D.C. on 11 December 1990 and to San Francisco on 12 December 1990. The Panel finds that the evidence provided is sufficient to demonstrate that both employees were unable to perform their ordinary employment duties until their return to the United States. The Panel finds that the employees would not willingly have remained in either Kuwait or Iraq during this time in order to continue working.

273. In relation to the salaries and entitlements paid to both employees, Chevron U.S.A. provided the relevant extracts from Chevron Research's payroll records. After adjustment for ordinary annual leave, these records substantiated unproductive salary costs in respect of the first employee for the

period from 2 August to 31 August 1990 in the amount of USD 6,749, and in respect of the second employee for the period from 2 August 1990 to 11 December 1990 in the amount of USD 29,090. Chevron U.S.A. provided no documentary evidence in support of the contention that the second employee was granted one month of extraordinary leave after his return to work on 11 December 1990. The Panel finds that the substantiated costs were directly caused by Iraq's invasion and occupation of Kuwait and recommends the award of compensation to Chevron U.S.A. for salary payments in the amount of USD 35,839.

274. Chevron U.S.A. substantiated the payment of "overhead and burden costs" by way of the payroll records referred to in paragraph 273 above. The Panel finds that only costs incurred in relation to direct employee benefits such as annual leave, life and medical insurance costs are compensable. On this basis, the Panel finds that the overhead and burden ratio of 40.7 per cent should be reduced to 5 per cent. Accordingly, the Panel recommends an award of compensation to Chevron U.S.A. for employee benefit costs in the amount of USD 1,792.

275. Chevron U.S.A. substantiated the payment of "hazard pay" to both employees by reference to Chevron Research's payroll records. The Panel considers that payments made by Chevron U.S.A. to its employees for losses that would otherwise be compensable to the individual are compensable in principle. In the case of the first employee, although Iraqi forces did not physically detain him, he was not at liberty to move freely and was forced into hiding. The Panel finds that he would be entitled to receive compensation in the amount of USD 2,600.[29] The second employee was clearly taken hostage, and would be entitled to compensation in the maximum amount of USD 10,000 as determined by the Governing Council decision 8. The Panel finds that, as the employees would be entitled to receive this compensation but have not themselves submitted claims for such losses, Chevron U.S.A. is entitled to compensation for having itself paid it to the two employees. The Panel accordingly recommends an award of compensation to Chevron U.S.A. for hazard pay paid to employees in the amount of USD 12,600.

276. The Panel now turns to project overtime pay. In response to the Panel's enquiries Chevron U.S.A. explained that, for payroll purposes, it had treated every day of detention or forced hiding as a day worked by both employees. Accordingly, days that were not regular working days (such as weekends) during which the employees were detained or forced to hide were compensated by Chevron as if they were overtime. Chevron U.S.A. substantiated the payment of these amounts by reference to its payroll records. The Panel finds that these costs were reasonably stated, have been appropriately substantiated and were incurred as a direct result of Iraq's invasion and occupation of Kuwait. The Panel recommends an award of compensation to Chevron U.S.A. for project overtime pay to employees in the amount of USD 12,784.

277. With respect to the employee entitlements described as "tax gross-up" and "foreign service premium", Chevron U.S.A. provided extracts from the payroll records of Chevron Research demonstrating that the amounts claimed had been paid to both employees. The evidence indicates that the amounts claimed were paid to both employees over the one-year period ending on 30 September 1990 in respect of the first employee and on 31 December 1990 in respect of the second employee.

The Panel finds that only a portion of the amounts paid to each of the employees during the remuneration period as described in paragraph 267 above are eligible for compensation and recommends an award of compensation to Chevron U.S.A. for tax gross-up and foreign service entitlement payments to employees in the amounts of USD 3,283 and USD 4,925 respectively.

