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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS
CONCERNING THE SIXTH INSTALMENT OF “F1” CLAIMS

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Introduction

1. This is the seventh report (the “Report”) submitted to the Governing Council of the United Nations Compensation Commission (the “Commission”) pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the “Rules”) 1/ by the Panel of Commissioners (the “Panel”) appointed by the Governing Council at its twenty-first session on 22-23 July 1996 to review “F1” claims. 2/ This Report sets forth the Panel’s determinations and recommendations to the Governing Council with respect to the sixth instalment of “F1” claims, comprising 16 claims (the “Claims”) submitted by four Governments and six international organizations (collectively the “Claimants”).
2. Fifteen claims in the sixth instalment were submitted to the Panel in accordance with article 32 of the Rules on 20 October 2000. The Panel approved the transfer of one additional claim into the instalment, that of the Sri Lanka Bureau of Foreign Employment, from subcategory “E2” on 1 December 2000.
3. The Claimants are listed in table 1 below, together with the original and amended amounts of compensation claimed. Certain of the original and amended amounts set out in table 1 include amounts claimed for claims preparation costs or interest or both. 3/ The Panel has not considered these amounts in the calculation of its recommendations with respect to such claims, for the reasons set out in paragraphs 37 and 46 below.

Table 1. Summary of amounts claimed in the sixth instalment of “F1” claims

<u>Claimant</u>	<u>Original amount claimed a/ (USD)</u>	<u>Amended amount claimed b/ (USD)</u>
Arab Republic of Egypt – Ministry of Civil Aviation, Cairo Airport Authority	6,969,500	6,997,652
Arab Republic of Egypt – Ministry of Civil Aviation, Egyptian Civil Aviation Authority	2,135,775	3,621,451
Arab Republic of Egypt – Ministry of Defence	107,585,819	108,728,712
Arab Republic of Egypt – Ministry of Transport, Communication and Maritime Transport	186,600,000	11,418,000
Islamic Republic of Iran – Ministry of Culture and Islamic Guidance	4,136,444	4,112,566
Islamic Republic of Iran – Ministry of Defence and Support for the Armed Forces	3,187,420,099	6,587,123,852
Islamic Republic of Iran – General Claim	2,269,254,325	2,837,038,772
Democratic Socialist Republic of Sri Lanka – Sri Lanka Bureau of Foreign Employment	109,384	109,384
Republic of Tunisia – Central Bank of Tunisia	105,778	105,778
Republic of Tunisia – Ministry of Social Affairs, Office for Tunisians Abroad	113,484	113,484
The Inter-Arab Investment Guarantee Corporation	6,292,272	6,292,272
The Gulf Arab States Educational Research Center	792,388	792,388
The Arab Planning Institute – Kuwait	14,903,388	3,331,135
Arab Fund for Economic and Social Development	68,001,730	68,895,173
The Joint Program Production Institution for the Arab Gulf Countries	16,856,644	16,856,644
Arab Towns Organization	781,945	1,100,021
<u>Total</u>	<u>5,872,058,975</u>	<u>9,656,637,284</u>

a/ The “Original amount claimed” is the amount of compensation requested by the claimant on the original claim form filed with the Commission. If this amount was not expressed in United States dollars, then, for the sole purpose of comparison, it is expressed in United States dollars using the August 1990 mid-point rate of exchange as indicated in the United Nations Monthly Bulletin of Statistics, Vol. XLV, No. 4, (April 1991), with one exception. For the reasons set out in paragraphs 41 to 44 below, amounts claimed in Iranian rials (IRR) are expressed in United States dollars using the exchange rate of USD 1 = IRR 1,350. The original amount claimed does not reflect any subsequent amendments that may have been made by the claimant.

b/ The “Amended amount claimed” is the original amount claimed as amended in a timely manner by the claimant. It includes any reductions to claimed amounts or partial withdrawal of claims made by the claimant before the Panel finalized the Report.

I. PROCEEDINGS

4. In accordance with article 16 of the Rules, the Executive Secretary of the Commission reported the Claims and their significant legal and factual issues to the Governing Council in the twenty-seventh, thirtieth and thirty-second reports, dated 26 April 1999, 17 February 2000 and 6 July 2000, respectively. Those reports were circulated to all Governments and international organizations that had filed claims before the Commission and to the Government of the Republic of Iraq ("Iraq"). A number of Governments, including Iraq, submitted their information and views concerning the reports to the Commission. These responses have been considered by the Panel during its review of the Claims.

5. In February 2000, pursuant to article 36 of the Rules and after a competitive bidding process, the services of expert consultants in accounting and loss adjusting were retained to assist the Panel in the verification and valuation of the Claims. After a preliminary review of the Claims, notifications pursuant to article 34 of the Rules ("article 34 notifications") were issued to the Claimants in April 2000 requesting that additional information and documents be submitted to assist the Panel in its review of the Claims.

6. Upon submission of the Claims to the Panel on 20 October 2000, procedural orders were issued informing the Claimants that their Claims were under review and had been classified as "unusually large or complex" within the meaning of article 38(d) of the Rules, and that, accordingly, the Panel would complete its review of the Claims and submit its report and recommendations thereon to the Governing Council within 12 months. At the instruction of the Panel, copies of the procedural orders were also sent to Iraq.

7. The Panel determined that Iraq was in a position to provide information that would facilitate its verification and valuation of the following nine claims: Egypt's Ministry of Civil Aviation, Cairo Airport Authority; Egypt's Ministry of Defence; Iran's General Claim; The Inter-Arab Investment Guarantee Corporation; The Gulf Arab States Educational Research Center; The Arab Planning Institute – Kuwait; the Arab Fund for Economic and Social Development; The Joint Program Production Institution for the Arab Gulf Countries; and the Arab Towns Organization. Accordingly, the Panel issued procedural orders directing the secretariat to transmit copies of these nine claims to Iraq. In accordance with article 36 of the Rules, Iraq was invited to submit written responses to the claims. Written responses were received from Iraq, and the Panel has considered these responses in its review of the Claims.

8. On 15 December 2000, the Permanent Mission of the Arab Republic of Egypt to the United Nations Office at Geneva was notified of the Panel's intention to send a technical mission to Egypt in order to inspect documents and materials that would assist the Panel in its verification and valuation of the four Egyptian claims. An inspection team composed of members of the secretariat and the expert consultants visited Egypt from 24 February to 2 March 2001 to clarify issues and seek responses to questions arising from the Panel's review of the four claims.

9. In the course of its review of the Claims, the Panel noted that some Claimants sought compensation for costs incurred in evacuating individuals, for salary or termination indemnities paid

to employees, and for payments made to contractors for losses incurred at building sites in Kuwait. As the individuals and corporations concerned might themselves have filed claims with the Commission in categories “C”, “D” or “E” for the same losses, in order to avoid multiple recovery of compensation across categories, the Panel instructed the secretariat to carry out cross-category checks to ascertain whether there was any duplication of claims. 4/

10. The cross-category checks have not revealed any claims that have been compensated in categories “C”, “D” or “E” for the same losses that have been found to be compensable in this Report. Consequently, no deductions have been made to the Claims in that regard.

11. In reviewing the Claims, the Panel held regular meetings at the Commission’s headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided legal, administrative and technical support to the Panel. In addition, as previously noted, the expert consultants assisted the Panel in the verification and valuation of the Claims.

II. LEGAL FRAMEWORK

12. In its report on part one of the first instalment of “F1” claims, the Panel discussed the legal framework within which it would decide the “F1” claims. 5/ The discussion covered the applicable law, the procedural requirements and evidentiary standard imposed on claimants, and the Panel’s role in the proceedings. The Panel’s findings concerning the applicable law, procedural requirements and evidentiary standard set out therein are also applicable to the Claims.

III. VERIFICATION AND VALUATION

13. In applying the aforesaid procedural requirements and evidentiary standard to the Claims, the Panel undertook a careful examination of the claim forms, statements of claim and evidence filed by the Claimants as well as the materials submitted by Claimants in their responses to the article 34 notifications. The Panel found that, within many Claims, individual loss elements or portions thereof failed to meet the directness requirement as formulated in paragraph 16 of Security Council resolution 687 (1991), or the Commission’s procedural requirements set out in the Rules, or the evidentiary standard also provided for in article 35 of the Rules. In such cases, the Panel recommends that no compensation should be awarded.

14. With respect to the loss elements that the Panel considered compensable in principle, the Panel proceeded to verify that the losses had, in fact, been sustained and then quantified such losses. In addition to verifying that the claimed losses had in fact been sustained, the Panel also considered the reasonableness of the Claimants’ conduct and of the amounts claimed.

15. In some of the Claims, the documentary and other evidence submitted established that an alleged loss had, in fact, occurred. Often, however, the evidence was insufficient to support the full amount of the claimed loss. In such cases, the Panel, in conformity with general principles of law, exercised its discretion in assessing the amount of compensation to be recommended. In exercising such discretion, the Panel considered the level and type of evidence that should reasonably be required

of a claimant given the circumstances prevailing at the time of the losses, particularly for those losses sustained in Iraq and Kuwait, and received advice from the expert consultants. 6/

16. In determining the recommended awards, the Panel adopted general principles of loss adjustment, such as reasonableness of costs incurred, depreciation and betterment. For example, in claims for lost or damaged property, the age and use of the property at the time the loss or damage occurred was taken into account and deductions were made where appropriate.

IV. COMMON LEGAL ISSUES

17. As in previous instalments, the Claims give rise to a number of common legal issues. In addressing these common issues, the Panel has formulated and applied certain principles that are set out below.

A. Supplements or amended claims

18. The Governing Council has determined that, with the exception of environmental claims, no category “F” claims will be accepted for filing under any circumstances after 1 January 1997 and unsolicited supplements to previously filed claims in category “F” will not be accepted after 11 May 1998. 7/ In view of these determinations, the Panel finds that new claims submitted after 1 January 1997 – be they for new loss types or additional loss elements - are not admissible as they are time-barred. Similarly, unsolicited supplements delivered to the Commission after 11 May 1998 cannot increase the amount claimed. Further, information or documentation submitted in response to article 34 notifications or procedural orders cannot increase the amount claimed.

B. Losses outside of Kuwait or Iraq

19. Security Council resolution 687 (1991) refers to “any direct loss, damage ... or injury” resulting from Iraq’s invasion and occupation of Kuwait, but does not expressly indicate where such direct loss, damage or injury should have occurred. Moreover, the decisions of the Governing Council do not limit the Commission’s jurisdiction in terms of the place where the direct loss, damage or injury was suffered. 8/ The Panel finds that there is no jurisdictional limitation, in principle, to the award of compensation for losses sustained outside of Kuwait or Iraq. 9/

C. Payments made or relief provided by Governments or international organizations

20. A number of the Claimants seek compensation for payments made or relief provided to others. Paragraph 36 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) provides that compensation is, in principle, available “to reimburse payments made or relief provided by Governments or international organizations to others ... for losses covered by any of the criteria adopted by the Council”.

21. The Panel considers that the effect of this provision is to make compensable claims for payments made or relief provided by Governments or international organizations in respect of losses for which the recipient would have been otherwise entitled to file a claim before the Commission, to

the extent that the underlying losses are compensable in accordance with the criteria developed by the Commission.

D. Debts owed by Iraq

22. Compensation is requested by some Claimants for amounts owed for goods delivered or services provided to Iraq prior to its invasion and occupation of Kuwait.

23. Paragraph 16 of Security Council resolution 687 (1991) states:

“[T]hat 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 ... as a result of Iraq’s unlawful invasion and occupation of Kuwait”.

24. In its first report, the “E2” Panel considered the issue of the compensability of Iraq’s debts existing at the time of the invasion and occupation of Kuwait and made the following determination:

“[T]he Panel finds that a rule which best implements the Security Council’s intention in resolution 687 (1991) is the following:

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.

‘Performance’ as understood by the Panel for purposes of this rule can mean complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance.” 10/

25. The “E2” Panel also found that the “object and purpose of the Security Council’s insertion of the ‘arising prior to’ clause was to exclude from the jurisdiction of the Commission Iraq’s old debt.” 11/ The Panel, as it has in previous reports, concurs with these findings and conclusions of the “E2” Panel.

E. Contract interruption losses

26. Some Claimants seek compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990 and which related to the construction of buildings in Kuwait. Such losses include the costs of site restoration and the additional costs of completing the construction projects.

27. The Panel found in its F1(1.2) Report that to establish the necessary causal link it is not sufficient for a claimant merely to submit evidence that an original contract was renegotiated with a

higher price after the liberation of Kuwait. ^{12/} Rather, a claimant must demonstrate that the additional costs were a direct result of Iraq's invasion and occupation of Kuwait.

28. The Panel notes that the "F3" Panel has also considered claims for contract interruption losses. ^{13/} The "F3" Panel found in its report concerning the first instalment of "F3" claims that, "following the liberation of Kuwait, there was a general increase in the price of goods and services in Kuwait and that such increase was the result of many factors, the precise effect of which it is impossible to identify." ^{14/} However, the "F3" Panel found that price increases attributable to one or more of the following three factors were linked directly to Iraq's invasion and occupation of Kuwait:

(a) Site restoration costs (including those related to the replacement of materials and equipment taken during Iraq's invasion and occupation of Kuwait and which were needed for the resumption of construction contracts);

(b) Additional transportation costs (including double-handling costs); and

(c) Additional insurance costs. ^{15/}

29. The Panel has been mindful of its previous findings in the F1(1.2) Report and those of the "F3" Panel in its review of claims for contract interruption losses.

F. Prepaid rent

30. Compensation is requested by some Claimants for rent paid in advance on an office or other premises in Iraq or Kuwait that could not be used as a result of Iraq's invasion and occupation of Kuwait. These Claimants seek to recoup the amount of the prepaid rent for the period during which it is asserted that no benefit was obtained.

31. The Panel considers that, although the loss of use of rented property in Iraq or Kuwait may be considered compensable, in principle, if it resulted directly from Iraq's invasion and occupation of Kuwait, the particular loss in question may not be amenable to monetary evaluation because of the nature of the activities carried out at the rented property. That was one basis for the Panel's previous recommendations of no award of compensation for rent paid in advance by Governments on diplomatic mission offices and premises of Governmental agencies in Iraq or Kuwait. In its F1(2) Report, the Panel stated:

"In the Panel's view, rent paid in advance by Governments for staff residences should be considered in the same way as prepaid rent on Embassy buildings. This is due to the close link between the two types of premises: when diplomatic relations are interrupted, it is not only the premises of the diplomatic mission offices that are vacated but, inevitably, also the staff residences. The nature of diplomatic relations between States is such that a State opening a diplomatic mission and renting Embassy premises and staff residences can be considered to have assumed an inherent risk that it will lose rent paid in advance if diplomatic relations with the host State are interrupted and the mission is withdrawn. The cost of renting residences for the members of diplomatic missions can be considered an

‘ancillary cost’ of running the mission. Furthermore, the rent was an expense that would have been incurred regardless of the invasion and occupation of Kuwait. Thus, the loss suffered was not the prepaid rent but the use of the premises. For the same reasons that the Panel found that the economic value of the loss of use of the Embassy premises was not quantifiable, because of the nature of the activities carried out by diplomatic missions, the loss in the present Claims is not amenable to monetary evaluation.” 16/

32. Accordingly, when reviewing the claims for prepaid rent, the Panel has carefully examined the nature of the activities carried out at the rented properties.

G. Loss of revenues or profits

33. Some Claimants request compensation for a loss of revenues or profits sustained during and/or after the period of Iraq’s invasion and occupation of Kuwait.

34. The Panel notes that Governing Council decision 9 (S/AC.26/2001/9) provides guidance with respect to the compensability and valuation of loss of profits and other business losses covered by Security Council resolution 687 (1991). The decision refers to three types of business losses that are eligible for compensation: (a) contract losses or past business practice; (b) losses relating to tangible assets; and (c) losses relating to income-producing properties. More specifically, decision 9 describes losses resulting from cancelled or frustrated contracts, damage to tangible property and damage to business concerns that were destroyed or had to close down temporarily and be rebuilt.

35. However, decision 9 does not purport to identify all types of losses that may be compensable under Security Council resolution 687 (1991). Rather, paragraph 3 of the decision expressly recognizes that other types of losses may be eligible for compensation, and further states that the panels of Commissioners may identify principles relevant to such losses.

36. The Panel considers that claims for revenues or profits that, in the ordinary course of events, a claimant would have expected to earn and that were lost as a result of a decline in business directly caused by Iraq’s invasion and occupation of Kuwait are compensable in principle. The Panel further considers that the valuation of such losses should be focused on past performance rather than forecasts and projections into the future, and that deductions should be made for saved costs. 17/

V. OTHER ISSUES

A. Claims preparation costs

37. In a letter dated 6 May 1998, the Executive Secretary of the Commission notified the Panel that the Governing Council intends to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel makes no recommendation with respect to claims for such costs.

B. Currency exchange rates

38. Some of the Claimants have sustained losses or stated their claims in currencies other than United States dollars. Since the Commission issues awards in United States dollars, the Panel is required to determine and to apply the appropriate rates of exchange.

1. Date of loss

39. Consistent with the approach taken in previous reports, the Panel finds that the appropriate currency exchange rate to be applied to claims advanced in currencies other than United States dollars is, with the exception of claims advanced in Kuwaiti dinars, the rate prevailing on the date of loss. ^{18/} Since Iraq's invasion and occupation of Kuwait caused significant disturbance of the exchange rate for the Kuwaiti dinar during the period 2 August 1990 to 2 March 1991, the Panel finds that the exchange rate to be applied to claims advanced in Kuwaiti dinars is the rate prevailing on 1 August 1990.

40. The Panel notes that the majority of the losses claimed in this instalment occurred regularly throughout the period of Iraq's invasion and occupation of Kuwait. However, in most cases, it is not possible to identify the precise date of their occurrence. Therefore, the Panel considers it appropriate to select 16 November 1990, the mid-point of the invasion and occupation period, as the date of loss for all losses in respect of which it has recommended an award of compensation in this instalment.

