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COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS
CONCERNING THE FIRST INSTALMENT OF “E4” CLAIMS

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Introduction

1. At its twenty-fourth session, held on 23-24 June 1997, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed Messrs. Robert R. Briner (Chairman), Alan J. Cleary and Lim Tian Huat as the Panel of Commissioners (the "Panel") charged with reviewing "E4" claims. The "E4" population consists of claims submitted by Kuwaiti entities, other than oil sector claims, eligible to file claims under the Commission's "Claim Forms for Corporations and Other Entities" ("Form E").

2. The first instalment of 45 "E4" claims were submitted to the Panel on 20 February 1998, in accordance with article 32 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules").

3. Pursuant to article 38 of the Rules, this report contains the Panel's recommendations to the Governing Council concerning the first instalment claims.

I. OVERVIEW OF THE FIRST INSTALMENT CLAIMS

4. The first instalment claims were randomly selected from the population of approximately 2,750 "E4" claims to present a representative sample of standard and "unusually large or complex" claims found in this claim population. A random selection was used to enable the Panel, by its resolution of these claims, to establish a comprehensive methodology that can be consistently applied in resolving all "E4" claims.

5. The first instalment claims allege losses aggregating Kuwaiti dinars ("KD") 77,252,103 (US$267,308,315). The claimants also assert claims for interest aggregating KD 2,814,713 (US$9,739,491) and claim preparation costs aggregating KD 119,476 (US$413,412). Six claims assert individual losses ranging between KD 3 million and KD 30 million (i.e., between approximately US$10 million and US$100 million) and account for nearly 70 per cent of the total losses asserted by the first instalment claims.

6. This is consistent with the "E4" claims population wherein 172 "unusually large or complex" claims account for approximately 60 per cent of the total losses asserted. The smallest claim in this first instalment totals a little over KD 4,000 (approximately US$13,800).

7. Claims have generally been classified as "unusually large or complex" if the amount claimed is more than KD 3 million (approximately US$10 million) or if, due to the nature of the legal and factual issues raised in the claim or the voluminous nature of the documentation provided in support of the claimed losses, the verification and valuation of the claim is unlikely to be feasible within 180 days.

8. All the claimants in this first instalment operated in Kuwait prior to Iraq's invasion and occupation of Kuwait. Most of these businesses

traded in consumer items, while some dealt in chemicals, construction materials, vehicles, vehicle parts and industrial products. A significant number of claimants were engaged in service industries, e.g., construction and engineering services, real estate and financial services (leasing and foreign exchange dealerships), transportation, travel and travel-related services. Apart from these trading and service industry businesses, one claimant was the sole provider of mobile phone and paging services in Kuwait, three claimants were engaged in agriculture or agriculture-related industries and two claimants were engaged in textile manufacturing.

9. Form E classifies losses as related to contract, business transaction or course of dealing, real property, other tangible property, income-producing property, payment or relief to others and other losses. Form E also allows, at page E1, claims for loss of earnings or profits.

10. Claimants in this instalment have sought compensation under all loss categories identified on Form E, except loss of business transaction or course of dealing. One claimant, Jawad & Haider Y. Abdulhasan Company, asserted a claim for loss of business transaction or course of dealing. However, on review, it was found that the claim related to loss of income-producing property. Accordingly, this element of the claim was reclassified and reviewed under the latter category. The two most common losses alleged in this instalment are loss of tangible property (mainly furniture, fixtures, equipment and stock) and loss of earnings or profits. First instalment claimants also submitted claims for uncollectible receivables, restart costs, interest and claim preparation costs under the "other losses" category.

II. THE PROCEEDINGS

11. Before the first instalment claims were submitted to the Panel, the secretariat undertook a complete review of these claims in accordance with the Rules. The secretariat first carried out a preliminary assessment of the claims, pursuant to article 14 of the Rules, to verify whether the claims met the formal requirements of articles 14(1) and 14(2). For example, the claims were reviewed to ascertain whether they had submitted proof of incorporation or organization under the laws of Kuwait on the date the claim arose, and contained an affirmation by the authorized official for each claimant that the information contained in the claim is correct. The results of this formal review were entered into a centralized database maintained by the secretariat (the "Claims Database").

12. Originally, fifty claims were randomly selected by the secretariat for inclusion in this first instalment. Of these fifty claims, five presented formal deficiencies and were deferred to subsequent instalments. Accordingly, the secretariat issued no notifications pursuant to article 15 of the Rules for the first instalment claims.

13. A substantive review of the first instalment claims was undertaken by qualified professionals (legal officers, accountants and loss adjusters)

within the secretariat, to identify significant legal and factual issues. The results of the review, including the significant issues identified, were recorded in the Claims Database.

14. The Executive Secretary of the Commission submitted reports dated 31 January 1997 and 11 April 1997 to the Governing Council in accordance with article 16 of the Rules. These reports covered, inter alia, the first instalment of “E4” claims. A number of Governments, including the Government of Iraq, submitted to the secretariat for transmission to the Panel additional information and views in response to the Executive Secretary’s reports.

15. For “unusually large or complex” claims, the secretariat prepared narrative claim summaries recording, inter alia, the significant issues identified in the claims. These summaries, which included annotated references to the nature and type of supporting evidence submitted by the claimants, were submitted to the Panel pursuant to article 32 of the Rules.

16. Accordingly, at the conclusion of the (i) preliminary assessment; (ii) substantive review; and (iii) article 16 reporting, the secretariat submitted the following documents to the Panel for consideration:

(a) the claim documents submitted by the claimants;

(b) the preliminary assessment reports prepared by the secretariat under article 14 of the Rules;

(c) the claim summaries and reports prepared by the secretariat;

(d) information and views of Governments, including the Government of Iraq, received in response to the article 16 reports; and

(e) other information, such as legal briefing notes, deemed, under article 32 of the Rules, to be useful to the Panel for its work.

17. The number of claims before the Panel in this instalment, the volume and nature of evidence presented in these claims and the need to develop a comprehensive verification and valuation methodology for all “E4” claims necessitated the use of expert consultants in accordance with article 36(b) of the Rules. The Panel, at its first meeting, retained the services of an internationally-renowned accounting firm and an internationally-renowned loss adjusting firm, selected by a competitive bidding process in accordance with applicable United Nations rules. The Panel’s use of expert consultants in this manner is consistent with Commission practice. (See “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘E2’ claims” (S/AC.26/1998/7) (the “First E2 Report”), para. 265 and supporting notes; and “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 "First F Report"), para. 107 and supporting notes.)

18. The Panel directed the expert consultants to review each claim in accordance with the verification and valuation methodology developed by the Panel (discussed infra) and to submit a detailed report for each claim summarizing the expert consultants' findings.

19. During the period 17-21 January 1998, at the direction of the Panel, four members of the secretariat and one accounting and one loss adjusting consultant travelled to Kuwait to obtain information useful to the Panel in their development of the verification and valuation methodology. The delegation met with governmental agencies, including the Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC"), the Ministry of Planning (Central Statistical Office), the Ministry of Commerce, the Kuwait Chamber of Commerce & Industry, the Public Authority of Industry, several banks, accountants and loss adjusters and a number of claimants.

20. By its first procedural order dated 20 February 1998, the Panel gave notice of its intention to complete its review of the first instalment claims and submit its report and recommendations to the Governing Council within twelve months of 20 February 1998. In this procedural order, the Panel requested the claimants to submit copies of their audited financial statements for the years 1988 to 1993, to the extent they had not already done so. The requested financial statements were required to be submitted on or before 1 June 1998.

21. The largest claim in the first instalment is that of Mobile Telephone Systems Company, requesting compensation for losses in excess of KD 30 million (approximately US$100 million). By its procedural order dated 20 March 1998, the Panel instructed the secretariat to transmit the statement of claim and all other supporting documents filed by this claimant to the Government of Iraq. The same day, the documents were transmitted to the Government of Iraq. The Panel invited the Government of Iraq to submit its response to this claim within 180 days of the date of the procedural order.

22. On 24 April 1998, the Panel issued four additional procedural orders to claimants in this instalment, i.e., Mobile Telephone Systems Company, Kuwait Automotive Imports Company, Sons of Fahad Al-Sultan & Partners Co. W.L.L., and Union Trading Company Abdul-Razaq Al-Rozouki and Partner W.L.L. The Panel also issued a procedural order to Musaad Al-Saleh and Sons Investment Group W.L.L. on 18 June 1998. These claimants were given 90 days to respond to various detailed questions relating to their claims. On 15 September 1998 the Panel issued a procedural order seeking additional clarifications from Sons of Fahad Al-Sultan & Partners Co. W.L.L. This claimant was requested to respond to the additional questions by 6 November 1998. On 17 November 1998 the Panel issued a procedural order

to Carpets Industry Company K.S.C. (Closed). This claimant was requested to respond to the clarification sought by 4 December 1998.

23. The Panel's procedural orders were transmitted to the Government of Iraq and the Government of Kuwait. The Panel received responses to all its procedural orders issued to claimants. The Government of Iraq responded, by its letter dated 4 November 1998, to the Panel's procedural order dated 20 March 1998 after the Panel allowed the Government of Iraq an extended period to file its response.

24. Based on its review of the documents submitted, including documents and clarifications received in response to procedural orders, the Panel concluded that the issues presented by the first instalment claims had been adequately developed and that oral proceedings to further explore such issues were not required.

III. LEGAL FRAMEWORK

A. Applicable law

25. In resolution 687 (1991), the Security Council established Iraq's liability under international law for any direct loss, damage or injury arising as a result of Iraq's unlawful invasion and occupation of Kuwait. (See also First F Report, paras. 47-49.) Further, article 31 of the Rules identifies the law to be applied by the Commissioners in considering the claims, i.e., Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims and any pertinent decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. Procedural and evidentiary requirements

26. Article 35 of the Rules requires the Panel to "determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted". The same article states, inter alia, that claims in category "E" must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. In this regard, Governing Council decision 46 concerning explanatory statements by claimants in categories "D", "E" and "F", clarifies that such "documents and other evidence must exceed the reasonable minimum that was required for claims in categories 'A', 'B' and 'C'" and that "no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant" (S/AC.26/Dec.46 (1998)).

27. In its decision 15 on compensation for business losses resulting from Iraq's unlawful invasion and occupation of Kuwait where the trade embargo and related measures were also a cause, the Governing Council expressly states in relation to "all types of business losses, including losses

relating to contracts, transactions that have been part of a business practice or course of dealing, tangible assets and income-producing properties", that "[t]here will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" (S/AC.26/1992/15, paras. 5 and 10).

28. The instructions for claimants in Form E specifically instruct category "E" claimants to include with their statements of claim the following particulars:

> "(a) the date, type and basis of the Commission's jurisdiction for each element of loss ... ;
>
> (b) the facts supporting the claim;
>
> (c) the legal basis for each element of the claim; and
>
> (d) the amount of compensation sought, and an explanation of how this amount was arrived at."

29. It is therefore well established that claimants in category "E" (and categories "D" and "F") need to meet more specific evidentiary standards and sufficiently demonstrate the circumstances and amount of the claimed loss.

C. The Panel's role in the proceedings

30. Based on the foregoing, three specific tasks have been entrusted by the Governing Council to the Panel. First, the Panel must determine whether an alleged loss falls within the jurisdiction of the Commission. Second, the Panel must verify whether the loss was actually suffered by the claimant. Third, the Panel must determine the amount of the compensable loss suffered by the claimant and recommend an award thereon. (See also First E2 Report, para. 39.)

31. With specific reference to the first instalment claims, the Panel has sought, by its resolution of these claims, to establish a consistent, comprehensive, fair and administrable verification and valuation methodology for all "E4" claims. The methodology described below was developed by the Panel with these objectives in mind.

IV. VERIFICATION AND VALUATION OF CLAIMS

A. Approach

32. As mentioned above, the first task undertaken by the Panel is to determine which losses asserted by the claimants were suffered as a direct result of Iraq's invasion and occupation of Kuwait. (The Panel's findings in this regard have been described in subsequent sections of this report.)

After making this determination, the Panel confirms whether each compensable loss has been suffered in the amount claimed.

33. In determining the relevance, materiality and weight of the documents and other evidence submitted, the Panel is aware that shortcomings in evidence lead to difficulties in accurately quantifying claims.

34. In the claims before this Panel, such shortcomings mean that a claimant produces sufficient evidence to establish that it suffered a loss as a direct result of Iraq's invasion and occupation of Kuwait, but fails to provide sufficient evidence to support the specific amount of the claimed loss. In such situations, the Panel can often establish a range of values to quantify the alleged losses, but not the specific amount of such losses. Claims with evidentiary shortcomings that prevent their precise quantification therefore present a risk that they might be overstated. In this report the Panel uses the expression "risk of overstatement" to refer to such cases. The expression "risk of overstatement" is therefore used as a term of art in this report and does not connote or imply any deliberate overstatement by any claimant.

35. Awarding nothing in cases presenting a "risk of overstatement" ignores the adverse impact that Iraq's invasion and occupation of Kuwait had on the ability of Kuwaiti claimants to document their claims. The loss of official records and documentation as a result of Iraq's invasion and occupation of Kuwait is well documented in the report to the Secretary-General by a United Nations Mission, led by former Under-Secretary-General Mr. Abdulrahim A. Farah (the "Farah Report"). The Farah Report assesses the scope and nature of damage inflicted on Kuwait's infrastructure during Iraq's occupation, and is annexed to a letter dated 26 April 1991 from the Secretary-General to the President of the Security Council (S/22535).

36. The Panel notes the non-judicial and fact-finding nature of the Commission's mandate and procedures, identified in the report of the Secretary-General pursuant to para. 19 of Security Council resolution 687 (1991) (S/22559, paras. 20 and 25). The Panel's approach to the verification and valuation of claims therefore balances the claimant's inability to always provide best evidence against the "risk of overstatement" introduced by shortcomings in evidence.

37. The following process, based on the above approach, has been applied by the Panel in verifying and valuing the first instalment claims.

B. Verification and valuation methodology

1. Evidentiary summary

38. The first step in the verification and valuation process is a detailed review of all the documentary evidence submitted by the claimant for each loss category. This review is carried out, under the Panel's

supervision, by the secretariat and external consultants (accountants and loss adjusters) engaged as experts.

39. The nature of the documents reviewed and, on completion of the evidentiary review, the quality of the cumulative and corroborative effect of such documents are reported in an evidentiary summary. For “unusually large or complex claims” the secretariat prepares narrative claim summaries recording the significant legal and factual issues raised in the claims. These summaries, which include annotated references to the nature and type of supporting evidence, are submitted to the Panel pursuant to article 32 of the Rules (in addition to the documents listed in paragraph 16, supra).

40. Shortcomings in documentary evidence are also noted in the evidentiary summary. If such shortcomings are due to the loss of primary documentation during Iraq’s invasion and occupation of Kuwait, this assertion is reported together with the claimant’s account of the circumstances surrounding the alleged loss of documentation. The Panel assesses the reasonableness of the claimant’s inability to provide primary documentation and determines appropriate methods for evaluating the amount of loss based upon the evidence provided. For shortcomings in evidence that are due to other reasons, the Panel’s approach depends on the nature of the deficiency.

2. Loss classification

41. During the evidentiary review, the claimant’s classification of losses is verified. This confirms that appropriate loss categories are used by each claimant. (Loss category selection is based on principal asset and income type, e.g., loss of real property, loss of tangible property, loss of profits, etc.) This verification is necessary to allow the Panel to apply the proper review procedures discussed infra.

42. For most claimants, the claims under the category loss of tangible property require partial reclassification into appropriate sub-categories, i.e., loss of stock, loss of cash and loss of vehicles. This reclassification is often done by the claimants themselves in their statements of claim.