278. The travel and living expenses were separated by Chevron U.S.A. into the following categories: lodging, airfares, ground transportation medical expenses, telephone expenses, meals and other miscellaneous items such as laundry expenses. The first employee accounted for USD 5,533 of the total and the second employee for USD 1,829. In regard to the first employee, acceptable substantiating evidence was provided in support of USD 4,064. In the case of the second employee, the employee expense report indicates that he departed for Kuwait on 9 July 1990 in possession of a fully refundable return airline ticket to the value of USD 4,175. In response to the Panel's enquiries, Chevron U.S.A. indicated that it did not know whether a partial refund had been received for the unused portion of either employee's airline ticket, but that it seemed likely that a refund was obtained for the return portion of the second employee's air ticket. The Panel finds that it is probable that Chevron U.S.A. received or should have received at least USD 2,000 as a refund from the relevant airline company in respect of the unused portion of the airline ticket of the second employee. The Panel finds that the refund should be set off against the claimed travel and living expenses of USD 1,829 in respect of the second employee. The Panel recommends an award of compensation to Chevron U.S.A. for employee travel and living expenses in the amount of USD 4,064.

279. Based on the foregoing, the Panel recommends an award of compensation in the amount of USD 75,287 for payment or relief to others.

## D. Recommendations

280. The Panel's recommendations with respect to the claim of Chevron U.S.A. for payments to employees are summarized in table 27 below.

Table 27. Chevron U.S.A.'s claim for payments to employees - recommended compensation (United States dollars)

| Claim element | Original amount claimed | Amount of compensation recommended |
|---|---|---|
| Payment or relief to others | | |
| - Salaries | 36,392 | 35,839 |
| - Overhead and burden | 14,812 | 1,792 |
| - Hazard pay | 20,000 | 12,600 |
| - Project overtime pay | 12,784 | 12,784 |
| - Tax gross-up | 10,959 | 3,283 |
| - Foreign service premium | 16,438 | 4,925 |
| - Travel and living expenses | 7,362 | 4,064 |
| Total | 118,747 | 75,287 |

# XVI. CLAIM OF CHEVRON U.S.A. INC.

# (INCREASED INSURANCE PREMIUMS)

## A. Facts and contentions

### 1. Introduction

281. Chevron U.S.A. Inc. ("Chevron U.S.A.") is a corporation organized under the laws of the State of Pennsylvania, United States. Under the category of "other", Chevron U.S.A. claims USD 3,924,000 with respect to increased insurance premiums that it allegedly paid as a result of Iraq's invasion and occupation of Kuwait for hull and machinery insurance, deductible insurance and cargo war risk insurance for fifteen tanker shipments of crude oil, totalling approximately 32,460,485 barrels, from the Persian Gulf. Chevron U.S.A.'s claim for increased insurance premiums is summarized in table 28 below.

Table 28. Chevron U.S.A.'s claim for increased insurance premiums
(United States dollars)

| Claim element | Original amount claimed |
|---|---|
| Other | 3,924,000 |
| Total | 3,924,000 |

282. Chevron U.S.A. states that it purchased the crude oil from a third party, and shipped the oil to the United States where it was processed, with the exception of parts of three shipments that were delivered to a third party as part of a crude oil exchange, in which the third party delivered comparable quantities of a different grade of crude oil to Chevron U.S.A., with no trading profit or loss to either party, on various dates between 15 August 1990 and 26 February 1991. Chevron U.S.A. states that during this period it was charged increased insurance premiums, the particulars of which are as follows.

### 2. Hull and machinery insurance

283. Chevron U.S.A. states that, prior to Iraq's invasion and occupation of Kuwait, its annual premium for hull and machinery insurance was USD 2,762,640 calculated based on a rate of 0.003 per cent of the amount by which each vessel's insured value exceeded Chevron U.S.A.'s USD 10 million deductible. After Iraq's invasion and occupation of Kuwait, Chevron U.S.A. states that its insurers imposed surcharges for hull and machinery insurance for all voyages in the Persian Gulf. Chevron U.S.A. states that these surcharges ranged from USD 0.165 to USD 1.490 during the period from 15 August 1990 to 26 February 1991. Chevron U.S.A. claims USD 1,741,000 for the surcharges it was charged for hull and machinery insurance. In support of its claim for increased hull and machinery insurance, Chevron U.S.A. provided copies of the insurance policy, documents entitled "Confirmation of Insurance" (which show the insured value of the vessels, the period of coverage and the amount of the surcharge) and proof of payment.

