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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS
CONCERNING THE FOURTH INSTALMENT OF “E/F” CLAIMS

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the “Commission”) constituted the present Panel of Commissioners (the “Panel”), by appointing Mr. Roberto MacLean (Chairman) and Mr. Rafael Vizcarrondo at its thirtieth session in December 1998 and Mr. Nigel Alington at its thirty-third session on 30 September 1999. The Panel was appointed to review claims filed with the Commission on behalf of insurers and export credit agencies (the “E/F Claims”), in accordance with the relevant Security Council resolutions and Governing Council decisions, including the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the “Rules”).
2. The E/F Claims category originated from the fact that some claimants (the “claimants”, more specifically defined in paragraph 17 below) filed their claims in category “E” (claims of corporations and other legal entities) and some claimants filed their claims in category “F” (claims of Governments and international organizations). Each claimant seeks compensation for amounts paid to policyholders or other persons or entities for loss, damage or injury allegedly arising from Iraq’s invasion and occupation of Kuwait on 2 August 1990.
3. This report contains the Panel’s recommendations to the Governing Council, pursuant to article 38(e) of the Rules, concerning 15 “E/F” Claims for compensation in a total amount of 382,716,447 United States dollars (USD) (the “fourth instalment claims”).¹ The majority of the fourth instalment claims relate to losses incurred by export credit agencies.² By loss type, the fourth instalment claims relate to:
 - (a) Contract-related losses, specifically losses under export credit policies;
 - (b) Payments under a statutory scheme to compensate victims of terrorism; and
 - (c) Other losses, being losses under policies covering tangible property and death or disability.

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

4. The role of the Commission is set out in the “Report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991)” (S/22559). In paragraph 20 of his report, the Secretary-General described the function of the Commission:

“... The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element.”

5. In processing the fourth instalment claims, the Panel was required to:

(a) Determine whether the various types of losses alleged by claimants are within the Commission's jurisdiction (i.e. are eligible for compensation within the framework established by the Security Council);

(b) Verify whether the alleged losses that are, in principle, eligible for compensation have in fact been incurred by a given claimant; and

(c) Evaluate the appropriate measure of compensation for each type of compensable loss and the quantum of the compensable losses.

6. For this purpose, the Panel had regard to the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E/F' claims" (S/AC.26/2001/6), the "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'E/F' claims" (S/AC.26/2002/18) and the "Report and recommendations made by the Panel of Commissioners concerning the third instalment of 'E/F' claims" (S/AC.26/2002/R.[28]) (respectively, the "First E/F Report", the "first instalment claims", the "Second E/F Report", the "second instalment claims", the "Third E/F Report" and the "third instalment claims").

B. The procedural history of the fourth instalment claims

7. Before the fourth instalment claims were submitted to the Panel on 13 December 2001, the secretariat undertook a preliminary assessment of these claims in accordance with article 14 of the Rules, in order to determine whether they met the formal requirements established by the Governing Council.³

8. Thirteen claims presented formal deficiencies. The secretariat issued notifications to the claimants concerned, pursuant to article 15 of the Rules, requesting that the defects be remedied. Thirteen of the claimants responded, five of which corrected those formal deficiencies. The claims with outstanding formal deficiencies were presented to the Panel as submitted.

9. Pursuant to Governing Council decision 114 (S/AC.26/Dec.114 (2000)), the Panel issued Procedural Order No. 1, dated 19 December 2000, sending to the Government of Iraq the claim files relating to two of the fourth instalment claims. These claim files were sent to the Government of Iraq as each claim sought compensation for asserted losses that exceeded USD 100 million. On 23 October 2001 the Government of Iraq provided the secretariat with its comments on these claims. The Panel considered the information provided by the Government of Iraq and took these comments into account in making the recommendations set out in this report.

10. By Procedural Order No. 2, dated 13 December 2001, the Panel gave notice of its intention to complete its review of the fourth instalment claims and to submit its report and recommendations to the Governing Council within 180 days, in accordance with article 38(c) of the Rules. This procedural order was transmitted to the claimants, through the diplomatic missions of their respective Governments, and to the Government of Iraq.

11. In processing the fourth instalment claims, the Panel employed the full range of investigative procedures available to it under the Rules. Pursuant to article 34 of the Rules, notifications were sent to all of the claimants ("article 34 notifications"). In the case of many of the claimants, the Panel sent supplementary article 34 notifications seeking further explanatory information and evidence.

12. The Panel performed a thorough factual and legal analysis of all of the fourth instalment claims, in accordance with article 38 of the Rules. The Panel also engaged expert accounting consultants to assist in the verification and valuation of the fourth instalment claims.

II. LEGAL FRAMEWORK

13. The legal framework for the evaluation of the fourth instalment claims is the same as that used for the first, second and third instalment claims, as described in paragraphs 12 to 30 of the First E/F Report, paragraph 15 of the Second E/F Report and paragraph 13 of the Third E/F Report respectively. The present report only addresses new issues that arise out of the factual circumstances of the fourth instalment claims.

14. One of the most significant of the fourth instalment claims, in terms of the number of loss elements and complexity, concerns losses asserted for payments made pursuant to a statutory scheme for compensation to victims of terrorism. This claim (the "claim for statutory compensation payments") is more fully described in paragraphs 60 to 93 below. Pursuant to the scheme, the claimant, a governmental entity constituted by statute, made payments to certain individuals or dependants of individuals who suffered loss, damage or injury as a direct result of Iraq's invasion and occupation of Kuwait. The payments were for losses arising out of forced hiding and detention, medical and other expenses, loss of income and personal injury. According to statute the claimant is subrogated to the rights of those paid by it and claims before the Commission in that capacity.

15. Many of the individuals, their dependants and employers submitted related claims before the Commission. These related claims have been or are being processed by the Commission in other claims categories in accordance with the Rules. Some have been awarded compensation for the related losses as well as other losses not claimed by the claimant. The Panel instructed the secretariat to conduct cross-category checks in other claims categories to identify any claims by the individuals, their dependants or employers in respect of the same losses for which the individuals or their dependants were paid by the claimant and for which the claimant seeks compensation (see paragraphs 33 and 34 below). The Panel notes that, in many cases, the related claimants disclosed the nature and extent of payments received from the claimant. In addition, the claimant disclosed to the Commission any compensation received by the related claimants from the Commission or any other source in respect of which it had exercised its right of subrogation. The claimant reduced its claimed amount accordingly.

16. As more fully described in paragraph 76 below, the Panel compared the loss categories for which the individuals, their dependants or employers had received compensation from the Commission with those for which the claimant sought compensation in respect of each individual, in order to assess whether compensation had already been awarded for the same losses.

III. COMPENSABILITY OF INSURANCE AND EXPORT CREDIT CLAIMS

A. The underlying loss and the insurers' right of subrogation

17. All except one of the fourth instalment claims have been submitted by export credit agencies and insurance companies (together, the "insurers") in respect of indemnity payments to policyholders for losses that were said to be a direct result of Iraq's invasion and occupation of Kuwait. The fourth instalment claims also include a claim of a governmental entity described in paragraph 14 above. The insurers and this governmental entity are collectively referred to in this report as the "claimants".

18. The Panel considered the eligibility of insurance claims for compensation in paragraphs 31 to 36 of the First E/F Report. The Panel recommended that payments by insurance entities for which compensation is sought must satisfy two criteria to be eligible for compensation:

(a) Such payments must have been made in respect of underlying losses (i.e. losses suffered by policyholders) that were a direct result of Iraq's invasion and occupation of Kuwait; and

(b) The underlying loss must have been compensable under the particular insurance policy (i.e. the claimant must have been obligated to pay its policyholder under the terms of the relevant policy).

19. The Panel has applied the same criteria to the fourth instalment claims submitted by insurers and has applied the same principle to the claim for statutory compensation payments.