2. Applicable exchange rates

41. The Panel recognizes that, in previous reports, it and other panels of Commissioners have relied upon the United Nations Monthly Bulletin of Statistics for determining appropriate commercial rates of exchange for converting other currencies into United States dollars for recommended awards of compensation. The Panel considers, however, that there may be circumstances in which there were few international financial transactions in a particular currency that would give rise to a single, objectively reliable exchange rate at the date or time a loss was incurred.

42. With respect to the claims of Iran, the Panel notes that there were various USD – IRR exchange rates prevailing during the period of Iraq's invasion and occupation of Kuwait. Moreover, the Panel notes that several different rates were relied upon by Iran, including USD 1 = IRR 70 and USD 1 = IRR 68.28. These rates are similar to the rates quoted in the United Nations Monthly Bulletin of Statistics applicable during the claim period and are consistent with the basic official rate applicable at that time. However, these exchange rates are significantly different from other exchange rates used in Iran during 1990 and 1991, at a time when all transactions in Iranian rials were essentially controlled and set by the central banking authority of Iran.

43. Based on its investigations, the Panel finds that there were seven official rates used in Iran from 2 August 1990 to 20 January 1991. The basic official rate was applied mainly to exports of oil, imports of essential goods, military items, certain raw materials and machinery and public-sector capital transactions. The exchange rate system also included two incentive rates which applied to non-oil exports, a preferential rate and a competitive rate which applied to certain imports, a service rate which was used for some invisibles (such as education, medical treatment and travel abroad) and a

free-market rate which was market determined and applied to all foreign exchange payments and receipts of resident nationals not covered by other official rates.

44. The basic official, incentive, preferential, competitive and service rates applied only to certain specified transactions and were set and controlled by the central banking authority of Iran, whereas the free-market rate more accurately reflected the actual market value of the Iranian rial. The Panel therefore considers that the free-market rate used from 2 August 1990 to 20 January 1991 is the rate that most accurately reflects the actual market value of the Iranian rial during this time. This rate was in the region of USD 1 = IRR 1,300 to USD 1 = IRR 1,400 between 2 August 1990 and 20 January 1991. The Panel finds that the appropriate rate to be used in converting Iranian rials to United States dollars for losses incurred in Iranian rials is the rate of USD 1 = IRR 1,350.

45. In calculating the rates of exchange to be used for losses advanced in currencies other than Iranian rials, the Panel finds that the monthly exchange rates as reported in the United Nations Monthly Bulletin of Statistics are appropriate.

C. Interest

46. Governing Council decision 16 (S/AC.26/1992/16) 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”. In decision 16, the Governing Council further specified that “[t]he methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time” and that “[i]nterest will be paid after the principal amount of awards”. The only task of the Panel, therefore, is to determine the date of loss from which interest is to run, as set out in paragraph 40 above.

D. Classification of loss types

47. The standard claim form for category “F” claims contains the following loss types: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs; public service expenditures; environmental damage; depletion of natural resources; and other losses. ^{19/} In the first instance, Claimants classified their losses pursuant to these loss types. On a number of occasions, after reviewing the Claimants’ contentions and supporting documents, the Panel has considered it more appropriate to review a particular loss under a different loss type. The Claims are discussed below as reclassified.

VI. THE CLAIMS

A. Arab Republic of Egypt

48. The Claims submitted by the Government of the Arab Republic of Egypt ("Egypt") include claims for:

- (a) Outstanding debt owed by Iraq;
- (b) Revenue losses sustained at airports in Egypt; and
- (c) Assistance provided to evacuees.

1. Ministry of Civil Aviation, Cairo Airport Authority (UNCC Claim No. 5000089)

49. Egypt's Ministry of Civil Aviation, Cairo Airport Authority (the "Claimant") originally sought compensation in the total amount of 13,929,768 Egyptian pounds (EGP) for payment or relief to others, public service expenditures and other losses. In a September 1997 submission, the Claimant increased the total amount of the Claim to EGP 13,995,365. However, in its July 2000 response to the article 34 notification, the Claimant stated that the total amount of compensation it is seeking in the Claim is EGP 13,995,303. The Claim as reclassified comprises losses as described below under two loss types: business transaction or course of dealing and other.

(a) Business transaction or course of dealing

(i) Facts and contentions

50. The Claimant originally sought EGP 304,573 as compensation for unpaid landing, housing, rent, electricity and telephone fees owed to it by Iraqi Airways. In a September 1997 submission, the Claimant stated that it was seeking a total of EGP 370,170 as compensation for unpaid landing, housing and telephone fees, as well as unpaid penalties, owed to it by Iraqi Airways.

51. In its response to the article 34 notification, the Claimant stated that it had received some payments from Iraqi Airways and that the amount of EGP 78,300 only remained outstanding. The Claimant further stated that this amount is comprised of unpaid fines and penalties that it imposed against Iraqi Airways prior to 8 August 1990 for regulatory infractions at the Cairo airport. According to the Claimant, it did not provide any services to Iraqi Airways after that date.

(ii) Analysis and valuation

52. The Panel finds that the date of the Claimant's performance giving rise to the outstanding fines and penalties owed by Iraqi Airways is the date of its assessment of the fines and penalties. Applying the principles set out in paragraphs 23 to 25 above, the Panel finds that the claim for unpaid fines and penalties is compensable only to the extent that it relates to fines or penalties assessed against Iraqi Airways after 2 May 1990. 20/

(iii) Recommendation

53. The Panel recommends an award in the amount of USD 5,850 (EGP 11,700) for business transaction or course of dealing losses.

(b) Other

(i) Facts and contentions

54. The Claimant seeks EGP 13,625,195 as compensation for a loss of revenues it allegedly sustained during the period August 1990 to January 1991.

55. According to the Claimant, its revenues from landing, parking, housing, departure, bridge and terrace fees decreased during the period August 1990 to January 1991, as compared to the revenues from those fees during the period August 1989 to January 1990. The Claimant alleges that the decrease in revenues was a direct result of Iraq's invasion and occupation of Kuwait and the fall in the number of aircraft and passengers using the Claimant's airport in Cairo during the stated period.

56. The Claimant calculates the amount of its claim for loss of revenues by subtracting the total amount of revenues earned during the period August 1990 to January 1991 from the total amount of revenues earned during the period August 1989 to January 1991. To this amount, the Claimant adds an amount representing the loss of projected growth in revenues during the period August 1990 to January 1991, as well as an amount representing the loss of fee increases that the Claimant delayed implementing until after the liberation of Kuwait. Finally, the Claimant also adds amounts representing the loss of passenger departure fees and taxes, as well as the loss of tax revenues from landing, parking, housing, departure, bridge and terrace charges.

(ii) Analysis and valuation

57. As noted in paragraph 36 above, the Panel considers that claims for revenues or profits that, in the ordinary course of events, a claimant would have expected to earn and that were lost as a result of a decline in business directly caused by Iraq's invasion and occupation of Kuwait, are compensable in principle. However, the Panel finds that the Claimant failed to provide sufficient evidence to establish that it incurred any loss of revenues or profits as a direct result of Iraq's invasion and occupation of Kuwait. The evidence does not demonstrate any consistent growth in the Claimant's revenues in the years immediately prior to Iraq's invasion and occupation of Kuwait, and the Panel is unable to verify that a loss was incurred.

58. On the basis of these findings, the Panel concludes that the claim for loss of revenues is not compensable.

(iii) Recommendation

59. The Panel recommends no award of compensation for other losses.

2. Ministry of Civil Aviation, Egyptian Civil Aviation Authority (UNCC Claim No. 5000090)

60. The Ministry of Civil Aviation, Egyptian Civil Aviation Authority (the “Claimant”) originally sought compensation in the total amount of USD 2,135,775. In a September 1997 submission, the Claimant increased the total amount of the Claim to the amounts of USD 1,937,083 and EGP 3,368,736.

(a) Other

(i) Facts and contentions

61. The Claimant seeks the amounts of USD 1,937,083 and EGP 3,368,736 as compensation for revenue losses it allegedly sustained in Egypt.

62. The Claimant asserts that, as a result of Iraq’s invasion and occupation of Kuwait, fewer aircraft and passengers utilized its airports and the airspace of Egypt for international flights during and after the period of Iraq’s invasion and occupation of Kuwait. The Claimant further asserts that the revenues it earned during 1991 from landing, parking, housing, air navigation and passenger departure fees were less than what it would have earned absent Iraq’s invasion and occupation of Kuwait. The Claimant seeks compensation for the amount of these anticipated but unrealized revenues.

63. According to the Claimant, 160,416 fewer than expected passengers and 2,112 fewer than expected aircraft utilized its airports in Alexandria, Aswan, Hurgada, Sharm El-Sheikh and Luxor for international flights during 1991. The Claimant calculates the amount of its claim for revenue losses by multiplying these figures by the average amounts it charged per aircraft or per passenger, as the case may be, for landing, parking, housing, air navigation and passenger departure fees.

(ii) Analysis and valuation

64. The Panel finds that the Claimant failed to provide sufficient evidence to establish that it incurred any loss of revenues or any loss of profits as a direct result of Iraq’s invasion and occupation of Kuwait. The evidence does not demonstrate that the Claimant’s overall revenues decreased in 1991 as compared to the years immediately preceding Iraq’s invasion and occupation of Kuwait. Moreover, the Panel is unable to verify the forecasts of revenue growth relied upon by the Claimant in its calculation of the Claim.

65. On the basis of these findings, the Panel concludes that the Claim is not compensable.

(iii) Recommendation

66. The Panel recommends no award of compensation for other losses.

3. Ministry of Defence (UNCC Claim No. 5000091)

67. The Egyptian Ministry of Defence (the “Claimant”) originally sought compensation in the total amount of USD 107,585,819. In March 1998, the Claimant increased the total amount of the

Claim to USD 108,728,712. In February 2001, the Claimant further increased the total amount of the Claim to USD 155,361,017. The admissibility of the last amendment to the quantum of the Claim is discussed below.

(a) Contract

(i) Facts and contentions

68. The Claimant seeks USD 4,934 as compensation for rent paid in advance on the residence of the Egyptian military attaché in Baghdad. According to the Claimant, the rent on this property for the period July 1990 to June 1991 was paid prior to Iraq's invasion and occupation of Kuwait and the subsequent closure of the military attaché's office at the Egyptian Embassy in Baghdad.

(ii) Analysis and valuation

69. Applying the principles set out in paragraph 31 above, the Panel finds that the claim for rent paid in advance on the residence of the Egyptian military attaché in Baghdad is not compensable.

(iii) Recommendation

70. The Panel recommends no award of compensation for contract losses.

(b) Business transaction or course of dealing

(i) Facts and contentions

71. The Claimant originally sought USD 107,580,885 as compensation for amounts owed for goods delivered and services provided to Iraq. In its March 1998 submission, the Claimant increased the amount of its claim for outstanding payments owed by Iraq to USD 108,723,778. In its February 2001 submission, the Claimant further increased the amount of its claim for outstanding payments to USD 155,356,083.

72. The Claimant asserts that amounts are owed to it by Iraq in respect of agreements or dealings for the following items:

- (a) The sale and delivery of two Tukano military aircraft to Iraq;
- (b) The sale and delivery of "military items" to Iraq;
- (c) The provision of training to Iraqi military students in Egypt;
- (d) The provision of aircraft fuel, repair services and ground services to Iraq; and
- (e) The supply of fuel, water, food rations, "signal services", and pier rental services to two Iraqi naval vessels (i.e. the "Agnadeen" and the "Floating Basin") berthed in Egypt.

73. The evidence provided by the Claimant indicates that the Tukano military aircraft and the "military items" in question were each sold and delivered to Iraq prior to 1990. The evidence also

indicates that the Claimant provided Iraq with the training and the aircraft fuel, repair services and ground services in question prior to 1990.

74. According to the Claimant, the “Agnadeen” and the “Floating Basin” have been berthed in Egypt since May 1985 and October 1986, respectively. The Claimant asserts that, because of Iraq’s invasion and occupation of Kuwait and the trade embargo imposed on Iraq, the vessels have been unable to return to Iraq. The Claimant further asserts that, as a result, it was required to provide supplies and services to these two vessels and their Iraqi crews. The amount claimed in respect of the fuel, water, food rations, “signal services” and pier rental services provided to the vessels is divided by the Claimant into amounts due for supplies and services provided before 2 August 1990 and amounts due for supplies and services provided after 2 August 1990.

75. In its response to the Claim, Iraq submitted that it was unable, due to the trade embargo, to fulfil its financial obligations to the Claimant. Iraq further submitted that the claims asserted by the Claimant are beyond the jurisdiction of the Commission according to Security Council resolution 687 (1991).

(ii) Analysis and valuation

76. In accordance with the principles set out in paragraph 18 above, the Panel finds that the Claimant’s increase of the amount of the claim in February 2001 from USD 108,723,778 to USD 155,356,083 is time-barred.

77. The Panel finds that the amounts owed by Iraq for the Tukano military aircraft, the “military items”, the training, and the aircraft fuel, repair services and ground services are debts or obligations of Iraq that arose more than three months prior to 2 August 1990. Applying the principles set out in paragraphs 23 to 25 above, the Panel finds that the claims for these amounts are not compensable.

78. With regard to the claim for amounts owed for the supply of fuel, water, food rations, “signal services”, and pier rental services to two Iraqi naval vessels, the Panel finds that the Claimant did not provide sufficient evidence to demonstrate that the claim is for losses incurred as a direct result of Iraq’s invasion and occupation of Kuwait. Consequently, this claim is not compensable.

(iii) Recommendation

79. The Panel recommends no award of compensation for business transaction or course of dealing losses.

4. Ministry of Transport, Communication and Maritime Transport (UNCC Claim No. 5000185)

80. The Ministry of Transport, Communication and Maritime Transport (the “Claimant”) originally sought compensation for evacuation costs in the amount of USD 186,600,000. In its submission of 11 May 1998, the Claimant reduced its Claim to the amounts of EGP 17,106,044 and USD 2,864,978.

(a) Evacuation costs

(i) Facts and contentions

81. At the time of Iraq's invasion of Kuwait, over 1 million Egyptian nationals were residing in either Iraq or Kuwait. ^{21/} During the period of Iraq's invasion and occupation of Kuwait, the Claimant organized a large-scale evacuation operation to repatriate a great number of these individuals by air, land and sea.

82. In early August 1990, the Government of Egypt established an emergency "Chamber of Operations" under the direction of the Claimant, with offices in Cairo, Egypt, and Aqaba, Jordan. A temporary relief camp was quickly set up in the Ruweished area near Jordan's border with Iraq, and the Claimant arranged for thousands of Egyptian evacuees to receive food and urgent medical attention at this camp. The Claimant also arranged for buses to transport many of these evacuees from the camp either to Aqaba, from where they travelled by ship to Egypt, or to Amman, from where they travelled by air to Egypt. When the evacuees arrived in Egypt, principally in Cairo, Nuweiba and Sharm El-Sheikh, the Claimant provided those travelling onwards with bus and/or train transportation to their final destinations in Egypt.

83. The Claimant also arranged sea transportation from Aqaba to Egypt for thousands of Egyptian evacuees who fled Iraq or Kuwait in their motor vehicles. In addition, upon arrival in Egypt, the Claimant provided the driver of each motor vehicle with 40 litres of fuel to assist them to reach their final destinations in Egypt.

84. The vast majority of Egyptian nationals who fled from Iraq and Kuwait returned to Egypt via Jordan. However, a number of Egyptian evacuees were also repatriated by air from Saudi Arabia on aircraft supplied by Egypt Air and Egypt's Ministry of Defence, as well as by other Governments.

85. The Claimant seeks the amounts of EGP 17,106,044 and USD 2,864,978 as compensation for the cost of the food, transportation and medical necessities provided to Egyptian evacuees, as well as for the cost of some operational expenses, such as telephone charges, bus maintenance costs and photocopying costs, that it incurred in connection with the evacuation effort.

86. The Claimant was requested in the article 34 notification to explain whether it received any cash or in-kind payment or assistance from other sources, including international organizations, with respect to any of the costs for which compensation is sought. In its response, the Claimant stated that it received the amounts of EGP 122,093 and USD 1,017,489 as aid from international organizations and foreign Governments. Following the technical mission to Egypt, the Claimant provided evidence indicating that in 1990 it received financial assistance in the amounts of EGP 1,604,283 and USD 1,213,118 from sources outside the Government of Egypt. The evidence also indicates that this financial assistance was used to cover part of the evacuation costs in respect of which compensation is sought.

(ii) Analysis and valuation

87. In its F1(1.1), F1(2) and F1(3) Reports, the Panel established a number of principles governing the compensability of claims for evacuation costs. ^{22/} The Panel determined, *inter alia*, that costs incurred by Governments in evacuating individuals from Iraq, Kuwait, Israel and Saudi Arabia during the period 2 August 1990 to 2 March 1991 are compensable, to the extent they are supported by sufficient documentary or other appropriate evidence. In particular, the Panel found that compensation should be awarded for costs incurred for necessities such as food, transport, accommodation and urgent medical treatment provided to evacuees. However, the Panel also found that general expenses, such as overtime salaries and travel costs of staff, incurred by Governments in connection with their evacuation operations should not be awarded.

88. Applying these principles, the Panel finds that the majority of the evacuation costs claimed by the Claimant are, in principle, compensable. The evidence does not, however, support the full amount claimed.

89. On the evidence submitted, the Panel further finds that the Claimant received the amounts of EGP 1,604,283 and USD 1,213,118 from sources outside the Government of Egypt for the same evacuation costs that form the subject of the Claim. In this context, the Panel notes that paragraph 3(b) of Governing Council decision 13 (S/AC.26/1992/13) states that:

“When the Commission learns, either through information provided by the claimant or through other means, and before paying compensation from the Fund, that a claimant in categories ‘C’, ‘D’, ‘E’ and ‘F’ has received compensation elsewhere for the same loss, the amount already received will be deducted from the compensation to be paid from the Fund to that claimant for the same loss.”

90. In accordance with paragraph 3(b) of Governing Council decision 13, the Panel finds that the amounts of EGP 1,604,283 and USD 1,213,118 should be deducted from the total amount of evacuation costs that the Panel would have otherwise recommended for compensation.