3. Deductible insurance

284. Chevron U.S.A. states that its hull and machinery insurance was subject to a USD 10 million deductible and therefore it also purchased deductible insurance. Chevron U.S.A. states that, prior to Iraq's invasion and occupation of Kuwait, it paid an annual premium of USD 55,000 based on an estimated 40 voyages in the Persian Gulf per year. Chevron U.S.A. states that its insurers cancelled its deductible insurance on 2 August 1990, and offered replacement insurance on a per voyage basis at varying rates depending on the date of the voyage and the risks presented by Iraq's invasion and occupation of Kuwait at that time. Chevron U.S.A. states that the premiums for the replacement insurance ranged from USD 16,000 to USD 154,000 during the period from 15 August 1990 to 26 February 1991. Chevron U.S.A. claims USD 672,000 for the increased premiums it was charged for deductible insurance. In support of its claim for increased deductible insurance, Chevron U.S.A. provided copies of the insurance policy, notice of cancellation, documents entitled "Confirmation of Insurance" (which show the amount of the premium) and proof of payment.

4. Cargo war risk insurance

285. Chevron U.S.A. states that, as a result of Iraq's invasion and occupation of Kuwait, its policy for cargo war risk insurance was cancelled with effect from 14 August 1990. Chevron U.S.A. states that its insurers thereafter charged it cargo war risk insurance rates on a per voyage basis. Chevron U.S.A. states that its premium increased from 0.0035 per cent of the value of the cargo shipped to rates that varied between 0.0578 per cent and 0.4625 per cent during the period from 15 August 1990 to 26 February 1991. Chevron U.S.A. claims USD 1,511,000 based on the difference in premiums it paid for cargo war risk insurance. In support of its claim for increased cargo war risk insurance premiums, Chevron U.S.A. provided copies of the insurance policy, notice of cancellation, invoices for the replacement insurance and proof of payment.

B. Iraq's response

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

(a) Iraq states that the increase in the cost of insurance in the Persian Gulf after 2 August 1990 was not a direct result of Iraq's entry into Kuwait.

(b) Iraq further states that a claim for insurance premiums is not compensable based on the conclusions of the "E3A" Panel as set out in paragraph 98 of the Annex to the Tenth "E3" Report.

(c) Lastly, Iraq states that Chevron U.S.A. must have benefited from the worldwide increase in the price of crude oil so that any loss would be offset by additional profits.

C. Analysis and valuation

287. Based on the evidence provided by Chevron U.S.A. and referenced in paragraphs 283 to 285 above, the Panel finds that Chevron U.S.A. incurred increased insurance premiums in the amount of USD 3,923,442. The difference between this amount and the amount claimed was found by the Panel

to have been caused by the rounding of certain amounts by Chevron U.S.A. The Panel further finds that the increase in the insurance premiums charged by Chevron U.S.A's insurers was a direct result of Iraq's invasion and occupation of Kuwait and therefore compensable.[30] Accordingly, the Panel recommends an award of compensation to Chevron U.S.A. for increased insurance premiums in the amount of USD 3,923,442.

## D. Recommendations

288. The Panel's recommendations with respect to the claim of Chevron U.S.A. for increased insurance premiums are summarized in table 29 below.

Table 29. Chevron U.S.A.'s claim for increased insurance premiums – recommended compensation
(United States dollars)

| Claim element | Original amount claimed | Amount of compensation recommended |
|---|---|---|
| Other | 3,924,000 | 3,923,442 |
| Total | 3,924,000 | 3,923,442 |

# XVII. CLAIM OF CRC-EVANS PIPELINE INTERNATIONAL, INC.

## A. Facts and contentions

### 1. Introduction

289. CRC-Evans Pipeline International, Inc. ("CRC-Evans") is a corporation organized under the laws of the State of Delaware, United States. Its operations include the manufacturing of equipment and the supply of services for the pipeline construction industry.