B. Quantum of compensation

1. Valuation

20. The Panel has applied to the fourth instalment claims the valuation methodology used in the first, second and third instalment claims (see paragraphs 37 to 43 of the First E/F Report, paragraphs 22 to 24 of the Second E/F Report and paragraphs 20 to 22 of the Third E/F Report respectively).

21. Accordingly, the Panel recommends awards of compensation to claimants for the actual value of the underlying loss suffered by an insurer's policyholder, rather than the agreed or contractually defined value of the asset lost (see paragraph 39 of the First E/F Report). This is subject to the condition that, where the value of the underlying loss is greater than its agreed or contractually defined value, a claimant may receive compensation for no more than the insured value it actually paid (see paragraph 41 of the First E/F Report).

22. For the purposes of assessing the value of the underlying loss, the Panel has followed the recommendations it made in this respect in the First E/F Report and Second E/F Report. For aircraft, the Panel considers that, in principle, market value is the appropriate basis of valuation (see paragraph 40 of the First E/F Report). For aircraft spares, the Panel bases its valuations on the net book value of the lost spare parts and on the repair and recertification costs of damaged spares (see paragraphs 87 to 89 of the Second E/F Report).

23. The Panel has applied a different methodology to the valuation of the claim for statutory compensation payments (see paragraphs 92 and 93 below).

2. Date of underlying loss

24. In relation to insurance claims, the date of the underlying loss is the date on which the actual loss was suffered by the policyholder. The Panel chooses this date, rather than any date of loss defined in the policy, so that Iraq will not benefit, or suffer, from fluctuations in market values resulting from the application of a term of a policy to which it was not a party (see paragraph 44 of the First E/F Report). The date of underlying loss should be contrasted with the date of compensable loss (see paragraphs 35 to 38 below).

3. Premiums

25. The Panel does not recommend the deduction of premiums from compensation awards, as it is not possible to formulate a general principle for the deduction of premiums that could be accurately applied in all cases (see paragraphs 47 to 52 of the First E/F Report). If, however, the claimed amount does not include the premium, the claimant can recover no more than the amount that it has claimed.

4. Incidental losses

26. In the First E/F Report (see paragraphs 53 and 54), the Panel considered that there might be circumstances in which incidental losses (i.e. costs incurred by claimants in their capacity as insurers, specifically as a result of handling claims for losses which were a direct result of Iraq's invasion and occupation of Kuwait) are eligible for compensation. To be so eligible, the Panel recommended that those losses must have:

- (a) Been direct losses, resulting from Iraq's invasion and occupation of Kuwait;
- (b) Had a sufficient connection with the underlying loss, being incurred in mitigation of the underlying loss; and
- (c) Been necessarily and reasonably incurred.

27. In reviewing the claim for statutory compensation payments, the Panel considered whether there might be circumstances in which incidental losses incurred by non-insurer claimants are eligible for compensation. In the claim for statutory compensation payments, the claimant sought compensation for medical fees that it incurred in requiring individuals to undergo medical examinations in order to prove certain injuries or disabilities (see paragraph 91 below). The Panel recommends no compensation for these fees, as it finds that they were incurred by the claimant as a result of its consideration of the quantum of each individual's asserted losses regardless of the cause of the losses. The Panel finds that these fees are a consequence of the claimant's function to provide compensation to victims of terrorism. In this respect they are similar to brokers' fees (see paragraph 29 of the Second E/F Report) and loss adjusters' fees (see paragraphs 55 and 56 of the First E/F Report) in the insurance context.⁴ The Panel, therefore, considers that the claimant did not incur these fees as a direct result of Iraq's invasion and occupation of Kuwait.

IV. EVIDENTIARY REQUIREMENTS

28. A claim must be supported by sufficient evidence to demonstrate that it is eligible for compensation pursuant to paragraph 16 of Security Council resolution 687 (1991). Specifically, article 35(3) of the Rules provides that claims of Governments or international organizations, corporations and other entities must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss.⁵

29. Two claimants in the fourth instalment submitted their claims on category “E” claim forms. Thirteen claimants in the fourth instalment submitted their claims on category “F” claim forms.

30. The instructions for the submission of claims and supporting evidence, as set out in the category “E” claim form, are described in paragraph 59 of the First E/F Report. The instructions for the submission of claims and supporting evidence, as set out in the category “F” claim form, are described in paragraph 30 of the Third E/F Report.

31. The Panel has required the same nature and specific types of evidence for the fourth instalment claims, and applied the same methodology in relation to evidentiary shortcomings, as it did in all previous instalments (see, for example, paragraphs 60 to 78 of the First E/F Report). As set out in the First E/F Report, the Panel’s approach to the verification of claims balances the claimant’s inability always to provide the best evidence against the “risk of overstatement” introduced by shortcomings in evidence (see paragraphs 72 and 73 of the First E/F Report). The Panel modified these evidentiary requirements when reviewing the claim for statutory compensation payments (see paragraphs 66 to 73 below).

V. MITIGATION

32. Insurers (like all claimants before the Commission) are under a duty to take all reasonable steps to mitigate their losses. An award of compensation will be reduced to the extent that the claimed losses could reasonably have been avoided. In certain circumstances expenses reasonably incurred in mitigation of a loss are compensable (see paragraph 81 of the First E/F Report). The Panel considered this subject in the First E/F Report (see paragraphs 79 to 82) and followed the same approach in relation to the second and third instalment claims. Likewise, the Panel has followed the same approach in relation to the fourth instalment claims.

VI. AVOIDANCE OF MULTIPLE RECOVERY

33. The Panel avoids awarding compensation for the same loss more than once (i.e. multiple recovery), in the ways described in paragraphs 84 to 89 of the First E/F Report. In summary, the Panel seeks to ensure that:

(a) Where a claimant has already received compensation in another forum or from another source for the same loss as that claimed in the fourth instalment, the amount already received by the claimant is deducted (unless already deducted by the claimant) from the amount of the compensation recommended by the Panel; and

(b) Where the Commission has already awarded compensation for the same losses as those claimed in the fourth instalment claims, the amount already awarded is deducted from the amount of the compensation recommended by the Panel.

34. In relation to the claim for statutory compensation payments, the Panel instructed the secretariat to carry out cross-category checks in all other claims categories to identify any claims by individuals, their dependants or employers where any of those parties had received payments from the claimant (see paragraphs 14 to 16 above).

VII. INCIDENTAL ISSUES

A. Date of compensable loss

35. The date of compensable loss is the date of loss for the purpose of establishing the appropriate exchange rates to be used (see paragraph 90 of the First E/F Report). This date may also be used for calculating interest (see paragraph 40 below).

36. As set out in paragraphs 90 to 94 of the First E/F Report, the Panel considers that for claims submitted by insurers the date of compensable loss is the date of payment, where proved, by the claimant to its policyholder. In respect of the non-contractual payments that are the subject of one of the fourth instalment claims (see paragraphs 14 to 16 above and paragraphs 60 to 93 below), the Panel recommends that the date of compensable loss is the date of each payment made by the claimant.

37. In the absence of evidence that establishes conclusively the date of compensable loss, the Panel has followed the recommendations set out in paragraphs 92 to 94 of the First E/F Report in respect of claims by insurers. Where there is evidence of payment to the policyholder, but not of the date of receipt of payment, the date of compensable loss should be the date 120 days after the date on which the claimant drew its cheque or, if that date is not known, 120 days after the date on which the claimant dispatched the cheque to the policyholder. Where payment was made by electronic transfer, the date of compensable loss should be the date on which the claimant's account was debited. If there is no evidence that the claimant's account was debited, the date of compensable loss should be the third day after the date on which transfer instructions were given. In the absence of evidence of payment, but where there is verifiable evidence of the date of receipt of payment, the date of compensable loss should be the latter date.

38. The Panel has applied the same principles to the claim for statutory compensation payments (see paragraphs 60 to 93 below).

