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COMPENSATION COMMISSION

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE TWELFTH INSTALMENT OF "E3" CLAIMS

GE.00-60760

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning fourteen claims included in the twelfth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "E3 Claims") on the basis of criteria established under the Rules.

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

2. The status and functions of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 689 (1991) dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

3. The Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Second, the Panel verifies whether the alleged losses are in principle compensable and had in fact been incurred by a given claimant. Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

B. The procedural history of the claims in the twelfth instalment

4. On 27 July 1999, the Panel issued the procedural order relating to the claims. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to

classify any of the claims as unusually large or complex within the meaning of article 38(d) of the Rules. The Panel thus decided to complete its review of the claims within 180 days of 27 July 1999, pursuant to article 38(c) of the Rules.

5. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by claimants in reply to requests for information and documents. It also considered Iraq's responses to the factual and legal issues raised in the twenty-seventh report of the Executive Secretary issued on 26 April 1999, in accordance with article 16 of the Rules.

6. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Pursuant to article 36 of the Rules, the Panel retained as expert consultants accounting and loss adjusting firms, both with international and Persian Gulf experience, to assist the Panel in the quantification of losses incurred in large construction projects. The Panel then directed its expert consultants to prepare comprehensive reports on each of the claims.

7. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

C. Amending claims after filing

8. The Panel notes that the period for filing category "E" claims expired on 1 January 1996. The Governing Council permitted claimants to file unsolicited supplements up to and including 11 May 1998. A number of the claimants included in the twelfth instalment had submitted several supplements to their claimed amount up to 11 May 1998. In this report, the Panel has taken into consideration such supplements up to 11 May 1998. The Panel has only considered those losses contained in the original claim, as supplemented by the claimants, up to 11 May 1998, except where such losses have been withdrawn or reduced by the claimants. Where the claimants reduced the amount of their losses the Panel has considered the reduced amount. This, however, does not preclude corrections relating to arithmetical and typographical errors.

D. The claims

9. This report contains the Panel's findings for losses allegedly caused by Iraq's invasion and occupation of Kuwait with respect to the following claims:

(a) China Metallurgical Construction Corporation, a state enterprise licensed in the People's Republic of China, which seeks compensation in the amount of USD 24,909,175;

(b) Erection and Industrial Services Company, a publicly owned enterprise organised according to the laws of the Arab Republic of Egypt, which seeks compensation in the amount of USD 11,152,035;

(c) Eman Establishment for Contracting Nan Tawfik Boules, a sole proprietor registered according to the laws of the Arab Republic of Egypt, which seeks compensation in the amount of USD 7,290,794;

(d) El-Tadamone El-Araby Co. for Contracting, a partnership organised according to the laws of the Arab Republic of Egypt, which seeks compensation in the amount of USD 5,639,113;

(e) Lindner Aktiengesellschaft, a corporation organised according to the laws of the Federal Republic of Germany, which seeks compensation in the amount of USD 330,428;

(f) Mannesmann Demag Hüttentechnik, a corporation organised according to the laws of the Federal Republic of Germany, which seeks compensation in the amount of USD 51,445;

(g) The New Tel Aviv Central Bus Station Limited, a corporation organised according to the laws of the State of Israel, which seeks compensation in the amount of USD 8,245,000;

(h) MORANDO IMPIANTI-Impianti per l'Industria dei materiali da Costr. S.p.A, a corporation organised according to the laws of the Italian Republic, which seeks compensation in the amount of USD 4,763,303;

(i) V.I.P.P. S.p.A., a corporation organised according to the laws of the Italian Republic, which seeks compensation in the amount of USD 471,836;

(j) Nazir and Company (Private) Limited, a corporation organised according to the laws of the Islamic Republic of Pakistan, which seeks compensation in the amount of USD 2,243,080;

(k) Construction Engineering and Maintenance, NAFTOBUDOWA Holding Co., a joint stock company organised according to the laws of the Republic of Poland, which seeks compensation in the amount of USD 4,643,401;

(l) SörmaÕ Sö—üt Refrakter Malzemeleri AÔ, a corporation organised according to the laws of the Republic of Turkey, which seeks compensation in the amount of USD 85,839;

(m) Cleveland Bridge and Engineering Middle East (Private) Limited, a corporation organised according to the laws of the United Arab Emirates, which seeks compensation in the amount of USD 5,989,489;

(n) Dal Sterling Group PLC, a corporation organised according to the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the amount of USD 267,587.

II. LEGAL FRAMEWORK

A. Applicable law

10. As set forth in paragraphs 16-18 and 23 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E3' Claims (S/AC.26/1998/13) (the "First Report"), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. Liability of Iraq

11. As set forth in paragraph 16 of the "Report and Recommendations Made by the Panel of Commissioners concerning the Third Instalment of 'E3' Claims (S/AC.26/1999/1) (the "Third Report"), the Panel determined that "Iraq" as used in decision 9 (S/AC.26/1992/9) means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq's invasion and occupation of Kuwait, the Government of

Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade.

C. The “arising prior to” clause

12. In its First Report, the Panel adopted the following interpretation of the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) the phrase “without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms” was intended to have an exclusionary effect on the Commission’s jurisdiction, i.e., that such debts and obligations could not be brought before the Commission;

(b) the period described by “arising prior to 2 August 1990" should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq’s existing bad debts from the Commission’s jurisdiction;

(c) the terms “debts” and “obligations” should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) the use of a three month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

13. The Panel finds that a claim relating to a “debt or obligation arising prior to 2 August 1990” means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

D. Application of the “direct loss” requirement

14. The Governing Council’s decision 7 (S/AC.26/1991/7/Rev.1), decision 9 (S/AC.26/1992/9) and decision 15 (S/AC.26/1992/15) provide specific instructions to the Panel regarding the interpretation of the “direct loss” requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a “direct loss” - was present.

15. The Panel made the following findings regarding the meaning of “direct loss”:

(a) with respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the breakdown in civil order in those countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets;

(b) with respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defence to its obligations under the contract;

(c) with respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq or Kuwait; and

(e) the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorize the transfer of the converted funds out of Iraq, and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

E. Loss of profits

16. In order to substantiate a claim for loss of profits, a claimant must prove that it had an existing contractual relationship at the time of the invasion. Second, a claimant must prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. Finally, profits should be measured over the life of the contract. A claimant must demonstrate that the contract would have been profitable as a whole. Thus, a claimant must demonstrate that it would have been profitable to complete the contract, not just that the contract was profitable at a single moment in time.

17. Calculations of a loss of profits claim should take into account the inherent risks of the particular project and the ability of a claimant to

realize a profit in the past. The speculative nature of some projects requires the Panel to view the evidence submitted with a critical eye. In order to establish with "reasonable certainty" a loss of profit claim, the Panel requires that a claimant submit not only the contracts and invoices related to the various projects, but also detailed financial statements, including audited statements where available, management reports, budgets, accounts, time schedules, progress reports, and a breakdown of revenues and costs, actual and projected for the project.

F. Date of loss

18. The Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16 (S/AC.26/1992/16) for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars. Where applicable, the Panel has determined the date of loss for each claim.