43. However, in a few cases, losses asserted under other categories also require reclassification. For example, in the claim of Integral Services Company W.L.L., a loss asserted as a loss of income-producing property was found to be a claim for loss of tangible property, stock and vehicles and was reclassified accordingly.

3. Materiality

44. The next step in the Panel’s review is to identify areas with the greatest “risk of overstatement”. To facilitate this identification, the Panel uses a “materiality” standard developed from and based on international accounting practice.

45. Individual items and aggregate balances are deemed to be “material” if they exceed the level where the Panel would be concerned if the claim was overstated by this amount or more. Such amount is defined as the level of materiality. The Panel’s methodology is designed to provide a high level of certainty in detecting overstatement greater than the materiality level. Based on specific attributes of the claim population, such as the number of claims and the range of values claimed, materiality has been set at the lower of 5 per cent of the total value of the net claim and KD 10,000 (approximately US$34,600). The net claim is treated, for this limited purpose, as the gross asserted claim value less amounts claimed for disallowed items (e.g., claims for losses outside the Commission’s jurisdiction) and amounts claimed for interest, claim preparation costs, cash losses and uncollectable receivables. The percentage limit approximates the level generally applied in accordance with international accounting practice. The monetary limit has been set to cap the value of materiality on high value claims and is applied in recognition of the relative lack of interdependence noted between various loss categories.

46. The use of a materiality standard allows the Panel to identify items that should be subject to a greater level of scrutiny. Non-material items are also subject to review but to a lesser extent than material items. High risk loss categories, such as loss of cash, receive the highest level of review regardless of materiality.

47. The distinction in review processes between material and non-material items ensures that the Panel’s review of each claim focuses on higher value and higher risk items. This provides a greater level of accuracy in verification and valuation within the time-frame established for review of the claims.

4. Specific review methodologies

48. Specific review methodologies have been developed for each loss category (e.g., loss of tangible property, loss of profits, etc.) and in some cases for individual items within a loss category (e.g., separate review methodologies have been developed for loss of vehicles, loss of stock and loss of cash).

49. The methodologies typically consist of a series of questions structured uniquely for each loss category. The methodologies allow the Panel to gauge the weight and sufficiency of the documents and other evidence submitted by the claimants to support asserted losses.

50. Since the methodologies are specific to each loss category (or sub-category), the issues addressed therein are not identical. However, they have some common features.

(a) Fundamental criteria

51. The first stage in each methodology reviews whether the asserted loss meets certain fundamental criteria. Negative responses at this stage of the review generally result in the Panel disallowing the claimed loss. For example, in a claim for loss of contract, a fundamental question addressed by the Panel is whether the claimant has submitted documents or other evidence to establish the existence of the contract at the time of Iraq’s invasion and occupation of Kuwait.

(b) Actual adjustments and satisfactory claims

52. The second stage in each methodology identifies whether the loss claimed (i) is supported by satisfactory evidence; (ii) requires actual adjustment based upon identified deficiencies; or (iii) presents a “risk of overstatement”.

53. If the evidence supports the claimed loss and does not present a “risk of overstatement”, then the claimed loss is approved by the Panel without adjustment. If instead the need for actual adjustments is identified, then these adjustments are applied by the Panel (e.g., in case of apparent double-counting or a claimant’s failure to factor depreciation into its claim for loss of fixed assets).

(c) Risk adjustment

54. If, based on a review of the evidence, the Panel concludes that the claimant suffered a loss as a direct result of Iraq’s invasion and occupation of Kuwait, but the Panel is unable to either quantify the actual adjustment required to specifically value the loss or state that the claim is satisfactory as presented, then a “risk of overstatement” exists for that loss.

55. The “risk of overstatement” must then be factored into the recommended award. The third phase of the Panel’s review process therefore assesses the “risk of overstatement” and the adjustment necessary to offset such risk.

56. Based on its review of the claims, the Panel identifies the evidentiary shortcomings in each loss category. Then, in consultation with its accounting and loss adjusting experts, the Panel quantifies the most probable impact of such shortcomings. To offset the “risk of overstatement” identified, the Panel applies corresponding adjustments to the claims.

57. The adjustments are specific to each loss category since some loss types pose inherently higher “risks of overstatement”. For example, the “risk of overstatement” in a claim for repair costs incurred is lower than the “risk of overstatement” in a claim for loss of profits that is necessarily based on projections.

58. Care is taken to ensure that a claim is not adjusted twice for the same evidentiary shortcoming.

59. The adjustments made to offset “risks of overstatement” are not applied in a vacuum. Where exceptional circumstances warrant, the Panel considers alternative methods for valuing the claimed losses.

5. Non-material items

60. Non-material items are reviewed by the Panel for reasonableness. Where non-material items aggregate to a material amount they are reviewed on a sample basis using a monetary unit sampling technique. Although monetary unit sampling is primarily based on attribute sampling theory, it gives conclusions based on monetary amounts and not rates of occurrence. This is achieved by defining each monetary unit of the population as a separate sampling unit with every monetary unit having an equal chance of selection by choosing every nth monetary unit of the population.

61. The technique is ideally suited to test claims for overstatement. The sample size is derived by dividing the product of the “population value” and the “assurance factor” by the “materiality level”. The “population value” is the aggregate monetary value of all the items to be selected. The “materiality level” has been explained in paragraphs 44-47, supra. The “assurance factor” is a number computed from what is known as the Poisson distribution, where the variables are confidence levels and the number of errors to be discovered in the sample. For simplicity, the Panel uses the monetary materiality level as the sampling interval which equates to using an assurance factor of one. This allows the Panel to conclude that on the “balance of probability” the population being tested is not overstated by more than the monetary materiality level. In the case of “E4” claims, using a 5 per cent materiality level subject to a further monetary limit, implies that on the average claim, adopting a sampling interval of KD 10,000 will result in the Panel being able to draw a 92 per cent assurance that each claim element being evaluated on a sample basis is not overstated by more than 5 per cent (i.e., the percentage materiality level) of the asserted claim.

62. The sample items are reviewed using the applicable methodology. This method of review allows a consistent and uniform assessment of the claims by the Panel.

V. THE CLAIMS

63. Applying the methodologies described above, the Panel has reviewed the first instalment claims according to the nature and type of loss identified. Accordingly, the Panel’s recommendations have been set out below by loss type. (Reclassified losses have been dealt with in the section pertaining to the loss category into which the Panel reclassified the losses.)

A. Contract

64. Claims for loss of contract are raised by two claimants in this instalment. These claims do not relate to contracts with the Government of Iraq or to contracts requiring performance in Iraq.

65. Mobile Telephone Systems Company, seeks compensation for the increased cost of completing certain pre-existing construction contracts following the end of Iraq’s invasion and occupation of Kuwait. The contract loss claim raised by Globe Commercial Company relates to loss of rent on leases the claimant held in Kuwait.

66. Integral Services Company W.L.L. also asserted a claim for loss of contract. However, as this related to profits lost on underlying contracts, the claim was reclassified and reviewed as a loss of profits claim. A second loss of contract claim asserted by Globe Commercial Company was found to relate to uncollectible receivables. The claim was accordingly reclassified and is discussed in the section of this report relating to receivables (paras. 207-219, infra).

1. Compensability

67. Mobile Telephone Systems Company’s claim deals with three contracts that were being executed at the time of Iraq’s invasion of Kuwait. The first contract was for the construction of a new office building, the second contract was for engineering consulting services in relation to the office building being constructed and the third contract related to furnishings for the new office building. The claim in each case was for increased costs paid post-liberation on the underlying contract.

68. The claimant established that it was required to suspend performance on the construction contract during the period of Iraq’s occupation of Kuwait. It also established, with reference to the original contract terms, that it was unable to terminate the original contract, or to negotiate a fresh contract with a new contractor, without incurring significant additional costs. The claimant provided documents to substantiate that the contractor was unable to recommence work on the contract, post-liberation, without increasing contract costs. Finally, the claimant produced correspondence to show that subsequent to the end of Iraq’s occupation of Kuwait, it negotiated the price increase on construction costs down from 50 per cent of the original contract price to 20 per cent of the original contract price. The issue before the Panel was whether this 20 per cent increase is a direct result of Iraq’s invasion and occupation of Kuwait, and if so to what extent.

69. The Panel is of the view that, in the period following the end of Iraq’s occupation of Kuwait, prices in Kuwait were likely to be affected by various factors. These include (i) the “widespread destruction of capital assets and the supporting infrastructure, as well as the looting of

equipment and inventories" during the period of Iraq's invasion and occupation of Kuwait, as described in paragraph 47 of the Farah Report, (ii) the general economic situation caused by the trade embargo and related measures, and (iii) other factors such as an overall reduction in the return to Kuwait of expatriate manpower.

70. In the present case, the evidence submitted (e.g., copies of the relevant contracts and correspondence between the claimant, its independent consultants and the contractor relating to the negotiated price increase), indicates that the increased contract price was agreed on a lump sum basis and was attributable to various factors, including (i) lack of construction equipment and increased rental costs for construction equipment; (ii) lack of skilled manpower; (iii) increased material costs; and (iv) the fact that the contractor may have under-bid prices on the original pre-invasion contract.

71. The Panel is of the view that some of these factors are a direct result of Iraq's invasion and occupation of Kuwait, e.g., increased equipment rental costs because of the widespread destruction of such equipment during the period of Iraq's invasion and occupation. Other factors are clearly unrelated to Iraq's invasion and occupation of Kuwait, e.g., the fact that the contractor under-bid prices on the pre-invasion contract.

72. However, many areas are not clear-cut. Increased material costs could be attributable both to destruction and looting of inventory during the period of Iraq's invasion and occupation of Kuwait and to the general economic situation in Kuwait caused by the trade embargo and related measures. Similarly, labour shortages could be attributed both to the dislocation of Kuwaiti and expatriate manpower during the period of the invasion and occupation and to other factors such as the general reduction in the return to Kuwait of expatriate manpower. The Farah Report states, at paragraph 41, that "Kuwait City, previously a modern, urban centre with thriving bazaars and a busy commercial district, had become a ghost town. The same was true of other urban areas across the country, where major social dislocations had occurred during the occupation of the country: two thirds of Kuwaiti nationals had sought refuge abroad; three quarters of the labour force had been obliged to leave Kuwait". (See also "Report on the situation of human rights in Kuwait under Iraqi occupation, prepared by Mr. Walter Kälin, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1991/67" (E/CN.4/1992/26), paras. 240-245.)

73. In view of the above, the Panel believes that some portion of the increased contract costs are a direct result of Iraq's invasion and occupation of Kuwait. The extent to which such increases are a direct result of Iraq's invasion and occupation depend on the facts and circumstances of each case.

74. In the case of Mobile Telephone Systems Company, the Panel believes it is reasonable to expect the claimant to negotiate a lump sum price increase rather than a segmented price increase, with each segment of the price increase attributable to a separate cause. Based on the principles enunciated in Governing Council decision 15, paragraph 9(II)(ii), the nature of the underlying contract, the work involved and the price negotiations documented, the Panel determines that half of the 20 per cent price increase is a direct result of Iraq's invasion and occupation of Kuwait and is therefore compensable.

75. Mobile Telephone Systems Company also raises a loss of contract claim for fees paid to its engineering consultants during the extended period that the contract was continued after the liberation of Kuwait. The Panel notes that the performance period remaining on this contract at the time of Iraq's invasion of Kuwait was five months. As such, the claim for consulting fees is allowed for the eight months negotiated for contract completion less the five months outstanding at the time of the loss. Additional overruns are disallowed either because they are not shown to be a direct result of Iraq's invasion and occupation of Kuwait, or because they are attributable to contract variations or contractor delays.

76. A claim is also raised by Mobile Telephone Systems Company for increased furnishing costs based on prices quoted nearly two years after the liberation of Kuwait. The Panel disallows this portion of the claim as the claimant has not demonstrated that such increased costs are a direct result of Iraq's invasion and occupation of Kuwait. Given the lapse in time in restarting the underlying contract and the absence of evidence on whether the original contract prices were time bound, the Panel believes that the increased furnishing costs appear to have been caused by general price inflation in Kuwait and the substantially unexplained delay in completing the construction of the building for which this furnishing was required.

2. Verification and valuation method

77. For contract losses, after determining which losses are compensable, the Panel proceeds to verify whether the claimant has demonstrated the existence of a valid contractual relationship at the time of the loss. Claims that do not demonstrate the existence of a valid contractual relationship, or provide a reasonable explanation for the lack of such evidence, are disallowed at this fundamental stage of the review.

78. The Panel then reviews evidence of the repudiation, cancellation or failure to perform the contract. In cases where no evidence of termination or cessation is provided, the Panel approaches this shortcoming based on the facts and circumstances specific to the contract. For example, in the case of rental contracts, the Panel is of the view that it is reasonable to expect claimants to encounter difficulty in obtaining evidence of termination from tenants fleeing Iraq's invasion and occupation of Kuwait. On the other hand, the Panel expects claimants to provide evidence of

termination in the case of supply contracts where the other contracting party continued operations after March 1991. A failure to provide evidence of termination in the latter case, without any reasonable explanation thereof, will result in the claim being disallowed at this stage of the review.

79. On establishing, with reasonable certainty, that a valid contractual relationship existed at the time of Iraq’s invasion of Kuwait and that the contractual relationship was terminated or suspended as a direct result of the invasion, the Panel assesses whether the loss asserted was suffered in the amount claimed, i.e., whether the loss asserted can be reconciled with the contractual terms. Amounts claimed in excess of contractual terms are adjusted.

80. The Panel then reviews areas presenting “risks of overstatement”. Governing Council decision 15, paragraph 9(IV)(i), clarifies that “[t]he duty to mitigate applies to all claims”. The Panel identifies whether the claimant has demonstrated, on the basis of the evidence provided, its attempt(s) to mitigate the loss in the best way possible, given the circumstances prevailing in Kuwait during Iraq’s occupation and immediately thereafter. Where the Panel concludes that the claimant has failed to adequately mitigate its loss, it adjusts the claim to offset the effects of the failure to mitigate.

81. The Panel next verifies whether the claimant has matched costs with revenues in calculating its loss. Where a claimant fails to make its claim net of incremental and variable costs that would otherwise have been incurred, the Panel adjusts the claim where such costs are determinable. If such costs are not determinable, the Panel adjusts the claim based on the “risk of overstatement” presented.

82. The Panel verifies whether the claimant has demonstrated a reasonable expectation of meeting its contractual obligations and reaching a satisfactory settlement of the contract prior to the date of the loss. Where a claimant was in default at the time of the loss and would ordinarily have had to incur penalties or damages on the contract, the Panel verifies whether the claim has been adjusted for such costs. Where the Panel concludes that a claimant’s expectation of meeting its contractual obligations and reaching a satisfactory settlement of the contract prior to the date of the loss is uncertain, and the claimant has failed to factor this aspect into the loss claimed, the Panel makes an actual adjustment. In cases where this actual adjustment cannot be quantified with certainty, the Panel adjusts the claim based on the “risk of overstatement” presented.

83. Governing Council decision 9, relating to types of business losses and their valuation (S/AC.26/1992/9), states at paragraph 10, that “[a] relevant consideration may be whether the contracting parties could resume the contract after the lifting of the embargo against Kuwait, and whether they have in fact resumed the contract.” The Panel reviews the evidence on

contractual remedies and whether resumption of the contract was possible. Where the claimant fails to demonstrate that it pursued its contractual remedies and the claimant does not provide a reasonable explanation for this failure, this shortcoming leads to a further adjustment.