B. Currency exchange rate

39. The Commission issues its awards in United States dollars. As set out in paragraphs 95 and 96 of the First E/F Report, the Panel recommends that the appropriate exchange rate to be applied to the fourth instalment claims in currencies other than United States dollars should be the rate prevailing in the United Nations Monthly Bulletin of Statistics on the date of compensable loss.

C. Interest

40. Governing Council decision 16 (S/AC.26/1992/16) states that the Governing Council will consider the methods of calculation and of payment of interest at the appropriate time. For this reason the Panel makes no recommendation in relation to interest. In accordance with paragraph 98 of the First E/F Report, however, the Panel recommends that the date from which any interest awarded is to run for the fourth instalment claims is the date of compensable loss.

D. Claims preparation costs

41. As the Governing Council intends to resolve the issue of claims preparation costs at a future date (see paragraph 99 of the First E/F Report), the Panel makes no recommendation as to claims preparation costs for the fourth instalment claims.

VIII. THE CLAIMS

A. Factual background

42. The Panel described the events surrounding Iraq's invasion and occupation of Kuwait and the effects thereof in paragraphs 100 and 101 of the First E/F Report. In paragraph 100 of the First E/F Report, the Panel referred to the "Report on the situation of human rights in Kuwait under Iraqi occupation", by Mr. Walter Kälin (the "Kälin Report").⁶ The Kälin Report found that nationals of member countries of the Organisation for Economic Co-operation and Development (OECD) "were ordered to report to the Iraqi authorities on 16 August 1990. Subsequently...they were deported to Iraq and obliged to remain there. Some were detained at strategic sites and thus used as 'human shields', some among them until December 1990."⁷

43. Against this background, the claimants in the fourth instalment asserted losses that relate to three distinct categories of underlying losses (see paragraph 3 above):

- (a) Contract-related losses, specifically losses under export credit policies;
- (b) Statutory compensation payments; and
- (c) Other losses, being losses under policies covering tangible property and death or disability.

B. Contract-related losses

1. Export credit losses relating to non-payment under contracts

(a) Summary of the relevant facts

44. Ten of the fourth instalment claims relate to export credit policies insuring the risk of non-payment in respect of contracts for the supply of goods and services to entities of the Government of Iraq ("Iraqi entities"), to Kuwaiti parties or, in one case, to an unknown party. Six of the fourth

instalment claims relate to export credit policies issued by one claimant. Another claimant submitted three claims and one claimant submitted a single claim covering a number of export credit policies.

45. In one of the fourth instalment claims referred to in paragraph 44 above, arising out of export contracts with Iraqi entities, there is evidence that in 1989 the parties entered into an agreement to defer the Iraqi entities' payment obligations under the contracts (see paragraph 51 below).

(b) Evidentiary requirements specific to export credit losses relating to non-payment under contracts

46. In respect of contracts with Kuwaiti parties, the Panel required the same evidence as that described in relation to the claims for export credit losses in the first instalment claims (see paragraphs 126 to 133 of the First E/F Report). That is, in addition to the evidence described in paragraph 68 of the First E/F Report, the Panel required evidence of the underlying contract between the buyer and the seller or the contractor and the principal and, if applicable, evidence of presentation of the documents required under a letter of credit in accordance with its terms.

47. The Panel required the same evidence in relation to contracts with Iraqi parties. In addition, the Panel required evidence of the dates of performance of the underlying export contracts in order to determine whether the Iraqi importer's obligation was a debt of Iraq arising prior to 2 August 1990 (see paragraphs 22 to 25 of the First E/F Report). In relation to such contracts secured by letters of credit, the Panel required evidence of presentation of the documents required under the letter of credit in accordance with its terms (for the reason set out in paragraph 52 below. See also paragraph 56 of the Third E/F Report).

(c) Analysis and recommendations

48. In relation to contracts with Kuwaiti parties, the Panel follows its recommendations set out in paragraphs 134 to 137 of the First E/F Report and paragraphs 138 to 140 of the First E/F Report concerning goods diverted or retained.

49. In relation to contracts with Iraqi parties, the Panel adopts the recommendations of the "E2A" Panel that, apart from the trade embargo and its related measures, the actions of Iraq's officials during Iraq's occupation of Kuwait, the military operations to liberate Kuwait and the ensuing breakdown in civil order in Iraq directly caused Iraq's failure to pay its debts after 2 August 1990 (see paragraph 59 of the Third E/F Report). The "E2A" Panel found that the contractual obligations of Iraqi purchasers and Iraqi banks in respect of goods delivered before the invasion were generally not paid after 2 August 1990 as a direct result of Iraq's invasion and occupation of Kuwait.⁸ Accordingly, resulting losses are direct within the meaning of paragraph 21 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) and are eligible for compensation, in principle. Where, however, the evidence is that freezing orders adopted by individual States were the sole cause of the non-payment by the Iraqi parties, the Panel considers that such claims are not eligible for compensation (see paragraph 59 of the Third E/F Report).⁹

50. The Panel also adopts the recommendations of the "E2A" Panel that "the compensable period for losses arising from Iraq's failure to pay its debts shall be defined as 2 August 1990 to 2 August

1991” (see paragraph 60 of the Third E/F Report).¹⁰ Accordingly, where the payment obligations of an Iraqi party became due after 2 August 1991, the Panel finds that a claim for losses based on this debt is not eligible for compensation.

51. The Panel follows its approach in relation to the first, second and third instalment claims and finds that those claims relating to non-payment of debts by Iraqi parties arising prior to Iraq’s invasion and occupation of Kuwait (i.e. where performance giving rise to the original debt was rendered by the policyholder prior to 2 May 1990) are not eligible for compensation as they are outside the jurisdiction of the Commission (see paragraphs 22 to 25 of the First E/F Report).

52. The “E2A” Panel has recommended that either the sales contract or, if the contract was secured by a letter of credit issued by an Iraqi bank, the letter of credit may be considered as the basis for the Commission’s jurisdiction (see paragraph 61 of the Third E/F Report).¹¹ If the letter of credit is considered as the basis for jurisdiction, claims for unpaid amounts due from an Iraqi buyer may be compensable if the documents required under the letter of credit were presented to the bank on or after 2 May 1990 and the period between shipment and presentation of the documents did not exceed 21 days. The Panel followed this recommendation when considering the fourth instalment claims.

53. In relation to the interruption of contracts with Iraqi parties (i.e. goods destined for Iraq but diverted or retained), the Panel adopts the recommendations of the “E2A” Panel that the performance of contracts for the supply of goods to Iraq between 2 August 1990 and 2 March 1991 was rendered impossible as a direct result of Iraq’s invasion and occupation of Kuwait and continued to be impossible until 2 August 1991 (see paragraph 62 of the Third E/F Report).¹² Accordingly, the Panel finds that losses arising from the interruption of contracts with Iraqi parties during this period are eligible for compensation.

54. The Panel recommends no compensation in respect of any of these claims, for the reasons set out in annex III.

2. Export credit losses relating to tangible property

(a) Summary of the relevant facts

55. One of the fourth instalment claims submitted by an export credit agency relates to payments in respect of insured property that the policyholder owned in Iraq. The property was said to consist of villas, dormitories and trailers that were allegedly destroyed or damaged as a direct result of Iraq’s invasion and occupation of Kuwait.

56. The same claimant also seeks, among other losses, compensation for equipment and vehicles that its policyholders supplied pursuant to contracts with Iraqi parties. The claimant asserts that the equipment and vehicles were in Iraq at the time of Iraq’s invasion and occupation of Kuwait and that they were stolen, vandalized or destroyed as a direct result thereof.

57. Another of the fourth instalment claims includes, among other losses, equipment and a site office in Kuwait that were said to have been lost or destroyed as a direct result of Iraq's invasion and occupation of Kuwait.

(b) Evidentiary requirements specific to export credit losses relating to tangible property

58. As it did in respect of similar first and second instalment claims (see paragraphs 160 and 170 of the First E/F Report and paragraphs 76, 83, 92 and 96 of the Second E/F Report respectively), the Panel required evidence of the policyholder's ownership of the lost or destroyed property and evidence that the property was in Iraq or Kuwait at the time of Iraq's invasion and occupation of Kuwait.