G. Interest

19. According to decision 16 (S/AC.26/1992/16), "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing decisions on the methods of calculation and payment of interest.

20. The Panel finds that interest shall run from the date of loss, or, unless otherwise established, from 2 August 1990.

H. Currency exchange rate

21. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore, the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

22. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

23. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, on 2 August 1990.

I. Evacuation losses

24. In accordance with paragraph 21(b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

J. Valuation

25. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The valuation analysis used by the Panel's expert consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

26. After receipt of all claim information and evidence, the Panel's expert consultants applied the verification program. Each loss element was analysed individually according to a set of instructions. The expert consultants' analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a recommendation of no compensation for each loss element. In those instances where the Panel's expert consultants were unable to respond decisively, the issue was brought to the attention of the Panel for further discussion and development.

27. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

K. Evidentiary requirements

28. Pursuant to article 35(3) of the Rules, corporate claims must be supported by evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to recommend compensation.

29. The category “E” claim form requires all corporations and other legal entities that have filed claims to submit with their claim form “a separate statement explaining its claim (‘Statement of Claim’), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss”.

30. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant requesting specific information and documentation regarding the loss (the “claim development letter”). In reviewing the subsequent submissions, the Panel noted that in many cases the claimant still did not provide sufficient evidence to support its alleged losses.

31. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. This requires the application of relevant principles of the Commission’s rules on evidence and an assessment of the loss elements according to these principles. The recommendations of the Panel are set forth below.

III. CLAIM OF CHINA METALLURGICAL CONSTRUCTION CORPORATION

32. China Metallurgical Construction Corporation (“China Metallurgical”) is a limited liability entity organised according to the laws of the People’s Republic of China. Its main activities are designing and construction work relating to engineering projects for mining, civil and industrial projects. China Metallurgical also supplies services particularly in the areas of technical and labour contracts. China Metallurgical seeks compensation for losses arising from contract, tangible property losses and payment or relief to others totalling USD 24,909,175. China Metallurgical has also submitted claims for interest.

33. China Metallurgical changed its name on 19 October 1994 to China Metallurgical Construction (Group) Corporation.

34. In its reply to a claim development letter, China Metallurgical had included an additional claim relating to “expenses in China” which it asserted totalled USD 76,589. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by China Metallurgical. Where China Metallurgical reduced the amount of losses in its reply to the claim development letter, the Panel has considered the reduced amount.

Table 1. CHINA METALLURGICAL’S CLAIM

Claim element	Claim amount (USD)
Contract losses (Iraq)	12,602,763
Contract losses (Kuwait)	9,125,625
Loss of tangible property	2,463,854
Payment or relief to others	716,933
Interest	(--)
Total	24,909,175

A. Contract losses (Iraq)

1. Facts and contentions

(a) Labour supply contracts

35. During the period from 1983 to 1985, China Metallurgical signed five labour supply contracts with various Iraqi entities. The contracts were as follows:

i. Labour supply contract for the Taji-Steel Structure Factory;

ii. Labour supply contract for the Delianya Transformer Factory;

iii. Labour supply contract for the Geological team;

iv. Labour supply contract for the Basrah Steel Plant; and

v. Labour supply contract for the Basrah Steel Pipe Factory.

36. China Metallurgical stated that at the time of Iraq's invasion and occupation of Kuwait, it had completed the services relating to the Taji-Steel Structure Factory, the Delianya Transformer Factory and for the Geological team.

37. With respect to the labour supply contracts for Basrah Steel Plant and Basrah Steel Pipe Factory, China Metallurgical alleged that it was still providing a service on 2 August 1990. The Basrah Steel Plant and Basrah Steel Pipe factory agreements had been extended on 22 January 1990 and 4 April 1990 respectively for a period of twelve months. China Metallurgical asserted that on 2 August 1990 it was still providing services to the Iraqi state enterprises in respect of the extended agreements and that it continued to perform in terms of the contracts until the end of August 1990.

38. The terms of payment for the five labour supply contracts were subject to a number of deferred payment arrangements and China Metallurgical alleged that "it was entitled to receive payments from Iraq during the period from 1990-1992 in the amount of USD 8,759,268.92".

(b) 17 sub-stations contract

39. China Metallurgical stated that it signed a contract in July 1985 for the construction of 17 sub-stations with the Iraq Ministry of Industry and Mineral Electric Organization Small Project Country Electric Engineering Bureau. China Metallurgical indicated that the project was completed in October 1988. It asserted that as at 2 August 1990, it had received a total payment of USD 38,442 and there was an amount outstanding in the total sum of USD 3,666,357 and unreleased retention “fees” of USD 177,137. China Metallurgical seeks compensation for the amount of USD 3,843,494 relating to the 17 sub-stations contract.

2. Analysis and valuation

40. The Panel finds that for the purposes of the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991) China Metallurgical had contracts with Iraq with respect to the labour supply contracts and the 17 sub-stations contract.

41. The Panel finds that the losses allegedly incurred by China Metallurgical with respect to the Taji-Steel Structure Factory contract, Delianya Transformer Factory contract, the Geological team contract and 17 sub-stations contract, are based on services provided prior to 2 May 1990. Accordingly, the claim for the losses relating to these contracts is outside the jurisdiction of the Commission.

42. In addition, part of those debts were covered by deferred payment agreements. The Panel finds that for the purpose of Security Council resolution 687 (1991) the deferred payment agreements did not have the effect of novating the debt. Accordingly, claims for such losses are outside the jurisdiction of this Commission.

43. With respect to the labour supply contracts for Basrah Steel Plant and Basrah Steel Pipe Factory, the Panel finds that China Metallurgical was still providing services at the time of Iraq’s invasion and occupation of Kuwait. Accordingly, the claims relating to performances from 2 May 1990 until the end of August 1990 are within the jurisdiction of the Commission. The Panel finds that, with respect to the Basrah Steel Plant and Basrah Steel Pipe Factory, China Metallurgical submitted confirmations of the amounts due under the contracts and schedules of certificates indicating when the services were rendered.

44. China Metallurgical claimed USD 3,884,447 for contract losses relating to the Basrah Steel Plant and Basrah Steel Pipe Factory and of this claimed amount, the Panel finds that China Metallurgical did submit sufficient evidence which demonstrates that it is entitled to compensation in the amount of USD 227,193 for work performed between 2 May 1990 and 31 August 1990.

3. Recommendation

45. The Panel recommends compensation in the amount of USD 227,193 for contract losses relating to the contracts in Iraq.

B. Contract losses (Kuwait)

1. Facts and contentions

(a) W3-2 Project

46. China Metallurgical seeks compensation of KWD 1,708,223 (USD 6,171,298) arising out of a sub-agreement that it entered into on 8 April 1985 ("the sub-agreement") for the construction of the W3-2 Project with Khalifa Al-Jassim Trading & Contracting Co ("Khalifa Co"), a Kuwaiti based entity. The original subcontractor of the project was Mountain Blue Commercial Co. who assigned all of its rights and obligations of the sub-agreement to China Metallurgical upon approval of Khalifa Co. In terms of the subcontract, China Metallurgical was to undertake the building of 334 houses, a school and twelve sub-stations. The contract value was the amount of KWD 3,037,523 (USD 10,973,660).