84. Finally, the Panel considers whether, based on the cumulative effect of the evidence submitted, any additional adjustments are warranted.

3. Evidence submitted

85. Both claimants with contract losses in this instalment provided substantial evidence to establish the existence of valid contractual relationships on the date of the loss. However, Globe Commercial Company failed to provide evidence of termination of its lease contracts.

86. The Panel still recommends compensation for this claimant, for losses related to rental contracts, absent specific evidence of termination of each contract, as it is reasonable to assume that the claimant will not be able to obtain evidence of termination of the contracts from tenants fleeing Kuwait during the invasion and occupation. The Panel’s recommended award for this claim is arrived at after making additional adjustments identified in the course of applying the loss of contract verification and valuation methodology described above.

87. The Panel’s treatment of the Mobile Telephone Systems Company loss of contract claims is discussed in paragraphs 67-76, supra.

B. Real property

88. Twelve claimants in this instalment asserted claims aggregating over KD 3 million (approximately US$10 million) for loss of real property. These claims relate to damage to various freehold and leasehold premises in Kuwait.

1. Compensability

89. Most claimants established the fact and nature of damage to their buildings and facilities by providing copies of witness statements, corroborating statements in their audited accounts and photographs. The nature of damage alleged and the location of all the properties in Kuwait established that the damage was a result of military operations in Kuwait and the breakdown of civil order in Kuwait during the period of Iraq’s invasion and occupation of Kuwait, as set out in paragraph 21 of Governing Council decision 7 dealing with the criteria for additional categories of claims (S/AC.26/1991/7/Rev.1). Accordingly, the direct causal link between the loss alleged and Iraq’s invasion and occupation of Kuwait is sufficiently well established in the first instalment claims for loss of real property.

90. While most claims were based on generally accepted methods of valuing the loss (e.g., actual cost of repair or net book value), Kuwait Agriculture Company W.L.L. sought compensation on the basis of the original cost of the building without considering accumulated depreciation. Based on its review of evidence of the building’s age and the circumstances of the loss, the Panel concludes that there was a diminution in the value of the building prior to Iraq’s invasion of Kuwait. As the original cost value ignores normal depreciation, the Panel concludes that the claimant’s basis of valuation is inappropriate.

91. Based on the evidence provided by the claimant and the Governing Council’s guidance in decision 9 on the valuation of assets, the Panel finds that the appropriate method of valuation in this case is net book value, i.e., historical cost less accumulated depreciation.

2. Verification and valuation method

92. The first stage in verifying and valuing loss of real property claims is identifying the nature of the claimant’s interest in the affected property. Where a claimant’s interest in the property is uncertain, the Panel determines whether the claimant is otherwise entitled to compensation based on its review of all the evidence submitted.

93. The Panel then determines whether the claim is for costs incurred in the repair or replacement of the damaged property, or whether the claim is based on a valuation or other estimate of the loss.

94. Where a valuation opinion or estimate has been used, the Panel tests the valuation using an alternative review method, discussed below. Where the claim is based on costs actually incurred, the Panel proceeds to verify the evidence provided to support the amount actually spent to repair or replace the damaged property.

95. Proof of payment can be offered in numerous ways, ranging from certifications in major repair contracts to invoices and payment receipts in minor repair contracts. If the evidence of payment does not support the amount claimed, the Panel adjusts the claim to the amount supported by the evidence.

96. In calculating the loss suffered, the Panel reviews whether the claim is for repairs to or the replacement of property. In the case of repairs, the Panel verifies whether the claim reflects maintenance costs that would have been incurred in the ordinary course of events. The full amount of such costs (e.g., routine painting) cannot be regarded as a direct result of Iraq’s invasion and occupation of Kuwait and is therefore discounted. Similarly, for replaced items, the Panel verifies whether the claimant has considered normal depreciation of the original item replaced. Where normal adjustments for maintenance and depreciation have not been made by the claimant, the Panel adjusts the claim accordingly.

97.   The Panel then checks for evidence of betterment. As identified by the “E2” Panel, “[b]etterment occurs when old and used items are replaced with new or better ones”. (See First E2 Report, para. 271.) For example, in the case of real property, this can occur during the reconstruction phase when tile floors are replaced with marble, or room size dimensions are increased. If betterment is evident (e.g., on reviewing payment receipts, contract terms and damage survey reports), the Panel adjusts the claim for betterment, unless the betterment is unavoidable. Based on the cumulative effect of the evidence submitted, the Panel considers whether any further adjustment of the claim is warranted.

98.   Three real property claims in the first instalment are not based on actual costs incurred. The claim of Union Trading Company Abdul-Razaq Al-Rozouki and Partner W.L.L. is based on the net book value of affected assets; Kuwait Agriculture Company W.L.L. seeks compensation based on original value without considering depreciation, (but the Panel has applied net book value as discussed above); and the claim of Jawad & Haider Y. Abdulhasan Company is based on a cost estimate.

99.   For claims based on net book value, the Panel reviews the audited accounts and documents provided to establish the cost and date of acquisition of the asset. Where the accounts are unaudited or materially qualified, such shortcomings give rise to a “risk of overstatement”. The depreciation applied in the audited accounts is reviewed for reasonableness and the claim adjusted if necessary. Finally, the Panel verifies whether, based on the cumulative effect of the evidence submitted, any further adjustment is necessary.

100. For claims based on a cost estimate, the Panel verifies whether the claim is for repairs or replacement of real property and reviews the evidence submitted relating to the contractor’s qualifications and independence. The Panel also checks the estimate for betterment. The Panel then compares the estimate using an alternative method of valuation, e.g., net book value (based on audited accounts), and arrives at a recommended value by applying the method that assesses the loss with a greater level of certainty.

101. In a claim based on a valuation or estimate, the Panel also reviews the evidence provided to determine why the claimant failed to carry out the repairs or replace the assets. Where no reasonable justification is provided, the claim is adjusted for the “risk of overstatement” created by this shortcoming.

3. Evidence submitted

102. Most claimants submitted copies of title deeds or leases to establish their interest in the affected property. Where leases were submitted, the secretariat carried out additional checks to ensure that no duplicate claims had been filed by the owners of the leased properties. The Panel

also referred to the claimant’s audited accounts to corroborate the claimant’s interest in the affected properties.

103. Sons of Fahad Al-Sultan & Partners Co. W.L.L. sought compensation for damaged properties that had been mortgaged to a bank prior to Iraq’s invasion and occupation of Kuwait. The Panel determined that the lender bank has not raised a similar claim for the affected properties and that the claimant actually incurred the repair costs claimed. Accordingly, the Panel recommends compensation for this claimant.

104. Claimants sought to support repair costs by providing copies of payment receipts or certificates, invoices, contract documents and audited accounts. However, most claimants did not include any adjustments for applicable maintenance or depreciation in their asserted losses. The Panel adjusted the claims to account for these items. Similar adjustments were made by the Panel in cases of betterment.

105. In the case of the claim based on estimated replacement cost, i.e., Jawad & Haider Y. Abdulhasan Company, the Panel finds the estimate provided to be fundamentally flawed. The estimate is prepared by a 51 per cent owned subsidiary of the claimant. Betterment, though evident, is not quantified. No asset ages are provided and no maintenance element is considered. There is also insufficient evidence to demonstrate the extent or nature of the loss alleged.

106. The audited accounts provided by this claimant contain numerous material qualifications and the auditors have declined to offer an opinion on the veracity of the financial statements. Additionally, the claimant does not explain its failure to repair the properties or explain the numerous evidentiary shortcomings. However, the claimant’s audited accounts for the two years 1990 and 1991 do report an extraordinary loss of real property as a direct result of Iraq’s invasion and occupation of Kuwait. As this is independent proof of the fact of loss, the Panel’s recommended award has been arrived at after adjusting the net book value reported in these accounts to offset the “risk of overstatement” attributable to the material qualifications in the accounts and the lack of any explanation for the claimant’s failure to repair the properties.

C. Tangible property

107. Tangible property losses are raised by all but two of the claimants in this first instalment. The claims for loss of tangible property relate mainly to loss of stock, furniture, fixtures, equipment and vehicles. Other claims in this category relate to loss of cash.

1. Compensability

108. As in the case of real property claims, most claimants establish the fact and nature of damage to tangible property by providing copies of witness statements, statements from their audited accounts and photographs.

The claims establish, in accordance with paragraph 21 of Governing Council decision 7, that the damage was a result of military operations in Kuwait, actions by officials, agents or employees of the Government of Iraq or its controlled entities during the period of Iraq's invasion and occupation of Kuwait, in connection with the invasion or occupation and the breakdown of civil order in Kuwait during that period. Accordingly, the direct causal link between the loss alleged and Iraq's invasion and occupation of Kuwait is sufficiently well established in the first instalment claims for loss of tangible property.

109. The issues presented in the claims for tangible property therefore relate mainly to evidentiary standards. As these issues are closely associated with the methodology adopted by the Panel to review and verify the loss of tangible property claims, these issues are discussed in the following sub-sections dealing with the various verification and valuation methods adopted by the Panel to review these claims.

2. Verification and valuation method

110. As indicated in paragraph 15 of Governing Council decision 9, the Panel's approach to verification and valuation of tangible property losses depends on the nature of the asset affected. Accordingly, the approach adopted varies for stock, cash, vehicles and other tangible property losses.

(a) Tangible property

111. In the case of compensable tangible property losses, as in the case of real property losses, the Panel identifies the existence of the property and the claimant's interest therein at the time of the loss. The Panel also reviews the evidence submitted to establish the fact of loss.

112. The Panel then reviews whether the claim is for costs incurred to repair or replace the asset, diminution in the value of the asset or estimated repair costs.

113. For claims based on repair or replacement costs incurred, the method adopted is similar to the method used for verifying real property losses. Accordingly, proof of payment is reviewed and the claim adjusted for any unsupported payments. The claims are reviewed to verify whether adjustments have been made to reflect applicable depreciation, maintenance, or betterment. Where the claimant has not made the necessary adjustments to the claims, the Panel makes these adjustments in the manner described above for real property claims. (See paras. 92-101, supra.)

114. In cases where claims are based on a valuation opinion or estimate, the Panel tests the valuation using an alternative review method. In the first instalment claims, the net book value method has been used for most valuation-based claims. In such cases, the Panel reviews the audited accounts or other documents provided to establish the cost and date of

acquisition of the asset. Where the accounts are unaudited or materially qualified, the Panel adjusts the claims for a “risk of overstatement”. The claimant’s calculation of depreciation is reviewed for reasonableness and the claim adjusted if necessary. Finally, the Panel checks whether, based on the cumulative effect of the evidence submitted, any further adjustment is warranted.

115. In the case of claims based on a valuation opinion or estimate, such as Al-Fulaij United Group Company for General Trading & Contracting, Al Sabah Trading and Contracting Co. - (W.L.L.), and Jawad & Haider Y. Abdulhasan Company, the Panel seeks evidence of the independence of the valuer or contractor providing the opinion or estimate. For valuation opinions, the Panel reviews the valuer’s qualifications, the basis of valuation adopted and the appropriateness of the valuer’s instructions. The Panel compares the valuation provided with alternative valuation methods and applies the most appropriate method of valuation based on the circumstances of the loss. For example, in the case of Al-Fulaij United Group Company for General Trading & Contracting, a net book value method was applied because of the lack of evidence relating to the valuer’s independence and experience with the valuation techniques used. For claims based on a cost estimate, the Panel verifies whether any betterment has been included in the estimate.

116. In all cases where the claim for loss of tangible property is based on a valuation opinion or estimate, the Panel seeks justification for the claimant’s failure to carry out any repairs or replacement. Where no reasonable justification is provided, the Panel adjusts the claim for a “risk of overstatement”. Here too, the Panel verifies whether, based on the cumulative effect of the evidence submitted, any further adjustment is warranted.

(b) Stock

117. The methods of verification and valuation applied to stock losses and losses of goods in transit are similar. The Panel seeks evidence demonstrating the existence of stock or goods in transit on 2 August 1990 or on the date of loss if later.

118. In the Panel’s view, the best evidence to prove the existence of stock is a stock taking attended by the claimant’s independent accountants shortly before the date of loss. Noting that it is unlikely that many claimants would have such evidence, the Panel accepts a “roll-forward” calculation based on an earlier stock taking together with a calculation supported by documentary records of additions and withdrawals during the intervening period.

119. A “roll-forward” calculation uses, as a starting point, the closing stock balance reflected in the claimant’s audited accounts for the fiscal year immediately preceding Iraq’s invasion of Kuwait. (These accounts are generally for the year ended 31 December 1989.) To this closing stock

value, the Panel adds stock purchases made during the intervening period, i.e., up to 2 August 1990. The stock purchases are verified with supporting invoices or other purchase documents, where available. The Panel then deducts the cost of goods sold (derived from the sales for the intervening period). The cost of goods sold figure used by the Panel is based on the claimant's historical results as reflected in the claimant's audited accounts for the years preceding Iraq's invasion of Kuwait. Finally, the Panel deducts any stock remaining after the liberation of Kuwait. Where the evidence submitted does not allow the Panel to carry out a "roll-forward" this shortcoming is regarded as creating a "risk of overstatement".

120. In the case of goods in transit, the Panel seeks copies of certificates from Kuwaiti port authorities or letters from shipping agents to establish the existence, ownership and loss of goods in transit. Trade documents (such as letters of credit and invoices) are reviewed to corroborate the asserted value of the goods in transit. In such cases, the Panel also reviews dates of shipment, modes of transport and other shipment details to determine whether the goods claimed to have been lost in transit were in Kuwait prior to the imposition of the trade embargo and related measures or whether the goods in transit were lost as result of the trade embargo and related measures. (See, for example, Governing Council decision 15, para. 9(III)(ii).)

121. Any unsupported elements of such claims are disallowed. The Panel also reviews the basis of valuation of stock and goods in transit for reasonableness (e.g., valuation at the lower of original cost or net realizable value).

122. Having established the existence and value of the stock and goods in transit, the Panel checks the claims against historical results. In the case of stock losses, specific areas considered are historical profit margins achieved by the claimant, exceptional stock write-offs or restocking costs and provisioning in the audited accounts. If required, the Panel adjusts the claim to a level consistent with historical results. In cases where the Panel identifies inconsistencies between the asserted claim value and the historical results of the business and is unable to make an actual adjustment because of evidentiary shortcomings, the Panel adjusts the claim to offset the "risk of overstatement" created by these inconsistencies.

123. The Panel then reviews the stock claims for overall reasonableness. Where the levels of stock allegedly lost are based on a quantity materially higher than the average levels held by the claimant prior to Iraq's invasion and occupation of Kuwait, the Panel initially seeks justification for such stock build-up, e.g., by reference to seasonality or documented change in demand. Where no reasonable justification for the stock build-up is provided, the Panel adjusts the claim to the average stock levels demonstrated prior to Iraq's invasion and occupation of Kuwait.

124. In addition to comparing stock levels to average holdings prior to the date of loss, it is also necessary to compare stock levels with historical sales volumes to identify whether the levels of stock held are reasonable or whether there is evidence of over-stocking. The Panel directs its expert consultants to compare the volume of lost stock with industry stocking standards common in Kuwait and the Middle East. This comparison allows the Panel to determine acceptable levels of inventory for each claimant and to adjust claims for over-stocking.

125. Next, the Panel seeks to confirm that the claimant has considered obsolescence in the calculation of its loss and to verify that the levels of obsolescence applied by the claimant are reasonable for the nature of stock allegedly lost. Where claimants have not considered any obsolescence or where claimants have under-provisioned losses due to normal obsolescence, damage or deterioration, without providing any reasonable explanation for this, the Panel adjusts the claims to reflect obsolescence rates applicable to the nature of the stock lost.