(c) Analysis and recommendations

59. The Panel recommends no award of compensation in respect of these claims, as either there were formal deficiencies in the claims or the claimants did not submit evidence to substantiate the claimed losses.

C. Statutory compensation payments

1. Summary of the relevant facts

(a) Introduction to claim

60. The claimant seeks compensation for payments made under a French statutory scheme for the compensation of victims of terrorism (see paragraphs 14 to 16 above). Pursuant to this scheme, the claimant is given authority to determine categories of compensable loss upon the occurrence of a terrorist action. In accordance with the applicable law, the claimant exercised its statutory authority and paid individuals who suffered losses, as defined by its own criteria, as a direct result of Iraq's invasion and occupation of Kuwait. The claimant described its payments as compensation for losses including moral damage resulting from detention, loss of income, specific post-traumatic syndrome, disability, pain and suffering, moral and family damage, disfiguration damage, pleasure damage and medical and travel expenses.

61. The claimant paid the individuals for these losses according to its own rules governing awards of compensation. These rules provided, for example, for compensation to French individuals or their dependants (see paragraphs 63 and 65 below).

62. The claimant acquires statutory rights of subrogation to any awards of compensation received by individuals for the same losses. Accordingly, although it initially submitted a claim for payments made to 487 individuals, it periodically amended its claim to take into account amounts that it received from the exercise of its rights of subrogation to awards of compensation made to individual claimants in categories "A", "B", "C" and "D". The claimant also disclosed, and reduced its claimed amount in respect of, amounts received through litigation in municipal courts.¹³ The claimant's amended claim concerns payments to 320 individuals, in respect of some of whom it has acknowledged partial reimbursement through subrogation.

(b) Losses suffered by victims

63. The claimant claims for payments made to French individuals who were in Iraq or Kuwait as at 2 August 1990 and were subsequently detained by Iraqi forces or were unable to leave Iraq or Kuwait (the “victims”). Of those who were detained by Iraqi forces, some were held as human shields in what the claimant described as “strategic sites” in Iraq. All of the victims were later released or allowed to leave Kuwait and Iraq and repatriated. The claimant’s rules provided for lump sum payments that varied according to the period of detention and whether or not the victims were held in a “strategic site”.

64. The claimant also claims for other payments made to victims who were said to have suffered personal losses arising out of their detention or forced hiding. Such payments were made for all the categories of loss described in paragraph 60 above. In respect of payments for loss of income, in many cases the claimant entered into loss-sharing agreements with the victims’ employers and other French Government entities. Pursuant to these loss-sharing agreements, the claimant paid only a proportion of each victim’s loss of income and claims compensation only for its share.

(c) Losses suffered by dependants

65. The claimant also made payments to dependants of victims (the “dependants”), where those victims had been detained or were in forced hiding. In respect of these payments, the claimant’s rules provided that it could pay a French dependant or a dependant of a French victim. These rules also provided for payments to dependants only for loss of financial support and the cost of medical treatment for injuries or conditions that they had suffered as a result of Iraq’s invasion and occupation of Kuwait. The claimant seeks compensation for these payments, as well as for other payments, which were said to have been made to dependants notwithstanding its rules, for categories of loss such as specific post-traumatic syndrome and pain and suffering.

2. Evidentiary requirements specific to statutory compensation payments

(a) Evidentiary requirements in respect of payments for detention and forced hiding

66. In respect of victims detained by Iraqi forces or unable to leave Iraq or Kuwait, the Panel required evidence that each victim was in Kuwait or Iraq as at 2 August 1990, and evidence of the fact of each victim’s detention and the length of their detention or forced hiding in Iraq or Kuwait (see paragraphs 78 to 83 below).

67. In order to calculate the period of a victim’s detention or forced hiding (and, therefore, the amount of compensation that the victim would have received if the victim had claimed before the Commission, see paragraphs 74 and 75 below), the Panel required evidence of the date on which the detention or forced hiding began and the date on which it ended. In the absence of specific evidence of the date of departure from Iraq or Kuwait, the Panel calculated the period of detention or forced hiding by relying on evidence of the date of repatriation to the victim’s home country and deducting two days’ travel time from Iraq or Kuwait.

68. In respect of dependants, the claimant's rules provided only for compensation to the dependants for loss of financial support and the cost of medical treatment. Accordingly, the Panel required evidence of each dependant's loss and the cause of that loss. For example, in relation to medical treatment, the Panel required evidence of the nature of the dependant's injury or condition requiring treatment and evidence that it arose as a direct result of Iraq's invasion and occupation of Kuwait.

(b) Other losses suffered by victims

69. In respect of other losses suffered by victims, the Panel required evidence of the loss, damage or injury suffered by each victim. This included, for example, evidence of any loss of income (i.e. evidence of the victim's employment and lost salary or wages), personal injury, medical fees and any other expenses. These specific evidentiary requirements are consistent with those that relate to insured losses of a similar nature (see paragraphs 215 and 217 of the First E/F Report).

(c) Other specific evidentiary requirements

70. The Panel required evidence in English in accordance with article 6(5) of the Rules and, accordingly, required translations of all unique documents and sample translations of generic documents. Where available, the Panel supplemented this evidence with information from related claim files. In this connection, the Panel notes that documents filed with claims in categories "B" and "C" were not always translated into English unless specifically required (see article 6(4) of the Rules). The Panel therefore accepted as evidence documents from these related claim files in their original language.

71. In order to establish each victim's or dependant's underlying loss, the Panel applied the evidentiary standards applicable to individual claims. On the other hand, the Panel required the claimant to comply with the evidentiary standards set out in article 35(3) of the Rules (see paragraph 28 above) in order to substantiate its own loss.

72. As the Panel recommends that compensation only be awarded where the claimant paid victims in accordance with its own rules (see paragraph 75 below), the Panel required evidence of compliance with these rules. For example, the Panel required evidence of the nationality of the victims or the dependants (see paragraphs 63 and 65 above). The claimant's rules also provided for higher amounts to be paid to victims who had been held in strategic sites (see paragraph 63 above). In such cases, the Panel required evidence that the victims were, in fact, held in strategic sites. The Panel accepted attestations from the French Ministry of Foreign Affairs as to both nationality and detention in strategic sites.

73. In accordance with its approach in the Third E/F Report (see paragraph 68 of that report) the Panel also required evidence that payment was received by each victim from the claimant (consistent with the requirement in relation to insurers, as described in paragraph 68(g) of the First E/F Report).

3. Analysis and recommendations

(a) Eligibility of the claimant for compensation

74. The Panel has followed the approach set out in paragraph 16 of the Third E/F Report. That is, the Panel considers that payments made by claimants pursuant to governmental decrees or decisions are eligible for compensation in the absence of any insurance policy or guarantee, to the extent that the underlying loss would have been eligible had the recipient itself claimed before the Commission. This is consistent with the approach of the “F1” Panel, that the Commission cannot award more to Governments that provided relief to others than the recipients of the relief would have been entitled to receive had they filed individual claims.¹⁴

75. Accordingly, the Panel reviewed the evidence submitted by the claimant in respect of each victim or dependant individually, in order to determine the nature and extent of the underlying loss in each case. On this basis, the Panel recommends an award of compensation to the claimant of no greater amount than the compensation to which each individual would have been entitled had the individual filed a claim before the Commission in another category. This is subject to the condition that, where the individual would have been entitled to receive compensation in an amount greater than the amount which the claimant actually paid to the individual, the claimant may receive compensation for no more than the amount that it actually paid or, if lower, the amount that it should have paid according to its own rules (in relation to the insurance context, see paragraphs 36 and 41 of the First E/F Report and paragraph 21 of the Third E/F Report).