47. China Metallurgical stated that it began construction in September 1985 and completed it in March 1988. It alleged that the maintenance period was extended continuously up to the date of Iraq's invasion of Kuwait.

(b) Rabiya Housing Project ("163 Project")

48. China Metallurgical entered into three agreements on 28 July 1986 ("the subcontracts") with a Kuwaiti registered company, M/S Arabian Building and Construction Company W.L.L. ("the contractor"). The contractor had an agreement with the National Housing Authority of Kuwait ("the main contract") to build, inter alia, houses, mosques and groups of shops.

49. The three subcontracts related to the supply of labour and equipment and the provision of infrastructure. The subcontract lump sum price was

KWD 2,400,000 for the labour agreement, the subcontract relating to infrastructure supply provided for a lump sum payment of KWD 731,000 and the subcontract agreement for equipment provided for a lump sum of KWD 600,000. China Metallurgical has alleged an amount totalling KWD 817,761 (USD 2,954,327) as remaining unpaid for work performed relating to the subcontracts for which amount it seeks compensation.

50. China Metallurgical alleged that it completed all of its obligations under the subcontracts by September 1989 and at the same time began the performance of the maintenance requirements. Up to 22 February 1989, the contractor had paid China Metallurgical part of the subcontract amounts totalling KWD 2,913,239 (USD 10,524,657), which included a pre-payment. China Metallurgical contended that the "maintenance period and its negotiation for the payment of the sub-contract were frustrated and destroyed by Iraq's unlawful invasion and occupation of Kuwait on 2 August 1990".

51. China Metallurgical alleged that it sought to contact the other contracting parties after the cessation of hostilities, but it received no response from them.

2. Analysis and valuation

52. This Panel has found that a claimant must provide specific proof that the failure of a Kuwaiti debtor to pay was a direct result of Iraq's invasion and occupation of Kuwait. A claimant must demonstrate that a business debtor was rendered unable to pay due to insolvency or bankruptcy caused by the destruction of its business during Iraq's invasion and occupation of Kuwait. China Metallurgical has not supplied this proof. China Metallurgical only submitted copies of a telephone record between itself and its agent in Kuwait which purports to confirm that the debtors were no longer in existence.

53. The Panel finds that China Metallurgical failed to submit sufficient evidence that its claim for contract losses in Kuwait arose as a direct result of Iraq's invasion and occupation of Kuwait on 2 August 1990.

3. Recommendation

54. The Panel recommends no compensation for contract losses in Kuwait.

C. Loss of tangible property

1. Facts and contentions

55. China Metallurgical seeks compensation in the amount of USD 2,463,854 for tangible property losses allegedly arising in Kuwait and Iraq.

56. China Metallurgical asserted that it had 334 personnel at its branch office and work sites in Iraq and eight staff members in Kuwait at the time of Iraq's invasion and occupation of Kuwait. It stated that it evacuated its personnel from both Kuwait and Iraq.

(a) Office in Iraq

57. China Metallurgical seeks compensation for USD 85,775 arising out of the alleged loss of equipment from its office in Iraq. In respect of the Iraq office, China Metallurgical asserted that it entered into an agreement dated 1 October 1990 with a local agent to guard its property ("Trust Agreement I"). This agreement related to a "List of Temporarily Imported Vehicles and Equipment" and a "List of other Vehicles and Equipment" located at China Metallurgical's work site.

(b) AT Barrage Project

58. In addition, the Trust Agreement I required the agent to guard the sealed offices of China Metallurgical. In its reply to a claim development letter, China Metallurgical stated that this material related to "AT Barrage of Ikifil Shinafiya Project". It appears that China Metallurgical was a subcontractor to China State Construction Engineering Corporation. China Metallurgical submitted documentation which indicated that the equipment was in fact imported by China State Construction Engineering Corporation. It asserted that China State Construction Engineering Corporation did authorise China Metallurgical to make the claim to the Commission as China Metallurgical allegedly paid for the equipment. China Metallurgical asserts a loss of USD 552,146.

(c) Basrah Navigation Lock No. 1 Project

59. China Metallurgical stated that it entered into a second agreement dated 1 October 1990 ("Trust Agreement II") with the same agent to guard vehicles, equipment, materials, instruments, spares and steel bars. In its reply to a claim development letter, China Metallurgical asserted that the steel bars that it had imported were rejected by the contractor as being

unsuitable and it was in the process of arranging to re-export them when Iraq's invasion and occupation of Kuwait occurred. China Metallurgical seeks compensation for the full value of the steel bars in the amount of USD 1,167,000. The total compensation claimed, including the steel bars, is USD 1,627,354.

60. China Metallurgical submitted a report dated 29 June 1992 alleging the property was stolen on 21 October 1990.

(d) Office in Kuwait and W3-2 Project

61. With respect to the Kuwait office, China Metallurgical alleged that it purchased office equipment between 1980 and 2 August 1990. China Metallurgical seeks compensation in the amount of USD 90,198. China Metallurgical also seeks compensation relating to the W3-2 project, where it was the subcontractor, of USD 108,381.

2. Analysis and valuation

62. In relation to the property alleged to be lost in Iraq and Kuwait, China Metallurgical contended that it lost most of the original invoices. China Metallurgical stated that "the costs of the properties claimed herein are net value calculated on the base of the financial records regularly maintained at Claimant's headquarter". China Metallurgical submitted a "summary of spare parts" and a "detailed list of main materials" and other internally generated schedules of material.

63. With respect to the steel bars, China Metallurgical submitted various invoices dating from 1988 along with importation documentation. It had also submitted a letter of rejection of the steel bars from the Ministry of Agriculture and Irrigation to the Board of the South-Area Customs dated 30 July 1990. This letter contained a request for permission to re-export the steel bars. The letter also made reference to attachments which had details of the "specifications and amount attached hereunder". These attachments were not provided in China Metallurgical's reply to the claim development letter.

64. In order to establish a loss of tangible property claim, this Panel found that a claimant must submit evidence such as certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements, transportation documents and other relevant documents generated prior to 2 August 1990.

65. The Panel finds that China Metallurgical did not submit sufficient evidence which demonstrated its title to or right to use the assets, the value and the presence of the tangible property located in Iraq and Kuwait. The Panel finds that China Metallurgical failed to submit sufficient evidence to substantiate its loss of tangible property claim.

3. Recommendation

66. The Panel recommends no compensation for tangible property losses in Kuwait and Iraq.

D. Payment or relief to others

1. Facts and contentions

67. China Metallurgical asserted that after 2 August 1990 it decided to withdraw its asserted 334 personnel in Iraq and the eight persons in Kuwait to China. In its reply to the claim development letter, China Metallurgical stated that 337 employees were in Iraq and eight in Kuwait. Of those in Iraq, three travelled by road via Turkey to China. The rest of the employees were transported by bus to Jordan and then by air to China. The transfer to China appears to have occurred towards the end of August 1990. China Metallurgical did assert a total loss of USD 591,786 calculated as follows:

i. Airline tickets - USD 400,595;

ii. Food - USD 8,710;

iii. Bus rental - USD 174,479; and

iv. Lodging USD - 8,002.

