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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS  
CONCERNING THE FIFTEENTH INSTALMENT OF "E2" CLAIMS

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Table 1. Governing Council decisions to which the present report refers

<u>Decision No.</u>	<u>Title</u>	<u>Document No.</u>
4	Business losses of individuals eligible for consideration under the expedited procedures	S/AC.26/1991/4
7	Criteria for additional categories of claims	S/AC.26/1991/7/Rev.1
9	Propositions and conclusions on compensation for business losses: types of damages and their valuation	S/AC.26/1992/9
10	Provisional rules for claims procedure	S/AC.26/1992/10
13	Further measures to avoid multiple recovery of compensation by claimants	S/AC.26/1992/13
15	Compensation for business losses resulting from Iraq's unlawful invasion and occupation of Kuwait where the trade embargo and related measures were also a cause	S/AC.26/1992/15
16	Awards of interest	S/AC.26/1992/16
19	Military costs	S/AC.26/Dec.19(1994)
123	Claims filed by individuals seeking compensation for direct losses sustained by Kuwaiti companies	S/AC.26/Dec.123(2001)

Table 2. List of panel reports and recommendations to which the present report refers

<u>Short name</u>	<u>Title</u>	<u>Document No.</u>
C(7) report	Report and recommendations made by the Panel of Commissioners concerning the seventh instalment of individual claims for damages up to USD 100,000 (Category "C" claims)	S/AC.26/1999/11
D(1.1) report	Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above USD 100,000 (Category "D" claims)	S/AC.26/1998/1
D(2.1) report	Report and recommendations made by the Panel of Commissioners concerning part one of the second instalment of individual claims for damages above USD 100,000 (Category "D" claims)	S/AC.26/1998/11
E1(3) report	Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E1" claims	S/AC.26/1999/13
E1(5) report	Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of "E1" claims	S/AC.26/2000/1
E2(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E2" claims	S/AC.26/1998/7
E2(2) report	Report and recommendations made by the Panel of Commissioners concerning the second instalment of "E2" claims	S/AC.26/1999/6
E2(3) report	Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E2" claims	S/AC.26/1999/22
E2(4) report	Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of "E2" claims	S/AC.26/2000/2
E2(5) report	Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of "E2" claims	S/AC.26/2000/17
E2(6) report	Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of "E2" claims	S/AC.26/2001/1
E2(7) report	Report and recommendations made by the Panel of Commissioners concerning the seventh instalment of "E2" claims	S/AC.26/2001/11
E2(8) report	Report and recommendations made by the Panel of Commissioners concerning the eighth instalment of "E2" claims	S/AC.26/2001/19
E2(9) report	Report and recommendations made by the Panel of Commissioners concerning the ninth instalment of "E2" claims	S/AC.26/2001/27

<u>Short name</u>	<u>Title</u>	<u>Document No.</u>
E2(10) report	Report and recommendations made by the Panel of Commissioners concerning the tenth instalment of "E2" claims	S/AC.26/2002/14
E2(11) report	Report and recommendations made by the Panel of Commissioners concerning the eleventh instalment of "E2" claims	S/AC.26/2002/22
E2(12) report	Report and recommendations made by the Panel of Commissioners concerning the twelfth instalment of "E2" claims	S/AC.26/2003/2
E2(13) report	Report and recommendations made by the Panel of Commissioners concerning the thirteenth instalment of "E2" claims	S/AC.26/2003/10
E3(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E3" claims	S/AC.26/1998/13
E3(20) report	Report and recommendations made by the Panel of Commissioners concerning the twentieth instalment of "E3" claims	S/AC.26/2001/20
E4(2) report	Report and recommendations made by the Panel of Commissioners concerning the second instalment of "E4" claims	S/AC.26/1999/17
E4(3) report	Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E4" claims	S/AC.26/2000/6
E4(4) report	Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of "E4" claims	S/AC.26/1999/18
E4(14) report	Report and recommendations made by the Panel of Commissioners concerning the fourteenth instalment of "E4" claims	S/AC.26/2001/22
E4 Special Overlap report	Special report and recommendations made by the "E4" and "E4A" Panels of Commissioners concerning overlapping claims	S/AC.26/2002/28
F1(1.1) report	Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of "F1" claims	S/AC.26/1997/6
F1(4) report	Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of "F1" claims	S/AC.26/2000/13
F3(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "F3" claims	S/AC.26/1999/24
F3(3.3) report	Report and recommendations made by the Panel of Commissioners concerning part three of the third instalment of "F3" claims	S/AC.26/2003/15

## Introduction

1. The Governing Council of the United Nations Compensation Commission (the “Commission”), at its twenty-first session in 1996, appointed the present Panel of Commissioners, composed of Messrs. Bernard Audit (Chairman), José María Abascal and David D. Caron (the “Panel” or the “E2 Panel”) to review “E2” claims. These claims were submitted by non-Kuwaiti corporations, public sector enterprises and other private legal entities (excluding oil sector, construction/engineering, export guarantee/insurance and environmental claimants). This report contains the Panel’s recommendations to the Governing Council, pursuant to article 38(e) of Governing Council decision 10 (the Provisional Rules for Claims Procedure or the “Rules”), concerning the fifteenth and final instalment of “E2” claims.

2. The claims in this instalment were selected by the secretariat of the Commission (the “secretariat”) from the “E2” claims on the basis of criteria that include (a) the date of filing with the Commission, (b) the claimant’s type of business activity and (c) the type of loss claimed. This instalment also includes a number of claims deferred from previous instalments. As the final instalment of “E2” claims, it contains a wide spectrum of the types of losses previously considered by the Panel.

3. This instalment consists of 258 claims submitted by claimants primarily operating in the trade of goods and supply of services at the time of Iraq’s invasion and occupation of Kuwait. Of this total, 257 claims were filed by claimants through 23 Governments and one claim was directly submitted by a claimant. Prior to the Panel’s completion of its review of the claims, seven claims were withdrawn by claimants; and, after consultation with the Panel, one claim was transferred by the Executive Secretary to a different panel for the reasons discussed in paragraph 24 below.<sup>1</sup> Hence, in this report, the Panel makes recommendations on 250 claims involving a claimed amount of USD 506,992,738.<sup>2</sup>

4. The role and tasks of the Panel, the applicable law and criteria, the liability of the Government of the Republic of Iraq (“Iraq”) and a description of the applicable evidentiary requirements have been stated in detail in the Panel’s report and recommendations concerning the first instalment of “E2” claims.<sup>3</sup> Within this framework, three tasks have been entrusted to the Panel. First, the Panel must determine whether the various types of losses alleged by claimants are, in principle, compensable before the Commission and, if so, the appropriate criteria for the valuation of compensation. Second, it must verify whether the losses that are in principle compensable have in fact been incurred by a given claimant. Third, the Panel must value those losses found to be compensable and recommend awards thereon.

5. Section I of this report provides an overview of the claims. The procedure followed by the Panel in processing the claims is described in section II. The legal principles generally applicable to the claims are described in section III. The review of the claims is set out in greater detail in section IV. Certain incidental issues are discussed in section V. Finally, a list of reasons for denial in whole or in part of the claimed amount and a tabular summary of the particular recommendations with respect to each claim are attached as annexes I and II, respectively.

## I. OVERVIEW OF THE CLAIMS

6. The claimants are non-Kuwaiti entities that were operating primarily in the services sector and import-export trade as of 2 August 1990. Most claimants were engaged in industries such as tourism, hotel management, recreational services, transport and professional services. Others were involved in the manufacture, import and export of a variety of goods, ranging from food products, consumer goods, machinery, chemicals to construction materials.

7. Approximately half of the claims relate to the tourism industry in Greece, Egypt, Israel or other locations in the Middle East. These claimants have stated that, following Iraq's invasion and occupation of Kuwait, there was a substantial decline in the number of incoming tourists to the Middle East and surrounding regions. Other claimants managed hotels in Iraq, Kuwait and Saudi Arabia. A few operated restaurants, amusement parks or cinemas in Kuwait, Saudi Arabia and Israel. These claimants have submitted claims for the interruption of their business operations.

8. Many other claimants had contracts to provide goods or services to customers located in the Middle East, and some had business premises or agents in the Middle East. The claimants allege that Iraq's invasion and occupation of Kuwait disrupted these ongoing business activities. Most of them seek compensation for the non-payment of goods or services provided. In other cases, contracts were interrupted prior to the completion of performance, and the claimants typically claim for the costs incurred in performing the contracts or the loss of anticipated profits. A number of claimants seek compensation for goods lost or destroyed in transit, or for losses incurred when goods originally shipped to buyers located in Iraq or Kuwait were diverted and then resold at a price below the original contract price. Other claimants seek to recover the loss of profits from discontinued or reduced business operations. Several claimants have also claimed for tangible property losses, evacuation costs, and compensation paid to, or expenses incurred in the support of, persons detained by Iraq. Recovery is also sought for increased costs of operations, such as additional insurance, freight, start-up expenses, retraining and other staff costs.

9. Approximately 20 of these import-export claimants seek compensation for the loss of use of funds, which typically arose out of a delay in the receipt of payments by Kuwaiti debtors or insurance payments, or the temporary inability to withdraw funds from Kuwaiti bank accounts.

10. A particularly complex claim in terms of the valuation of the loss was submitted by an American insurance company which had a branch in Kuwait. The claimant alleges that Iraq's invasion and occupation of Kuwait forced it to suspend operations in Kuwait from August 1990 to July 1991. The claimant seeks compensation primarily for losses due to a reduction in its portfolio of existing life insurance policies and in its sale of new life, personal accident and group policies. It also seeks to recover for tangible property losses and a variety of increased costs.

11. The Civil Aviation Authority of the Islamic Republic of Iran (the "Iranian Civil Aviation Authority") has submitted a multifaceted claim that includes losses experienced at three airports in south-west Iran (close to the Iraqi border and the Persian Gulf) and losses suffered by two Iranian airlines. In relation to

the three airports, the claimant seeks compensation primarily for lost revenue due to the reduction in flights to and from the airports. With regard to the two Iranian airlines, the primary losses alleged are the costs of re-routing of flights and the reduction in ticket sales resulting from cancelled flights to and from Kuwait.

12. Three claims were submitted by one Austrian individual and two Austrian corporations who held shares in a Kuwaiti company whose assets were destroyed during Iraq's invasion and occupation of Kuwait and which was subsequently liquidated. These claimants seek compensation for the loss of expected share earnings or for the decline in the value of their beneficial shareholding as at 2 August 1990. Two of the claimants also seek to recover for the non-payment of loans and other advances, which they had made to the Kuwaiti company.

13. The various types of losses for which the claimants seek compensation are discussed in greater detail in section IV below.

## II. PROCESSING OF THE CLAIMS AND PROCEDURAL MATTERS

14. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported the significant new legal and factual issues raised by the claims in this instalment in his thirty-second report dated 6 July 2000. Pursuant to paragraph 3 of article 16, a number of Governments submitted information and their views on the issues raised in the Executive Secretary's report. In addition, the information required under article 16 regarding the claims in this instalment was reported in the Executive Secretary's thirty-ninth report to the Governing Council dated 5 April 2002.

15. The secretariat made a preliminary assessment of the claims in order to determine whether each claim met the formal requirements established by the Governing Council in article 14 of the Rules. As provided by article 15 of the Rules, the deficiencies identified were communicated to the claimants in order to give them the opportunity to remedy those deficiencies.

16. The Panel was formally presented with the claims by the Executive Secretary pursuant to article 32 of the Rules and was briefed upon them by the secretariat during the first substantive meeting of the Panel on this instalment. In its procedural order dated 31 July 2002, the Panel classified the claims as "unusually large or complex" within the meaning of article 38(d) of the Rules in view of the large number of claims, the variety of the issues raised, the volume of documentation submitted with the claims, and the time provided to Iraq to submit written comments with respect to the claim files transmitted to Iraq pursuant to the procedural orders described in paragraphs 19 to 21 below.

17. Given those same factors, as well as the complexity of the verification and valuation issues in these claims, the Panel requested expert advice pursuant to article 36 of the Rules. This advice was provided by accounting and loss adjusting consultants retained to assist the Panel. In addition, because the claim by the insurance company, noted at paragraph 10 above, presented complex actuarial issues relating to the valuation of lost profits, the Panel obtained the assistance of actuarial experts to advise the Panel with regard to that claim.

18. The secretariat and the expert consultants undertook a preliminary review of the claims in order to identify any additional information and documentation that would assist the Panel in properly verifying and valuing the claims. After consultation with the Panel and pursuant to article 34 of the Rules, notifications were dispatched to the claimants (the "article 34 notifications") in which claimants were asked to respond to a series of questions concerning their claims and to provide additional documentation.

19. In its procedural order dated 13 June 2002 and in two subsequent procedural orders dated, respectively, 18 October 2002 and 18 November 2002, the Panel instructed the secretariat to transmit to Iraq the claim files (consisting of the claim form, statement of claim and all of the documents attached by the claimant to the statement of claim) in relation to 28 claims: in particular, those claims (a) based on allegedly unpaid letters of credit issued by Iraqi banks; (b) involving bilateral agreements with Iraq; or (c) relating to transactions with an Iraqi party in respect of which the Panel considered that Iraq's comments could assist in its review of the claim.

20. In the first procedural order, Iraq was invited to submit its comments on such documentation in relation to 25 claims and to respond to questions posed by the Panel by 13 December 2002. Iraq did so on 22 January 2003. The comments and responses of Iraq were nonetheless considered by the Panel in its review of the claims, since such consideration did not delay the Panel's completion of its review and evaluation of the claims within the time period prescribed by the Rules.

21. Iraq's response on three other claims was due on 18 April 2003 and 19 May 2003, respectively. No response has been received from Iraq. Throughout its work, this Panel has sought comments from Iraq, as described above, to assist it in its review of the claims. Consistent with this objective, the Panel has assessed the impact of Iraq's lack of response on the Panel's ability to review these particular claims. Having considered the circumstances of, and evidence available in, each of the three claims involved, as well as the assistance provided by Iraq in similar claims in the past, the Panel concludes that the absence of Iraq's response has not affected its review of the claims.<sup>4</sup>

22. In one claim involving services provided to an Iraqi ministry for which the claimant alleges no payment was made, the claimant requested that the claim file not be transmitted to Iraq. The claimant maintained this request even though it was advised by the secretariat that the Panel may draw an adverse inference against the claimant resulting in a recommendation that no compensation should be awarded for all or part of the claim. The Panel considered the reasons stated by the claimant for its request, as well as the nature of the claim, and finds that Iraq's inability to comment on the claim is material to the proper determination of the claim. Consequently, the Panel recommends no compensation in respect of that claim.

23. In verifying the claims, valuing the losses and determining the appropriate amount of compensation, if any, the Panel takes into consideration the information and documentation provided by the claimants in the original submission and in response to the article 34 notifications, Iraq's comments and documents filed in response to the questions raised by the Panel's 13 June 2002 procedural order, and the comments submitted by a number of Governments in response to the Executive Secretary's reports made pursuant to article 16 of the Rules. The Panel also considers the claim files and claim-specific reports prepared by the secretariat and the expert consultants under the Panel's supervision and guidance. The Panel applies the procedures and methods of verification and valuation described in its previous reports.<sup>5</sup> Where necessary, the Panel adapts these procedures and methods to take into account specific aspects of the claims in this instalment.

24. With regard to the claims by one Austrian individual and two Austrian corporations for losses related to shareholdings in a Kuwaiti corporation, described in paragraph 12 above, the Panel notes that Governing Council decision 123, issued on 15 March 2001, provides for a special procedure for the review of claims submitted by individuals "for direct losses sustained by Kuwaiti companies as a result of Iraq's invasion and occupation of Kuwait" for which claims were also filed by the Kuwaiti company in category "E" ("overlapping claims"). The Panel determines that the claim submitted by the Austrian individual for diminution in the value of his shareholding in the Kuwaiti corporation is an overlapping claim within the meaning of Governing Council decision 123 and therefore must be transferred to another Panel to be considered as such pursuant to Governing Council decision 123.<sup>6</sup> In contrast, the Panel considers that the corporations' claims, having been brought by corporate entities, do not fall within the procedure

established by Governing Council decision 123; accordingly, these claims are determined by this Panel as discussed further at paragraphs 299 to 302 below.

25. In reviewing the claims, the Panel, consistent with its previous practice, has taken measures to ensure that, as required by Governing Council decisions 7 and 13, compensation is not awarded more than once for the same loss.<sup>7</sup> Among other measures, the Panel requested the secretariat to conduct the necessary checks whenever it appeared that the loss under review might be the basis of another claim before the Commission (“cross-check investigation”).<sup>8</sup> Where a claim has been found to be compensable in this instalment and compensation for the same loss has been awarded in another claim, the amount of compensation awarded in the other claim is deducted from the compensation calculated for the claim in this instalment. Where it appears that another claim for the same loss is pending before the Commission, the relevant information is provided to the Panel reviewing the other claim in order to prevent multiple compensation.

26. As between two claimants seeking compensation for the same loss (such as a seller of goods and a Kuwaiti importer), it is the Panel’s conclusion that the right of a claimant to maintain a claim is not necessarily determined on the basis of which party had title to the goods or bore the risk of loss under the terms of the contract, but rather is determined by which party suffered an actual loss, taking into account whether or not payment for the goods had been made to the seller.<sup>9</sup>

27. In several instances, a company claims on its own behalf as well as on behalf of its subsidiary. The Panel recalls the practice adopted for the seventh instalment of “E2” claims that, in such circumstances, the Panel instructs the secretariat to verify that the subsidiary has not presented a claim before the Commission in respect of the same loss or to look for an assignment of the claim from the subsidiary to the parent company.<sup>10</sup>

28. Similarly, the Panel notes the guidance of the Governing Council in paragraph 25 of decision 7 that “any compensation ... already received from any source will be deducted from the total amount of losses suffered”. Both the original claim form and the article 34 notification utilized in this instalment required the claimant to disclose any compensation it has received or may receive from any source other than the Commission and advised the claimant of its ongoing disclosure obligations. In paragraphs 29 to 31 below, the Panel examines various issues relating to this rule.

29. A number of claimants have received part or even full compensation from an insurer, usually a governmental export-credit guarantee agency. Some claimants have submitted claims on behalf of their insurers. Consistent with its previous findings, the Panel concludes that claims submitted in respect of losses for which an indemnity had been received from an insurer “are not admissible unless the claimant produces a mandate from the insurance company confirming that the claimant is authorized to seek in its own name compensation on behalf of the insurer”.<sup>11</sup> The Panel finds that this requirement is satisfied where a claimant establishes that it is obliged under a policy to pursue recovery on behalf of the insurer.<sup>12</sup> Conversely, where the requirement has not been met, payments received by a claimant from its insurers have been deducted from any compensation to be recommended for the claim in this instalment. Where the claimant alleges that the insurer only compensated a portion of its loss, it is incumbent upon the

claimant to establish which part of the claim was covered by insurance so as to enable the Panel to examine whether the uncovered part of the claim is compensable and to avoid multiple recovery for the same loss.

30. In another claim, evacuation and security costs for which the claimant seeks compensation were also subject to reimbursement provisions under a contract between the claimant and a governmental agency for the provision of services. The claimant entered into a settlement agreement with the governmental agency for part payment of the losses alleged. Although a partial payment in full settlement of a claim does not necessarily preclude a claim for the balance before the Commission,<sup>13</sup> the Panel does not recommend compensation for these losses because, inter alia, the claimant did not provide sufficient details of the settlement agreement as would permit the Panel to assess whether there remained an uncompensated direct loss.

31. The Panel recalls that the Commission is not an exclusive forum. Some claimants may have resorted to other legal means to recover losses that could be eligible for compensation by the Commission, notably by bringing an action before a national court or an arbitration tribunal. In order to prevent multiple recovery, the Governing Council, in decision 13, requested Iraq and other Governments to provide information to the Commission about pending lawsuits or other proceedings against Iraq relating to losses for which claims have been filed before the Commission. Similarly, in questions from the Panel, both the claimants and Iraq have been requested to provide the Panel with information about claims in other fora against Iraq or any other third party, in which compensation has been sought for the same losses as those alleged in the claims before the Commission.

### III. LEGAL FRAMEWORK

#### A. General principles

32. Most of the legal issues raised by the claims in the present instalment have been addressed in previous reports by this or other panels. This Panel is guided by the findings in these reports. Before reviewing the claims, the Panel recalls the principles generally applicable.

33. Security Council resolution 687 (1991), paragraph 16, establishes Iraq's liability for losses arising from its invasion and occupation of Kuwait:

“[The Security Council] reaffirms that 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.”

34. The clause in paragraph 16 of resolution 687 (1991) relating to “the debts and obligations of Iraq arising prior to 2 August 1990” (the “arising prior to” clause) has been interpreted by this Panel in its first report. The Panel has found that this clause was intended to exclude from the jurisdiction of the Commission Iraq's “old debt” that had accumulated primarily in the 1980s during the war between the Islamic Republic of Iran and Iraq.<sup>14</sup> The Panel concluded that, for the purposes of resolution 687 (1991), when the performance giving rise to the debt had been rendered by a claimant more than three months before Iraq's invasion and occupation of Kuwait, that is, prior to 2 May 1990, a claim based on payment owed for such performance is to be considered as a debt or obligation arising prior to Iraq's invasion and occupation of Kuwait and is therefore outside the jurisdiction of the Commission.<sup>15</sup> The interpretation of this requirement and the Panel's earlier findings, as they relate to the claims and types of losses in this instalment, are addressed in paragraphs 51 to 55 and 132 and 133 below.

35. Security Council resolution 687 (1991) requires that the causal link between Iraq's invasion and occupation of Kuwait and the loss be “direct” (the “directness requirement”). Paragraph 21 of Governing Council decision 7 establishes the basic rule as to what constitutes a “direct loss” for category “E” claims:

“These payments are available with respect to any direct loss, damage or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

- “(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
- “(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
- “(c) Actions by officials, employees or agents of the Government of Iraq or its

controlled entities during that period in connection with the invasion or occupation;

“(d) The breakdown of civil order in Kuwait or Iraq during that period; or

“(e) Hostage-taking or other illegal detention.”

Paragraph 21 is not exclusive and leaves open the possibility that there may be causes of “direct loss” other than those enumerated.<sup>16</sup>

36. Security Council resolution 661 (1990) imposed on Iraq and Kuwait a trade embargo, effective 6 August 1990, in order to bring Iraq’s invasion and occupation of Kuwait to an end and to restore the sovereignty and territorial integrity of Kuwait. Under Governing Council decision 9, losses that are due solely to the trade embargo and related measures (the “trade embargo”) are not compensable.<sup>17</sup> Governing Council decision 9 further provides that compensation is not to be awarded for trade embargo losses except to “the extent that Iraq’s unlawful invasion and occupation of Kuwait constituted a cause of direct loss ... which is separate and distinct from the trade embargo and related measures”.<sup>18</sup> The application of this requirement to the claims and types of losses in this instalment is explained in paragraphs 59 and 287 below.

37. With regard to the valuation principles applicable to contract losses, the Panel recalls the findings of the “E2A” Panel that:

“The standard measure of compensation for each loss that is deemed to be direct should be sufficient to restore the claimant to the same financial position that it would have been in if the contract had been performed.”<sup>19</sup>

38. Finally, the Governing Council has established, through paragraph 6 of Governing Council decision 9, that claimants before the Commission are under a duty to take reasonable steps to mitigate their losses and that “[t]he total amount of compensable losses will be reduced to the extent that those losses could reasonably have been avoided”. Paragraph 9 (IV) of Governing Council decision 15 confirms that the claimant’s duty to mitigate applies to all types of losses, including contract losses and damage to an ongoing business. The Panel has formulated specific guidelines with respect to the claimant’s duty to mitigate in cases regarding sale of goods contracts as set forth in paragraphs 84 and 114 to 116 below.

#### B. Evidentiary requirements

39. Paragraph 3 of article 35 of the Rules provides that corporate claims “must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss”. This may include consideration by the Panel of evidence submitted by another claimant to the Commission in respect of the same transaction, party or loss, or related thereto.<sup>20</sup>

40. A number of claimants asserted that they were unable to produce the necessary evidence, in whole or in part, because of the time that had elapsed since the events in question or because of the loss or destruction of relevant documents in the course of business. The Panel cannot accept the passage of time

or the routine destruction of the claimant's records in the course of its business activity as adequate reasons to relieve a claimant from the evidentiary requirements of article 35 of the Rules. It is incumbent upon a claimant to preserve all documents within its control that may be relevant to the determination of its claim.

41. In some instances, the claimants filed a summary description of the losses alleged but failed to submit underlying documents supporting the circumstances or the amount of such losses.<sup>21</sup> In others, although the claimants submitted documentation, they did not organize their submission in an understandable fashion or did not supply explanations sufficient to allow the Panel to link the evidence to the particular elements of damage alleged.

42. A number of claimants failed to submit claim forms or English translations of documents in conformity with article 14 of the Rules. Although requested by the secretariat to remedy this deficiency, as required by article 15 of the Rules, some claimants failed to do so. Notably, certain claimants failed to submit an "E" claim form, a statement of claim in English and English translations of documentation on which they relied. Despite several notices from the secretariat, these claimants failed to rectify the deficiencies. The Panel therefore recommends no compensation be awarded in these instances.<sup>22</sup>

43. A number of claimants did not respond to the article 34 notifications sent to them, or only partially responded to some of the questions. Where the lack of supporting evidence or explanation is only partial, the Panel has adjusted the amount to be recommended so as to reflect these deficiencies. This Panel and the "E2A" Panel have recognized that some flexibility is required where Iraq's invasion and occupation of Kuwait itself made it impossible to gather the necessary evidence, such as in the case of records destroyed during the invasion. However, in all cases where the lack of supporting evidence is so extensive or the presentation of the claim is so unclear as to prevent the Panel from understanding the circumstances of the losses claimed or from ascertaining whether the losses are compensable, the Panel recommends no compensation for the claim, or the relevant portions thereof, on the grounds that the claim is unsubstantiated.<sup>23</sup>

#### IV. REVIEW OF THE CLAIMS

44. In this section, the Panel proceeds to examine the specific issues raised by the claims under review by loss type. For each type of loss, the main fact patterns of the claims are described briefly under the heading "Claims description", followed by a discussion of the specific legal principles applicable to the claims under the heading "Compensability". In its analysis of the claims, the Panel is guided by its previous findings and by the findings of other panels. The Panel's recommendations with respect to each claim are set forth in annex II.

##### A. Provision of goods and services for which payment was not received

##### 1. Contracts with parties located in Iraq

##### (a) Claims description

45. Many claimants seek compensation for unpaid sums due under contracts with parties located in Iraq. The claims relate to contracts with Iraqi State entities as well as with Iraqi private parties. The contracts involve the supply of a wide range of goods or services. Most relate to the supply of goods. Some contracts call for the performance of specific tasks, such as the repair of a particular piece of machinery; others relate to project contracts for the supply and installation of specially designed equipment at the Iraqi customer's site.

46. In most cases, sums due for transactions with Iraqi customers were to be paid by letters of credit issued by an Iraqi bank. The terms of payment varied from payment due upon presentation of shipping documents to several months following the completion of the transaction. In some cases, payment was made subject to certain conditions (for example, the issuance of an invoice or an acceptance certificate). In a number of claims, payment was not due until one or two years after the date of performance; in others, the payments had been re-scheduled for several months or years after the original payment due date.

47. Several claims involve contracts for the long-term provision of services. For example, one claim by an insurance company involves unpaid receivables owed by two Iraqi entities to the claimant for their share of underwriting losses that occurred on insurance programmes in which they participated as co-insurers or re-insurers. Another claimant, who operated a hotel in Iraq under a long-term management agreement, seeks compensation for unpaid management services provided in the month of July 1990.

48. Typically, the claimants seek to recover the original contract price of the goods or services. Two claimants also seek other costs associated with the transactions, such as insurance premiums and truck rental fees to arrange deliveries to Iraq.

##### (b) Compensability

49. With respect to the claims involving contracts with an Iraqi private party, the Panel recalls its conclusion in the third report that there is no basis to distinguish between Iraqi private and public parties with respect to "debts and obligations of Iraq arising prior to 2 August 1990 within the meaning of

Security Council resolution 687 (1991)". The Panel also determined in its third report that paragraph 8 of Governing Council decision 9, which establishes Iraq's liability with respect to contractual losses, applies equally to Iraqi private parties as well as to Iraqi Government entities.<sup>24</sup>

50. In its previous reports, the Panel has considered the application of the "arising prior to" clause recited at paragraph 33 above and the directness requirement contained in Security Council resolution 687 (1991) to claims involving non-payment for goods delivered or services provided to Iraqi parties. The application of these principles to the present claims is discussed below.

(i) Jurisdiction under the "arising prior to" clause

51. In implementing the principles recalled at paragraph 34 above, with respect to debts of an Iraqi party for the provision of goods or services, the Panel notes the conclusion in its first report that, as a general rule for the purposes of the "arising prior to" clause, such claims are outside the Commission's jurisdiction where the performance giving rise to the debt had been rendered by the claimant prior to 2 May 1990.<sup>25</sup>

52. In determining when performance was rendered for purposes of the "arising prior to" clause, the Panel notes that the date on which the work was performed must be established. With respect to debts of an Iraqi party for the supply of goods, the Panel recalls the conclusion in its first report, also adopted by the "E2A" Panel, that the claimant's performance is defined by the shipment of the goods and that a claim for non-payment based on a sales contract with an Iraqi party is outside the Commission's jurisdiction if the shipment of the goods took place prior to 2 May 1990.<sup>26</sup> With respect to the supply of services, the Panel observes that some claimants submitted dated invoices showing the amounts due from Iraqi parties, but did not provide evidence that directly demonstrated the date when the claimants rendered the services that entitled them to payment. In such cases, the Panel has ascertained the date on which the work was performed on a case-by-case basis, considering, where possible, such factors as the date of the invoice, the claimant's billing history with the Iraqi party and industry practice. This approach was used by the Panel, for example, in the claims where the claimant sought compensation for insurance underwriting losses and hotel management services, as described at paragraph 47 above.

53. Where the sale of goods to an Iraqi party was to be paid by a letter of credit that has not been honoured, the Panel notes the conclusion of the "E2A" Panel that the exporter may base a claim either upon the underlying sales contract or upon the letter of credit.<sup>27</sup> The "E2A" Panel concluded that, in order to determine whether an exporter's claim based on unpaid letters of credit is within the Commission's jurisdiction under the "arising prior to" clause, the Panel should look to the date on which the claimant presented to the bank documents in conformity with the requirements of the letter of credit, as well as to the date of performance of the underlying transaction, for example, the date of shipment of the goods. In so noting, the Panel adopts the "E2A" Panel's finding that, for the exporter's claim to be within the Commission's jurisdiction, the claimant must have presented to the "confirming" or "advising" bank conforming documents on or after 2 May 1990, provided that the exporter's shipment of the goods was made within 21 days of the presentation of documents, i.e. on or after 11 April 1990.<sup>28</sup>

54. In respect of claims involving the performance of a number of separate undertakings, the Panel recalls the conclusion in its first report that, where performance was still ongoing as at 2 August 1990, the “arising prior to” clause would apply “to those portions of performance that are separately identifiable in so far as the parties agreed in the contract that a particular payment would be made for a particular portion of the overall work called for under the contract”.<sup>29</sup> In respect of claims involving the performance of a single undertaking, the Panel notes that the “E1” Panel, in the context of a contract with an Iraqi party to provide services and equipment over a period from March to July 1990, concluded that as the claimant undertook a single contractual obligation “with no provision for payment for anything less than delivery of the complete package”, its performance for the purposes of the “arising prior to” clause was not complete until the final delivery was made.<sup>30</sup>

55. Claims have been submitted relating to contracts where the original payment dates were rescheduled; others relate to contracts with unusually long payment terms. In its first report, the Panel noted that the rescheduling of contract debts and unusually long payment terms may have the effect of masking the true age of a debt. The Panel concluded that, for purposes of the “arising prior to” clause, old debts cannot be made “new” by deferments or reschedulings and therefore that the claims involving such payment arrangements are outside the jurisdiction of the Commission.<sup>31</sup>

(ii) Application of the directness requirement

56. With respect to the causes of the non-performance of contractual obligations of Iraqi purchasers and Iraqi banks in respect of goods or services provided before Iraq’s invasion and occupation of Kuwait, the Panel notes the “E2A” Panel’s conclusion that the actions of Iraq’s officials during the invasion and occupation of Kuwait, the military operations by Iraq and by the Allied Coalition Forces to liberate Kuwait and the ensuing breakdown of civil order in Iraq directly caused such losses within the meaning of paragraph 21 of Governing Council decision 7.<sup>32</sup>

57. In determining when payment from the Iraqi party was due, the Panel looks to the underlying agreement between the parties. Where payment was not due until after 2 March 1991, the Panel notes that the “E2A” Panel has considered the compensability of such losses in connection with claims brought by manufacturers and suppliers. The “E2A” Panel recognized that the effects of Iraq’s invasion and occupation of Kuwait did not necessarily end immediately after the cessation of hostilities on 2 March 1991 but continued for some period as a direct cause of Iraq’s non-payment of its obligations, parallel to the trade embargo. The “E2A” Panel concluded that, where a payment fell due after 2 March 1991 but was not made by an Iraqi debtor, the ensuing loss might still constitute a direct loss resulting from Iraq’s invasion and occupation of Kuwait and could thus be compensable.<sup>33</sup> However, the “E2A” Panel considered that the direct effects of the invasion and occupation would have abated after several months and, therefore, where payment became due after 2 August 1991, such non-payment could no longer be deemed to have been directly caused by Iraq’s invasion and occupation of Kuwait.<sup>34</sup>

58. With respect to the two claims described at paragraph 48 above, where compensation is sought not only for the contract price of goods but also for associated costs such as insurance premiums and actual costs incurred in arranging deliveries to Iraq, the Panel enquires as to whether the non-payment of the contract price of the goods was a direct result of Iraq’s invasion and occupation of Kuwait; and whether

there is a risk of double compensation with any award for the contract price of the goods. The Panel finds in one case that the non-payment of the goods was not a direct result of Iraq's invasion and occupation of Kuwait and recommends no compensation for the associated insurance premium. In the other, the Panel finds there is insufficient evidence of the amount of the associated freight costs or whether these were, in any event, included in the contract price. Consequently, the Panel recommends no compensation for the actual costs sought.

(iii) Trade embargo

59. In one claim, goods were shipped by the claimant to Iraq after the date on which the trade embargo established under Security Council resolution 661 (1990) entered into effect, namely 6 August 1990. The Panel recalls its earlier finding that a claim based on a shipment of goods to Iraq by a claimant after that date, in violation of the terms of the trade embargo, is not compensable.<sup>35</sup> Moreover, the Panel finds that the claim is unsubstantiated. Therefore, the Panel recommends no compensation for this claim.

60. The Panel applies the above findings to those claims for amounts due but unpaid by Iraqi parties for goods and services provided. The Panel also undertakes a further inquiry into each relevant claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth in annex II.

2. Contracts with parties located in Kuwait

(a) Claims description

61. A number of claimants seek compensation for amounts due under contracts with parties in Kuwait for goods or services supplied prior to Iraq's invasion of Kuwait. The payment terms usually required payment immediately upon shipment or from one to three months after the invoice date. In some instances, the transactions with Kuwaiti customers were to be paid by letters of credit issued by a Kuwaiti bank. In most cases, the claimants had requested payment from the Kuwaiti party by way of invoices or other documents, prior to 2 August 1990.

62. In one claim, where the claimant had received a cheque from the buyer in Kuwait for goods received prior to the invasion, the collecting bank in the United Kingdom advised that payment could not be made due to the trade embargo and related measures. The claimant attempted to collect payment but the buyer refused to pay its debts to the claimant unless, inter alia, the claimant resumed trading with the buyer and ceased marketing its products through other agents in Kuwait. In 1995, a debt-collecting agency retained by the claimant indicated that the buyer ceased to exist.

63. A Swiss claimant, who was operating a restaurant in Kuwait under a management contract, seeks compensation for management services provided from April to August 1990, for which it was allegedly not paid. The claimant also seeks compensation for an overpayment it allegedly made to the owner with regard to certain expenses incurred prior to Iraq's invasion of Kuwait and which it was unable to recover thereafter.

64. Two other claimants were beneficial shareholders in a corporation formed in Kuwait that was involved in the production of ready-mix concrete. The claimants became shareholders in the Kuwaiti corporation in December 1987 and 1988, respectively, and immediately advanced funds to the corporation. Although the terms of repayment of the monies were not defined, the Kuwaiti corporation made some repayments to the claimants in 1989 and 1990. During Iraq's invasion and occupation of Kuwait, assets of the Kuwaiti corporation were damaged and destroyed, and the corporation ceased to operate. The corporation was put in liquidation in 1991 and the liquidator rendered its final report in February 2002, distributing a residual surplus in favour of the shareholders. The claimants did not file claims with the liquidator for the alleged outstanding debts owed to them by the corporation and seek compensation before the Commission.

65. The claimants described in paragraphs 61 to 64 above cite a variety of reasons for the non-payment of the debts. A number of them assert that the buyer in Kuwait could not be traced after the liberation of Kuwait, that the buyer's plant and equipment were destroyed or that the buyer ceased operating and did not resume business thereafter. Other claimants state that the buyer in Kuwait declined to make payments on the basis that the goods supplied were lost or damaged during Iraq's invasion and occupation of Kuwait or that it incurred heavy losses in its business as a result of Iraq's invasion and occupation of Kuwait. A few claimants do not state any reason for non-payment of the debts.