290. In April 2002, Weatherford International, Inc., a corporation also organized under the laws of the State of Delaware, advised and demonstrated that it owns the claim for compensation originally filed by CRC-Evans. As the claim arose from events involving CRC-Evans and was originally filed in the name of that company, the Panel refers to the claimant as CRC-Evans even though Weatherford International, Inc. now owns the claim.

291. CRC-Evans seeks compensation in the total amount of USD 2,497,736 for losses related to two contracts that it entered into with Iraq's State Company for Oil Projects ("SCOP") prior to Iraq's invasion and occupation of Kuwait. Its claim is summarized in table 30 below.

Table 30. CRC-Evans' claim
(United States dollars)

| Claim element | Original amount claimed |
|---|---|
| Contract | 1,811,736 |
| Interest | 677,303 |
| Attorneys' fees | 8,697 |
| Total | 2,497,736 |

### 2. Contract

#### (a) Purchase order No. 3994

292. On 22 March 1990, CRC-Evans received a purchase order from SCOP dated 1 March 1990 for the manufacture, supply and delivery of pipeline equipment at a price of USD 2,252,000 ("purchase order No. 3994"). Under the terms of purchase order no. 3994, the pipeline equipment was to be delivered to SCOP within 12 weeks of CRC-Evans' receipt of the purchase order. Moreover, payment of the purchase price was to be secured by a letter of credit. On 10 April 1990, Iraq's Rafidain Bank issued the required letter of credit in favour of CRC-Evans Services Ltd.. The letter of credit was originally valid until 17 July 1990, and required that shipment of the pipeline equipment take place not later than 17 June 1990. However, on 18 July 1990, the terms of this letter of credit were amended such that the validity of the credit and the deadline for shipment of the pipeline equipment were extended to 30 September 1990.

293. According to CRC Evans, the manufacturing and purchasing of the pipeline equipment included under purchase order No. 3994 were completed by early July 1990 and the equipment was scheduled to be shipped from Houston, in the United States, on 2 August 1990. However, CRC-Evans states that the shipment of the pipeline equipment became impossible for as a result of Iraq's invasion and occupation of Kuwait.

294. CRC-Evans seeks the amount of USD 619,252 as compensation for the value of the pipeline equipment. CRC-Evans calculates its loss based on the purchase price of USD 2,013,721, less the total amount of proceeds that CRC-Evans received (beginning in October 1990) from its resale, rental and return of the equipment to third parties and suppliers (USD 1,394,469). According to CRC-Evans, some of the pipeline equipment had to be sold at distressed or auction prices because the equipment was manufactured to SCOP's specifications.

(b) Purchase order No. 4153

295. On 2 July 1990, CRC-Evans received a purchase order from SCOP dated 20 June 1990 for the manufacture, supply and delivery of pipeline equipment at a price of USD 2,923,000 ("purchase order No. 4153"). Under the terms of purchase order No. 4153, the pipeline equipment was to be delivered to SCOP within 12 to 14 weeks of CRC-Evans' receipt of the purchase order. Moreover, payment of the purchase price was to be secured by a letter of credit. On 21 July 1990, Rafidain Bank issued the required letter of credit in favour of CRC-Evans Services Ltd. and, on 3 August 1990, CRC-Evans received notice of the letter of credit's issuance. The letter of credit was valid until 15 December 1990 and required that shipment of the pipeline equipment take place not later than 30 October 1990.