68. China Metallurgical also included a claim for alleged payments made to an accountant and an amount allegedly paid to its local agent for guarding China Metallurgical’s assets in Iraq. The total asserted loss is USD 125,147. With regard to the accountant, China Metallurgical stated that it incurred costs totalling USD 48,133 with respect to services provided during the course of evacuation relating to accounting, taxation and audit. The second claim related to an alleged payment of USD 77,014 to its agent for guarding China Metallurgical’s property.

2. Analysis and valuation

69. With respect to the claim for air fares, China Metallurgical did submit the following evidence of its loss: copies of nine receipts which it stated were in respect of air transport; copies of its employees names and passport numbers; an affidavit signed by two of its employees; copies of a number of contracts identified under the loss of contracts heading; and a "certificate" from Air China. The Panel finds that China Metallurgical did provide sufficient evidence of the evacuation of its employees and having incurred the air fares.

70. The Panel has held that temporary and extraordinary costs of evacuation are compensable. China Metallurgical was requested, in a claim development letter, to explain how its costs would have exceeded the costs in repatriating its employees assuming the normal completion of work in Iraq. In its reply, China Metallurgical indicated that it would have had to pay a "higher airfare than usual". It did not state what the difference in air fare would be nor did it state what the normal air fare would be.

71. The Panel examined the contracts and evidence submitted by China Metallurgical to establish which party was responsible for the air fares with respect to the various contracts that China Metallurgical had submitted. The Panel finds that China Metallurgical submitted some evidence which demonstrates that the employer was responsible for the repatriation costs of some of the workers and that the costs incurred by China Metallurgical exceeded the costs it would have normally incurred in the repatriation of its workers upon natural completion of the contracts by an amount of USD 101,964. With respect to the balance of the claim for the cost of air fares, the Panel finds that China Metallurgical did not submit sufficient evidence to demonstrate that the alleged losses were temporary and extraordinary expenses.

72. China Metallurgical submitted receipts and "advising bills" for bus hire and car rental. With respect to the asserted expenses for lodging and food, China Metallurgical did submit receipts, "advising bills" and several partially translated receipts to support this particular element of the claim. The Panel finds that China Metallurgical did submit sufficient evidence demonstrating a loss in the amount of USD 5,755 relating to the balance of the claim for evacuation costs.

73. The Panel finds that with respect to the alleged payment to the Iraqi accountant and the alleged costs of guarding the property, China

Metallurgical did not submit adequate evidence of payment. It accordingly recommends no compensation for this loss element.

3. Recommendation

74. The Panel recommends USD 107,719 compensation for payment or relief to others.

E. Interest

75. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20 of this report.

F. Recommendation for China Metallurgical

Table 2. RECOMMENDED COMPENSATION FOR CHINA METALLURGICAL

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses (Iraq)	12,602,763	227,193
Contract losses (Kuwait)	9,125,625	nil
Loss of tangible property	2,463,854	nil
Payment or relief to others	716,933	107,719
Interest	(--)	(--)
Total	24,909,175	334,912

76. Based on its findings regarding China Metallurgical’s claim, the Panel recommends compensation in the amount of USD 334,912.

IV. CLAIM OF ERECTION AND INDUSTRIAL SERVICES COMPANY

77. Erection and Industrial Services Company ("Erection and Industrial") is an Egyptian registered public sector company involved in the provision of engineering and industrial services. It seeks compensation in the amount of USD 11,152,035 for contract losses, loss of profits, tangible property loss and interest.

78. Erection and Industrial also submitted a subsidiary claim in the event its claim for unremitted contract amounts is not considered compensable. The claim is based on alleged financial losses arising in connection with Erection and Industrial's funds in the Rafidain Bank in Iraq. The total amount claimed in the subsidiary claim is USD 8,249,134.

Table 3. ERECTION AND INDUSTRIAL'S CLAIM

Claim element	Claim amount
	USD
Contract losses	5,672,453
Loss of profits	959,461
Loss of tangible property	265,779
Interest	4,254,342
Total	11,152,035

A. Contract losses

1. Facts and contentions

79. Erection and Industrial entered into its first contract in Iraq in June 1983 with the Baghdad Electricity Distribution Organization for a contract price of IQD 500,000. On 8 August 1984, Erection and Industrial entered into a second contract with the same party for a contract price of IQD 500,000. It entered into the third contract with the same party in March 1986 for a contract price of IQD 3,000,000. On 29 April 1989, Erection and Industrial entered into a contract with the Baghdad Electricity Distribution Organisation for a contract price of IQD 2,000,000 ("the fourth contract").

80. With respect to the first three contracts, Erection and Industrial seeks compensation for the total amount of USD 3,928,267 representing losses which Erection and Industrial asserted were due and owing to it in convertible Iraqi dinars. These amounts were to be paid to it at the end of the war between Iran and Iraq. Erection and Industrial indicated that at the time of Iraq's invasion and occupation of Kuwait, it had completed its work in relation to the first three contracts, but it did not specify an exact completion date. It stated that "the cease-fire of 20 August 1988" determined the end of the Iran-Iraq war, which determined the "due dates of payment".

81. The fourth contract was for the improvement and upgrading of the electricity distribution network in Baghdad. The period for execution of the contract was 24 months from the date of commencement. Erection and Industrial asserted it commenced the works on 1 July 1989 and was due to complete the works on 1 July 1991. Erection and Industrial stated that at 2 August 1990, it had completed work to the value of IQD 850,000, which represented 42.5 per cent of the contract.

82. Erection and Industrial stated that completion of the fourth contract became impossible as a result of Iraq's invasion and occupation of Kuwait. Erection and Industrial asserted that the employer owed it an amount of IQD 226,475 representing work completed and not paid up to 30 June 1990 (IQD 152,538) and retention monies (IQD 73,937). Erection and Industrial also seeks compensation for an asserted loss of IQD 108,000 representing work completed and not paid from 2 June 1990 to 2 August 1990. It, therefore, asserted a total loss of IQD 334,475 (USD 1,070,321).

83. Erection and Industrial also asserted a loss in respect of the United States dollar portion of the fourth contract. The contract stated that Erection and Industrial was entitled to a payment of 10 per cent of the contract value in United States dollars payable in four equal instalments commencing, according to Erection and Industrial, on 29 July 1989 with the final payment due on 29 April 1990. Erection and Industrial asserted a loss, representing the 10 per cent amount to be remitted, of IQD 210,000.

2. Analysis and valuation

84. The Panel finds for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) that Erection and Industrial, in each case, had a contract with Iraq.

85. The Panel finds that the performance by Erection and Industrial with respect to the first three contracts was completed prior to 2 May 1990 and that the claims for the unremitted convertible Iraqi dinar amounts relate entirely to work that was performed prior to 2 May 1990. Accordingly, the claim for the losses relating to the first three contracts is outside the jurisdiction of the Commission.