66. In some cases, the claimant was able to recover part of its debt in Kuwait after the liberation of Kuwait or a settlement was reached with the debtor providing for the payment of all or part of the debt. It is noted that a number of claimants resumed trading with their customers in Kuwait after it was liberated.

67. Some claimants do not state whether they made any efforts to collect payment from the party in Kuwait or to locate that party after the cessation of hostilities. Other claimants state that they tried to locate the buyer in Kuwait through debt-collection firms. Many claimants state, usually without any documentary support, that, either directly or through a third party, (a) they were unsuccessful in their attempts to contact the buyer in Kuwait by telephone, facsimile or through embassies or trips to Kuwait; (b) they sent letters requesting payment after the liberation of Kuwait to which no response was received; (c) they re-established contact with the buyer, but were unsuccessful in obtaining payment; or (d) the owner or point of contact at the Kuwaiti business could not be traced.

68. Many claimants submitted evidence of their efforts to collect payment from the debtor in Kuwait or to locate the debtor after the cessation of hostilities. For example, some provided correspondence or investigation reports by their agents or collection firms in Kuwait. In a number of claims, the evidence indicates that the debtor continued to exist after the liberation of Kuwait.

(b) Compensability

69. In its first report, the Panel determined that claimants seeking compensation for the non-payment of amounts owed by Kuwaiti parties must:

“... provide specific proof that the failure to perform was the direct result of Iraq's invasion and occupation of Kuwait. It should not, for example, stem from a debtor's economic decision to use

its available resources to ends other than discharging its contractual obligation, for such an independent decision would be the direct cause of the non-payment and the resulting loss would therefore not be compensable. Adequate proof that a contracting party's inability to perform resulted from Iraq's invasion and occupation of Kuwait would include a showing that performance was no longer possible, for example because the contracting party, in the case of an individual, was killed, or in the case of a business, ceased to exist or was rendered bankrupt or insolvent, as a result of Iraq's invasion and occupation of Kuwait".<sup>36</sup>

70. In the fifth "E2" report, the Panel determined that:

"... it is not sufficient for a claimant merely to allege that the Kuwaiti party was adversely affected by Iraq's invasion and occupation. The claimant must provide specific evidence to demonstrate that the Kuwaiti party's inability to pay the debt was a direct result of Iraq's invasion and occupation of Kuwait".<sup>37</sup>

71. With respect to the claim described at paragraph 62 above involving a cheque which was not honoured after Iraq's invasion of Kuwait, the Panel finds that the claimant has shown that it was owed a debt by the buyer in Kuwait. However, the Panel finds that the buyer temporarily resumed its business after the cessation of hostilities and, although the claimant made numerous efforts to collect the debt through 1993, the buyer refused to pay the debt. The Panel finds the non-payment of the debt to be a result of the buyer's independent decision to use its available resources to ends other than discharging its contractual obligation and not a direct result of Iraq's invasion and occupation of Kuwait. Consequently, the claim is not compensable.

72. With respect to the claim brought by the company operating in Kuwait under a restaurant management contract described at paragraph 63 above, the Panel finds that the claimant has shown that it provided management services to the Kuwaiti company up to August 1990. However, despite specific requests by the secretariat, the claimant has not indicated whether the company in Kuwait ceased to exist or was rendered insolvent as a result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that the claimant has not provided specific proof that the non-payment was the direct result of Iraq's invasion and occupation of Kuwait and recommends no compensation for the losses claimed.

73. With respect to the shareholders' claims described at paragraph 64 above for debts allegedly owed by the Kuwaiti corporation, the Panel finds that the claimants have shown that they provided funds to the corporation and that the corporation ceased to operate as a consequence of Iraq's invasion and occupation of Kuwait. However, the claimants have not shown that they attempted to recoup the funds from the corporation through the liquidator after it ceased to operate. Consequently, the Panel finds that the claimant's choice not to pursue the claim in the liquidation, rather than Iraq's invasion and occupation of Kuwait, is the direct cause of the non-payment by the Kuwaiti corporation and that the claims are non-compensable.

74. As explained in paragraphs 25 and 26 above, the Panel is mindful that a Kuwaiti buyer may also have sought compensation from the Commission for the loss of the same goods as claimed by the seller.

In such circumstances, as between the two parties, only the one who suffered the actual loss may be awarded compensation provided that the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above.<sup>38</sup>

75. The Panel applies the above findings to the claims under review. The Panel also undertakes a further inquiry into each relevant claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth in annex II.

3. Contracts between parties located outside either Iraq or Kuwait

(a) Claims description

76. One claimant seeks compensation for debts involving a partnership located in Abu Dhabi. According to the claimant, the debts were incurred when, following Iraq's invasion and occupation of Kuwait, his partner disappeared and embezzled partnership funds. The claim involves an unpaid judgement against the absconding partner issued by the courts of the United Arab Emirates, as well as debts of the partnership which the claimant was forced to bear on its own.

77. Another claimant, a tour operator in Egypt who had contracted in 1988 with a tour operator in Israel for the provision of services to Israeli tourists in Egypt, seeks compensation for unpaid services provided during the period up to October 1990. The Israeli tour operator began defaulting on payments in September 1990. In March 1991, the claimant obtained Israeli and Egyptian court judgements against the Israeli tour operator, ordering it to pay the sums due to the claimant. The claimant was able to enforce the Israeli court judgement but states that it was unable to enforce the Egyptian court judgement and seeks compensation in the amount thereof.

(b) Compensability

78. The Panel notes the conclusion of the "E2A" Panel in the E2(4) report that:

"Losses relating to contracts involving parties outside Iraq and Kuwait may be compensable insofar as non-performance was directly caused by Iraq's invasion and occupation of Kuwait and, in particular, by military operations or threat of military action in the areas described by the [Panel] ..."<sup>39</sup>

79. The Panel recalls its finding in the E2(13) report that where a claimant seeks compensation for the non-payment of amounts owed for delivered goods under contracts with parties who were not located in Iraq or Kuwait, the claimant must provide specific evidence to demonstrate that the non-payment of the debt was a direct result of Iraq's invasion and occupation of Kuwait.<sup>40</sup> The Panel notes the principles of compensability for claims based on unpaid sums due under contracts with Kuwaiti parties, described at paragraphs 69 to 74 above, and finds that these principles apply to claims based on the non-payment of contracts with parties outside Iraq or Kuwait.

80. In applying the above findings to the claims under review, the Panel determines that none of the claims is compensable, as there was no showing by the respective claimants that the non-payment was directly caused by the invasion. In particular, in relation to the claim involving the partnership based in Abu Dhabi described at paragraph 76 above, noting that all events related to the alleged losses occurred outside the compensable area,<sup>41</sup> the Panel finds that the claimant failed to make a specific showing that its partner absconded or failed to pay as a direct result of Iraq's invasion and occupation of Kuwait. With respect to the claim involving the non-payment of services provided by an Egyptian tour operator to an Israeli party, described at paragraph 77 above, the Panel finds that the claimant has not provided evidence to show that the non-payment was caused by the military operations that affected Israel during the relevant compensable period, namely 15 January 1991 to 2 March 1991,<sup>42</sup> or otherwise was directly caused by Iraq's invasion and occupation of Kuwait.

B. Interrupted contracts

1. Specific principles

81. Certain basic principles set forth in decisions of the Governing Council and in prior reports apply to interrupted contracts performed in Iraq, Kuwait, Saudi Arabia and elsewhere. They are summarized below.

82. Paragraphs 9 and 10 of Governing Council decision 9 provide that Iraq is liable for losses arising from contracts that were interrupted as a direct result of Iraq's invasion and occupation of Kuwait. This liability applies to contracts with Iraqi parties as well as to those to which there is no Iraqi party. Consistent with its findings in previous reports, the Panel interprets "direct loss" in this context to mean "only those losses that would, as of the date of the impossibility, reasonably be expected by both parties to the contract to occur given the nature of the work, the terms of the underlying contract and the cause of the impossibility to perform".<sup>43</sup> This includes the costs of performing the interrupted contract, the loss of expected income under the contract and the additional costs incurred as a result of the interruption. Whenever applicable, deductions are made for cost savings brought about by the non-completion of performance.

83. Previous panel reports have established that, where a contract was being performed in the "compensable area"<sup>44</sup> on 2 August 1990 and was interrupted, the attendant loss is considered to have resulted directly from Iraq's invasion and occupation of Kuwait.<sup>45</sup> Where performance of a contract with a non-Iraqi party did not occur within the compensable area, a claim based upon the contract's interruption is compensable only if the claimant has provided specific proof that the interruption was a direct result of Iraq's invasion and occupation of Kuwait.<sup>46</sup>

84. Compensation for interrupted contracts must take into account the provisions of Governing Council decisions 9 and 15 that require claimants to mitigate their losses.<sup>47</sup> The "E2A" Panel, in the context of interrupted contracts for the supply of goods, has interpreted the duty to mitigate as generally requiring that "the claimant sell the undelivered goods to a third party in a reasonable time and in a reasonable manner".<sup>48</sup> In addition, the "E2A" Panel observed that "in discharging its duty to mitigate, the claimant

must take reasonable steps to preserve the goods or commodities, in conditions appropriate to their nature, pending resale to a third party or resumption of performance of the original sales contract".<sup>49</sup> The "E2A" Panel has also noted that "the duty to mitigate does not require that the resale efforts of the claimant be successful. Rather, it requires that the seller make reasonable efforts to reduce its loss."<sup>50</sup> Consistent with its previous determinations, this Panel adopts the principles outlined by the "E2A" Panel and applies them to the claims under review.<sup>51</sup> This Panel has also decided that, where a claimant has not discharged this duty to the satisfaction of the Panel, any award of compensation is reduced commensurately.<sup>52</sup>

85. The Panel is mindful that claims relating to the same loss as alleged by the seller may also have been filed by the buyer (as in the case of goods lost or destroyed in transit or goods diverted en route to the buyer) or by a supplier to the seller (as in the case of a contract interrupted before shipment of the goods). Consequently, the Panel reviews the secretariat's cross-check investigation for related claims before the Commission and takes the further action described in paragraphs 25 and 26 above.

86. The Panel applies the above findings to the claims under review.

## 2. Goods lost or destroyed in transit

### (a) Claims description

87. Many claimants seek compensation for goods lost or destroyed while in transit. In most of these claims, the goods were destined for buyers in Kuwait. In one claim, the goods were in transit in Kuwait on their way to a third country.

88. In most cases, it is alleged that the goods were in Kuwait near the time of Iraq's invasion of Kuwait or, more specifically, that on 2 August 1990 they were either at the airport or on the docks, in warehouses or the customs areas of one of Kuwait's three maritime ports, or with the Kuwaiti postal services. In other cases, it is alleged that the goods were being held at the storage facilities of agents or transportation companies in Kuwait, including Kuwait Airways. Most claimants state that they do not know what became of the goods because the general destruction brought about by Iraq in Kuwait made it impossible to trace the goods or because the buyer could not be located after the liberation of Kuwait.

89. One claimant, an American exporter, seeks to recover compensation for air conditioning units, which had been found damaged on arrival in Kuwait and were awaiting collection at the time of invasion. In another claim, an American exporter seeks compensation for consignments of vegetable seeds that were sent by post and by air freight to a buyer in Kuwait, which were allegedly lost or destroyed in transit.

90. The goods involved in these claims were shipped at various times. Some would have arrived early enough before the invasion of Kuwait to have been delivered to the buyer. Others would have arrived in Kuwait shortly before the invasion; others would not yet have reached Kuwait by the time of the invasion. For example, a German claimant alleges it had sent three consignments of tyres from Europe to Kuwait by sea on 15 and 29 June 1990 and by air on 21 June 1990. Another claimant, an American exporter, seeks compensation for pump spare parts shipped by sea from Los Angeles to Kuwait on 19 July 1990.

91. In the claim relating to the loss of goods in transit in Kuwait en route to another destination, a German claimant states that carpets were stored at Kuwait International Airport, awaiting transshipment from India to Germany, when Iraq invaded Kuwait.

92. The claimants generally seek compensation for the unpaid contract price of the goods. In addition, one claimant seeks to recover bank charges for the return of a bill of exchange in April 1992.

(b) Compensability

93. Given the military operations and breakdown of civil order in Kuwait during the period of Iraq's invasion and occupation, the Panel finds paragraph 21 of Governing Council decision 7, quoted in paragraph 35 above, provides an adequate basis for a finding of direct loss in respect of claims for goods lost in transit in Kuwait.<sup>53</sup>

94. The "E2A" Panel has found in previous reports that due to the breakdown of civil order and the widespread destruction of property at Kuwaiti airports and seaports, claimants faced practical difficulties in obtaining specific proof of the circumstances in which goods were lost.<sup>54</sup> Given these circumstances, the "E2A" Panel determined that where non-perishable goods arrived at a Kuwaiti seaport on or after 2 July 1990 or at a Kuwaiti airport on or after 17 July 1990 and could not thereafter be located by the claimant, an inference can be made that the goods were lost or destroyed as a direct result of Iraq's invasion and occupation of Kuwait including the ensuing breakdown of civil order.<sup>55</sup> Where, however, the goods arrived in Kuwait prior to the above-stated dates, the "E2A" Panel has required specific evidence to show that the goods were lost or destroyed as a direct result of Iraq's invasion and occupation of Kuwait.<sup>56</sup>

95. In certain claims, the title to the goods or the risk of loss may have already passed to the other party under the terms of the contract at the time the goods were lost.<sup>57</sup> Under such circumstances, the Panel has previously concluded that, provided that multiple recovery for the same loss is avoided and irrespective of which party bore the risk of loss under the terms of the contract, a claim for compensation may be maintained by a seller who has not been paid for the goods, where delivery of the goods to the buyer was prevented due to Iraq's invasion and occupation of Kuwait.<sup>58</sup> This Panel adopts these findings and applies them to the claims under review.

96. With respect to the first claim described at paragraph 89 above, where the goods had been damaged on arrival in Kuwait, the Panel observes that had the invasion not occurred, it is likely that the parties would have negotiated a reduced price for the damaged goods or that the goods would have been returned to the claimant. Accordingly, the Panel awards compensation for the estimated diminished value of the goods that were at the Kuwaiti port and awaiting collection as at 2 August 1990.

97. With regard to the second claim, described in paragraph 89 above, for consignments of vegetable seeds sent by post and by air to a buyer in Kuwait, the Panel finds that the consignment sent by post is non-compensable since the claimant did not provide evidence that the goods alleged to be lost were posted. In respect of the consignment sent by air freight, although no evidence of the date of air shipment was

provided, the Panel is satisfied that the contemporaneous documentation from the banks demonstrates that the collection documents, including the airway bill, were only released to the buyer after 17 July 1990. The bank's documents also corroborate both the claimant's assertion that the goods had not cleared customs before the date of invasion and the buyer's statement that it had not taken delivery of the consignments. Accordingly, the Panel finds the claim compensable, but takes into account evidentiary deficiencies in recommending the amount of compensation.

98. With respect to the claim described at paragraph 90 above, the Panel is satisfied that the consignments sent by sea from Germany on 15 and 29 June 1990 would have arrived in Kuwait after 2 July 1990, namely after the date when an inference can be made that the goods were lost or destroyed as a result of Iraq's invasion and occupation of Kuwait. These losses are accordingly compensable. However, the consignment by air would likely have arrived before 17 July 1990, and as the claimant provided no specific proof that the loss was a direct result of Iraq's invasion and occupation of Kuwait, the Panel finds that the claim based on the consignment by air is not compensable.

99. As to the second claim described in paragraph 90 above, the Panel notes that, given the reasonable estimate of the duration of passage between Los Angeles and Kuwait, the goods would not have arrived in Kuwait by 2 August 1990 and therefore could not have been lost as a direct result of Iraq's invasion and occupation of Kuwait. In the absence of specific proof to the contrary, the claim is not compensable.

100. In the claim for goods awaiting onward shipment to the buyer in Germany, described in paragraph 91 above, the Panel finds there is evidence that the buyer set the goods aside for onward shipment and that on 2 August 1990, the goods were still at Kuwait International Airport. The Panel is therefore satisfied that the goods were lost or destroyed in Kuwait due to Iraq's invasion and occupation of Kuwait and, accordingly, the Panel finds the claim compensable.

101. Where a claimant has satisfied the evidentiary criteria described above, compensation is based on the value of the lost goods, plus any reasonable costs directly resulting from the loss, such as costs involved in trying to locate the goods. Any costs saved as a result of the interruption of the contract, such as commissions that would have been payable to the buyer in Kuwait, are offset against the losses incurred.<sup>59</sup>

102. The compensability of bank charges described in paragraph 92 above relating to the return of a bill of exchange in April 1992 is discussed at paragraph 231 below.

103. The Panel applies the above findings to the claims for goods lost or destroyed in transit. The Panel also undertakes a further inquiry into each relevant claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth in annex II.

### 3. Goods diverted en route to buyer

#### (a) Claims description

104. Several claimants seek compensation for losses related to shipments originally dispatched to a buyer in Iraq or Kuwait that were allegedly diverted as a direct result of Iraq's invasion and occupation of Kuwait. Some of the goods had arrived in the region but had not reached their final destination at the time of Iraq's invasion of Kuwait and had to be diverted to other locations.

105. The goods in question include both ordinary products and specifically manufactured goods made to the requirements of the buyer or for a particular market in Kuwait. The claimants allege either that the goods were resold at a price below the original contract price or that they could not be resold or otherwise used.

106. For example, one claimant alleges that goods en route to Kuwait from the United Kingdom were diverted to Oman. The claimant was able to return some of the goods to its suppliers but was required to pay the supplier's handling charges. It was also able to re-ship the remaining goods to the Kuwaiti customer in December 1991 at the same price. The claimant seeks the loss of profit on the original sale and increased costs for the return air freight and supplier's charges.

107. Two claimants seek compensation for goods shipped from Europe to Iraq which were diverted en route to the Netherlands, where the Dutch authorities arrested the vessels and took possession of the cargo. In order to obtain release of the cargo, the claimants were requested by the Dutch authorities to provide the relevant shipping documents. As the claimants were unable to supply the documents, the Dutch authorities proceeded to auction the goods to pay for costs owed to them or the carrier.

108. Another claimant shipped pharmaceutical products to Iraq shortly after 6 August 1990, the date on which the trade embargo, established under Security Council resolution 661 (1990), entered into effect. The goods were diverted en route and were returned to the claimant's premises, whereupon part of them were resold and the remainder destroyed. The claimant seeks the profits it expected to make on the original sale, as well as the costs of shipping, destroying and re-labelling the goods.

109. Compensation is generally sought for the original contract price or for the difference between the original contract price and the resale price or salvage value. Compensation is also sought for additional costs incurred in the transportation, storage and re-packaging of the goods, costs incurred to destroy the unsold goods, suppliers' handling charges, legal fees (other than claim preparation costs), and commission charges incurred in connection with the resale of the goods.

#### (b) Compensability

110. With respect to the application of the directness requirement, the Panel applies the following rules to the claims under review involving the diversion of goods originally destined for parties in Iraq or Kuwait or third countries.

111. The “E2A” Panel has previously found that, with respect to claims for losses resulting from the diversion on or after 2 August 1990 of goods en route to Iraq, the losses directly resulted from the factual circumstances described in paragraph 56 above and that, accordingly, such losses are the direct result of Iraq’s invasion and occupation of Kuwait.<sup>60</sup> This Panel adopts these findings and applies them to the claims under review.

112. The “E2A” Panel has also previously found that, with respect to claims for losses arising from the diversion on or after 2 August 1990 of goods en route to Kuwait, such diversions were the direct result of actions of Iraqi officials during Iraq’s invasion and occupation of Kuwait, military operations and the ensuing breakdown of civil order in Kuwait. Consequently, the “E2A” Panel has found that such losses are the direct result of Iraq’s invasion and occupation of Kuwait.<sup>61</sup> This Panel adopts these findings and applies them to the claims under review.

113. With respect to claims for losses arising from the diversion of goods destined for countries other than Iraq or Kuwait, which occurred on or after 2 August 1990, the Panel applies the following rule. Where a contract was being performed in a “compensable area”, as described in paragraph 83 above, the interruption is considered to have resulted directly from Iraq’s invasion and occupation of Kuwait. Where the interrupted contract was being performed outside the compensable area, the claimant must make a specific showing that its inability to perform or the buyer’s cancellation was directly caused by Iraq’s invasion and occupation of Kuwait.<sup>62</sup>

114. As noted in paragraphs 38 and 84 above, the claimant is under an obligation to take reasonable steps to mitigate its losses. In the context of losses arising from diverted shipments, such an obligation includes the requirement that the claimant attempt to sell the undelivered goods to a third party within a reasonable time and in a reasonable manner. The claimant must also take reasonable steps to preserve the goods in a condition appropriate to their nature, pending resale to a third party or resumption of performance of the original sales contract.

115. Where the claimant has resold the goods in a reasonable manner and within a reasonable time, the measure of compensation is the difference between the original contract price and the price in the substitute transaction, plus reasonable incidental costs, such as expenses incurred in stopping delivery, preserving the goods, and re-routing or reselling them. Any costs saved as a result of the interruption of the original contract, such as unincurred freight costs, are offset against the losses incurred.<sup>63</sup>

116. Where the claimant has not taken reasonable steps to dispose of the goods, or where the resale price obtained was less than that which could reasonably have been obtained for the goods in question, the measure of compensation is the difference between the original contract price and the price at which the goods reasonably could have been resold. Where the claimant has established that the goods could not be resold, the measure of compensation is the contract price of the goods, less their salvage value and expenses avoided, plus reasonable additional costs where claimed.<sup>64</sup>

117. With respect to the claim described at paragraph 106 above, where the claimant re-shipped the remaining goods to the Kuwaiti customer after the liberation, the Panel is satisfied that the claimant had

made reasonable efforts to mitigate its loss and that it suffered a loss of profit on the unperformed portion of the contract.

118. With regard to the claims described at paragraph 107 above, where diverted goods were seized by the Dutch authorities and sold to pay costs after the relevant shipping bills were not provided, the Panel finds the claims compensable. However, with respect to one of the claims, the Panel adjusts the amount to be recommended to reflect the lack of evidence as to the claimant's efforts to collect the cargo.

119. As regards the claim described in paragraph 108 above, the Panel recalls its earlier finding that a shipment of goods to Iraq after 6 August 1990 violates the terms of the trade embargo and a claim based on such a shipment is not compensable.<sup>65</sup> In the claim under review however, based on the information provided, the Panel is satisfied that the goods, namely, pharmaceutical products, were not subject to the embargo.<sup>66</sup> The Panel therefore finds compensable the loss of profit under the contract, as well as the costs of destroying and re-labelling the goods. As for the costs associated with the shipment of the items, the Panel notes that the claimant took the risk of non-delivery as it made the shipment after the date of Iraq's invasion of Kuwait. Consequently, the Panel determines that these associated costs are not direct losses and are thus non-compensable.

120. The compensability of the claims for additional costs associated with diverted goods, such as freight, storage, costs to destroy unsold items, legal costs and commission charges, is discussed in paragraphs 218 to 223 below.

121. The Panel applies the above findings to the claims under review. The Panel also undertakes a further inquiry into each relevant claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth in annex II.

#### 4. Contracts interrupted before shipment of goods or provision of services

##### (a) Claims description

122. Several claimants seek compensation for losses related to contracts for the manufacture and delivery of goods and, in some cases, the provision of related services such as installation or technical assistance, which allegedly were interrupted due to Iraq's invasion and occupation of Kuwait. The goods involved were either ordinary products or goods manufactured to the buyer's particular specifications. The contracts were generally concluded between buyers in Kuwait or Iraq and sellers from many parts of the world. One claimant, based in Spain, seeks compensation in connection with several contracts for textiles placed by a number of buyers, including some from Bahrain and the United Arab Emirates.

123. As alleged by the claimants, the interruption of the contracts occurred at various stages of performance. Some claimants state that manufacture was completed by 2 August 1990 and that the shipment or installation of the equipment represented the only remaining performance. Others state that, at the time of Iraq's invasion and occupation of Kuwait, the necessary materials for manufacture were being assembled and the goods were partially manufactured. For example, a supplier in Saudi Arabia alleges that

it had already purchased copper and aluminium in June 1990 to fulfil an order from an Iraqi buyer for electrical cables at the time of the invasion. A few claimants state that work had not begun on the contract at that time. For example, one claimant alleges that it concluded a contract for the supply of carbon steel coils to a customer in Iraq in June 1990 but that no steps had been taken by the claimant to perform the contract as of 2 August 1990. Another claimant, an American medical supplier, was engaged in negotiations with a customer in Kuwait to finalize a specific order of medical supplies and had reached agreement on the final terms of the order with the Kuwaiti customer, when the order was interrupted as a result of the invasion. Finally, in other claims, contracts with parties in Iraq or Kuwait were interrupted months or even over a year before the invasion.

124. One claimant seeks compensation in connection with a number of contracts concluded in 1989 and 1990 to supply steel, rubber and other products to several customers in Iraq. The contracts required that the customers in Iraq open a letter of credit in favour of the claimant prior to delivery. With regard to some of the contracts, no letter of credit had been opened and no deliveries had been made by the claimant; while for other contracts, although the claimant did not show that a letter of credit had been issued, it nevertheless had begun making deliveries to the customer in Iraq by the time of Iraq's invasion of Kuwait. Several other contracts were concluded a few weeks prior to the invasion and, as of 2 August 1990, no corresponding deliveries had been made. The Iraqi customers had, in some cases, made partial payments to the claimant for the shipments delivered. The claimant alleges that the contracts were in each case interrupted as a result of Iraq's invasion and occupation of Kuwait and seeks compensation for loss of profit on the undelivered goods under each contract.

125. In another claim, a buyer of machinery in Israel seeks compensation for loss of profit arising from a delay in the delivery of machinery as well as associated insurance, transportation and credit expenses. According to the claimant, on the scheduled date for shipment to Israel, 18 January 1991, the seller refused to ship the goods unless the claimant paid the balance of the contract price in advance. Under the original contract, the terms of sale were "free on board" and the balance of the price was payable against presentation of documents. The claimant eventually paid the balance in advance, and the machinery was shipped on 2 February 1991 and arrived in Israel on 3 March 1991, several weeks after originally scheduled.

126. Although a number of claimants were successful in reselling the manufactured goods to other customers, others allege that the unique nature of the goods made it impossible to find other buyers. For example, one claim is based on a contract to supply chinaware with a design specifically manufactured for Iraqi Airways, which could not be delivered to Iraq or resold to a third party. Other claimants do not explain the efforts, if any, that were undertaken to re-sell the goods.

127. Some claimants attempted to resume the transactions with the Kuwaiti buyers. In one claim, the claimant had manufactured a mould to the customer's specifications but the shipment, which was sent on 26 July 1990, was interrupted in transit to Kuwait. The mould was diverted to Dubai where it was stored until 1992 when it was delivered to the same customer in Kuwait. The customer found, however, that at that point it could no longer use the mould and refused to pay for it. The claimant seeks compensation for the contract price of the mould.

128. Claimants normally seek compensation for one or more of the following losses: the contract price; the costs incurred in performing the contract up to the time when performance was interrupted; the profits they expected to earn under the contract; the difference between the contract price and any income generated from resale of the goods; and the difference between the contract price and the salvage value of the goods.

129. Several claimants also seek compensation for additional costs allegedly incurred as a result of the interruption, such as freight, storage and assorted costs, legal fees and banking costs.

130. Two claimants, who had entered into sales contracts with parties in Iraq, had opened a letter of credit and a counter-guarantee in favour of the Iraqi party pursuant to the terms of their respective contracts. The contracts were interrupted, and the claimants seek compensation for banking fees they incurred with respect to the letter of credit and counter-guarantee. In one claim, compensation is also sought for financing premiums to cover future orders of goods under a contract with an Iraqi buyer, which were never made due to Iraq's invasion and occupation of Kuwait. The claimant alleges that as no further shipments to Iraq were possible, it did not receive the benefit of the financing fee.

(b) Compensability

131. With respect to the application of the "arising prior to" clause and the directness requirement to claims involving contracts interrupted before the shipment of goods or the provision of services, in addition to the principles set forth in paragraphs 32 to 38 and 81 to 86 above, the Panel applies the following rules.

(i) Jurisdiction under the "arising prior to" clause

132. Where a contract with an Iraqi party was in progress on 2 August 1990 and was interrupted as a result of Iraq's invasion and occupation of Kuwait, portions of performance that are separately identifiable, in so far as the parties had agreed that a particular payment would be made for a specified portion of the overall work, are subject to the "arising prior to" clause.<sup>67</sup> In such circumstances, only claims relating to those portions of the work that were completed on or after 2 May 1990 are within the Commission's jurisdiction.<sup>68</sup>

133. Where the contract provided that approval or certification by the owner was a condition precedent to payment, the "arising prior to" rule is applied in the following manner: (a) if the approval occurred or should have occurred prior to 2 May 1990, claims for such payments are outside the jurisdiction of the Commission; and (b) if approval occurred or should have occurred on or after 2 May 1990, claims for such payments are not barred under the "arising prior to" clause.<sup>69</sup>

(ii) Application of the directness requirement

134. With respect to the directness requirement, paragraphs 9 and 10 of Governing Council decision 9 provide that Iraq is liable for losses arising from contracts that were interrupted as a direct result of Iraq's

invasion and occupation of Kuwait. This rule applies to contracts with Iraqi parties as well as to those where there is no Iraqi party.

135. Concerning claims based on contracts with Iraqi parties, the performance of contracts for the manufacture and supply of goods to Iraq between 2 August 1990 and 2 March 1991 is deemed to have been rendered impossible as a direct result of Iraq's invasion and occupation of Kuwait, given the factual circumstances described in paragraph 56 above.<sup>70</sup>

136. As regards claims based on contracts with Kuwaiti parties, the interruption of such contracts was caused by military operations and the breakdown of civil order in Kuwait during the period of Iraq's invasion and occupation between 2 August 1990 and 2 March 1991 as described in paragraph 112 above and, therefore, is deemed to have been a direct result of Iraq's invasion and occupation of Kuwait.<sup>71</sup> Where the contract was interrupted before performance was completed, a relevant consideration under Governing Council decision 9 is whether the parties could have resumed the transaction after the cessation of hostilities and whether they have in fact resumed the transaction.<sup>72</sup>

137. With respect to the interruption of contracts between parties from States other than Iraq or Kuwait, where a contract was being performed in a compensable area during the relevant periods, as described in paragraph 83 above, the interruption is considered to have resulted directly from Iraq's invasion and occupation of Kuwait.<sup>73</sup>

138. Where the interruption is alleged in relation to a contract being performed outside the compensable area, the claimant must make a specific showing that its inability to perform or the other party's cancellation was directly caused by Iraq's invasion and occupation of Kuwait.<sup>74</sup> No such showing was made in the Spanish claim before the Panel, described at the end of paragraph 122 above, which involves customers located in Bahrain and the United Arab Emirates and for which the Panel accordingly does not recommend compensation.

139. As regards the claim for loss of profits with respect to an anticipated contract, described in paragraph 123 above, the Panel finds that Iraq's invasion and occupation of Kuwait interfered with the claimant's business relationship with its Kuwaiti customer. The Panel is satisfied that, had the invasion not occurred, the contract would likely have been finalized. The claim for loss of expected profits is therefore compensable to the extent that these can be ascertained with reasonable certainty, less any actual cost savings resulting from the interruption of the contract. In other cases, the Panel finds that, although contracts were interrupted and the claimants incurred a loss, such interruption was not the direct result of Iraq's invasion and occupation of Kuwait. This applies, for example, in the claims described at the end of paragraph 123 above, where the contracts were interrupted months or more before the invasion and, accordingly, such claims are not compensable.

140. The claim described at paragraph 124 above involves several contracts. The Panel finds non-compensable those parts of the claim based on contracts interrupted for reasons other than Iraq's invasion and occupation of Kuwait, for example, where the letter of credit involved had not been opened as required under the terms of the contract and no deliveries had been made prior to 2 August 1990. In contrast, the Panel finds compensable those parts of the claim based on contracts where delivery had

begun and performance was ongoing as of 2 August 1990, as well as those based on contracts concluded a few weeks prior to the invasion.

141. With regard to the claim for loss of profit and associated costs arising from a delay in the delivery of machinery, described at paragraph 125 above, the Panel finds the cause of the losses to be the seller's refusal to ship the goods in accordance with the contract. Therefore, no compensation is recommended as the claimant has not shown that the losses were a direct result of Iraq's invasion and occupation of Kuwait.

142. With respect to claims based upon contracts interrupted before the shipment of goods or the provision of services, the Panel concludes that direct losses may include the costs incurred by the claimant in performing the contract prior to its interruption, additional costs incurred as a result of the interruption, as well as the loss of income that the claimant expected to earn under the contract. In determining the compensation to be awarded for such losses, the Panel recalls the findings of the "E2A" Panel that, where performance of a manufacturing contract was discontinued, the appropriate measure of compensation is "normally the actual costs plus the lost profit, proportionate to the degree of fulfilment of the contract that the claimant could reasonably have expected to earn under the contract. These costs include 'variable costs' plus reasonable overhead costs, less credit for any proceeds of resale and costs saved".<sup>75</sup>

143. With regard to claims for lost profits expected on the unperformed portion of a contract, the Panel applies the principle that the claimant may recover an amount sufficient to restore it to the same financial position that it would have been in had the contract been performed.<sup>76</sup> Compensation may be awarded for loss of future earnings and profits that the claimant expected to earn under the contract to the extent that they can be ascertained with reasonable certainty, less any cost savings resulting from the interruption of the contract.<sup>77</sup> In such cases, the Panel finds that lost profits should be calculated on the basis of the claimant's profit margin for the contract. In assessing the claimant's profit margin, the Panel mainly looks to the claimant's financial statements and the relevant industry standards.<sup>78</sup>

144. In view of the claimant's duty to mitigate its losses, the Panel applies its previous determination that the period for which compensation may be awarded is limited to a reasonable period necessary for the claimant to replace the work called for by the contract when the contract was interrupted (the "interrupted-contract recovery period").<sup>79</sup> In determining the interrupted-contract recovery period for a particular claim, the Panel is mindful of the factors identified by the "E2A" Panel in determining the extent to which lost profits may be awarded for the unperformed portion of a long-term contract:

"The Panel considers as particularly relevant to such a determination, the time period necessary for the business in question to recover from the effects of Iraq's invasion by, for example, locating another market and reallocating its resources to other business activities. In determining the length of the compensation period, the Panel also regards as relevant the complexity of the contract, its length and its importance in relation to the total business operations of the claimant."<sup>80</sup>

145. Similarly, as applied to the claims in this instalment, which primarily concern contracts for the supply of goods, the Panel considers the following factors, among others, as especially pertinent in

determining the length of the interrupted-contract recovery period: the duration of the interrupted contract; the size of the contract and the percentage of the claimant's business it represented; the extent to which the contract was performed prior to interruption; the nature of the claimant's business; the location of the claimant's business and its customers; the availability of substitute customers; and the ability of the claimant to reallocate its resources.<sup>81</sup>

146. Concerning claims based on contracts with Kuwaiti parties, the Panel also notes that whether and when the contracting parties could resume the contract after the lifting of the trade embargo against Kuwait, and whether they in fact have resumed the contract, are also relevant considerations in determining the extent to which a claimant has suffered a compensable loss of profits under an interrupted contract.<sup>82</sup> Thus, where a claimant has concluded new contracts with the same party after the liberation of Kuwait, involving in whole or in part the same work that the claimant would have undertaken under the original contract, the claimant will normally not have suffered a compensable loss of profits under the contract.<sup>83</sup>

147. As to the claim described at paragraph 127 above, where the claimant attempted to resume the sale of a mould with the Kuwaiti buyer, the Panel finds that the claim is compensable inasmuch as the item was, in fact, rendered obsolete in 1992 as a result of a delay directly caused by the invasion.

148. In some of the contracts where performance was interrupted between 2 August 1990 and 2 March 1991, payment by the Iraqi party was not due until after 2 August 1991. For such contracts, the Panel adopts the findings of the "E2A" Panel that Iraq's liability extends to the costs reasonably incurred prior to the interruption of performance of the contract and, where appropriate, subject to the duty of mitigation, the expected profits under the contract apportioned over the period during which they would have been earned. Only amounts accrued within the compensable period (described at paragraph 169 below) may be awarded.<sup>84</sup>

149. The compensability of other claims for additional costs of freight, storage, insurance and assorted costs and for legal fees and banking costs is discussed in paragraphs 218 to 233 and 252 to 255 below.