296. CRC-Evans seeks the amount of USD 1,192,484 as compensation for the value of pipeline equipment to have been supplied (USD 2,647,761), less what would allegedly have been the cost of manufacturing and purchasing the equipment (USD 1,455,277). According to CRC-Evans, the manufacturing and shipment of the pipeline equipment included under purchase order No. 4153 became impossible as a result of Iraq's invasion and occupation of Kuwait. CRC-Evans states that, in order to mitigate its loss, it did not incur any manufacturing, purchasing, packaging or shipping costs in respect of purchase order No. 4153.

(c) Evidence

297. In support of its claim for contract interruption losses, CRC-Evans has provided copies of the purchase orders received from SCOP, the letters of credit issued by Rafidain Bank, resale invoices issued by CRC-Evans from October 1990 to May 1993, rental invoices issued by CRC-Evans from August 1992 to January 1994, a contract to auction dated 21 July 1992, an auction settlement statement dated 21 September 1992, a list of pipeline equipment in storage in 1994, a list of unit costs and sale prices of pipeline equipment, and relevant financial statements.

### 3. Interest and attorneys' fees

#### (a) Interest

298. CRC-Evans requests that it be awarded the total amount of USD 677,303 as interest on its contract losses, running from August 1990 to March 1994.

#### (b) Attorneys' fees

299. CRC-Evans also seeks the total amount of USD 8,697 as compensation for attorneys' fees that it incurred in late 1990 and 1991. According to CRC-Evans, it paid a total of USD 8,933 to two law firms for legal advice on matters concerning Iraq's invasion and occupation of Kuwait. However, since the advice from the law firms also covered matters in addition to purchase order No. 3994 and purchase order No. 4153, CRC-Evans' claim is only for the portion of the total amount that allegedly relates to the two purchase orders.

#### (c) Evidence

300. In support of its claims for interest and attorneys' fees, CRC-Evans has provided copies of a list of lending rates compiled by the International Monetary Fund, fee statements issued by the two law firms and payment notices issued by one of the two law firms.

## B. Iraq's response

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

(a) Iraq alleges that the trade embargo imposed in August 1990 was the only reason for the non-shipment of the materials under purchase order No. 3994, as well as for the non-implementation of purchase order No. 4153. Iraq contends that the losses claimed with respect to these purchase orders are not therefore within the jurisdiction of the Commission.

(b) Iraq further contends that purchase order No. 3994 could have been implemented and paid for prior to 2 August 1990 if CRC-Evans had adhered to the original contractual delivery period of 12 weeks.

(c) Iraq states that the amount claimed for lost profits under purchase order no. 4153 represents 45 per cent of the total value of the order. According to Iraq, such a percentage is very high and is not compatible with the normal profit margin for such orders.

(d) With respect to the claim for interest, Iraq rejects the notion of awarding interest on an award of compensation, which amounts to imposing compensation on compensation.

## C. Analysis and valuation

### 1. Contract

302. 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.

303. The Panel considers that, in view of the prevailing conditions in Iraq and the military situation in the Persian Gulf region, the performance of purchase order No. 3994 and purchase order No. 4153 was rendered impossible as a direct result of Iraq's invasion and occupation of Kuwait. Moreover, in respect of both purchase orders, the Panel considers that the appropriate measure of compensation is a gross profit margin that is derived from CRC-Evans' audited financial statements for the financial year ended 31 December 1990.

304. Based on the foregoing, the Panel recommends an award of compensation in the amount of USD 932,296 to CRC-Evans for contract losses.

### 2. Interest and attorneys' fees

305. The Panel finds that CRC-Evans' claim for interest falls within the scope of Governing Council decision 16 (S/AC.26/1992/16), as discussed in paragraph 312 below. Consequently, the Panel makes no recommendation in respect of this claim.

306. The Panel finds that the costs of legal advice received by a claimant after 2 August 1990 are compensable in principle if the situation necessitating the engagement of legal services directly resulted from Iraq's invasion and occupation of Kuwait, and the costs were incurred other than in respect of the preparation of a claim before the Commission.[31] However, CRC-Evans did not provide sufficient evidence in support of its claim for attorneys' fees. With respect to the legal advice that it received from one of the two law firms, CRC-Evans failed to prove that the advice was in response to a situation directly caused by Iraq's invasion and occupation of Kuwait. With respect to the legal advice that it received from the other law firm, CRC-Evans failed to provide any proof of payment for that advice. Accordingly, the Panel recommends no award of compensation to CRC-Evans for attorneys' fees.