(iii) Recommendation

91. The Panel recommends an award in the amount of USD 9,362,995 (EGP 15,422,270 and USD 1,651,860) for evacuation costs, after deduction of the amounts of financial assistance received from sources outside the Government of Egypt.

(b) Other

(i) Facts and contentions

92. The Claimant requests that it be awarded an unspecified amount of compound interest on the total amount of its Claim.

(ii) Analysis and valuation

93. The Panel finds that this claim for interest falls within the scope of Governing Council decision 16, as discussed in paragraph 46 above. Consequently, the Panel makes no recommendation in respect of the claim.

(iii) Recommendation

94. The Panel makes no recommendation in respect of other losses.

5. Recommendation for the Arab Republic of Egypt

95. Based on its findings regarding the Claims filed by the Arab Republic of Egypt, the Panel recommends compensation in the amount of USD 9,368,845.

Table 2. Recommended compensation for the Arab Republic of Egypt

<u>Loss type</u>	<u>Recommended compensation (USD)</u>
1. Ministry of Civil Aviation, Cairo Airport Authority	
Business transaction or course of dealing	5,850
Other	nil
2. Ministry of Civil Aviation, Egyptian Civil Aviation Authority	
Other	nil
3. Ministry of Defence	
Contract	nil
Business transaction or course of dealing	nil
4. Ministry of Transport, Communication and Maritime Transport	
Evacuation costs	9,362,995
Other <u>a/</u>	no recommendation
<u>Total</u>	<u>9,368,845</u>

a/ This loss type includes an interest component. See paragraph 46 above.

B. Islamic Republic of Iran

96. The Claims submitted by the Government of the Islamic Republic of Iran ("Iran") include claims for:

- (a) Damage to real and tangible property;
- (b) Costs incurred in respect of Iran's military response to Iraq's invasion and occupation of Kuwait; and
- (c) Assistance provided to refugees.

1. Ministry of Culture and Islamic Guidance (UNCC Claim No. 5000060)

(a) Real property

(i) Facts and contentions

97. Iran's Ministry of Culture and Islamic Guidance (the "Claimant") seeks compensation in the total amount of IRR 5,584,200,000 for losses sustained at certain public buildings in south-western Iran that were allegedly occupied by refugees from Iraq and Kuwait during the period December 1990 to March 1991. By way of its response to the article 34 notification filed in July 2000 and a supplemental response filed in September 2000, the Claimant advised that it has been able to gather evidence of losses sustained in respect of one building only, the Khorramshahr Public Library, in the amount of IRR 66,963,861.

98. According to the Claimant, the Khorramshahr Public Library was used to house temporarily 150 refugees from Iraq and Kuwait during the period December 1990 to March 1991. The Claimant asserts that such use of the building during this period caused degradation to the building and its grounds, as well as to its water, sewerage, electrical and air-conditioning systems.

99. The Claimant seeks to recover the cost of repairs and renovations that were undertaken in 1995 to the Khorramshahr Public Library, its grounds and its water, sewerage, electrical and air-conditioning systems. The Claimant also seeks to be compensated for water that was allegedly consumed by the refugees at the building during the period of their stay. In support of its claim for these costs, the Claimant provided more than 100 invoices, all of which are dated 1995 or 1996.

(ii) Analysis and valuation

100. The Panel considers that property losses incurred as a direct consequence of providing relief to refugees from Iraq and Kuwait during the period of Iraq's invasion and occupation of Kuwait are compensable in principle. However, the Panel finds that the evidence submitted by the Claimant fails to demonstrate that a loss was incurred at the Khorramshahr Public Library as a direct result of Iraq's invasion and occupation of Kuwait. The invoices provided by the Claimant do not permit the Panel to verify that the Khorramshahr Public Library was occupied and damaged by refugees from Iraq and

Kuwait, as alleged. Consequently, the Panel finds that the claim for the cost of repairs and renovations to the Khorramshahr Public Library is not compensable.

101. The Claimant did not provide any evidence in support of the remaining parts of the Claim that relate to losses sustained in respect of buildings other than the Khorramshahr Public Library. In the absence of evidence, the Panel finds that these remaining parts of the Claim are not compensable.

(iii) Recommendation

102. The Panel recommends no award of compensation for real property losses.

(b) Other

(i) Facts and contentions

103. The Claimant seeks an unspecified amount of compensation for “incidental expenses such as expert’s and translator’s fees” that it allegedly incurred in connection with the preparation of its Claim.

(ii) Analysis and valuation

104. For the reason set out in paragraph 37 above, the Panel makes no recommendation with respect to the claim for costs incurred by the Claimant to prepare its Claim.

(iii) Recommendation

105. The Panel makes no recommendation in respect of other losses.

2. Ministry of Defence and Support for the Armed Forces of the Islamic Republic of Iran (UNCC Claim No. 5000088)

(a) Public service expenditures

(i) Facts and contentions

106. The Ministry of Defence and Support for the Armed Forces of the Islamic Republic of Iran (the “Claimant”) asserts that following Iraq’s invasion and occupation of Kuwait on 2 August 1990, the Iranian Armed Forces, consisting of the Army, the Revolutionary Guard Forces and the Police Force, were mobilized and put on alert to protect “against the unwanted expansion of the War into Iranian territory”. Beginning in August 1990, ground and naval forces of the Army and the Revolutionary Guard Forces were moved into strategic positions in southern Iran, and the air force components of the Army and the Revolutionary Guard Forces undertook additional air, “ground-to-air defence” and intelligence operations. In addition, the Police Force strengthened its border posts in southern Iran and on various Iranian islands in the Persian Gulf. The Claimant seeks compensation for the costs incurred by the Iranian Armed Forces to undertake these actions and to maintain a state of alert for a period of approximately 10 months.

107. The Claimant originally sought the total amount of USD 3,187,420,099 as compensation for the costs incurred by the Iranian Armed Forces. In a submission of 11 May 1998, the Claimant increased the total amount claimed to the amounts of USD 2,203,101,741, IRR 6,357,415,240,241 and 23,567,460 Deutsche Mark (DEM). However, in its article 34 response filed in July 2000, the Claimant reduced the total amount of the Claim to the amounts of USD 2,203,120,741, IRR 5,898,035,396,153 and DEM 23,567,460.

108. The Claimant contends that none of the claimed costs should be considered as military costs within the meaning of Governing Council decision 19 (S/AC.26/Dec.19(1994)). It alleges that because Iran was not a member of the Allied Coalition Forces and had no choice but to prepare itself against the possible sudden expansion of the conflict into its territory, the costs of such preparations should be compensable.

109. The Claimant further contends that the losses asserted in the Claim can be divided into two categories: military costs and non-military or humanitarian costs. The military costs are described as those incurred to mobilize and put the Iranian Armed Forces on alert for a period of approximately 10 months. The non-military or humanitarian costs are described and broken down by the Claimant as follows.

a. Costs incurred by the Army's military police to provide care and relief to Iraqi military defectors – IRR 70,855,007,620

110. The Claimant asserts that approximately 5,000 Iraqi military defectors were received in Iran during the period of Iraq's invasion and occupation of Kuwait. The Claimant further asserts that these defectors were handed over to the Army's military police and relocated to a camp facility near Tehran. At the camp, the defectors were allegedly provided with accommodation, food, clothing, health care and other miscellaneous items and services. The Claimant seeks the amount of IRR 70,855,007,620 as compensation for the costs of the care and relief provided to the defectors during the period August 1990 to September 1991.

b. Costs incurred by the Army's naval branch for the transfer of potable water to Kharg Island – IRR 606,200,000

111. The Claimant asserts that Iraqi forces in Kuwait caused the release of oil from Kuwaiti oil facilities into the waters of the Persian Gulf in January 1991. The Claimant further asserts that on 13 February 1991, the Iranian Navy decided that, effective 20 February 1991, a Navy-owned desalination plant on Kharg Island had to be shut down in order to prevent it from being damaged by an approaching oil slick. On 14 February 1991, the Navy contracted with a private company to supply potable water to Kharg Island from the mainland for a 14-day period in March 1991. In total, costs of IRR 606,200,000 were allegedly incurred to supply potable water to approximately 9,000 civilians and 600 military personnel residing on Kharg Island during March 1991.

c. Costs incurred by the Army's naval branch for minesweeping operations in the Persian Gulf – IRR 963,830,000

112. The Claimant asserts that, during the period of Iraq's invasion and occupation of Kuwait, Iraqi forces planted approximately 1,200–1,300 mines in the waters of the Persian Gulf. The Claimant further asserts that a number of these mines eventually entered the territorial waters of Iran and threatened Iranian oil platforms and commercial shipping lanes. The Iranian Navy therefore contracted with a private company to carry out minesweeping operations in the vicinities of Kharg Island and the Forouzan oil platforms during the period January to March 1991. According to the Claimant, a total of eight mines were located and destroyed by the private company. The Claimant seeks compensation in the amount of IRR 963,830,000, being the amount it allegedly paid to the private company for its minesweeping services.

d. Costs incurred by the Gendarmerie to control, direct and organize Iraqi military defectors and civilian refugees from Iraq and Kuwait – IRR 82,488,958,533

113. The Claimant asserts that during a period of 45 days beginning in mid-January 1991, the Iranian Gendarmerie was put on "full alert" to control, organize and direct Iraqi military defectors and civilian refugees from Iraq and Kuwait along the border areas of Iran. As a result, additional costs totalling IRR 82,488,958,533 were allegedly incurred by the Gendarmerie in order to operate in a state of full alert during this period. According to the Claimant, these costs included additional salary payments to gendarmes and additional maintenance and depreciation of motor vehicles, buildings and installations owned by the Gendarmerie. The Claimant asserts that these additional costs of the Gendarmerie were necessarily incurred in order to preserve social order in Iran, as well as to make it easier to provide assistance to the defectors and refugees.

(ii) Analysis and valuation

114. Governing Council decision 19 provides that "the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation". Moreover, at its eighty-first meeting on 30 September 1998, the Governing Council concluded that claims for military costs of States that were not members of the Allied Coalition Forces are not eligible for compensation by the Commission.

115. In its F1(5) Report, 23/ the Panel found that the costs of a State's military response to Iraq's invasion and occupation of Kuwait, regardless of whether or not the State was a member of the Allied Coalition Forces, are military costs as contemplated by the Governing Council. The Panel also found that the fact that a claimant is a military entity, while a factor to be considered, is not determinative of the question of whether an asserted cost is a "military cost". 24/ Both of these findings are applicable here.

116. The Panel finds that the part of the Claim concerning costs incurred to mobilize and put the Iranian Armed Forces on alert for a period of approximately 10 months is a claim in respect of Iran's military response to Iraq's invasion and occupation of Kuwait. Consequently, this part of the Claim constitutes a claim for military costs, and it is, therefore, not eligible for compensation.

117. With regard to the claim for costs incurred by the Army's military police to provide care and relief to Iraqi military defectors, the Panel finds that, although the Claimant is arguably entitled to reimbursement of such costs from Iraq pursuant to the international law of armed conflict, 25/ the evidence is insufficient to verify and value the claim. Therefore, without deciding the question of whether the claim for costs incurred by the Army's military police to provide care and relief to Iraqi military defectors is a claim for military costs, the Panel recommends no award of compensation in respect of this claim.

118. With regard to the claim for costs incurred to transfer potable water to Kharg Island, the Panel finds that the Claimant's assertion that the desalination plant on Kharg Island was shut down as a direct result of oil spilled into the Persian Gulf by Iraqi forces is supported by the evidence. The Panel also finds that the Claimant reasonably and necessarily arranged for the supply of potable water to Kharg Island from the mainland for the benefit of both military personnel and civilians residing on the island. The Panel cannot, however, recommend compensation for the costs of supplying potable water to the military personnel on Kharg Island, since the evidence indicates that these personnel were mobilized and put on alert as part of Iran's military response to Iraq's invasion and occupation of Kuwait. Accordingly, it is only the costs incurred to supply potable water to approximately 9,000 civilians residing on Kharg Island that are compensable.

119. With regard to the claim for costs incurred by the Army's naval branch for minesweeping operations in the Persian Gulf, the Panel notes that the "E2" Panel has previously determined that mines were laid by Iraq in waters off Kuwait and that these mines posed a grave risk to shipping operations in the northern part of the Persian Gulf. 26/ The areas affected were found by the "E2" Panel to include the waters surrounding Iranian ports such as Kharg Island and Bandar-e-Bushehr. 27/ The Panel agrees with these findings of the "E2" Panel and finds that the purpose of the minesweeping operations in question was to clear Iranian shipping lanes and protect oil platforms in the northern part of the Persian Gulf from mines laid by Iraq. Consequently, the claim for the costs of these minesweeping operations is compensable.

120. Lastly, with regard to the claim for costs incurred by the Gendarmerie to control, direct and organize Iraqi military defectors and civilian refugees from Iraq and Kuwait, the Panel finds that the evidence is insufficient to verify and value the claim. Consequently, the Panel recommends no award of compensation in respect of this claim.

(iii) Recommendation

121. The Panel recommends an award in the amount of USD 1,134,920 (IRR 1,532,142,500) for public service expenditures.

(b) Other

(i) Facts and contentions

122. The Claimant seeks an unspecified amount as compensation for the costs incurred to prepare its Claim. The Claimant also requests that it be awarded interest at an “appropriate rate” on the total amount claimed.

(ii) Analysis and valuation

123. For the reason set out in paragraph 37 above, the Panel makes no recommendation with respect to the claim for costs incurred by the Claimant to prepare its Claim.

124. The Panel finds that the Claimant’s claim for interest falls within the scope of Governing Council decision 16, as discussed in paragraph 46 above. Consequently, the Panel makes no recommendation in respect of this claim.

(iii) Recommendation

125. The Panel makes no recommendation in respect of other losses.

3. General Claim (UNCC Claim No. 5000120)

126. Iran seeks compensation for losses sustained by four Government departments: the Ministry of Foreign Affairs, the Ministry of Education, the Ministry of Interior and the Central Committee for Reconstruction and Renovation of War-stricken Areas. The amounts of USD 1,801,264,000 and IRR 631,786,938,600 were originally sought as compensation for these losses. However, by virtue of submissions filed on behalf of the four departments on 11 May 1998, Iran increased the total amount claimed to the amounts of USD 2,749,246,491 and IRR 118,519,580,000. The claims of the four departments, as reclassified by the Panel, are addressed in turn below.

(a) Ministry of Foreign Affairs

(i) Real property

a. Facts and contentions

127. The Ministry of Foreign Affairs (the “MFA”) asserts that, during the period of Iraq’s invasion and occupation of Kuwait, the Iranian Embassy and Ambassador’s residence in Kuwait were looted and damaged by Iraqi forces. The MFA seeks USD 531,000 as compensation for the costs of cleaning, repairing and refurnishing the Embassy and Ambassador’s residence following the liberation of Kuwait.

b. Analysis and valuation

128. The Panel considers that the MFA has established a direct causal link between Iraq’s invasion and occupation of Kuwait and damage sustained at its Embassy and Ambassador’s residence in

Kuwait. Accordingly, the Panel finds that the claimed costs are compensable to the extent that they are reasonable and supported by sufficient documentary and other appropriate evidence. In this regard, the Panel finds that the MFA has provided sufficient evidence to support only part of the amount claimed.

c. Recommendation

129. The Panel recommends an award of USD 53,100 for real property losses.

(ii) Other tangible property

a. Facts and contentions

130. The MFA seeks compensation totalling USD 2,503,200 for the value of various items of personal property that it asserts were looted or destroyed by Iraqi forces at the Iranian Embassy and Ambassador's residence in Kuwait. In particular, the MFA asserts that the following items were lost:

(a) Seventy-seven items such as televisions, refrigerators, cameras, telephones and carpets that were, according to records maintained in Iran, present at the Embassy and Ambassador's residence prior to Iraq's invasion and occupation of Kuwait – USD 1,024,500;

(b) Fourteen "precious" and "antique" items, consisting of seven paintings, five carpets and two hand-made clocks – USD 1,350,000;

(c) One closed-circuit video security system, including projectors – USD 27,700;

(d) An unspecified number of gift items, such as watches and carpets, that were allegedly kept at the Embassy to give to foreign diplomats or Kuwaiti officials – USD 55,000; and

(e) Banknotes deposited in a safe at the Embassy – USD 46,000.

b. Analysis and valuation

131. The Panel considers that where a loss of or damage to tangible property has been suffered as a direct result of Iraq's invasion and occupation of Kuwait, a claim for such loss or damage is compensable in principle. The claim must, however, be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss.

132. In this case, the Panel finds that the evidence submitted on behalf of the MFA is insufficient to permit the Panel to verify whether any gift items or banknotes were looted or destroyed, as alleged. Consequently, the Panel recommends no award of compensation in respect of the claims for these items.

133. With regard to the other items of tangible property in respect of which compensation is sought, the Panel finds that the evidence is sufficient to demonstrate that a loss was sustained as a direct result of Iraq's invasion and occupation of Kuwait. The evidence does not, however, support the full amount claimed in respect of these items.

c. Recommendation

134. The Panel recommends an award of USD 404,975 for other tangible property losses.

(iii) Other

a. Facts and contentions

135. The MFA seeks an unspecified amount as compensation for the costs incurred to prepare its claim. The MFA also requests that it be awarded interest at an “appropriate rate” as compensation for the loss of use of the total amount claimed by it.

b. Analysis and valuation

136. For the reason set out in paragraph 37 above, the Panel makes no recommendation with respect to the claim for costs incurred by the MFA to prepare its claim.

137. The Panel finds that the MFA’s claim for interest falls within the scope of Governing Council decision 16, as discussed in paragraph 46 above. Consequently, the Panel makes no recommendation in respect of this claim.

c. Recommendation

138. The Panel makes no recommendation in respect of other losses.

(b) Ministry of Education

(i) Contract

a. Facts and contentions

139. Iran’s Ministry of Education (the “MOE”) seeks the total amount of USD 304,590 as compensation for rent it paid in advance on two Iranian schools and an administrative office in Kuwait, each of which was closed during the period of Iraq’s invasion and occupation of Kuwait. According to the MOE, the rent for one of the schools had been prepaid for the entire seven-month period of Iraq’s invasion and occupation of Kuwait, while the rent for the other school and the administrative office had been prepaid for the months of August and September 1990.