76. The Panel considered the types of losses for which the claimant paid individuals and for which the claimant seeks compensation. Where these loss types correspond to loss types for which the Commission would have awarded compensation to the individuals, the Panel recommends that the claimant's payments for these loss types are eligible, in principle, for compensation. Where however the claimant paid an individual for a loss that would not have been eligible for compensation before the Commission, the Panel recommends no award of compensation. In making these recommendations the Panel had regard to the substance of the claimed loss rather than the terms used by the claimant to identify them.

77. In some cases the Panel notes that the claimant paid a victim or dependant for losses in more than one loss type (as defined by its own rules) whereas the Commission would consider such losses as falling within a single loss type. In such cases the Panel aggregated the amounts paid by the claimant for the purposes of comparing the total amount with the amount of compensation payable by the Commission. For example, the claimant paid certain victims for specific post-traumatic syndrome as well as for pain and suffering. The Panel considers that these payments together correspond to the compensation that the Commission would award for mental pain and anguish resulting from serious personal injury.¹⁵

(b) Payments for losses arising out of detention and forced hiding

78. The Panel considered the claimant's payments to victims for losses arising out of their detention by Iraqi forces or their forced hiding in Iraq or Kuwait. The Panel recommends compensation for these payments, which would have been compensable as mental pain and anguish arising from detention or forced hiding had the victims claimed before the category "C" or "D" Panels.¹⁶

79. The Panel relied on the Kälín Report to find that the victims in question, as nationals of an OECD country, had a manifestly well-founded fear for life in the circumstances that prevailed (see paragraph 42 above). As a result of this well-founded fear, the Panel considers that in the absence of evidence of actual detention by, or hiding from, Iraqi forces, the victims in Iraq or Kuwait were in fact in forced hiding from Iraqi forces.¹⁷

80. In these circumstances, the Panel recommends an award of compensation for payments made to victims who were in forced hiding or detention (if there is evidence of detention) in amounts no greater than those that the victims would have received for the corresponding loss categories if the victims had themselves claimed before the Commission (see paragraph 75 above).

81. The claimant seeks compensation for higher payments that it made to victims who it asserted were detained by Iraqi forces in strategic sites (see paragraph 63 above). In such cases, the Panel notes that when recommending compensation other Panels have made no distinction as to the type of site at which a victim was detained. Accordingly, the Panel recommends an award of compensation of either the amount that the claimant paid to the victim (including the amount of a higher payment for detention at a strategic site, provided that there is evidence of detention at such a site) or the amount the victim would have received had the victim claimed before the Commission for his or her detention, whichever is lower (see paragraph 75 above).

82. Where there is evidence that a victim departed from Iraq or Kuwait outside the jurisdictional period and there is no other evidence of detention or forced hiding within the jurisdictional period, the Panel recommends no award of compensation, as the loss was not a direct result of Iraq's invasion and occupation of Kuwait.¹⁸ Where there is evidence that a victim chose to remain in Iraq or Kuwait instead of being repatriated, the Panel recommends an award of compensation only for the period prior to the date on which the victim could have been repatriated.

83. In the absence of evidence of the period of detention or forced hiding but where there is evidence that a victim was detained in a strategic site (see paragraph 81 above) or was interrogated, the Panel considers that the victim was under an imminent threat to life and recommends an award of compensation based on the minimum amount the Commission would have awarded to a victim for detention of less than three days in these circumstances.¹⁹ Otherwise, the Panel recommends no award of compensation.²⁰

(c) Other losses suffered by victims or dependants

(i) Loss of income or financial support

84. The Panel recommends that the claimant's payments to victims for their loss of income during the period of detention or forced hiding are compensable, in principle, as the victims could have been awarded compensation for loss of income had they claimed before the Commission. The "F1" Panel recommended compensation for payments to hostages on the basis that:

"... the monetary payments were made to compensate for the loss of income the hostages would have earned had they not been taken hostage or otherwise illegally detained. Accordingly, the time period for which such payments are justified is the length of their detention. This is subject, however, to the principle set out by the Panel in the First ["F1"] Report that the Commission cannot award more to Governments who provided relief to others than the recipients of the relief would have been entitled to had they filed individual claims."²¹

85. Similarly, the Panel recommends that the claimant's payments to dependants for loss of financial support during the period of detention or forced hiding are compensable in principle, as the dependants could have been awarded compensation for loss of financial support had they claimed before the Commission.²²

(ii) Personal injuries

86. The claimant also seeks compensation for payments made to victims or dependants in respect of personal injuries suffered as a direct result of Iraq's invasion and occupation of Kuwait.

87. In the case of the victims, the Panel recommends that these payments are compensable in principle where the injury or loss would have been compensable if the victim had claimed before the Commission. For example, the Panel recommends an award of compensation where the claimant paid victims for future loss of earnings as a result of a permanent partial disability or for loss of earnings as a result of a temporary partial disability, provided that the claimant submitted evidence of the disability (such as a medical report) and personal circumstances (such as age and earning capacity).

88. The Panel also recommends an award of compensation for the claimant's payments to a victim for pain and suffering as a result of a serious personal injury, as the victim would have been eligible to claim compensation for this loss before the Commission.²³

89. In the case of dependants, however, the Panel notes that the claimant seeks compensation for payments in respect of pain and suffering and for specific post-traumatic syndrome, although it also provided evidence that its own rules limit compensation for personal injuries to the cost of medical treatment. The Panel therefore recommends no award of compensation for these payments, as there was insufficient evidence that they were made by the claimant pursuant to its own rules (see paragraph 75 above).

(iii) Medical and travel expenses

90. The Panel considers that the claimant's payments to victims and dependants for medical fees and travel expenses are compensable in principle where there is evidence that the victims and dependants incurred these amounts as a direct result of Iraq's invasion and occupation of Kuwait. The Panel however recommends no award of compensation for these expenses. The Panel finds that in some cases the claim is extinguished by compensation already awarded to the victim, and that in other cases there is insufficient evidence that the losses were a direct result of Iraq's invasion and occupation of Kuwait or insufficient evidence to substantiate the losses.

(iv) Medical examination fees

91. The claimant also seeks compensation for the cost of medical examinations that it required certain victims to undergo in order to prove that they had suffered personal injuries during their detention or forced hiding in Iraq or Kuwait. The Panel does not recommend an award of compensation for the cost of these medical examinations, as they were incurred in valuing the underlying loss rather than as a direct result of Iraq's invasion and occupation of Kuwait. In this respect, they are similar to loss adjusters' fees incurred by insurers (see paragraph 27 above).

4. Basis of valuation

92. In relation to the claim for statutory compensation payments, the Panel based its valuation of the claimed losses on the bases of valuation for the Commission's corresponding loss types (see paragraphs 75 and 76 above).

93. Accordingly, the Panel had regard to the "A", "B", "C" and "D" Panels' bases of valuation, as appropriate, when considering the amount to which each victim or dependant would have been entitled had he or she claimed before the Commission. The Panel compared this amount with the amount that the claimant paid and the amount that the claimant ought to have paid according to its rules. The Panel recommends compensation of no more than the lowest of these amounts (see paragraph 75 above).

D. Other losses

1. Loss of tangible property

(a) Summary of the relevant facts

94. One of the fourth instalment claims relates to payments under marine insurance policies covering cargo containers said to have been lost or damaged as a direct result of Iraq's invasion and occupation of Kuwait. Another of the fourth instalment claims relates to Kuwait Airways Corporation ("KAC") aircraft and aircraft spare parts and equipment that were lost or damaged at Kuwait International Airport (see paragraphs 63 to 75 and 82 of the Second E/F Report).

(b) Evidentiary requirements specific to loss of tangible property

95. As it did in respect of similar first and second instalment claims (see paragraph 58 above) the Panel required evidence of the policyholder's ownership of, or interest in the lost or damaged tangible property and evidence that it was in Iraq or Kuwait at the time of Iraq's invasion and occupation of Kuwait.