## D. Recommendations

307. The Panel's recommendations with respect to the claim of CRC-Evans are summarized in table 31 below.

Table 31. CRC-Evans' claim – recommended compensation
(United States dollars)

| Claim element | Original amount claimed | Amount of compensation recommended |
|---|---|---|
| Contract | 1,811,736 | 932,296 |
| Interest | 677,303 | No recommendation |
| Attorneys' fees | 8,697 | Nil |
| Total | 2,497,736 | 932,296 |

# XVIII. INCIDENTAL ISSUES

## A. Currency exchange rate

308. 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.

309. 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.

310. In the circumstances, the Panel finds that the appropriate currency exchange rate to be applied to the claims advanced in part two 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 32 below.

## B. Interest

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

312. 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.

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

314. 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 out in paragraphs 276 to 288 of the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E2' claims", (S/AC.26/1998/7). 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.

315. In accordance with these determinations, table 32 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 32. Dates of loss

| Claimant and loss element | Date of loss |
|---|---|
| Technip-Geoproduction S.A. | |
| - Unpaid work and retention money | 2 August 1990 |
| - Salaries and other expenses | 27 September 1990 |
| Caleb Brett UAE (PVT) Ltd. | |
| - Other tangible property | 2 August 1990 |
| - Payment or relief to others | 2 August 1990 |
| - Pre-paid rent | 2 August 1990 |
| Entec Europe Limited | |
| - Other | 6 November 1990 |
| Ferguson & Timpson Limited | |
| - Business transaction or course of dealing | 2 August 1990 |
| Saybolt United Kingdom Limited | |
| - Contract | 2 August 1990 |
| - Other tangible property | 2 August 1990 |
| - Income-producing property | 2 August 1990 |
| Arabian Chevron, Inc. | |
| - Payment or relief to others | 15 November 1990 |
| Chevron International Oil Company, Inc | |
| - Other | 12 December 1990 |
| Chevron U.S.A. Inc. (Loss of Catalyst Sales) | |
| - Loss of profits | 1 May 1991 |
| Chevron U.S.A. Inc. (Payments to Employees) | |
| - Payment or relief to others | 21 October 1990 |
| Chevron U.S.A. Inc. (Increased Insurance Premiums) | |
| - Other | 20 November 1990 |
| CRC-Evans Pipeline International, Inc. | |
| - Contract | 2 August 1990 |

## C. Claims preparation costs

316. 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.