140. The MOE also seeks the amount of USD 2,640 as compensation for two months of salary paid in advance to a Kuwaiti national who was the acting director of the Iranian schools in Kuwait. According to the MOE, the function of the acting director was to periodically obtain permits and licences from the Government of Kuwait enabling the Iranian schools to operate in Kuwait.

141. In its response to the General Claim, Iraq submitted that the Iranian schools in Kuwait could have remained open and operated in a normal and regular manner as did more than 100 other schools in Kuwait during the period of Iraq’s presence in Kuwait.

b. Analysis and valuation

142. As noted in paragraph 31 above, the Panel considers that the compensability of claims for prepaid rent in Kuwait is closely tied to the nature of the activities carried out by the claimant at the rented property. In this regard, the Panel finds that the Iranian schools and the administrative office in Kuwait were operated by the MOE in order to provide educational services to Iranian nationals. As such, the Panel considers that the loss of use of these facilities during the period of Iraq's invasion and occupation of Kuwait is not amenable to monetary evaluation. Consequently, the Panel recommends no award of compensation in respect of the rent paid in advance by the MOE.

143. With regard to the claim for the salary payment made in advance to the acting director of the Iranian schools in Kuwait, the Panel finds that the salary payment was an expense that would have been incurred regardless of Iraq's invasion and occupation of Kuwait. ^{28/} Consequently, the Panel recommends no award of compensation in respect of the claim for salary paid in advance to the acting director of the Iranian schools in Kuwait.

c. Recommendation

144. The Panel recommends no award of compensation for contract losses.

(ii) Other tangible property

a. Facts and contentions

145. The MOE seeks the amount of USD 1,387,851 as compensation for the value of 25 items of furniture and equipment that were allegedly lost or damaged at the Iranian schools in Kuwait during the period of Iraq's invasion and occupation of Kuwait.

146. The MOE also seeks the amount of USD 64,350 as compensation for the value of two cars that it allegedly owned and that were damaged during the period of Iraq's invasion and occupation of Kuwait by Iraqi forces.

b. Analysis and valuation

147. In the Panel's view, it follows from paragraph 34 of Governing Council decision 7 that claims for lost or damaged tangible property in Iraq or Kuwait are compensable in principle where the evidence demonstrates that the property was in the location at the relevant time and was lost or damaged during the period of Iraq's invasion and occupation of Kuwait. The evidence must also be sufficient to demonstrate the amount of the claimed loss.

148. In this case, the Panel finds that the evidence is sufficient to demonstrate that 25 items of furniture and equipment and two cars belonging to the MOE were lost or damaged in Kuwait, as alleged. The evidence does not, however, support the full amount claimed in respect of these items.

c. Recommendation

149. The Panel recommends an award of USD 353,398 for other tangible property losses.

(iii) Other

a. Facts and contentions

150. The MOE seeks an unspecified amount as compensation for the costs incurred to prepare its claim. The MOE also requests that it be awarded interest at an “appropriate rate” as compensation for the loss of use of the total amount claimed by it.

b. Analysis and valuation

151. For the reason set out in paragraph 37 above, the Panel makes no recommendation with respect to the claim for costs incurred by the MOE to prepare its claim.

152. The Panel finds that the MOE’s claim for interest falls within the scope of Governing Council decision 16, as discussed in paragraph 46 above. Consequently, the Panel makes no recommendation in respect of this claim.

c. Recommendation

153. The Panel makes no recommendation in respect of other losses.

(c) Ministry of Interior

(i) Payment or relief to others

a. Facts and contentions

154. The Ministry of Interior (the “MOI”) seeks the amount of USD 2,744,452,860 as compensation for costs it incurred to provide assistance to three waves of refugees that allegedly fled to Iran as a direct result of Iraq’s invasion and occupation of Kuwait.

155. According to the MOI, a first wave of refugees (the “first-wave refugees”) comprising approximately 10,000 third-country nationals left Iraq or Kuwait during August and September 1990 and took temporary refuge in Iran before being repatriated. The MOI asserts that the first-wave refugees were initially accommodated at border transit centres before being transported to two camps near Tehran and that they stayed an average of seven days in Iran. The MOI further asserts that it provided the first-wave refugees with food, accommodation, hygienic services, clothing and medical assistance throughout the period of their stay in Iran. The MOI seeks a total of USD 1,050,000 as compensation for assistance provided to the first-wave refugees.

156. The MOI asserts that a second wave of refugees (the “second-wave refugees”) comprising approximately 57,700 to 65,000 third-country nationals from Asia, Africa and the Middle East left Iraq or Kuwait during January 1991 and took temporary refuge in Iran. According to the MOI, the

majority of the second-wave refugees stayed an average of seven days in Iran before being repatriated in January 1991. However, the MOI states that some 9,720 refugees from the second wave stayed in Iran beyond January 1991 and were gradually repatriated between February 1991 and January 1992. Another group of 80 refugees from the second wave allegedly stayed in Iran until December 1995. The MOI asserts that the second-wave refugees were also initially accommodated at border transit centres before being transported to two camps near Tehran, and that it provided them with food, accommodation, hygienic services, clothing and medical assistance throughout the period of their stay in Iran. The MOI seeks a total of USD 30,188,700 as compensation for assistance provided to the second-wave refugees.

157. According to the MOI, a third and final wave of refugees (the “third-wave refugees”) comprising approximately 1.4 million Iraqi nationals, mostly of Kurdish origin, began arriving in Iran after 15 March 1991. The MOI asserts that the total number of third-wave refugees reached its peak in early May 1991 and that the majority of the third-wave refugees stayed in Iran for several months before returning to Iraq. However, some 60,000 refugees from the third wave allegedly remained in Iran for several years. The MOI asserts that it established reception centres and camps in Iran to accommodate the third-wave refugees and that it provided them with food, shelter, clothing, medicine and other basic necessities on an emergency basis. The MOI seeks a total of USD 2,713,214,160 as compensation for assistance provided to the third-wave refugees during the period March 1991 to December 1993.

158. The MOI contends that the costs it incurred to provide assistance to the three waves of refugees represent direct losses suffered as a result of Iraq’s invasion and occupation of Kuwait. In particular, the MOI relies on paragraph 34 of Governing Council decision 7, which provides as follows:

“34. These payments are available with respect to any direct loss, damage or injury to Governments or international organizations 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.”

159. The MOI contends that the Allied Coalition Forces encouraged civil unrest and rebellion in Iraq as part of their military strategy against Iraq and that they undertook military operations that

inevitably led to the breakdown of civil order in Iraq. It alleges that the exodus of the third-wave refugees from Iraq to Iran was, therefore, part of a natural sequence of events that was started by Iraq's invasion and occupation of Kuwait and that resulted in a foreseeable manner in the losses claimed in respect of the third-wave refugees.

b. Analysis and valuation

160. The Panel finds that the claims for costs incurred in providing assistance in the form of food, accommodation, hygienic services, clothing, medical assistance and transportation to the first and second-wave refugees are compensable in principle, in accordance with paragraphs 34(b) and 36 of Governing Council decision 7. The evidence does not, however, support the full amount claimed. In particular, the evidence fails to demonstrate that the MOI incurred any costs in respect of refugees from the second wave that stayed in Iran beyond January 1991, as alleged.

161. The Panel recognizes that a considerable effort was exerted by Iran to provide humanitarian relief to the Iraqi nationals, mostly of Kurdish origin, comprising the third wave of refugees. However, the Panel finds that the claim for costs incurred in providing assistance to the third-wave refugees is not compensable in principle, as the presence of those refugees in Iran was not a direct result of Iraq's invasion and occupation of Kuwait. ^{29/} Rather, the evidence demonstrates that the third-wave refugees arrived in Iran as a direct result of Iraq's suppression of uprisings involving Kurdish people in the north of Iraq, and the Shia population in the south. The Panel does not consider that either the suppression of uprisings or the subsequent exodus of refugees from Iraq was a natural and foreseeable consequence of Iraq's invasion and occupation of Kuwait.

c. Recommendation

162. The Panel recommends an award of USD 7,875,000 for payment or relief to others.

(ii) Other

a. Facts and contentions

163. The MOI seeks an unspecified amount as compensation for the legal costs incurred in connection with its claim. The MOI also requests that it be awarded interest at "Libor plus two percent" in accordance with Governing Council decision 16.

b. Analysis and valuation

164. For the reason set out in paragraph 37 above, the Panel makes no recommendation with respect to the claim for legal costs incurred by the MOI in connection with its claim.

165. The Panel finds that the MOI's claim for interest falls within the scope of Governing Council decision 16, as discussed in paragraph 46 above. Consequently, the Panel makes no recommendation in respect of this claim.

c. Recommendation

166. The Panel makes no recommendation in respect of other losses.

(d) The Central Committee for Reconstruction and Renovation of War-stricken Areas

(i) Payment or relief to others

a. Facts and contentions

167. The Central Committee for Reconstruction and Renovation of War-stricken Areas (the “Central Committee”) seeks the amount of IRR 118,519,580,000 as compensation for losses incurred due to the interruption and modification of a reconstruction and resettlement plan affecting displaced Iranian nationals.

168. The Central Committee states that, during the course of the war between Iran and Iraq (1980-1988), approximately 1.5 million Iranian nationals were displaced from their homes located in areas of Iran near to the border with Iraq. Following the end of the war in 1988, the Central Committee was charged with the task of reconstructing the cities, towns and villages in Iran that had been destroyed, as well as the task of planning the return of over 1 million displaced persons to the border areas.

169. The Central Committee allegedly developed and received budget financing for a plan to complete reconstruction and to return all of the displaced persons to the border areas over a period of five years beginning in 1990. According to the plan, 175,000 people were to return to the border areas between March 1990 and March 1991, and a further 225,000 people were to return the following year. The Central Committee asserts, however, that thousands who were expected to return to the border areas in 1990 and 1991 refused to do so because, following Iraq’s invasion and occupation of Kuwait, they feared that conflict and military operations would return to these areas. As a result, Iran allegedly incurred additional costs to provide these displaced persons with temporary accommodation in camps, dormitories and housing complexes, as well as monthly stipends. Iran also allegedly incurred additional costs because, in order to encourage the non-returnees eventually to return to the border areas, it offered to pay their moving costs. The Central Committee contends that these additional costs were incurred as a direct result of Iraq’s invasion and occupation of Kuwait and it seeks compensation for them.

170. The Central Committee also seeks compensation for additional costs that were allegedly incurred to complete reconstruction in the border areas. According to the Central Committee, reconstruction projects had to be modified as a direct result of Iraq’s invasion and occupation of Kuwait and this led to “over-budget spending”.

171. In its response to the General Claim, Iraq submitted that the evidence indicates that the majority of the people who were expected to return to the border areas in 1990 and 1991 actually did so during those years. Iraq further submitted that this evidence demonstrates that the border areas were stable and negates the Central Committee’s assertion that the return of the displaced persons was impeded by events in Kuwait.

b. Analysis and valuation

172. The Panel finds that the land territory of Iran was not the subject of military operations or the threat of military action within the meaning of paragraph 34(a) of Governing Council decision 7. 30/ Moreover, the Panel finds that any fear or apprehension that may have been felt by the displaced persons who refused to return in 1990 and 1991 to the border areas is insufficient to establish a direct causal link between the asserted losses and Iraq's invasion and occupation of Kuwait.

173. The Panel also finds that, although thousands of refugees left Iraq and Kuwait and took temporary refuge in Iran during the period of Iraq's invasion and occupation of Kuwait, the Central Committee did not demonstrate that this influx of refugees affected the reconstruction projects or the ability of the displaced persons to resettle in the border areas. Accordingly, the Panel finds that there is no direct causal link between the asserted losses and the departure of persons from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991.

174. On the basis of these findings, the Panel concludes that the claim for losses incurred due to the interruption and modification of the Central Committee's reconstruction and resettlement plan is not compensable.

c. Recommendation

175. The Panel recommends no award of compensation for payment or relief to others.

(ii) Other

a. Facts and contentions

176. The Central Committee seeks an unspecified amount as compensation for the costs incurred to prepare its claim. The Central Committee also requests that it be awarded interest at an "appropriate rate" as compensation for the loss of use of the total amount claimed by it.

b. Analysis and valuation

177. For the reason set out in paragraph 37 above, the Panel makes no recommendation with respect to the claim for costs incurred by the Central Committee to prepare its claim.

178. The Panel finds that the Central Committee's claim for interest falls within the scope of Governing Council decision 16, as discussed in paragraph 46 above. Consequently, the Panel makes no recommendation in respect of this claim.

c. Recommendation

179. The Panel makes no recommendation in respect of other losses.

4. Recommendation for the Islamic Republic of Iran

180. Based on its findings regarding the Claims of the Islamic Republic of Iran, the Panel recommends compensation in the amount of USD 9,821,393.

Table 3. Recommended compensation for the Islamic Republic of Iran

<u>Loss type</u>	<u>Recommended compensation (USD)</u>
1. Ministry of Culture and Islamic Guidance	
Real property	nil
Other	no recommendation
2. Ministry of Defence	
Public service expenditures	1,134,920
Other <u>a/</u>	no recommendation
3. General Claim	
(a) Ministry of Foreign Affairs	
Real property	53,100
Other tangible property	404,975
Other <u>a/</u>	no recommendation
(b) Ministry of Education	
Contract	nil
Other tangible property	353,398
Other <u>a/</u>	no recommendation
(c) Ministry of Interior	
Payment or relief to others	7,875,000
Other <u>a/</u>	no recommendation
(d) Central Committee for Reconstruction and Renovation of War-stricken Areas	
Payment or relief to others	nil
Other <u>a/</u>	no recommendation
<u>Total</u>	<u>9,821,393</u>

a/ This loss type includes an interest component. See paragraph 46 above.

C. Democratic Socialist Republic of Sri Lanka

181. The Claim submitted by the Government of the Democratic Socialist Republic of Sri Lanka (“Sri Lanka”) includes claims for:

- (a) Assistance provided to evacuees; and
- (b) Claims processing services provided to Sri Lankan nationals.

1. Sri Lanka Bureau of Foreign Employment (UNCC Claim No. 4001491)

182. The Sri Lanka Bureau of Foreign Employment (the “Claimant”) is a public corporation established in 1985 by an Act of Sri Lanka’s Parliament. The Claimant seeks a total of 4,366,618 Sri Lanka rupees (LKR) as compensation for losses reclassified by the Panel as evacuation costs and other.

(a) Evacuation costs

(i) Facts and contentions

183. The Claimant seeks a total of LKR 3,848,856 as compensation for costs incurred by the Government of Sri Lanka to evacuate and repatriate Sri Lankan nationals from Kuwait.

184. The Claimant asserts that it advanced the sum of LKR 3,500,000 to the Sri Lankan Ministry of Foreign Affairs in September 1990 to pay for the evacuation and repatriation of Sri Lankan nationals who fled into Jordan from Kuwait after 2 August 1990. According to the Claimant, the Ministry of Foreign Affairs used these funds to pay for food supplied to Sri Lankan nationals at border camps in Jordan, transportation of the nationals from these border camps to the airport in Amman and air tickets for flights back to Sri Lanka. The Ministry of Foreign Affairs did not subsequently reimburse the Claimant for the funds.

185. The Claimant also seeks the amount of LKR 338,856 as compensation for costs it incurred to transport Sri Lankan nationals by bus from the Katunayake airport in Sri Lanka to reception centres in Colombo and Narahenpita, as well as to provide meals to these nationals at the reception centres. The evidence indicates that these costs were incurred in August and September of 1990.

186. The Claimant additionally seeks compensation for an “initial deposit” of LKR 10,000 that was made to the “Workers Relief Fund”. In its response to the article 34 notification, the Claimant stated that this deposit was provided to augment the Fund, and that the proceeds of the Fund were used to provide “various relief measures to the Gulf War victims”. The Claimant did not, however, provide any further explanation regarding this claim for LKR 10,000.

(ii) Analysis and valuation

187. The Panel considers that the principles governing the compensability of claims for evacuation costs, identified at paragraph 87 above, are applicable here.

188. Applying these principles, the Panel finds that the claims for food and transportation costs incurred to evacuate and repatriate Sri Lankan nationals from Kuwait are compensable in principle. The evidence does not, however, support the full amount claimed for these costs.

189. With regard to the claim for an “initial deposit” made to the “Workers Relief Fund”, the Panel finds that the Claimant did not provide sufficient evidence to establish that the claim is for a loss directly resulting from Iraq’s invasion and occupation of Kuwait. Consequently, the Panel recommends no award of compensation in respect of this claim.

(iii) Recommendation

190. The Panel recommends an award in the amount of USD 49,993 (LKR 2,014,235) for evacuation costs.

(b) Other

(i) Facts and contentions

191. The Claimant seeks the total amount of LKR 517,762 as compensation for the costs of claim processing services that were provided between 1992 and 1994 to Sri Lankan nationals who sought to file individual claims for compensation with the Commission.

192. According to the Claimant, it collected claim “applications” through district centres, local government authorities and diplomatic missions in the Middle East and then lodged claims “on behalf of victims according to the guidelines given by the UNCC”. The Claimant seeks the amount of LKR 500,000 as compensation for the costs of photocopying, courier services, fuel and employee overtime that it allegedly incurred in connection with the claims and their processing.

193. The Claimant also seeks the amount of LKR 17,762 as compensation for the costs of stationery, a “Name Board” and employee overtime that it allegedly incurred in connection with “information centres”. The Claimant did not provide any further explanation regarding these costs, and advised that payment vouchers cannot be traced in respect thereof.