150. With respect to the claims involving banking charges paid by the claimants on a letter of credit and a counter-guarantee opened in favour of the Iraqi party (described at paragraph 130 above), the Panel finds, in one claim, that the claimant did not show that the contract, which was interrupted months prior to Iraq's invasion and occupation of Kuwait, was interrupted as a direct result thereof; and in the other claim, that the claimant did not show it suffered a loss as it had received a pre-payment from the party in Iraq for undelivered goods which exceeded the banking costs related to the counter-guarantee. The Panel concludes that the banking charges are therefore not compensable. With regard to the claim for insurance premiums paid in connection with shipments to Iraq that were cancelled as a result of Iraq's invasion and occupation of Kuwait (described at paragraph 130 above), the Panel adopts the finding of the "E2A" Panel with respect to a similar claim for fees that had been paid in order to guarantee payment in connection with the unperformed portion of a contract.<sup>85</sup> As in that case, the Panel finds that the claim under review is compensable in principle, as the cost of the premiums was specifically incurred to perform a contract with an Iraqi party which was later interrupted, and that the claimant's consequential inability to receive

the benefit of the insurance premiums was therefore a direct result of Iraq's invasion and occupation of Kuwait.

151. The Panel applies the above findings to the claims under review. The Panel also undertakes a further inquiry into each relevant claim to determine whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth in annex II.

5. Interrupted long-term management and licensing contracts

(a) Claims description

152. Six claims arise from the interruption of long-term management or licensing agreements involving various retail shops, hotels and a restaurant, all located in Kuwait or Iraq. The claimants allege that as a result of Iraq's invasion and occupation of Kuwait, the various premises were occupied by Iraqi troops or suffered extensive damage which forced the claimants to suspend operations. In some cases, the claimants state that, after the liberation of Kuwait, operations never resumed or never returned to pre-invasion levels. The claimants seek compensation for loss of expected income during the period of the invasion and occupation and, in some cases, for reduced revenue for extended periods of time thereafter. Some of the claimants also seek compensation for additional costs incurred to resume operations and for unproductive salaries, evacuation of staff or personal property reimbursement.

153. Four claimants, who operated large quality hotels or a restaurant in Kuwait, allege losses in relation to the interruption of long-term management contracts. In the first of these claims, the claimant invoked force majeure provisions under the contract as early as 28 July 1990, in view of the imminent threat of military action by Iraq, and suspended performance of the contract. The hotel, which was later occupied for several weeks by Iraqi forces, sustained extensive damage as a result of the invasion of Iraqi troops and subsequent looting. The claimant states that the hotel reopened on 31 March 1991, and it seeks compensation for management fees lost from 2 August 1990 to 31 March 1991, as well as additional increased administrative costs incurred to resume the hotel's business.

154. In the second and third claims, the claimants allege that, due to the invasion, operation of the hotels that they respectively managed in Kuwait was suspended; and that after the liberation, activity could only be resumed following extensive repairs. Both hotels were occupied by Iraqi troops and suffered widespread damage; the hotel in the second claim was used as a holding centre for hostages and Kuwaiti prisoners; and the hotel in the third claim was extensively burned by departing Iraqi forces. These claimants seek to recover management fees lost from 2 August 1990 until the re-opening dates of the hotels, that is 9 July 1991 and 1 January 1993, respectively.

155. In the last of the four Kuwaiti management claims, the claimant states that it was forced to suspend operation of a restaurant in Kuwait during the period of the occupation. The claimant does not allege any material damage to the premises, but seeks compensation until August 1991 based on a liquidated damage provision of the contract, which provided for payment of 12 months of lost revenue.

156. Another claim involves the interruption of a licensing and technical assistance agreement and a supply contract entered into in 1982 with a Kuwaiti retailer covering four toy stores in Kuwait. The claimant alleges that during the invasion, two stores, together with their inventory, were destroyed and the other stores were looted; and that following the cessation of hostilities, only one store reopened, and the claimant's Kuwaiti business operations never returned to pre-invasion levels. The claimant seeks compensation for a decline in revenue from August 1990 to July 1993 (when the claimant's agreements with the Kuwaiti retailer were terminated for other reasons).

157. The sixth claimant in this category was the manager of two deluxe hotels in Baghdad and Basra under 10-year contracts with the Iraqi Ministry of Tourism. According to the claimant, at the time of the invasion, Iraqi officials occupied both hotels, expelled hotel guests and used the hotels as centres to hold hostages and prisoners. The claimant states that its expatriate staff resigned and its Iraqi staff was conscripted into military service and that it never resumed management of the hotels. There is no allegation of damage to the hotels. The claimant states that Iraq's actions breached the management agreements and that it therefore considered its obligations terminated. The claimant seeks compensation for management fees lost from August 1990 to, respectively, December 2001 and December 2002, when the management contracts were originally scheduled to expire.

(b) Compensability

158. Consistent with the principles described at paragraphs 81 to 85 and 142 to 146 above, the Panel finds that each of the services contracts in question was interrupted as a direct result of Iraq's invasion and occupation of Kuwait.<sup>86</sup> Accordingly, the claimants are entitled to compensation for loss of earnings and profits that they expected to earn under the contract to the extent that such losses can be ascertained with reasonable certainty, less any cost savings resulting from the interruption of the contract, for a period limited to the "interrupted-contract recovery period" defined above.<sup>87</sup>

159. In determining the appropriate length of the interrupted-contract recovery period to be applied in these claims, which principally concern contracts for the supply of services, the Panel applies the factors stated at paragraph 145 above, also taking into account any contract provision permitting early termination of the claimant's services. More specifically, the Panel looks to the nature of the claimant's business and the extent of damage suffered to determine the date upon which the claimant could reasonably have been expected to resume normal operations. Other considerations relevant to determine the appropriate compensation period are the size of the business, the nature and length of the contract, the complexity of the operation, the extent of improvements made as part of the repairs and, as the case may be, the extent to which refurbishment was ongoing at the time of the invasion.

160. Thus, for example, with regard to the three claims by hotel operators in Kuwait described in paragraphs 153 and 154 above, the Panel concludes that 31 March 1991 and 9 July 1991 as claimed by the first and second claimants, respectively, and 31 March 1992, rather than 1 January 1993 as claimed by the third claimant, determine appropriate compensation periods, considering in each case the nature of the managed establishments, the extent of the material damage sustained, the period of reconstruction, and the measure of improvements made as part of the restoration.<sup>88</sup>

161. With respect to the claim by the restaurant manager in Kuwait described at paragraph 155 above, in view of the limited information provided by the claimant and given the nature of the industry, the Panel concludes that a period of one month after the cessation of hostilities is a sufficient period for the claimant to have resumed operations.

162. In recommending an appropriate compensation period for the claim described at paragraph 156 above, the Panel notes that the retail shops would not have required extensive outfitting to resume business. Accordingly, the Panel finds that a span of five months after 2 March 1991 is a reasonable period for the operations to return to normal levels. Accordingly, the claim for loss of profit is compensable until 31 July 1991.<sup>89</sup>

163. With respect to the claim in relation to two hotels located in Iraq described at paragraph 157 above, the Panel finds that the contracts were interrupted as a direct result of Iraq's invasion and that therefore the claim is compensable. As regards the appropriate compensation period, the Panel recalls its earlier finding in its second report in relation to a similar claim and concludes that the claimant could have been expected to recover from the effects of the invasion by the end of June 1991.<sup>90</sup>

164. The Panel also undertakes a further inquiry into each relevant claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. In determining the measure of compensation for such losses, the Panel applies the factors stated at paragraph 159 above. Its recommendations with respect to each claim are set forth in annex II.

165. Claims for related increased costs to restart operations, unproductive salaries, evacuation and personal property reimbursement expenses are examined by the Panel in paragraphs 241 to 248, 256 to 259, 266 to 269 and 276 to 278 below.

### C. Decline in business or interrupted course of dealing

166. Some claimants seek compensation for a loss of revenue suffered as a result of a decline in business or an interrupted course of dealing that occurred during the period of Iraq's invasion and occupation of Kuwait and, in some cases, for a period thereafter. These claims are not based on the interruption of specific contracts, but rather on the suspension or reduction of the claimant's general business operations.

#### 1. Specific principles

167. The Panel concluded in previous reports that a general reduction in the revenue of an ongoing business, which suffered a decline in operations but no physical destruction or temporary closure, may constitute a loss eligible for compensation.<sup>91</sup> Similarly, the Panel has found that, consistent with the provisions of Governing Council decision 9, a claim based on the interruption of a course of dealing may constitute a loss eligible for compensation.<sup>92</sup> In considering such claims, the Panel has elaborated on the "directness requirement", in particular: (a) the definition of the "compensable area" and "primary

compensation period”; (b) the allowance of a “secondary compensation period” for business recovery; and (c) the definition of “presence” in the compensable area, as set forth below.<sup>93</sup>

(a) Compensable area and primary compensation period

168. Security Council resolution 687 (1991) reaffirms that Iraq is liable for any direct loss, damage or injury as a result of its invasion and occupation of Kuwait. Where losses are sustained in Iraq or Kuwait, the directness requirement will generally be met by the claimant showing that the loss resulted from one of the five enumerated categories of events and circumstances listed in paragraph 21 of Governing Council decision 7. In the case of losses suffered outside Iraq and Kuwait by claimants in the present instalment, the Panel finds that the facts underlying the claims can only relate to paragraph 21(a) of decision 7, which requires that the “military operations or threat of military action by either side during 2 August 1990 to 2 March 1991” be the direct cause of the loss or damage.<sup>94</sup>

169. In its second and third reports, the Panel considered the geographical area and the time period within which decline in business and course of dealing losses may be considered to have been directly caused by military operations or threat of military action within the meaning of paragraph 21(a) of decision 7.<sup>95</sup> In its third report, the Panel delineated the locations that were subject to military operations and the threat of military action for the purposes of subparagraph 21(a) of decision 7, as well as the time periods during which they were so affected (collectively referred to as the “compensable locations” or the “compensable area”).<sup>96</sup> The findings in these reports are summarized below:

Table 3. Compensable area

<u>Location</u>	<u>Date</u>
Iraq	2 August 1990 - 2 March 1991
Kuwait	2 August 1990 - 2 March 1991
Saudi Arabia (within the range of Iraq’s scud missiles)	2 August 1990 - 2 March 1991
Persian Gulf north of the 27th parallel	2 August 1990 - 2 March 1991
Israel	15 January 1991 – 2 March 1991
Jordanian airspace	15 January 1991 – 2 March 1991
Bahrain	22 February 1991 - 2 March 1991
Qatar	25 February 1991 - 2 March 1991

170. Even where a loss has been allegedly sustained in a compensable area, the Panel, with respect to the claims before it, undertakes an inquiry to determine whether the particular loss asserted is a direct one and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above.

(b) Business recovery and secondary compensation period

171. In its second report, the Panel found that, in some instances, the full resumption of a claimant's business operations was not likely to have taken place immediately upon the cessation of military operations, and consequently compensation could be awarded for a recovery period extending beyond 2 March 1991 (the "secondary compensation period").<sup>97</sup> The Panel further found that the guiding principle to be followed in determining the secondary compensation period is that "losses are compensable until the point where the claimant's business could reasonably have been expected to return to normal levels" and that the duration of the appropriate compensation period should be decided on a case-by-case basis.<sup>98</sup>

172. For example, in respect of the tourism industry, the Panel recalls its previous findings that hotels and tour operations may have experienced a period of time after the liberation of Kuwait during which Iraq's invasion and occupation of Kuwait could have had a continuing effect on the claimant's business. Specifically, one could reasonably expect that a period of several weeks or months would elapse before normal activities resumed, since most tourists book tours and make other travel arrangements well in advance.<sup>99</sup> For Israeli tourism claims, the Panel specifically determined in its second report that the average date after the cessation of military operations on which the claimants' business revenue first reached or exceeded projected revenue was 30 June 1991. Consequently, the Panel found that a span of four months after 2 March 1991 is a reasonable period for the tourism related claimants in Israel to have resumed normal operations, and that any loss of profits suffered during the secondary compensation period is compensable.<sup>100</sup> Appropriate secondary compensation periods for other types of claims in this instalment are discussed below.

(c) Relevance of presence in the compensable area

173. In the case of claims for losses from a decline in business, previous reports of the Panel have established that where a claimant was based in the compensable area or otherwise maintained a presence there by way of a branch, agency or other establishment (such situations described hereafter as a "presence") during the relevant time period, such claims are compensable in principle.<sup>101</sup> Any such losses are considered to have resulted directly from Iraq's invasion and occupation of Kuwait. Claims for decline in business by a claimant with a presence in the compensable area are considered in paragraphs 176 to 192 below.

174. Claimants who did not maintain a presence in the compensable area may be able to sustain a claim for decline in business if, rather than a presence, they can establish a "course of dealing" with a party in the area as discussed in paragraphs 202 to 211 below.

175. The Panel applies the above findings to the claims under review for decline in business or course of dealing losses. The Panel also undertakes a further inquiry into each relevant claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations with respect to these claims are set forth in annex II.

2. Claimants with a presence in the compensable area: general

(a) Claims description

176. A number of claimants in this instalment were based in or carried on operations from offices, branches or other establishments in Kuwait, northern Saudi Arabia or Israel. Most of these claimants provided tourism or entertainment services, notably as hotel and tour operators. These claimants seek lost profits due to a decline in business revenues, allegedly sustained as a result of Iraq's invasion and occupation of Kuwait.

177. One example is a claim by a hotel operator in Al Khafji, Saudi Arabia, which is located 12 kilometres from the Kuwait border. Following the invasion of Kuwait, the hotel first experienced a large influx of refugees. Due to the later threat of military attack, its staff was evacuated to Dammam under instructions from the officials of Al Khafji. On 31 January 1991, the city of Al Khafji was invaded by Iraqi forces. The hotel was occupied by Iraqi troops and suffered damage to its structure, fixtures and furniture. In addition to compensation for damaged property and evacuation costs, the claimant seeks to recover the profits lost from 17 January 1991 to the end of April 1991, the period when the hotel was not operating.

178. Numerous claims were submitted on behalf of Israeli companies for decline in revenues due to the downturn in tourism and recreational activities, mostly during the period from January to March 1991. The claimants allege that their businesses were disrupted by the threat of military action directed against Israel by Iraq beginning on 15 January 1991, and the launching of scud missiles against Israel from 18 January 1991.

179. For example, a number of Israeli claimants seek compensation for the profits lost by their hotels. Two bus tour operators and an event organizer in Israel claim compensation for a cancellation or reduction in bookings.

180. Several theatre owners claim a loss of cinema earnings in Israel. One claimant was a non-profit organization established to promote the film industry in Israel which derived its income from a levy imposed on cinema tickets sold in Israel. The claimants state that cinemas in Israel were partially closed for part of January and February 1991 due to the military situation and suffered reduced attendance when they reopened.

181. Another claimant was an amusement park operator in Dhahran and Dammam in the northern part of Saudi Arabia, which suffered a decline in the number of visitors to both facilities. The claimant alleged that its visitors were mainly from the area and avoided the parks due to military operations in the region.

182. One claimant, a Dubai partnership, claims a loss of profit in relation to its retail store and restaurant in Kuwait, which were damaged and closed during Iraq's invasion and occupation of Kuwait. In addition, this claimant asserts a claim for the loss of "goodwill" of the store and restaurant.

(b) Compensability

183. The Panel previously determined that if a claimant establishes that it was based in the compensable area or maintained a presence there, as described in paragraph 173 above, during the relevant time period, a direct causal link will in principle be found to exist between the alleged decline in business and Iraq's invasion and occupation of Kuwait. Under such circumstances, the claimant is entitled to compensation "for the profits which, in the ordinary course of events [the claimant] would have been expected to earn and which were lost as a result of a decline in business directly caused by Iraq's invasion and occupation of Kuwait".<sup>102</sup>

184. In relation to the claims for decline in revenues due to the reduction in tourism and recreational activities described in paragraphs 178 to 180 above, the Panel recalls the findings in its second report that "as of 15 January 1991...until the cease-fire resolution came into effect, there existed a credible and serious threat of military action directed at Israel that was intimately connected to Iraq's invasion and occupation of Kuwait" and that, consequently, losses suffered in Israel from 15 January 1991 to 2 March 1991 that were a direct result of this threat are compensable.<sup>103</sup> Consistent with its second report, the Panel determines that the primary compensation period for the losses suffered in Israel extends from 15 January 1991, when the threat of military action first materialized, to 2 March 1991, when military operations ceased.

185. As noted in paragraph 172 above, the Panel has previously determined in its second report that the secondary compensation period for claims by hotel and tour bus operators in Israel should not exceed four months beyond 2 March 1991 as this was considered to be a reasonable period for the tourism related claimants to resume normal operations.

186. With regard to the claim by the events organizer, described in paragraph 179 above, the Panel determines that the period from 3 March 1991 to 31 March 1991 (the last day of the period claimed) is a reasonable secondary compensation period. A period of several weeks would be required for this type of business to re-establish bookings.

187. With regard to the claims by cinema operators, only one of the claims raises the issue of whether a secondary compensation period should be recommended. The Panel finds that, given the circumstances of this claim, compensation for a secondary period of one week is appropriate.

188. With respect to the valuation of the compensable losses, the Panel refers to the loss of profit methodology described in its second report.<sup>104</sup> According to this methodology, historical revenues are analysed to determine historical growth rates to be used in determining revenue lost during the compensation period. Where appropriate financial information is provided, the Panel determines if a consistent trend exists for the period August 1987 to July 1990 and projects the trend over the compensation period. The Panel may need to vary this approach according to the data provided. Actual revenue reported for the compensation period is deducted from the projected revenue to arrive at lost revenue.<sup>105</sup> In respect of Israeli claims, where insufficient historic data is available to perform a valid

projection of revenue and the data is stated in Israeli New shekels, the Panel confirms the application of an inflation adjustment of 10 per cent to account for inflation in Israel during this period.<sup>106</sup>

189. With respect to the claim of the hotel operator described in paragraph 177 above, the claimant has claimed for losses only after January 1991 when Iraqi forces forced the closure of the hotel. Based on its review of the financial statements provided by the claimant, the Panel finds that from August 1990 to January 1991, the period when there was an influx of refugees, the claimant earned extraordinary revenues as a result of Iraq's invasion and occupation of Kuwait. In order to put the claimant in the position it would have been in but for the invasion and occupation, the Panel determines that it should consider all the effects of the invasion and occupation on the claimant's situation and compare the claimant's position with the position that it would have been in, had the invasion and occupation not occurred. As these extraordinary profits exceeded the amount of profit lost during the claim period, the Panel does not recommend compensation for the loss of profit portion of the claim. In the circumstances of this claim, however, the Panel does not find it appropriate to set off the amount of extraordinary profits against other loss types claimed by the claimant.<sup>107</sup>

190. With regard to the claim submitted by the operator of the amusement parks in Dhahran and Dammam, Saudi Arabia, described in paragraph 181 above, the Panel finds that both parks were within the compensable area; and, consistent with the findings in its second report, the claim is compensable during the period 2 August 1990 to 2 March 1991. The Panel further determines that a one-month period following 2 March 1991 is an appropriate secondary compensation period during which the claimant's business could reasonably have been expected to return to normal levels. In making its findings, the Panel notes that the claimant has not alleged that its amusement parks had sustained physical damage as a result of military operations and that, unlike a hotel relying on the attendance of tourists, the parks relied on the attendance of the local community so that no advance bookings were required.

191. The Panel determines that the claim described in paragraph 182 above is compensable in principle from 2 August 1990 to 2 March 1991. In addition, the Panel finds that the period from 3 March 1991 to 2 August 1991 is a reasonable secondary compensation period, at the end of which this type of business could be expected to resume normal operations.

192. The Panel is mindful that the way in which claims are presented by the claimants might entail a risk of double compensation, for example, where the claim includes both lost profits and increased costs of operations or unpaid receivables.<sup>108</sup> With regard to the claimant who suffered a loss of profit in relation to its restaurant and retail store in Kuwait, described in paragraph 182 above, the Panel finds that, in this case, the claims for loss of "goodwill" are not truly claims for loss of the value of the reputation of a business, but are rather, in fact, a duplication of the claim for loss of profit due to a decline in business caused by the invasion and occupation of Kuwait.<sup>109</sup> Accordingly, the Panel recommends no compensation for the claims for loss of "goodwill".

3. Claimant with a presence in the compensable area: life insurance trade

(a) Claims description

193. One claimant is an American life insurance company which sold and administered life, personal accident and group insurance policies in Kuwait through a network of 35 agents and eight support staff. The claimant alleges that it had to suspend operations in Kuwait during the period of Iraq's invasion and occupation, that it started to reorganize its activities in July 1991 and did not resume normal operations until January 1992. The claimant seeks compensation for loss of profit due to both a reduction in its portfolio of life insurance policies, and a decline in its sales of life, personal accident and group insurance policies. The claimant also seeks compensation for additional costs incurred to resume operations after the cessation of hostilities, evacuation costs and loss of tangible property.

194. The claimant alleges that following Iraq's invasion of Kuwait, numerous policy-holders fled Kuwait and stopped paying insurance premiums and, consequently, that many life insurance policies lapsed (the "loss of in-force life business"). In addition, the claimant alleges that its agency workforce and base of potential customers in Kuwait were dispersed as a result of Iraq's invasion and occupation of Kuwait and that its new sales levels of life, accident and group policies dropped (the "loss of new business"). The claimant seeks compensation for the loss of profit on policies which lapsed during the period August 1990 to the end of October 1992; and for the profit it would have generated on new insurance sales from August 1990 to the end of 2001.

(b) Compensability

195. In keeping with the standards described at paragraph 183 above, the Panel finds that the claimant has established that it maintained a presence in a compensable area during the relevant compensable period and that, under such circumstances, it is entitled to compensation for the profits which, in the ordinary course of events, it would have been expected to earn and which were lost as a result of a decline in business directly caused by Iraq's invasion and occupation of Kuwait.

196. Based on the criteria described at paragraph 171 above, the Panel determines the appropriate compensation period for the loss of profit incurred by the claimant. First, as regards the claimant's loss of in-force life business, the Panel finds that the compensable period should only cover policies that lapsed from 2 August 1990 to 31 December 1991. In reaching this decision, the Panel notes that the claimant re-opened its office in July 1991, so that it appears reasonable that by December 1991 the claimant could have re-assembled its records and contacted policy-holders to invite them to reinstate their policies. Moreover, the policies that lapsed after 31 December 1991 are not shown by the evidence to have lapsed as a direct result of Iraq's invasion and occupation of Kuwait.

197. Second, as regards the claimant's loss of new business, the Panel notes that the claimant's network of agents in Kuwait was dispersed and that a significant portion of the sales force had to be recruited and retrained. Based on the Panel's appreciation of the evidence provided by the claimant, the Panel finds that 31 December 1992 is a reasonable date for the claimant's business to have resumed normal operations.

(c) Valuation

198. As stated at paragraphs 10 above and 17 above, because this claim presents complex actuarial issues relating to the valuation of lost profits, the Panel retained expert consultants with insurance actuarial expertise to assist it in the review of this claim. In assessing the claim, the expert consultants reviewed the documents provided by the claimant (notably financial statements, management accounts, draft actuarial statements, new business statistics reports and lapse reports) and examined the assumptions used by the claimant in calculating its loss, including future cash flow and reserve projections, and the risk discount rate used by the claimant to calculate the present value of this amount.

199. The Panel observes that the method often used by this Panel and other panels to calculate lost profits of a business is the historical growth method which, as noted at paragraph 188 above, involves a comparison of past and future projected profits with the actual profits earned for the compensation period. However, the Panel notes that application of the historical growth methodology to claims for lost profits in the insurance industry can lead to distortions. Indeed, customary practice in the life insurance industry is to calculate profitability through “embedded values” based on the “discounted cash flow method”,<sup>110</sup> as the claimant has done in this claim. Considering all of the above, the Panel finds that the discounted cash flow method is the appropriate method for assessing the alleged lost profits in the claim before it.<sup>111</sup>

200. In valuing the claim, the Panel reviews the assumptions used by the claimant in calculating its loss according to the discounted cash flow method, taking into account also any saved expenses. In particular, in consultation with the expert consultants, the Panel makes significant adjustments to the claimant’s assumptions relating to normal lapse rate and surrender profit. The revised assumptions are applied by the Panel in its calculation of the loss of profit to be recommended for compensation.

201. The claims for additional costs to resume operations after the cessation of hostilities, evacuation costs and loss of tangible property are examined by the Panel in paragraphs 256 to 259, 266 to 269 and 282 to 288 below.

4. Claimants without a presence in the compensable area

(a) Claims description

202. Most of the claims in this category involve the provision of tourism services. Approximately 130 claimants operated hotels in Greece or Egypt or provided travel, cruise boat and car rental services in one of those countries. One claimant operated a hotel in Cyprus. These claimants allege a decline in the number of incoming tourists from all over the world. Other claimants were based in Germany, Italy, the Netherlands or the United Kingdom and organized tours to Egypt, Greece, Morocco and other Mediterranean resorts. These claimants allege a decline in the number of customers travelling to these destinations.

203. Another claimant, the Iranian Civil Aviation Authority, seeks compensation for airline industry losses suffered in relation to three airports and two national airlines in Iran due to cancelled or re-routed flight operations. Recovery is sought for lost profits arising from a general decrease in transit charges, exit duties, airport rental revenue and ground service revenue. The claimant also seeks to recover increased

costs incurred by the national airlines due to the re-routing of flights between Iran and Syria, Greece and Cyprus, as well as the loss in ticket sales for flights between Iran and Kuwait.

204. A consultancy company, registered in Jersey, England, but based in Abu Dhabi, claims loss of profits and a reduction in its bank balances due to the detention of its sole owner and employee in Kuwait and later Iraq from 2 August 1990 to 10 December 1990. The employee was in Kuwait for consultancy work and was due to leave for Abu Dhabi on the day of the invasion when he was detained by Iraqi troops and later taken to Baghdad. As a result, the company could not operate from August 1990 to May 1991 when the employee resumed consultancy work in Abu Dhabi after a period of illness following his detention.

205. None of the claimants maintained an office or other establishment in a compensable area. All of them seek compensation for loss of revenue or profits.

(b) Compensability

206. Where claimants were based outside the compensable area and did not maintain a presence there, the Panel has evaluated each claim pursuant to the standards of paragraph 11 of Governing Council decision 9 which states:

“Where a loss has been suffered relating to a transaction that has been part of a business practice or course of dealing, Iraq is liable according to the principles that apply to contract losses. No liability exists for losses related to transactions that were only expected to take place based on a previous course of dealing.”

207. In previous reports, the Panel found that course of dealing claims are compensable under paragraph 11 of Governing Council decision 9 where

“the claimant shows that there was a regular course of dealing with another party, demonstrating that the claimant had a well-founded expectation of further business dealings of the same character with the same party under readily ascertainable terms and, in addition, that a consistent level of income and profitability had been realized from such dealings. A mere showing of past earnings from operations to locations in the compensable area will be insufficient to establish a course of dealing giving rise to compensable losses.”<sup>112</sup>

208. In the E2(9) report, in interpreting these rules, this Panel stated that “to establish that there was a ‘well-founded expectation of further business dealings of the same character with the same party under ascertainable terms,’ a claimant must show there were particular circumstances that created this expectation”.<sup>113</sup> Such circumstances could consist of, for example, “a well-established arrangement that contemplated further dealings of the same character with the same parties in the compensable area”.<sup>114</sup>

(i) Tourism claims

209. In the light of the number of claims involved, the Panel instructed the secretariat and the expert consultants to undertake a specific preliminary review of the claims with a view to ascertaining the number of potentially compensable ones. Accordingly, “short-form” article 34 notifications were sent to the claimants for the purpose of determining whether the claimants had any business activity in the compensable area (described in paragraph 169 above). In a number of responses, the claimant expressly indicated that it had no business or customers located in the compensable area or that it had no additional information to provide to the Commission. Where a claimant responded that it had business or customers in the compensable area, a further article 34 notification on decline in business or course of dealing was sent to that claimant.

210. Applying the principles described in paragraphs 173 to 174 above, the Panel finds non-compensable those claims in which the claimants did not have a presence in a compensable area and did not establish that they had a course of dealing with any identifiable customers from the compensable area. The Panel also determines to be non-compensable those claims merely asserting the receipt of earnings from the compensable area without evidence of a series of transactions with specifically identifiable customers from this area.

211. In contrast, the Panel finds to be compensable, in principle, a claim by an Egyptian tour operator in which the claimant has provided sufficient evidence of a well-established, regular series of past transactions with an identified customer in Israel over time and prior to 2 August 1990, which was interrupted as a result of Iraq’s invasion and occupation of Kuwait. The Panel finds that other losses claimed by this claimant in respect of interrupted dealings with other alleged customers in Israel and Kuwait, which were not supported by sufficient evidence, are not compensable.

(ii) Iranian aviation claim

212. With regard to the claim by the Iranian Civil Aviation Authority for airline industry losses, the claimant did not provide evidence to support the claimed amounts in relation to any of the loss elements claimed. In particular, the claimant did not provide schedules, statistical data or other evidence of a nature to demonstrate a decline in business with respect to flights to, from or over a compensable area; nor were basic accounts or other financial information submitted to substantiate the alleged reduced earnings.

213. In response to a supplemental article 34 notification,<sup>115</sup> the claimant provided a further two-page document relating to flight routes and navigational instructions. This document did not provide information on operations related to the compensable area or associated revenue and profitability. Based on the lack of evidence, the Panel finds the claim to be non-compensable.

(iii) Hostage-related claim

214. With regard to the claim by the company registered in Jersey and with its head office in Abu Dhabi, described in paragraph 204 above, the Panel notes that neither location is within a compensable area. However, the claimant’s sole employee and owner was detained in Kuwait and Iraq during the invasion and occupation.

215. The Panel recalls its observation in its second report that Security Council resolution 687 (1991) refers to any “direct loss or damage” resulting from Iraq’s invasion and occupation of Kuwait, but does not specify where such loss or damage should have occurred.<sup>116</sup> Similarly, the decisions of the Governing Council do not limit per se the Commission’s jurisdiction in terms of the place where the loss or damage was suffered or, for that matter, where the event causing the loss took place. Accordingly, the Panel has found that the place where the loss or damage was suffered by the claimant is not in itself determinative of the Commission’s competence.<sup>117</sup> The Panel finds that the present claim is compensable because the detention of the claimant’s only employee and owner in Kuwait and Iraq directly led to the suspension of the claimant’s operations.<sup>118</sup> The Panel determines that the period of compensation ought to be the period of the employee’s detention as well as that necessary for him to recover from his detention and to resume business activities in Abu Dhabi.

216. To avoid double compensation, the Panel deducts from the recommended amount the award for loss of salary and loss of profits previously awarded to the employee in category “C”. The Panel is also mindful that the way in which claims are presented by the claimants might entail a risk of double compensation and, in this respect, the Panel finds that in the present claim the reduction in the claimant’s bank balance losses duplicates the alleged loss of profit and therefore is not compensable.

#### D. Increased costs

217. Numerous claimants seek compensation for additional costs incurred as a result of the disruption or cessation of their business operations in Iraq, Kuwait or Saudi Arabia, or their transactions with parties in these and other locations allegedly caused by Iraq’s invasion and occupation of Kuwait. Such increased costs include claims for (1) additional costs of resale, freight and storage and associated administrative costs; (2) bank guarantees and commissions; (3) re-routing costs; (4) fuel costs; (5) additional war risk insurance charges; (6) unproductive salaries and termination payments paid to employees; (7) unproductive rental payments; (8) legal and related consultancy fees other than claim preparation costs; (9) post-liberation start-up costs; and (10) incentive payments.

##### 1. Additional costs of resale, freight and storage and associated administrative costs

###### (a) Claims description

218. A number of claimants seek to recover increased costs allegedly incurred to mitigate losses relating to contracts or business operations that were interrupted as a result of Iraq’s invasion and occupation of Kuwait as described hereafter.

###### (i) Increased freight costs

219. As described in paragraph 109 above, where goods were diverted en route, several claimants seek compensation for increased freight costs incurred in returning the goods or diverting them to alternative destinations.

###### (ii) Storage and handling

220. As described in paragraphs 109 and 129 above, where goods were diverted en route or where manufactured goods could not be shipped to the original buyer in Iraq or Kuwait, some claimants seek compensation for additional storage, handling, disposal or destruction costs, as well as associated administrative costs.

(iii) Re-packaging, adaptation and associated administrative costs

221. As described in paragraphs 109 and 129 above, where goods were diverted en route or where manufactured goods could not be shipped to the original buyer in Iraq or Kuwait, some claimants seek compensation for the costs incurred in re-packaging, re-labelling and adapting the goods or equipment for resale to an alternative customer, as well as associated administrative costs.

(b) Compensability

222. The Panel has found that increased costs such as the cost of freight for diverting goods, costs of storing and handling goods or equipment that could not be delivered to Iraq or Kuwait or other compensable areas, costs of finding substitute markets, as well as associated administrative costs, are reasonable steps in mitigation of a claimant's loss. Such costs are compensable, provided they are appropriate in nature and reasonable in amount.<sup>119</sup>

223. The Panel applies the above findings to the claims under review. The Panel also undertakes a further inquiry into each relevant claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations with respect to each claim are set forth in annex II.

2. Bank guarantees and commissions

(a) Claims description

224. Several claimants seek compensation for fees charged by banks in relation to a variety of matters. Typically, these fees relate to guarantees and the return of an unpaid bill of exchange.

225. One British claimant seeks compensation for commissions charged by a bank for the period 9 August 1990 to 9 December 1992 in relation to bank guarantees, which allegedly could not be released because an Iraqi buyer did not return a performance guarantee relating to goods diverted en route to Iraq as a result of Iraq's invasion and occupation of Kuwait.

226. One American claimant alleged that it was required to deposit funds in a Kuwaiti bank account as security for guarantees given by its Kuwait office to various Kuwaiti government entities. The claimant closed its Kuwait office in December 1990. In 1992 the claimant filed an application to cancel its business licence and the related guarantees. In 1995 that application was approved and the claimant's funds were released, less commission charged by the Kuwaiti bank. The claimant seeks compensation for the commission charges.<sup>120</sup>

227. As stated at paragraph 92 above, another claimant seeks compensation for bank charges incurred when the issuing bank returned a bill of exchange in April 1992. The bill of exchange related to goods shipped “on a sight draft basis” from the United States to Kuwait on 19 May 1990, which arrived damaged at the Kuwaiti port on 18 June 1990 and which as at 2 August 1990 had not been collected and were subsequently lost or destroyed as a result of the invasion.

228. Prior to Iraq’s invasion and occupation of Kuwait, one American claimant obtained a bank loan for its related business in Kuwait, which was guaranteed by a relative of the claimant’s owner. The claimant alleges that, as a result of Iraq’s invasion and occupation of Kuwait, it defaulted on the loan, the guarantor was called upon by the bank to repay the loan, and the claimant had to repay the guarantor. The claimant seeks compensation for the amounts it repaid to the guarantor.

(b) Compensability

229. As to the claim for bank guarantee commission charges described in paragraph 225 above, the Panel recalls the “E2A” Panel’s finding that “beyond a certain point in time, the economic and other consequences of Iraq’s invasion and occupation of Kuwait would have abated. Consequently, beyond such point in time, Iraq’s invasion and occupation of Kuwait can no longer be deemed to be the direct cause of Iraq’s non-payment of its obligations. While it is difficult to assess with precision the time that Iraq would have needed to restore its capacity to resume payment of its obligations, absent the trade embargo, the Panel finds that such period would not have exceeded five months beyond 2 March 1991”.<sup>121</sup> The Panel agrees with this determination and similarly finds that, had Iraq’s invasion and occupation of Kuwait not occurred, the guarantee would likely have been cancelled and the commissions would not have been charged. The Panel thus determines that the continued failure of the Iraqi buyer to return the performance guarantee during the period claimed was a direct result of Iraq’s invasion and occupation of Kuwait until 2 August 1991. Beyond this period, the Panel determines that the invasion and occupation can no longer be deemed to be the direct cause of the Iraqi buyer’s failure to return the performance guarantee and the continued accrual of bank commission charges.

230. As to the commission charges deducted from funds released by a Kuwaiti bank to the claimant in 1995, described in paragraph 226 above, the Panel confirms its finding in the E2(5) report that this claimant has failed to present sufficient evidence of the direct relationship between the charges alleged and Iraq’s invasion and occupation of Kuwait.<sup>122</sup> Accordingly, no compensation is recommended.

231. As to the costs incurred in relation to the bill of exchange described in paragraph 227 above, the Panel recalls its previous determination that the amount of compensation for goods found to be lost or destroyed in transit as a direct result of Iraq’s invasion and occupation of Kuwait is based on an assessed value of the goods for which payment is outstanding plus any reasonable incidental costs. The Panel finds that the goods for which the bill of exchange was issued were lost or destroyed in transit as a direct result of the invasion. Therefore, compensation is recommended, not only for the assessed value of the lost goods, but also for the reasonable incidental costs in the form of bank charges for the return of the bill of exchange following the loss of the goods.

232. As to the claim described at paragraph 228 above, the Panel finds that, because the loan was repayable in any event, the claimant has not demonstrated that it suffered a direct loss as a result of Iraq's invasion and occupation of Kuwait. Accordingly, no compensation is recommended.

233. The Panel applies the above findings to the claims under review. The Panel also undertakes a further inquiry into each relevant claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth at annex II.

### 3. Re-routing costs

#### (a) Claims description

234. The Iranian Civil Aviation Authority states that as a result of Iraq's invasion and occupation of Kuwait, two Iranian national airlines had to re-route flights between Iran and Syria, Greece and Cyprus. It seeks compensation for the additional costs incurred over a period of seven months following 2 August 1990.