126. Finally, the Panel verifies whether the cumulative evidentiary value of the documents presented warrants any further adjustment.

(c) Cash

127. Due to the mobility of the asset involved, cash loss claims present a greater potential for overstatement than other categories of property claims. As a result, the evidence submitted in support of cash claims is subject to the highest level of review, regardless of the amount claimed.

128. The Panel reviews the statement of claim and supporting documents to verify whether all the circumstances of the loss appear credible and whether any part of the cash lost could have been recovered (e.g., in cases where claims are for loss of payment instruments other than coins and paper currency.)

129. The Panel seeks credible and contemporaneous records of cash on the premises, such as cash books, bank statements, and daily cash deposits and withdrawals. In this connection, the Panel regards the Kuwaiti claimant’s audited post-liberation accounts of cash loss merely as corroborative evidence of the loss, given the nature of the loss and the qualified and uncertain circumstances in which such losses are generally reported to have been reviewed by the claimants’ auditors. In many cases, the auditors allege that the cash loss reported as an exceptional item in an “E4” claimant’s post-liberation accounts is based on statements by the claimant or its employees and cannot be subject to independent verification.

(d) Vehicles

130. The first stage in the review of vehicle loss claims is to identify whether the claim is for a total loss of the vehicle or for repair costs. If the claim is for repair costs, the Panel reviews the claim by applying

the methodology developed for tangible property losses. (See paras. 111-116, supra.)

131. In the case of total loss of a vehicle, the Panel relies on the vehicle registration cancellation certificates (“deregistration certificates”) issued by the Government of Kuwait to establish the existence of the vehicle before Iraq’s invasion and to establish the claimant’s interest therein.

132. The mobility of title to an asset such as a vehicle means that a simple proof of purchase prior to 2 August 1990 cannot constitute sufficient proof of ownership by the claimant at the time of Iraq’s invasion of Kuwait. The Government of Kuwait informed the secretariat that the “deregistration certificates” issued by its Traffic Department are evidence of the legally registered owner of the vehicle. Further, the Panel notes that the procedures adopted by the Kuwaiti Traffic Department regarding the inability to re-register or transfer the ownership of the vehicle without written confirmation from PAAC, that the vehicle is not included in the claim of the registered owners(s), strengthens the evidentiary value of such certificates. As a result, the Panel is of the view that claims for loss of vehicles cannot be compensated in the absence of an official “deregistration certificate” issued by the Government of Kuwait.

133. However, “deregistration certificates” are regarded as proof of loss only where the fact of loss is also supported by witness statements or other records (e.g., the claimant’s post-liberation accounts recording the loss of vehicles as an extraordinary loss).

134. In cases where there is a discrepancy between the name of the claimant and the name in the “deregistration certificate”, the Panel considers the reasons for such discrepancy. For example, the Panel notes that it was common in Kuwait for vehicles operated by a company to have been purchased in the name of one of its owners, directors or employees. In such cases, the Panel directs the secretariat to carry out a separate check to ensure that said owner, director or employee has not filed a duplicate claim for the vehicle in question.

135. The value of the vehicle loss is verified for reasonableness by the Panel. In its review of vehicle claims, the Panel compares the loss value asserted by the claimant with comparative vehicle values in Kuwait as set out in a Motor Vehicle Valuation Table (the “M.V.V. Table”) provided to the Commission along with a report regarding claims for motor vehicles dated 20 July 1994, submitted by PAAC. The Panel notes that in the case of vehicles, factors other than the make, model and year, e.g., specific use or features or flaws, affect the value of the vehicle. Accordingly, where a vehicle value asserted by a claimant is lower than the M.V.V. Table value, the Panel does not increase such claims but treats the M.V.V. Table value as representative of the maximum compensable value for a vehicle of the same make, model and year. (See “Report and recommendations made by

the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above US$100,000 (category ‘D’ claims)” (S/AC.26/1998/1) (the “First D Report”), paras. 267-272.)

3. Evidence submitted

(a) Tangible property

136. Most claimants in this instalment submitted audited accounts to establish the existence, ownership and value of the tangible assets damaged or lost as a direct result of Iraq’s invasion and occupation of Kuwait. In establishing the fact and cause of loss, claimants relied on assertions in their statement of claim and witness statements. These assertions were generally corroborated by additional documents, such as photographs and independent survey reports. The Panel also relied on the claimants’ audited accounts for the years 1990 and 1991. These accounts showed the losses of tangible property as extraordinary losses that were a direct result of Iraq’s invasion and occupation of Kuwait, and as such provided an additional independent verification of the loss.

(b) Stock

137. For most claimants the existence, ownership and value of stock lost was supported by copies of the claimant’s audited accounts, original inventory purchase invoices and “roll-forward” calculations.

138. Some claimants provided additional evidence such as copies of stock records, sales invoices, payment records, pre-loss audited stock taking and insurance records. Abdul-Jaleel Mahmoud Al-Baqer & Sons Co. and Gulf Cows Breeding Company W.L.L. also provided copies of receipts issued by Iraqi authorities for livestock commandeered during the initial months of Iraq’s occupation of Kuwait, and deducted these “sales” when presenting their total claim. The fact of loss was generally supported by witness statements, audited accounts and photographs of the damage caused.

139. Successful claims for loss of goods in transit related to goods that were held in Kuwait on the day of Iraq’s invasion and that were subsequently lost. These claimants were able to establish the ownership, existence and loss of the goods by providing certificates issued by the Kuwaiti port authorities or shipping agents.

140. In a few cases, claimants also relied on copies of invoices from suppliers, letters of credit, bills of lading, bank debit advices and customs clearance forms to establish their losses. Accordingly, if such claimants were unable to provide more direct evidence of the loss (such as port authority or shipping agent certificates), the Panel allowed the claim if it was apparent that, based on shipping dates, modes of transport used and other shipping details, the loss did not occur due to the trade embargo or related measures.

(c) Cash

141. Successful claimants alleging cash losses were able to substantiate their claims by providing, among other things, documents establishing cash held on 2 August 1990, previous month-end listings, copies of daily bank deposit statements, cash flow registers and monthly sales ledgers. Claimants supplemented this evidence with photographs of the looted safes and witness statements and such claimants also established that they were engaged in the types of businesses expected to hold, on their premises, the amount of cash claimed.

142. Claimants for whom no award has been recommended generally sought to rely only on witness statements without providing any additional documents substantiating their claims.

(d) Vehicles

143. Virtually all claimants were able to establish their ownership of lost vehicles, on the date of the loss, by providing copies of “deregistration certificates” issued by the Government of Kuwait. The fact of loss was generally established by the “deregistration certificates” together with additional substantiating documents such as witness statements describing the circumstances of the loss and audited accounts recording the loss of vehicles as an extraordinary item.

144. Where claimants did not provide deregistration certificates or where the name of the owner in the deregistration certificate could not be linked to the claimant or its owners, directors or employees, the Panel disallowed the claim. However, in one case involving the loss of fork lifts, the Panel allowed the claim based on witness statements and copies of the sale contract and purchase receipt for the vehicles, as these types of vehicles were not required to be registered in Kuwait.

145. The asserted values of the vehicles lost were separately verified by the Panel against vehicle values contained in the M.V.V. Table or, for vehicles not listed in the M.V.V. Table, against other third party estimates. In the case of third party estimates the Panel tested these estimates by applying alternative valuation methods such as the net book value and depreciated replacement cost methods.

D. Income-producing property

146. Three first instalment claims allege a loss of income-producing property. Musaad Al-Saleh Travel Company Hamad Musaad Al-Saleh and Partners W.L.L. asserts a claim for loss of income-producing property, alleging a permanent diminution in sales after the liberation of Kuwait compared with sales prior to Iraq’s invasion. The claimant computes its loss by projecting a diminution in cash flows for a period of ten years from 31 December 1991 and discounting this diminution (by a factor of 4.5 per cent) to arrive at the present value of said cash flows. The same

claimant also raises a separate claim for loss of profits between August 1990 and December 1991.

147. Musaad Al-Saleh & Sons Investment Group W.L.L., raises a similar claim for loss of income-producing property, alleging it suffered a permanent diminution in rental income due to reduced occupancy levels in its Kuwaiti properties. Here, the value of the loss is calculated by discounting a projected diminution in cash flows over 25 years (applying a 4 per cent discount factor). Again, a separate claim for loss of profits is also raised, but in this case, for the period between August 1990 and December 1992.

148. The Panel determines that both these claims for loss of income-producing property are not compensable for the following reasons. To the extent that these two claimants suffered a loss of income as a direct result of Iraq’s invasion and occupation of Kuwait, the claimants have been compensated under the loss of profits category. Additionally, the claimants fail to establish why the losses asserted under this category, based on cash flows projected for ten years and 25 years, will not be recouped, and how losses projected over these ten and 25 year periods will actually be suffered as a direct result of Iraq’s invasion and occupation of Kuwait. Further, the Panel notes that the discounted cash flow method of valuation is a measure of the value of a business as whole on a going concern basis. Where a claimant has separately been compensated for loss of assets and loss of profits, any additional compensation based on a discounted cash flow basis would include a duplication of these loss elements.

149. Jawad & Haider Y. Abdulhasan Company claims it suffered a compensable loss when it sold its interest in an United States-based investment company. (The claim was submitted as a claim for loss of business transaction or course of dealing and was reclassified on review to a claim for loss of income-producing property.) This claimant states that it was forced to sell this interest because the United States-based company was facing bankruptcy, allegedly arising from lack of confidence in Kuwaiti ownership. This lack of confidence is stated to be a direct result of Iraq’s invasion and occupation of Kuwait.

150. The claimant relies on an agreement dated seven months after the liberation of Kuwait establishing that it did sell shares in an United States-based company on the date of the agreement. The claimant does not provide any evidence to support the claimed reason behind the sale of shares or to establish that the sale of shares was forced in any manner. The claimant’s pre-invasion audited accounts are materially qualified and the claimant’s auditor has declined to express any opinion on the accounts. The accounts for the years 1990 and 1991 show a loss on the sale of shares as an extraordinary item. However, these accounts also contain material qualifications and merely establish a difference between the historical cost of the shares and their selling price. The claimant provides no

evidence of the carrying value of the investment prior to Iraq’s invasion of Kuwait or at the time of the sale.

151. Given the nature of the underlying asset, the Panel finds no basis on which to verify or value the loss claimed. The Panel accordingly determines that this claim is not compensable as the claimant has failed to provide appropriate evidence sufficient to establish the circumstances and the amount of the claimed loss. As the facts alleged are not established, the Panel does not need to address the issue of whether the loss is a direct result of Iraq’s invasion and occupation of Kuwait.

E. Payment or relief to others

152. Two claimants in this instalment submitted claims for payment or relief to others. The claim of the Buildings and Roads Company is for amounts paid by the claimant to its general manager and his family for salary and airfare. Al Omar Technical Company raises a claim for petty cash that was reportedly distributed among its employees and their families to help them evacuate Kuwait.

1. Compensability

153. For amounts claimed by way of regular (and unexceptional) salary payments, the Panel finds that such payments would have been incurred as regular expenses in the normal course of events. As the claimant seeking compensation for the salary expenses also raised a claim for loss of profits, the Panel finds that compensating regular salary expenses relating to the period for which a loss of profits claim has been raised duplicates compensation (as the regular salary expenses are considered in the loss of profits calculation). (See First F Report, paras. 85 and 89.)

154. Accordingly, the Panel recommends disallowing the claim of the Buildings and Roads Company for salary expenses as the amount paid is not shown to be an extraordinary expense incurred as a direct result of Iraq’s invasion and occupation of Kuwait, and as the salary paid relates to the period for which loss of profits has been compensated.

2. Verification and valuation method

155. After identifying which items can be regarded as compensable, the Panel verifies whether the claim is supported by proof of payment for all items claimed. The type of evidence expected of claimants is determined by the nature of the payment. For example, in the case of airfares borne by a claimant to evacuate or return staff, the Panel expects claimants to provide copies of the airline ticket (as the ability to produce such documents will not have been affected by Iraq’s invasion and occupation of Kuwait). The Panel disallows amounts claimed that are not supported by appropriate documentary evidence to prove that payments were actually made by the claimant.

156. Where claims relate to payments to or costs incurred on behalf of individuals, the Panel verifies whether the individuals have been identified by means of their passport or other equivalent identification numbers and documents. The Panel then verifies whether duplicate claims have been raised, under other categories of claims before the Commission, by the same individuals for the same losses. Where the individuals have been generally identified but the claimants have not provided passport and other identification details, these shortcomings create a “risk of overstatement”.

157. Finally, the Panel verifies whether the payments are in the nature of loans or advances. All loans are disallowed by the Panel as they are, by their very nature, repayable.

3. Evidence submitted

158. In the case of the Buildings and Roads Company, the claimant has provided neither airline tickets nor the names of all the passengers for whom the airline tickets were allegedly bought. The Panel is unable to verify the payment from any other documents. Given the lack of evidence, the Panel does not recommend any compensation to this claimant for this loss.

159. In the case of Al Omar Technical Company, the claimant has provided no receipts or other documents to establish that the payments were made. In this case also, the Panel is unable to verify the payment from any other documents. Accordingly, the Panel finds that the evidence presented does not support the loss claimed.

F. Loss of profits

160. Claims for loss of profits were raised in 38 of the first instalment claims for an aggregate asserted value of over KD 24 million (approximately US$83 million).

1. Compensability

161. The first instalment claims raise four significant legal and factual issues. First, should benefits received under a post-liberation debt settlement programme, introduced by the Government of Kuwait, affect the assessment of loss of profits claims? Second, should windfall or exceptional profits earned by claimants in the period immediately following the liberation of Kuwait be considered in evaluating loss of profits claims? Third, for what period should a loss of profits claim be awarded? Finally, where claimants were engaged in various lines of business but sought to claim for loss of profits in relation to their profitable lines of business only, are the claims representative of the loss actually suffered by such claimants? A brief discussion of these issues and the Panel’s conclusions thereon is set out below.

(a) <u>The post-liberation Kuwaiti Difficult Debt Settlement Programme</u>

162. At the time of Iraq’s invasion of Kuwait, Kuwaiti banks and financial institutions had advanced substantial loans to corporations in Kuwait. Subsequent to the occupation, the Government of Kuwait found that a significant portion of this debt had become or was very likely to become non-performing. Accordingly, to alleviate the crisis faced by Kuwait’s banking and financial sector and to facilitate the repayment of the debt, the Government of Kuwait introduced a Difficult Debt Settlement Programme in 1992 and 1993. This programme was introduced under Kuwaiti “Decree-Law No. 32 of 1992 on Dealing with the Status of the Banking and Financial Sectors” (“Kuwaiti Law 32 of 1992”) and Kuwaiti “Law No. 41 of 1993 - State Purchase of Select Debts and Collection Procedures” (“Kuwaiti Law 41 of 1993”).

163. Under the Difficult Debt Settlement Programme, the Central Bank of Kuwait purchased from Kuwaiti banks and financial institutions, the debt owed to these banks and institutions by Kuwaiti individuals and corporations as well as the debt owed by citizens of Gulf Cooperation Council States. The debt purchased was outstanding on 1 August 1990 and was purchased from the selling banks and financial institutions against floating-rate Government bonds issued for that purpose. (The annual interest rate on these bonds was initially set at 5 per cent. However, this rate is determined by the Central Bank of Kuwait based on the cost of funds in the local market.) The purchase value of the debt was computed in accordance with a formula set out in the Kuwaiti laws under which the Programme was introduced and administered. In general terms, the debt purchase value was computed at the book value of the outstanding debt on 1 August 1990, less provisions, reserves and certain similar sums. (See Kuwaiti Law 32 of 1992, article 4.)