## XIX. SUMMARY OF RECOMMENDATIONS

317. Table 33 below summarizes the Panel's recommended awards of compensation.

Table 33. 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) |
|---|---|---|---|---|---|
| Technip-Geoproduction S.A. | FRF 116,775,998<br>IQD 899,450<br>KWD 76,350 | FRF 33,711,408<br>GBP 3,488 | 25,433,302 | 19,081,726 | 6,437,645 |
| Galileo Vacuum Tec S.p.A. | ITL 1,559,383,164 | Nil | 1,345,107 | 1,345,107 | Nil |
| Kuwait Petroleum Europoort B.V. | USD 6,700,000 | Nil | 6,700,000 | 6,700,000 | Nil |
| British Electricity International Limited | GBP 698,970 | Nil | 1,328,840 | 1,328,840 | Nil |
| Caleb Brett UAE (PVT) Ltd. | AED 1,738,863 | AED 25,663<br>GBP 25,211<br>KWD 4,687 | 473,675 | 473,675 | 71,139 |
| Entec Europe Limited | GBP 33,394 | GBP 13,070 | 63,486 | 63,486 | 25,329 |
| Facet Industrial UK Limited | GBP 6,511 | Nil | 12,378 | 12,378 | Nil |
| Ferguson & Timpson Limited | GBP 37,287 | GBP 37,287 | 70,888 | 70,888 | 70,888 |
| Saybolt United Kingdom Limited | GBP 164,112 | KWD 32,226<br>GBP 14,467 | 312,000 | 312,000 | 139,013 |
| Arabian Chevron, Inc. | USD 2,185,419 | USD 1,660,362 | 2,185,419 | 1,972,098 | 1,660,362 |
| Chevron International Oil Company, Inc. | USD 67,820 | USD 44,791 | 67,820 | 44,791 | 44,791 |
| Chevron U.S.A. Inc. (Loss of Catalyst Sales) | USD 6,248,846 | USD 3,972,492 | 6,248,846 | 5,964,728 | 3,972,492 |
| Chevron U.S.A. Inc. (Payments to Employees) | USD 118,747 | USD 75,287 | 118,747 | 118,747 | 75,287 |
| Chevron U.S.A. Inc. (Increased Insurance Premiums) | USD 3,924,000 | USD 3,923,442 | 3,924,000 | 3,924,000 | 3,923,442 |
| CRC-Evans Pipeline International, Inc. | USD 2,497,736 | USD 932,296 | 2,497,736 | 2,497,736 | 932,296 |
| Total (USD) | --- | --- | 50,782,243 | 43,910,200 | 17,352,684 |

318. 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] Although the total amount of its claim was reduced, TPG increased the amounts it was claiming for unpaid work and retention money and additional costs. The admissibility of these amendments is considered below in the discussion of the different losses.

[4] As noted in paragraph 39. of this report, TPG is claiming for unpaid work performed between 2 May and 25 August 1990.

[5] The Panel conducted a cross-check to determine whether any of the three employees in respect of which TPG is claiming salary payments was already awarded compensation by the Commission for loss of salary in either categories "C" or "D". The cross-check revealed that compensation was recommended and awarded (in category "C") to one of the employees for the same salary loss that would otherwise have been found compensable by the Panel. Accordingly, the amount of the recommended award for salaries and social security costs has been adjusted by FRF 48,628 in order to avoid duplication in the payment of compensation.

[6] During the two-year period preceding July 1990, KPE processed only Kuwait crude oils in crude unit 1.

[7] KPE originally stated that the claim covers the period from 23 January to 30 September 1991. However, in its October 2002 response to a request for additional information, KPE advised that the claim does not include the period from 23 to 31 January 1991.

[8] The loss calculation provided in an attachment to KPE's statement of claim indicates lost earnings of USD 6,736,100.

[9] Caleb Brett's financial statements, which were prepared solely for the purpose of calculating its liability to income tax in Kuwait, were expressed in Kuwaiti dinars. Caleb Brett, however, calculated the claim in United States dollars and then converted it to United Arab Emirates dirhams.

[10] Caleb Brett's income statements were expressed in Saudi Arabian riyals.

[11] The amounts used in the list of assets were expressed in Kuwaiti dinars and then converted to United Arab Emirates dirhams.

[12] The amounts paid by Caleb Brett to its employees were paid in Pounds sterling or Kuwati dinars, which it then converted to United Arab Emirates dirhams.

[13] The amounts paid by Caleb Brett to its employees were paid in Pounds sterling or Kuwati dinars, which it then converted to United Arab Emirates dirhams.

[14] See, for example, the Second "E1" Report, paragraphs 428-432.

[15] This finding accords with those of other panels. See, for example, "Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of 'E2' claims", (S/AC.26/2001/1), para. 115.

[16] The letter of credit called for delivery of the goods by truck via Turkey. F&T offered no explanation for this discrepancy in method of transportation. The Panel also notes that delivery of the goods was not effected until after the expiration date that is printed on the face of the letter of credit. Again, there is some evidence in the record that that parties extended the term of the letter of credit.