(ii) Analysis and valuation

194. Paragraph I.1 of Governing Council decision 18 (S/AC.26/Dec.18(1994)) provides:

“Governments may offset their costs of processing claims by deducting a small fee from payments made to claimants. The Governments shall be required to provide explanations satisfactory to the Governing Council for any processing costs so deducted. Such fees shall be commensurate with the actual expenditure of Governments. In the case of awards payable to claimants in categories ‘A’, ‘B’ and ‘C’, the fees should not exceed 1.5 per cent, and for awards payable to claimants in ‘D’, ‘E’ and ‘F’, the fees should not exceed 3 per cent.”

195. In its F1(2), F1(3) and F1(4) Reports, the Panel concluded that the fee allowed to Governments by paragraph I.1 of Governing Council decision 18 was intended to be the sole compensation to which Governments are entitled in respect of their claim processing expenditures. ^{31/} Accordingly, the claim for the costs of claims processing services provided to Sri Lankan nationals is not compensable.

(iii) Recommendation

196. The Panel recommends no award of compensation for other losses.

2. Recommendation for the Democratic Socialist Republic of Sri Lanka

197. Based on its findings regarding the Claim of the Democratic Socialist Republic of Sri Lanka, the Panel recommends compensation in the amount of USD 49,993.

Table 4. Recommended compensation for the Democratic Socialist Republic of Sri Lanka

<u>Loss type</u>	<u>Recommended compensation (USD)</u>
Evacuation costs	49,993
Other	nil
<u>Total</u>	<u>49,993</u>

D. Republic of Tunisia

198. The Claims submitted by the Government of the Republic of Tunisia ("Tunisia") include claims for:

- (a) Cancelled Kuwaiti dinar banknotes; and
- (b) Assistance provided to evacuees.

1. Central Bank of Tunisia (UNCC Claim No. 4002595)

(a) Business transaction or course of dealing

(i) Facts and contentions

199. The Central Bank of Tunisia (the "Claimant") seeks the amount of KWD 9,450 as compensation for Kuwaiti dinar banknotes that Tunisian nationals returning from Kuwait brought into the country after 2 August 1990 and that it accepted for exchange. According to the Claimant, it accepted the banknotes for exchange prior to receiving notice that they formed part of a series of banknotes, identifiable by serial number, which had been stolen and circulated by Iraqi forces in Kuwait and subsequently cancelled by the Government of Kuwait. The Claimant wrote to the Central Bank of Kuwait in 1991 and requested that the value of the banknotes be returned to it. The Central Bank of Kuwait refused to exchange the banknotes on the basis that they formed part of the series that was cancelled by the Government of Kuwait.

200. The Claimant also seeks the amount of KWD 21,120 as compensation for Kuwaiti dinar banknotes that were submitted to it for exchange after it had received notice of their cancellation. The Claimant asserts that these banknotes were submitted by 14 Tunisian nationals returning from Kuwait. Although the Claimant refused to accept them for exchange, it sent a letter to the Central Bank of Kuwait in 1991 requesting that the value of the banknotes be returned on behalf of the 14 Tunisian nationals. According to the Claimant, the Central Bank of Kuwait refused to exchange the banknotes, once again on the basis that they formed part of the series that was cancelled by the Government of Kuwait. Thereafter, 11 Tunisian nationals retrieved their cancelled Kuwaiti dinar banknotes in the total amount of KWD 5,570 from the Claimant. Three did not.

201. In the article 34 notification, the Claimant was requested to clarify the basis upon which it seeks compensation on behalf of the 14 Tunisian nationals. In its response, the Claimant states that, although it does not have written authorization from any of the 14 individuals to claim on their behalf, it does possess written notes that it received from each of these individuals in 1990 or 1991 requesting that it exchange the Kuwaiti dinar banknotes for Tunisian dinars (TND). The Claimant asserts that these exchange requests necessarily imply, in the circumstances, that it is authorized to seek compensation on behalf of the 14 individuals before the Commission.

202. The Claimant submitted banknotes totalling KWD 25,000 for verification by the Commission in July 2000. It did not, however, submit the banknotes totalling KWD 5,570 that were retrieved from it in 1991 by 11 Tunisian nationals.

(ii) Analysis and valuation

203. The Panel recalls that in its F1(5) Report, it considered a claim for Kuwaiti dinar banknotes that the Central Bank of Kuwait refused to exchange in August 1991 on the basis that they formed part of the series of banknotes that had been stolen by Iraqi forces in Kuwait and subsequently cancelled during the period of Iraq's invasion and occupation of Kuwait. The Panel found that the claim's compensability depended upon the circumstances under which the banknotes came into the claimant's possession. In particular, the Panel determined that the claimant needed to explain whether it received the banknotes in the usual course of its business and whether it took reasonable measures to avoid the losses for which it claimed. 32/

204. The evidence provided here demonstrates that the Claimant exchanged Kuwaiti dinar banknotes totalling KWD 9,450 in the ordinary course of its business and prior to receiving notice of their cancellation. The Panel therefore considers that there is a direct link between the theft and circulation of Kuwaiti dinar banknotes by Iraqi forces and the loss incurred by the Claimant as a result of its exchange of cancelled banknotes totalling KWD 9,450. Accordingly, the Panel finds that the claim for KWD 9,450 is compensable in principle.

205. With regard to the claim for cancelled Kuwaiti dinar banknotes totalling KWD 21,120, the Panel finds that because the Claimant did not accept the banknotes for exchange, it did not suffer a loss in respect thereof. The Panel also finds that the Claimant failed to demonstrate that it is authorized to claim for the losses incurred by the 14 individuals who own the cancelled banknotes totalling KWD 21,120. Consequently, the Panel finds that this claim is not compensable.

(iii) Recommendation

206. The Panel recommends an award of USD 32,699 (KWD 9,450) for business transaction or course of dealing losses.

2. Ministry of Social Affairs, Office for Tunisians Abroad (UNCC Claim No. 4002610)

(b) Evacuation costs

(i) Facts and contentions

207. Tunisia's Ministry of Social Affairs, Office for Tunisians Abroad (the "Claimant") seeks a total of TND 97,710 for costs it incurred to evacuate and repatriate Tunisian nationals from Iraq and Kuwait. According to the Claimant, it assisted a total of 2,583 Tunisian nationals.

208. The Claimant asserts that it disbursed the amount of TND 64,903 to Tunisian Embassies and General Consulates in Iraq, Jordan, Saudi Arabia, Egypt and Libya to finance assistance and relief provided to Tunisian nationals fleeing from Iraq and Kuwait during the invasion and occupation

period. The Claimant further asserts that it incurred additional costs totalling TND 30,007 to pay for food, accommodation and transport provided to Tunisian nationals from Iraq and Kuwait following their arrival in Tunisia in September and October 1990. A further amount of TND 2,800 was allegedly disbursed by the Claimant to its regional office in Medenine, Tunisia, to pay for assistance and relief provided to Tunisian nationals returning through Libya in September and October 1990.

(ii) Analysis and valuation

209. The Panel considers that the principles governing the compensability of claims for evacuation costs, as identified in paragraph 87 above, are applicable here.

210. Applying these principles, the Panel finds that the evacuation costs claimed by the Claimant are compensable in principle. The evidence does not, however, support the full amount claimed.

(iii) Recommendation

211. The Panel recommends an award of USD 59,718 (TND 49,924) for evacuation costs.

3. Recommendation for the Republic of Tunisia

212. Based on its findings regarding the Claims of the Republic of Tunisia, the Panel recommends compensation in the amount of USD 92,417 (KWD 9,450 and TND 49,924).

Table 5. Recommended compensation for the Republic of Tunisia

<u>Loss type</u>	<u>Recommended compensation (USD)</u>
1. Central Bank of Tunisia Business transaction or course of dealing	32,699
2. Ministry of Social Affairs, Office for Tunisians Abroad Evacuation costs	59,718
<u>Total</u>	<u>92,417</u>

E. The Inter-Arab Investment Guarantee Corporation (UNCC Claim No. 4002393)

213. The Inter-Arab Investment Guarantee Corporation (the “Claimant”) is an international organization established in 1974, with its headquarters in Kuwait. Its main objectives are to provide insurance coverage for inter-Arab investments and trade financing between member countries and to promote investments among member countries.

214. The Claimant seeks a total of KWD 1,818,467 as compensation for losses reclassified by the Panel under the loss types: business transaction or course of dealing, other tangible property, payment or relief to others and other.

1. Business transaction or course of dealing

(a) Facts and contentions

215. The Claimant asserts that its business operations were interrupted on 2 August 1990 as a direct result of Iraq’s invasion and occupation of Kuwait. It seeks the amount of KWD 241,697 as compensation for the resulting loss of profits that it allegedly incurred during the period 2 August 1990 to 28 February 1991.

216. The Claimant’s main sources of revenue are interest on promissory notes and bonds, income from investments and income from guarantee operations, i.e., operations concerning the provision of insurance coverage for inter-Arab investments against non-commercial risks, as well as for export credits against non-commercial and commercial risks. According to the Claimant, the only source of income affected by Iraq’s invasion and occupation of Kuwait was that of its guarantee operations. The Claimant seeks, as a loss of profits, the net guarantee premiums (i.e. income from insurance premiums net of reinsurance premiums paid) that it did not earn during the seven-month period of Iraq’s invasion and occupation of Kuwait.

217. The amount claimed is calculated by the Claimant on the basis of the average monthly net guarantee premiums earned during the years 1988 to 1990, multiplied by seven, representing the seven-month period of Iraq’s invasion and occupation of Kuwait. The Claimant’s calculation does not, however, take into account costs that were saved by the Claimant as a result of the curtailment of its business operations during the seven-month period of Iraq’s invasion and occupation of Kuwait.

(b) Analysis and valuation

218. The Panel finds that the evidence submitted by the Claimant does not demonstrate that it incurred any loss as a direct result of Iraq’s invasion and occupation of Kuwait. The evidence demonstrates that the cost savings achieved by the Claimant during the relevant period were in excess of its loss of net guarantee premiums. Consequently, the Panel finds that the Claimant’s loss of profits claim is not compensable.

(c) Recommendation

219. The Panel recommends no award of compensation for business transaction or course of dealing.

2. Other tangible property

(a) Facts and contentions

220. The Claimant asserts that during the period of Iraq's invasion and occupation of Kuwait, most of the office equipment and furniture at its office premises in Kuwait was looted, damaged or destroyed by Iraqi forces. The Claimant seeks the amount of KWD 297,561 as compensation for the value of this tangible property.

(b) Analysis and valuation

221. The Panel finds that the evidence is sufficient to demonstrate that office equipment and furniture belonging to the Claimant was lost or damaged in Kuwait as a direct result of Iraq's invasion and occupation of Kuwait. The evidence does not, however, support the full amount claimed in respect thereof.

(c) Recommendation

222. The Panel recommends an award of USD 58,761 (KWD 16,982) for other tangible property losses.

3. Payment or relief to others

(a) Facts and contentions

223. The Claimant asserts that approximately half of its 74 employees in Kuwait were on vacation outside Kuwait at the time of Iraq's invasion and occupation of Kuwait. The Claimant further asserts that, by the end of October 1990, all of its employees in Kuwait had managed to leave Kuwait. In early 1991, most of these 74 employees were reassigned by the Claimant to temporary offices in Egypt and Jordan.

224. The Claimant allegedly continued to pay full salaries to all its employees during the period of Iraq's invasion and occupation of Kuwait. It seeks the amount of KWD 704,156 as compensation for the salaries it paid during the period August 1990 to August 1991. Although the Claimant does not explain why it seeks compensation for salaries paid after the liberation of Kuwait, it stated in its response to the article 34 notification that the nature of its loss is the "payment of salaries without getting enough business activity to generate income".

225. In addition to its claim for salaries, the Claimant seeks the amount of KWD 573,803 as compensation for termination indemnities allegedly paid to its employees following the liberation of Kuwait. In its original submission, the Claimant asserted that the Government of Kuwait "in exile"

passed a law “terminating all contracts to protect employers from paying their employees for the period of the occupation”. The Claimant further asserted that, pursuant to this law, all of its contracts of employment with its employees were terminated as of 2 August 1990 and termination indemnities were paid to its employees when they returned to Kuwait in November 1991.

226. In its article 34 response, the Claimant stated that “after November 1991 and due to the decrease of enough operations and business to enable the Claimant [to] meet his expenses, the Claimant decided to downsize the activities and related staff” and thus discharged “selected employees that could be easily replaced”. The evidence indicates that termination indemnities were paid to some 20 employees in November and December 1991 in the total amount of KWD 573,803.

(b) Analysis and valuation

227. The Panel notes that the “E4” Panel, in its report concerning the first instalment of “E4” claims, 33/ considered the claim of a Kuwaiti corporation that sought compensation both for loss of profits and regular salary payments relating to the same period. The “E4” Panel found that regular (and unexceptional) salary payments would have been incurred as regular expenses in the normal course of events. The “E4” Panel further found that compensation would be duplicated if the claimant was compensated for regular salary payments relating to the period for which a claim for loss of profits has been advanced (as the regular salary expenses are considered in the loss of profits calculation).

228. The Panel finds that the reasoning of the “E4” Panel is applicable here. It further finds that, because the evidence does not demonstrate that the Claimant incurred any loss of profits as a direct result of Iraq’s invasion and occupation of Kuwait, 34/ the claim for salaries is not compensable.

229. With regard to the claim for termination indemnities, the Panel finds that the evidence demonstrates that termination indemnities were paid to some 20 employees only in November and December 1991, not to all employees as was initially alleged. The Panel further finds that the termination indemnities were paid pursuant to a business decision made by the Claimant that it did not demonstrate was directly linked to Iraq’s invasion and occupation of Kuwait. Consequently, this claim is not compensable.

(c) Recommendation

230. The Panel recommends no award of compensation for payment or relief to others.

4. Other

(a) Facts and contentions

231. The Claimant seeks the amount of KWD 1,250 as compensation for the costs it incurred to prepare and document its Claim. The Claimant also requests that it be awarded interest as compensation for the delay in repayment of its direct losses.

(b) Analysis and valuation

232. For the reason set out in paragraph 37 above, the Panel makes no recommendation with respect to the claim for costs incurred by the Claimant to prepare and document its Claim.

233. The Panel finds that the Claimant's claim for interest falls within the scope of Governing Council decision 16, as discussed in paragraph 46 above. Consequently, the Panel makes no recommendation in respect of this claim.

(c) Recommendation

234. The Panel makes no recommendation in respect of other losses.

5. Recommendation for the Inter-Arab Investment Guarantee Corporation

235. Based on its findings regarding the Claim of the Inter-Arab Investment Guarantee Corporation, the Panel recommends compensation in the amount of USD 58,761.

Table 6. Recommended compensation for the Inter-Arab Investment Guarantee Corporation

<u>Loss type</u>	<u>Recommended compensation (USD)</u>
Business transaction or course of dealing	nil
Other tangible property	58,761
Payment or relief to others	nil
Other ^{a/}	no recommendation
<u>Total</u>	<u>58,761</u>

^{a/} This loss type includes an interest component. See paragraph 46 above.

F. The Gulf Arab States Educational Research Center (UNCC Claim No. 4002420)

236. The Gulf Arab States Educational Research Center (the “Claimant”) is an international organization established in 1977 by the member States of the Arab Bureau of Education for the Gulf States. Its primary aim is to contribute to developing, updating and integrating the educational movement in member countries.

237. The Claimant seeks a total of KWD 229,000 as compensation for losses incurred at its headquarters in Kuwait.

1. Real property

(a) Facts and contentions

238. The Claimant asserts that during the period of Iraq’s invasion and occupation of Kuwait, its office premises in Kuwait were occupied and used as a camp by Iraqi troops. The Claimant seeks the amount of KWD 9,000 as compensation for costs incurred to clean, repair and otherwise restore its office premises after the liberation of Kuwait.

(b) Analysis and valuation

239. The Panel considers that the Claimant has established a direct causal link between Iraq’s invasion and occupation of Kuwait and damage sustained at its office premises in Kuwait. Accordingly, the Panel finds that the claimed costs are compensable to the extent that they are reasonable and supported by sufficient documentary and other appropriate evidence.

(c) Recommendation

240. The Panel recommends an award of USD 16,176 (KWD 4,675) for real property losses.

2. Other tangible property

(a) Facts and contentions

241. The Claimant seeks the amount of KWD 220,000 as compensation for the value of tangible property, including furniture, office equipment, motor vehicles and library books and periodicals, that was stolen or damaged by Iraqi troops and officials.

242. According to the Claimant, its tangible property in Kuwait was systematically removed to Baghdad by Iraqi officials pursuant to a decree of Iraq’s Minister of Education dated 14 October 1990. In January 1993, Iraq returned some of this tangible property to the Claimant through the United Nations, but much of it was allegedly damaged. ^{35/} The Claimant estimates that the value of the tangible property returned was KWD 20,000 and asserts that the amount claimed for its tangible property losses is net of the value of the returned tangible property.

(b) Analysis and valuation

243. The Panel finds that the evidence is sufficient to demonstrate that tangible property belonging to the Claimant was lost or damaged in Kuwait as a direct result of Iraq's invasion and occupation of Kuwait. The evidence does not, however, support the full amount claimed in respect thereof.

(c) Recommendation

244. The Panel recommends an award of USD 199,751 (KWD 57,728) for other tangible property losses.

3. Recommendation for The Gulf Arab States Educational Research Center

245. Based on its findings regarding the Claim of The Gulf Arab States Educational Research Center, the Panel recommends compensation in the amount of USD 215,927.

Table 7. Recommended compensation for The Gulf Arab States Educational Research Center

<u>Loss type</u>	<u>Recommended compensation (USD)</u>
Real property	16,176
Other tangible property	199,751
<u>Total</u>	<u>215,927</u>

G. The Arab Planning Institute – Kuwait (UNCC Claim No. 4002421)

246. The Arab Planning Institute – Kuwait (the “Claimant”) is an international organization established in 1972, with its headquarters in Kuwait. The primary aims of the Claimant are to conduct training programmes and render advisory services to Arab States in the fields of economic and social development planning and management.

247. The Claimant originally sought compensation in the total amount of KWD 4,307,079. However, in a December 1995 submission, the Claimant reduced the total amount of the Claim to KWD 962,698.