164. Subsequent to the purchase of this debt, the debt was required to be settled by the concerned debtors under one of two settlement methods:

(a) a spot settlement scheme under which only a part of the original debt was required to be repaid for full settlement of the debt; and

(b) a staggered settlement scheme under which the purchased debt was required to be repaid in twelve annual instalments from 1995 onwards.

165. The settlement mechanism waived interest on the debt, except in cases of default. Additional discounts were also offered on the amount to be repaid in cases where the debtors made advance settlements. By Kuwaiti Law 41 of 1993, debt settled after the liberation of Kuwait, and before the effective date of the Difficult Debt Settlement Programme, was also bought under the programme. If any repayment made during this interim period was in excess of the amount required to be paid under the Difficult Debt Settlement Programme, the additional amounts paid were refunded to the debtors.

166. The Panel determined that, by a law dated 11 August 1986, the Government of Kuwait introduced a similar programme, the Difficult Credit Facilities Settlement Programme, to relieve the problems created by the Souk al-Manakh (stock market) crash that occurred between 1981 and 1983. This Difficult Credit Facilities Settlement Programme was in effect on 1 August 1990 and accounted for a substantial portion of the outstanding debt that was subsequently purchased under the Difficult Debt Settlement Programme.

167. The Panel notes that it is not possible to differentiate between debt that became unpayable as a result of the stock market crash, debt that became unpayable as a result of Iraq’s invasion and occupation of Kuwait, and debt that became unpayable as a result of the economic consequences of the trade embargo and related measures. It appears that the economic difficulties that were sought to be addressed by the Difficult Debt Settlement Programme had been created mainly by the earlier Souk al-Manakh crash and that these problems had been aggravated by Iraq’s invasion and occupation of Kuwait and by the trade embargo and related measures and the economic situation caused thereby. By a letter dated 26 August 1998, PAAC informed the secretariat that it has no knowledge of any claim submitted by the Government of Kuwait or any agency or instrumentality thereof (including any organization or Ministry of the Government of Kuwait) for or in relation to the Difficult Debt Settlement Programme.

168. The issue raised is whether, in such circumstances, the Difficult Debt Settlement Programme can be regarded as compensating the claimants whose debt was purchased under this programme, i.e., whether the benefits of interest waivers and discounted repayment offered under the Difficult Debt Settlement Programme should otherwise be considered in evaluating the actual losses suffered by claimants who received these benefits post-liberation.

169. On a review of the context in which the expression “compensation” has been used by the Governing Council, the Panel is of the view that the expression is intended to refer to payments made for losses suffered as a direct result of Iraq’s invasion and occupation of Kuwait, i.e., compensable losses. (See Governing Council decision 7, para. 25; and “Further Measures to Avoid Multiple Recovery of Compensation by Claimants” (S/AC.26/1992/13).)

170. The Panel finds that the benefits offered by the Government of Kuwait under the Difficult Debt Settlement Programme are not based on the nature of loss suffered or the extent of damage suffered by claimants either during or as a result of Iraq’s invasion and occupation of Kuwait. Eligibility to participate in the Difficult Debt Settlement Programme was not contingent on any damage, injury or loss suffered by claimants.

171. Although the Difficult Debt Settlement Programme requires claimants receiving compensation from the Commission to first apply that compensation to repaying any outstanding debt under the programme, the outstanding debt

refers only to the discounted amounts payable under the Difficult Debt Settlement Programme and not to the original debt that may have been outstanding on 1 August 1990. The amount required to be repaid under the Difficult Debt Settlement Programme is based on the amount of debt outstanding as on 1 August 1990 and the scheme under which the debtor elects to make repayments - not on any loss or damaged suffered by any claimants.

172. The benefits offered under the Difficult Debt Settlement Programme cannot therefore be regarded as “compensating” any loss or damage suffered as a direct result of Iraq’s invasion and occupation of Kuwait.

173. The Panel also notes from its review of an official translation of Kuwaiti Law 41 of 1993 that the Difficult Debt Settlement Programme was introduced by the Government of Kuwait to help restore the economy, financial stability and the banking system in Kuwait. Kuwaiti Law 41 of 1993 indicates that the programme was introduced to address the “solvency problem” that “reflected negatively on the economic condition in general” and adversely affected the financial position of the banking and financial sector. The explanatory statement to Kuwaiti Law 41 of 1993 also contains the following clarification:

> “This Law ... was drafted out of concern to set the stipulations and rules that guarantee the State collection of purchased debts according to regulations that safeguard public funds, and at the same time give serious clients willing to settle their purchased debts the appropriate facilities which entail the least cost possible to be encumbered by public funds, in a manner enabling the citizens to quickly settle their debts so that matters revert back to normalcy as soon as possible.”

174. As stated above, these problems were mainly caused by events that long preceded Iraq’s invasion of Kuwait, i.e., the Souk al-Manakh crash. While Iraq’s invasion and occupation of Kuwait and the trade embargo and related measures and the economic situation caused thereby undoubtedly aggravated these problems, the Panel concludes that since the Difficult Debt Settlement Programme itself is not related to Iraq’s invasion and occupation of Kuwait, benefits offered thereunder cannot be regarded as compensating losses suffered as a direct result of Iraq’s invasion and occupation of Kuwait. This determination is made with specific reference to debtors whose debt was purchased under the Difficult Debt Settlement Programme. At this stage, the Panel makes no determination with reference to the possible impact of this programme on the claims of banks and other financial institutions that originally advanced the debt purchased under the programme.

(b) Windfall profits

175. When compared with their profits for similar periods prior to the invasion, certain claimants show unusually high profits in the period immediately following the end of Iraq’s occupation of Kuwait.

176. Where the Panel encounters exceptional profits in the claimant’s financial statements for the period immediately following Iraq’s occupation of Kuwait, the Panel investigates the reasons for this increase in profits. Where the increase is due to non-operational items (e.g., benefits under the Difficult Debt Settlement Programme referred to earlier), the effect of such exceptional gains is ignored. However, there are a few cases where the claimant’s financial statements show an extraordinary rise in operating profits in the period immediately following the end of Iraq’s occupation of Kuwait.

177. Within this subset of claims, the profits earned by most claimants can be explained from a review of their pre-invasion accounts as part of an increasing trend in earnings (again unrelated to Iraq’s invasion and occupation of Kuwait).

178. However, in some cases, a review of the evidence submitted reveals that there is a high likelihood that a direct cause for the rise in profits was Iraq’s invasion and occupation of Kuwait rather than any specific efforts undertaken by the claimant to develop its business. For example, automobile dealerships and construction companies in Kuwait could show such windfall profits in the period immediately following the liberation of Kuwait because the damage caused during the period of the occupation resulted in a sharp increase in demand for the products and services offered by such companies post-liberation.

179. In measuring the loss actually suffered by such claimants the Panel is of the view that it is not appropriate to compensate a claimant for losses suffered as a direct result of Iraq’s invasion and occupation of Kuwait without considering extraordinary gains earned as a direct result of the same invasion and occupation.

180. However, the Panel finds that, while it is possible to identify lines of business where such gains can be expected, it is extremely difficult to identify the extent to which such gains are a direct result of Iraq’s invasion and occupation of Kuwait.

181. Given the judgement inherent in the quantification of loss of profits claims generally, where (i) the evidence presented provides no reasonable explanation for an extraordinary and unsustained increase in post-liberation operating profits, (ii) the claimant makes no adjustment to reflect such windfall profits, and (iii) the claimant engages in a line of business where windfall profits are expected, the Panel regards such claims for loss of profits as presenting a “risk of overstatement”. The Panel adjusts these claims to offset the “risk of overstatement” so that, in

accordance with Governing Council decision 9, paragraph 19, the adjusted claim represents with reasonable certainty the loss of profits actually suffered as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Period of loss

182. The first instalment presents loss of profits claims made for varying periods of time. The Panel determines, in each case, the period of time for which a claim for loss of profits is a direct loss resulting from Iraq's invasion and occupation of Kuwait. This determination is made both where claimants did, and where claimants did not, resume operations after the liberation of Kuwait.

183. Paragraph 17 of Governing Council decision 9, states that "[i]n the event that the business has been rebuilt and resumed, or that it could reasonably have been expected that the business could have been rebuilt and resumed, compensation may only be claimed for the loss suffered during the relevant period". Paragraph 7 of Governing Council decision 15, in clarifying the earlier decision 9, states the following:

> "[I]n the case of a business which has been, or could have been, rebuilt and resumed, compensation would be awarded for the loss from the cessation of trading to the time when trading was, or could have been, resumed. In the case of a business ... which it was not possible to resume, the Commissioners would need to calculate a time limit for compensation for future earnings and profits, taking into account the claimant's duty to mitigate the loss wherever possible."

184. The "E2" Panel of Commissioners, in dealing with loss of profits claims associated with the destruction of businesses that were, or could have been, rebuilt, interpreted the relevant Governing Council decisions to mean that "compensation for lost business in such a case may be awarded for the period between the cessation of operations and the time when the business reasonably could have resumed production at the pre-invasion capacity". (See First E2 Report, para. 242.) Accordingly, the standard applied is to allow compensation for the period until the claimant could have recommenced operations at pre-invasion capacity (and not necessarily the period within which the claimant could have achieved pre-invasion levels of profitability).

185. The Panel concurs with the "E2" Panel's approach in dealing with the period for which loss of profits claims can be compensated. However, the Panel believes this approach can only be applied to businesses that resumed operations after the liberation of Kuwait.

186. In relation to businesses that did not resume operations after the liberation of Kuwait, the Panel was particularly mindful of the Governing Council's directions in decision 15. (See para. 183, supra.) Claimants who did not resume operations generally explained their inability to resume trading as being due to financial difficulties following Iraq's occupation.

Specific reasons for these financial difficulties were generally not explained. However, a variety of possible causes was often identified, including pre-invasion financial problems, the trade embargo and related measures and the economic situation caused thereby.

187. Based on the above, the Panel concludes that “E4” claimants who did not resume operations after the liberation of Kuwait can be compensated for loss of profits during the seven month period of Iraq’s invasion and occupation of Kuwait, as this period clearly constitutes a “separate and distinct” cause for the claimant’s loss of profits. However, for such claimants to receive loss of profits awards for any extended period following the liberation of Kuwait, the claimants must clearly demonstrate that a “separate and distinct” cause for their inability to resume operations is Iraq’s invasion and occupation of Kuwait.

(d) Claims excluding other lines of business

188. Certain claimants who were engaged in more than one line of business prior to Iraq’s invasion of Kuwait have claimed for “loss of profits” in relation to some lines of business, and excluded other (less remunerative) business operations from their calculation. The issue before the Panel is whether loss of profits can be computed selectively on the basis of some lines of business without considering all the lines of business in which the claimant is engaged.

189. Paragraph 16 of Governing Council decision 9, states that the conclusions on compensating losses for income-producing properties “are based on the premise that the business affected was a going concern, i.e. it had the capacity to continue to operate and generate income in the future”. Paragraph 17 of the same decision goes on to state that “[i]n principle, Iraq is liable to compensate for the loss of a business or commercial entity as a whole resulting from Iraq’s invasion and occupation of Kuwait”. Although these conclusions are made with regard to income-producing properties, the Panel finds these conclusions and propositions relevant to claims for loss of profits. Subsequent paragraphs, e.g., paragraph 19, of the same section of decision 9 also deal with the calculation of loss of earnings or profits.

190. The Panel concludes that a key premise for compensating loss of profits is that the “business affected” should have been a “going concern”. A single line of business may indeed amount to a “going concern” within the meaning of Governing Council decision 9. However, this fact alone does not form the basis of compensating a claimant, unless the single line of business is the “business affected”. In other words, the Panel understands the expression “going concern”, as used in decision 9 to be qualified by the expression “business affected”.

191. The Panel concludes that, where a claimant is engaged in more than one line of business, the loss of profits calculation should be based on all “affected” lines of business. A claimant may have been engaged in two

lines of business, one of which was profitable (e.g., real estate) and the other non-profitable (e.g., manufacturing or dealing in securities). If both businesses were affected, then a claim based only on the profitable line of business is not representative of the loss actually suffered by the claimant. If, for example, the losses incurred by the loss-making division actually decreased as a direct result of Iraq’s invasion and occupation of Kuwait, then ignoring the performance of the loss-making division overstates the loss actually suffered by the claimant.

192. Another relevant consideration is whether the line of business used for the claim is unrelated to the other lines of business, i.e., is the line of business claimed for a distinct and separate “going concern”? For example, a travel agency may raise a claim based only on its airline passenger ticket sales, without considering its package tour and cargo handling operations. In such a case, because the various lines of business are closely associated with one another, the Panel finds it is necessary to consider the business as a whole when computing loss of profits.

193. Based on the above, the standard developed by this Panel to compensate claims for loss of profits is based on a review of the “business affected”. The Panel concludes that a loss of profits award that places the claimant, as far as can be determined with reasonable certainty, in the position the claimant would have been in, but for the invasion and occupation, is the most appropriate measure of profits lost by the business affected.

2. Verification and valuation method

194. Pre-invasion and post-liberation audited accounts are fundamental to establishing a claim for loss of profits. A failure to submit audited accounts (without reasonable explanation for the omission or alternative information on which the claim can be verified) results in the claim being disallowed by the Panel.

195. The second stage of the verification and valuation process reviews the calculation of the claim. If necessary, claims are adjusted for inaccurate extraction of figures from underlying evidence or for arithmetical errors.

196. The third stage reviews key areas of possible overstatement. The first key area is the period for which the loss of profits claim is raised. As discussed above, the Panel adjusts claims to the period for which loss of profits is a direct result of Iraq’s invasion and occupation of Kuwait. (See paras. 182-187, supra.)

197. A claim for loss of profits cannot be solely based on revenues lost. It must be matched with corresponding expenses. Claims based on gross revenues or gross profit margins are therefore adjusted to net values (operating revenues less operating expenses).

198. The next stage tests the claim against the claimant's historical results, excluding any extraordinary items shown in these historical results. If the adjusted amount exceeds the average profits achieved in similar fiscal periods preceding Iraq's invasion of Kuwait, the Panel adjusts the claim based on the claimant's historical results. If the pre-invasion results indicate a trend of increasing or decreasing profits, the adjustment made by the Panel accommodates the effects of such trend.

199. The Panel then reviews areas of possible overstatement of the actual loss suffered. The claim is reviewed for seasonality in profit. Where the business exhibits seasonal variations and the claimant provides sufficient information to enable appropriate adjustments, these are made. However, in businesses demonstrating seasonality, where the claimant has provided no information to allow a compensating adjustment, the claim is regarded as presenting a "risk of overstatement".

200. The claim is then reviewed for exceptional or highly volatile results (for example, increased revenues due to non-recurring or extraordinary items such as the sale of capital assets). Exceptional items are removed from the basis of computation and the claim recomputed based on sustainable items. However, in cases where the magnitude of the exceptional items cannot be identified, the claim is seen as presenting a "risk of overstatement".

201. Next, the claimant's post-liberation results are reviewed to determine whether the claimant has enjoyed any windfall profits as a direct result of Iraq's invasion and occupation of Kuwait. If such profits are evident, the claim is adjusted in the manner described in the preceding portions of this report dealing with windfall profits. (See paras. 175-181, supra.)

202. Finally, the cumulative value of the evidence submitted is considered to determine whether any further adjustment is warranted.