#### (b) Compensability

235. The Panel previously addressed similar claims for re-routing costs in its third report.<sup>123</sup> The Panel had earlier defined the theatre of air military operations as including the airspace of Iraq, Kuwait, part of Saudi Arabia, Israel and Jordan, an area significantly smaller than the area of actual re-routing by airlines following Iraq's invasion and occupation of Kuwait. In addition, it noted that re-routing is a common occurrence in air transport due to a number of events such as congestion of traffic and weather conditions and, as such, is factored into the calculation of operating costs by civil carriers. Moreover, the contingency routes defined by the International Civil Aviation Organisation at the time of Iraq's invasion and occupation of Kuwait continued to be used after the cease-fire. Therefore, the Panel concluded that "these circumstances combined make it practically impossible to identify and assess re-routing costs, if any, which would have been directly caused by the invasion and occupation of Kuwait."<sup>124</sup> Moreover, in the present case, the claimant failed to provide sufficient information and evidence to enable the Panel to attempt such an assessment. Accordingly, no compensation is recommended.

### 4. Fuel costs

#### (a) Claims description

236. A Saudi Arabian importer seeks compensation for additional fuel costs incurred for imports from countries including South Korea during the period from August 1990 to April 1991. The claim is based on a general increase in the cost of fuel and other petroleum products as a result of a worldwide increase in the price of crude oil following Iraq's invasion of Kuwait.

(b) Compensability

237. This Panel addressed similar claims for increased fuel costs in its third report. The Panel found that the temporary hike in the price of oil following Iraq's invasion of Kuwait was due to market forces, presumably driven by the enforcement of the United Nations trade embargo and the expectation of oil shortages that in fact never materialized.<sup>125</sup> It also noted that in decision 15 the Governing Council stated that these oil price increases were an example of the economic situation caused by the trade embargo, which is not a basis for compensation.<sup>126</sup> The Panel applies this determination to the claim under review. Accordingly, no compensation is recommended.

5. Additional war risk insurance charges

(a) Claims description

238. A Saudi Arabian importer claims compensation for increased war risk insurance costs incurred in the course of its business operations, which it alleges resulted from Iraq's invasion and occupation of Kuwait. This claim is based on surcharges imposed by carriers on the claimant for additional premiums charged by underwriters in order to maintain war risk coverage in respect of shipments of goods through the Middle East.

(b) Compensability

239. In its third report, this Panel concluded that the cost of additional war risk insurance premiums was a direct result of Iraq's invasion and occupation of Kuwait to the extent that they were incurred in respect of operations within compensable areas during the compensable periods identified in paragraph 169 above.<sup>127</sup> In the same report, the Panel further found that, to the extent that a war risk premium covers risks other than military operations or the threat thereof, such as terrorist attacks, part of the premium was not incurred as a direct result of Iraq's invasion and occupation of Kuwait and therefore is not compensable.<sup>128</sup>

240. The Panel applies the above findings to the claim under review. The Panel also undertakes a further inquiry into the claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations with respect to this claim are set forth in annex II.

6. Unproductive salary and termination payments

(a) Claims description

241. Seven claimants seek compensation for salaries typically paid for periods from July 1990 to April 1991 to employees who were allegedly rendered unproductive as a result of Iraq's invasion and occupation of Kuwait. Among these are employees who were held hostage in Iraq, employees who remained in Kuwait and Israel but were unable to work productively, an employee who was on vacation overseas

when Iraq invaded Kuwait and was unable to return, and others who were evacuated from Kuwait, Iraq and Al Khafji, Saudi Arabia.

242. Several claimants also seek compensation for termination payments made to employees who were discharged due to the disruption or cessation of the claimant's business activities in Kuwait and Iraq as a result of Iraq's invasion. One claimant seeks compensation for further costs allegedly incurred in relation to such employees located in Kuwait, namely loss of "visa deposit fees" and losses arising from early pension payments to a Jordanian national who was unable to return to Kuwait after Iraq's invasion and occupation of Kuwait.

(b) Compensability

243. With respect to claims for increased employment costs, the Panel recalls the findings in its previous reports that salary payments made to unproductive employees are compensable "to the extent that the lack of productivity was a direct result of Iraq's invasion and occupation of Kuwait ... and the employee could not be reassigned to other productive tasks".<sup>129</sup> In addition, as found in prior reports, contractually or legally required expenses incurred in terminating employment, rather than continuing to incur unproductive employment costs, are mitigation expenses and, as such, are compensable in principle.<sup>130</sup>

244. The Panel considers that these principles apply equally to salary payments made to unproductive employees based in compensable locations other than Iraq and Kuwait during the compensable periods, to the extent that the lack of productivity was a direct result of military operations or the threat of military action rather than other circumstances. Salary payments to employees after evacuation from compensable locations are compensable only when the employee could not be reassigned to other productive tasks and the non-productivity was caused directly by Iraq's invasion and occupation of Kuwait.<sup>131</sup>

245. The Panel is particularly mindful that in claims of this type, related parties, such as the claimants' employees themselves, may have also sought compensation from the Commission for the loss of salary or termination of their employment contracts. Consequently, the Panel reviews the secretariat's cross-check investigation for related claims before the Commission and takes the further action described in paragraphs 25 and 26 above.

246. As to the claim for further costs allegedly incurred in relation to termination of employment, described in paragraph 242 above, the Panel finds that the losses arising from early pension payments made to the Jordanian employee are not compensable as the employee's failure to return to Kuwait was not demonstrated to be a direct result of Iraq's invasion and occupation of Kuwait.

247. The Panel further finds that, in relation to "visa deposit fees", the claimant failed to adequately explain why the fees could not be recovered or to demonstrate that the loss was a direct result of Iraq's invasion and occupation of Kuwait.

248. The Panel applies the above findings to the claims under review. The Panel also undertakes a further inquiry into each relevant claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth in annex II.

## 7. Unproductive rental payments

### (a) Claims description

249. One claimant seeks compensation for the loss of the benefit of advance payments of rent made in respect of offices in Kuwait that could not be used because of Iraq's invasion and occupation of Kuwait. The payment covered a period of time following 2 August 1990 when the claimant was forced to cease its operations in the area.

### (b) Compensability

250. In its previous reports, the Panel found that payments for rent and other services for the period 2 August 1990 to 2 March 1991 in connection with premises in Iraq or Kuwait that the claimant could not utilize are compensable in principle.<sup>132</sup> As determined in prior reports, rental payments in the case of businesses are best considered as contributing to a loss of profit and taken into consideration in valuing such a loss.<sup>133</sup> In the claim under review, however, it is not possible to value the claim for rental payments as an element of a loss of profits, notably because the claimant did not submit such a claim. In such a case, the Panel considers that the advance payments created an entitlement to the use of an asset and, to the extent that the claimant's inability to receive the full benefit of those payments was the direct result of Iraq's invasion and occupation of Kuwait, such payments are compensable in principle.<sup>134</sup>

251. The Panel applies the above findings to the claim under review. The Panel also undertakes a further inquiry into the claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth in annex II.

## 8. Legal and related consultancy fees other than claim preparation costs

### (a) Claim description

252. One claimant seeks to recover the cost of legal and engineering consultancy services allegedly incurred in order to address matters resulting from Iraq's invasion and occupation of Kuwait. This involved taking steps to retrieve goods shipped to Iraq but diverted to the Netherlands, to recover bank charges incurred in relation to interrupted contracts with an Iraqi buyer, and to recover insurance premiums incurred for the unperformed portion of an interrupted contract with an Iraqi buyer.

### (b) Compensability

253. The Panel found in the E2(9) report that claims for legal fees are compensable in principle if the matter necessitating the engagement of legal services was a direct result of Iraq's invasion and occupation of Kuwait and to the extent such fees are reasonable in amount.<sup>135</sup> The same reasoning applies to other professional services that were necessary.

254. With regard to the claim described in paragraph 252 above, the Panel finds that the services were required to respond to circumstances arising as a direct result of Iraq's invasion and occupation of Kuwait and therefore the costs incurred are compensable in principle.

255. The Panel adopts the above findings and applies them to the claim under review. The Panel also undertakes a further inquiry into the claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth in annex II.

#### 9. Post-liberation start-up costs

##### (a) Claims description

256. Two claimants seek compensation for costs incurred in resuming business operations in Kuwait after the country was liberated. These costs include maintenance, rental and advertising costs, recruitment, training and transportation costs for new personnel, as well as transportation, food and other costs of staff who travelled to Kuwait to resume business operations.

##### (b) Compensability

257. The Panel recalls the findings in its previous reports that post-liberation start-up costs are compensable if they constitute "extraordinary expenses that were incurred as a direct result of Iraq's invasion and occupation of Kuwait" (such as airfares and hotel accommodation for returning staff and costs to re-build the workforce following its dispersal), but not if they represent "ordinary expenses incurred as part of an ongoing business enterprise"<sup>136</sup> (such as salary costs for replacement staff).

258. With regard to advertising expenses, the Panel recalls its finding in its third report that post-liberation promotional costs, including advertising, asserted to be necessary to rebuild lost business, are only compensable to the extent it is demonstrated that such promotional activities would not have been undertaken in the ordinary course of business.<sup>137</sup>

259. The Panel applies the above findings to the claims under review. The Panel also undertakes a further inquiry into each relevant claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth at annex II.

#### 10. Incentive payments

##### (a) Claims description

260. One claimant seeks to recover the cost of incentives paid to employees from 18 January 1991 to 28 February 1991 in order to encourage them to continue working in Saudi Arabia during Iraq's occupation of Kuwait.

261. Another claimant seeks to recover incentive payments paid to an employee to encourage his return to Kuwait after the liberation.

(b) Compensability

262. With regard to the claim described in paragraph 260 above, the Panel recalls the finding in its third report that additional payments made to staff as incentives to enable claimants to continue operations in the compensable area during the hostilities are compensable to the extent that they are reasonable in amount.<sup>138</sup>

The Panel applies this finding to the claim under review. Given the evidentiary deficiencies of the claim, however, the Panel recommends no compensation.

263. With regard to the claim described in paragraph 261 above, the Panel notes the determination of the "E4" Panel with respect to a similar claim that such payments were the result of an independent business decision and are not compensable as losses directly resulting from Iraq's invasion and occupation of Kuwait.<sup>139</sup> The Panel adopts this determination and applies it to the claim under review. Accordingly, no compensation is recommended.

E. Payment or relief to others

264. A number of claimants allege that, as a direct result of Iraq's invasion and occupation of Kuwait, they made payments or provided benefits to employees. The compensation sought by the claimants is addressed in this section in the following categories: (1) costs incurred in evacuating, relocating or repatriating employees and family members from Iraq, Kuwait or Saudi Arabia; (2) payment of detention allowances and other benefits to employees who were detained in Iraq; (3) reimbursement of personal property losses to employees; and (4) security and protective measures.

265. The Panel is particularly mindful that in claims of this type, related parties, notably the claimants' employees themselves, may have also sought compensation from the Commission for the same payments claimed by the claimants. Consequently, the Panel reviews the secretariat's cross-check investigation for related claims before the Commission and takes the further action described in paragraphs 25 and 26 above.

1. Evacuation, relocation and repatriation costs

(a) Claims description

266. Several claimants seek to recover costs incurred in evacuating, relocating or repatriating employees and their family members who were in Kuwait, Iraq and parts of Saudi Arabia. The costs involved relate to transportation and to lodging and food provided during such journeys, which typically took place during the period of Iraq's invasion and occupation of Kuwait.

(b) Compensability

267. The Panel recalls the findings in its third report that evacuation costs are compensable if actual military operations took place in, or a threat of military action was directed at, the location from which persons were evacuated.<sup>140</sup> The Panel refers to its delineation of the areas subject to military operations and the threat of military action set forth in paragraph 169 above and concludes that the costs of

evacuating employees and their family members from Iraq, Kuwait and Saudi Arabia (within the range of Iraq's scud missiles) during the period between 2 August 1990 and 2 March 1991 are compensable in principle.<sup>141</sup>

268. The Panel has previously determined that compensable evacuation costs are "temporary and extraordinary" expenses related to the repatriation of employees and their family members, including expenses incurred for accommodation and food. The Panel has also determined that "stop-over costs incurred at locations outside the home country of the evacuee, which are part of the on-going evacuation journey from [the compensable area] and which are not a significant interruption in that journey, are compensable on the same basis as costs incurred to evacuate individuals directly from these locations".<sup>142</sup> The Panel has further found that expenses related to repatriation that would have been incurred by a claimant in any event are not compensable.<sup>143</sup>

269. The Panel applies the above findings to the claims under review. The Panel also undertakes a further inquiry into each relevant claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. As stated in paragraph 30 above, one of these claimants entered into a settlement agreement for part of the losses alleged. The claimant did not provide sufficient details of the settlement agreement as would permit the Panel to assess whether there remained an uncompensated direct loss. In addition, the claimant has failed to satisfy the evidentiary requirements set out in paragraphs 39 to 43 above. As a result, the Panel recommends no compensation for this claim. The Panel's recommendations are set forth in annex II.

## 2. Detention and related allowances

### (a) Claim description

270. One claimant seeks compensation for detention allowances in the form of bonus payments paid to five of its employees to compensate them for their detention in Iraq.

271. The claimant also seeks to recover other expenses incurred with respect to detained employees. These include costs of communication, counselling for detained employees and their families, a payment made to a delegation that negotiated the release of detained personnel, as well as a car repair expense of one of the detainees that was incurred in the United States.

### (b) Compensability

272. With regard to the bonus payments paid as compensation for detention, the Panel notes that the "E2A" Panel has found that costs incurred by claimants in providing bonus payments to detained staff are compensable in principle pursuant to Governing Council decision 7, to the extent that they were reasonable in the circumstances.<sup>144</sup>

273. With regard to the expenses incurred for employees following their detention, this Panel has found that costs incurred in providing accommodation, food and medical or other assistance to such persons are compensable in principle to the extent that such costs were reasonable in the circumstances.<sup>145</sup> With regard to the costs of communication, the Panel also refers to the finding in its third report that costs

incurred in facilitating communication between detainees and members of their family are compensable to the extent that they were reasonable in the circumstances.<sup>146</sup> With regard to counselling expenses, the Panel also recalls its earlier determination that “[e]xpenses such as [those] relating to the establishment and operation of crisis centres or psychologists’ fees’ for detainees and their families are compensable in principle”.<sup>147</sup> The Panel also refers to its finding in its third report that costs relating to the provision of support to family members of detainees are compensable only to the extent that they would not have been incurred in any event, were prompted by humanitarian considerations and were reasonable in amount.<sup>148</sup> It follows that discretionary expenses, such as repair expenses for a detainee’s car incurred in the United States, as in the claim under review, are not compensable.

274. As regards the payment made to a negotiating delegation, the Panel considers such expenses to be compensable in principle under the circumstances of this claim to the extent that such costs are reasonable.<sup>149</sup>

275. The Panel applies the above findings to the claim under review. The Panel also undertakes a further inquiry into the claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth in annex II.

### 3. Personal property reimbursement

#### (a) Claim description

276. One claimant seeks compensation in respect of payments made to two employees to reimburse them for the loss of personal property. One employee reportedly abandoned personal property in the process of his evacuation from Kuwait via Iraq during the period of Iraq’s invasion and occupation of Kuwait. Another employee was on vacation outside Kuwait at the time of its invasion by Iraq and was unable to return and recover his personal property in Kuwait.

#### (b) Compensability

277. The Panel refers to the finding in its third report that payments made as reimbursement to employees for loss of personal property are compensable in principle, “where [they] were made pursuant to legal obligations or otherwise appear justified and reasonable under the circumstances”.<sup>150</sup>

278. The Panel applies the above findings to the claim under review. The Panel also undertakes a further inquiry into the claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth in annex II.

4. Security and protective measures

(a) Claim description

279. One claimant seeks to recover the costs allegedly incurred in providing gas masks to its employees located in Riyadh, Saudi Arabia.

(b) Compensability

280. The Panel has previously determined that the cost of reasonable measures designed to protect the lives of employees located in a compensable area (as defined in paragraph 169 above) is compensable in principle.<sup>151</sup>

281. The Panel applies the above findings to the claim under review. The Panel also undertakes a further inquiry into the claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. The Panel finds that the claim fails to satisfy such evidentiary requirements. Further, as stated in paragraph 30 above, the claimant entered into a settlement agreement for part of the losses alleged. The claimant did not provide sufficient details of the settlement agreement as would permit the Panel to assess whether there remained an uncompensated direct loss. Accordingly, no compensation is recommended.

F. Loss of tangible property

1. Claims description

282. Several claimants seek compensation for a variety of tangible assets that were allegedly stolen, lost or destroyed in Kuwait and Saudi Arabia during the period of Iraq's invasion and occupation of Kuwait. The property in question typically includes household and office equipment, inventory, tools, machinery and vehicles.

283. Three of the claimants operated businesses in Kuwait, namely an insurance company, a car dealership, and a retail store. Another claimant operated a hotel located in Al Khafji, Saudi Arabia, which was invaded by Iraqi forces on 31 January 1991. The claimants seek compensation for the damage or destruction of a building structure and of fixtures, furniture and equipment.

284. In addition, one American claimant who exported used vehicles to Kuwait seeks compensation for the depreciation of three vehicles that were seized in transit by the customs authorities in the United States as a result of a national freezing order on Kuwaiti-owned assets. The vehicles were retained for three months before being released to the claimant.

2. Compensability

285. The Panel recalls its earlier determination that claims for lost tangible property are compensable in principle if the record shows that the claimant's assets were in Kuwait or Iraq as of 2 August 1990 and such assets were destroyed during Iraq's invasion and occupation of Kuwait.<sup>152</sup> In addition, the Panel must be satisfied that the value of the lost assets has been sufficiently established.<sup>153</sup>

286. With respect to the claim involving a hotel located in Al Khafji, described at paragraph 283 above, the Panel finds that the city of Al Khafji was subject to an invasion by Iraqi troops on 31 January 1991. The Panel concludes that the claimant's loss of property is the direct result of "military operations" within the meaning of Security Council resolution 687 (1991)<sup>154</sup> and that the loss is compensable to the extent that the value of the lost assets has been sufficiently established.

287. With respect to the claim for depreciation of vehicles seized by United States customs authorities described at paragraph 284 above, the Panel recalls Governing Council decision 9, paragraph 6, which is cited at paragraph 36 above, and finds, in this case, that the trade embargo and related measures are the sole cause of the claimant's loss. The Panel, therefore, concludes that the claim is not compensable.

288. The Panel applies the above findings to the claim under review. The Panel undertakes a further inquiry into each claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. The Panel also verifies whether the amounts claimed for the property reflect appropriate valuation methodologies, including depreciation, normal maintenance or betterment.<sup>155</sup> Where the claimants have failed to do so, the Panel makes the necessary adjustments. Its recommendations are set forth in annex II.

#### G. Iraqi currency loss

##### 1. Claim description

289. One claimant, based in the United States, operated a used car dealership with representatives in Kuwait. The claimant seeks compensation for various losses alleged to have arisen from its forced acceptance of Iraqi currency in lieu of Kuwaiti currency during the period of Iraq's occupation of Kuwait, after Iraqi authorities withdrew the Kuwaiti dinar from circulation and placed it on a par with the Iraqi dinar (IQD). According to the claimant, it consequently came into possession of the Iraqi currency notes when its representatives in Kuwait sold inventory and other assets, obtained payment of outstanding trade receivables and hastily withdrew funds from bank accounts of the business before fleeing the country. The Iraqi currency notes obtained from these various transactions were subsequently deposited in a safe outside Kuwait. The claimant's representatives, who were Jordanian nationals, did not return to Kuwait after the cessation of hostilities. The claimant states that it has Iraqi dinar notes in the amount of IQD 500,000, which it contends are virtually worthless.

##### 2. Compensability

290. As a preliminary matter, the Panel recalls the finding of this and other panels that, upon Iraq's invasion of Kuwait, Iraqi authorities took over the Kuwaiti banking system, misappropriated Kuwaiti currency notes, withdrew Kuwaiti currency from circulation, and issued a decree placing any debts denominated in Kuwaiti currency on a par with the Iraqi dinar.<sup>156</sup>

###### (i) Bank account withdrawals in Iraqi currency

291. Claims for withdrawals made from Kuwaiti bank accounts in Iraqi dinars have been considered by this and other panels. Various remedial measures were adopted by the Government of Kuwait with regard to the Kuwaiti banking system following the liberation, which are relevant to this type of claim.<sup>157</sup> The Government of Kuwait advised the Commission that withdrawals from bank accounts made during the occupation “were fully restored” to pre-invasion levels by the Kuwaiti Government.<sup>158</sup> The “D2” Panel has noted that “all bank account deposits were restored to their pre-invasion balances where forced withdrawals had been made, and interest for the period of the occupation was calculated ...”<sup>159</sup>

292. In the light of the remedies available through the Central Bank of Kuwait, this and other panels have determined that claims for compensation of Kuwaiti dinar funds held in bank accounts in Kuwait are not compensable, without a showing of compliance with the Central Bank’s procedures and continued denial of access.<sup>160</sup> Compensation has been denied, for example, where a claimant failed to demonstrate that the Central Bank would not honour the claimant’s Iraqi dinar deposits.<sup>161</sup> Where continued denial of access is shown, claims are reviewed on a case-by-case basis.<sup>162</sup> The Panel observes, moreover, that a high degree of scrutiny is warranted in such claims as there is a greater potential for overstatement than in other categories of claims.<sup>163</sup>

293. Regarding the present case, the Panel first notes that according to the above procedures, the claimant should have attempted to recover the balances withdrawn through the Central Bank of Kuwait. However, the claimant has not shown efforts by it to recover the balance of its account in Kuwaiti dinars from the Central Bank of Kuwait and states that it was unaware of such remedies. In any event, the Panel finds that the claimant has presented no evidence to establish the circumstances under which it acquired the Iraqi currency notes.<sup>164</sup> Specifically, the claimant has not provided evidence that the Iraqi dinars were withdrawn from its bank accounts in Kuwait during the occupation nor evidence of the circumstances of the alleged withdrawals or of the amounts withdrawn.

294. Accordingly, the Panel concludes that the claimant has failed to substantiate that its alleged loss resulting from bank account withdrawals in Iraqi currency during the occupation was directly caused by Iraq’s invasion and occupation of Kuwait.

(ii) Sale of stock and other assets

295. With respect to the portion of the claim involving the sale of stock in Iraqi currency during the occupation, the Panel notes that a number of claimants, which continued to do business in Kuwait during the occupation period, have been awarded compensation by the “E4” Panel on the basis that they were forced to accept Iraqi dinars notes as consideration for their voluntary “trade” in stock at an exchange rate of one Iraqi dinar to one Kuwaiti dinar.<sup>165</sup>

296. The Panel further notes that in considering similar claims, other panels have required evidence establishing that sales in Iraqi dinars took place in the normal course of business during Iraq’s occupation of Kuwait, as well as evidence of the original value of the items and the amount received in Iraqi dinars for the sale.<sup>166</sup>

297. In this case, the Panel finds that, while alleging that inventory, as well as personal and business assets, were sold by its representatives in Kuwait in exchange for Iraqi dinars, the claimant has not provided evidence that the sales took place. Consequently, the Panel finds that this portion of the claim is not compensable as it has not been sufficiently substantiated.

(iii) Discharge of receivables

298. With regard to that portion of the claimant's claim involving the discharge of receivables and outstanding loans in Iraqi currency, the Panel recalls its findings in the E2(5) report that a lender could recover for Kuwaiti denominated loans, which were repaid by the borrower in Iraqi dinars, while the lender's Kuwaiti branch office was under the control of Iraqi forces.<sup>167</sup> However, in the case under review, the claimant has not provided evidence of either the outstanding debts or their discharge. Accordingly, no compensation is recommended in respect of this element of the claim.

H. Decline in value of shareholder investment

1. Claims description

299. As stated at paragraph 24 above, two Austrian corporations claim for losses related to their asserted beneficial shareholdings in a Kuwaiti corporation. The corporations' claims include claims for the diminution in the value of, and loss of expected share earnings from, their beneficial shareholding in a Kuwaiti corporation.<sup>168</sup> The Kuwaiti corporation suffered damage as a result of Iraq's invasion and occupation of Kuwait (notably, its plant and equipment were substantially destroyed) and did not subsequently resume operations. The Kuwaiti corporation entered into liquidation in December 1991 and its liquidator filed an "E4" claim on its behalf. The "E4" Panel reviewed the Kuwaiti corporation's claim and recommended an award of part of the sum claimed; that award has been approved by the Governing Council and paid. Subsequent to such payment, the liquidation in Kuwait was finalized and a surplus distributed to the shareholders, including the two Austrian corporate claimants in this instalment.

2. Compensability

300. With reference to the claims under review, the thirty-second report of the Executive Secretary of the Commission pursuant to article 16 of the Rules raised the issue of whether a shareholder could bring a claim for compensation for the loss of its capital investment in a company. Two Governments submitted comments on this issue. Both Governments expressed the view that, except in limited circumstances, only the corporation (or the liquidators or trustees therefor) may claim for the losses of the corporation and that, in the circumstances, shareholders could not pursue a claim for loss of their capital investment in the corporation.

301. The Panel recalls the conclusion of the "E3" Panel in the E3(20) report that, in the absence of any extraordinary circumstances that would warrant departure from the rule stated in Governing Council decision 4 that losses suffered by a business entity that has a separate legal personality must, in principle, be claimed by that entity, a non-Kuwaiti corporation had no entitlement to file a claim with the Commission for a share of the losses of a Kuwaiti corporate claimant in whose shares it held a beneficial interest.<sup>169</sup>

302. Noting that the jurisprudence of the “E3” Panel set out above is consistent with the views expressed by Governments, the Panel adopts the above findings and applies them to the claims under review. In the present circumstances, the Panel determines that the corporations’ claims for the diminution in the value of, and loss of expected share earnings from, their beneficial shareholding in a Kuwaiti corporation are not compensable. Accordingly, no compensation is recommended.

I. Loss of funds in bank accounts in Iraq

1. Claims description

303. One claimant, who belonged to an international hotel group, operated two hotels in Iraq under management agreements at the time of Iraq’s invasion and occupation of Kuwait. It seeks to recover funds which it held in an Iraqi dinar denominated bank account in Baghdad as of 2 August 1990.

304. According to the claimant, the management agreements provided for the fees paid in Iraqi dinars to be converted into United States dollars and remitted to the United States. The amount claimed represents the United States dollar equivalent, as at 2 August 1990, of the management fees that had yet to be remitted at the time of the invasion. The claimant provided evidence of 10 previous remittances made from its Iraqi bank account to the United States between January 1985 and March 1990. The claimant explained that there was no precise schedule for the conversion and remittance of the funds but that a detailed process had been established over the years to implement transfers from Iraq to the United States.<sup>170</sup>

305. The claimant states that it wrote in August 1991 to the Central Bank of Iraq requesting transfer of the sums credited in the account, but that financial regulations enacted in Iraq following the invasion of Kuwait made it impossible to effect this transfer.<sup>171</sup>

2. Compensability

306. The Panel recalls its earlier determination that claims for funds held in Iraqi bank accounts are compensable in principle if, prior to Iraq’s invasion and occupation of Kuwait, the claimant had a reasonable expectation that it could transfer the funds outside Iraq, while such claims are not compensable if the funds were not exchangeable for foreign currency.<sup>172</sup>

307. Applying the above determinations to the claim under review, the Panel finds the claim compensable in principle. The terms of the agreements expressly set out an understanding of the claimant’s requirement that the fees would be repatriated in United States dollars. Furthermore, the history of prior cash remittances in United States dollars is evidence in support of the claimant’s expectation that it would be able to convert the fees paid in Iraqi dinars into dollars and remit them to the United States.

308. Consequently, the Panel finds that the claimant is entitled to the funds in its Iraqi bank account, as they represent fees earned over the years prior to 1990 which have not yet been converted into United States dollars and repatriated. The Panel, however, makes an adjustment to the recommended amount in respect of fees paid into the account during the period January to June 1990, as these amounts were only

estimates of the fees that would have been earned in 1990 and subsequently repatriated in United States dollars.

J. Loss of use of funds

1. Claims description

309. Twenty claimants seek compensation for the loss of use of funds. The claimants typically allege that the payment of funds due under a contract was delayed as a result of Iraq's invasion and occupation of Kuwait. In most cases, payment was eventually received. The losses in question arise from a variety of situations. Notably, these include (a) a delay in the receipt of payment from customers or insurers for goods shipped or services provided, or agreed to be provided, by claimants prior to Iraq's invasion and occupation of Kuwait; (b) a delay in access to funds deposited for various purposes in Kuwaiti bank accounts; (c) the delayed repayment of loans made by the claimant; and (d) the delayed provision of a replacement bank draft that was lost. In each case, the claimants allege that the delay was a direct result of Iraq's invasion and occupation of Kuwait and seek compensation for the deprivation for a period of time of monies to which they were entitled.

310. A number of claimants in particular seek compensation for the delayed receipt of payment in whole or in part from Kuwaiti customers for goods shipped or services supplied before 2 August 1990, allegedly caused by Iraq's invasion and occupation of Kuwait. Several other claimants seek compensation for the delayed receipt of a portion of the contract price as a result of the resale of goods that were diverted en route to a buyer in Kuwait. Other claimants received delayed payment in the form of insurance proceeds for goods lost or destroyed in transit.

311. Another claimant seeks compensation for losses arising from the delayed payment of the contract price, as a result of the interruption of its manufacturing contract for the supply of goods to a buyer in Iraq before the goods could be shipped. The claimant later resumed the transaction with the buyer pursuant to a United Nations exemption to the trade embargo in August 1992. Under the original contract with the buyer, payment for the goods was due on 16 February 1991, but the claimant did not receive payment until dates in 1992 and 1993.

312. Three other claimants seek compensation for delayed access to funds in Kuwaiti bank accounts that were frozen during Iraq's occupation of Kuwait and access to which was also restricted by the Central Bank of Kuwait for a period after the liberation of Kuwait.

313. Another claimant alleges that it was required to deposit funds in a non-interest-bearing United States dollar account with a Kuwaiti bank as security for guarantees given by its Kuwait office to various Kuwaiti government entities. The claimant closed its Kuwait office in December 1990. The claimant alleges, however, that it was unable to file an application to cancel its business licence and the related guarantees until 1992, due to the lingering turmoil in Kuwait; and that although Kuwaiti law provided for a two-year process for the cancellation of licences and return of deposits, its funds were not released until August

1995, that is nearly three years after its application. The claimant seeks compensation for “the opportunity cost of holding the funds in a non-interest-bearing account” from 1990 to 1995.

## 2. Compensability

### (a) General

314. The claims under review for loss of use of funds raise two threshold questions which the Panel must decide: first, whether such losses are direct losses within the meaning of Security Council resolution 687 (1991); and, second, if they are, whether these claims should be characterized as claims for interest which must be deferred to the Governing Council under decision 16.

315. With reference to the first issue, previous decisions of panels of Commissioners have determined that claims for the loss of use of funds may be compensable as “direct losses” within the meaning of paragraph 16 of Security Council resolution 687 (1991). Most recently, the “F3” Panel has found that the loss of use of funds by the Kuwait Investment Authority (“KIA”) – arising from the need to divert Kuwaiti financial resources from income-generating investments to funding the reconstruction of Kuwait – is a direct loss that may be compensated by this Commission.<sup>173</sup> Prior to that report, in a claim involving a delayed payment for goods delivered and services rendered (a fact pattern similar to some of the claims at hand), the “E1” Panel concluded that the delay in payment in question was the direct result of Iraq’s invasion and occupation of Kuwait.<sup>174</sup> The Panel adopts these findings and applies them to the claims under review.

316. In view of the foregoing, the Panel concludes that claims for the loss of use of funds are compensable in principle.

317. Having reviewed the facts and circumstances of each of these claims before it, the Panel is satisfied that in each case the delay in payment in question was the direct result of Iraq’s invasion and occupation of Kuwait.

318. With reference to the second issue noted at paragraph 314 above, the Panel notes the determination in the F3(3.3) report as to the circumstances in which claims for the loss of use of funds are characterized as claims for interest and therefore to be deferred to the Governing Council under decision 16. In relevant part, the “F3” Panel construed Governing Council decision 16

“... to mean that all ‘losses of use of principal amounts’ of awards of compensation are and are only to be compensated under Governing Council decision 16, by way of an award of interest on the awards made in respect of underlying claims ... Such losses therefore cannot be the subject of recommendations for compensation by the Panel.”<sup>175</sup>

319. The Panel agrees with the “F3” Panel’s decision that a claim for interest is a claim dependent upon an award of a principal amount. The Panel has considered the facts of the claims under review accordingly. Its conclusion is that they do not involve “losses of use of the principal amounts of awards” [emphasis added]. Such claims do not therefore fall within the ambit of Governing Council decision 16; rather, the claims are eligible for compensation as principal claims.

320. The Panel also agrees with the “F3” Panel’s decision that a claim for interest is necessarily dependent on an award of compensation by the Commission. Thus the Panel concludes that delayed payments of the kind referred to at paragraphs 309 to 313 above, such as late payments by customers, delay in the receipt of funds paid by an insurer for a loss directly caused by Iraq’s invasion and occupation of Kuwait, and delay in the receipt of resale proceeds of shipments diverted en route to a Kuwaiti customer as a result of Iraq’s invasion and occupation of Kuwait, are not to be considered as “awards of compensation” for the loss of use of the principal amount of an award within the meaning of decision 16.<sup>176</sup>

(b) Compensation period

321. The period for which compensation may be awarded is limited to the time during which payment of, or access to, funds was delayed as a direct result of Iraq’s invasion and occupation of Kuwait (the “compensation period”). Noting the well documented conditions in Kuwait and Iraq during and after Iraq’s invasion and occupation of Kuwait,<sup>177</sup> the Panel finds that in the circumstances of the claims under review, Iraq’s actions were the direct cause of the loss of use for the period of Iraq’s invasion and occupation of Kuwait, as well as for an appropriate time thereafter, to account for the continuing direct effects of Iraq’s actions. This and other panels have concluded that the direct effects of the invasion and occupation would have abated after a few months.<sup>178</sup> The Panel similarly finds that, after a certain point in time, the claimant’s loss of use of funds can no longer be considered a direct result of Iraq’s invasion and occupation of Kuwait as detailed below.

322. In addition to the foregoing, in determining the length of the relevant compensation period the Panel considers the following factors as especially pertinent: the expected date of payment of funds; the general disruption that followed Kuwait’s liberation; the suspension of the Kuwaiti banking system from 2 August 1990 to 24 March 1991 and subsequent restrictions on withdrawals until August 1991;<sup>179</sup> the time necessary for claimants to resume trading relationships with customers (in Kuwait or in Iraq) or to re-sell diverted goods; and the time necessary for insurers to investigate and make payments for the losses in question.<sup>180</sup>

323. As explained above, the Panel determines that each of the claims under review involves a loss of use of funds in respect of which the Panel may make recommendations for compensation and does not fall within the ambit of Governing Council decision 16. Specific determinations of the compensable periods for the claims in this instalment are described in paragraph 329 to 336 below.

(c) Verification and Valuation

324. The Panel must also consider the appropriate methodology for the verification and valuation of a loss of use funds claim in accordance with the requirements of article 35 of the Rules. With respect to the existence of a direct loss, the Panel considers that key elements to establish such a claim are: (a) the date of the claimant’s right to the funds; (b) the period over which they were not available; and (c) a direct link, between the loss and Iraq’s invasion and occupation of Kuwait. Once a direct loss is established, the Panel then assesses the value of the loss.

325. Where the claimant asserts a specific value to a loss of use of funds, the Panel requires sufficient evidence of a history of earnings by the claimant at the corresponding rate.<sup>181</sup> The Panel observes that it will be rare for any claimant, other than a large investor, to be able to produce such a specific history of earnings. Indeed, the Panel notes that, for the claims under review, no claimant has provided such specific evidence.

326. Where the claimant has submitted sufficient evidence to establish the existence of the loss, but not the claimed amount, the Panel, as with other categories of loss (for example, the loss of personal property), must determine a method for valuing the loss. In the present case, the Panel determines that the measure of the loss is the time value of the money of which the claimant was deprived for the compensable period. The Panel also determines that the loss should be measured by an administrable standard that is readily available and ensures consistency among claimants. The Panel finds that such criteria are best met by LIBOR,<sup>182</sup> an internationally recognized rate of interest grounded in commercial practice, frequently employed in international contracts and commonly utilized by courts and arbitral tribunals. Where the claimant has claimed a lower rate, the Panel looks to the rate claimed as the measure of its loss.

327. The Panel applies the applicable LIBOR rate of the currency of loss. The Panel observes that LIBOR rates exist only for certain currencies. Noting the significant variations in the published LIBOR rates<sup>183</sup> and the fluctuation of the currencies, the Panel finds that the United States Dollar LIBOR rate is a conservative standard in relation to other published rates and, consequently, adopts this rate as the default rate where there is no published LIBOR rate for the currency of loss.

328. The Panel decides that the applicable LIBOR rate should be determined using the average monthly rate over the period of compensation. The Panel further decides to apply simple, rather than compound interest.

(d) Specific determinations

329. For claims arising from the delay in payment from a Kuwaiti debtor for goods delivered or services rendered, the Panel determines that the compensable period of loss should commence on 2 August 1990 or the due date for payment, if later, and end on 2 June 1991 or the actual date of receipt of payment, if earlier.