1. Business transaction or course of dealing

(a) Facts and contentions

248. The Claimant asserts that, following Iraq’s invasion and occupation of Kuwait on 2 August 1990, its facilities and assets in Kuwait were looted and damaged and it was unable to continue its business operations. As a result, the Claimant allegedly incurred revenue losses totalling KWD 103,444 during the period 2 August 1990 to 30 June 1991 in the form of lost annual contributions from two international organizations and a Kuwaiti public corporation. According to the Claimant, it was able to resume its business operations only after 30 June 1991.

249. The Claimant calculates the amount of its claim for revenue losses first by dividing the total amount of contributions it received during the 60-month period October 1984 to September 1989 by 60, and then by multiplying the resulting average “monthly” figure of KWD 9,404 by 11 to represent the 11-month period during which the Claimant alleges that its business operations were interrupted. The Claimant’s calculation does not, however, take into account costs that were saved by the Claimant as a result of the interruption of its business operations during that 11-month period.

250. According to the Claimant, the two international organizations and the Kuwaiti public corporation in question were not contractually bound to make annual contributions to it. Rather, they voluntarily agreed to provide annual contributions to the Claimant in response to formal requests by the Claimant for funding to support its future training, research, consultation, seminar and publication activities.

(b) Analysis and valuation

251. The Panel finds that the evidence submitted by the Claimant does not demonstrate that it incurred any loss of revenues as a direct result of Iraq’s invasion and occupation of Kuwait. Moreover, the evidence demonstrates that the cost savings achieved by the Claimant during the relevant period were in excess of its asserted loss of annual contributions. Consequently, the Panel finds that the Claimant’s claim for loss of revenues is not compensable.

(c) Recommendation

252. The Panel recommends no award of compensation for business transaction or course of dealing losses.

2. Real property

(a) Facts and contentions

253. The Claimant asserts that during the period of Iraq's invasion and occupation of Kuwait, the building in Kuwait in which its headquarters were located was occupied and damaged by Iraqi forces. The Claimant further asserts that, following the liberation of Kuwait, it incurred costs totalling KWD 204,241 to clean, repair and otherwise restore its headquarters.

(b) Analysis and valuation

254. The Panel considers that the Claimant has established a direct causal link between Iraq's invasion and occupation of Kuwait and damage sustained at its headquarters in Kuwait. Accordingly, the Panel finds that the claimed costs are compensable to the extent that they are supported by sufficient documentary and other appropriate evidence demonstrating that they were actually incurred by the Claimant, adjustment being made for betterment.

(c) Recommendation

255. The Panel recommends an award of USD 192,142 (KWD 55,529) for real property losses.

3. Other tangible property

(a) Facts and contentions

256. The Claimant seeks the amount of KWD 405,622 as compensation for the value of tangible property, including furniture, office equipment, computers, motor vehicles and library books and periodicals, that allegedly was stolen or damaged by Iraqi forces in Kuwait. The amount claimed is stated to be net of the value of library books and periodicals that were returned by Iraq through the United Nations in October 1992.

257. In its response to the Claim, Iraq asserted that it returned the library books and periodicals in question to the Claimant in October 1992 and returned the computers in question "after coordination with the League of Arab States".

(b) Analysis and valuation

258. The Panel finds that the evidence is sufficient to demonstrate that tangible property belonging to the Claimant was lost or damaged in Kuwait as a direct result of Iraq's invasion and occupation of Kuwait. The evidence does not, however, support the full amount claimed.

(c) Recommendation

259. The Panel recommends an award of USD 603,927 (KWD 174,535) for other tangible property losses.

4. Payment or relief to others

(a) Facts and contentions

260. The Claimant seeks the amount of KWD 45,019 as compensation for salary payments it made to seven employees during the period August 1990 to April 1991. According to the Claimant, although these seven employees continued to work and receive their regular salaries during this period, the work they performed was not related to “productive activities”.

261. The Claimant also seeks the amount of KWD 124,112 as compensation for “termination indemnities” (i.e. end-of-service benefits) which it paid in December 1991 to 55 employees in Kuwait. The Claimant asserts that it paid these indemnities pursuant to an “Amiri Decree” that was issued by the Government of Kuwait and concluded that all contracts, including employment contracts, entered into prior to Iraq’s invasion and occupation of Kuwait were terminated as of 2 August 1990. The Claimant further asserts that the amount of the indemnity paid to each employee was, in accordance with Kuwaiti labour law, based on the length of the employee’s service with the Claimant as of 2 August 1990.

262. The evidence indicates that, under the terms of their employment contracts, indemnity amounts accrued to the Claimant’s employees during the course of their service with the Claimant. The evidence also indicates that the Claimant made provision for the payment of these indemnity amounts in its annual financial statements.

(b) Analysis and valuation

263. The Panel finds that the conclusions set out in paragraph 227 above are applicable here. The Panel further finds that, because the evidence does not demonstrate that the Claimant incurred any loss of revenues or profits as a direct result of Iraq’s invasion and occupation of Kuwait, 36/ the claim for salary payments is not compensable.

264. With regard to the claim for termination indemnities, the Panel finds that the evidence fails to demonstrate that the Claimant’s termination of the employment contracts of its 55 employees was a direct result of Iraq’s invasion and occupation of Kuwait. The Panel is unable to conclude, based on the evidence submitted, that the Claimant was compelled by the circumstances and/or effect of Iraq’s invasion and occupation of Kuwait to terminate its employment contracts and pay end-of-service benefits. Moreover, the Panel finds that the evidence fails to demonstrate that any part of the termination indemnities paid to the Claimant’s 55 employees was incremental (i.e. additional to the costs ordinarily incurred by the Claimant for this type of expense). Consequently, the claim for termination indemnities is not compensable.

(c) Recommendation

265. The Panel recommends no award of compensation for payment or relief to others.

5. Other

(a) Facts and contentions

266. The Claimant originally sought KWD 16,000 as compensation for costs it incurred to prepare and document its Claim. However, in its submission of December 1995, the Claimant reduced the amount claimed for claims preparation costs to KWD 12,000.

267. The Claimant also originally requested that it be awarded the amount of KWD 502,491 as interest on its losses. However, in its submission of December 1995, the Claimant reduced the amount claimed for interest to KWD 68,260.

(b) Analysis and valuation

268. For the reason set out in paragraph 37 above, the Panel makes no recommendation with respect to the claim for costs incurred by the Claimant to prepare and document its Claim.

269. The Panel finds that the Claimant's claim for interest falls within the scope of Governing Council decision 16, as discussed in paragraph 46 above. Consequently, the Panel makes no recommendation in respect of this claim.

(c) Recommendation

270. The Panel makes no recommendation in respect of other losses.

6. Recommendation for The Arab Planning Institute - Kuwait

271. Based on its findings regarding the Claim of The Arab Planning Institute – Kuwait, the Panel recommends compensation in the amount of USD 796,069.

Table 8. Recommended compensation for The Arab Planning Institute - Kuwait

<u>Loss type</u>	<u>Recommended compensation (USD)</u>
Business transaction or course of dealing	nil
Real property	192,142
Other tangible property	603,927
Payment or relief to others	nil
Other <u>a/</u>	no recommendation
<u>Total</u>	<u>796,069</u>

a/ This loss type includes an interest component. See paragraph 46 above.

H. Arab Fund for Economic and Social Development (UNCC Claim No. 5000109)

272. The Arab Fund for Economic and Social Development (the “Claimant”) is an international organization established in 1971, with its headquarters in Kuwait. Its primary aims are to promote the economic and social development of Arab countries through financing investment projects, promoting investment and providing technical expertise and assistance.

273. The Claimant originally sought compensation in the total amount of KWD 19,652,500, but then increased that amount to KWD 20,161,854 in March 1996 and further amended the total to KWD 19,910,705 in July 2000. The Claim comprises losses as described below under two loss types: contract and other.

1. Contract

(a) Facts and contentions

274. In its initial submission, the Claimant sought a total of KWD 17,000,000 as compensation for contract-related losses. In a revised submission dated March 1996, the Claimant increased the total amount claimed to KWD 17,509,354. However, in its July 2000 response to the article 34 notification, the Claimant reduced the total amount claimed for contract-related losses to KWD 17,300,766.

275. The Claimant asserts that in May 1988 it entered into a contract (the “main contract”) with a contractor (the “main contractor”) for the construction of a new headquarters building in Kuwait, to be substantially completed by 30 November 1991 at a cost of KWD 16,792,000. Construction began on 1 August 1988 and the building’s concrete superstructure was allegedly 89 per cent complete at the date of Iraq’s invasion and occupation of Kuwait. Most of the on-site work that remained to be completed at 2 August 1990 allegedly involved finishing work using materials manufactured and imported from abroad, approximately 95 per cent of which had been ordered by the main contractor prior to Iraq’s invasion and occupation of Kuwait.

276. According to the Claimant, construction at the building site was suspended following Iraq’s invasion and occupation of Kuwait and was not resumed until after the liberation of Kuwait. It asserts that, as a direct result of Iraq’s invasion and occupation of Kuwait, the substantial completion of its new headquarters building in Kuwait was delayed by 27 months, from 30 November 1991 to 28 February 1994. The Claimant seeks compensation for the following losses that it allegedly incurred as a direct result of the suspension and delay in completion of construction.

a. Losses incurred in respect of the main contract – KWD 15,984,642

277. The Claimant asserts that, pursuant to the terms of the main contract, it was required in the event of war or hostilities in Kuwait to repay the main contractor for the cost of any work, materials or other property which was intended for the building project and was damaged or destroyed by reason of the war or hostilities. The main contractor was also allegedly entitled to payment for the costs of

repairing or replacing any destruction or damage to the building, as well as for any increased costs of the execution of the construction project attributable to the war or hostilities.

278. The Claimant asserts that, following the liberation of Kuwait, it made “extra” payments to the main contractor in the total amount of KWD 15,984,642 to pay for losses and increased costs that it considers to be a direct result of Iraq’s invasion and occupation of Kuwait and the 27-month delay in completion of construction. More specifically, it asserts that the extra payments were made to pay for: (a) the cost of repairing or replacing work, equipment and materials that were looted, damaged or destroyed during the period of Iraq’s invasion and occupation of Kuwait; (b) the increased cost of labour and materials needed to complete construction after the liberation of Kuwait; and (c) other costs, such as costs related to the stoppage and restarting of construction work, that the Claimant considered to be directly attributable to Iraq’s invasion and occupation of Kuwait.

279. In support of its claim for the extra payments made to the main contractor, the Claimant provided copies of contract variation orders that were issued and agreed to after the liberation of Kuwait and that describe the nature and amount of the payments it made to the main contractor. It alleges that, in respect of the variation orders concerning labour and materials ordered after the liberation of Kuwait, it has assessed the increased cost using an “assumed average increased cost of materials and labour as between pre-Invasion and post-Liberation periods”. According to the Claimant, the “assumed average increased cost” ranged from 20 to 50 per cent for materials and from 15 to 75 per cent for labour.

b. Losses incurred in respect of security works – KWD 32,927

280. The Claimant asserts that in April 1990 a subcontractor was hired to install an integrated security system at its new headquarters building and that some installation work had been completed prior to Iraq’s invasion and occupation of Kuwait. The Claimant further asserts that materials and accessories intended for installation at the building were looted during the period of Iraq’s invasion and occupation of Kuwait. Following the liberation of Kuwait, the Claimant allegedly paid the subcontractor the amount of KWD 32,927 for the cost of the looted materials and accessories, as well as for the cost of restarting the installation work after the liberation of Kuwait. The Claimant seeks compensation for this payment in the amount of KWD 32,927.

c. Losses incurred in respect of the procurement of certain finishing and furnishing items – KWD 962,494

281. The Claimant asserts that, as a direct result of Iraq’s invasion and occupation of Kuwait, the programme for finishing and furnishing its new headquarters building was delayed. The Claimant further asserts that, as a result of this delay, it had to pay, on average, 40 per cent higher prices for certain office furniture, ceramics and sculptured stonework, Thai plant pots and document storage units and other furnishings installed in the building. It contends that, but for Iraq’s invasion and occupation of Kuwait, these items would have been procured earlier (i.e. in either 1990 or 1991) and at a lesser cost.

282. The Claimant seeks the total amount of KWD 962,494 as compensation for the higher prices it allegedly paid for the office furniture, ceramics and sculptured stonework, Thai plant pots and document storage units and other furnishings installed in the building. It admits, however, that because the procurement of these items was not initiated until after the liberation of Kuwait, it cannot provide documentary evidence in support of its contention that, over the period of the delay, the cost of the items increased by an average of 40 per cent.

d. Losses incurred in respect of supervision services – KWD 320,703

283. In March 1988, the Claimant hired an engineering company to supervise the construction of its new headquarters building. Pursuant to the terms of its contract with the engineering company, the Claimant agreed to pay directly the salaries and employment indemnities of the engineering staff involved in the supervision of the construction.

284. The Claimant asserts that, as a direct result of Iraq's invasion and occupation of Kuwait and the alleged 27-month delay in completion of construction, it incurred additional supervision costs. It seeks the amount of KWD 320,703 as compensation for salaries it paid to engineering staff in respect of the 27-month delay (KWD 261,757), end-of-service indemnities that became payable to engineering staff as a result of the 27-month delay (KWD 47,401) and moneys paid to reimburse an engineering employee for accrued but unused annual vacation leave (KWD 11,545). This last claim was first asserted by the Claimant in its response to the article 34 notification.

(b) Analysis and valuation

285. Applying the principles set out in paragraphs 27 and 28 above, the Panel finds that the claim for losses incurred in respect of the main contract is compensable, in principle, in so far as it relates to extraordinary expenses directly linked to Iraq's invasion and occupation of Kuwait. In this regard, the Panel finds that the evidence is sufficient to demonstrate that the losses incurred by the Claimant to pay for the cost of repairing or replacing work, equipment and materials that were looted, damaged or destroyed during the period of Iraq's invasion and occupation of Kuwait are losses directly linked to Iraq's invasion and occupation of Kuwait. These losses are therefore compensable to the extent that they are supported by sufficient documentary and other appropriate evidence. In respect of the losses incurred by the Claimant to pay for the increased cost of labour and materials and other costs, however, the Panel finds that the evidence is insufficient to establish that they are losses directly linked to Iraq's invasion and occupation of Kuwait.

286. The Panel finds that the claim for losses incurred in respect of security works constitutes a claim for extraordinary expenses that were incurred as a direct result of Iraq's invasion and occupation of Kuwait. Consequently, the Panel finds that the claim is compensable to the extent that it is supported by sufficient documentary and other appropriate evidence.

287. With regard to the claim for losses incurred in respect of office furniture, ceramics and sculptured stonework, Thai plant pots and document storage units and other furnishings, all of which were purchased after the liberation of Kuwait, the Panel finds that the evidence fails to demonstrate

that the Claimant sustained any losses in respect of the procurement of these items. Consequently, the Panel finds that this claim is not compensable.

288. With regard to the claim for losses incurred in respect of supervision services, the Panel finds that, in accordance with the principles set out in paragraph 18 above, the claim for moneys paid to reimburse an engineering employee for accrued but unused annual vacation leave is time-barred since it was first asserted by the Claimant as a new claim after 1 January 1997. However, the Panel finds that the claims for salaries and end-of-service indemnities are compensable in principle, but only to the extent that the salaries and indemnities were paid in respect of a period of delay that was directly attributable to Iraq's invasion and occupation of Kuwait.

289. Based on the evidence submitted, the Panel finds that although it was not possible for construction on the new headquarters building to resume immediately after the liberation of Kuwait, the Claimant did not demonstrate that factors directly attributable to Iraq's invasion and occupation of Kuwait caused a 27-month delay in completion of construction, as alleged. Rather, in the circumstances, the Panel finds that 16 months, comprising the seven-month period of Iraq's invasion and occupation of Kuwait and a nine-month period thereafter, is the period of delay directly attributable to Iraq's invasion and occupation of Kuwait. In so finding, the Panel has considered the nature and size of the construction project, as well as the amount of work to be completed and the extent of the damage sustained at the building site. The Panel has also considered the conditions prevailing in Kuwait in the months following its liberation.

290. On the basis of its findings, the Panel recommends that the claims for salaries and end-of-service indemnities paid to engineering staff be compensated in so far as they relate to a 16-month period from 2 August 1990 and are supported by sufficient documentary and other appropriate evidence.

(c) Recommendation

291. The Panel recommends an award in the amount of USD 6,456,875 (KWD 1,866,037) for contract losses.

2. Other

292. The Claimant originally sought a total amount of KWD 2,652,500 as compensation for other losses, described as exceptional expenditures incurred during the period November 1990 to May 1992 to continue its development operations and aid activities. In its response to the article 34 notification, the Claimant reduced the total amount claimed for other losses to KWD 2,609,939.

(a) Costs of operating temporary offices in Bahrain

(i) Facts and contentions

293. The Claimant asserts that, due to the exceptional circumstances in Kuwait, it decided in September 1990 to set up temporary offices in the State of Bahrain ("Bahrain") to allow it to continue its development activities and obligations. It seeks a total of KWD 1,046,905 as compensation for the

costs of operating in Bahrain during the period November 1990 to May 1992, including additional office expenses (being office rent, utility charges, municipality fees, maintenance expenses, public relation expenses, the costs of purchasing office furniture, equipment and computers and freight charges for shipping documents from Bahrain to Kuwait) and employee-related expenses (such as salaries and social security contributions paid in respect of approximately 20 temporary staff hired in Bahrain, social security contributions paid in respect of approximately 30 permanent staff relocated from Kuwait to Bahrain, hotel accommodation paid and cars provided to permanent staff, the costs of storing furniture belonging to permanent staff and other miscellaneous costs).

294. The Claimant's main offices in Kuwait remained open during the period of Iraq's invasion and occupation of Kuwait and were staffed by approximately 100 of the Claimant's permanent employees. According to the Claimant, these employees worked during this period to ensure a flow of documents to the temporary offices in Bahrain, as well as to protect valuable documents and assets including computer hardware in the main offices.