86. With respect to the remittable United States dollar portion of the fourth contract, the Panel finds that the amounts were debts and obligations of Iraq arising prior to 2 August 1990. Accordingly, the claim for the losses relating to the remittable portion of the fourth contract is outside the jurisdiction of the Commission.

87. With respect to claims for work completed but allegedly not paid up to 30 June 1990 and from 2 June 1990 to 2 August 1990 under the fourth contract, Erection and Industrial had submitted a copy of the contract and correspondence with the employer. In relation to the retention amount claimed, it would appear that the project was 42.5 per cent completed by 2 August 1990 and could, therefore, be considered to be ongoing.

88. The Panel finds that the evidence submitted by Erection and Industrial is not sufficient to establish its loss and entitlement to the alleged amounts outstanding under the fourth contract and retention monies claimed.

3. Recommendation

89. The Panel recommends no compensation for contract losses.

B. Loss of profits

90. Erection and Industrial stated that Iraq's invasion and occupation of Kuwait prevented it from completing the fourth contract. Erection and Industrial contended that it would have made a profit based on a return of 26 per cent. Erection and Industrial stated that as the unperformed portion of the contract amounted to IQD 1,150,000, it would, based on a return of 26 per cent on that amount, have made a profit of IQD 299,000 (USD 959,461).

91. Erection and Industrial produced an extract from the Iraqi Branch's budget for June 1990 as proof that it was making a profit. Erection and Industrial did not submit audited financial statements, budgets for the project, management accounts, turnover, original bids, profit/loss statements, finance costs and head office costs prepared by or on behalf of

Erection and Industrial for the project. In addition, no evidence of the profitability of its other projects in Iraq was submitted.

92. The Panel finds that Erection and Industrial did not submit sufficient evidence to establish its claim for loss of profits on the fourth contract.

93. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

94. Erection and Industrial seeks compensation in the amount of IQD 51,806 (USD 265,779) relating to tangible property losses. Erection and Industrial contended that at the time of Iraq's invasion and occupation of Kuwait it departed from Iraq and abandoned its property in Iraq. It asserted that on 17 April 1992, the Government of Iraq issued a decree confiscating the property and assets of foreign companies that had left Iraq after 2 August 1990 and this included the property of Erection and Industrial.

95. Erection and Industrial provided, as evidence of its title to the property, an inventory of its assets in its Iraqi Branch, made for the purpose of preparation of the Branch's budget on 30 June 1990. It did not submit evidence such as certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements, transportation documents and other relevant documents generated prior to 2 August 1990.

96. The Panel finds that Erection and Industrial did not submit sufficient evidence which demonstrated its title to or right to use the property and that such property was in Iraq prior to 2 August 1990.

97. The Panel recommends no compensation for tangible property losses.

D. Subsidiary claim

98. Erection and Industrial had submitted as a "subsidiary request" an alternative claim, in the event that the claim for unremitted contract losses is considered not compensable. Erection and Industrial seeks, as an alternative, compensation for an alleged loss of USD 8,249,134. It substituted its claim for unremitted contract losses for the amount to its credit in the Rafidain Bank, which allegedly amounted to IQD 919,792 (USD 2,943,334). It calculated its subsidiary claim as detailed in the table below.

Table 4. ERECTION AND INDUSTRIAL'S SUBSIDIARY CLAIM

Claim element	Claim amount USD
Contract losses	1,070,320
Loss of profits	959,461
Loss of tangible property	265,779
Financial losses	2,943,334
Interest	3,010,240
Total	8,249,134

99. The Panel finds that Erection and Industrial failed to prove that the funds in the account have been appropriated, removed, stolen or destroyed and therefore how it suffered any loss.

100. The Panel recommends no compensation for the subsidiary claim

E. Interest

101. As the Panel recommends no compensation on contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

F. Recommendation for Erection and Industrial

Table 5. RECOMMENDED COMPENSATION FOR ERECTION AND INDUSTRIAL

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	5,672,453	nil
Loss of profits	959,461	nil
Loss of tangible property	265,779	nil
Interest	4,254,342	nil
Total	11,152,035	nil

102. Based on its findings regarding Erection and Industrial's claim, the Panel recommends no compensation.

V. CLAIM OF EMAN ESTABLISHMENT FOR CONTRACTING

103. Nan Tawfik Boules is an Egyptian sole proprietor trading as “Eman Establishment for Contracting” (“Eman”). Eman is a provider of electrical constructions and sanitary works. Eman seeks compensation for losses relating to contract, loss of tangible property, payment or relief to others and interest totalling USD 7,290,794.

Table 6. EMAN’S CLAIM

Claim element	Claim amount (USD)
Contract losses	1,598,616
Loss of tangible property	2,417,553
Payment or relief to others	387,457
Interest	2,887,168
Total	7,290,794

104. In its reply to the claim development letter, Eman added a new loss element of loss of profit for an amount of IQD 124,092. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by Eman. Where Eman reduced the amount of losses in its reply to the claim development letter, the Panel has considered the reduced amount.

A. Contract losses

1. Facts and contentions

105. Eman seeks compensation for contract losses and the cost of equipment hire in the amount of USD 1,598,616. Eman signed a contract with the Iraqi Ministry of Industry and Military Industrialization, the General Organization of Electricity Distribution for Governorates on 25 May 1990. The value of the contract was IQD 395,612. The contract related to the construction of the 33kV Lehis line in the Basra region in Iraq (“the project”). Eman was to undertake the construction of steel towers for high tension electricity transmission lines over a distance of approximately 33 kilometres. The project was to be completed within a period of six months. Eman stated that it commenced work on the project on 1 June 1990 and ceased on 2 August 1990.

106. Eman asserted that it was denied permission to leave Iraq by the Iraqi authorities. It contended that in the "first days of the war" the raiding planes struck the project site destroying twenty-two towers which had been erected together with its machinery and a caravan, which it used as a project office. This caravan allegedly contained most of Eman's documents relating to the project.

107. Eman stated that work resumed on the site on 21 September 1991.

108. Eman alleged it completed the work according to the prices stated in the contract despite the prices having "multiplied by more than 5 times".

109. The alleged loss sustained by Eman is for that portion of the work that was completed after 21 September 1991, which, according to Eman, was 75 per cent of the contract value. The amount representing the 75 per cent of the contract value was then multiplied by 150 per cent, which Eman asserted represents its loss for the work undertaken from 21 September 1991 to 2 June 1993. The asserted loss is IQD 451,374.

110. Eman stated that the first taking over certificate for the project was issued on 2 April 1992 and the final certificate was issued on 2 June 1993. It acknowledged that it was paid IQD 438,365 representing the contract price, by the employer.

111. Eman also made a further claim for its retention monies of IQD 44,777. However, in its reply to the claim development letter, Eman stated that it was paid the "retained insurance in full after termination of the maintenance period and finally taking over the work." It would appear, therefore, to have been compensated with respect to the retention monies it claimed amounting to IQD 44,777.