330. In considering a claim for delayed payment under a contract with a Kuwaiti customer interrupted before shipment and resumed following the liberation of Kuwait, the Panel determines that for this claim, the compensable period of loss should commence on 2 August 1990 or the due date for payment, if later. In respect of the end date for compensation, the Panel first determines that a span of three months after 2 March 1991 is a reasonable estimate of the time needed for a claimant to have resumed its relationship with its customer in Kuwait. The Panel further determines that based on a probable resumed shipment date of 2 June 1991, the end date should be the due date of receipt of payment under the resumed contract, estimated on the basis of the payment schedule under the original contract.

331. In respect of the claim involving the resumption, under a United Nations trade embargo exemption, of an interrupted contract with an Iraqi customer, the Panel decides that, as with interrupted contracts with Kuwaiti parties, the compensable period of loss should commence on 2 August 1990 or the due date for payment, if later. Where an interrupted contract involved an Iraqi customer, the Panel determines that 2 August 1991 (rather than 2 June 1991) should be the estimated date when a claimant could reasonably have resumed a relationship with the customer in Iraq, consistent with jurisprudence of the Commission on the abatement of the direct effects of the invasion in Iraq after 2 August 1991.<sup>184</sup>

332. In respect of claims arising from the delay in the receipt of insurance payments from an insurer for goods that were delivered to a Kuwaiti buyer but were not paid for, or that were lost or destroyed in transit, the Panel determines that the period of loss should start from 2 August 1990 or the due date of the expected payment, if later. It should end on the earlier of the date of receipt of payment from the insurer or 31 December 1991, as the Panel considers that a span of 10 months after 2 March 1991 is a reasonable estimate of the time generally needed by an insurer to investigate and process such claims as those under review.

333. In respect of claims arising from the diversion of goods which could not be delivered to Iraq or Kuwait, the Panel determines that the period of loss should extend from 2 August 1990 or the due date for payment, if later, to the date of the claimant's receipt of payment of the resale proceeds or the date when the goods could reasonably have been resold and paid for, whichever is earlier.

334. In respect of the claims under review arising from the inability to access frozen Kuwaiti bank accounts, the Panel determines that the compensable period of loss should extend from 2 August 1990 until the earlier of (a) 2 August 1991, the date when all restrictions on bank withdrawals were lifted,<sup>185</sup> or (b) the end date as calculated by the claimant for its claimed loss.

335. In the case of the claimant described in paragraph 313 above, that had deposited funds in a non-interest-bearing United States dollar account with a Kuwaiti bank as security for guarantees given by its Kuwait office to various Kuwaiti government entities, the Panel reaffirms its decision in respect of this particular claimant made in the E2(5) report that "the period during which the claimant was deprived of the use of its funds as a direct result of Iraq's invasion and occupation of Kuwait was eight months".<sup>186</sup>

336. Another claimant had shipped goods to a Kuwaiti buyer, but the bank draft issued by a Kuwaiti bank was lost en route to the claimant's bank in June 1990. The claimant could not obtain a replacement bank draft until 13 August 1991 because the Kuwaiti bank ceased operations as a result of the invasion. The bank recommenced limited operations in March 1991. Based on the facts available, the Panel concludes that, if the invasion had not occurred, the lost bank draft could have been replaced by 28 August 1990. The Panel finds that the claim is compensable for the period from 28 August 1990 to 2 June 1991, on the basis that the non-availability of the draft during that period was directly caused by Iraq's invasion and occupation of Kuwait. The date of 2 June 1991 provides a reasonable period to allow a Kuwaiti bank, following the cessation of military operations, to reorganize its affairs and investigate and process a request for a re-issuance of the bank draft.

337. The Panel applies the above findings to those claims under review for loss of use of funds. The Panel also undertakes a further inquiry into each relevant claim to determine whether the specific loss asserted is direct and whether the claim satisfies the evidentiary requirements set out in paragraphs 39 to 43 above. Its recommendations are set forth in annex II.

## V. INCIDENTAL ISSUES

### A. Date of loss

338. The Panel must determine “the date the loss occurred” for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars, and with respect to the awarding of interest at a later date in accordance with Governing Council decision 16. The Panel is guided by its findings in its previous reports, as well as the findings of other panels. The date when the loss occurred depends most significantly on the character of the loss, and the following paragraphs address each loss type in turn.

339. With respect to the claims based on contract losses in this instalment, the Panel notes its earlier decisions and finds that the date of loss for each contract normally would depend on the facts and circumstances surrounding the non-performance of the contract.<sup>187</sup> However, given the large number of contracts before the Commission and the significance of one event (i.e. Iraq’s invasion and occupation of Kuwait) on contractual relations, the Panel finds that 2 August 1990 represents an appropriate and administrable date of loss for the contract claims now under consideration.<sup>188</sup>

340. With respect to claims for a decline in business or course of dealing leading to loss of profits or claims for increased costs, the Panel notes its earlier decisions and finds that such losses in this instalment were suffered over extended periods of time rather than at a particular moment or series of moments. Given these circumstances, the Panel selects the mid-point of the relevant compensable period (including potential relevant primary or secondary compensation periods, as the case may be) during which the particular loss occurred as the date of loss.<sup>189</sup> The Panel finds that this date of loss is equally applicable to claims for loss of use of funds, which raise similar considerations.

341. With respect to claims for payment or relief to others, including evacuation costs, the Panel notes, as in previous reports, that such losses likewise have been incurred throughout the compensable period applicable to the geographic area for which the costs were incurred and, therefore, the Panel selects the mid-point of the applicable compensable period as the date of loss for costs of this nature.<sup>190</sup>

342. With respect to claims for loss of tangible assets, the Panel follows its earlier decisions and selects 2 August 1990 as the date of loss, as that date generally coincides with the claimant’s loss of control over the assets in question in this instalment.<sup>191</sup>

### B. Currency exchange rate

343. Many of the claimants have advanced claims in currencies other than United States dollars. The Panel assesses all such claims and performs all claim calculations in the original currencies of the claims. Since the Commission issues its awards in United States dollars, however, the Panel must determine the appropriate rate of exchange to be applied to claims where the losses are alleged in other currencies. The Panel is guided by its previous findings, and by the views of other panels. Particular rules are established for Kuwaiti dinars, set forth in paragraph 349 below.

344. Noting that all prior Commission compensation awards have looked to the United Nations Monthly Bulletin of Statistics (the “United Nations Monthly Bulletin”) for determining commercial exchange rates into United States dollars, the Panel adopts that source for the data to be utilized in exchange rate calculations.

345. For claims based on contract losses in this instalment, the Panel, noting that the date of loss set forth in paragraph 339 above for such claims is 2 August 1990, follows its earlier decisions and adopts the last available exchange rate unaffected by Iraq’s invasion and occupation of Kuwait, as reported in the United Nations Monthly Bulletin.<sup>192</sup>

346. For claims for decline in business or course of dealing leading to loss of profits and claims for increased costs, the Panel follows its earlier decisions that the appropriate rate will be the average of the rates reported in the United Nations Monthly Bulletin for the months over which the particular claimant is compensated.<sup>193</sup> The Panel finds that this rate is equally applicable to claims for loss of use of funds, which raise similar considerations.

347. For claims for payment or relief to others within this instalment, including evacuation costs and security measures, the Panel, noting that the date of loss set forth in paragraph 341 above for such claims is the mid-point of the compensable period, follows its earlier decisions and decides that the appropriate rate will be the rate reported in the United Nations Monthly Bulletin for the month in which that mid-point falls.<sup>194</sup>

348. For claims for the loss of tangible assets, the Panel, noting that the date of loss set forth in paragraph 342 above for such claims is 2 August 1990, follows its earlier decisions and adopts the last available exchange rate unaffected by Iraq’s invasion and occupation of Kuwait, as reported in the United Nations Monthly Bulletin.<sup>195</sup>

349. The above rules apply to claims stated in currencies other than the Kuwaiti dinar. For claims denominated in Kuwaiti dinars, the Panel, noting the extreme fluctuation in the value of that currency during the period of occupation of Kuwait and the earlier findings of this and other Panels, adopts the rate of exchange for 2 August 1990, namely the last available exchange rate unaffected by Iraq’s invasion and occupation of Kuwait, as reported in the United Nations Monthly Bulletin.<sup>196</sup>

### C. Interest

350. Governing Council decision 16 states that “[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award”. The Governing Council further specified that it would consider the method of calculation and of payment of interest at a later date and that “[i]nterest will be paid after the principal amount of awards”.

351. With respect to the awarding of interest in accordance with Governing Council decision 16, the Panel notes that the dates of loss defined in paragraphs 338 to 342 above may be relevant to the later choice of the dates from which interest will accrue for all compensable claims.

D. Claim preparation costs

352. In a letter dated 6 May 1998, the Executive Secretary of the Commission advised the Panel that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

VI. RECOMMENDATIONS

353. Based on the foregoing, the Panel recommends that the amounts set out in annex II below, totalling USD 50,397,873, be paid in compensation for direct losses suffered by the claimants as a result of Iraq's unlawful invasion and occupation of Kuwait.

Geneva, 31 July 2003

(Signed) Mr. Bernard Audit  
Chairman

(Signed) Mr. José María Abascal  
Commissioner

(Signed) Mr. David D. Caron  
Commissioner

Notes

<sup>1</sup> The withdrawn claims and the transferred claim are noted in the tabular summary of the Panel's recommendations attached as annex II.

<sup>2</sup> This figure includes amounts claimed for interest and claim preparation costs. As explained in paragraphs 350 and 351 of this report, the Governing Council will consider claims for interest, where an amount has been awarded for the principal sum claimed, at a future date. As explained in paragraph 352 and note 135 of this report, the Governing Council will also consider the issue of claim preparation costs at a later date.

<sup>3</sup> E2(1) report, paragraphs 38 to 48.

<sup>4</sup> Of the three claims for which Iraq did not provide comments and responses, the Panel has recommended that no compensation be awarded for one of the claims. For the other two claims, the Panel has assessed the impact of Iraq's lack of response on the Panel's ability to review these particular claims and does recommend an award of compensation. In the first of these, the Panel has found that there is sufficient evidence that the company suffered a loss of profit as a direct result of the invasion and occupation of Kuwait while its sole owner and key employee was detained in Iraq (see discussion at paragraphs 214 to 216 of this report). For the other claim, involving the shipment of goods to Iraq in late June 1990, having considered the circumstances of, and evidence available in the claim, as well as the assistance provided by Iraq in similar claims in the past and the small amount of compensation involved for this shipment (DEM 3,906), the Panel concluded to recommend compensation.

<sup>5</sup> See, for example, E2(3) report, paragraphs 180 to 182 (general methodology); E2(2) report, paragraphs 101 to 106 and 137 to 152 (decline in business); E2(3) report, paragraphs 175 to 179 (verification procedures), 198 and 199 (contract losses), 200 and 201 (evacuation costs), 202 (payment or relief to others), 203 to 207 (tangible property and cash); E2(9) report, paragraphs 67 to 70 (contractual lost profits), 120 to 126 (course of dealing transport losses); E2(11) report, paragraph 103 (interrupted contract losses); and E2(13) report, paragraph 169 to 185 (course of dealing transport losses). See also methodology of "E2A" Panel in the E2(6) report, paragraphs 117 to 119 and 126 to 127 (increased costs).

<sup>6</sup> See E4 Special Overlap report, paragraph 10. See also E4 Special Overlap report, paragraph 40, where the "E4" Panels considered the treatment of "equity interests" in the valuation of overlapping claims.

<sup>7</sup> See Governing Council decision 7, paragraph 25; and Governing Council decision 13, generally.

<sup>8</sup> More specifically, the Panel requested the secretariat to ascertain whether other claims had been submitted to the Commission with respect to the same projects, transactions, or property as those forming the subject-matter of the claims under review. For each potentially compensable claim, the secretariat has searched the database of the Commission to ascertain whether another claim has been filed by the same claimant or by a related party. (For example, see paragraphs 74, 85, 245 and 265 of this report). Where a related party is found, the secretariat then reviews the pertinent claim files to ascertain whether duplicate or overlapping claims exist. If compensation has been awarded in the related claim, the extent to which the prior award covers the same loss as the present claim is evaluated. The secretariat reports the results of this investigation to the Panel and, as appropriate, the Panel takes the further action described in paragraphs 25 and 26 of this report.

<sup>9</sup> See also the "E2A" Panel's finding in E2(4) report, paragraph 211.

<sup>10</sup> E2(7) report, paragraph 14; and E2(13) report, paragraph 21.

<sup>11</sup> E2(7) report, paragraph 13. See also E2(4) report, paragraph 207; E2(9) report, paragraph 18; E2(11) report, paragraph 17; and E2(13) report, paragraph 19.

<sup>12</sup> See E2(7) report, paragraph 13, note 8; E2(9) report, paragraph 18; E2(11) report, paragraph 17; and E2(13) report, paragraph 19.

<sup>13</sup> See the “E2A” Panel’s finding in E2(4) report, paragraph 138.

<sup>14</sup> E2(1) report, paragraphs 87 to 89.

<sup>15</sup> Ibid., paragraph 90.

<sup>16</sup> See Governing Council decision 15, paragraph 6. See also E2(1) report, paragraph 108.

<sup>17</sup> Governing Council decision 15, paragraph 9 provides that “[t]he trade embargo and related measures are the prohibitions in United Nations Security Council resolution 661 (1990) and relevant subsequent resolutions and the measures taken by states in anticipation thereof and pursuant thereto, such as the freezing of assets by Governments”.

<sup>18</sup> Governing Council decision 9, paragraph 6. See also Governing Council decision 7, paragraph 9, and Governing Council decision 15, paragraph 9.

<sup>19</sup> E2(4) report, paragraph 157.

<sup>20</sup> See paragraph 2 of article 36 of the Rules.

<sup>21</sup> In some instances, claimants failed to submit documents other than a claim form and a brief statement of claim. In others, claimants submitted reports prepared by in-house or consultant accountants or loss adjusters but failed to file the financial records supporting such reports.

<sup>22</sup> See E2(13) report, paragraph 33; and E2(2) report, note 3.

<sup>23</sup> E2(4) report, paragraph 77; E2(9) report, notes 8 and 14; and E2(11) report, paragraph 31.

<sup>24</sup> E2(3) report, paragraphs 106 to 108. See also E2(4) report, paragraphs 86 and 87.

<sup>25</sup> As stated in the E2(1) report, paragraph 90: “In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990.”

<sup>26</sup> E2(1) report, paragraphs 90, 104 and 105; and E2(4) report, paragraphs 84 and 89.

<sup>27</sup> E2(4) report, paragraph 96.

<sup>28</sup> See E2(4) report, paragraphs 91 to 96; and E2(8) report, paragraph 66. See also this Panel’s findings in the E2(7) report, paragraph 63; E2(9) report, paragraph 37; E2(11) report, paragraph 38; and E2(13) report, paragraph 43.

<sup>29</sup> E2(1) report, paragraph 98.

<sup>30</sup> E1(3) report, paragraph 330.

<sup>31</sup> E2(1) report, paragraphs 87 and 96. See E2(11) report, paragraph 42; and E2(13) report, paragraph 45. See also E2(4) report, paragraph 83; and E2(10) report, paragraph 51.

<sup>32</sup> E2(4) report, paragraph 115. These factual circumstances cited by the “E2A” Panel include Iraq’s adoption of Act 57 (1990) by which Iraqi State organizations, corporations and citizens were effectively prohibited from making payments to certain foreign suppliers and which confirmed previous declarations made by Iraqi officials announcing that Iraq had suspended payment of certain foreign debts. See also E2(4) report, paragraphs 106 to 116.

<sup>33</sup> E2(4) report, paragraphs 117 to 119; and E2(6) report, paragraph 42.

<sup>34</sup> Ibid.

<sup>35</sup> E2(1) report, paragraph 173. This finding applies except where the record shows that the goods were not subject to the United Nations trade embargo or that the shipment was authorized under the sanctions regime established by Security Council resolutions. (See E2(13) report, paragraph 52. An example of such a claim is described at paragraph 108 of this report.)

<sup>36</sup> E2(1) report, paragraph 145. See also E2(2) report, paragraph 89; and E2(3) report, paragraph 154.

<sup>37</sup> E2(5) report, paragraph 75.

<sup>38</sup> See E2(4) paragraph 139.

<sup>39</sup> E2(4) report, paragraph 151, with references to E2(1) report, paragraphs 157 to 163; E2(2) report, paragraphs 62 to 68; and E2(3) report, paragraphs 55 to 58.

<sup>40</sup> E2(13) report, paragraph 75. See also E2(9) report, paragraph 84.

<sup>41</sup> The “compensable area” is an area previously delineated by the Panel as having been subject to actual military operations or the threat of military action for defined periods. See E2(3) report, paragraph 77. The portion of this area as well as the defined periods relevant to this instalment are summarized in table 3 at paragraph 169 of this report.

<sup>42</sup> See table 3 at paragraph 169 of this report.

<sup>43</sup> E2(1) report, paragraph 118; E2(9) report, paragraph 50; E2(11) report, paragraph 61; and E2(13) report, paragraph 78.

<sup>44</sup> See note 41 above.

<sup>45</sup> E2(9) report, paragraph 51. See also E2(6) report, paragraphs 80 and 81; E2(8) report, paragraphs 110 and 111; E2(11) report, paragraph 62; and E2(13) report, paragraph 79.

<sup>46</sup> E2(6) report, paragraph 83; E2(8) report, paragraph 112; E2(9) report, paragraph 51; E2(11) report, paragraph 62; and E2(13) report, paragraph 79.

<sup>47</sup> Governing Council decision 9, paragraph 6; and Governing Council decision 15, paragraph 9(IV). See also paragraph 38 of this report.

<sup>48</sup> E2(4) report, paragraph 202(a).

<sup>49</sup> Ibid.

<sup>50</sup> Ibid., paragraph 203(b).

<sup>51</sup> E2(9) report, paragraphs 53 and 54; E2(11) report, paragraph 63; and E2(13) report, paragraph 80.

<sup>52</sup> See E2(1) report, paragraph 124; E2(3) report, paragraph 114; E2(9) report, paragraph 54; E2(11) report, paragraph 63; and E2(13) report, paragraph 80.

<sup>53</sup> E2(11) report, paragraph 70; and E2(13) report, paragraph 88, with reference to E2(4) report, paragraph 141.

<sup>54</sup> E2(4) report, paragraphs 145 and 146.

<sup>55</sup> E2(4) report, paragraph 147(b); E2(6) report, paragraph 60; and E2(10) report, paragraph 87.

<sup>56</sup> E2(6) report, paragraph 60. See also this Panel's determinations in E2(7) report, paragraph 79; E2(11) report, paragraph 71; and E2(13) report, paragraph 89. With regard to the goods sent to Kuwait by post, see also E2(13) report, paragraph 90.

<sup>57</sup> For example, as noted by the "E2A" Panel, depending on the terms of the contract, the risk of loss may have passed to the buyer when the goods were handed over to the first carrier. E2(6) report, note 33. See also E2(11) report, note 49; and E2(13) report, note 60.

<sup>58</sup> See paragraph 26 above. See also E2(4) report, paragraphs 143 and 144; E2(6) report, paragraph 61; E2(10) report, paragraph 88; E2(11) report, paragraph 73; and E2(13) report, paragraph 94.

<sup>59</sup> E2(11) report, paragraph 74; E2(13) report, paragraph 95. See also E2(9) report, paragraph 74.

<sup>60</sup> E2(4) report, paragraphs 120 to 123; and E2(6) report, paragraph 66.

<sup>61</sup> E2(4) report, paragraphs 148 and 149; E2(6) report, paragraph 65. As noted by the "E2A" Panel in previous reports, the effects on the economy and population of Kuwait caused by Iraq's invasion and occupation are well documented in United Nations reports, as well as in other panel reports of this Commission. Within hours of entering Kuwait, Iraqi forces seized control of the country, closing all ports and the airport, imposing a curfew, and cutting off the country's international communications links. Access to Kuwait by sea was prevented by the laying of mines in its offshore waters. In addition, there was widespread destruction of property by Iraqi forces and a breakdown of civil order. The E2(4) report, paragraphs 127 to 133, cites the "Report to the Secretary-General by a United Nations mission, led by Mr. Adulrahim A. Farah, former Under Secretary-General, assessing the scope and nature of damage inflicted on Kuwait's infrastructure during the Iraqi occupation of the country from 2 August 1990 to 27 February 1991", which is annexed to the "Letter dated 26 April 1991 from the Secretary-General addressed to the President of the Security Council" (S/22535) ("Farah Report"); United Nations Economic and Social Council (ECOSOC), "Report on the situation of human rights in Kuwait under Iraqi occupation, by Walter Kälin, Special Rapporteur of the ECOSOC Commission on Human Rights" (E/CN.4/1992/26). See also E2(1) report, paragraphs 146 and 147.

<sup>62</sup> See for example, E2(9) report, paragraph 84; and E2(13) report, paragraph 103.

<sup>63</sup> E2(4) report, paragraphs 161, 162 and 203(d); E2(10) report, paragraph 82; E2(11) report, paragraph 85; and E2(13) report, paragraph 105.

<sup>64</sup> E2(4) report, paragraph 203; E2(10) report, paragraph 83; and E2(11) report, paragraph 86.

<sup>65</sup> E2(1) report, paragraph 173.

<sup>66</sup> See Security Council resolution 661 (1990), paragraph 3(c), in which the Security Council decided that all States shall prevent “[t]he sale or supply by their nationals or from their territories or using their flag vessels of any commodities or products, including weapons or any other military equipment, whether or not originating in their territories but not including supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs, to any person or body in Iraq or Kuwait or to any person or body for the purposes of any business carried on in or operated from Iraq or Kuwait, and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply of such commodities or products”. See also note 35 above.

<sup>67</sup> E2(1) report, paragraph 98.

<sup>68</sup> Ibid., paragraphs 90 and 98.

<sup>69</sup> See E2(1) report, paragraph 100; E2(6) report, paragraph 78; E2(11) report, paragraph 98; and E2(13) report, paragraph 121.

<sup>70</sup> E2(11) report, paragraph 100; and E2(13) report, paragraph 123. See also E2(4) report, paragraph 123.

<sup>71</sup> E2(11) report, paragraph 101; and E2(13) report, paragraph 124. See also E2(4) report, paragraph 149.

<sup>72</sup> Governing Council decision 9, paragraph 10. See also E2(4) report, paragraph 150; E2(11) report, paragraph 101; and E2(13) report, paragraph 124.

<sup>73</sup> E2(13) report, paragraph 125.

<sup>74</sup> See, for example, E2(9) report, paragraph 84; and E2(13) report, paragraph 126.

<sup>75</sup> E2(4) report, paragraph 164. See also E2(11) report, paragraph 102; and E2(13) report, paragraph 128.

<sup>76</sup> E2(4) report, paragraph 157; E2(9) report, paragraph 67; E2(11) report, paragraph 103; and E2(13) report, paragraph 129.

<sup>77</sup> See, for example, Governing Council decision 9, paragraphs 8 and 9; E2(3) report, paragraph 199; E2(7) report, paragraph 72; and E2(11) report, paragraph 103.

<sup>78</sup> See E2(9) report, paragraph 67; E2(11) report, paragraph 103; and E2(13) report, paragraph 129.

<sup>79</sup> E2(9) report, paragraph 68; E2(11) report, paragraph 104; and E2(13) report, paragraph 130.

<sup>80</sup> E2(4) report, paragraph 166.

<sup>81</sup> E2(11) report, paragraph 105; and E2(13) report, paragraph 131. See, in relation to contracts for the supply of services, E2(9) report, paragraph 69.

<sup>82</sup> Governing Council decision 9, paragraph 10.

<sup>83</sup> E2(7) report, paragraph 72; E2(9) report, paragraph 70; E2(11) report, paragraph 106; and E2(13) report, paragraph 132.

<sup>84</sup> E2(4) report, paragraph 125; and E2(10) report, paragraph 105.

<sup>85</sup> E2(10) report, paragraphs 95 and 107. See also E2(13) report, paragraph 136.

<sup>86</sup> With respect to the first claim described at paragraph 153 of this report, the Panel determines that the claimant's decision to suspend the management contract on 28 July 1990 was the direct result of the threat of military action in Kuwait. The Panel recommends compensation from 2 August 1990, as claimed by the claimant.

<sup>87</sup> See further discussion at paragraphs 142 to 146 of this report.

<sup>88</sup> With regard to the third claim, the Panel observes that the Kuwaiti owner of the hotel was awarded compensation for its losses by the "E4" Panel for the same duration, 20 months from the date of the invasion, i.e. until 31 March 1992. The Panel observes that the interrupted-contract recovery period is normally shorter than 20 months. However, in view of the extensive damage sustained by the hotel, the Panel is satisfied that the hotel could not have resumed normal operations before 20 months from 2 August 1990, i.e. 31 March 1992, and therefore recommends compensation until that date.

<sup>89</sup> The Panel observes that the Kuwaiti licensed party was awarded compensation for its losses by the "E4" Panel for the same duration of time, i.e. until July 1991.

<sup>90</sup> See E2(2) report, paragraphs 28, 97 and 98 where, in relation to a similar claim for loss of profit in respect of a hotel in Iraq seeking compensation until the expiration of the management contract on 31 March 1996, the Panel stated that the effects of the invasion continued in Iraq until 30 June 1991 and selected this date as the limit of the interrupted-contract recovery period for the claim under review.

<sup>91</sup> See, for example, E2(2) report, paragraphs 73 to 78.

<sup>92</sup> Governing Council decision 9, paragraph 11. See also E2(3) report, paragraph 105.

<sup>93</sup> See also E2(9) report, paragraphs 95 to 102; E2(11) report, paragraphs 114 to 119; and E2(13) report, paragraphs 141 to 153.

<sup>94</sup> For similar findings, see E2(2) report, paragraph 59; E2(6) report, paragraph 93; E2(9) report, paragraph 95; E2(11) report, paragraph 114; and E2(13) report, paragraph 142.

<sup>95</sup> In the E2(2) report, the Panel concluded in paragraph 64 that "military operations" included both "actual and specific activities by Iraq in its invasion and occupation of Kuwait, or by the Allied Coalition in its efforts to remove Iraq's presence from Kuwait". In the E2(1) report, the Panel considered the meaning of a "threat of military action" and in paragraphs 158 to 163, concluded that a "threat" of military action outside of Kuwait must be a "credible and serious threat that was intimately connected to Iraq's invasion and occupation" and within the actual military capability of the entity issuing the threat, as judged in the light of "the actual theatre of military operations during the relevant period".

<sup>96</sup> E2(3) report, paragraph 77.

<sup>97</sup> E2(2) report, paragraph 81.

<sup>98</sup> *Ibid.*, paragraph 142. See also E2(9) report, paragraph 98; E2(11) report, paragraph 116; and E2(13) report, paragraph 145.

<sup>99</sup> E2(2) report, paragraphs 81 and 139.

<sup>100</sup> E2(2) report, paragraphs 139 and 140.

<sup>101</sup> E2(2) report, paragraph 78; E2(3) report, paragraphs 101 and 102; E2(4) report, paragraph 181; E2(5) report, paragraph 114; E2(6) report, paragraphs 99 and 100; E2(7) report, paragraph 89; E2(9) report, paragraph 100; E2(11) report, paragraph 117; and E2(13) report, paragraph 150.

<sup>102</sup> E2(2) report, paragraph 78. See, for example, E2(9) report, paragraph 107; E2(11) report, paragraph 123; and E2(13) report, paragraph 155.

<sup>103</sup> E2(2) report, paragraph 102. See also paragraphs 66 and 68(c) of that report.

<sup>104</sup> E2(2) report, paragraphs 144 to 152.

<sup>105</sup> The Panel makes adjustments to the approach where necessary to obtain a more accurate estimate of the loss, for example, where it is apparent that the loss of revenue for 1991 did not accrue evenly throughout the year and the loss for the relevant period should not be calculated by simply pro-rating the total loss of 1991 but rather should be assessed on a month-by-month basis.

<sup>106</sup> E2(2) report, paragraph 148.

<sup>107</sup> The Panel notes the findings of other panels with respect to similar issues.

<sup>108</sup> See E2(7) report, note 22; E2(9) report, note 27; and E2(11) report, note 27.

<sup>109</sup> See generally E2(3) report, paragraph 196; E2(11) report, paragraph 125; and E2(13) report, paragraph 156.

<sup>110</sup> See generally paragraph 18 of Governing Council decision 9 which states, in connection with the valuation of business losses for income producing properties, that “where ... market value cannot be ascertained, the economic or current value of that asset can be ascertained by the discounted cash flow method”.

<sup>111</sup> To calculate the embedded value of a portfolio of business, future cash flow and reserves are projected using assumptions to determine a flow of expected profits and losses. The present value of these amounts is then determined by discounting, using a risk discount rate.

<sup>112</sup> E2(3) report, paragraph 105. See also E2(7) report, paragraph 23; E2(9) report, paragraph 102; and E2(11) report, paragraph 130.

<sup>113</sup> E2(9) report, paragraph 120.

<sup>114</sup> Ibid.

<sup>115</sup> The secretariat informed the claimant’s representatives of the Commission’s evidentiary requirements. In particular, the secretariat emphasized the insufficiency of an official’s statement of losses unaccompanied by supporting evidence and the importance of evidence (such as official statistics and reports) establishing transactions from or to the compensable area. A supplemental article 34 notification was sent to the claimant on 20 August 2002.

<sup>116</sup> E2(2) report, paragraph 54.

<sup>117</sup> Ibid.

<sup>118</sup> See paragraph 21(e) of Governing Council decision 7.

<sup>119</sup> See E2(4) report, paragraphs 162 and 203(d); E2(9) report, paragraph 153; E2(11) report, paragraph 139; and E2(13) report paragraph 191.

<sup>120</sup> This claim was considered by the Panel in the E2(5) instalment, and was severed and transferred to be considered as part of this instalment.

<sup>121</sup> E2(4) report, paragraph 119.

<sup>122</sup> E2(5) report, paragraph 106.

<sup>123</sup> E2(3) report, paragraphs 97 to 99. See also E2(13) report, paragraph 197.

<sup>124</sup> E2(3) report, paragraph 99. See also E2(13) report, paragraphs 196 and 197.

<sup>125</sup> E2(3) report, paragraph 95. The Panel noted that there was, indeed, a significant rise in oil prices, beginning in August 1990. However, the increase soon abated, so that by January 1991, prices had almost reverted to their pre-invasion levels. See also E2(9) report, paragraph 151; and E2(13) report, paragraph 199.

<sup>126</sup> E2(3) report, paragraphs 94 to 96, referring to Governing Council decision 15, paragraph 9(I)(iii). See also E2(9) report, paragraph 151; and E2(13) report, paragraph 199.

<sup>127</sup> E2(3) report, paragraph 93; E2(9) report, paragraph 152; E2(11) report, paragraph 151; and E2(13) report, paragraph 201.

<sup>128</sup> E2(3) report, paragraph 91. See also E2(9) report, paragraph 152.

<sup>129</sup> E2(5) report, paragraph 128. See also E2(1) report, paragraphs 213 to 215 and 237 to 238; E2(3) report, paragraph 161; E2(9) report, paragraph 64; E2(11) report, paragraph 154; and E2(13) report, paragraph 204.

<sup>130</sup> See E2(3) report, paragraph 161; E2(5) report, paragraph 128; E2(9) report, paragraph 64; E2(11) report, paragraph 154; and E2(13) report, paragraph 204.

<sup>131</sup> See E2(9) report, paragraph 64; and E2(13) report, paragraph 205.

<sup>132</sup> E2(1) report, paragraph 234; E2(5) report, paragraphs 135 and 136; E2(9) report, paragraph 135; and E2(11) report, paragraph 159; and E2(13) report, paragraph 211.

<sup>133</sup> E2(3) report, paragraphs 157 and 158; E2(5) report, paragraph 136; E2(7) report, paragraph 122; E2(9) report, paragraph 135; E2(11) report, paragraph 159; and E2(13) report, paragraph 211.

<sup>134</sup> Ibid.

<sup>135</sup> See, for example, E2(9) report, paragraph 138; E2(11) report, paragraph 162; and E2(13) report, paragraph 215. In making this finding, the Panel does not touch on the question of the compensability of costs incurred in respect of the preparation of a claim before the Commission. In a letter dated 6 May 1998, the Executive Secretary of the Commission advised the Panel that the Governing

Council will consider the issue of claims preparation costs at a future date (see paragraph 352 of this report).

<sup>136</sup> See E2(5) report, paragraph 140 and E2(1) report, paragraph 239. See also E2(7) report, paragraph 97; and E2(9) report, paragraph 148.

<sup>137</sup> See E2(3) report, paragraph 149.

<sup>138</sup> E2(3) report, paragraph 100. See also E2(9) report, paragraph 66.

<sup>139</sup> E4(3) report, paragraphs 117 and 118.

<sup>140</sup> E2(3) report, paragraph 82 (citing E2(2) report, paragraph 60; and F1(1.1) report, paragraphs 94 to 96). See also E2(1) report, paragraph 228; E2(5) report, paragraphs 147 and 148; E2(7) report, paragraph 100; E2(9) report, paragraph 172; E2(11) report, paragraph 169; and E2(13) report, paragraph 220.

<sup>141</sup> Ibid.

<sup>142</sup> E2(3) report, paragraph 83. See also E2(7) report, paragraph 102; E2(9) report, paragraph 173; E2(11) report, paragraph 170; and E2(13) report, paragraph 221.

<sup>143</sup> See E2(3) report, paragraph 79, citing E3(1) report, paragraphs 177 to 178. See also E2(7) report, paragraph 102; E2(9) report, paragraph 173; E2(11) report, paragraph 170; and E2(13) report, paragraph 221.

<sup>144</sup> See E2(12) report, paragraph 130; E2(10) report, paragraph 138; and E2(8) report, paragraph 141.

<sup>145</sup> E2(3) report, paragraph 79, citing the E3(1) report, paragraphs 177 to 178. See also E2(7) report, paragraphs 107 and 108; E2(9) report, paragraph 167; E2(11) report, paragraph 174; and E2(13) report, paragraph 225.

<sup>146</sup> E2(3) report, paragraph 145; E2(7) report, paragraph 107; and E2(11) report, paragraph 174.

<sup>147</sup> E2(7) report, paragraph 108, quoting E2(3) report, paragraph 145.

<sup>148</sup> E2(3) report, paragraph 146, referring to E1(3) report, paragraphs 433 to 435 and to F1(1.1) report, paragraph 85. See also E2(7) report, paragraph 108; E2(9) report, paragraph 168; E2(11) report, paragraph 174; and E2(13) report, paragraph 225.

<sup>149</sup> See also D(1.1) report, paragraphs 373 and 380.

<sup>150</sup> E2(3) report, paragraph 162. See also E2(9) report, paragraph 177; E2(11) report, paragraph 180; and E2(13) report, paragraph 228.

<sup>151</sup> See E2(3) report, paragraph 147; E2(5) report, paragraph 145; E2(7) report, paragraph 111; and E2(11) report, paragraph 183.

<sup>152</sup> E2(3) report, paragraph 167; E2(5) report, paragraphs 151 and 152; E2(7) report, paragraph 116; E2(9) report, paragraph 188; E2(11) report, paragraph 185; and E2(13) report, paragraph 239.

<sup>153</sup> E2(3) report, paragraph 206; E2(5) report, paragraph 152; E2(6) report, paragraph 130; E2(7) report, paragraph 116; E2(9) report, paragraph 188; E2(11) report, paragraph 185; and E2(13) report, paragraph 239.

<sup>154</sup> See also E2(9) report, paragraph 198 where the Panel found that “[w]ith respect to the repair costs for premises in Saudi Arabia ... where a claimant had demonstrated that the damage for which compensation is claimed resulted from a specific military event, such as a scud missile attack, the requisite causal link between the loss or damage and Iraq’s invasion and occupation of Kuwait is established”.

<sup>155</sup> E2(1) report, paragraph 271; E2(3) report, paragraph 204; E2(11) report, paragraph 186; and E2(13) report, paragraph 240.

<sup>156</sup> See, for example, E2(5) report, paragraphs 69 and 71, and note 23, which states that on 26 September 1990 the Iraqi Revolution Command Council issued a resolution “which withdrew the Kuwaiti currency from circulation and decreed that borrowers should pay their obligations in Iraqi dinars at the rate of one Iraqi dinar to one Kuwaiti dinar”. See also E4(4) report, paragraph 96.

<sup>157</sup> See generally D(2.1) report, paragraphs 77 to 84; and F1(1.1) report, paragraphs 30 and 82. See also E2(3) report, paragraph 170; E2(5) report, paragraph 105; and E2(9) report, paragraph 196. In October 1991, the Commission sent to the Missions of all submitting Governments a summary of the remedial actions taken by the Central Bank of Kuwait with regard to bank accounts of Kuwaiti and non-Kuwaiti account holders. In addition, other panels (“C”, “D” and “F1”) have directed the secretariat to inform the claimants (or their respective Missions) of the procedures that were put in place by the Kuwaiti Government following the liberation. See also F1(1.1) report, paragraph 82. As instructed by this Panel, the secretariat has informed the claimant of the existence of such procedures.