(c) Analysis and recommendations

96. The Panel recommends no award of compensation in respect of the claim for lost or damaged cargo containers as the claimant did not submit evidence to substantiate the claimed losses.

97. In respect of the claim for lost or damaged KAC aircraft and aircraft spare parts and equipment, the Panel has already made recommendations concerning such losses, which it found to be eligible for compensation as a direct result of Iraq's invasion and occupation of Kuwait (see paragraphs 78 to 81 and 84 to 89 of the Second E/F Report). The Panel makes similar recommendations in respect of this claim and uses the same basis of valuation.

2. Losses under policies covering death or disability

(a) Summary of the relevant facts

98. One of the fourth instalment claims relates to payments made under policies covering journalists for losses arising from their death or disability. The claimant paid four journalists under these policies for injuries said to have been suffered during Iraq's invasion and occupation of Kuwait.

(b) Evidentiary requirements specific to policies covering death or disability

99. In respect of this claim the Panel applied the same specific evidentiary requirements, where applicable, as those set out in paragraphs 215 to 217 of the First E/F Report.

(c) Analysis and recommendations

100. In accordance with its recommendations set out in paragraph 218 of the First E/F Report, the Panel considers that claims for injuries are compensable, in principle, where it can be shown that the injury was a direct loss resulting from Iraq's invasion and occupation of Kuwait. As the claimant did not submit such evidence, the Panel recommends no award of compensation in respect of this claim.

IX. RECOMMENDATIONS OF THE PANEL

101. Based on the matters set out in this report, the Panel recommends that total compensation of USD 1,507,538, as set out in annex I below, be paid for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait.

Geneva, 12 July 2002

(Signed) Mr. Roberto MacLean
Chairman

(Signed) Mr. Nigel Alington
Commissioner

(Signed) Mr. Rafael Vizcarrondo
Commissioner

Notes

¹ The fourth instalment claims include one claim that was severed and transferred from “E4”.

² An export credit agency is an entity (often governmental) that provides insurance in respect of losses arising out of export sales contracts. In general, an export credit agency covers the exporter against the risks of frustration of the contract and non-payment by the buyer, whether due to commercial or political risks.

³ Prior to undertaking its review of the fourth instalment claims, the Panel considered three sub-claims of UNCC claim No. 4002885, a second instalment claim. In the Second E/F Report, the Panel deferred these sub-claims for later review. The Panel considered that these sub-claims do not, in fact, relate to claims of an insurance company arising out of payments or relief to others but relate instead to claims made by an insurance company in its own right. The Panel, therefore, recommended to the Executive Secretary that the sub-claims be severed and transferred to another category of claims for review. Following this recommendation, the Executive Secretary transferred the sub-claims to the “E2” Panel pursuant to article 32(3) of the Rules. As they have been transferred, the sub-claims are not included in the claims which are the subject of this report nor in the claimed amount referred to in paragraph 3 above.

⁴ See also the “Report and recommendations made by the Panel of Commissioners concerning the third instalment of ‘F1’ claims”, (S/AC.26/1999/7) adopted in Governing Council decision 66 (S/AC.26/Dec.66(1999)) (the “F1(3) Report”), paragraph 112.

⁵ Article 35 of the Rules, cited in paragraphs 57 and 58 of the First E/F Report.

⁶ “Report on the situation of human rights in Kuwait under Iraqi occupation”, by Mr. Walter Kälin, Special Rapporteur of the United Nations Commission on Human Rights, (E/CN.4/1992/26) (16 January 1992) (the “Kälin Report”). See also the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US\$100,000 (category ‘C’ claims)”, (S/AC.26/1994/3) adopted in Governing Council decision 25 (S/AC.26/Dec.25(1994)) (the “C(1) Report”), paragraphs 264 to 271.

⁷ The Kälin Report, paragraph 90.

⁸ “Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of ‘E2’ claims”, (S/AC.26/2000/2) adopted in Governing Council decision 87 (S/AC.26/Dec.87(2000)) (the “E2(4) Report”), paragraphs 110-116.

⁹ See also the E2(4) Report, paragraph 116 and Governing Council decision 9 (S/AC.26/1992/9).

¹⁰ See also the E2(4) Report, paragraph 119.

¹¹ Ibid., paragraph 96.

¹² Ibid., paragraphs 120-125.

¹³ This litigation was brought by certain passengers of British Airways flight 149. See the First E/F Report, paragraphs 186 to 191.

¹⁴ See the “Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by Governments and international organizations (category ‘F’ claims)”, (S/AC.26/1997/6) adopted in Governing Council decision 45 (S/AC.26/Dec.45(1997)),

paragraph 86 and the F1(3) Report, paragraph 109, which states, “In the Panel’s view, the effect of this provision [paragraph 36 of Governing Council decision 7] is to make compensable claims for payments made by Governments in respect of losses for which the recipients would have been entitled to file individual claims before the Commission, to the extent the underlying individual losses are compensable in accordance with the criteria developed by the Commission for individual claims.”

¹⁵ See Governing Council decision 3 (S/AC.26/1991/3). This is consistent with the practice of reclassification employed by other Panels. See, for example, the C(1) Report, paragraphs 351 to 354.

¹⁶ See Governing Council decision 3 which established the principle of compensation for mental pain and anguish and Governing Council decision 8 (S/AC.26/1992/8) which determined the ceilings for compensation for mental pain and anguish.

¹⁷ See the “Report and recommendations made by the Panel of Commissioners concerning the second instalment of individual claims for damages up to US\$100,000 (category ‘C’ claims)”, (S/AC.26/1996/1) adopted in Governing Council decision 36 (S/AC.26/Dec.36(1996)), paragraph 32 and the “Report and recommendations made by the Panel of Commissioners concerning the seventh instalment of individual claims for damages up to US\$100,000 (category ‘C’ claims)”, (S/AC.26/1999/11) adopted in Governing Council decision 70 (S/AC.26/Dec.70(1999)), paragraph 102.

¹⁸ See Governing Council decision 7 (S/AC.26/1991/7) paragraph 6(b), where the Governing Council determined that losses arising from departure from, or inability to leave, Iraq or Kuwait (or a decision not to return) between 2 August 1990 and 2 March 1991 are direct. See also, for example, the C(1) Report, paragraph 235 and the “Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above US\$100,000 (category ‘D’ claims)” (S/AC.26/1998/1) adopted in Governing Council decision 47 (S/AC.26/Dec.47(1998)), paragraphs 127 and 128.

¹⁹ See Governing Council decision 8, category E.

²⁰ See the C(1) Report, paragraphs 304 and 305.

²¹ See the “Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of ‘F1’ claims”, (S/AC.26/2000/13) adopted in Governing Council decision 98 (S/AC.26/Dec.98(2000)), paragraph 284.

²² See C(1) Report, paragraph 586.

²³ See Governing Council decision 3.

Annex I

RECOMMENDED AWARDS FOR THE FOURTH INSTALMENT OF "E/F" CLAIMS

	Country	UNCC claim number	Claimant	Total amount claimed		Recommendation of the panel of Commissioners	
				Amount claimed in original currency	Total amount claimed restated in USD	Total amount recommended in USD	
1	France	5000059	Fonds de Garantie Contre les Actes de Terrorisme	FRF	9,366,191	1,786,759	1,350,013
2	Ireland	5000053	Department of Tourism and Trade	IEP	11,484,962	19,666,031	Nil
3	Italy	5000061	Istituto Nazionale di Previdenza dei Giornalisti Italiani	ITL	134,400,000	115,932	Nil
4	Italy	5000063	Ministry of Treasury/SACE	ITL	50,000,000	43,129	Nil
5	Italy	5000066	Ministry of Treasury/SACE	ITL	80,280,184,349	69,248,844	Nil
6	Italy	5000067	Ministry of Treasury/SACE	ITL	98,444,838,341	84,917,483	Nil
7	Italy	5000068	Ministry of Treasury/SACE	ITL	2,992,085,051	2,580,941	Nil
8	Italy	5000069	Ministry of Treasury/SACE	ITL	27,818,629,392	23,996,057	Nil
9	Italy	5000070	Ministry of Treasury/SACE	ITL	7,733,542,340	6,670,872	Nil
10	Italy	5000071	Ministry of Treasury/SACE	ITL	6,914,419,000	5,964,305	Nil
11	Kuwait	4006009	Warba Insurance Company (S.A.K.)	KWD	47,215	293,586	157,525
				USD	130,212		
12	Switzerland	5000095	Swiss Export Risk Guarantee Agency (ERG)	CHF	29,768,321	23,040,496	Nil
13	Switzerland	5000096	Swiss Export Risk Guarantee Agency (ERG)	CHF	40,481,473	31,332,409	Nil
14	Switzerland	5000097	Swiss Export Risk Guarantee Agency (ERG)	CHF	143,161,258	110,805,927	Nil
15	United Kingdom	4002138	Through Transport Mutual Insurance Association Limited	USD	2,253,676	2,253,676	Nil
Total						382,716,447	1,507,538