112. Finally, Eman seeks compensation for equipment that it allegedly had to rent to complete the project. It stated a loss of IQD 75,000 in its original statement of claim. This loss element is calculated on the basis of 150 days of hire at IQD 500 per day. In its reply to the claim development letter, Eman asserted that the machines were hired for 90 days at IQD 500 per day, which equals a claimed amount of IQD 45,000.

2. Analysis and valuation

113. The Panel finds for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) that Eman had a contract with Iraq. The Panel finds that the work relating to the contract

was performed after 2 May 1990 and that the claim relating thereto is therefore within the jurisdiction of the Commission.

114. In relation to the increased contract prices claim, Eman did provide a copy of the contract and copies of correspondence with the employer. Eman did not provide evidence of applications for payment, approved payment certificates, interim certificates, progress reports, account invoices and actual payments received.

115. The Panel finds that Eman did not submit any independent evidence that supports its assertion as to the performance and the increased contract costs.

116. With respect to the cost of renting additional equipment, the Panel finds that Eman did not submit any evidence to indicate the equipment hired, the itemised cost thereof, proof of hire, dates of hire and proof of payment.

117. The Panel finds that Eman failed to submit sufficient evidence to support its claim for the increased cost of the contract and the rental of the equipment.

3. Recommendation

118. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

119. Eman seeks compensation for losses relating to tangible property totalling IQD 751,500 (USD 2,417,553). The statement of claim made reference to storage of certain property prior to the commencement of the work on the project. Eman stated that it appointed guards from its regular Egyptian labour force. However, the guards fled when the “war” reached the project site and the “war” allegedly destroyed all Eman’s machinery in the open and in the warehouse where some of it had been stored.

120. The Panel finds that Eman did not submit evidence such as certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements, transportation documents and other relevant documents generated prior to 2 August 1990.

121. The Panel finds that Eman did not submit sufficient evidence which demonstrated its title to or right to use the property and that such property was in Iraq prior to 2 August 1990.

122. The Panel recommends no compensation for tangible property losses.

C. Payment or relief to others

1. Facts and contentions

123. Eman seeks compensation relating to two loss elements, namely, “living expenses on delay times” and “office expenses on delay times.” Eman stated that its employees were unable to leave Iraq after 2 August 1990 as the Iraqi employer wanted them to complete the project

124. With respect to the claim for living expenses, Eman had submitted a claim totalling IQD 59,400 (USD 191,088) for living expenses for eight labourers and Mr. Nan Tawfik Boules for 330 days of the alleged stoppage period. Eman also stated in its reply to the claim development letter, that it was responsible for the maintenance of nine people during the stoppage period and 25 during the work period. The cost was calculated at the rate of IQD 20 per day.

125. The claim for office expense on the delay times totals IQD 61,050 (USD 196,369) which are alleged office expenses for 11 months. The office expenses allegedly totalled IQD 5,550 per month. These mainly related to the salaries of the engineer, accountants and clerks as well as the rent costs.

2. Analysis and valuation

126. Eman had provided a list of ten employees which it indicated were employed on the project and their passport numbers. It did not submit any of the following information relating to its employees: family name, first name, employee identification number, Iraqi residency permit number, and passport issuing country. Copies of Eman’s payroll records for the employees for the period relevant to the claim (both before and after 2 August 1990) have not been provided. Proof of the alleged amounts paid has not been submitted.

127. With respect to the office expenses, the Panel finds that Eman did not submit a copy of the lease agreement nor have invoices and receipts of the expenses allegedly incurred by Eman been provided. The Panel finds that

there is no explanation proffered as to how Iraq's invasion and occupation of Kuwait caused the losses relating to office expenses.

128. The Panel finds that Eman did not submit sufficient evidence to establish its claim for living expenses and office expenses.

3. Recommendation

129. The Panel recommends no compensation for payment or relief to others.

D. Interest

130. As the Panel recommends no compensation on contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

E. Recommendation for Eman

Table 7. RECOMMENDED COMPENSATION FOR EMAN

Claim element	Claim amount (USD)	Recommended Compensation (USD)
Contract losses	1,598,616	nil
Loss of tangible property	2,417,553	nil
Payment or relief to others	387,457	nil
Interest	2,887,168	nil
Total	7,290,794	nil

131. Based on its findings regarding Eman's claim, the Panel recommends no compensation.

VI. CLAIM OF EL-TADAMONE EL-ARABY COMPANY FOR CONTRACTING

132. El-Tadamone El-Araby Company for Contracting ("El Tadamone") is an Egyptian partnership that performs general contracting, importation, exportation and commercial agency work. El Tadamone seeks compensation for contract losses, loss of profits, loss of tangible property, payment or relief to others, a claim to "cover financial and moral damage resulting from the delay in payment" and interest in the amount of USD 5,639,113.

Table 8. EL TADAMONE'S CLAIM

Claim element	Claim amount USD
Contract losses	1,121,594
Loss of profits	222,375
Loss of tangible property	500,460
Payment or relief to others	1,647,935
Financial losses	1,821,476
Interest	325,273
Total	5,639,113

A. Contract losses

1. Facts and contentions

133. The first contract for which El Tadamone seeks compensation in the amount of USD 611,937 was entered into on 29 January 1986 with the Department of Electricity Distribution of Baghdad for the modernisation of the Baghdad electricity supply ("contract number 1"). The contract value was IQD 1,000,000. This contract was for a duration of 12 months. El Tadamone stated that "[t]he first contract was executed and the works therein described were completed within the period stipulated in the contract. A certificate of completion was delivered to the owner". The amounts allegedly outstanding relate to workers salaries to be remitted in United States dollars.

134. El Tadamone entered into a second contract with the General Establishment of the Distribution of Baghdad Electricity ("contract number 2") on 1 February 1989. This contract related to the establishment of a new residential districts' electricity network and the improvement of the existing network in certain Baghdad neighbourhoods (Karkh District). The

contract value was IQD 2,000,000 and the completion period stipulated in the contract was 24 months. El Tadamone asserted that by 2 August 1990, work totalling IQD 198,000 remained unexecuted "because of the war". El Tadamone asserted that it was the employer who requested suspension of the works.

135. El Tadamone asserted losses arising in respect of the following:

i. IQD 50,000 representing the balance of funds retained by the employer up to 31 December 1991; and

ii. IQD 108,827 which had been "earmarked for transfer...but not yet transferred".

136. El Tadamone also seeks compensation for IQD 256,001 representing the commercial account it had with the "Alrafedain Bank" in Iraq. This amount is reclassified as a financial loss.

137. El Tadamone submitted further claims as contract losses, which are reclassified as unproductive labour costs or payment or relief to others. These claims are considered under the heading "payment or relief to others".

2. Analysis and valuation

138. The Panel finds for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) that El Tadamone had contracts with Iraq in respect of both contracts.

139. The Panel finds that the alleged losses relating to contract number 1 are based on work performed prior to 2 May 1990 and therefore are outside the jurisdiction of the Commission.

140. The Panel finds that part of the work relating to the contract number 2 was performed after 2 May 1990 and therefore such losses are within the jurisdiction of the Commission.