3. Evidence submitted

203. Virtually all first instalment claims included annual audited accounts for the period 1987-1991 and based their claim for loss of profits on these accounts. Many claimants that resumed operations after the liberation of Kuwait also submitted annual audited accounts for 1992 and 1993.

204. Claims for businesses that resumed operations after the liberation of Kuwait but did not submit post-liberation accounts were regarded as presenting a "risk of overstatement", unless the omission to submit the accounts was sufficiently explained. (As noted above, the Panel's first procedural order dated 20 February 1998 requested all claimants in this instalment to submit copies of their annual audited accounts for 1988 to 1993.)

205. When a claimant sought to compute loss of profits on a basis other than the average profits in its pre-invasion audited accounts, the Panel reviewed the justification provided by the claimant for the alternative basis of computation. If the alternative basis of computation used by the claimant did not, in the Panel's opinion, accurately calculate the loss of profits sustained, the Panel recomputed the loss based on the historical financial performance of the claimant as indicated in paragraph 19 of Governing Council decision 9.

206. Claims based on one line of business were valued and verified applying the principles set out in paragraphs 188-193 above.

G. Receivables

207. Nine claimants in this instalment asserted claims for uncollectible receivables or "bad debts" aggregating over KD 3.9 million (approximately US$13.5 million). The majority of these claims were for sums owed by businesses or individuals located in Kuwait prior to Iraq's invasion.

1. Compensability

208. Most claimants sought compensation for debts that remained uncollected because debtors had not returned to Kuwait after liberation. The issue is whether the uncollected debt had become uncollectible as a direct result of Iraq's invasion and occupation of Kuwait.

209. Article 35(3) of the Rules states, inter alia, that category "E" claims "must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss". Claims for debts that have become uncollectible should demonstrate, by documentary or other appropriate evidence, the nature and amount of debt in question and the circumstances that caused the debt to become uncollectible.

210. An unsupported assertion that all of a claimant's uncollected debts are ipso facto uncollectible as a direct result of Iraq's invasion and occupation of Kuwait is not sufficient to meet the requirements set out in article 35 of the Rules. The nature of evidence expected in this regard is discussed in the following section.

2. Verification and valuation method

211. In reviewing claims for uncollectible receivables, the Panel verifies the amount of debt claimed against accounting records and contemporaneous documents. The Panel reviews the normal level of bad debt encountered in the claimant's business to verify that the claimant is not seeking compensation for bad debt unrelated to Iraq's invasion and occupation of Kuwait. A claimant's failure to provide information as to the pre-invasion level of bad debt generates a "risk of overstatement" in the claim.

212. The Panel then reviews the period for which the claimant recognized the debt as outstanding prior to Iraq’s invasion and occupation of Kuwait. To the extent the loss claimed relates to debt that would have been written off under international accounting practices prior to Iraq’s invasion, the claim is disallowed. For all other receivables, the Panel seeks evidence that the invasion is a “separate and distinct” direct cause rendering such debt uncollectible. In cases where the claimant has not provided such evidence the Panel disallows the claim.

213. The Panel next verifies whether the claimant has provided evidence of attempts to recover the receivables and mitigate damage. The Panel does not regard a claim as sufficiently established where the claimant has not made any attempt to recover the receivables and has not provided any reasonable explanation of its failure to do so. In cases where the evidence provided suggests the likelihood of further recovery, the Panel reverts to the claimant for additional information on the outcome of subsequent recovery attempts.

214. Next, the Panel determines whether the claimant has demonstrated that its debtor’s inability to pay is a direct result of Iraq’s invasion of Kuwait. For example, if a claimant submits evidence that a debtor did not resume operations in Kuwait, the Panel recognizes that this could be due to various reasons. Where the evidence establishes that the debtor did not resume operations post-liberation as a direct result of Iraq’s invasion and occupation of Kuwait, e.g., the debtor was rendered bankrupt as a direct result of the invasion and occupation, no further adjustments are made to the claim. However, if the evidence submitted does not clearly establish the reason for the debtor’s inability to recommence operations, then there is a likelihood that there are multiple causes for the debt being uncollectible, including Iraq’s invasion and occupation of Kuwait. (See First E2 Report, para. 232.) In such cases, the Panel then adjusts the claim to offset the “risk of overstatement”, applying the principles set out in paragraph 9 of Governing Council decision 15, for situations in which there are additional causes for a loss.

215. Finally, the Panel reviews whether the cumulative effect of the evidence submitted raises any issues warranting further adjustment.

3. Evidence submitted

216. As discussed above, the Panel disallows claims that rely on mere assertions that uncollected debts are ipso facto uncollectible because the debtors did not return to Kuwait. For claims in this instalment that have been so disallowed, there is insufficient evidence supporting the debtors’ inability to pay the debt or any attempt to recover the debt.

217. Globe Commercial Company raises a claim for loss of contract that relates to amounts owed by a company in Iraq, under contractual arrangements that date back to 1976. The Panel has reclassified this claim as relating to uncollectible receivables. Based on the claimant’s own

statement of account, nearly 99 per cent of the amount claimed relates to amounts that should have been written off, under international accounting practices, even prior to 1990. No explanation is provided for the claimant's inability to recover these sums prior to Iraq's invasion of Kuwait. Accordingly, this portion of the debt is disallowed by the Panel. The evidence submitted to support the remaining portion of the claim cannot be reconciled with the loss asserted by the claimant. The Panel therefore does not recommend compensation for the remaining amount given the insufficient evidence submitted in support of the nature and value of the loss claimed. As the entire claim has been disallowed on evidentiary grounds, the Panel need not address the issue of whether the loss claimed is a direct result of Iraq's invasion and occupation of Kuwait or related to the trade embargo.

218. The claim of Union Trading Company Abdul-Razaq Al-Rozouki and Partner W.L.L. documents post-liberation attempts to recover its receivables in Kuwaiti courts. However, the claimant does not provide evidence establishing the age of the debt and the Panel has adjusted the claim to offset the "risk of overstatement" created thereby. M/s. Safwan International Co. W.L.L. provided court records that demonstrate its debtor's absence from Kuwait following the end of Iraq's occupation of Kuwait. The records are sufficient to establish that the debtor is presumed bankrupt as a direct result of the invasion and occupation. The Panel therefore recommends payment of this claim in full.

219. Musaad Al-Saleh & Sons Investment Group W.L.L. submitted certificates from the Kuwait Chamber of Commerce & Industry establishing that eight debtors did not resume business after the liberation of Kuwait. The Panel has allowed this claim to the extent it relates to sums owed by these eight debtors. The Panel has disallowed the remaining claim that is only supported by an assertion that the other debtors' inability to repay the debt is a direct result of Iraq's invasion and occupation of Kuwait. In arriving at its recommendation on the sums owed by the eight debtors, the Panel has adjusted the claim to offset the "risk of overstatement" attributable to the evidentiary shortcomings described in paragraph 214 above. The claim of Automated Multi Access Systems Co. K.S.C. relies on similar certificates, and this claim has therefore been similarly verified and valued by the Panel.

H. Restart costs

220. Two claimants in this instalment seek compensation for restart costs. In the case of Mobile Telephone Systems Company, the restart costs are for the cost of temporary equipment purchased when recommencing operations after the liberation of Kuwait and travel costs incurred at the time. In the case of Bait Awladona Company, the costs relate to certain post-liberation repairs and to salaries paid to employees for cleaning the claimant's showrooms.

221. The amounts claimed as restart costs have been reviewed using methodologies applicable to other loss categories, e.g., loss of profits, loss of tangible property, or payment or relief to others. The two claims do not raise any new significant legal issues.

222. In the case of the cost of temporary equipment, purchased by Mobile Telephone Systems Company, the claim relates to satellite dishes that the claimant purchased following the liberation of Kuwait to facilitate communications during its restart of operations. The claimant states that it purchased five dishes and was able to sell three of the dishes. It claims the cost of the two dishes it was unable to resell. The claimant does not explain why it required five dishes as a direct result of Iraq’s invasion and occupation of Kuwait or why it has been unable to sell the two remaining dishes. The Panel recommends no compensation for this portion of the claim as the claimant has provided no evidence of the need for these additional dishes, or that the purchase of the additional dishes was a direct result of Iraq’s invasion and occupation of Kuwait. In relation to the travel costs claimed by this claimant, the Panel finds the claimant has not established that the costs are extraordinary items incurred as a direct result of Iraq’s invasion and occupation, i.e., costs incurred over and above normal travel costs. Accordingly, in this case also, the Panel does not recommend any compensation.

223. In the case of Bait Awladona Company, the claimant does not establish that the salary payments made are extraordinary payments incurred as a direct result of Iraq’s invasion and occupation, i.e., payments made over and above regular salary payments. As no incremental costs have been incurred, the salary payments claim is disallowed since such payments are considered in the loss of profit award recommended. Additional compensation for these payments would amount to double recovery. The claimant supports its claim for repair costs but does not take account of regular maintenance costs that would normally have been incurred. The recommended award is therefore arrived at after adjusting the claim for these maintenance costs.

I. Other losses

224. Bait Awladona Company and Carpets Industry Co. K.S.C. (Closed) seek compensation under this loss category for charges paid on letters of credit stated to have been cancelled as a direct result of Iraq’s invasion of Kuwait. Neither claimant demonstrates that the amounts claimed are extraordinary amounts. A review of the claimants’ accounts for the period between 1987 and 1990 reveal that the claimants regularly bore such cancellation charges, in excess of the amount claimed, prior to Iraq’s invasion of Kuwait. In one case the claimant’s auditor treats the cancellation charges claimed as regular banking expenses. Accordingly, the Panel finds that the claimants have not established that they suffered any particular loss in relation to the amounts asserted. Further, as these costs were normal operating expenses, they have been considered in the claimants’ loss of profits awards.

225. Buildings and Roads Company also raises a claim under this category. The claim relates to items, such as laboratory equipment, lost as a direct result of Iraq’s invasion and occupation of Kuwait. The amount claimed is not “material” and the cause and value of the losses are supported by the auditor’s statements in the claimants audited accounts. The claim has therefore been allowed by the Panel without any adjustment being recommended.

VI. OTHER ISSUES

A. Applicable dates for currency exchange rate and interest

226. All claimants have asserted their losses in Kuwaiti dinars. However, as the Commission issues its awards in United States dollars, the Panel must determine the appropriate exchange rate to apply to losses or claims expressed in Kuwaiti dinars and other currencies.

227. The three options generally considered by courts and tribunals for this purpose are the exchange rate on the date (i) of the loss, (ii) of judgement, or (iii) of the execution of the judgement. Previous Panels have already decided this issue and selected the exchange rate on the date of the loss as the most appropriate method of calculating the exchange rate for claims. (See “Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US$100,000 (category ‘C’ claims)” (S/AC.26/1994/3) (“First C Report”), pages 31-32; First F Report, para. 100; and First E2 Report, para. 279.) This Panel concurs with this view and recommends the application of the exchange rate on the date of loss.

228. This recommendation also accords with Governing Council decision 16 on awards of interest (S/AC.26/1992/16), to pay interest “from the date the loss occurred until the date of payment”. Accordingly, the Panel’s determination of the date of the loss is relevant to both issues of currency exchange rate and interest payment.

229. Most losses asserted occurred on various occasions and fairly regularly throughout Iraq’s invasion and occupation of Kuwait. Accordingly, the Panel recommends that the midpoint of the period of Iraq’s occupation (15 November 1990) be used as the date of loss.

230. However, for loss of earnings or profits (including contractual earnings), often the losses have been incurred for some months after the liberation of Kuwait. In these cases, the Panel recommends using the midpoint of the period for which loss of earnings or profits has been awarded as the date of the loss.

231. Decision 16 indicates that the methods of calculation and of payment of interest will be considered by the Governing Council at a future date.

The Panel therefore makes no further recommendation with respect to the payment of interest at this time.

232. During Iraq's occupation of Kuwait there were significant disturbances in the exchange rate for the Kuwaiti dinar. The Panel therefore recommends using the Kuwaiti dinar exchange rate on 1 August 1990 for losses where the midpoint of Iraq's occupation is used as the date of loss. The exchange rate used for 1 August 1990 for the Kuwaiti dinar, i.e., US$1 = KD 0.289, is the average monthly rate for July 1990 as reported in the United Nations Monthly Bulletin of Statistics, vol. XLIV, No. 12 (December 1990). (See also First C Report, page 33; First D Report, para. 62; First E2 Report, para. 284; and First F Report, para. 102.)

233. However, in claims for loss of earnings or profits, where the award relates to periods extending beyond the liberation of Kuwait, the Panel recommends using the average of the monthly commercial rates for the period for which an award for loss of earnings or profits has been recommended. In such cases, the Panel recommends that the Kuwaiti dinar exchange rates prevailing on 1 August 1990 be regarded as the exchange rates for the months during Iraq's occupation of Kuwait.

B. Claim preparation costs

234. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to compensation for claim preparation costs at this time.

C. Recommended awards

235. Based on the foregoing, the awards recommended by the Panel for claimants in the first instalment of "E4" claims are set out in annex I to this report. The underlying principles behind the Panel's recommendations on claims in this instalment are summarized in annex II to this report.

Geneva, 30 December 1998

(Signed) Robert R. Briner
Chairman

(Signed) Alan J. Cleary
Commissioner

(Signed) Lim Tian Huat
Commissioner

Annex I
Recommended awards for first instalment of “E4” claims
Reported by UNSEQ and UNCC claim numbers and claimant name

UNSEQ claim no.*	UNCC claim no.	Claimant’s name	Amount claimed (KD)	Net amount claimed (KD)**	Amount recommended (KD)	Amount recommended (US$)
E-00013	4002419	Abdul-Jaleel Mahmoud Al-Baqer & Sons Co.	488,685	488,685	392,209	1,355,527
E-00034	4000785	Musaad Al-Saleh Travel Company Hamad Musaad Al-Saleh and Partners W.L.L.	1,632,906	1,412,900	17,087	59,001
E-00035	4000786	Musaad Al-Saleh & Sons Investment Group W.L.L.	10,020,740	9,062,314	443,248	1,528,871
E-00037	4000787	Faisal Naser Al-Qatami & Sons Trading Co.	1,280,754	1,280,754	965,809	3,341,900
E-00081	4000784	Mobile Telephone Systems Co.	30,313,162	30,291,162	15,334,232	52,956,840
E-00092	4000758	Al Bahar & Bardawil for Private Material Co. W.L.L	373,005	330,517	277,266	959,398
E-00093	4000759	Kuwait Automotive Imports Co.	3,193,528	2,869,852	2,043,223	7,069,976
E-00094	4000760	Faris Al Dabbous & Sons Trading Co. W.L.L	381,624	342,190	238,776	825,489
E-00107	4000637	Automated Multi Access Systems Co., K.S.C.	641,476	579,178	132,002	455,917
E-00114	4000762	Building & Roads Co. (BARCO).	410,248	410,248	190,640	658,851
E-00130	4000804	Ghohar and Muthafar Trading Co.	464,595	419,313	317,110	1,096,694

UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KD)	Net amount claimed (KD)**	Amount recommended (KD)	Amount recommended (US$)
E-00160	4000805	Al-Noor Curtains Workshop Co. W.L.L.	2,978,177	2,537,853	2,272,827	7,864,453
E-00163	4000757	Al Istiklal New Exhibition Co. Abdul Aziz Khalaf & Co.	369,686	327,881	192,128	664,803
E-00184	4000761	Khaleefa Al-Matar General Trading & Contracting Company	116,661	116,661	97,943	338,903
E-00190	4000768	Adel Behbehani General Trading Co. W.L.L	305,972	276,184	110,665	382,924
E-00197	4000806	Seven Seas Readymade Garments, Cosmetics & Gifts Co., W.L.L.	986,385	871,280	622,889	2,155,325
E-00200	4000807	Al-Amir & Yaseen Jewellery Company-Yaseen Abdulla Al-Amir & Sons-Limited Liability Co.	345,852	343,352	287,723	994,937
E-00221	4000767	The Trading & Industrial Equipment Company	277,847	242,691	143,725	497,318
E-00237	4000808	Al-Shami Trd. & Gen. Contracting Co. W.L.L Sabeeha Saud Saleh Al-Shami & Co.	308,373	306,873	78,797	272,654
E-00240	4000763	Al-Waleed Construction & Trading Co. W.L.L.	408,796	407,796	107,755	372,855
E-00262	4000764	Sayed Hassan Bahbahani & Sons Co. Pty. Ltd.	821,087	821,087	119,255	412,284
E-00264	4000765	Kamal and Amoori for Technical Appliances Limited Liability Company	73,796	72,976	30,183	104,439
E-00290	4000766	Al-Sawagh Trade Comp.	4,200	4,200	2,400	8,304
E-00294	4000809	Bait Awladona Co.	349,914	329,726	183,903	635,055

UNSEQ claim no.*	UNCC claim no.	Claimant’s name	Amount claimed (KD)	Net amount claimed (KD)**	Amount recommended (KD)	Amount recommended (US$)
E-00347	4002396	Carpets Industry Co. K.S.C. (Closed)	841,437	840,687	140,437	484,833
E-00502	4000810	Al Fulaij United Group Company for General Trading & Contracting/Mahmoud Yousif Abdul Aziz Al Fulaij & Partners (W.L.L.)	2,280,610	2,036,534	1,312,412	4,541,218
E-00562	4000811	Al-Sabah Trading & Contracting Co.-(W.L.L.)	797,226	795,476	501,079	1,733,837
E-00568	4002397	Sons of Fahad Al-Sultan and Partners Co. W.L.L.	3,061,304	2,890,799	2,054,842	7,096,717
E-00573	4002398	Integral Services Co. W.L.L.	156,611	155,111	79,743	275,927
E-00589	4002399	M/s. Safwan International Co. W.L.L.	214,478	213,478	156,848	542,727
E-00599	4002400	The Arabic Co. for Sanitaryware Cons. Substances, Trade and Electronic Appliances W.L.L.	346,312	344,812	344,812	1,193,121
E-00636	4002402	Union Trading Company Abdul-Razaq Al-Rozouki and Partner W.L.L.	4,980,171	4,972,171	3,027,699	10,476,467
E-00655	4002403	Petroleum Services Company	434,073	431,573	88,249	304,609
E-00669	4002404	Mohamad & Al Sahen Supermarket for Foodstuff Co.	1,803,075	1,801,075	933,429	3,227,791
E-00682	4002405	Kuwait India International Exchange Co.	325,934	324,534	271,349	937,710
E-00685	4002406	Abdulla Al-Khorafi & Sons Co., W.L.L.	464,280	461,280	237,858	822,719

UNSEQ claim no.*	UNCC claim no.	Claimant's name	Amount claimed (KD)	Net amount claimed (KD)**	Amount recommended (KD)	Amount recommended (US$)
E-00713	4002407	Al Naji and Al-Saigh General Trading and Contracting	413,463	339,900	146,320	506,298
E-00731	4002408	Gulf Treasure Co. for Cont. & Gen. Transport Ibrahim Hussain Malek and Partner W.L.L.	1,828,257	1,826,757	781,257	2,703,311
E-00771	4002410	Al Maged & Alzeen Co. for General Contracting	89,813	83,470	46,609	160,721
E-00785	4002411	Al Omar Technical Company	210,425	208,925	118,603	410,264
E-00801	4002412	Globe Commercial Co.	1,139,637	1,137,137	396,853	1,373,194
E-00851	4002414	Gulf Cows Breeding Company W.L.L.	523,085	521,485	382,876	1,324,028
E-00929	4002416	Jawad & Haider Y. Abulhasan Co.	520,814	520,814	73,239	253,422

UNSEQ claim no.*	UNCC claim no.	Claimant’s name	Amount claimed (KD)	Net amount claimed (KD)**	Amount recommended (KD)	Amount recommended (US$)
E-00941	4002417	Kuwait Agriculture Company W.L.L.	1,393,746	1,392,746	299,969	1,037,955
E-01014	4002418	Kuwaiti British Readymix Company	1,814,072	1,807,666	1,109,879	3,838,672
TOTAL			80,186,292	77,252,103	37,106,157	128,258,259

* The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

** The “Net amount claimed” is the original amount claimed less amounts claimed for claim preparation costs and interest. As set forth in paragraphs 234 and 231 of the report, the Panel has made no recommendation with regard to these items.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Abdul-Jaleel Mahmoud Al-Baqer & Sons Co.
UNCC claim number: 4002419
UNSEQ number: E-00013

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	35,000	29,563	Adjusted for depreciation and maintenance. See paragraphs 88-106 of the report.
Loss of tangible property	46,950	37,561	Claim reclassified to loss of tangible property and stock. Tangible property claim adjusted for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	217,107	191,230	Livestock claim adjusted for evidentiary shortcomings. Fodder claim was adjusted for evidentiary shortcomings and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	189,628	133,855	Adjusted to restrict the period of loss to 12 months. See paragraphs 160-206 of the report.
TOTAL	488,685	392,209	

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Musaad Al-Saleh Travel Company
Hamad Musaad Al-Saleh and Partners W.L.L.

UNCC Claim number: 4000785

UNSEQ number: E-00034

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	12,294	6,762	Claim reclassified to loss of tangible property and cash. Tangible property claim adjusted for evidentiary shortcomings and for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of cash	7,647	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of income-producing property	1,046,656	0	See paragraphs 146-151 of the report.
Loss of profits	346,303	10,325	Adjusted to restrict period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	1,412,900	17,087	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	218,006	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Musaad Al-Saleh & Sons Investment Group W.L.L.
UNCC claim number: 4000786
UNSEQ number: E-00035

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	23,699	14,812	Adjusted for depreciation and maintenance. See paragraphs 88-106 of the report.
Loss of tangible property	11,756	6,466	Claim reclassified to loss of tangible property and cash. Tangible property claim adjusted for evidentiary shortcomings and for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of cash	17,669	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of income-producing property	5,721,805	0	See paragraphs 146-151 of the report.
Loss of profits	1,425,702	407,246	Adjusted to restrict period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
Bad debts	1,861,683	14,724	Adjusted for evidentiary shortcomings. See paragraph 207-219 of the report.
TOTAL	9,062,314	443,248	

Claim preparation costs	19,293	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	939,133	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Faisal Naser Al-Qatami & Sons Trading Co.
UNCC claim number: 4000787
UNSEQ number: E-00037

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	1,222,554	935,254	Adjusted for evidentiary shortcomings and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	58,200	30,555	Adjusted to restrict period of loss to 7 months, to reflect historical results and for evidentiary shortcomings. See paragraphs 160-206 of the report.
TOTAL	1,280,754	965,809	

Annex II
Recommended awards for first instalment of “E4” claims
Reported by claimant name and category of loss

Claimant’s name: Mobile Telephone Systems Co.
UNCC claim number: 4000784
UNSEQ number: E-00081

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contracts	314,795	163,030	See paragraphs 64-87 of the report.
Loss of real property	754,497	386,304	Adjusted for depreciation, betterment and evidentiary shortcomings. Claim for repairs to head office allowed without adjustment. See paragraphs 88-106 of the report.
Loss of tangible property	12,885,514	5,283,464	Claim reclassified to loss of tangible property, stock and cash. Tangible property claim adjusted to reflect net book value. Claim for “stolen materials” allowed without adjustment. Insufficient evidence to substantiate temporary furniture loss. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	1,380,858	864,348	Stock claim adjusted for obsolescence and absence of a roll-forward calculation. However, claim for Nokia equipment and rental equipment allowed in full as sufficiently corroborated. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of cash	22,586	22,586	Claim awarded in full. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of profits	14,542,259	8,614,500	Adjusted to restrict period of loss to 15 months and to reflect historical results. See paragraphs 160-206 of the report.
Bad debts	333,000	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 207-219 of the report.

Loss due to restart of business	57,653	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 220-223 of the report.
TOTAL	30,291,162	15,334,232	

Claim preparation costs	22,000	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Al Bahar & Bardawil for Private Material Co. W.L.L

UNCC claim number: 4000758

UNSEQ number: E-00092

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	14,323	14,323	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim awarded in full. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	263,936	233,058	Claim adjusted for obsolescence. See paragraphs 117-126 and paragraph 137-140 of the report.
Loss of vehicles	14,623	11,362	Claim adjusted to the M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	37,635	18,523	Adjusted to provision shown in post-liberation accounts. See paragraphs 160-206 of the report.
TOTAL	330,517	277,266	

Claim preparation costs	2,000	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.
Interest	40,488	n.a.	Governing Council’s determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Kuwait Automotive Imports Co.
UNCC claim number: 4000759
UNSEQ number: E-00093

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	1,516,580	1,005,093	Adjusted to write-off reported in the post-liberation accounts. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	1,353,272	1,038,130	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	2,869,852	2,043,223	

Claim preparation costs	5,600	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.
Interest	318,076	n.a.	Governing Council’s determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Faris Al Dabbous & Sons Trading Co. W.L.L

UNCC claim number: 4000760

UNSEQ number: E-00094

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	263,676	166,016	Claim was reclassified to loss of stock and vehicles. Stock claim was adjusted for stock build-up, stock remaining at liberation and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	14,159	11,983	Claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	64,355	60,777	Adjusted to restrict the period of loss to 12 months. See paragraphs 160-206 of the report.
TOTAL	342,190	238,776	

Claim preparation costs	5,500	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.
Interest	33,934	n.a.	Governing Council’s determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Automated Multi Access Systems Co., K.S.C.

UNCC claim number: 4000637

UNSEQ number: E-00107

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	57,058	55,465	Claim reclassified to loss of tangible property and vehicles. Tangible property claim adjusted for unexplained failure to repair/replace office equipment. See paragraphs 111-116 and paragraph 136 of the report.
Loss of vehicles	5,436	5,436	Claim awarded in full. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	515,399	70,137	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
Bad debts	1,285	964	Adjusted for evidentiary shortcomings. See paragraphs 207-219 of the report.
TOTAL	579,178	132,002	

Claim preparation costs	2,000	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	60,298	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Building & Roads Co. (BARCO).
UNCC claim number: 4000762
UNSEQ number: E-00114

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	250,238	106,702	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted to reflect net book value and for evidentiary shortcomings. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	12,545	7,338	Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	7,590	7,590	Claim awarded in full. See paragraphs 130-135 and paragraphs 143-145 of the report.
Payment or relief to others	15,583	0	See paragraphs 152-159 of the report.
Loss of profits	122,078	67,284	Adjusted to restrict the period of loss to 12 months. See paragraphs 160-206 of the report.
Bad debts	488	0	Insufficient evidence provided to substantiate claim. See paragraphs 207-219 of the report.
Other loss not categorized	1,726	1,726	Claim awarded in full. See paragraphs 224-225 of the report.
TOTAL	410,248	190,640	

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Ghohar and Muthafar Trading Co.
UNCC claim number: 4000804
UNSEQ number: E-00130

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	296,862	267,176	Original tangible property claim reclassified to loss of stock and vehicles. Stock claim adjusted for obsolescence. See paragraphs 117-126 and paragraph 137-140 of the report.
Loss of vehicles	3,500	1,926	Claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	118,951	48,008	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	419,313	317,110	

Claim preparation costs	3,700	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.
Interest	41,582	n.a.	Governing Council’s determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Al-Noor Curtains Workshop Co. W.L.L.
UNCC claim number: 4000805
UNSEQ number: E-00160

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	98,900	79,120	Adjusted for maintenance. See paragraphs 88-106 of the report.
Loss of stock	2,434,453	2,191,007	Original tangible property claim reclassified to loss of stock and vehicles. Stock claim adjusted for obsolescence. See paragraphs 117-126 and paragraph 137-140 of the report.
Loss of vehicles	4,500	2,700	“Non-M.V.V. Table” vehicles claim adjusted as stated in paragraphs 130-135 and paragraphs 143-145 of the report.
TOTAL	2,537,853	2,272,827	

Claim preparation costs	5,000	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.
Interest	435,324	n.a.	Governing Council’s determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Istiklal New Exhibition Co.
Abdul Aziz Khalaf & Co.

UNCC claim number: 4000757

UNSEQ number: E-00163

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	2,182	1,746	Claim reclassified to loss of tangible property, stock and cash. Tangible property claim adjusted for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	289,087	176,343	Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 117-126 and paragraph 137-140 of the report.
Loss of cash	6,000	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of profits	30,612	14,039	Adjusted to restrict the period of loss to 7 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	327,881	192,128	

Interest	41,805	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II
Recommended awards for first instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Khaleefa Al-Matar General Trading & Contracting Company
UNCC claim number: 4000761
UNSEQ Number: E-00184

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	2,323	2,323	Claim reclassified to loss of tangible property , stock, cash and vehicles. Tangible property claim awarded in full. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	64,458	49,310	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraph 137-140 of the report.
Loss of cash	4,783	4,783	Claim awarded in full. See paragraphs 127-129 and paragraph 141-142 of the report.
Loss of vehicles	7,573	4,003	"Non-M.V.V. Table" vehicles claim adjusted as stated in paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	37,524	37,524	Claim awarded in full. See paragraphs 160-206 of the report.
TOTAL	116,661	97,943	

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Adel Behbehani General Trading Co. W.L.L

UNCC claim number: 4000768

UNSEQ number: E-00190

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	264,278	110,665	Original tangible property claim reclassified to loss of stock. Stock claim adjusted for stock build-up. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	11,906	0	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	276,184	110,665	

Claim preparation costs	2,400	n.a.	Governing Council's determination pending. See paragraph 234 of the report.
Interest	27,388	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Seven Seas Readymade Garments, Cosmetics & Gifts Co., W.L.L.
UNCC claim number: 4000806
UNSEQ number: E-00197

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	15,526	12,421	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim for furniture and for decorations adjusted for unexplained failure to replace/repair. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	797,408	552,122	Stock claim adjusted for stock build-up and obsolescence. Goods in transit claim adjusted for evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	2,642	2,642	Claim awarded in full. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	55,704	55,704	Claim awarded in full. See paragraphs 160-206 of the report.
TOTAL	871,280	622,889	

Claim preparation costs	750	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.
Interest	114,355	n.a.	Governing Council’s determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Amir & Yaseen Jewellery Company-Yaseen Abdulla Al-Amir & Sons-Limited Liability Co.

UNCC claim number: 4000807

UNSEQ number: E-00200

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	274,953	233,710	Original tangible property claim reclassified to loss of stock. Stock claim adjusted for evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	68,399	54,013	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	343,352	287,723	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II
Recommended awards for first instalment of “E4” claims
Reported by claimant name and category of loss

Claimant’s name: The Trading & Industrial Equipment Company
UNCC claim number: 4000767
UNSEQ number: E-00221

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	121,488	66,386	Original tangible property claim reclassified to loss of stock and vehicles. Stock claim adjusted to reflect write-off reported in post-liberation accounts, for obsolescence and evidentiary shortcomings. Goods in transit claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	15,587	6,854	Claim adjusted as per paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	105,616	70,485	Adjusted to loss shown in post-liberation accounts. See paragraphs 160-206 of the report.
TOTAL	242,691	143,725	

Claim preparation costs	2,007	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.
Interest	33,149	n.a.	Governing Council’s determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Al-Shami Trd. & Gen. Contracting Co. W.L.L
Sabeeha Saud Saleh Al-Shami & Co.