[17] In response to the Panel's enquiries Saybolt explained that the terms "prover loop" or "meter prover" refer to a device consisting of a length of pipe, either straight or "U" shaped containing a spherical rubber displacer. The diameter of the displacer is greater than the inside diameter of the pipe. The displacer is moved around inside the pipe and the liquid displaced is used to prove a meter. The equipment is essential for the accurate measurement of oil transfers by pipeline.

[18] Due to a merger that was completed in 2001, Arabian Chevron's former parent, Chevron Corporation, changed its name to ChevronTexaco Corporation.

[19] In its responses to the Panel's article 34 notifications, Arabian Chevron stated that it discovered that it had received partial reimbursement totalling USD 213,321 from SISCO (through payments made to that entity by Saudi Aramco) for its claimed expenses for the categories "hazard pay" and "salaries paid during home visits", and it reduced its claim by this amount. However, it also stated that it could not properly allocate this reimbursement payment between the two categories of its claim. Therefore, it grouped the two into a single category, and the amended figure of USD 103,707 should be read in this fashion.

[20] Arabian Chevron states that Chevron Worldwide Services, Inc. was not the employer of the Chevron personnel that were seconded to the partnership for service in Saudi Arabia, but that these persons were the employees of other affiliated companies.

[21] The Panel has determined that neither Chevron Worldwide Services, Inc. nor its three partners filed claims with the Commission for their proportionate share of the losses claimed by Arabian Chevron.

[22] For convenience of reference, the phrase "Arabian Chevron", when used in relation to any of its employees in the service of Saudi Aramco, should hereinafter be construed to include both the employees of Arabian Chevron and any of its affiliated companies.

[23] "Report and recommendations made by the Panel of Commissioners concerning the third instalment of 'E1' claims", (S/AC.26/1999/13), paras. 283 and 284.

[24] See note 19 above.

[25] Although Chevron International originally requested compensation in the amount of USD 67,820, it subsequently withdrew part of its claim and thereby reduced the total amount claimed to USD 44,791.

[26] The "E3A" Panel of Commissioners, in that part of the Tenth "E3" Report relied upon by Iraq in its written response to Chevron International's claim, was referring to insurance premiums in the context of export guarantee credits.

[27] According to Chevron U.S.A., when a hydrocracking unit needs to be recharged with fresh catalysts, the unit is shut down and the catalysts are loaded into the unit all at once (rather than on an ongoing basis during the operation of the unit).

[28] The Panel notes that, in its claim that was included in the seventh instalment of "E1" claims, KNPC limited the period of its claim for business interruption losses to the period from 2 August 1990 to 30 June 1994 on the basis that its refineries in Kuwait could reasonably have been repaired and returned to normal operations by the end of June 1994. See "Report and recommendations made by the Panel of Commissioners concerning part one of the seventh instalment of 'E1' claims", (S/AC.26/2002/12), para. 29.

[29] The Governing Council prescribed, in its decision 8 (S/AC.26/1992/8), that individuals taken hostage or illegally detained for more than three days would be entitled to receive compensation of USD 1,500 per claimant plus USD 100 for each day detained in Iraq or Kuwait beyond three days. The Governing Council provided a ceiling of compensation in respect of this type of loss of USD 10,000 per claimant. In regard to claimants who on account of a manifestly well founded fear for their life or of being taken hostage or illegally detained were forced to hide, the claimant would be entitled to USD 1,500 for three days and USD 50 for each day of forced hiding thereafter, subject to a maximum ceiling of USD 5,000 per claimant.

[30] The "E3A" Panel of Commissioners, in that part of the Tenth "E3" Report relied upon by Iraq in its written response to Chevron U.S.A.'s claim, was referring to insurance premiums in the context of export guarantee credits.

[31] This finding is similar to that made by the "E2" Panel of Commissioners at paragraph 138 of its "Report and Recommendations made by the Panel of Commissioners concerning the ninth instalment of 'E2' claims", (S/AC.26/2001/27).

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