141. El Tadamone had submitted evidence, as proof of the value of the completed work, consisting of a letter from the employer confirming the completed work between 1 February 1989 to 16 September 1990, the date that the employer requested the suspension of the contract. El Tadamone was requested by a claim development letter to submit applications for payment, approved payment certificates, interim certificates, progress reports, account invoices and actual payments received. El Tadamone failed to submit the requested information.

142. The Panel finds that El Tadamone did not submit sufficient evidence for it to determine what portion of the claimed amount of IQD 108,827 related to work performed after 2 May 1990.

143. The claim relating to the retained fund is more appropriately described as retention money.

144. With reference to the retention money, this Panel has held that retention money is a form of security held by an employer to ensure fulfilment by a contractor of its obligations to complete the project and to remedy defects after take over of the completed project by the employer.

145. The Panel has previously recommended compensation for loss of retention money where the project was ongoing on 2 August 1990, the claimant was prevented from terminating the project without fault and had submitted sufficient evidence of the amounts retained and had proven that all interim certificates were paid on a timely basis by the employer.

146. In this case, it would appear that the project was ongoing on 2 August 1990. Indeed, it was suspended at the request of the employer on 16 September 1990. However, the Panel finds that the evidence submitted by El Tadamone is not sufficient to establish its loss and entitlement to the retention money. El Tadamone did not submit evidence establishing that progress payments were made on a timely basis by the employer nor did it provide any interim certificates or progress reports despite being requested to do so in the claim development letter.

147. The Panel finds that El Tadamone did not submit sufficient evidence to establish its loss and entitlement to all or any part of the retention money.

3. Recommendation

148. The Panel recommends no compensation for contract losses.

B. Loss of profits

149. El Tadamone seeks compensation for loss of profits in the amount of IQD 69,300 (USD 222,375). It based the loss of profits amount on 35 per cent of the unexecuted contract value, which it stated was IQD 198,000.

150. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17. El Tadamone only submitted a

copy of a document from the employer confirming the executed portion of the contract. The Panel finds that El Tadamone failed to submit sufficient evidence to substantiate its loss of profits claim.

151. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

152. El Tadamone seeks compensation for tangible property losses in the amount of IQD 155,961 (USD 500,460). It stated that "as a result of the interruption of the works under the second Contract, resulting from the Gulf war, the company had to leave most of the machines, equipment and furniture behind". The tangible property that El Tadamone asserted that it lost includes raw materials on site, manual instruments, transport, caravans and furniture.

153. El Tadamone provided as evidence of its title to the property, copies of correspondence with the Iraqi customs. El Tadamone did not submit evidence such as certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements, transportation documents and other relevant documents generated prior to 2 August 1990.

154. The Panel finds that El Tadamone did not submit sufficient evidence that demonstrates its title to or right to use the property and that such property was in Iraq prior to 2 August 1990.

155. The Panel recommends no compensation for tangible property losses.

D. Payment or relief to others

1. Facts and contentions

156. El Tadamone made several claims under the contract heading which are more properly classified as unproductive labour costs. It seeks compensation in the amount of IQD 513,554 (USD 1,647,935) and the claims are as follows:

(a) Salaries

157. El Tadamone stated that at the request of the Iraqi employer it remained in Iraq up until 30 September 1993. It calculated its loss on the basis of the salaries of 12 workers, five engineers and accountants over a

period of 37 months. El Tadamone seeks compensation in the amount of IQD 298,590.

(b) Social security

158. El Tadamone seeks compensation of IQD 35,830 for social security allegedly paid, which had been calculated as 12 per cent of the salary bill for the period relating to the 37 month stay in Iraq, that is, an amount of IQD 298,590.

(c) Travel expenses

159. El Tadamone submitted a claim for evacuation expenses for a total amount of IQD 75,000 calculated on the basis of 150 workers at IQD 500 each.

(d) Pre-paid rent of headquarters in Iraq

160. El Tadamone submitted a claim relating to the rent allegedly paid in respect of its headquarters in Iraq in the amount of IQD 23,666. The rent had been claimed up until 31 December 1993.

(e) Legal adviser's fees in Iraq

161. El Tadamone seeks compensation for "fees for the Iraqi legal adviser" in the amount of IQD 11,042.

(f) Service and publications

162. El Tadamone submitted a claim for IQD 32,426 for the cost of electricity, water, fuel, maintenance services and what it describes as "publications".

(g) Payments for increases in the cost of foodstuffs

163. El Tadamone seeks compensation for the alleged impact on its employees of the increase in the price for basic foodstuff in Iraq allegedly caused by Iraq's invasion and occupation of Kuwait. El Tadamone asserted that "during the thirty seven (37) months of the war the company paid its workers the amount of one thousand Iraqi dinars (IQD 1,000) monthly in order to make life possible for them and to help them provide their families with the minimum of subsistence requirements (1000 x 37 months = IQD 37,000, equaling USD 118,729)".

2. Analysis and valuation

164. The Panel finds that El Tadamone did not provide supporting evidence for the asserted losses. The following information about each employee should have been provided: family name, first name, employee identification number, Iraqi residency permit number, and passport number with issuing country. Copies of El Tadamone's payroll records for the employees for the period relevant to the claim (both before and after 2 August 1990) were also not provided.

165. The Panel finds that El Tadamone did not provide proof of the expenses it allegedly incurred or payment of these alleged expenses. El Tadamone did not provide invoices and receipts of the expenses allegedly incurred by it. Finally, El Tadamone failed to provide a copy of the lease agreement.

166. The Panel finds that the claim for payment or relief to others is not compensable on the grounds that El Tadamone failed to submit sufficient evidence to establish the alleged expenses. In addition, the Panel finds that El Tadamone did not establish how these losses were directly caused by Iraq's invasion and occupation of Kuwait.

3. Recommendation

167. The Panel recommends no compensation for payment or relief to others.

E. Financial losses

1. Facts and contentions

(a) Iraqi Bank account

168. El Tadamone seeks compensation for IQD 256,001 (USD 821,476) for alleged losses arising in connection with the commercial account El Tadamone had with the Rafidain Bank. This amount had originally been classified as a loss under contract, but is more appropriately classified as a financial loss. El Tadamone asserted that the losses had arisen out of the failure by the Rafidain Bank to transfer the funds due to El Tadamone.

(b) Material and moral damage

169. El Tadamone seeks "compensation for material and moral damage" in the amount of USD 1,000,000. It would appear that this claim partly arises out of El Tadamone's alleged purchase of new equipment to replace the equipment

it allegedly could not remove from Iraq. It ultimately stated that it is "within the Commission's discretion to review the company's estimation of damage, taking into account the size of the project in Iraq and the duration of the company's deprivation of the equipment".

170. In addition to the scant information submitted with its statement of claim, El Tadamone stated in its reply to the claim development letter that "[t]his lump sum amount is the claimant Company's estimation of the damage resulting from the interruption of the Company's work, and its deprivation of equipment left behind which could have been utilized to execute work in other projects."

2. Analysis and valuation

(a) Iraqi Bank account

171. El Tadamone produced a copy of its bank statement and asserted that the account was operable until 31 December 1991. El Tadamone is unable to state whether the funds in the bank account were removed, stolen or appropriated. The Panel finds that El Tadamone failed to prove that the funds in the account had been appropriated, removed, stolen or destroyed and, therefore, how it suffered any loss.