295. In the article 34 notification, the Claimant was requested to explain why it continued to operate the temporary offices in Bahrain after the liberation of Kuwait until May 1992. In its response, the Claimant asserted that it continued to operate the temporary offices in order to avert any interruption of its activities until its main offices in Kuwait resumed their "full operational capacity". The Claimant also asserted that Kuwait's infrastructure, particularly its communications sector, was not operating efficiently after the liberation of Kuwait and noted that it had prepaid rental agreements for its temporary offices in Bahrain that did not end until December 1992. ^{37/} In addition, the Claimant stated that the temporary offices in Bahrain remained open after the liberation of Kuwait in order to house staff who could not obtain entry visas to Kuwait and to receive and dispatch any mail or other correspondence.

(ii) Analysis and valuation

296. The Panel finds that the Claimant's decision to establish and operate temporary offices in Bahrain was reasonable in the circumstances and that the reasonable costs of so doing are compensable in principle, subject to deductions for costs that would ordinarily have been incurred at its operations in Kuwait. However, the Panel finds that it was not reasonable for the temporary offices in Bahrain to be maintained beyond 31 May 1991 when it was generally considered safe for the population of Kuwait to return in large numbers and for Government of Kuwait employees to resume their normal jobs. ^{38/} The evidence is insufficient to demonstrate that, in order to continue its development operations and aid activities, the Claimant needed to keep open its temporary offices in Bahrain beyond the end of May 1991.

297. The Panel therefore concludes that compensation for the costs claimed should be, with one exception, limited to the period from 1 November 1990 to 31 May 1991. The exception relates to the costs of office rent, which the Panel considers should be compensated to the end of November 1991 when the first rental agreement for office space in Bahrain expired.

298. Based on its findings, the Panel recommends an award of USD 302,052 (KWD 87,293) for costs of operating temporary offices in Bahrain.

(b) Costs of operating permanent offices in Kuwait

(i) Facts and contentions

299. As noted in paragraph 294 above, the Claimant's main offices in Kuwait remained open during the period of Iraq's invasion and occupation of Kuwait and were staffed by approximately 100 of the Claimant's permanent employees. A further 30 permanent employees were relocated from Kuwait to the Claimant's temporary offices in Bahrain in November 1990.

300. The Claimant asserts that it paid special allowances to its employees in Kuwait as an incentive to encourage them to continue to work in Kuwait under difficult circumstances during the period of Iraq's invasion and occupation. According to the Claimant, the decision to pay the special allowances was made in November 1990. However, the evidence indicates that this decision was not made until April 1991. The Claimant seeks the amount of KWD 47,271 as compensation for its payment of the special allowances.

301. The Claimant also seeks the amount of KWD 576,680 as compensation for rent paid in advance on its main office premises in Kuwait for the period August 1990 to December 1992. The Claimant asserts that it was unable to utilize its main office premises during this period, but, as stated in paragraph 294 above, the Claimant also asserts that its main offices in Kuwait remained open during the period of Iraq's invasion and occupation of Kuwait.

(ii) Analysis and valuation

302. The Panel finds that the special allowances paid to the Claimant's employees in Kuwait cannot be considered as incentive payments to staff to continue to work in Kuwait under difficult circumstances, as alleged. The evidence fails to demonstrate that the decision to pay the special allowances was made during the period of Iraq's invasion and occupation of Kuwait, or that the Claimant was bound to pay the special allowances pursuant to a promise or legal obligation that existed during that same period. Consequently, the Panel finds that the claim for the special allowances is not compensable.

303. With regard to the claim for prepaid rent, the evidence indicates that the Claimant's main office premises in Kuwait were utilized during and after the period of Iraq's invasion and occupation of Kuwait. The Panel finds, therefore, that the Claimant failed to demonstrate that it sustained a loss in respect of its payment of rent on its main office premises in Kuwait during the period August 1990 to December 1992. Consequently, the Panel finds that the claim for prepaid rent is not compensable.

(c) Costs of payments to staff

(i) Facts and contentions

304. In addition to the employee-related costs noted above, the Claimant seeks the amount of KWD 756,312 as compensation for a variety of payments it made to staff who stayed in Kuwait, relocated to Bahrain or left Kuwait for other countries. The Claimant asserts that each of these

payments, which are described below, was made as a direct result of Iraq's invasion and occupation of Kuwait.

a. Payment for unused annual leave - KWD 48,183

305. The Claimant asserts that its employees were unable to "enjoy" annual vacation during 1990 as a result of Iraq's invasion and occupation of Kuwait. The Claimant therefore allegedly decided in April 1991 to compensate permanent employees in Kuwait and Bahrain whose unused annual leave exceeded 120 days as at 31 December 1990 by paying them for each day in excess of 120 days. The evidence indicates that, pursuant to the Claimant's existing policy on annual leave, employees were entitled to between 30 and 60 days of annual leave but were not allowed to accumulate unused annual leave days beyond 120 days. The Claimant seeks the amount of KWD 48,183 as compensation for payments it made to compensate its employees for unused annual leave days in excess of 120 days.

b. Payment of "one-month basic salary compensation" - KWD 61,362

306. The Claimant asserts that Iraq's invasion and occupation of Kuwait inflicted financial losses and emotional suffering on its employees. It further asserts that, in order to minimize this suffering and compensate its employees for the loss of personal belongings, it decided in April 1991 to pay one-month of basic salary to its permanent staff. The Claimant seeks the amount of KWD 61,362 as compensation for one-month basic salary payments it made to 182 employees.

c. Payment of "rewards" to resigning staff - KWD 555,654

307. According to the Claimant, certain of its permanent employees who left Kuwait during the period of Iraq's invasion and occupation of Kuwait were unable, because of their respective nationalities, to return to Kuwait after its liberation. The Claimant therefore allegedly decided in April 1991 to offer each of these employees the option to (a) resign their employment effective 1 June 1991 and receive payment of the equivalent of 12 months' salary as a reward; or (b) continue their employment with the Claimant with the understanding that if, upon the resumption of normal operations at the Claimant's main offices in Kuwait, they remained unable to return to Kuwait, they would resign their employment and receive payment of the equivalent of three months' salary. The Claimant seeks the amount of KWD 555,654 in respect of payments made to employees who resigned in 1991, 1992 and 1994.

d. Payment of airfares for employees to return to Kuwait - KWD 15,864

308. The Claimant seeks the amount of KWD 15,864 as compensation for airfare ticket costs it incurred to fly approximately 20 employees back to Kuwait following its liberation. The Claimant asserts that these costs were incurred as a direct result of Iraq's invasion and occupation of Kuwait.

e. Payment of "extra work" allowances - KWD 75,248

309. The Claimant asserts that in November 1990 it decided to pay the administrative staff working at its temporary offices in Bahrain a monthly allowance of KWD 150 to compensate them for extra hours worked. In June 1991, the Claimant decided to pay administrative staff working in Kuwait the

same monthly allowance of KWD 150 that their counterparts in Bahrain were receiving. The Claimant seeks the total amount of KWD 75,248 as compensation for extra work allowances paid to administrative staff in Bahrain and Kuwait in 1990, 1991 and 1992.

(ii) Analysis and valuation

310. The Panel does not consider, in respect of the claim for compensation paid to employees for unused annual leave days, that the Claimant incurred a loss by paying its employees for annual leave days accrued beyond the 120-day limit set by the Claimant. Moreover, the Panel finds in any event that the Claimant's decision in April 1991 to pay for the unused annual leave was not a direct result of Iraq's invasion and occupation of Kuwait. Consequently, the Panel finds that the claim is not compensable.

311. With regard to the claim for payment of one-month basic salary compensation, the Panel finds that the evidence is insufficient to establish that the payments were made to compensate employees for losses in respect of which they themselves could have sought compensation from the Commission. Nor does the evidence demonstrate that the Claimant required its employees to prove their losses before they were entitled to receive payment of one-month basic salary compensation. Consequently, the Panel finds that the claim is not compensable.

312. The Panel finds that the claim for payment of rewards to staff who resigned their employment because they were not allowed to return to Kuwait is not compensable, in principle, since the Claimant failed to demonstrate that the rewards were paid as a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation in respect thereof.

313. With regard to the claim for airfare ticket costs, the Panel notes that it has previously found that costs incurred in bringing individuals back to the States from where they had been evacuated are not compensable, since they cannot be considered evacuation costs. ^{39/} For this same reason, the Panel finds that the claim for airfare ticket costs is not compensable.

314. Lastly, with regard to the claim for "extra work" allowances paid to administrative staff in Bahrain and Kuwait, the Panel finds that the Claimant failed to demonstrate that these allowances were paid or, that in any event, they were paid as a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore finds that the claim is not compensable.

(d) Costs of portfolio validation

(i) Facts and contentions

315. The Claimant asserts that it derives revenue from income earned on investments and that, prior to Iraq's invasion and occupation of Kuwait, its staff in Kuwait audited its portfolio of investments. The Claimant further asserts that in December 1990 it decided to engage the services of the United Bank of Kuwait in London to audit its portfolio of investments. According to the Claimant, it was more cost-efficient to have the United Bank of Kuwait audit the portfolio directly than for it to relocate or hire staff to perform the work at its temporary offices in Bahrain. The Claimant seeks the

total amount of KWD 182,772 as compensation for the fees it paid to the United Bank of Kuwait to audit its portfolio of investments for the years 1991 and 1992.

(ii) Analysis and valuation

316. The Panel finds that the evidence fails to demonstrate that the costs incurred by the Claimant after December 1990 to engage the United Bank of Kuwait to audit its portfolio of investments were additional to those that the Claimant would ordinarily have incurred at its offices in Kuwait to audit the portfolio. Consequently, the Panel finds that the claim for the costs of portfolio validation is not compensable.

(e) Recommendation

317. The Panel recommends an award in the amount of USD 302,052 (KWD 87,293) for other losses.

3. Recommendation for the Arab Fund for Economic and Social Development

318. Based on its findings regarding the Claim of the Arab Fund for Economic and Social Development, the Panel recommends compensation in the amount of USD 6,758,927.

Table 9. Recommended compensation for the Arab Fund for Economic and Social Development

<u>Loss type</u>	<u>Recommended compensation (USD)</u>
Contract	6,456,875
Other	302,052
<u>Total</u>	<u>6,758,927</u>

I. The Joint Program Production Institution for the Arab Gulf Countries (UNCC Claim No. 5000135)

319. The Joint Program Production Institution for the Arab Gulf Countries 40/ (the “Claimant”) is an international organization established in 1976 by the member countries of the Gulf Cooperation Council to produce and sell radio and television programmes highlighting the history, art, culture and ideals of Arab countries. It seeks a total of USD 16,856,644 as compensation for contract, business transaction or course of dealing, other tangible property, payment or relief to others and other losses.

1. Contract

(a) Facts and contentions

320. The Claimant seeks the amount of USD 24,387 as compensation for rent paid in advance on its main office premises in Kuwait for the period August to December 1990. The Claimant asserts that it was unable to use its main office premises during this period because of Iraq’s invasion and occupation of Kuwait and that, as a result, it incurred rent costs for which it received no benefit.

321. The Claimant also seeks the amount of USD 4,092 as compensation for annual fees that it allegedly paid in advance to its auditors in Kuwait for auditing services that “could not [be] used due to Iraq’s invasion and occupation of Kuwait”. Although the Claimant asserts that it received no benefit from annual fees paid in respect of the seven-month period of Iraq’s invasion and occupation of Kuwait, the evidence indicates that the Claimant’s financial statements for 1990 and 1991 were audited in 1992 at no additional cost to the Claimant. The evidence also indicates that the Claimant paid part of the 1990 annual fees and all of the 1991 annual fees to its auditors in Kuwait in December 1991 and February 1992.

(b) Analysis and valuation

322. With regard to the claim for prepaid rent, the evidence demonstrates that the Claimant was unable to use its main office premises in Kuwait for most of the period August to December 1990. The evidence further demonstrates that immediately prior to Iraq’s invasion and occupation of Kuwait the Claimant carried out commercial activities at these premises, which contributed to the overall revenues of the Claimant. The Panel finds, therefore, that in accordance with the principles set out in paragraph 31 above, the Claimant’s loss of use of these office premises during the period of Iraq’s invasion and occupation of Kuwait is amenable to monetary evaluation. The Panel further finds that, since the Claimant has not submitted a claim for loss of profits, the loss of use of the office premises should be measured by the amount of prepaid rent referable to the period that the Claimant was unable to use the office premises as a direct result of Iraq’s invasion and occupation of Kuwait.

323. With regard to the claim for annual fees paid for auditing services, the Panel finds that the Claimant has failed to demonstrate that it incurred a loss in connection with its payment of the annual fees. Consequently, this claim is not compensable.

(c) Recommendation

324. The Panel recommends an award of USD 24,387 for contract losses.

2. Business transaction or course of dealing

(a) Facts and contentions

325. The Claimant seeks the amount of USD 373,120 as compensation for accounts receivable for television programmes that it allegedly sold and delivered to the Public Radio and Television Corp. of Iraq between December 1981 and May 1990. According to the Claimant, three television programmes were sold and delivered to Iraq on 7 May 1990 for the sum of KWD 29,093. The only other sale and delivery of television programmes to Iraq in 1990 allegedly occurred on 16 January 1990.

326. The Claimant also seeks the amount of USD 71,746 as compensation for a judgement award owed to it by a Kuwaiti company pursuant to the terms of a judgement issued by a Kuwaiti court on 22 March 1990. The Claimant asserts that, as a direct result of Iraq's invasion and occupation of Kuwait, the Kuwaiti company "did not start any commercial activities in Kuwait" and did not have a "permanent address". Therefore, according to the Claimant, it was unable to collect the judgement award from the Kuwaiti company.

327. The evidence indicates that the judgement award was based on the non-payment of licensing fees by the Kuwaiti company and that the Claimant started its court action against the Kuwaiti company for recovery of these licensing fees in 1984.

(b) Analysis and valuation

328. Applying the principles set out in paragraphs 23 to 25 above, the Panel finds that the amounts owed to the Claimant by Iraq for television programmes sold and delivered prior to 2 May 1990 are outside the jurisdiction of the Commission as debts or obligations arising prior to 2 August 1990. The Panel further finds that, with respect to the three television programmes allegedly sold and delivered to Iraq after 2 May 1990, the Claimant failed to establish that its performance, i.e. delivery of the television programmes, was rendered after 2 May 1990. The Panel therefore recommends no award of compensation for accounts receivable for television programmes.

329. With regard to the claim for the outstanding judgement award, the Panel notes that in the E4(1) Report, the "E4" Panel considered claims for uncollectable receivables or "bad debts" owed by businesses or individuals located in Kuwait prior to Iraq's invasion. The "E4" Panel required that claimants demonstrate that Iraq's invasion and occupation of Kuwait was a "separate and distinct" cause rendering the receivables uncollectable, as well as demonstrate that the debtor's inability to pay was a direct result of Iraq's invasion and occupation of Kuwait. 41/

330. The Panel finds that this approach is applicable here. The Panel further finds that, based on the evidence submitted, the debt owed to the Claimant by the Kuwaiti company was uncollectable prior to Iraq's invasion and occupation of Kuwait. Accordingly, in the Panel's view, the Claimant did

not demonstrate that it was unable to collect the debt as a direct result of Iraq's invasion and occupation of Kuwait. The claim for the outstanding judgement award is therefore not compensable.

(c) Recommendation

331. The Panel recommends no award of compensation for business transaction or course of dealing losses.

3. Other tangible property

(a) Facts and contentions

332. The Claimant asserts that, during the period of Iraq's invasion and occupation of Kuwait, nearly all of its fixed assets in Kuwait such as furniture, office equipment, television production equipment, television programmes and motor vehicles were stolen or destroyed by Iraqi forces. The Claimant seeks the total amount of USD 13,921,456 as compensation for the value of its tangible property losses, broken down as follows:

(a) Furniture and equipment – USD 1,176,705;

(b) Motor vehicles – USD 47,873; and

(c) Television programmes – USD 12,696,878.

333. According to the Claimant, the amount claimed for furniture and equipment losses is based on the depreciated historical cost of these assets, while the amount claimed for motor vehicle losses is based on the historical market value of these assets as at 2 August 1990. The Claimant asserts that the amount claimed for television programme losses is based on the depreciated historical costs incurred by it to produce the programmes, rather than the historical market value of each television programme as at the date of its loss.

(b) Analysis and valuation

334. The Panel finds that the evidence is sufficient to demonstrate that tangible property belonging to the Claimant was lost or damaged in Kuwait as a direct result of Iraq's invasion and occupation of Kuwait. Moreover, the Panel finds that the methods used by the Claimant to calculate the amount of its losses are appropriate in the circumstances. The evidence does not, however, support the full amount claimed in respect of the tangible property losses.

(c) Recommendation

335. The Panel recommends an award of USD 4,505,547 for other tangible property losses.

4. Payment or relief to others

(a) Facts and contentions

336. The Claimant seeks the amount of USD 149,262 as compensation for salary payments that were made to certain of its employees following the liberation of Kuwait. According to the Claimant, because its office premises in Kuwait were occupied and looted by Iraqi forces during the period of Iraq's invasion and occupation of Kuwait, its employees were unable to perform their normal work duties and were therefore not paid their normal salaries during this period. Following the liberation of Kuwait, the Claimant paid 10 months of "back salary" to nine employees who were citizens of Kuwait or other member countries of the Gulf Cooperation Council.

337. The Claimant asserts that the "back salary" payments were made by it pursuant to a Government of Kuwait decree. The evidence indicates, however, that this decree was limited in its application to citizens of Kuwait or other member countries of the Gulf Cooperation Council who were employees of the Government of Kuwait.

338. The Claimant also seeks the amount of USD 1,268 as compensation for airfare ticket costs it incurred to fly four non-Kuwaiti employees back to Kuwait following its liberation. The Claimant asserts that, but for Iraq's invasion and occupation of Kuwait, it would not have incurred these costs.

(b) Analysis and valuation

339. The Panel finds that the decree issued by the Government of Kuwait concerning the payment of "back salary" did not, on its own terms, apply to the Claimant and its employees. The Panel further finds that the Claimant's decision to pay "back salary" to its employees was an independent decision that broke the chain of causation between the costs incurred and Iraq's invasion and occupation of Kuwait. Consequently, the claim for salary payments is not compensable.