Annex II

LIST OF REASONS STATED IN ANNEX III FOR RECOMMENDATION
OF NO COMPENSATION OR ONLY PARTIAL COMPENSATION

<u>Reason for recommendation of no compensation or only partial compensation</u>		<u>Explanation</u> (and references to relevant paragraph numbers of the First E/F Report, unless otherwise stated)
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. Accordingly, pursuant to Security Council resolution 687 (1991), the claim is outside the Commission’s jurisdiction. (Paragraphs 22 to 25.)
2	Claims preparation costs	The Governing Council will resolve the issue of claims preparation costs at a later date. (Paragraph 99.)
3	Deduction for failure to mitigate	The claimant has not taken such measures as are reasonable in the circumstances to reduce or minimise the loss as required by paragraph 6 of Governing Council decision 9 (S/AC.26/1992/9) and paragraph 9(IV) of decision 15 (S/AC.26/1992/15). (Paragraphs 79 to 83.)
4	Deduction for uninsured amount	The recommended amount is limited to the amount or proportion of the loss for which the claimant is liable under the policy. (Paragraphs 45 to 46 of the First E/F Report and paragraph 85 of the Second E/F Report.)
5	Exchange rate adjustment	The exchange rate applicable at the date of compensable loss is different from that on which the amount claimed was based. (Paragraph 96.)
6	Insufficient evidence of payment	There are evidentiary shortcomings in relation to payment by the claimant to its policyholder (or, where relevant, by a reinsurer to the claimant or by a retrocessionaire to a reinsurer). (Paragraphs 68 and 75.)
7	Insufficient evidence of the policy	There are evidentiary shortcomings in relation to the existence of a valid insurance policy at the date of the underlying loss. (Paragraphs 68 and 76.)
8	Insufficient evidence that the policy or scheme covered the underlying loss	There is insufficient evidence that the underlying loss fell within the scope of the policy or the rules of the statutory compensation scheme, as applicable. (Paragraphs 68 and 74 of the First E/F Report and paragraphs 72 and 75 above.)
9	Insufficient evidence of value	The claimant submitted insufficient evidence to prove all or part of the value of its claimed losses, as required by article 35 of the Rules. (Paragraphs 68 and 76.)
10	Ineligibility to claim	The claim is ineligible for compensation because the claimant, or any entity through which it has acquired its rights, is ineligible to claim. (Paragraphs 16 to 18 of the Second E/F Report.)
11	Military operations	The claim relates to the costs of the Allied Coalition Forces, including those of military operations against Iraq, or the costs and expenses of entities that provided services to the Allied Coalition Forces. (Paragraph 28.)
12	No standing to bring claim	The claimant submitted insufficient evidence to establish that the claimant has standing or is authorised to bring the claim on its own behalf or on behalf of a group of insurers. (Paragraphs 68 and 74.)
13	Part or all of the loss is not direct	The type of loss, in whole or part, is not a direct loss within the meaning of resolution 687 (1991). (Paragraphs 15 to 20.)
14	Part or all of the underlying loss is unsubstantiated	The claimant failed to submit documentation substantiating the underlying loss or, where documents were provided, these did not demonstrate the circumstances and amount of part or all of the underlying loss. (Paragraphs 68 and 74.)

<u>Reason for recommendation of no compensation or only partial compensation</u>		<u>Explanation</u> (and references to relevant paragraph numbers of the First E/F Report, unless otherwise stated)
15	Reduction to avoid multiple recovery	Although the claim is eligible for compensation, an award has already been made for the same loss in another claim before the Commission. Accordingly, the amount of compensation awarded in the other claim has been deducted from the compensation calculated for the present claim, in keeping with Governing Council decision 13 (S/AC.26/1992/13), paragraph 3. (Paragraphs 84 to 89.)
16	Reduction to reflect actual value	The actual value of the interest insured, as established by the experts appointed by the Panel or by other means, is less than the agreed value paid by insurers. (Paragraphs 37 to 43.)
17	Reduction to reflect compensable limit	The amount of compensation payable by the Commission is less than the amount paid by the claimant for the same loss. (Paragraph 75 above.)
18	Type of loss not compensable	The type of loss paid by the claimant is not compensable by the Commission. (Paragraph 76 above.)

[ENGLISH ONLY]

Annex III

RECOMMENDED AWARDS FOR THE FOURTH INSTALMENT OF “E/F” CLAIMS REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant: Fonds de Garantie Contre les Actes de Terrorisme
UNCC claim No.: 5000059
Submitting entity: France

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed</u> <u>(USD)</u> ^a	<u>Amount recommended</u> <u>(USD)</u>	<u>Comments</u> ^b
Payment or relief to others	Statutory compensation payments	1,772,886	1,350,013	Deduction for failure to mitigate; insufficient evidence of payment; insufficient evidence that the policy or scheme covered the underlying loss; part or all of the loss is not direct; part or all of the underlying loss is unsubstantiated; reduction to avoid multiple recovery; reduction to reflect compensable limit; type of loss not compensable
Other losses	Medical examination fees	13,873	Nil	No compensation recommended as part or all of the loss is not direct
<u>Total</u>		1,786,759	1,350,013	

^a This is the amount upon which the Panel bases its review of the claim. It includes corrections of any arithmetical errors that were made in the statements of claim and any reductions to original or amended amounts by the claimants during the period of review of the claims. The “Amount claimed” includes specific amounts, where claimed, for interest and claim preparation costs, although no recommendations have been made by the Panel in this respect (see paragraphs 97 and 99 of the First E/F Report). As the claimants are not permitted to introduce new claims after 1 January 1997 or to increase the amount claimed in response to article 34 notifications or procedural orders, or by way of unsolicited supplements submitted to the Commission after 11 May 1998, such increases are not included in the “amount claimed” amounts listed in annex III.

^b These comments are defined in annex II above.