<sup>158</sup> See D(2.1) report, paragraph 79, referring to a letter from the Public Authority For Assessment of Compensation Resulting from Iraqi Aggression (“PAAC”) to the Executive Secretary of the Commission dated 15 October 1991, together with an attachment entitled “Actions taken in Kuwait Regarding Customers Accounts with Kuwaiti Banks”. In this correspondence, the Executive Secretary was advised that, as of 3 August 1991, bank accounts in Kuwait were made freely available to both Kuwaiti and non-Kuwaiti holders and, in the opinion of the Government of Kuwait, “there was no need for such persons to file a claim though the U.N. process”. See also F1(1.1) report, paragraph 82.

<sup>159</sup> D(2.1) report, paragraph 79.

<sup>160</sup> See, for example, E2(3) report, paragraph 170; E2(5) report, paragraph 105; E2(9) report paragraph 196. See also D(2.1) report, paragraphs 96 to 99.

<sup>161</sup> The “E4” Panel denied compensation to a claimant for the value of Iraqi dinars that it deposited with a Kuwaiti bank during the occupation as a result of forced sales during the occupation, where the claimant had failed to provide “independent evidence, for example a letter from its bank” confirming either the bank balance or that the bank “was not going to honour the claimant’s Iraqi deposits”. E4(14) report, paragraphs 67 and 68.

<sup>162</sup> D(2.1) report, paragraph 99.

<sup>163</sup> In this regard, the “F1” Panel has held that “Iraqi dinar banknotes must be treated differently from Kuwaiti dinar banknotes as the former were not cancelled”. F1(4) report, paragraph 198.

<sup>164</sup> The Panel notes that evidence of the circumstances of the claimant’s acquisition of Iraqi dinars has been required by other panels. See generally F1(4) report, paragraphs 194 and 198.

<sup>165</sup> See E4(2) report, paragraphs 101 and 102; E4(4) report, paragraphs 96 and 97.

<sup>166</sup> As a matter of practice, the “E4” Panel has required evidence that the claimant acquired the Iraqi dinars in the normal course of business and contemporaneous evidence of the transactions. See for example, E4(4) report, paragraphs 93 to 96. See, generally, D(2.1) report, paragraph 14, requiring, for claims for forced sales of assets below market value, proof of presence in Iraq or Kuwait at the appropriate time; ownership of the property that was the subject of the sale; an explanation of the circumstances giving rise to the sale; evidence that the sale took place; and evidence of the original value and amount received for the items sold.

<sup>167</sup> E2(5) report, paragraphs 68 to 72.

<sup>168</sup> The claimants presented evidence that their shares were held in the name of Kuwaiti and Austrian individuals pursuant to trust agreements.

<sup>169</sup> E3(20) report, paragraph 307. See also paragraphs 302 to 306 of that report. The Panel also recalls that, as to claims for losses arising from stocks or securities, the “C” Panel found in C(7) report, paragraph 241, that “the claimant had to show that the loss claimed was suffered directly by the claimant, rather than indirectly, e.g. through a loss in value of the shares or the investment because the company in which the claimant had invested had itself suffered losses as a result of Iraq’s invasion and occupation of Kuwait.” The Panel further notes that in *Barcelona Traction, Light And Power Company Case (Belgium v. Spain)*, 1970 ICJ 3, the International Court of Justice stated at paragraph 44: “[N]otwithstanding the separate corporate personality, a wrong done to the company frequently causes prejudice to its shareholders. But the mere fact that damage is sustained by both company and shareholder does not imply that both are entitled to claim compensation ... Thus whenever a shareholder’s interests are harmed by an act done to the company, it is to the latter that he must look to institute appropriate action; for although two separate entities may have suffered from the same wrong, it is only one entity whose rights have been infringed.”

<sup>170</sup> The process involved the reconciliation of the amounts deposited with the final accounts of the hotels for each fiscal year and agreement between the parties as to the amounts payable as fees for the fiscal year. Thereafter, the approvals of the Iraqi State Financial Control Bureau and of the Central Bank of Iraq had to be obtained.

<sup>171</sup> The Iraqi Registrar for Companies’ “Instructions to Branches of Foreign Companies Operating in Iraq”, No. 511 (12 January 1992) provided, inter alia, that foreign companies that did not continue their operations in Iraq after 2 August 1990 were to be treated “as having repudiated their contracts” and their assets (including their bank accounts) “shall be seized”.

<sup>172</sup> E2(11) report, paragraphs 187 and 188. See also E2(1) report, paragraphs 136 to 140; E2(3) report, paragraph 169; E2(5) report, paragraph 127; E2(7) report, paragraphs 119 and 120; and E2(9) report, paragraphs 193 and 194.

<sup>173</sup> See F3(3.3) report, paragraphs 221 and 222, 355 and 364. The “F3” Panel signed its report and recommendations in respect of the KIA claim during the course of this Panel’s review of the claims. This Panel took into consideration the reasoning in the F3(3.3) report (which has since been approved by the Governing Council).

<sup>174</sup> E1(5) report, paragraphs 53 and 62.

The Panel also notes that the claims before it for loss of use of funds are not speculative, nor were they suffered remotely in time and are, thus, distinguishable from the kinds of losses resulting from the

economic situation following Iraq's invasion, which have been found to not be a basis for compensation. See Governing Council decision 15, paragraphs 5 and 9(I)(ii); E2(3) report, paragraphs 94 to 96; E2(9) report, paragraphs 200 to 202.

<sup>175</sup> F3(3.3) report, paragraph 171.

<sup>176</sup> Considering the terms and context of Governing Council decision 16, the Panel decides that it is inappropriate in this context to apply definitions of "compensation" applied for the purposes of decision 7, paragraph 25, and decision 13.

<sup>177</sup> See paragraph 56 and notes 32 and 61 of this report. The Panel notes that the "F3" Panel stated in the F3(1) report at paragraph 190 that during "the three months following liberation ... until the critical work needed to restore hospitals, public water supplies, electricity and other essential services in Kuwait was completed, it was not safe for the population of Kuwait to return in large numbers".

<sup>178</sup> See paragraph 57 of this report.

<sup>179</sup> The Panel recalls the information on post liberation Kuwaiti banking practices referred to in D(2.1) report, paragraph 70 and F1(4) report, paragraphs 30 and 82. According to a letter dated 15 October 1991 from the Government of Kuwait addressed to the Executive Secretary of the Commission, although Kuwaiti banks resumed operations on 24 March 1991, withdrawals from bank accounts were "restricted for a period of five months until 2 August 1991", as part of the action taken by the Central Bank of Kuwait to, inter alia, facilitate restoring the Kuwait banking system. An account-holder was only permitted to withdraw each month up to KWD 4,000 (or its equivalent in foreign currencies) until 30 June 1991, and up to KWD 6,000 (or its equivalent in foreign currencies) between 1 July 1991 and 2 August 1991. Thereafter, with effect from 3 August 1991, "the restrictions were lifted altogether".

<sup>180</sup> In this context, the Panel is mindful of the claimant's duty to mitigate its losses: see paragraph 38 of this report.

<sup>181</sup> The Panel notes F3(3.3) report, paragraphs 178 to 181, 443 and 460 to 473.

<sup>182</sup> "LIBOR" stands for the "London Interbank Offered Rate," the rate of interest at which banks borrow funds from other banks in the London interbank market.

<sup>183</sup> The Panel notes, for example, that there is a variation of approximately 5 per cent between the United States dollar LIBOR rate and Great Britain pound LIBOR rate during the relevant period.

<sup>184</sup> See paragraph 57 of this report.

<sup>185</sup> See note 179 of this report.

<sup>186</sup> See E2(5) report, paragraphs 104 and 105. See note 169 of that report for circumstances of the Panel's review in this instalment of this claim.

<sup>187</sup> See E2(3) report, paragraph 211.

<sup>188</sup> Ibid.

<sup>189</sup> Ibid., paragraphs 209 and 210. As to the definition of compensable periods, see paragraphs 168 et seq.

<sup>190</sup> E2(3) report, paragraph 212.

<sup>191</sup> Ibid., paragraph 213.

<sup>192</sup> See E2(7) report, paragraph 133.

<sup>193</sup> See E2(3) report, paragraph 216.

<sup>194</sup> Ibid., paragraph 218; F1(1.1) report, paragraph 101; and E2(7) report, paragraph 134.

<sup>195</sup> See E2(7) report, paragraph 136.

<sup>196</sup> See E2(3) report, paragraph 220.

Annex I

E2(15) LIST OF REASONS STATED IN ANNEX II FOR DENIAL IN WHOLE OR IN PART OF THE CLAIMED AMOUNT

<u>No.</u>	<u>Reason</u>	<u>Explanation</u>
COMPENSABILITY		
1	“Arising prior to” exclusion.	All or part of the claim is based on a debt or obligation of Iraq that arose prior to 2 August 1990 and is outside the jurisdiction of the Commission pursuant to Security Council resolution 687 (1991).
2	Part or all of loss is not direct.	The type of loss, in whole or part, is in principle not a direct loss within the meaning of Security Council resolution 687 (1991).
3	Part or all of loss is outside compensable period.	All or part of the loss occurred outside the period of time during which the Panel has determined that a loss may be directly related to Iraq’s invasion and occupation of Kuwait.
4	Part or all of loss is outside compensable area.	All or part of the loss occurred outside the geographical area within which the Panel has determined that a loss may be directly related to Iraq’s invasion and occupation of Kuwait.
5	Part or all of claim is unsubstantiated.	The claimant has failed to file documentation substantiating its claim; or, where documents have been provided, these are not sufficient to demonstrate the circumstances or amount of part or all of the claimed loss as is required under article 35 of the Rules.
6	No proof that part or all of the loss is direct.	The claimant has failed to submit sufficient evidence to demonstrate that the loss was a direct result of Iraq’s invasion and occupation of Kuwait.
7	No proof of actual loss.	The claimant has not established that all or a part of the claimed loss was suffered.
8	Failure to comply with formal filing requirements.	The claimant has failed to meet the formal requirements for the filing of claims as specified under article 14 of the Rules.
9	Non-compensable bank balance held in Iraq.	The claimant has not established that the funds were exchangeable for foreign currency and, accordingly, that it had a reasonable expectation that it could transfer the funds out of Iraq.

<u>No.</u>	<u>Reason</u>	<u>Explanation</u>
10	Trade embargo is sole cause.	The loss claimed was caused exclusively the application of the trade embargo or related measures imposed by or in implementation of Security Council resolution 661 (1990) and other relevant resolutions.
11	Loss is not compensable under Governing Council decision 19.	The claim relates to costs in connection with operations of the Allied Coalition Forces.
<b>VALUATION</b>		
12	Insufficient evidence of value of claimed loss.	The claimant has not produced sufficient evidence to prove the value of the claimed loss. The claimant has either failed to file any documentation to establish the value of the loss; or, where documents have been provided, these do not sufficiently support the value of part or all of the loss.
13	Calculated loss is less than loss alleged.	Applying the Panel's valuation methodology, the value of the claim was assessed to be less than that asserted by the claimant.
14	Failure to establish appropriate efforts to mitigate.	The claimant has not taken such measures as were reasonable in the circumstances to minimize the loss as is required under paragraph 6 of Governing Council decision 9 and paragraph 9 (IV) of decision 15.
15	Reduction or denial to avoid multiple recovery.	Although the claim is found to be eligible, the Panel concludes that an award has already been made for the same loss in this or another claim before the Commission, or, alternatively, that the claimant has previously received compensation for the same loss from another source. Accordingly, the amount of compensation already received by the claimant for this loss has been deducted from the compensation calculated for the present claim, in keeping with Governing Council decision 13, paragraph 3.
<b>OTHER GROUNDS</b>		
16	Interest.	The issue of methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time pursuant to Governing Council decision 16.
17	Principal sum not compensable.	Where the Panel has recommended that no compensation be paid for the principal amounts claimed, a nil award amount is recommended for interest claimed on such principal amounts.
18	Claim preparation costs.	The issue of claim preparation costs is to be resolved by the Governing Council at a future date.

Annex II

RECOMMENDED AWARDS FOR THE FIFTEENTH INSTALMENT OF "E2" CLAIMS

Table of recommendations

No.	Submitting Entity	UNCC claim number	Claimant	Total amount claimed including permissible amendments <sup>a</sup>		Reclassified amount <sup>d</sup>				Decision of the Panel of Commissioners <sup>e</sup>						
				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
1	Austria	3000167	Georg-Benda-Lutz Werke	ATS	4,697,384	427,113	Contract	Goods shipped, received but not paid for (Iraq): Contract price	ATS	4,656,900	ATS	0	0	"Arising prior to" exclusion; part or all of claim is unsubstantiated	Paras. 21, 39-43, 45-55	0
							Contract	Goods shipped, received but not paid for (Kuwait): Contract price	ATS	40,484	DEM	0	0	No proof that part or all of the loss is direct	Paras. 61-75	
2	Austria	3000190	Herbert Peintner	Claim has been transferred to a different category of claims (see paragraph 24)												
3	Austria	4000112	Strabag Österreich Aktiengesellschaft	ATS	49,341,935	4,486,446	Contract	Unpaid goods/services: Contract price	ATS	9,341,935	ATS	0	0	No proof that part or all of the loss is direct	Paras. 61-75, 73	0
							Business transaction	Loss of value of investment in Kuwaiti company: Value of investment in Kuwaiti company	ATS	40,000,000	ATS	0	0	Part or all of loss is not direct	Paras. 299-302	
4	Austria	4000137	TCG Transport-Beton Transport Concrete Group GesmbH	ATS	56,460,939	5,133,746	Contract	Goods and services provided but not paid for (Kuwait): Contract price	ATS	5,682,533	ATS	0	0	No proof that part or all of the loss is direct	Paras. 61-75, 73	0
							Contract	Unpaid loans: Contract price	ATS	8,346,370	ATS	0	0	No proof that part or all of the loss is direct	Paras. 61-75, 73	
							Business transaction	Loss of investment (Kuwait): Value of investments	ATS	29,040,819	ATS	0	0	Part or all of loss is not direct	Paras. 299-302	
							Business transaction	Loss of investment (Kuwait): Loss of profit	ATS	10,000,000	ATS	0	0	Part or all of loss is not direct	Paras. 299-302	
							Interest		ATS	3,391,217	ATS	0	0	Principal sum not compensable	Paras. 350-351	

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
5	Bahamas	4000022	Sheraton Overseas Company Limited, c/o Registrar General, Commonwealth of the Bahamas	USD	188,775	188,775	Contract	Interrupted contract (Kuwait): Loss of revenue (management & reservation fees)	USD	95,717	USD	86,145	86,145	Insufficient evidence of value of claimed loss	Paras. 39-43, 152-165, 160	86,145
							Payment or relief to others	Evacuation/Repatriation costs: Travel/Accommodation costs, Salary/Severance pay	USD	93,058	USD	0	0	Insufficient evidence of value of claimed loss	Paras. 39-43, 241-248, 266-269	
							Claim preparation costs		USD	unspecified	USD	Awaiting decision	Awaiting decision	To be resolved by Governing Council	Para. 352	
							Interest		USD	unspecified	USD	Awaiting decision	Awaiting decision	To be determined under Governing Council decision 16	Paras. 350-351	
6	Canada	4000163	Natco Trading Corporation	USD	804,959	804,959	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	332,459	USD	0	0	"Arising prior to" exclusion	Paras. 45-55	0
							Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	472,500	USD	0	0	"Arising prior to" exclusion	Paras. 45-55	
7	Canada	4000164	Trendi Inc	GBP	398,198 <sup>g</sup>	2,200,454	Contract	Goods shipped, received but not paid for (Iraq): Contract price	GBP	247,250	GBP	0	0	"Arising prior to" exclusion	Paras. 45-55, 51	0
				USD	1,443,424				USD	803,684	USD	0	0			
				Interest			GBP	150,949 and further interest	GBP	0	0	Principal sum not compensable	N/A			
							USD	639,740 and further interest	USD	0	0					

No.	Submitting Entity	UNCC claim number	Claimant	Total amount claimed including permissible amendments <sup>a</sup>			Reclassified amount <sup>d</sup>				Decision of the Panel of Commissioners <sup>e</sup>					
				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
8	Canada	4000165	General Motors of Canada Limited	USD	1,359,123	1,359,123	Contract	Goods shipped to (Kuwait) but diverted: Loss of profit and increased costs	USD	10,045	USD	10,045	10,045	N/A	Paras. 81-86, 104-121, 218-223	866,862
							Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	26,678	USD	11,169	11,169	"Arising prior to" exclusion	Paras. 45-55	
							Contract	Goods manufactured but not delivered to original buyer (Iraq): Loss of profit and increased costs	USD	1,093,769	USD	673,811	673,811	No proof of actual loss; insufficient evidence of value of claimed loss	Paras. 39-43, 81-86, 122-151, 218-223	
							Business transaction	Increased costs (Iraq): Unproductive salaries	USD	181,757	USD	135,124 <sup>h</sup>	135,124	Reduction to avoid multiple recovery; insufficient evidence of value of claimed loss	Paras. 25, 39-43, 241-248, 270-275	
							Payment or relief	Evacuation/Relocation/Repatriation costs (Iraq): Travel costs/Accommodation costs etc.	USD	13,663	USD	12,030	12,030	Part or all of claim is unsubstantiated	Paras. 39-43, 266-269	
							Payment or relief	Detention (Iraq): Compensation for detention/Support to detainees' dependants	USD	33,211	USD	24,683	24,683	Part or all of loss is not direct; insufficient evidence of value of claimed loss	Paras. 39-43, 270-275	
9	Corporate claims directly submitted	4002391	Wong and Sons Trading Co.	KWD	2,724,864	9,428,595	Business transaction	Decline in business (Kuwait): Loss of profit	KWD	363,966	KWD	135,262	468,035	Calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 166-192	1,755,364
							Business transaction	Decline in business (Kuwait): Loss of profit	KWD	367,486	KWD	143,414	496,242	Calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 166-192	

No.	Submitting Entity	UNCC claim number	Claimant	Total amount claimed including permissible amendments <sup>a</sup>		Reclassified amount <sup>d</sup>				Decision of the Panel of Commissioners <sup>e</sup>						
				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Business transaction	Decline in business (Kuwait): Loss of profit (goodwill)	KWD	1,031,870	KWD	0	0	Reduction to avoid multiple recovery; no proof that part or all of the loss is direct	Paras. 166-192, 192		
						Business transaction	Decline in business (Kuwait): Loss of profit (goodwill)	KWD	387,342	KWD	0	0	Reduction to avoid multiple recovery; no proof that part or all of the loss is direct	Paras. 166-192, 192		
						Real property	Damage or total loss (Kuwait): Refurbishment costs	KWD	76,800	KWD	7,680	26,574	Reduction to avoid multiple recovery; insufficient evidence of value of claimed loss	Paras. 39-43, 282-288		
						Real property	Damage or total loss (Kuwait): Refurbishment costs	KWD	90,000	KWD	9,000	31,142	Reduction to avoid multiple recovery; insufficient evidence of value of claimed loss	Paras. 39-43, 282-288		
						Other tangible property	Damage or total loss (Kuwait): Inventory, furniture and equipment	KWD	240,000	KWD	167,500	579,585	Part or all of claim is unsubstantiated; insufficient evidence of value of claimed loss	Paras. 39-43, 282-288		
						Other tangible property	Damage or total loss (Kuwait): Inventory, furniture and equipment	KWD	150,000	KWD	37,500	129,758	Insufficient evidence of value of claimed loss	Paras. 39-43, 282-288		
						Other tangible property	Damage or total loss (Kuwait): Automobiles	KWD	17,400	USD	24,028	24,028	Calculated loss is less than loss alleged	Paras. 282-288		
10	Cyprus	4000214	Phipan Properties Ltd	CYP	15,416	34,799	Business transaction	Decline in business (Cyprus): Loss of profit	CYP	15,416	CYP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
11	Egypt	4002918	El Nasr Transformers and Electrical Products Co. (Elmaco)	EGP	48,530	24,265	Contract	Sales contract interrupted before shipment (Iraq): Bank charges	EGP	48,530	EGP	0	0	No proof that part or all of the loss is direct	Paras. 81-86, 122-151	0
12	Egypt	4002923	Egyptian Marketing Center - Adel Hosny Mohamed	USD	32,462	32,462	Contract	Goods shipped, received but not paid for (Kuwait): Contract price	USD	13,276	USD	0	0	No proof of direct loss; part or all of claimed loss is unsubstantiated	Paras. 39-43, 61-75	0

No.	Submitting Entity	UNCC claim number	Claimant	Total amount claimed including permissible amendments <sup>a</sup>		Reclassified amount <sup>d</sup>				Decision of the Panel of Commissioners <sup>e</sup>						
				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Interest		USD	19,186	USD	0	0	Principal sum not compensable	N/A		
13	Egypt	4003003	Condor Travel Company	USD	242,416	242,416	Business transaction	Decline in business (tours): Loss of profit	USD	242,416	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
14	Egypt	4003004	Nefertiti Travel Co - Hussien Mohamed Abd El Saied Khattab	USD	604,474	604,474	Business transaction	Decline in business (tours): Loss of profit	USD	604,474	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
15	Egypt	4003005	Cairo International Company - Mohamed Yosery Abd El Rahman	USD	457,556	457,556	Business transaction	Decline in business (tours): Loss of profit	USD	457,556	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
16	Egypt	4003006	Blue Sky Travel	USD	408,537	408,537	Business transaction	Decline in business (tours): Loss of profit	USD	408,537	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
17	Egypt	4003007	Cataract Nile Cruises (E.J.S.C.)	USD	1,957,782	1,957,782	Business transaction	Decline in business (cruises): Loss of profit	USD	1,957,782	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
18	Egypt	4003008	Touring International	USD	330,213	330,213	Business transaction	Decline in business (tours): Loss of profit	USD	330,213	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
19	Egypt	4003009	Bestours	USD	3,700,096	3,700,096	Business transaction	Course of dealing (tours): Loss of profit	USD	3,700,096	USD	11,947	11,947	Part or all of loss is outside compensable area; part or all of claimed loss is unsubstantiated; calculated loss is less than loss alleged	Paras. 39-43, 166-175, 202-211, 211	11,947
20	Egypt	4003010	Menatours S.A.E.	EGP	5,776,272	2,888,136	Business transaction	Decline in business (tours): Loss of profit	EGP	5,776,272	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
21	Egypt	4003011	Thomas Cook Overseas Ltd.	USD	618,000	618,000	Business transaction	Decline in business (tours): Loss of profit	USD	618,000	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
22	Egypt	4003012	A One Travel	USD	33,117	33,117	Business transaction	Decline in business (tours): Loss of profit	USD	33,117	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
23	Egypt	4003013	Mahmoid Mohamed Erfan (Cairo Transport & Touring Co.)	EGP	1,877,104	938,552	Business transaction	Decline in business (tours): Loss of profit	EGP	1,877,104	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
24	Egypt	4003014	Kamal El Malakh (Tresor Travel)	EGP	990,787	495,394	Business transaction	Decline in business (tours): Loss of profit	EGP	990,787	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
25	Egypt	4003015	Ibn Khassib Company	USD	296,000	296,000	Business transaction	Decline in business (tours): Loss of profit	USD	296,000	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
26	Egypt	4003016	Travel Co. of Egypt - TRAVCO	USD	1,763,321	1,763,321	Business transaction	Decline in business (tours): Loss of profit	USD	1,763,321	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
27	Egypt	4003017	Amigo Tours - Saawaan Saied Ahmed Sallah	EGP	715,830	357,915	Business transaction	Decline in business (tours): Loss of profit	EGP	715,830	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
28	Egypt	4003018	Planet Tours and Travel	USD	29,973	29,973	Business transaction	Decline in business (tours): Loss of profit	USD	29,973	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
29	Egypt	4003019	African Queen Tours	USD	27,220	27,220	Business transaction	Decline in business (tours): Loss of profit	USD	17,757	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
							Interest		USD	9,463	USD	0	0	Principal sum not compensable	N/A	
30	Egypt	4003020	Ark Travel Co.	USD	73,718	73,718	Business transaction	Decline in business (tours): Loss of profit	USD	73,718	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
31	Egypt	4003021	La Belle Epoque Nile Cruises Co. (Nile Ark)	USD	282,400	282,400	Business transaction	Decline in business (tours): Loss of profit	USD	282,400	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
32	Egypt	4003022	Amo Travel	USD	75,000	75,000	Business transaction	Decline in business (tours): Loss of profit	USD	75,000	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
33	Egypt	4003023	Pharaohs Tours	USD	60,686 <sup>g</sup>	60,686	Business transaction	Decline in business (tours): Loss of profit	USD	32,312	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
							Interest		USD	28,374	USD	0	0	Principal sum not compensable	N/A	

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				Amount claimed in original currency <sup>b</sup>		Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency		Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD
34	Egypt	4003024	Nile Traveller's Club	USD	157,984	157,984	Business transaction	Decline in business (tours): Loss of profit	USD	151,159	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
							Interest		USD	6,825	USD	0	0	Principal sum not compensable	N/A	
35	Egypt	4003025	Travel Mark Tours	USD	74,606	74,606	Business transaction	Decline in business (tours): Loss of profit	USD	74,606	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
36	Egypt	4003026	Egyptian Travel Service	USD	11,366	11,366	Business transaction	Decline in business (tours): Loss of profit	USD	8,954	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
							Interest		USD	2,412	USD	0	0	Principal sum not compensable	N/A	
37	Egypt	4003027	Misr Aswan Tourist Company (S.A.E.)	USD	3,276,568	3,276,568	Business transaction	Decline in business (tours): Loss of profit	USD	3,276,568	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
38	Egypt	4003028	Galaxia Tours Co.	EGP	699,213	349,607	Business transaction	Decline in business (tours): Loss of profit	EGP	699,213	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
39	Egypt	4003029	Egypco Touristic Transportation Corp.	EGP	590,754	295,377	Business transaction	Decline in business (transportation): Loss of profit	EGP	590,754	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
40	Egypt	4003030	Venezia Travel Agency	USD	61,844	61,844	Business transaction	Decline in business (tours): Loss of profit	USD	61,844	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
41	Egypt	4003031	Never Tours Company - Hussien Abd El Hameid Khattab	USD	1,904,871	1,904,871	Business transaction	Decline in business (cruises): Loss of profit	USD	1,904,871	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
42	Egypt	4003032	Amin Tours	USD	585,000	585,000	Contract	Interrupted contract (Egypt): Loss of profit	USD	500,000	USD	0	0	Part or all of loss is outside compensable area	Paras. 81-86, 166-175	0
							Contract	Services provided but not paid for (Israel): Contract price	USD	75,000	USD	0	0	Part or all of claim is unsubstantiated; no proof that part or all of loss is direct	Paras. 39-43, 76-80, 80	

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						Business transaction	Decline in business (Egypt): Loss of profit	USD	10,000	USD	0	0	Part or all of claimed loss is unsubstantiated; part or all of loss is outside compensable area; no proof that part or all of the loss is direct	Paras. 39-43, 166-175, 202-211		
43	Egypt	4003033	Z- International Tours	USD	232,629	232,629	Business transaction	Decline in business (tours): Loss of profit	USD	212,948	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
							Interest		USD	19,681	EGP	0	0	Principal sum not compensable	N/A	
44	Egypt	4003034	Nile Valley Floating Hotels Co.	USD	1,926,147	1,926,147	Business transaction	Decline in business (hotels): Loss of profit	USD	1,926,147	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
45	Egypt	4003035	Chephren Travel	USD	318,181	318,181	Business transaction	Course of dealing (tours): Loss of profit	USD	318,181	EGP	0	0	Part or all of loss is outside compensable area; part or all of claimed loss is unsubstantiated	Paras. 39-43, 166-175, 202-211, 210	0
46	Egypt	4003036	Nile Valley Tours	USD	1,948,952	1,948,952	Business transaction	Decline in business (tours): Loss of profit	USD	1,948,952	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
47	Egypt	4003037	Nana Tours	USD	199,336	199,336	Business transaction	Course of dealing (tours): Loss of profit	USD	182,485	EGP	0	0	Part or all of loss is outside compensable area; part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-211	0
							Interest		USD	16,851	EGP	0	0	Principal sum not compensable	N/A	
48	Egypt	4003039	E. Y. Tours Co.	USD	132,289	132,289	Business transaction	Decline in business (tours): Loss of profit	USD	132,289	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
49	Egypt	4003040	Misir Travel	USD	10,367,834	10,367,834	Business transaction	Course of dealing (tours): Loss of profit	USD	10,367,834	USD	0	0	Part or all of loss is outside compensable area; part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-211	0
50	Egypt	4003041	Lucky Tours Co.	USD	627,167	627,167	Business transaction	Decline in business (tours): Loss of profit	USD	578,140	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Interest		USD	49,027	EGP	0	0	Principal sum not compensable	N/A		
51	Egypt	4003042	Ramzi Fouad Zaklama President (Mediterranean Tours and Travel)	USD	26,900	26,900	Business transaction	Decline in business (tours): Loss of profit	USD	26,900	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
52	Egypt	4003043	Majestic Hotels and Nile Cruises	USD	5,300,700	5,300,700	Business transaction	Decline in business (tours): Loss of profit	USD	5,300,700	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
53	Egypt	4003044	MO Travel, Hotels & Nile Cruises	USD	4,629,540	4,629,540	Business transaction	Decline in business (tours): Loss of profit	USD	4,629,540	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
54	Egypt	4003045	Captain Tours	EGP	840,000	420,000	Business transaction	Decline in business (tours): Loss of profit	EGP	840,000	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
55	Egypt	4003046	Egyptian Italian Co. for Hotels & Touring Establishments S.A.F.	EGP	54,874,740	27,437,370	Business transaction	Course of dealing (hotels): Loss of profit	EGP	54,874,740	EGP	0	0	Part or all of loss is outside compensable area; part or all of claimed loss is unsubstantiated	Paras. 39-43, 166-175, 202-211, 210	0
56	Egypt	4003047	El Nile for Floating Hotel and Tourism Nile Cruise Company	EGP	562,246	281,123	Business transaction	Decline in business (cruises): Loss of profit	EGP	562,246	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
57	Egypt	4003048	Ramsis for Floating Hotel and Nile Cruises Company	EGP	562,096	281,048	Business transaction	Decline in business (cruises): Loss of profit	EGP	562,096	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
58	Egypt	4003049	Giza Hotels and Nile Cruises Co.	EGP	592,964	296,482	Business transaction	Decline in business (cruises): Loss of profit	EGP	592,964	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
59	Egypt	4003050	El Nagar and Shalgany Nile Cruise Company	EGP	673,505	336,753	Business transaction	Decline in business (cruises): Loss of profit	EGP	673,505	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
60	Egypt	4003051	The General For Floating Hotel and Nile Cruises Company	EGP	278,503	139,252	Business transaction	Decline in business (hotels): Loss of profit	EGP	278,503	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
61	Egypt	4003052	Triad Travel Co.	USD	155,506	155,506	Business transaction	Decline in business (tours): Loss of profit	USD	155,506	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
62	Egypt	4003053	Temo Tours	USD	569,734	569,734	Business transaction	Decline in business (tours): Loss of profit	USD	390,320	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
							Interest		USD	179,414	EGP	0	0	Principal sum not compensable	N/A	
63	Egypt	4003054	Ahmed Mohamed Gouda Elshaer	EGP	332,181	166,091	Business transaction	Decline in business (tours): Loss of profit	EGP	332,181	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
64	Egypt	4003055	Aswan Oberoi Hotel	EGP	4,016,962 <sup>1</sup>	2,008,481	Business transaction	Decline in business (hotels): Loss of profit	EGP	4,016,962	EGP	0	0	Failure to comply with formal filing requirements (lack of translation); part or all of loss is outside the compensable area	Paras. 42, 166-175, 202-211	0
65	Egypt	4003056	Cairo Hotels Nile Cruises Company	USD	101,871	101,871	Business transaction	Decline in business (cruises): Loss of profit	USD	101,871	EGP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
66	Egypt	4005999	The Egypt Reinsurance Company (severed portion of 4002885)	EGP	810,800	1,910,396	Contract	Services provided but not paid for (Iraq): Insurance receivables	EGP	407,200	EGP	0	0	"Arising prior to" exclusion; part or all of claim is unsubstantiated	Paras. 39-43, 45-55	4,630
				FIM	340,700				GBP	2,500	GBP	2,500	4,630			
				GBP	5,760				IQD	2,000	IQD	0	0			
				IQD	3,200				USD	416,700	USD	0	0			
				USD	1,391,350				This portion of the claim has been withdrawn							
			Interest			EGP	403,600	EGP	0	0	0	Principal sum not compensable; to be determined under Governing Council decision 16	Paras. 350-351			
						FIM	340,700	FIM	0	0						

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
								GBP	3,260	GBP	Awaiting decision	Awaiting decision				
								IQD	1,200	IQD	0	0				
								USD	974,650	USD	0	0				
67	Egypt	4006145	Egypt Free Shops (severed portion of 4002870)	USD	69,764	69,764	Other	Loss of use: Delayed receipt of payment for goods shipped or services supplied to a Kuwaiti customer	USD	13,329	USD	3,617	3,617	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	14,724
							Other	Loss of use: Delayed access to frozen bank account (Kuwait)	USD	56,435	KWD	3,210	11,107	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	
68	France	4001982	Aqualim S.A.	FRF	110,287	21,039	Contract	Goods shipped, received but not paid for (Kuwait): Contract price	FRF	31,487	FRF	0	0	No proof that part or all of the loss is direct	Paras. 61-75, 69-70	0
							Contract	Goods lost or destroyed in transit (Kuwait): Contract price	FRF	78,800	FRF	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 81-103	
69	Germany	4000485	Teso Ten Elsen GmbH u. Co. KG	DEM	76,139	48,745	Other	Loss of use: Delayed receipt of payment for goods shipped or services supplied to a Kuwaiti customer	DEM	76,139	DEM	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 309-337	0
70	Germany	4000487	Porzellanfabrik Schönwald (Branch of Hutschenreuther AG)	DEM	33,758	21,612	Contract	Sales contract interrupted before shipment (Iraq): Actual costs incurred	DEM	3,344	DEM	3,344	2,095	N/A	Paras. 81-86, 122-151	19,246
							Contract	Sales contract interrupted before shipment (Iraq): Contract price	DEM	30,414	DEM	27,373	17,151	Failure to establish appropriate efforts to mitigate	Paras. 81-86, 122-151, 144	

No.	Submitting Entity	UNCC claim number	Claimant	Total amount claimed including permissible amendments <sup>a</sup>			Reclassified amount <sup>d</sup>				Decision of the Panel of Commissioners <sup>e</sup>					
				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
71	Germany	4000488	Hochbach GmbH	DEM	28,688	18,366	Contract	Goods shipped to Kuwait but diverted: Contract price	DEM	28,688	DEM	2,869	1,798	Reduction to avoid multiple recovery	Paras. 29, 81-86, 104-121	1,798
72	Germany	4000489	Adam Folk GmbH (Folk Services)	DEM	220,944	141,449	Contract	Goods shipped, received but not paid for (Kuwait): Contract price	DEM	1,692	DEM	0	0	No proof that all or part of the loss is direct	Paras. 81-86, 122-151	47,325
							Contract	Sales contract interrupted before shipment (Kuwait): Contract price	DEM	16,345	DEM	8,172	5,120	Insufficient evidence of value of claimed loss	Paras. 39-43, 81-86, 122-151, 147	
							Contract	Sales contract interrupted before shipment (Kuwait): Contract price	DEM	8,620	DEM	0	0	No proof of actual loss	Paras. 81-86, 122-151	
							Contract	Sales contract interrupted before shipment (Kuwait): Contract price	DEM	10,450	DEM	2,450	1,535	Calculated loss is less than loss alleged	Paras. 81-86, 122-151	
							Contract	Sales contract interrupted before shipment (Kuwait): Contract price	DEM	4,839	DEM	1,551	972	Insufficient evidence of value of claimed loss; calculated loss is less than loss alleged	Paras. 39-43, 81-86, 122-151	
							Contract	Sales contract interrupted before shipment (Kuwait): Contract price	DEM	26,500	DEM	10,280	6,441	Insufficient evidence of value of claimed loss; calculated loss is less than loss alleged	Paras. 39-43, 81-86, 122-151	
							Contract	Sales contract interrupted before shipment (Kuwait): Contract price	DEM	152,498	DEM	53,078	33,257	Part or all of claim is unsubstantiated; failure to establish appropriate efforts to mitigate; insufficient evidence of value of claimed loss	Paras. 39-43, 81-86, 122-151	
73	Germany	4000490	Claim has been withdrawn													