340. With regard to the claim for airfare ticket costs, the Panel notes that it has previously found that costs incurred in bringing individuals back to the States from where they had been evacuated are not compensable, since they cannot be considered evacuation costs. ^{42/} For this same reason, the Panel finds that the claim for airfare ticket costs is not compensable.

(c) Recommendation

341. The Panel recommends no award of compensation for payment or relief to others.

5. Other

(a) Facts and contentions

342. The Claimant requests that it be awarded the amount of USD 2,311,313 as interest on its losses, running from 26 February 1991 to 1 May 1994. The Claimant also requests that an additional daily amount of USD 1,993 be awarded to it as interest on its losses, running from 1 May 1994 to the date of payment of compensation.

(b) Analysis and valuation

343. The Panel finds that the Claimant's claim for interest falls within the scope of Governing Council decision 16, as discussed in paragraph 46 above. Consequently, the Panel makes no recommendation in respect of this claim.

(c) Recommendation

344. The Panel makes no recommendation in respect of other losses.

6. Recommendation for The Joint Program Production Institution for the Arab Gulf Countries

345. Based on its findings regarding the Claim of the Joint Program Production Institution for the Arab Gulf Countries, the Panel recommends compensation in the amount of USD 4,529,934.

Table 10. Recommended compensation for The Joint Program Production Institution for the Arab Gulf Countries

<u>Loss type</u>	<u>Recommended compensation (USD)</u>
Contract	24,387
Business transaction or course of dealing	nil
Other tangible property	4,505,547
Payment or relief to others	nil
Other ^{a/}	no recommendation
<u>Total</u>	<u>4,529,934</u>

^{a/} This loss type includes an interest component. See paragraph 46 above.

J. Arab Towns Organization (UNCC Claim No. 5000136)

346. The Arab Towns Organization 43/ (the “Claimant”) is an international organization established in 1967, with its headquarters in Kuwait. Its main objective is to develop and raise the standard of municipal services and utilities of Arab towns.

347. The Claimant originally sought compensation in the total amount of KWD 225,982. However, in a July 1997 submission, the Claimant increased the total amount of the Claim to KWD 522,222.

1. Contract

(a) Facts and contentions

348. The Claimant seeks the amount of KWD 187,510 as compensation for increased costs that it allegedly incurred due to the delayed construction of a new headquarters building in Kuwait. According to the Claimant, on 4 March 1990 it entered into a contract with a contractor for the construction of a new headquarters building, to be substantially completed by 28 August 1991 at a cost of KWD 1,332,550. Construction began on 29 April 1990, but it allegedly ceased after 2 August 1990 because of “military operations or threat of military action and the breakdown of civil order in Kuwait”. The Claimant asserts that the construction contract was thus “considered terminated by both parties without any notice from any party”.

349. According to the Claimant, as at 2 August 1990, construction of the new building was approximately 6 per cent complete and the value of the completed work totalled KWD 82,480. Following the liberation of Kuwait, the Claimant allegedly met with the contractor to discuss the possibility of resuming construction. The contractor expressed its willingness to continue, but only on the condition that a new contract with a revised price be negotiated. On 29 December 1991, the Claimant and the contractor entered into a revised contract for completion of the new building.

350. Under the terms of the revised contract, the Claimant agreed to pay the contractor the amount of KWD 1,437,580 to complete construction. This amount included a 15 per cent increase to the value of KWD 1,250,070 that remained under the original contract. The Claimant attributes this 15 per cent increase in cost, i.e. KWD 187,510, to Iraq’s invasion and occupation of Kuwait.

351. In the article 34 notification, the Claimant was requested to identify the specific causes of the increased contract price. In its response, the Claimant asserts that the incremental cost of completion of the new building following Kuwait’s liberation was due to an increase in the price of building materials caused by a shortage of available materials in Kuwait and an increase in the cost of shipping materials into Kuwait.

352. The evidence does not indicate whether the construction site or any equipment and materials at the site were damaged during the period of Iraq’s invasion and occupation of Kuwait.

353. The Claimant also seeks the amount of KWD 21,000 as compensation for additional consulting costs allegedly incurred by it in connection with the delayed construction of its new headquarters building. The Claimant asserts that it agreed in late 1989 to pay a Kuwaiti engineering company a monthly consulting fee of KWD 5,250 to supervise the construction of the new headquarters building from March 1990. The Claimant further asserts that, because both the original and revised construction contracts provided for a 16-month period of completion, the consulting fees paid in respect of the four-month period prior to Iraq's invasion and occupation of Kuwait were "lost". The Claimant did not, however, provide proof of payment for any of the consulting costs allegedly paid to the Kuwaiti engineering company.

(b) Analysis and valuation

354. Applying the principles set out in paragraphs 27 and 28 above, the Panel finds that the claim for the construction contract price increase is compensable to the extent that it is for losses attributable to factors linked directly to Iraq's invasion and occupation of Kuwait. However, the Claimant failed to provide sufficient evidence demonstrating that the contract price increase was attributable to such factors. Accordingly, the Panel finds that the claim for the construction contract price increase is not compensable.

355. With regard to the claim for additional consulting costs, the Panel finds that the Claimant failed to demonstrate that any such costs were incurred by it as a direct result of Iraq's invasion and occupation of Kuwait. The evidence does not demonstrate that, as a direct result of Iraq's invasion and occupation of Kuwait, an additional four months were required to complete construction of the new building, as alleged. Consequently, the Panel finds that the claim for additional consulting costs is not compensable.

(c) Recommendation

356. The Panel recommends no award of compensation for contract losses.

2. Other tangible property

(a) Facts and contentions

357. The Claimant originally sought the amount of KWD 6,976 as compensation for the value of furniture, fixtures and office equipment that were looted or destroyed at its office premises in Kuwait. In a submission dated July 1997, the Claimant increased the amount of its claim for tangible property losses to KWD 45,305.

(b) Analysis and valuation

358. The Panel finds that the evidence is sufficient to demonstrate that tangible property belonging to the Claimant was lost in Kuwait as a direct result of Iraq's invasion and occupation of Kuwait. The evidence does not, however, support the full amount claimed in respect thereof.

(c) Recommendation

359. The Panel recommends an award of USD 35,720 (KWD 10,323) for other tangible property losses.

3. Income-producing property

(a) Facts and contentions

360. The Claimant seeks the amount of KWD 204,316 as compensation for losses it classified under the loss type: income-producing property. This claim was first presented in the Claimant's submission dated July 1997, but no statement or explanation of the claim was provided at that time.

361. In the article 34 notification, the Claimant was requested to explain the nature of its claim for income-producing property losses. The Claimant did not provide a response to this request, nor did it provide any evidence in support this claim.

(b) Analysis and valuation

362. In accordance with the principles set out in paragraph 18 above, the Panel finds that the claim for income-producing property losses is not admissible since it was first asserted by the Claimant as a new claim after 1 January 1997. Moreover, the Panel finds that the claim is wholly unsupported by either a statement of claim or any evidence.

(c) Recommendation

363. The Panel recommends no award of compensation for income-producing property losses.

4. Other

(a) Facts and contentions

364. The Claimant seeks the amount of KWD 7,996 as compensation for Kuwaiti dinar banknotes that could not be exchanged by it. It asserts that, in September 1990, its General Manager arranged for 1,254,130 Moroccan dirhams to be exchanged for Kuwaiti dinars at a bank in Jordan and then distributed the majority of this money to the Claimant's employees in Kuwait. It further asserts that undistributed Kuwaiti dinar banknotes totalling KWD 7,996 were thereafter deposited by the General Manager into a safe at the Claimant's office premises in Kuwait. These office premises were subsequently destroyed by fire in early October 1990 and the Claimant was allegedly, as a result, unable to open the safe until December 1991. According to the Claimant, it discovered that the Kuwaiti dinar banknotes in the safe formed part of a series of banknotes that had been cancelled by the Government of Kuwait on 7 October 1990. The Claimant submitted the banknotes from the safe for verification by the Commission in September 2000.

365. The Claimant also seeks the amount of KWD 2,500 as compensation for costs it incurred to prepare and document its Claim. In addition, the Claimant requests compensation for interest on its

losses. In its initial submission, the Claimant requested an unspecified amount of compensation for “delay in repayment” of its losses. In its submission dated July 1997, the Claimant asserted a claim for interest in the amount of KWD 53,595.

(b) Analysis and valuation

366. Applying the principles set out at paragraph 203 above, the Panel finds that the claim for cancelled Kuwaiti dinar banknotes is compensable in principle. The evidence demonstrates that the Claimant received the cancelled banknotes during a currency exchange in Jordan in September 1990 and that it was unable to avoid the losses for which it seeks compensation.

367. For the reason set out in paragraph 37 above, the Panel makes no recommendation with respect to the claim for costs incurred by the Claimant to prepare and document its Claim.

368. The Panel finds that the Claimant’s claim for interest falls within the scope of Governing Council decision 16, as discussed in paragraph 46 above. Consequently, the Panel makes no recommendation in respect of this claim.

(c) Recommendation

369. The Panel recommends an award of USD 27,668 (KWD 7,996) for other losses, but makes no recommendation in respect of the claims for interest and claims preparation costs.

5. Recommendation for the Arab Towns Organization

370. Based on its findings regarding the Claim of the Arab Towns Organization, the Panel recommends compensation in the amount of USD 63,388.

Table 11. Recommended compensation for the Arab Towns Organization

<u>Loss type</u>	<u>Recommended compensation (USD)</u>
Contract	nil
Other tangible property	35,720
Income-producing property	nil
Other ^{a/}	27,668
<u>Total</u>	<u>63,388</u>

^{a/} This loss types includes an interest component. See paragraph 46 above.

VII. SUMMARY OF RECOMMENDATIONS

371. Based on the foregoing, the Panel recommends the following amounts of compensation:

- (a) The Arab Republic of Egypt: USD 9,368,845;
- (b) The Islamic Republic of Iran: USD 9,821,393;
- (c) The Democratic Socialist Republic of Sri Lanka: USD 49,993;
- (d) The Republic of Tunisia: USD 92,417;
- (e) The Inter-Arab Investment Guarantee Corporation: USD 58,761;
- (f) The Gulf Arab States Educational Research Center: USD 215,927;
- (g) The Arab Planning Institute – Kuwait: USD 796,069;
- (h) Arab Fund for Economic and Social Development: USD 6,758,927;
- (i) The Joint Program Production Institution for the Arab Gulf Countries: USD 4,529,934;
- (j) Arab Towns Organization: USD 63,388.

Geneva, 9 November 2001

(Signed) Mr. Bjørn Haug
Chairman

(Signed) Mr. Georges Abi-Saab
Commissioner

(Signed) Mr. Michael J. Bonell
Commissioner

Notes

1/ Governing Council decision 10, “Provisional Rules for Claims Procedure”, (S/AC.26/1992/10).

2/ “F1” claims are the claims, other than environmental claims, of international organizations and all Governments other than the Governments of the Hashemite Kingdom of Jordan (“Jordan”), the State of Kuwait (“Kuwait”) and the Kingdom of Saudi Arabia (“Saudi Arabia”).

3/ The Inter-Arab Investment Guarantee Corporation (UNCC Claim No. 4002393) seeks compensation for claims preparation costs in the amount of 1,250 Kuwaiti dinars (KWD). The Arab Planning Institute – Kuwait (UNCC Claim No. 4002421) originally sought compensation for claims preparation costs in the amount of KWD 16,000 and interest in the amount of KWD 502,491, but subsequently reduced the amounts claimed for claims preparation costs and interest to KWD 12,000 and KWD 68,260, respectively. The Joint Program Production Institution for the Arab Gulf Countries (UNCC Claim No. 5000135) makes a claim for interest in the amount of 2,311,313 United States dollars (USD). The Arab Towns Organization (UNCC Claim No. 5000136) seeks compensation for claims preparation costs in the amount of KWD 2,500 and interest in the amount of KWD 53,595. The Arab Towns Organization introduced its claim for interest in a submission dated July 1997.

4/ Category “C” claims are individual claims for damages up to USD 100,000 while category “D” claims are individuals claims for damages above USD 100,000. Category “E” claims are claims filed on behalf of corporations. Pursuant to Governing Council decision 1 (S/AC.26/1991/1), as confirmed in paragraph 3 of Governing Council decision 13 (S/AC.26/1992/13), questions of multiple recovery do not arise in relation to payments made under category “A” (departure claims) and category “B” (claims for serious personal injury and death). It was, therefore, not necessary to carry out cross-category checks in respect of claims in categories “A” and “B”.

5/ “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), (the “F1(1.1) Report”), paras. 47-64. See also “Report and recommendations made by the Panel of Commissioners concerning part two of the first instalment of claims by Governments and international organizations (category ‘F’ claims)”, (S/AC.26/1998/4), (the “F1(1.2) Report”), para. 45; “Report and recommendations made by the Panel of Commissioners concerning the second instalment of ‘F1’ claims”, (S/AC.26/1998/12), (the “F1(2) Report”), para. 75; “Report and recommendations made by the Panel of Commissioners concerning the third instalment of ‘F1’ claims”, (S/AC.26/1999/7), (the “F1(3) Report”), para. 75; “Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of ‘F1’ claims”, (S/AC.26/2000/13), (the “F1(4) Report”), para. 12; and “Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of ‘F1’ claims”, (S/AC.26/2001/15), (the “F1(5) Report”), para. 11.

6/ See the F1(1.1) Report, paragraph 62.

7/ These determinations were communicated by a letter dated 11 March 1998 from the secretariat to the Permanent Missions of States and Offices of International Organizations.

8/ See, for example, “Report and recommendations made by the Panel of Commissioners concerning the second instalment of ‘E2’ claims”, (S/AC.26/1999/6), (the “E2(2) Report”), para. 54.

9/ This finding is consistent with that of other panels; see, for example, “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘F2’ claims”, (S/AC.26/1999/23), para. 22.

10/ “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘E2’ claims”, (S/AC.26/1998/7), para. 90.

11/ *Ibid.*, paragraph 72.

12/ The F1(1.2) Report, paragraphs 70-72.

13/ See “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘F3’ claims”, (S/AC.26/1999/24), (the “F3(1) Report”), paras. 59-64; and “Report and recommendations made by the Panel of Commissioners concerning the second instalment of ‘F3’ claims”, (S/AC.26/2001/7), paras. 35-39.

14/ The F3(1) Report, paragraph 62.

15/ *Ibid.*, paragraph 63.

16/ The F1(2) Report, paragraph 81. See also the F1(3) Report, paragraphs 77-80.

17/ See also the F1(3) Report, paragraphs 153-156; the E2(2) Report, paragraphs 74-84; and the F3(1) Report, paragraphs 49-58.

18/ See, for example, the F1(1.1) Report, paragraph 100; the F1(1.2) Report, paragraph 74; and the F1(2) Report, paragraph 126.

19/ “United Nations Compensation Commission, Claim Forms for Governments and International Organizations (Form F)”, Part “F”, Summary of Losses Claimed.

20/ The Panel notes that the evidence does not demonstrate that the Claimant assessed any fines or penalties against Iraqi Airways for regulatory infractions that occurred on or after 2 August 1990. Accordingly, the Panel does not need to comment on the compensability of fines and penalties relating to such infractions.

21/ See “Report and recommendations made by the Panel of Commissioners concerning the first instalment of claims for departure from Iraq or Kuwait (category ‘A’ claims)”, (S/AC.26/1994/2), p. 27.

22/ The F1(1.1) Report, paragraphs 92-96; the F1(2) Report, paragraphs 100-111; and the F1(3) Report, paragraphs 125-127.

23/ The F1(5) Report, paragraph 24.

24/ *Ibid.*, paragraph 25.

25/ See, for example, articles 11 and 12 of the 1907 Hague Convention V Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, as cited in A. Roberts and R. Gueleff, eds., Documents On The Laws of War, 3rd ed. (New York, Oxford University Press Inc., 2000), p. 89.

26/ “Report and recommendations made by the Panel of Commissioners concerning the third instalment of ‘E2’ claims”, (S/AC.26/1999/22), para. 73.

27/ Ibid.

28/ See also the F1(5) Report, paragraph 251.

29/ See also the F1(4) Report, paragraph 71.

30/ The Panel has previously found implicitly that the land territory of Iran was not the subject of military operations or the threat of military action within the meaning of Governing Council decision 7. See the F1(1.1) Report, paragraphs 40 and 96.

31/ The F1(2) Report, paragraphs 117-118; the F1(3) Report, paragraphs 134-135; and the F1(4) Report, paragraphs 23-24.

32/ The F1(5) Report, paragraphs 281 and 284.

33/ “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘E4’ claims”, (S/AC.26/1999/4), (the “E4(1) Report”), para. 153.

34/ See paragraph 218 of this Report.

35/ The tangible property in question was returned by Iraq under supervision of the Coordinator of the United Nations Return of Property operation that commenced in 1991.

36/ See paragraph 251 of this Report.

37/ The evidence indicates that in October and November 1990, the Claimant entered into three separate rental agreements for office space in Bahrain: one to end on 30 November 1991; another to end on 14 December 1991; and the third to end on 31 March 1994. It also indicates that in November 1991, the Claimant entered into a supplementary rental agreement, whereby the lease ending 30 November 1991 was extended for a further period of 12 months through to November 1992.

38/ At page 6 of the F3(1) Report, the “F3” Panel notes that the period from 27 February to 31 May 1991 is referred to and used by the Government of Kuwait to denote the “emergency period” during which reconstruction and repair work commenced in Kuwait.

39/ The F1(2) Report, paragraphs 109-111.

40/ In its Claim, The Joint Program Production Institution for the Arab Gulf Countries refers interchangeably to itself as the “Gulf Cooperation Council – Joint Program Production Institute”.

41/ The E4(1) Report, paragraphs 207-215.

42/ The F1(2) Report, paragraphs 109-111.

43/ The Arab Towns Organization originally submitted its Claim in the name of the “Arabian Cities Organization”. However, in its response to the article 34 notification, the Arab Towns Organization advised that its official name in English is the “Arab Towns Organization”.