[ENGLISH ONLY]

Annex III

RECOMMENDED AWARDS FOR THE FOURTH INSTALMENT OF “E/F” CLAIMS REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant: Department of Tourism and Trade
UNCC claim No.: 5000053
Submitting entity: Ireland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	19,646,601	Nil	No compensation recommended as part or all of the underlying loss is unsubstantiated; “arising prior to” exclusion; insufficient evidence of the policy; part or all of the loss is not direct
Other losses	Legal and accountancy fees	19,430	Nil	No compensation recommended as part or all of the underlying loss is unsubstantiated
<u>Total</u>		19,666,031	Nil	

Claimant: Istituto Nazionale di Previdenza dei Giornalisti Italiani
UNCC claim No.: 5000061
Submitting entity: Italy

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Other losses – losses under policies covering death or disability	115,932	Nil	No compensation recommended as part or all of the loss is not direct
<u>Total</u>		115,932	Nil	

Claimant: Ministry of Treasury/Sezione Speciale per l’Assicurazione del Credito all’Esportazione
UNCC claim No.: 5000063
Submitting entity: Italy

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	43,129	Nil	No compensation recommended for insufficient evidence of the policy
<u>Total</u>		43,129	Nil	

[ENGLISH ONLY]

Annex III

RECOMMENDED AWARDS FOR THE FOURTH INSTALMENT OF “E/F” CLAIMS REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant: Ministry of Treasury/Sezione Speciale per l'Assicurazione del Credito all'Esportazione
UNCC claim No.: 5000066
Submitting entity: Italy

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	69,248,844	Nil	No compensation recommended as no standing to bring claim
<u>Total</u>		69,248,844	Nil	

Claimant: Ministry of Treasury/Sezione Speciale per l'Assicurazione del Credito all'Esportazione
UNCC claim No.: 5000067
Submitting entity: Italy

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	84,917,483	Nil	No compensation recommended as no standing to bring claim
<u>Total</u>		84,917,483	Nil	

Claimant: Ministry of Treasury/Sezione Speciale per l'Assicurazione del Credito all'Esportazione
UNCC claim No.: 5000068
Submitting entity: Italy

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to tangible property	2,580,941	Nil	No compensation recommended as no standing to bring claim
<u>Total</u>		2,580,941	Nil	

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RECOMMENDED AWARDS FOR THE FOURTH INSTALMENT OF "E/F" CLAIMS REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant: Ministry of Treasury/Sezione Speciale per l'Assicurazione del Credito all'Esportazione
UNCC claim No.: 5000069
Submitting entity: Italy

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts and tangible property	23,996,057	Nil	No compensation recommended as no standing to bring claim
<u>Total</u>		23,996,057	Nil	

Claimant: Ministry of Treasury/Sezione Speciale per l'Assicurazione del Credito all'Esportazione
UNCC claim No.: 5000070
Submitting entity: Italy

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	6,670,872	Nil	No compensation recommended as no standing to bring claim
<u>Total</u>		6,670,872	Nil	

Claimant: Ministry of Treasury/Sezione Speciale per l'Assicurazione del Credito all'Esportazione
UNCC claim No.: 5000071
Submitting entity: Italy

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to tangible property	5,964,305	Nil	No compensation recommended as no standing to bring claim
<u>Total</u>		5,964,305	Nil	

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RECOMMENDED AWARDS FOR THE FOURTH INSTALMENT OF “E/F” CLAIMS REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant: Warba Insurance Company (S.A.K.)
UNCC claim No.: 4006009 (Transferred from the twenty-fourth instalment of “E4” claims; formerly part of claim No. 4005147)
Submitting entity: Kuwait

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Other losses – loss of tangible property (aircraft)	151,038	127,057	Reduction to reflect actual value; part or all of the loss is not direct
Payment or relief to others	Other losses – loss of tangible property (aircraft spares)	75,000	30,468	Deduction for uninsured amount; reduction to reflect actual value; part or all of the underlying loss is unsubstantiated; part or all of the loss is not direct
Payment or relief to others	Other losses – loss of tangible property (aircraft spares - court awarded interest on a judgment sum)	55,212	Nil	No compensation recommended as part or all of the loss is not direct
Other losses	Claim for liability for costs in legal proceedings	Not quantified	Nil	No compensation recommended as part or all of the loss is not direct
<u>Total</u> (net of interest set out below)		281,250	157,525	
Other losses	Interest	12,336	N/A	See paragraph 40 of this report

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000095 – Sub-claim 1 (ABB Infocom Ltd/Thomcast Ltd)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts and tangible property	15,762,834	Nil	No compensation recommended for insufficient evidence of the policy
<u>Total</u>		15,762,834	Nil	

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RECOMMENDED AWARDS FOR THE FOURTH INSTALMENT OF “E/F” CLAIMS REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000095 – Sub-claim 2 (Electrowatt Engineering Services Ltd)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts and tangible property	1,436,240	Nil	No compensation recommended for insufficient evidence of the policy
<u>Total</u>		1,436,240	Nil	

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000095 – Sub-claim 3 (Forster Rohner AG)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	20,293	Nil	No compensation recommended as part or all of the loss is not direct
<u>Total</u>		20,293	Nil	

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000095 – Sub-claim 4 (Jakob Schlaepfer & Co Ltd)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	35,975	Nil	No compensation recommended for insufficient evidence of the policy
<u>Total</u>		35,975	Nil	

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RECOMMENDED AWARDS FOR THE FOURTH INSTALMENT OF “E/F” CLAIMS REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000095 – Sub-claim 5 (Sprecher Energie Ltd)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts and tangible property	5,785,154	Nil	No compensation recommended for insufficient evidence of the policy
<u>Total</u>		5,785,154	Nil	

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000096 – Sub-claim 1 (Ciba-Geigy Limited)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	10,602,926	Nil	No compensation recommended for “arising prior to” exclusion; insufficient evidence of the policy
<u>Total</u>		10,602,926	Nil	

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000096 – Sub-claim 2 (Cilag AG International)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	168,436	Nil	No compensation recommended for “arising prior to” exclusion
<u>Total</u>		168,436	Nil	

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RECOMMENDED AWARDS FOR THE FOURTH INSTALMENT OF “E/F” CLAIMS REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000096 – Sub-claim 3 (F. Hoffmann – La Roche Ltd)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	2,647,292	Nil	No compensation recommended for “arising prior to” exclusion; insufficient evidence of the policy
<u>Total</u>		2,647,292	Nil	

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000096 – Sub-claim 4 (I + B Architekten Itten + Brechbühl AG)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	2,830,326	Nil	No compensation recommended for insufficient evidence of the policy
<u>Total</u>		2,830,326	Nil	

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000096 – Sub-claim 5 (Protochemie Ltd)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	4,326,765	Nil	No compensation recommended for “arising prior to” exclusion
<u>Total</u>		4,326,765	Nil	

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RECOMMENDED AWARDS FOR THE FOURTH INSTALMENT OF “E/F” CLAIMS REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000096 – Sub-claim 6 (Sandoz Pharma Ltd)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	6,915,758	Nil	No compensation recommended for “arising prior to” exclusion; insufficient evidence of the policy
<u>Total</u>		6,915,758	Nil	

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000096 – Sub-claim 7 (Siegfried AG)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	172,503	Nil	No compensation recommended for “arising prior to” exclusion
<u>Total</u>		172,503	Nil	

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000096 – Sub-claim 8 (Zyma S.A.)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	449,323	Nil	No compensation recommended for “arising prior to” exclusion
<u>Total</u>		449,323	Nil	

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RECOMMENDED AWARDS FOR THE FOURTH INSTALMENT OF “E/F” CLAIMS REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000096 – Sub-claim 9 (Perbor Verkaufs AG)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	2,992,830	Nil	No compensation recommended for “arising prior to” exclusion
<u>Total</u>		2,992,830	Nil	

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000096 – Sub-claim 10 (Electrowatt Engineering Services Ltd)
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	226,250	Nil	No compensation recommended for “arising prior to” exclusion
<u>Total</u>		226,250	Nil	

Claimant: Swiss Export Risk Guarantee Agency (ERG)
UNCC claim No.: 5000097
Submitting entity: Switzerland

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Contract-related losses – export credit losses relating to non-payment under contracts	110,805,927	Nil	No compensation recommended for “arising prior to” exclusion
<u>Total</u>		110,805,927	Nil	

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RECOMMENDED AWARDS FOR THE FOURTH INSTALMENT OF “E/F” CLAIMS REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant: Through Transport Mutual Insurance Association Limited
UNCC claim No.: 4002138
Submitting entity: United Kingdom

<u>Type of loss</u>	<u>Category of loss</u>	<u>Amount claimed (USD)</u>	<u>Amount recommended (USD)</u>	<u>Comments</u>
Payment or relief to others	Other losses – loss of tangible property	2,253,676	Nil	No compensation recommended as part or all of the underlying loss is unsubstantiated
<u>Total</u>		2,253,676	Nil	