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
74	Germany	4000493	Uniroyal Engelbert Tyre Trading GmbH	DEM	159,748	102,271	Contract	Goods lost or destroyed in transit (Kuwait): Contract price	DEM	159,748	DEM	1,476	925	No proof that part or all of the loss is direct	Paras. 81-103, 98	94,909
											USD	93,984	93,984			
75	Germany	4000494	ABC Orient Teppich Import GmbH	INR	1,149,308	65,202	Contract	Goods lost or destroyed in transit (Kuwait): Contract price	INR	1,149,308	INR	574,654	33,167	Insufficient evidence of value of claimed loss	Paras. 39-43, 81-103	33,167
76	Germany	4000495	Didier-Werke AG	DEM	541,340	346,569	Contract	Goods shipped, received but not paid for (Iraq): Contract interest	DEM	21,738	DEM	0	0	"Arising prior to" exclusion	Paras. 45-55, 51	6,014
							Contract	Goods shipped to Iraq but diverted: Contract price and Contract interest	DEM	95,990	DEM	9,599	6,014	Failure to establish appropriate efforts to mitigate	Paras. 81-86, 104-121, 118	
							Contract	Goods shipped, received but not paid for (Iraq): Contract price	DEM	356,923	DEM	0	0	"Arising prior to" exclusion	Paras. 45-55, 51	
							Interest		DEM	66,689	DEM	Awaiting decision	Awaiting decision	To be determined under Governing Council decision 16; principal sum not compensable	Paras. 350-351	
DEM	0	0														
77	Germany	4000497	Adolf Sontag (Druck & Papierverarbeitung GmbH & Co. KG)	DEM	81,130	51,940	Contract	Goods shipped, received but not paid for (Iraq): Contract price	DEM	81,130	DEM	39,946	25,029	Part or all of claim is unsubstantiated	Paras. 39-43, 45-60	25,029
78	Germany	4000498	Bayer AG	BEF	227,169	1,048,823	Contract	Goods shipped to Kuwait but diverted: Loss of profit and increased costs	BEF	227,169	BEF	20,445	624	Reduction to avoid multiple recovery; insufficient evidence of value of claimed loss	Paras. 29, 39-43, 81-86, 104-121, 218-223	47,664
				DEM					1,419,140		DEM	93,227	DEM			

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
				USD	133,207	Contract	Goods shipped, received but not paid for (Kuwait): Contract price	USD	33,373	USD	0	0	No proof that part or all of loss is direct	Paras. 61-75		
						Contract	Goods shipped, received but not paid for (Iraq): Loss of profit	DEM	959,080	DEM	0	0	Reduction to avoid multiple recovery; part or all of claim is unsubstantiated	Paras. 29, 39-43, 45-58		
						Interest		DEM	25,197	DEM	Awaiting decision	Awaiting decision	Principal sum not compensable; to be determined under Governing Council decision 16	Paras. 350-351		
								DEM		DEM	0	0	Governing Council decision 16			
						Interest		DEM	300,890	DEM	0	0	Principal sum not compensable	N/A		
						Other	Loss of use: Delayed receipt of payment for goods shipped or services supplied to a Kuwaiti customer	DEM	40,746	DEM	16,015	9,984	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337		
								USD	86,130	USD	30,937	30,937				
						Other	Loss of use: Delayed receipt of payment for goods shipped or services supplied to a Kuwaiti customer	USD	13,704	USD	861	861	Calculated loss is less than loss alleged; part or all of loss is not direct; insufficient evidence of value of claimed loss; principal sum not compensable	Paras. 39-43, 309-337		
79	Germany	4000500	Claim has been withdrawn													
80	Germany	4000738	OFT Reisen 1 GmbH	DEM	2,450,000	1,568,502	Business transaction	Course of dealing (tours): Loss of profit	DEM	2,450,000	DEM	0	0	Part or all of loss is outside compensable area; part or all of claim is unsubstantiated	Paras. 166-175, 202-211, 210	0
81	Germany	4000827	Alvetra GmbH	DEM	297,345	190,362	Contract	Goods shipped to Iraq but diverted: Loss of profit and increased costs	DEM	297,345	DEM	128,672	80,622	Insufficient evidence of value of claimed loss; calculated loss is less than loss alleged	Paras. 39-43, 81-86, 104-121, 119	80,622
82	Germany	4000829	Weco Industrial	DEM	9,053,823	5,796,302	Contract	Goods shipped,	DEM	1,845,899	DEM	0	0	"Arising prior to"	Paras. 45-58	165,406

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD	
			Products Export GmbH				received but not paid for (Iraq): Contract price			USD	0	0	exclusion		
						Contract	Sales contract interrupted before shipment (Iraq): Loss of profit	DEM	1,814,573	DEM	0	0	No proof of actual loss; no proof that all or part of the loss is direct	Paras. 81-86, 122-151	
						Contract	Sales contract interrupted before shipment (Iraq): Loss of profit	DEM	36,965	DEM	0	0	Part or all of loss is not direct	Paras. 81-86, 122-151	
						Contract	Interrupted contract/ Goods shipped, received but not paid for (Iraq): Loss of profit	DEM	166,015	DEM	19,448	12,185	"Arising prior to" exclusion; insufficient evidence of value of claimed loss	Paras. 39-43, 45-58, 122-151, 140	
						Contract	Sales contract interrupted before shipment (Iraq): Loss of profit	DEM	4,468,453	DEM	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 81-86, 122-151	
						Contract	Sales contract interrupted before shipment (Iraq): Loss of profit	DEM	185,000	DEM	44,160	27,669	Insufficient evidence of value of claimed loss	Paras. 39-43, 81-86, 122-151	
						Contract	Sales contract interrupted before shipment (Iraq): Loss of profit	DEM	21,900	DEM	6,531	4,092	Insufficient evidence of value of claimed loss	Paras. 39-43, 81-86, 122-151	
						Contract	Sales contract interrupted before shipment (Iraq): Loss of profit	DEM	163,148	DEM	44,156	27,667	Insufficient evidence of value of claimed loss	Paras. 39-43, 81-86, 122-151	
						Contract	Sales contract interrupted before shipment (Iraq): Loss of profit	DEM	9,727	DEM	7,270	4,555	Insufficient evidence of value of claimed loss	Paras. 39-43, 81-86, 122-151	

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Contract	Sales contract interrupted before shipment (Iraq): Loss of profit	DEM	330,480	USD	86,400	86,400	Calculated loss is less than loss alleged	Paras. 81-86, 122-151		
						Contract	Sales contract interrupted before shipment (Iraq): Loss of profit	DEM	11,663	DEM	4,529	2,838	Insufficient evidence of value of claimed loss; calculated loss is less than loss alleged	Paras. 39-43, 81-86, 122-151		
83	Germany	4000831	Karl Doelitzsch GmbH & CO	DEM	2,633,831	1,686,191	Contract	Goods shipped, received but not paid for (Iraq): Contract price	DEM	2,633,831	DEM	0	0	"Arising prior to" exclusion	Paras. 45-58	0
84	Germany	4000878	El Dar Deutsch-Arabisches Reiseburo GmbH & Co. KG	DEM	1,050,000	672,215	Business transaction	Course of dealing (tours): Loss of profit	DEM	1,050,000	USD	0	0	Part or all of loss is outside compensable area; part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-211	0
85	Germany	4000895	R.C.P GmbH de Roode & Partner	DEM	245,000	156,850	Business transaction	Decline in business (Turkey): Loss of profit	DEM	245,000	DEM	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
86	Germany	4000901	Hans Zuschlag KC	DEM	1,223,126	783,051	Contract	Goods shipped, received but not paid for (Iraq): Contract price (balance)	DEM	267,987	DEM	0	0	Part or all of claim is unsubstantiated; Reduction to avoid multiple recovery	Paras. 25, 39-43, 45-60	272,255
							Contract	Goods shipped, received but not paid for (Iraq): Contract price (balance)	DEM	178,435	DEM	0	0	"Arising prior to" exclusion	Paras. 45-55	
							Contract	Goods shipped, received but not paid for (Iraq): Contract price (balance)	DEM	7,813	DEM	3,906	2,447	Insufficient evidence of value of claimed loss	Paras. 21, 39-43, 45-60	
							Contract	Goods shipped to Iraq but diverted: Loss of profit and Increased costs	DEM	140,168	DEM	140,168	87,825	N/A	Paras. 81-86, 104-121, 218-223	

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Contract	Interrupted contracts (Iraq): Loss of profit	DEM	628,723	DEM	290,445	181,983	Reduction to avoid multiple recovery; part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 81-86, 122-151, 135, 138, 142-143		
87	Germany	4000934	Hapag-Lloyd Cruises, Ltd.	DEM	8,249,000	5,281,050	Business transaction	Decline in business: Loss of profit	DEM	8,249,000	DEM	0	0	Part or all of loss is outside compensable area	Paras. 167-175, 202-216	0
88	Germany	4000939	K. Beringer GmbH	DEM	1,338,270	856,767	Contract	Goods and services provided under project contract but not paid for (Iraq): Contract price	DEM	1,338,270	DEM	0	0	"Arising prior to" exclusion	Paras. 45-55	0
89	Germany	4006002	Deltron GmbH Export-Import (severed portion of 4000502)	DEM	1,860	1,191	Other	Loss of use: Delayed receipt of resale proceeds for diverted goods (Kuwait)	DEM	1,860	DEM	1,846	1,151	Calculated loss is less than loss alleged	Paras. 309-337	1,151
90	Germany	4006003	Countinho Caro & Co. Remscheid GmbH (severed portion of 4000526)	DEM	4,404	2,819	Other	Loss of use: Delayed receipt of insurance proceeds for goods lost or destroyed in transit (Kuwait)	DEM	4,404	DEM	4,395	2,733	Part or all of the loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	2,733
91	Germany	4006004	E. Merck OHG - Claim 1 (severed portion of 4000543)	DEM	6,410	4,104	Other	Loss of use: Delayed receipt of payment for goods shipped or services supplied to a Kuwaiti customer	DEM	4,350	DEM	2,630	1,640	Part or all of the loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	2,437
							Other	Loss of use: Delayed receipt of payment for goods shipped or services supplied to a Kuwaiti customer	DEM	184	DEM	112	70	Part or all of the loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	
							Other	Loss of use: Delayed receipt of payment for goods shipped or services supplied to a Kuwaiti customer	DEM	1,876	DEM	1,165	727	Part or all of the loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
92	Greece	4005874	Afrotidi Venus S.A. - Rhodes	GRD	21,350,069 <sup>1</sup>	138,036	Business transaction	Decline in business (hotels): Loss of profit	GRD	21,350,069	GRD	0	0	Failure to comply with formal filing requirements (lack of translation); part of all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
93	Greece	4005875	"Hermes" Hotel Tourism Business N. Kokkinos P.T.Y. Ltd. - Kalymnos	GRD	12,177,000	78,729	Business transaction	Decline in business (hotels): Loss of profit	GRD	12,177,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
94	Greece	4005876	G. Kouyioumtzis and Co. Hotel and Tourist Enterprises - Crete	GRD	26,300,073	170,040	Business transaction	Decline in business (hotels): Loss of profit	GRD	26,300,073	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
95	Greece	4005877	Camelot Studios B Stamatakis - Crete	GRD	4,100,000	26,508	Business transaction	Decline in business (hotels): Loss of profit	GRD	4,100,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
96	Greece	4005878	Hotel Sun Flower Apollona S.A.	GRD	34,000,000	219,823	Business transaction	Course of dealing (hotels): Loss of profit	GRD	34,000,000	GRD	0	0	Part or all of loss is outside compensable area; part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-211	0
97	Greece	4005880	Hotel Arlekino (Katy Maltezoj) - Rhodes	GRD	12,000,000	77,585	Business transaction	Decline in business (hotel): Loss of profit	GRD	12,000,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
98	Greece	4005881	Minoa palace - Leonidas Avdis S.A. - Crete	GRD	39,833,254 <sup>1</sup>	257,537	Business transaction	Decline in business (hotels): Loss of profit	GRD	39,833,254	GRD	0	0	Failure to comply with formal filing requirements (lack of translation); part of all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
99	Greece	4005882	Hotel Gortyna Crete	GRD	5,000,000 <sup>1</sup>	32,327	Business transaction	Decline in business (hotels): Loss of profit	GRD	5,000,000	GRD	0	0	Failure to comply with formal filing requirements (lack of translation); part of all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
100	Greece	4005883	Emm. Xyrouhakis Hotel Management "Dimitris - Chryssany Appart. Crete"	GRD	11,788,000	76,214	Business transaction	Decline in business (hotels): Loss of profit	GRD	11,788,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0

No.	Submitting Entity	UNCC claim number	Claimant	Total amount claimed including permissible amendments <sup>a</sup>			Reclassified amount <sup>d</sup>				Decision of the Panel of Commissioners <sup>e</sup>					
				Amount claimed in original currency <sup>b</sup>		Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency		Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD
101	Greece	4005884	Philoxenia S.A. Touristic Enterprises - Crete	GRD	33,198,717	214,642	Business transaction	Decline in business (hotels): Loss of profit	GRD	33,198,717	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
102	Greece	4005885	Hotel Moschos - Haroula Kornaropoulou - Rhodes	GRD	8,500,000	54,956	Business transaction	Decline in business (hotel): Loss of profit	GRD	8,500,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
103	Greece	4005886	Nefeli Hotel - C. Vouyioukalakis Brothers S.A. - Crete	GRD	32,195,983	208,159	Business transaction	Decline in business (hotel): Loss of profit	GRD	32,195,983	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
104	Greece	4005887	Sudio Australia / Dovellos Michael - Kalymnos	GRD	668,000	4,319	Business transaction	Decline in business (hotels): Loss of profit	GRD	668,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
105	Greece	4005888	Affoti Tourist S.A. "Oasis" Apts. Karpathos Dodecanese	GRD	4,337,320	28,042	Business transaction	Decline in business (hotel): Loss of profit	GRD	4,337,320	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
106	Greece	4005889	Fengara Bros - Furnished Tourist Apts. Enterprises - Rhodes	GRD	9,865,000	63,781	Business transaction	Decline in business (hotels): Loss of profit	GRD	9,865,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
107	Greece	4005890	Hotel Apollon - Alex and John Mavronasios	DEM	116,090	74,321	Business transaction	Decline in business (hotels): Loss of profit	DEM	116,090	DEM	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
108	Greece	4005891	Hotel Elite - Achillion - Touris Hotel Enterprise Elite S.A	GRD	33,233,351	214,866	Business transaction	Decline in business (hotels): Loss of profit	GRD	33,233,351	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
109	Greece	4005892	Fundana Villen - Bugalow Spyros Spathas	GRD	1,019,200	6,590	Business transaction	Decline in business (hotel): Loss of profit	GRD	1,019,200	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
110	Greece	4005893	Hotel "9 Mouses" - Myrsini Pavlidilesvos	GRD	9,513,350	61,507	Business transaction	Decline in business (hotels): Loss of profit	GRD	9,513,350	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
111	Greece	4005894	Hotel Karpathos	GRD	6,000,000	38,792	Business transaction	Decline in business (hotels): Loss of profit	GRD	6,000,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
112	Greece	4005895	Hotel Bungalows Esperides - V.Fillipidis, E. Kyriakoy SA, Hotel and Tourist Enterprise Thasos	GRD	9,981,840	64,536	Business transaction	Decline in business (hotels): Loss of profit	GRD	9,981,840	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
113	Greece	4005896	E.XE.T.E.R S.A. - Blue Sky Hotel	GRD	46,326,000	299,515	Business transaction	Course of dealing (hotels): Loss of profit	GRD	46,326,000	GRD	0	0	Part or all of loss is outside compensable area; part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-211	0
114	Greece	4005897	Pantheon Palace Beach Hotel/Hellenic Islands S.a. Tourist, Hotel and Commercial Enterprises - Crete	GRD	250,000,000	1,616,344	Business transaction	Decline in business (hotels): Loss of profit	GRD	250,000,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
115	Greece	4005898	Pilot Beach Hotel / Asteras SA	GRD	135,249,682	874,440	Business transaction	Decline in business (hotels): Loss of profit	GRD	135,249,682	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
116	Greece	4005899	Bali Paradise Beach Hotel - Marika Pologeorg S.a.	GRD	119,256,000	771,035	Business transaction	Decline in business (hotels): Loss of profit	GRD	119,256,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
117	Greece	4005900	Orion Hotel - S. Gianikakis SA - Crete	GRD	292,000,000	1,887,890	Business transaction	Decline in business (hotels): Loss of profit	GRD	292,000,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
118	Greece	4005901	Georges Kipriotis S.a.	GRD	75,477,210	487,989	Business transaction	Decline in business (hotels): Loss of profit	GRD	75,477,210	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
119	Greece	4005902	Studios - Maniatakis Bros. - Crete	GRD	1,837,500 <sup>1</sup>	11,880	Business transaction	Decline in business (hotels): Loss of profit	GRD	1,837,500	GRD	0	0	Failure to comply with formal filing requirements (lack of translation) ; part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
120	Greece	4005903	Akti Apollonia Hotel, Greek Tourist and Hotel Companies of Crete SA - Crete	GRD	179,079,024	1,157,814	Business transaction	Course of dealing (hotels): Loss of profit	GRD	179,079,024	GRD	0	0	Part or all of loss is outside compensable area; part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-211	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
121	Greece	4005904	Avra Hotel Enterprises SA - Thomas Rompopoulos	GRD	51,556,500	333,332	Business transaction	Decline in business (hotels): Loss of profit	GRD	51,556,500	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
122	Greece	4005905	Hotel Kostantin - K. Kostopoulos & Co.	GRD	22,342,200	144,451	Business transaction	Decline in business (hotels): Loss of profit	GRD	22,342,200	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
123	Greece	4005906	Hotel Toroneos - A. Smaragdis S.A. Halkidiki	GRD	20,000,000	129,308	Business transaction	Decline in business (hotels): Loss of profit	GRD	20,000,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
124	Greece	4005907	Hotel Appts "Iro" - Spyridonos and Son Co. - Rhodes	GRD	7,500,000	48,490	Business transaction	Decline in business (hotels): Loss of profit	GRD	7,500,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
125	Greece	4005908	Orfeas Hotel SA - Pieria	GRD	44,215,500	285,870	Business transaction	Decline in business (hotels): Loss of profit	GRD	44,215,500	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
126	Greece	4005909	Tassios Georges and Co. - Philoxenia Bungalows	GRD	27,962,200	180,786	Business transaction	Decline in business (hotels): Loss of profit	GRD	27,962,200	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
127	Greece	4005910	Hotel Olympico - Halkidiki	GRD	85,881,200	555,254	Business transaction	Decline in business (hotels): Loss of profit	GRD	85,881,200	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
128	Greece	4005911	Poseidon SA	GRD	187,354,823	1,211,320	Business transaction	Decline in business (hotels): Loss of profit	GRD	187,354,823	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
129	Greece	4005912	Assa Maris Macedonian Village SA	DEM	821,700	526,056	Business transaction	Decline in business (hotels): Loss of profit	DEM	821,700	DEM	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
130	Greece	4005913	La Mirage Hotel - Radovas Hotel S. A. - Athens	GRD	63,960,000 <sup>g</sup>	413,526	Business transaction	Decline in business (hotels): Loss of profit	GRD	63,960,000	GRD	0	0	Failure to comply with formal filing requirements (lack of translation); part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
131	Greece	4005914	Hotel Orpheus - Komotini	GRD	9,240,000	59,740	Business transaction	Course of dealing (hotels): Loss of profit	GRD	9,240,000	GRD	0	0	Part or all of loss is outside compensable area; part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-211	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
132	Greece	4005915	Anatolia Hotel - N. Chrysohoides - Komotini	GRD	15,480,000	100,084	Business transaction	Decline in business (hotels): Loss of profit	GRD	15,480,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
133	Greece	4005916	Hotel Apollon - Em. - Papatheodorou S. A. - Samos	GRD	12,300,000	79,524	Business transaction	Decline in business (hotels): Loss of profit	GRD	12,300,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
134	Greece	4005917	Hotel Aggelidis Palace - Loutraki	GRD	56,749,800	366,909	Business transaction	Decline in business (hotels): Loss of profit	GRD	56,749,800	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
135	Greece	4005918	Stadium Appts. Enosis S. A. - Kos	GRD	1,285,850 <sup>g</sup>	8,314	Business transaction	Decline in business (hotels): Loss of profit	GRD	1,285,850	GRD	0	0	Failure to comply with formal filing requirements (lack of translation); part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
136	Greece	4005919	Hotel Nestor - Athens	GRD	10,856,200	70,189	Business transaction	Decline in business (hotels): Loss of profit	GRD	10,856,200	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
137	Greece	4005920	Hotel Dimosthenis - Kilkis	GRD	108,000	1,697	Business transaction	Decline in business (hotels): Loss of profit	GRD	108,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
				USD	999		Business transaction	Decline in business (hotels): Loss of profit	USD	999	USD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	
138	Greece	4005921	Irene Rent Rooms - Kalymnos	GRD	2,044,333	13,217	Business transaction	Decline in business (hotels): Loss of profit	GRD	2,044,333	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
139	Greece	4005922	Galini Hotel S. A. - Nafplion	GRD	5,000,000	32,327	Business transaction	Decline in business (hotels): Loss of profit	GRD	5,000,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
140	Greece	4005923	Hotel Vritomartis - Tourist Enterprises Georges N. Douroundakis S. A. - Crete	GRD	71,328,000	461,162	Business transaction	Decline in business (hotels): Loss of profit	GRD	71,328,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
141	Greece	4005924	Kronos S. A. Tourism Enterprises - Crete	GRD	9,311,000	60,199	Business transaction	Decline in business (hotels): Loss of profit	GRD	9,311,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
142	Greece	4005925	Hotel Canea - Kardamaki Evang. - Crete	GRD	738,000	4,771	Business transaction	Decline in business (hotels): Loss of profit	GRD	738,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
143	Greece	4005926	Hotel Zafolia	GRD	100,254,600	648,184	Business transaction	Decline in business (hotels): Loss of profit	GRD	100,254,600	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
144	Greece	4005927	Hotel Elena - Rhodes	GRD	35,160,000 <sup>h</sup>	227,323	Business transaction	Decline in business (hotels): Loss of profit	GRD	35,160,000	GRD	0	0	Failure to comply with formal filing requirements (lack of translation); part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
145	Greece	4005928	Hotel Florida - Rhodes	GRD	1,320,000 <sup>h</sup>	8,534	Business transaction	Decline in business (hotels): Loss of profit	GRD	1,320,000	GRD	0	0	Failure to comply with formal filing requirements (lack of translation); part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
146	Greece	4005929	Motel Natassa - Anastasiadis S. A.	GRD	30,396,000 <sup>h</sup>	196,522	Business transaction	Decline in business (hotels): Loss of profit	GRD	30,396,000	GRD	0	0	Failure to comply with formal filing requirements (lack of translation); part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
147	Greece	4005930	Evang. Pikraki and Co. - Crete	GRD	1,500,000 <sup>h</sup>	9,698	Business transaction	Decline in business (hotels): Loss of profit	GRD	1,500,000	GRD	0	0	Failure to comply with formal filing requirements (lack of translation); part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
148	Greece	4005931	Appts/Stella, Ioanna Linaraki - Crete	GRD	3,150,000 <sup>h</sup>	20,366	Business transaction	Decline in business (hotels): Loss of profit	GRD	3,150,000	GRD	0	0	Failure to comply with formal filing requirements (lack of translation) ; part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
149	Greece	4005932	Odysseas Krasoydakis - Appts - Crete	GRD	6,500,000	42,025	Business transaction	Decline in business (hotels): Loss of profit	GRD	6,500,000	GRD	0	0	Failure to comply with formal filing requirements (lack of translation) ;part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
150	Greece	4005933	Georges Studios - G. Sidera - Thassos	GRD	3,289,000	21,265	Business transaction	Decline in business (hotels): Loss of profit	GRD	3,289,200	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
151	Greece	4005934	Scaleta Beach Hotel Papyraki SA - Crete	GRD	60,000,000 <sup>g</sup>	387,923	Business transaction	Decline in business (hotels): Loss of profit	GRD	60,000,000	GRD	0	0	Failure to comply with formal filing requirements (lack of translation) ;part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
152	Greece	4005935	Hotel Vanta - Y. Magafini & Co. Thassos	GRD	6,236,400 <sup>g</sup>	40,321	Business transaction	Decline in business (hotels): Loss of profit	GRD	6,236,400	GRD	0	0	Failure to comply with formal filing requirements (lack of translation) ; Part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
153	Greece	4005936	Hotel Mironi - Thassos	GRD	7,935,000 <sup>g</sup>	51,303	Business transaction	Decline in business (hotels): Loss of profit	GRD	7,935,000	GRD	0	0	Failure to comply with formal filing requirements (lack of translation) ; part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
154	Greece	4005937	Hotel Castello Di Rodi - Ilka SA - Rhodes	GRD	31,779,642 <sup>g</sup>	205,467	Business transaction	Decline in business (hotels): Loss of profit	GRD	31,779,642	GRD	0	0	Failure to comply with formal filing requirements (lack of translation) ; part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
155	Greece	4005938	Hotel Diana - Rhodes	GRD	26,000,000	168,100	Business transaction	Course of dealing (hotels): Loss of profit	GRD	26,000,000	GRD	0	0	Part or all of loss is outside compensable area; no proof that part or all of the loss is direct.	Paras. 39-43, 166-175, 202-211	0
156	Greece	4005939	Hotel Elena Karnezis - Nafplio	GRD	8,694,530	56,213	Business transaction	Decline in business (hotels): Loss of profit	GRD	8,694,530	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
157	Greece	4005940	Hotel Rex Ltd. - Nafplio	GRD	54,584,000	352,906	Business transaction	Decline in business (hotels): Loss of profit	GRD	54,584,000	GRD	0	0	Failure to comply with formal filing requirements (lack of translation); part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
							Interest		GRD	unspecified	GRD	0	0	Principal sum not compensable	N/A	
158	Greece	4005941	Hotel Nafplia SA - Nafplio	GRD	24,752,000	160,031	Business transaction	Decline in business (hotels): Loss of profit	GRD	24,752,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
159	Greece	4005942	Agamemnon Hotel L. Terzaki - Nafplio	GRD	6,392,036	41,327	Business transaction	Decline in business (hotels): Loss of profit	GRD	6,392,036	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
160	Greece	4005943	Apost. Rekoumis & Co. (Hotel Leto, Hotel King Otto)	GRD	2,599,500	16,807	Business transaction	Decline in business (hotels): Loss of profit	GRD	2,599,500	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
161	Greece	4005944	Hotel Arthemis - Milt. P. Smirniotakis - Nafplio	GRD	3,658,740	23,655	Business transaction	Decline in business (hotels): Loss of profit	GRD	3,658,740	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
162	Greece	4005945	Hotel Athina - Ioan. & Evang. Prountzou - Nafplio	GRD	9,911,760	64,083	Business transaction	Decline in business (hotels): Loss of profit	GRD	9,911,760	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
163	Greece	4005946	Hotel Tyrns - Irene G. Mastorakou	GRD	1,000,000	6,465	Business transaction	Decline in business (hotels): Loss of profit	GRD	1,000,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
164	Greece	4005947	Epidaurus Hotel & Appts - Dim. Ath. Lampropoulos - Nafplio	GRD	1,600,000	10,345	Business transaction	Decline in business (hotels): Loss of profit	GRD	1,600,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
165	Greece	4005948	Hotel Argolis - Grig. Bouras - Nafplio	GRD	5,100,000	32,973	Business transaction	Decline in business (hotels): Loss of profit	GRD	5,100,000	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
166	Greece	4005949	Hotel Batis - N. Sifnias S.a. - Crete	GRD	7,500,000 <sup>h</sup>	48,490	Business transaction	Decline in business (hotels): Loss of profit	GRD	7,500,000	GRD	0	0	Failure to comply with formal filing requirements (lack of translation); part or all of loss is outside compensable area	Paras. 42, 166-175, 202-211	0
167	Greece	5000085	Cruise Vessel "Lambada"/ Kalymnos	GRD	14,096,562	91,140	Business transaction	Decline in business (hotels): Loss of profit	GRD	14,096,562	GRD	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	0
168	India	3001524	Sidharth Chowdhry	IQD	86,011	276,563	Contract	Services provided but not paid for (Iraq): Contract price	IQD	86,011	IQD	0	0	No proof of actual loss	Paras. 22, 45-58	0
169	India	4000291	Kitply Industries Ltd	USD	1,849,071	1,849,071	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	1,182,867	USD	0	0	"Arising prior to" exclusion; part or all of loss is not direct	Paras. 45-55	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Contract	Goods shipped, received but not paid for (Iraq): Insurance	USD	30,644	USD	0	0	Part or all of loss is not direct	Paras. 45-58, 58		
						Interest		USD	635,560	USD	0	0	"Arising prior to" exclusion; part or all of loss is not direct; principal sum not compensable	N/A		
170	India	4006005	Goel Associates Pvt Ltd (severed portion of 4000658)	INR	507,744	28,805	Other	Loss of use: Delayed receipt of insurance proceeds for goods lost or destroyed in transit (Kuwait)	INR	507,744	INR	53,579	2,497	Part or all of the loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	2,497
171	Iran, Islamic Republic of	4006000	Civil Aviation Authority of the Islamic Republic of Iran (severed portion of 5000283)	IRR	10,175,562,922	9,621,484	Business transaction	Decline in business (Iran): Loss of profit (Ticket sales - Ahwaz Airport)	IRR	2,756,250,000	IRR	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-208, 212-213	0
				USD	2,084,030		Business transaction	Decline in business (Iran): Loss of profit (Transit flight charges - Ahwaz Airport)	USD	484,000	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-208, 212-213	
				Business transaction	Decline in business (Iran): Loss of profit (Transit flight charges - Abadan Airport)		USD	474,000	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-208, 212-213			
				Business transaction	Decline in business (Iran): Loss of profit (Rental revenues - Abadan Airport)		IRR	3,200,000,000	IRR	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-208, 212-213			
				Business transaction	Decline in business (Iran): Loss of profit (Ground service revenues - Bushehr Airport)		IRR	871,550,892	IRR	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-208, 212-213			

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Business transaction	Decline in business (Iran): Loss of profit (Exit duty revenue - Bushehr Airport)	IRR	1,563,340,000	IRR	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-208, 212-213		
						Business transaction	Decline in business (Iran): Loss of profit (Rental revenues - Bushehr Airport)	IRR	74,422,030	IRR	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-208, 212-213		
						Business transaction	Increased costs: Re-routing costs (Iran Air flights)	USD	1,037,170	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 234-235		
						Business transaction	Increased costs: Re-routing costs (Asseman Air flights)	USD	88,860	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 234-235		
						Business transaction	Course of dealing (Kuwait): Loss of profit (Lost ticket sales - Iran Air)	IRR	1,710,000,000	IRR	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-208, 212-213		
						Claim preparation costs		IRR	unspecified	IRR	Awaiting decision	Awaiting decision	To be resolved by Governing Council	Para. 352		
					USD			unspecified	USD	Awaiting decision	Awaiting decision					
						Interest		IRR	unspecified	IRR	0	0	Principal sum not compensable	N/A		
					USD			unspecified	USD	0	0					
172	Israel	3003494	Meir Gershon & Sons Ltd. (Gershon Tours)	USD	150,000	150,000	Business transaction	Decline in business (Israel): Loss of profit	USD	150,000	ILS	306,060	145,604	Calculated loss is less than loss alleged	Paras. 166-192, 184, 185, 188	145,604
173	Israel	4000338	J.N. Natanyia Ltd.	USD	150,000	150,000	Business transaction	Decline in business (Israel): Loss of profit	USD	150,000	ILS	46,708	23,088	Calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 166-192, 184, 185, 188	23,088

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
174	Israel	4000396	Ramat Aviv Properties Ltd. (Formerly-Israeli Tourist Centers Ltd)	USD	74,305	74,305	Business transaction	Decline in business (Israel): Loss of profit	USD	74,305	ILS	26,400	13,050	Part or all of loss is outside compensable period; calculated loss is less than loss alleged	Paras. 166-192, 184, 185, 188	13,050
175	Israel	4000403	Ron Cinema	USD	66,580	66,580	Business transaction	Decline in business (Israel): Loss of profit	USD	66,580	USD	31,632	31,632	Calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 166-192, 188	31,632
176	Israel	4000404	Cinema "Ordea" Ramat-Gan Ltd.	USD	20,303	20,303	Business transaction	Decline in business (Israel): Loss of profit	USD	20,303	ILS	29,485	14,575	Calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 166-192, 188	14,575
177	Israel	4000412	Rabiner Zeev Ltd.	USD	168,000	168,000	Contract	Interrupted contract: Increased costs (credit expenses)	USD	6,340	USD	0	0	No proof that part or all of the loss is direct	Paras. 81-86, 122-151, 141	0
							Contract	Interrupted contract: Increased costs (insurance premiums)	USD	3,860	USD	0	0	No proof that part or all of the loss is direct; part or all of claim is unsubstantiated	Paras. 39-43, 81-86, 122-151, 141	
							Contract	Interrupted contract: Increased costs (transportation expenses)	USD	9,000	USD	0	0	No proof that part or all of the loss is direct; part or all of claim is unsubstantiated	Paras. 39-43, 81-86, 122-151, 141	
							Contract	Interrupted contract: Loss of profit (loss of use of machinery)	USD	100,800	USD	0	0	No proof that part or all of the loss is direct	Paras. 81-86, 122-151, 141	
							Business transaction	Increased costs: Unproductive salaries	USD	48,000	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 241-248	
178	Israel	4000416	Israel Theatres Ltd	ILS	2,276,000	1,114,048	Business transaction	Decline in business (Israel): Loss of profit	ILS	2,276,000	ILS	2,276,000	1,125,062	N/A	Paras. 166-192, 184	1,125,062
							Real property	This portion of the claim has been withdrawn								
179	Israel	4000427	Mivnei Taasia B' Herilia Pituaj Limited	USD	343,700	343,700	Business transaction	Decline in business (Israel): Loss of profit	USD	343,700	ILS	207,156	98,552	Part or all of loss is outside compensable period; calculated loss is less than loss alleged	Paras. 166-192, 184, 187, 188	98,552

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				Amount claimed in original currency <sup>b</sup>		Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency		Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD
180	Israel	4000428	David Hartman	USD	172,200	172,200	Business transaction	Decline in business (Israel): Loss of profit	USD	172,200	ILS	42,125	19,575	Part or all of loss is outside compensable period; insufficient evidence of value of claimed loss; calculated loss is less than loss alleged	Paras. 166-192, 184, 185, 188	19,575
181	Israel	4000432	Ofer Entertainment Ltd.	ILS	35,000	17,132	Business transaction	Decline in business (Israel): Loss of profit	ILS	35,000	ILS	1,653	786	Part or all of loss is outside compensable period; insufficient evidence of value of claimed loss; calculated loss is less than loss alleged	Paras. 39-43, 166-192, 184, 186, 188	786
182	Israel	4000434	Darlon Limited	USD	830,000	830,000	Business transaction	Decline in business (Israel): Loss of profit	USD	830,000	USD	239,234	239,234	Part or all of loss is outside compensable period; calculated loss is less than loss alleged	Paras. 166-192, 184, 185, 188	239,234
183	Israel	4000435	Migdaley AI Ltd.	USD	584,718	584,718	Business transaction	Decline in business (Israel): Loss of profit	USD	584,718	USD	324,544	324,544	Part or all of loss is outside compensable period ; Calculated loss is less than loss alleged	Paras. 167-192	324,544
184	Israel	4000503	Israel Fund For Film Promotion	ILS	174,068	85,202	Business transaction	Decline in business (Israel): Loss of profit	ILS	174,068	ILS	174,068	86,044	N/A	Paras. 166-192, 184	86,044
185	Israel	4000506	Natali (1972) Hashkaot Unimun Ltd.	USD	198,418	198,418	Business transaction	Decline in business (Israel): Loss of profit	USD	198,418	USD	51,253	51,253	Part or all of loss is outside compensable period; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 166-192, 184, 185, 188	51,253
186	Italy	4001070	BECA S.p.A	USD	312,347	312,347	Contract	Goods shipped, received but not paid for (Kuwait): Contract price	USD	45,510	USD	0	0	No proof that part or all of the loss is direct	Paras. 61-75	0
							Contract	Goods shipped, received but not paid for (Kuwait): Contract price	USD	42,620	USD	0	0	No proof that part or all of the loss is direct	Paras. 61-75	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Contract	Goods shipped, received but not paid for (Kuwait): Contract price	USD	224,217	USD	0	0	No proof that part or all of the loss is direct	Paras. 61-75		
187	Italy	4001071	O.M.P. Officine Mazzocco Pagnon S.r.l.	DEM	122,675	78,537	Contract	Goods shipped, received but not paid for (Kuwait): Contract price	DEM	119,450	DEM	0	0	No proof that part or all of the loss is direct	Paras. 61-75, 69, 70	0
						Interest		DEM	3,225	DEM	0	0	Principal sum not compensable	N/A		
188	Italy	4001272	Oceanic Shipping Agency S.r.l.	ITL	220,005,883	189,775	Business transaction	Decline in business (Turkey): Loss of profit	ITL	220,005,883	ITL	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211, 210	0
189	Netherlands	4001562	Aquasun Netherland B.V.	NLG	140,800	79,955	Business transaction	Increased costs (Evacuation of customers): Actual costs incurred	NLG	140,800	NLG	0	0	Part or all of the loss is outside the compensable area	Paras. 168-170, 266-269	0
190	Netherlands	4001565	Don Quijote	NLG	178,896	101,588	Business transaction	Decline in business (travel): Loss of profit	NLG	178,896	NLG	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211, 210	0
191	Netherlands	4006010	Honeywell Middle East B.V. (Home B.V.) (severed portion of 4001381)	USD	20,864	20,864	Interest		USD	16,042	USD	0	0	Principal sum not compensable	N/A	0
						Other	Loss of use: Delayed receipt of loan payment (Kuwait)	USD	4,822	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 309-337		
192	Netherlands	4006144	Cebag B.V. (severed portion of 4001559)	USD	37,370	37,370	Other	Loss of use: Delayed receipt of payment for goods shipped or services supplied to a Kuwaiti customer	USD	37,370	USD	15,385	15,385	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value and calculation	Paras. 39-43, 309-337	15,385
193	Pakistan	4006011	Jeewajee (Pvt) Ltd (severed portion of 4001375)	USD	1,031,250	1,031,250	Other	Loss of use: Delayed receipt of payment for goods shipped to an Iraqi customer	USD	1,031,250	USD	252,950	252,950	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337, 331	252,950