UNCC claim number: 4000808

UNSEQ number: E-00237

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	11,899	8,000	Claim reclassified to loss of tangible property and stock. Tangible property claim adjusted due to unexplained failure to replace/repair. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	294,974	70,797	Claim adjusted for stock build-up and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
TOTAL	306,873	78,797	

Claim preparation costs	1,500	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II
Recommended awards for first instalment of “E4” claims
Reported by claimant name and category of loss

Claimant’s name: Al-Waleed Construction & Trading Co. W.L.L
UNCC claim number: 4000763
UNSEQ number: E-00240

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	1,609	1,609	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim awarded in full. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	146,806	63,845	Claim adjusted for obsolescence and evidentiary shortcomings. Insufficient evidence to substantiate claim for goods in transit. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	5,206	0	Insufficient evidence, i.e. no Kuwaiti deregistration certificates, provided to substantiate claimed loss. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	112,347	42,301	Adjusted to restrict the period of loss to 7 months and to reflect historical results. See paragraphs 160-206 of the report.
Bad debts	141,828	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 207-219 of the report.
TOTAL	407,796	107,755	

Claim preparation costs	1,000	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Sayed Hassan Bahbahani & Sons Co. Pty. Ltd.
UNCC claim number: 4000764
UNSEQ number: E-00262

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	288,257	88,867	Adjusted for maintenance and betterment. See paragraphs 88-106 of the report.
Loss of profits	532,830	30,388	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	821,087	119,255	

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kamal & Amoori for Technical Appliances Limited Liability Company

UNCC claim number: 4000765

UNSEQ number: E-00264

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	5,454	3,349	Claim reclassified to loss of tangible property, stock and cash. Tangible property claim adjusted for unexplained failure to repair/replace and for additional depreciation, where appropriate. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	49,648	18,085	Claim adjusted for evidentiary shortcomings, overstocking and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of cash	375	0	Insufficient evidence provided to substantiate claim. See paragraphs 127-129 and paragraph 141-142 of the report.
Loss of profits	17,499	8,749	Adjusted to loss reported in post-liberation accounts. See paragraphs 160-206 of the report.
TOTAL	72,976	30,183	

Claim preparation costs	820	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Al-Sawagh Trade Comp.

UNCC claim number: 4000766

UNSEQ number: E-00290

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of vehicles	4,200	2,400	Original tangible property claim reclassified to loss of vehicles. Vehicle claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
TOTAL	4,200	2,400	

Annex II
Recommended awards for first instalment of “E4” claims
Reported by claimant name and category of loss

Claimant’s name: Bait Awladona Co.
UNCC claim number: 4000809
UNSEQ number: E-00294

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	7,670	7,670	Claim reclassified to loss of tangible property, stock and cash. Tangible property claim awarded in full. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	112,353	60,034	Stock claim adjusted for stock build-up and obsolescence. Goods in transit claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of cash	8,040	8,040	Claim awarded in full. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of profits	199,819	107,900	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
Loss due to restart of business	1,609	259	Adjusted for maintenance. See paragraphs 220-223 of the report.
Other loss not categorized	235	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 224-225 of the report.
TOTAL	329,726	183,903	

Interest	20,188	n.a.	Governing Council’s determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Carpets Industry Co. K.S.C. (Closed)
UNCC claim number: 4002396
UNSEQ number: E-00347

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	32,000	25,600	Adjusted for unexplained failure to repair/replace. See paragraphs 88-106 of the report.
Loss of tangible property	8,511	3,522	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	657,383	15,185	Claim adjusted to write-off in post-liberation accounts and for obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	3,220	3,220	Claim awarded in full. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	137,943	92,910	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
Other loss not categorized	1,630	0	Insufficient evidence provided to substantiate claim. See paragraphs 224-225 of the report.
TOTAL	840,687	140,437	

Claim preparation costs	750	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Al-Fulaij United Group for General Trading & Contracting/Mahmoud Yousif Abdul Aziz Al Fulaij & Partners (W.L.L.)

UNCC claim number: 4000810

UNSEQ number: E-00502

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	496,074	282,300	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation and for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	901,914	527,620	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	261,100	154,068	Claim adjusted as per paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	377,446	348,424	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	2,036,534	1,312,412	

Claim preparation costs	2,000	n.a.	Governing Council’s decision pending. See paragraph 234 of the report.
Interest	242,076	n.a.	Governing Council’s decision pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Sabah Trading & Contracting Co. - (W.L.L.)
UNCC claim number: 4000811
UNSEQ number: E-00562

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	77,521	19,641	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for evidentiary shortcomings and depreciation. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	680,085	464,148	Claim adjusted for evidentiary shortcomings, obsolescence and stock build-up. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	9,950	9,740	Claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	27,920	7,550	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	795,476	501,079	

Claim preparation costs	1,750	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Sons of Fahad Al-Sultan & Partners Co. W.L.L.
UNCC claim number: 4002397
UNSEQ number: E-00568

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	1,332,935	901,843	Adjusted for maintenance, evidentiary shortcomings and betterment. See paragraphs 88-106 of the report.
Loss of tangible property	38,544	18,893	Claim reclassified to loss of tangible property, cash and vehicles. Tangible property claim adjusted for depreciation and for unexplained failure to repair/replace in the case of survey equipment. Furniture claim adjusted to reflect net book value. Claim for boats awarded in full. See paragraphs 111-116 and paragraph 136 of the report.
Loss of cash	8,981	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of vehicles	5,850	5,738	Claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	1,504,489	1,128,368	Adjusted to restrict the period of loss to 12 months, to reflect historical results and for evidentiary shortcomings. See paragraphs 160-206 of the report.
TOTAL	2,890,799	2,054,842	

Interest	170,505	n.a.	Governing Council's determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Integral Services Co. W.L.L.
UNCC claim number: 4002398
UNSEQ number: E-00573

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	37,967	23,549	Original income-producing property claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation. Claim for "portable office" awarded in full. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	38,241	34,540	Claim adjusted for obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	9,393	4,197	Claim adjusted to M.V.V. Table values for 5 vehicles for which Kuwaiti deregistration certificates were submitted. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	69,510	17,457	Original contracts claim reclassified to loss of profits. Claim adjusted to reflect historical results, windfall profits and to restrict the period of loss to 9 months. See paragraphs 160-206 of the report.
TOTAL	155,111	79,743	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: M/s. Safwan International Co. W.L.L.
UNCC claim number: 4002399
UNSEQ number: E-00589

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	84,828	70,076	Original tangible property claim reclassified to loss of stock. Stock claim adjusted to reflect historical profit margins and obsolescence. Goods in transit claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	69,598	27,720	Adjusted to loss recorded in claimant’s audited post-liberation accounts. See paragraphs 160-206 of the report.
Bad debts	59,052	59,052	Claim awarded in full. See paragraphs 207-219 of the report.
TOTAL	213,478	156,848	

Claim preparation costs	1,000	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: The Arabic Co. for Sanitaryware Cons. Substances, Trade and Electronic Appliances W.L.L.

UNCC claim number: 4002400

UNSEQ number: E-00599

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	344,812	344,812	Original tangible property claim reclassified to loss of stock. Stock claim awarded in full. See paragraphs 117-126 and paragraphs 137-140 of the report.
TOTAL	344,812	344,812	

Claim preparation costs	1,500	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II
Recommended awards for first instalment of “E4” claims
Reported by claimant name and category of loss

Claimant’s name: Union Trading Company
Abdul-Razaq Al-Rozouki and Partner W.L.L.
UNCC claim number: 4002402
UNSEQ number: E-00636

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	98,816	54,349	Adjusted for evidentiary shortcomings. See paragraphs 88-106 of the report.
Loss of tangible property	18,701	6,409	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation, evidentiary shortcomings and for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	3,528,297	2,328,927	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	77,519	76,037	Claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	538,220	242,199	Adjusted for seasonality and evidentiary shortcomings. See paragraphs 160-206 of the report.
Bad debts	710,618	319,778	Adjusted for evidentiary shortcomings. See paragraphs 207-219 of the report.
TOTAL	4,972,171	3,027,699	

Claim preparation costs	8,000	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II
Recommended awards for first instalment of “E4” claims

<u>Reported by claimant name and category of loss</u>

<u>Claimant's name</u>: Petroleum Services Company
<u>UNCC claim number</u>: 4002403
<u>UNSEQ number</u>: E-00655

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of vehicles	36,919	25,303	Original tangible property claim reclassified to loss of vehicles. Vehicles claim adjusted to M.V.V. Table values. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	394,654	62,946	Adjusted to restrict the period of loss to 12 months and for evidentiary shortcomings. See paragraphs 160-206 of the report.
TOTAL	431,573	88,249	

Claim preparation costs	2,500	n.a.	Governing Council's determination pending. See paragraph 234 of the report.

Annex II
Recommended awards for first instalment of “E4” claims
Reported by claimant name and category of loss

Claimant’s name: Mohamad & Al Sahen Supermarket for Foodstuff Co.
UNCC claim number: 4002404
UNSEQ number: E-00669

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	65,344	48,610	Claim reclassified to loss of tangible property and stock. Tangible property claim adjusted for depreciation and for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	1,323,457	711,605	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	279,225	173,214	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
Bad debts	133,049	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 207-219 of the report.
TOTAL	1,801,075	933,429	

Claim preparation costs	2,000	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Kuwait India International Exchange Co.

UNCC claim number: 4002405

UNSEQ number: E-00682

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	15,369	12,472	Claim reclassified to loss of tangible property and cash. Tangible property claim adjusted for depreciation. See paragraphs 111-116 and paragraph 136 of the report.
Loss of cash	157,117	157,117	Claim awarded in full. See paragraphs 127-129 and paragraphs 141-142 of the report.
Loss of profits	152,048	101,760	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	324,534	271,349	

Claim preparation costs	1,400	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Abdulla Al-Khorafi & Sons Co., W.L.L.
UNCC claim number: 4002406
UNSEQ number: E-00685

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	411,852	211,126	Original tangible property claim reclassified to loss of stock. Stock claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	49,428	26,732	Adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 160-206 of the report.
TOTAL	461,280	237,858	

Claim preparation costs	3,000	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II
Recommended awards for first instalment of “E4” claims
Reported by claimant name and category of loss

Claimant’s name: Al Naji & Al-Saigh General Trading & Contracting
UNCC claim number: 4002407
UNSEQ number: E-00713

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of vehicles	339,900	146,320	Original tangible property claim reclassified to loss of vehicles. Vehicles claims adjusted as per paragraphs 130-135 and paragraphs 143-145 of the report.
TOTAL	339,900	146,320	

Claim preparation costs	1,000	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.
Interest	72,563	n.a.	Governing Council’s determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Gulf Treasure Co. for Cont. and Gen. Transport
Ibrahim Hussain Malek and Partner W.L.L.

UNCC claim number: 4002408

UNSEQ number: E-00731

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	1,450,540	561,948	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation/maintenance and unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	96,837	55,009	Claim adjusted for stock build-up and for obsolescence. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	28,940	28,940	Claim awarded in full. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	250,440	135,360	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	1,826,757	781,257	

Claim preparation costs	1,500	n.a.	Governing Council determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Al Maged & Alzeen Co. for General Contracting
UNCC claim number: 4002410
UNSEQ number: E-00771

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of profits	83,470	46,609	Adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	83,470	46,609	

Claim preparation costs	500	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.
Interest	5,843	n.a.	Governing Council’s determination pending. See paragraph 231 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Al Omar Technical Company
UNCC claim number: 4002411
UNSEQ number: E-00785

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	194,942	107,932	Original tangible property claim reclassified to loss of stock. Stock claim adjusted for overstocking, obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Payment or relief to others	1,581	0	Insufficient evidence provided to substantiate claim. See paragraphs 152-159 of the report.
Loss of profits	12,402	10,671	Adjusted to restrict period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	208,925	118,603	

Claim preparation costs	1,500	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Globe Commercial Co.

UNCC claim number: 4002412

UNSEQ number: E-00801

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contracts	30,408	7,121	Claim reclassified to loss of contracts and bad debts. Contracts claim adjusted for evidentiary shortcomings. See paragraphs 64-87 of the report.
Loss of real property	4,558	3,646	Adjusted for maintenance. See paragraphs 88-106 of the report.
Loss of tangible property	5,093	4,074	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	377,124	377,124	Claim awarded in full. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	6,700	4,888	Vehicle claim adjusted as per paragraphs 130-135 and 143-145 of the report.
Bad debts	713,254	0	Insufficient evidence provided to substantiate claimed loss. See paragraphs 207-219 of the report.
TOTAL	1,137,137	396,853	

Claim preparation costs	2,500	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II
Recommended awards for first instalment of “E4” claims
Reported by claimant name and category of loss

Claimant’s name: Gulf Cows Breeding Company W.L.L.
UNCC claim number: 4002414
UNSEQ number: E-00851

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	53,360	36,145	Adjusted for maintenance and betterment. See paragraphs 88-106 of the report.
Loss of tangible property	31,095	18,699	Claim reclassified to loss of tangible property and stock. Tangible property claim adjusted for depreciation and for unexplained failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	328,850	260,780	Claim adjusted for evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of profits	108,180	67,252	Claim adjusted to restrict the period of loss to 12 months and to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	521,485	382,876	

Claim preparation costs	1,600	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II
Recommended awards for first instalment of “E4” claims
Reported by claimant name and category of loss

Claimant’s name: Jawad & Haider Y. Abdulhasan Co.
UNCC claim number: 4002416
UNSEQ number: E-00929

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	269,085	64,469	Adjusted for reasons stated in the report, paragraphs 88-106.
Loss of tangible property	129,459	8,770	Adjusted for reasons stated in the report, paragraphs 111-116 and paragraph 136 of the report.
Loss of income-producing property	122,270	0	Insufficient evidence provided to substantiate claimed loss and for reasons stated in the report, paragraphs 146-151.
TOTAL	520,814	73,239	

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Kuwait Agriculture Company W.L.L.
UNCC claim number: 4002417
UNSEQ number: E-00941

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	91,865	14,351	Adjusted to reflect net book value, for evidentiary shortcomings and for unexplained failure to repair/replace. See paragraphs 88-106 of the report.
Loss of tangible property	13,150	3,443	Claim reclassified to loss of real property, tangible property, stock and vehicles. Tangible property claim adjusted for same reasons as set forth above for real property. Also see paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	1,133,074	185,659	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	14,426	14,426	Claim awarded in full. See paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	140,231	82,090	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	1,392,746	299,969	

Claim preparation costs	1,000	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.

Annex II

Recommended awards for first instalment of “E4” claims

Reported by claimant name and category of loss

Claimant’s name: Kuwaiti British Readymix Company
UNCC claim number: 4002418
UNSEQ number: E-01014

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	1,053,412	535,495	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for maintenance, evidentiary shortcomings and insufficient justification for failure to repair/replace. See paragraphs 111-116 and paragraph 136 of the report.
Loss of stock	158,513	89,664	Claim adjusted for obsolescence, stock build-up and evidentiary shortcomings. See paragraphs 117-126 and paragraphs 137-140 of the report.
Loss of vehicles	444,392	338,937	Vehicle claim adjusted as per paragraphs 130-135 and paragraphs 143-145 of the report.
Loss of profits	151,349	145,783	Adjusted to reflect historical results. See paragraphs 160-206 of the report.
TOTAL	1,807,666	1,109,879	

Claim preparation costs	6,406	n.a.	Governing Council’s determination pending. See paragraph 234 of the report.