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
194	Republic of Korea	4001099	Hyundai Corporation	USD	114,349,550 <sup>g</sup>	114,349,550	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	90,171,516	USD	530,520	530,520	"Arising prior to" exclusion; part or all of claim is unsubstantiated	Paras. 39-43, 45-55	530,520
							Interest		USD	24,178,033	USD	Awaiting decision	Awaiting decision	To be determined under Governing Council decision 16; principal sum not compensable	Paras. 350-351	
											USD	0	0			
195	Republic of Korea	4001116	Lucky-Goldstar International Corporation	USD	28,357,424	28,357,424	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	24,200,000	USD	19,100,000	19,100,000	"Arising prior to" exclusion	Paras. 45-55	19,100,000
							Interest		USD	4,157,424	USD	Awaiting decision	Awaiting decision	To be determined under Governing Council decision 16; principal sum not compensable	Paras. 350-351	
											USD	0	0			
196	Republic of Korea	4001117	Samsung Corporation	USD	87,808,564	87,808,564	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	21,045,919	USD	0	0	"Arising prior to" exclusion	Paras. 45-55	8,167,960
							Contract	Goods shipped, received but not paid for (Iraq): Contract interest	USD	4,564,353	USD	0	0	"Arising prior to" exclusion	Paras. 45-55	
							Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	50,051,663	USD	8,167,960	8,167,960	"Arising prior to" exclusion; no proof that part or all of the loss is direct; "arising prior to" exclusion	Paras. 45-58, 53	
							Interest		USD	2,302,188	USD	0	0	Principal sum not compensable	N/A	
							Interest		USD	9,844,441	USD	Awaiting decision	Awaiting decision	To be determined under Governing Council decision 16; principal sum not compensable	Paras. 350-351	
											USD	0	0			
197	Republic of Korea	4001118	Se Yang Corporation	USD	64,178	64,178	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	64,178	USD	0	0	"Arising prior to" exclusion	Paras. 45-55	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
198	Republic of Korea	4001120	Ssangyong Corporation	USD	4,722,578	4,722,578	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	2,670,000	USD	0	0	"Arising prior to" exclusion	Paras. 45-55	0
							Interest		USD	2,052,578	USD	0	0	Principal sum not compensable	N/A	
199	Saudi Arabia	4002471	Claim has been withdrawn													
200	Saudi Arabia	4002473	Saudi Modern Co. for Cables Ind. Ltd (Riyadh Cables)	USD	15,113,311 <sup>g</sup>	15,113,311	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	1,879,213	USD	0	0	"Arising prior to" exclusion; part or all of loss is not direct	Paras. 45-58	0
							Contract	Sales contract interrupted before shipment (Iraq): Costs incurred	USD	3,472,093	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 81-86, 122-151	
							Contract	Sales contract interrupted before shipment (Iraq): Increased costs (insurance/storage costs)	USD	1,645,569	USD	0	0	Part or all of claim is unsubstantiated; insufficient evidence of value of claimed loss	Paras. 39-43, 81-86, 122-151, 218-223	
							Contract	Sales contract interrupted before shipment (Iraq): Contract price	USD	6,185,641	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 81-86, 122-151	
							Interest		USD	1,930,796	USD	0	0	"Arising prior to" exclusion; principal sum not compensable	N/A	
201	Saudi Arabia	4002475	Al-Ethhad Co for Industry & Commercial Development	SAR	46,000	12,283	Contract	Goods shipped, received but not paid for (Kuwait): Contract price	SAR	46,000	SAR	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 61-75	0
202	Saudi Arabia	4002483	Saudi Agricultural Development Company Limited	SAR	438,750	117,156	Contract	Goods shipped to Saudi Arabia: Increased costs	SAR	438,750	SAR	438,750	117,156	N/A	Paras. 218-223	117,156

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
203	Saudi Arabia	4002484	Hamad Abdulla Alessa & Sons Inc.	USD	831,675	831,675	Business transaction	Increased costs (Saudi Arabia): Insurance and fuel (Home appliance division)	USD	246,725	USD	0	0	Part or all of loss is not direct; part or all of claim is unsubstantiated (lack of translation)	Paras. 39-43, 42, 236-237, 238-240	16,013
							Business transaction	Increased costs (Saudi Arabia): Insurance and fuel (Textile division)	USD	31,000	SAR	35,532	9,488	Part or all of loss is not direct; part or all of claim is unsubstantiated; part or all of loss is outside compensable period	Paras. 39-43, 236-237, 238-240	
									USD		USD	6,525	6,525			
							Business transaction	Increased costs (Saudi Arabia): Unspecified	USD	553,950	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43	
204	Saudi Arabia	4002536	Najd Group Comapny	SAR	18,906,161	5,048,374	Contract	Interrupted service contract (Saudi Arabia): Loss of profit	SAR	1,080,000	SAR	0	0	Part or all of loss is not direct	Paras. 81-86, 122-151, 138	0
							Business transaction	Decline in business (Saudi Arabia): Loss of profit	SAR	17,826,161	SAR	0	0	Part or all of loss is outside compensable area; part or all of claim is unsubstantiated	Paras. 39-43, 166-175, 202-211	
205	Saudi Arabia	4002541	Saad Aldin Mursi Abubaker & Sons Co. (Al-Khaffji Beach Hotel)	SAR	979,738	261,612	Business transaction	Decline in business (Saudi Arabia): Loss of profit	SAR	306,663	SAR	0	0	No proof of actual loss	Paras. 166-192, 189	61,453
							Business transaction	Increased costs (Saudi Arabia): Unproductive salary and allowance	SAR	73,710	SAR	0	0	Insufficient evidence of value of claimed loss; failure to establish appropriate efforts to mitigate	Paras. 39-43, 241-248, 266-269	
							Other tangible property	Damage (Saudi Arabia): Original purchase cost	SAR	290,315	SAR	190,878	50,969	Part or all of claim is unsubstantiated; calculated loss is less than loss alleged	Paras. 39-43, 282-288	
							Other tangible property	Damage (Saudi Arabia): Repair costs	SAR	302,050	SAR	39,262	10,484	Part or all of claim is unsubstantiated; insufficient evidence of value of claimed loss	Paras. 39-43, 282-288	

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Payment or relief to others	Evacuation costs (Saudi Arabia): Accomodation costs	SAR	7,000	SAR	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 266-269		
206	Saudi Arabia	4002547	Saudi Amusement Centers Company	SAR	2,569,613	686,145	Business transaction	Decline in business (Saudi Arabia): Loss of profit	SAR	2,569,613	SAR	1,981,223	529,032	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 166-192, 188, 190	529,032
207	Spain	4001457	Al Andulus Hispania, S.A.	USD	2,951,407	2,951,407	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	2,951,407	USD	0	0	Part or all of the claim is unsubstantiated	Paras. 39-43, 45-60	0
							Interest		USD	unspecified	USD	0	0	Principal sum not compensable	N/A	
208	Spain	4001458	Manufacturados Y Acabados Textiles, S.A. (Manatex, S.A.)	USD	270,665	270,665	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	270,665	USD	0	0	"Arising prior to" exclusion; part or all of the loss is not direct	Paras. 45-58	0
							Interest		USD	unspecified	USD	0	0	Principal sum not compensable	N/A	
209	Spain	4001459	Paduana, S.A.	ESP	30,067,853	308,863	Contract	Sales contract interrupted before shipment (Kuwait, Saudi Arabia, United Arab Emirates & Bahrain): Contract price	ESP	30,067,853	ESP	0	0	Part or all of loss is outside compensable area; part or all of claim is unsubstantiated	Paras. 39-43, 81-86, 122-151, 138	0
210	Spain	4006012	Salas and Manzano S. A. (severed portion of 4001449)	USD	5,489	5,489	Other	Loss of use: Delay in replacement of lost bank draft (Kuwait)	USD	5,489	ESP	0	0	No proof that part or all of the loss is direct; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337, 336	1,398
									USD		USD	1,398	USD	1,398		
211	Sweden	4001482	Scandinavian Airlines System (Claim No. 2)	USD	1,440,107	1,440,107	Contract	Interrupted service contract (Kuwait): Loss of profit	USD	1,440,107	KWD	191,619	663,042	Calculated loss is less than loss alleged; insufficient evidence of value of claimed loss; no proof that part or all of the loss is direct	Paras. 39-43, 152-165, 160	663,042

No.	Submitting Entity	UNCC claim number	Claimant	Total amount claimed including permissible amendments <sup>a</sup>		Reclassified amount <sup>d</sup>				Decision of the Panel of Commissioners <sup>e</sup>						
				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
212	Sweden	4001486	ABB Network Control AB	USD	28,505	28,505	Contract	Contract: Loss of profit	USD	28,505	USD	0	0	Failure to comply with formal filing requirements; part or all of claim is unsubstantiated	Paras. 39-43, 42	0
213	Switzerland	4001516	MHI Mövenpick Hotel and Restaurant Management AG	CHF	205,123	158,764	Contract	Services provided but not paid for (Kuwait): Contract price	CHF	33,550	KWD	0	0	No proof that part or all of loss is direct	Paras. 61-75, 72	47,541
							Contract	Interrupted service contract (Kuwait): Loss of profit	CHF	100,650	KWD	2,684	9,287	Insufficient evidence of value of claimed loss; calculated loss is less than loss alleged	Paras. 39-43, 81-86, 152-165, 161	
							Contract	Unpaid receivables (Kuwait): Overpaid credit card expenses	CHF	13,168	CHF	0	0	No proof that part or all of loss is direct	Paras. 61-75, 72	
							Business transaction	Increased costs (Kuwait): Unproductive salary payments	CHF	30,311	CHF	25,640	19,861	Part or all of claim is unsubstantiated; calculated loss is less than loss alleged	Paras. 39-43, 241-248	
											DEM	0	0			
							Payment or relief to others	Personal property reimbursement (Kuwait): Payment to employee for lost personal property	CHF	15,000	CHF	15,000	11,691	N/A	Paras. 276-278	
Payment or relief to others	Personal property reimbursement (Kuwait): Payment to employee for lost personal property and other miscellaneous expenses	CHF	12,444	CHF	8,599	6,702	Part or all of claim is unsubstantiated; insufficient evidence of value of claimed loss	Paras. 39-43, 276-278								
214	Switzerland	4006006	Cattin Machines SA (severed portion of 4001499)	CHF	77,280	59,814	Other	Loss of use: Delayed receipt of payment for goods shipped to a Kuwaiti customer	CHF	77,280	CHF	49,689	35,518	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	35,518

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
215	Syrian Arab Republic	3005089	Mohamad Raed Mohamad Bashir Al-Halabi (on behalf of Halabi & Kokash Co)	USD	179,020	179,020	Contract	Goods shipped, received but not paid for (Kuwait): Contract price	USD	143,216	USD	0	0	No proof that part or all of the loss is direct	Paras. 61-75, 69-70	0
							Interest		USD	35,804	USD	0	0	Principal sum not compensable	N/A	
216	Turkey	4001693	Musa Kavak - Kavak Ithalat ve Tiracat	USD	12,615	12,615	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	9,990	USD	9,990	9,990	N/A	Paras. 45-58	9,990
							Contract	Goods shipped, received but not paid for (Iraq): Actual costs incurred	USD	2,625	TRL	0	0	Part or all of claim is unsubstantiated; no proof of actual loss	Paras. 45-58	
217	Turkey	4001719	Talas Sinai Mamülleri Ihracat ve Pazarlama Ltd Sti	USD	6,400	6,400	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	6,400	USD	6,400	6,400	N/A	Paras. 45-60	6,400
218	Turkey	4001720	Claim has been withdrawn													
219	United Arab Emirates	3010726	Mohammed Darwish Khamis Al Shebli	AED	4,897,457 <sup>g</sup>	1,334,093	Contract	Contract between parties located outside Iraq or Kuwait (United Arab Emirates)	AED	3,205,079	AED	0	0	Part or all of loss is not direct	Paras. 76-80, 80	0
							Interest	Judgement interest	AED	unspecified	AED	0	0	Principal sum not compensable	N/A	
							Other	Unpaid partnership debts (United Arab Emirates)	AED	1,692,379	AED	0	0	No proof that part or all of the loss is direct	Paras. 76-80, 80	
220	United Arab Emirates	4001785	Claim has been withdrawn													
221	United Arab Emirates	4001786	Claim has been withdrawn													

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
222	United Arab Emirates	4001787	Claim has been withdrawn													
223	United Kingdom	3002365	Leonard Richard Weithley (on behalf of L. R. Weithley and Associates (Jersey Ltd))	USD	45,170 <sup>k</sup>	45,170	Business transaction	Decline in business (Kuwait): Loss of profit <sup>k</sup>	USD	45,170	USD	20,874	20,874	Calculated loss is less than loss alleged; insufficient evidence of value of claimed loss; reduction to avoid multiple recovery	Paras. 21, 39-43, 166-175, 202-208, 214-216	20,874
224	United Kingdom	4002005	Holiday Inn (Kuwait) Ltd. (A Subsidiary of Bass International Holdings BV, A Subsidiary of Bass PLC)	USD	324,195	324,195	Contract	Interrupted contract (Kuwait): Loss of revenue (management fee)	USD	195,504	KWD	46,681	161,526	Calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 152-165, 159, 160	168,447
							Business transaction	Increased costs (Kuwait): Start-up costs	USD	128,691	USD	6,921	6,921	No proof that part or all of the loss is direct; part or all of claim is unsubstantiated; insufficient evidence of value of claimed loss	Paras. 39-43, 256-259	
225	United Kingdom	4002095	Dolphin Incentive Marketing Limited (filed by Kian Tan, liquidator)	GBP	1,388,556	2,639,840	Business transaction	Decline in business: Loss of profit (Dolphin Incentive Marketing Limited)	GBP	796,159	GBP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211, 210	0
							Business transaction	Decline in business: Loss of profit (Dolphin Vacation Vouchers Limited)	GBP	128,100	GBP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211, 210	
							Business transaction	Decline in business: Loss of profit (Blue Sea Worldwide Travel Limited)	GBP	434,993	GBP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211, 210	
							Business transaction	Decline in business: Loss of profit (Corporate Travel and Leisure Clubs Limited)	GBP	29,304	GBP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211, 210	

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
226	United Kingdom	4002114	Gibline Ltd	GBP	53,000	100,760	Business transaction	Decline in business: Loss of profit	GBP	53,000	GBP	0	0	Part or all of loss is outside compensable area	Paras. 167-175, 202-216	0
227	United Kingdom	4002184	Hofels Pure Foods Ltd	GBP	11,415	21,702	Contract	Goods lost or destroyed in transit (Kuwait): Contract price <sup>j</sup>	GBP	11,415	GBP	11,415	21,139	N/A	Paras. 81-103	21,139 <sup>g</sup>
228	United Kingdom	4002185	C Dugard Limited	GBP	282,127 <sup>h</sup>	536,363	Contract	Goods shipped to Iraq but diverted: Contract price	GBP	85,897	GBP	85,697	158,698	Calculated loss is less than loss alleged	Paras. 81-86, 104-121, 115, 118	450,091
							Contract	Goods shipped to Iraq but diverted: Bank guarantee charges	GBP	11,350	GBP	4,776	8,844	Part or all of loss is not direct	Paras. 81-86, 104-121, 224-233, 229	
							Contract	Sales contract interrupted before shipment (Iraq): Bank charges	GBP	1,509	GBP	0	0	No proof of actual loss	Paras. 81-86, 122-151, 150	
							Contract	Goods not manufactured and not shipped (Iraq): Premiums	GBP	113,699	GBP	113,699	210,554	N/A	Paras. 81-86, 122-151, 150	
							Contract	Sales contract interrupted before shipment (Iraq): Actual costs	GBP	14,000	GBP	14,000	25,926	N/A	Paras. 81-86, 122-151	
							Claim preparation costs		GBP	4,220	GBP	Awaiting decision	Awaiting decision	To be resolved by Governing Council	Para. 352	
							Interest		GBP	21,210	GBP	Awaiting decision	Awaiting decision	To be determined under Governing Council decision 16	Paras. 350-351	
							Other	Legal fees other than claim preparation costs/consulting fees	GBP	28,733	GBP	25,568	46,068	No proof that part or all of the loss is direct	Paras. 252-255, 254	
229	United Kingdom	4002190	Dalgety Food Ingredients Ltd	GBP	41,469	78,838	Contract	Goods shipped, received but not paid for (Kuwait): Contract price	GBP	18,146	GBP	0	0	No proof that part or all of the loss is direct	Paras. 61-75	43,191

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Contract	Goods lost or destroyed in transit (Kuwait): Contract price	GBP	17,165	GBP	17,165	31,787	N/A	Paras. 81-103		
						Contract	Goods shipped to Kuwait but diverted: Contract price less resale proceeds and increased costs	GBP	6,158	GBP	6,158	11,404	N/A	Paras. 81-86, 104-121, 218-223		
230	United Kingdom	4002191	LRC Products Ltd	ITL	80,162,477	69,147	Contract	Goods shipped, received but not paid for (Kuwait): Contract price	ITL	80,162,477	ITL	0	0	No proof that part or all of the loss is direct	Paras. 61-75, 71	0
231	United Kingdom	4002192	Greenham Trading Ltd	GBP	1,306	2,483	Contract	Goods shipped to Kuwait but diverted: Loss of profit and increased costs	GBP	1,306	GBP	1,306	2,419	N/A	Paras. 81-86, 104-121, 218-223	2,419 <sup>g</sup>
232	United Kingdom	4002193	Hotfrost Limited	GBP	2,073	3,941	Contract	Goods lost or destroyed in transit (Kuwait): Contract price	GBP	2,073	GBP	2,073	3,839	N/A	Paras. 81-103	3,839 <sup>g</sup>
233	United Kingdom	4002195	Core Drill (UK) Limited	GBP	8,985	17,082	Contract	Goods shipped, received but not paid for (Kuwait) (13 items) and Goods lost or destroyed in transit (Kuwait) (1 item): Contract price	GBP	8,985	GBP	321	594	No proof that part or all of loss is direct (13 items); insufficient evidence of value of claimed loss (1 item)	Paras. 39-43, 61-75, 81-103	594
234	United Kingdom	4002324	Cadogan Travel Ltd.	GBP	148,616	282,540	Contract	Interrupted contract (Israel): Loss of profit	GBP	28,078	GBP	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 166-175	0
							Business transaction	Decline in business (tours): Loss of profit	GBP	120,538	GBP	0	0	Part or all of loss is outside compensable area	Paras. 166-175, 202-211	
235	United Kingdom	4002379	Munther Mansour (Trading as Symbol Trading Company)	GBP	66,432	126,297	Contract	Goods shipped, received but not paid for (Iraq): Contract price	GBP	66,432	GBP	0	0	"Arising prior to" exclusion	Paras. 45-55	0

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
236	United Kingdom	4002381	Harcros Chemicals UK Ltd, Durham Chemicals Division	GBP	11,711	22,264	Contract	Goods lost or destroyed in transit (Kuwait): Contract price	GBP	3,551	GBP	3,119	5,776	Calculated loss is less than loss alleged	Paras. 81-103	19,485
							Contract	Goods lost or destroyed in transit (Kuwait): Contract price	GBP	8,160	GBP	7,403	13,709	Calculated loss is less than loss alleged	Paras. 81-103	
237	United Kingdom	4005990	Golder Associates UK Ltd. (severed portion of 4001950)	KWD	10,313	35,685	Other	Loss of use: Delayed receipt of payment for goods shipped or services supplied to a Kuwaiti customer	KWD	10,313	KWD	2,394	8,284	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	8,284
238	United Kingdom	4005991	STME Ltd. (severed portion of 4002008)	KWD	3,657	12,654	Other	Loss of use: Delayed receipt of payment for goods shipped or services supplied to a Kuwaiti customer	KWD	2,287	KWD	811	2,806	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	6,758
							Other	Loss of use: Delayed access to frozen bank account (Kuwait)	KWD	1,370	KWD	1,142	3,952	Insufficient evidence of value of claimed loss; calculated loss is less than loss alleged	Paras. 39-43, 309-337	
239	United Kingdom	4005992	KPMG Management Consulting (severed portion of 4002202)	GBP	26,457	50,298	Other	Loss of use: Delayed receipt of payment for goods shipped or services supplied to a Kuwaiti customer	GBP	26,457	KWD	907	3,138	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	3,138
240	United Kingdom	4005993	DCS Group Ltd (severed portion of 4002204)	GBP	28,022	53,274	Other	Loss of use: Delayed receipt of payment for goods shipped or services supplied to a Kuwaiti customer	GBP	28,022	GBP	10,329	18,918	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	18,918
241	United Kingdom	4005994	Shaw and Hatton International Ltd (severed portion of 4002215)	KWD	689	2,384	Other	Loss of use: Delayed access to frozen bank account (Kuwait)	KWD	689	KWD	549	1,900	Insufficient evidence of value of claimed loss; calculated loss is less than loss alleged	Paras. 39-43, 309-337	1,900

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				Amount claimed in original currency <sup>b</sup>		Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD	
242	United Kingdom	4005998	Eagle Star Reinsurance Co. Ltd. (Burton Sons & Saunder Ltd sub-claim) J.S. Collyer (Recoveries) Ltd.	GBP	14,605	27,766	Contract	Goods shipped to Kuwait but diverted: Contract price	GBP	14,605	GBP	0	0	Failure to comply with formal filing requirements	Paras. 39-43, 42	0
243	United Kingdom	4006007	Anglo Dutch Meats (severed portion of 4002168)	GBP	2,641	5,021	Other	Loss of use: Delayed receipt of resale proceeds for diverted goods (Kuwait)	GBP	2,641	USD	484	484	Insufficient evidence of value of claimed loss; calculated loss is less than loss alleged	Paras. 39-43, 309-337	484
244	United Kingdom	4006008	Klynton Davis Group Ltd. (severed portion of 4002169)	GBP	3,673	6,983	Interest		GBP	unspecified	GBP	Awaiting decision	Awaiting decision	To be determined under Governing Council decision 16	Paras. 350-351	5,099
							Other	Loss of use: Delayed receipt of resale proceeds for diverted goods (Kuwait)	GBP	3,673	GBP	2,631	5,099	No proof that part or all of loss is direct; insufficient evidence of value of claimed loss	Paras. 39-43, 309-337	
245	United States of America	4000622	Sheraton Middle East Management Corporation	USD	33,121,392	33,121,392	Contract	Interrupted contract (Iraq): Loss of revenue (management fees)	USD	23,646,807	IQD	561,456	1,805,325	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 152-165, 159, 163	10,981,648
							Contract	Services provided but not paid for (Iraq): Management fees	USD	324,593	USD	162,296	162,296	Insufficient evidence of value of claimed loss	Paras. 39-43, 45-58	
							Payment or relief to others	Evacuation/Repatriation/Relocation (Iraq): Travel & accomodation costs, salary/severance pay	USD	148,462	USD	12,497	12,497	Insufficient evidence of value of claimed loss	Paras. 39-43, 266-269	
							Claim preparation costs		USD	unspecified	USD	Awaiting decision	Awaiting decision	To be resolved by Governing Council	Para. 352	

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Interest		USD	unspecified	USD	Awaiting decision	Awaiting decision	To be determined under Governing Council decision 16	Paras. 350-351		
						Other	Loss of funds in bank accounts in Iraq	USD	9,001,530	IQD	2,799,476	9,001,530	N/A	Paras. 303-308		
246	United States of America	4000630	Toys R Us Inc	USD	607,158	607,158	Contract	Interrupted supply contract (Kuwait): Loss of profit (commissions)	USD	247,541	USD	73,335	73,335	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 152-165, 159, 162	189,449
						Contract	Interrupted contract (Kuwait): Loss of profit (commissions)	USD	359,617	USD	116,114	116,114	Part or all of loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 152-165, 159, 162		
247	United States of America	4000633	Vincula International Ltd Inc	USD	270,153	270,153	Contract	Sales contract interrupted before shipment (Kuwait): Contract price	USD	245,655	USD	22,273	22,273	Calculated loss is less than loss alleged; insufficient evidence of value of claimed loss; failure to establish appropriate efforts to mitigate	Paras. 39-43, 81-86, 122-151, 143-144	31,907
						Contract	Sales contract interrupted before shipment (Kuwait): Loss of profit	USD	24,498	USD	9,634	9,634	Calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 81-86, 122-151, 139, 143		
248	United States of America	4000635	Winthrop Products Inc	USD	3,820,376	3,820,376	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	3,820,376	GBP	0	0	"Arising prior to" exclusion	Paras. 45-58	0
249	United States of America	4002346	Ingersoll-Dresser Pump Company	USD	7,129	7,129	Contract	Goods lost or destroyed in transit (Kuwait): Contract price	USD	2,666	USD	2,666	2,666	N/A	Paras. 81-103	2,666
						Contract	Goods lost or destroyed in transit (Kuwait): Contract price	USD	3,294	USD	0	0	No proof that part or all of the loss is direct	Paras. 81-103, 99		

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Contract	Goods shipped, received but not paid for (Kuwait): Freight cost	USD	1,169	USD	0	0	No proof that part or all of the loss is direct	Paras. 61-75		
						Claim preparation costs		USD	unspecified	USD	Awaiting decision	Awaiting decision	To be resolved by Governing Council	Para. 352		
						Interest		USD	unspecified	USD	Awaiting decision	Awaiting decision	To be determined under Governing Council decision 16; principal sum not compensable	Paras. 350-351		
								USD		USD	0	0				
250	United States of America	4002347	James V. Jones Enterprises Ltd	USD	305,000 <sup>h</sup>	305,000	Contract	Interrupted contract (Kuwait): Loss of deposit	USD	305,000	USD	0	0	Part or all of claim is unsubstantiated; part or all of loss is not direct	Paras. 39-43, 61-75, 81-86	0
251	United States of America	4002349	Waverly Inc	USD	71,203	71,203	Contract	Goods shipped, received but not paid for (Iraq): Contract price	USD	71,203	USD	0	0	"Arising prior to" exclusion	Paras. 45-55	0
252	United States of America	4002353	North American Auto Exports Inc	USD	2,083,475	2,083,475	Business transaction	Increased costs: Rental payments	USD	29,250	KWD	2,250	7,785	Insufficient evidence of value of claimed loss	Paras. 39-43, 249-251	64,980
						Business transaction	Increased costs: Guarantee	USD	60,000	USD	0	0	No proof of actual loss	Paras. 224-233, 232		
						Other tangible property	Total loss (Kuwait): Office equipment and cars	USD	275,700	USD	57,195	57,195	Calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 282-288		
						Other tangible property	Depreciation (Cars)	USD	900	USD	0	0	Trade embargo is sole cause	Paras. 282-288		
						Other	Iraqi currency loss	USD	92,625	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 289-298		
						Other	Worthless Iraqi Dinars on hand	USD	1,625,000	IQD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 289-298		
253	United States of America	4002356	Forex Inc	USD	84,892	84,892	Contract	Goods lost or destroyed in transit (Kuwait): Contract price	USD	31,053	USD	15,526	15,526	Insufficient evidence of value of claimed loss	Paras. 39-43, 81-103, 96	69,319

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				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Contract	Goods lost or destroyed in transit (Kuwait): Bank charges	USD	77	USD	77	77	N/A	Paras. 81-103, 224-233, 231		
						Contract	Goods lost or destroyed in transit (Kuwait): Contract price	USD	47,728	USD	47,728	47,728	N/A	Paras. 81-103		
						Contract	Sales contract interrupted before shipment (Kuwait): Increased costs	USD	671	USD	625	625	Calculated loss is less than loss alleged	Paras. 81-86, 122-151, 143, 218-223		
						Contract	Goods shipped to Kuwait but diverted: Increased costs	USD	5,363	USD	5,363	5,363	N/A	Paras. 81-86, 104-121, 218-223		
						Interest		USD	unspecified	USD	Awaiting decision	Awaiting decision	To be determined under Governing Council decision 16	Paras. 350-351		
254	United States of America	4002507	GTE Valenite Corporation	USD	885,163	885,163	Contract	Sales contract interrupted before shipment (Iraq): Value of manufactured goods	USD	885,163	USD	686,939	686,939	Calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 81-86, 122-151, 142-143	686,939
						Interest		USD	unspecified	USD	Awaiting decision	Awaiting decision	To be determined under Governing Council decision 16	Paras. 350-351		
255	United States of America	4002571	Petoseed Co Inc	USD	38,422	38,422	Contract	Goods lost or destroyed in transit (Kuwait): Contract price	USD	29,452	USD	17,413	17,413	Part or all of claim is unsubstantiated; no proof that part or all of the loss is direct	Paras. 81-103, 97	17,413
						Interest		USD	8,970	USD	Awaiting decision	Awaiting decision	Principal sum not compensable; to be determined under Governing Council decision 16	Paras. 350-351		
								USD		USD	0	0				

No.	Submitting Entity	UNCC claim number	Claimant	Total amount claimed including permissible amendments <sup>a</sup>			Reclassified amount <sup>d</sup>				Decision of the Panel of Commissioners <sup>e</sup>					
				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
256	United States of America	4002576	The Boeing Company	USD	13,084,327	13,084,327	Business transaction	Increased costs: Incentive payments	USD	223,952	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 260-263	0
							Payment or relief to others	Evacuation costs (Saudi Arabia): Travel, accommodation and visa costs/support	USD	8,087,671	USD	0	0	Part or all of claim is unsubstantiated	Paras. 30, 39-43, 266-269	
							Payment or relief to others	Security and protective measures (Saudi Arabia): Gas masks	USD	23,547	USD	0	0	Part or all of claim is unsubstantiated	Paras. 30, 39-43, 279-281	
							Payment or relief to others	Evacuation costs (Saudi Arabia): Subcontractors' claims	USD	2,730,341	USD	0	0	Part or all of claim is unsubstantiated	Paras. 30, 39-43, 266-269	
							Payment or relief to others	Evacuation costs (Saudi Arabia): Travel costs/support	USD	257,122	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 266-269	
							Payment or relief to others	Evacuation costs (Saudi Arabia): Other overhead costs	USD	1,736,838	USD	0	0	Part or all of claim is unsubstantiated	Paras. 39-43, 266-269	
							Payment or relief to others	Evacuation costs (Saudi Arabia): Employee overtime costs	USD	24,856	USD	0	0	Part or all of claim is unsubstantiated	Paras. 30, 39-43, 266-269	
257	United States of America	4005997	American Life Insurance Company (ALICO)	USD	23,754,114	23,754,114	Business transaction	Decline in business (Kuwait): Loss of profit and rolled-up interest	USD	18,916,000	USD	2,241,000	2,241,000	Part or all of loss is outside compensable period; no proof that part or all of the loss is direct; calculated loss is less than loss alleged	Paras. 166-175, 193-201	2,295,267
							Business transaction	Increased costs: Start-up costs (training of agents)	USD	4,560,000	USD	16,100	16,100	No proof that part or all of the loss is direct; no proof of actual loss; insufficient evidence of value of claimed loss	Paras. 39-43, 256-259	

No.	Submitting Entity	UNCC claim number	Claimant	Total amount claimed including permissible amendments <sup>a</sup>		Reclassified amount <sup>d</sup>				Decision of the Panel of Commissioners <sup>e</sup>						
				Amount claimed in original currency <sup>b</sup>	Total amount claimed restated in USD <sup>c</sup>	Type of loss	Subcategory	Amount claimed in original currency	Currency of loss	Amount recommended in original currency or currency of loss <sup>f</sup>	Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total amount recommended in USD		
						Business transaction	Increased costs: Unproductive salary and termination payments	USD	36,388	USD	15,308	15,308	No proof that part or all of the loss is direct; insufficient evidence of value of claimed loss	Paras. 39-43, 241-248, 247		
						Business transaction	Increased costs: Costs of re-training employees	USD	139,354	INR	6,741	318	Part or all of claim is unsubstantiated	Paras. 39-43, 256-259		
								USD		USD	0	0				
						Business transaction	Increased costs: Post-liberation start-up costs	USD	3,999	USD	3,999	3,999	N/A	Paras. 256-259		
						Business transaction	Increased costs: Starting up expenses	USD	16,168	USD	0	0	Part or all of loss is not direct; part or all of claim is unsubstantiated	Paras. 39-43, 256-259		
						Business transaction	Increased costs: Termination payment and loss of use of pension fund	USD	75,269	USD	15,074	15,074	Part or all of loss is not direct	Paras. 241-248, 246		
						Other tangible property	Equipment: Replacement costs	USD	6,936	USD	3,468	3,468	Insufficient evidence of value of claimed loss	Paras. 39-43, 282-288		
						Interest		USD	unspecified	USD	Awaiting decision	Awaiting decision	To be determined under Governing Council decision 16	Paras. 350-351		
258	United States of America	4006001	Merrill Lynch & Co Ltd. (severed portion of 4002249)	USD	200,799	200,799	Other	Loss of use: Delayed access to frozen bank account (Kuwait)	USD	200,799	USD	14,343	14,343	Part or all of the loss is not direct; calculated loss is less than loss alleged; insufficient evidence of value of claimed loss	Paras. 39-43, 224-233, 230, 309-337, 335	14,343
<u>Total</u>					506,992,738								<u>Total</u>		50,397,873	

Notes to table of recommendations

<sup>a</sup> Pursuant to the Governing Council's decision taken at its twenty-seventh session held in March 1998, claimants in category "E" are not permitted to submit new claims or new loss types or elements, or increase the quantum of previously filed claims, after 11 May 1998. Nor may claimants use the claim development process,

including the article 34 notifications, to advance new claims or increase the quantum of previously filed claims. However, any additional evidence submitted by claimants in response to article 34 notifications may be used to support claims timely filed. Accordingly, the total claimed amounts stated in this table include only those supplements and amendments to the original claimed amounts submitted prior to 11 May 1998 or submitted after that date where these comply with the requirements of the Commission. The Panel observes that, in a few cases, there were discrepancies between the total amount asserted by the claimant in the claim form and the sum of the individual loss items stated by the claimant in the statement of claim. In such circumstances, the Panel adopts the total value asserted in the claim form where that claim form was filed prior to 11 May 1998.

<sup>b</sup> Currency codes: AED (United Arab Emirates dirham), ATS (Austrian schilling), BEF (Belgian franc), CHF (Swiss franc), CYP (Cyprus Pound), DEM (Deutsche Mark), EGP (Egyptian pound), ESP (Spanish Peseta), FIM (Finnish Markka), FRF (French franc), GBP (Pound sterling), GRD (Greek Drachma), ILS (Israeli New Shekel), INR (Indian rupee), IQD (Iraqi dinar), IRR (Iranian rials), ITL (Italian lira), KWD (Kuwaiti dinar), NLG (Dutch Guilder), SAR (Saudi Arabian riyal), TRL (Turkish lira), USD (United States dollar).

<sup>c</sup> In the column entitled “Total amount claimed restated in USD”, for claims originally expressed by the claimant in currencies other than United States dollars, the secretariat has converted the amount claimed to United States dollars based on August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics, or in cases where this exchange rate is not available, the latest exchange rate available prior to August 1990. This conversion is made solely to provide an indication of the amount claimed in United States dollars for comparative purposes. In contrast, the date of the exchange rate that was applied to calculate the recommended amount is described in paragraphs 343 to 349 of this report.

<sup>d</sup> In the columns under the heading entitled “Reclassified amount”, the Panel has re-categorised certain of the losses using standard classifications, as appropriate, since many claimants have presented similar losses in different ways (see columns entitled “Type of loss” and “Subcategory”). This procedure is intended to ensure consistency, equality of treatment and fairness in the analysis of the claims and is consistent with the practice of the Commission. In addition, the amount stated in the claim form for each element of loss is also reflected.

<sup>e</sup> As used in this table, “N/A” means not applicable.

<sup>f</sup> The secretariat has recalculated the amount claimed in the currency of the original loss which, on occasion, has been different from the amount stated in the claim form.

<sup>g</sup> In a few cases, there is a difference between the total amount of the reclassified elements of loss and the claimed amount due to rounding.

<sup>h</sup> This element of loss is subject to a deduction for compensation previously awarded by the Commission in a category “C” claim. The Panel has applied such a deduction in calculating the compensation recommended. See paragraph 216 of this report.

<sup>i</sup> Claim amount and/or currency of claim is inferred from documents in the claim file and is stated only for statistical purposes.

<sup>j</sup> The difference between the claimed amount restated in USD (as of 2 August 1990 for statistical purposes) and the recommended amount converted to USD as of the date of loss is due to different exchange rates being applied, as described in note c above.

<sup>k</sup> The Panel notes that there is a reference to an alleged additional loss of profits in the materials filed with the claim. The amount of the loss is unspecified and

not referred to on the claim form; the Panel finds that, in the circumstances, there is no claim for additional loss of profits.

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