(b) Material and moral damage

172. The Panel finds that El Tadamone did not provide evidence in support of its alleged loss.

3. Recommendation

173. The Panel recommends no compensation for financial losses.

F. Interest

174. As the Panel recommends no compensation on contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

G. Recommendation for El Tadamone

Table 9. RECOMMENDED COMPENSATION FOR EL TADAMONE

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	1,121,594	nil
Loss of profits	222,375	nil
Loss of tangible property	500,460	nil
Payment or relief to others	1,647,935	nil
Financial losses	1,821,476	nil
Interest	325,273	nil
Total	5,639,113	nil

175. Based on its findings regarding El Tadamone's claim, the Panel recommends no compensation.

VII. CLAIM OF LINDNER AKTIENGESELLSCHAFT

176. Lindner Aktiengesellschaft ("Lindner") is a German joint stock company. It seeks compensation for contract losses and materials totalling DEM 516,128 (USD 330,428).

Table 10 LINDNER'S CLAIM

Claim element	Claim amount (USD)
Contract losses	181,527
Loss of tangible property	110,825
Loss of profits	38,076
Total	330,428

A. Contract losses

1. Facts and contentions

177. On 24 May 1990, Lindner entered into a contract with the Ministry of Planning (the "employer") in Iraq. The contract was in respect of the interior decoration to Meeting Hall Number 144 in Project 25 in Baghdad. The project had a value of DEM 1,486,864, with reductions for material supplied by the employer. The contract stated that the effective date of commencement would be 10 June 1990 and the contract work was to be completed within a period of seven months.

178. Lindner contended that it commenced the planning, design/static calculations, and production in respect of the contract. It asserted that it incurred losses with respect to contract and design/static calculations.

179. Lindner submitted a claim for losses under contract for an amount of DEM 223,020 (USD 142,778). In its reply to the claim development letter, Lindner indicates that this amount represents "expenses paid for travelling and local staff and offices in Baghdad". These expenses allegedly amount to DEM 163,545. Included in the claim for the DEM 223,020 is an amount of DEM 59,475 which is a claim for loss of profits. The loss of profits claim will be analysed separately.

180. Lindner made further submissions relating to a claim for DEM 120,000 for "design/static calculations". It contended that the work commenced on this portion of the claim on 28 May 1990 and was completed by 13 July 1990.

The claim had been filed as “other” on the “E” Claim Form, but appears to be a contract related claim and will be treated as such for the purpose of the Panel’s findings.

2. Analysis and valuation

181. The Panel finds that for the purposes of the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991) Lindner had a contract with Iraq. The work relating to the contract was performed after 2 May 1990 and therefore the alleged losses are within the jurisdiction of the Commission.

182. The Panel finds that Lindner did not submit sufficient information to support its claim for contract losses.

183. With respect to the claim for local office expenses in Baghdad, Lindner stated that it could not produce documents as after the arrest of its employee the vouchers and documents of the local office allegedly disappeared. The Panel finds that Lindner did not submit sufficient evidence to demonstrate its loss and, in any event, finds that losses related to branch office expenses are not a direct result of Iraq’s invasion and occupation of Kuwait.

184. With respect to the claim for the design/static calculations, Lindner did not submit sufficient evidence to prove its loss. Although Lindner submitted an invoice reflecting an amount for DEM 400,000 relating to the claim for design/static calculations and for materials, the Panel finds that this invoice is of limited probative value as the amount stated therein of DEM 400,000, by Lindner’s own admission, is an overstated amount.

3. Recommendation

185. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

186. Lindner seeks compensation for an amount of DEM 173,108 (USD 110,825) relating to the purchase of a custom-made wood veneer required for the fulfilment of the contract. It asserted that as this veneer was custom-made it had been unable to dispose of it. Lindner alleged that it tried various methods of attracting buyers including: advertisements in a German timber industry magazine; sending samples to companies dealing in timber; and attempting to sell it back to the seller. Lindner stated that these

attempts were unsuccessful. It did not provide any documentation or other information in support of these alleged efforts.

187. The Panel finds that Lindner failed to provide sufficient information and/or documentation to prove ownership, value and existence of the material for which it seeks compensation. Lindner also failed to provide proof of its attempts to sell the material.

188. The Panel recommends no compensation for loss of tangible property.

C. Loss of profits

189. Lindner submitted a claim for loss of profits in the amount of DEM 59,475 (USD 38,076). It based the loss of profits amount on 4 per cent of the contract value of DEM 1,486,864.

190. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17. The Panel finds that Lindner failed to submit sufficient evidence to substantiate its loss of profits claim.

191. The Panel recommends no compensation for loss of profits.

D. Recommendation for Lindner

Table 11. RECOMMENDED COMPENSATION FOR LINDNER

Claim element	Claim amount (USD)	Recommended Compensation (USD)
Contract losses	181,527	nil
Loss of tangible property	110,825	nil
Loss of profits	38,076	nil
Total	330,428	nil

192. Based on its findings regarding Lindner’s claim, the Panel recommends no compensation.

VIII. CLAIM OF MANNESMANN DEMAG HÜTTENTECHNIK

193. Mannesmann Demag Hüttentechnik ("Mannesmann")is a German registered joint stock company whose main activities are the development, planning, manufacture and sales of machines, plants and equipment. Mannesmann seeks compensation for loss of tangible property in Iraq in the amount of DEM 80,357 (USD 51,445).

Table 12. MANNESMANN'S CLAIM

Claim element	Claim amount USD
Loss of tangible property	51,445
Total	51,445

A. Loss of tangible property

1. Facts and contentions

194. Mannesmann stated that it had a subcontract in Iraq with Klöckner Industrie-Anlagen GmbH for the supervision of the construction of steelworks. The site was set up in July 1989 and Mannesmann asserted that it procured certain assets in order for it to perform its supervisory role. Mannesmann stated that its employees left the site at the end of July 1990 and due to Iraq's invasion and occupation of Kuwait it was unable to move its assets out of Iraq. Mannesmann asserted that "the Taji site was totally destroyed during the Gulf war".

2. Analysis and valuation

195. The requirements to substantiate a loss of tangible property claim have been stated by the Panel at paragraphs 64 and 65. The Panel finds that Mannesmann failed to submit sufficient evidence to substantiate its loss of tangible property claim.

196. Mannesmann did submit as evidence of its loss of tangible property, a schedule which it appears to have prepared itself. Mannesmann did not submit evidence such as a copy of the contract, certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements, transportation documents and other relevant documents generated prior to 2 August 1990. Mannesmann indicated in its reply to the claim development letter that it is unable to supply the required documentation after "such a long time".

197. The Panel finds that Mannesmann did not provide sufficient evidence of its title to or right to use the assets or the value of the property and that such property was in Iraq prior to 2 August 1990.

3. Recommendation

198. The Panel recommends no compensation for loss of tangible property.

B. Recommendation for Mannesmann

Table 13. RECOMMENDED COMPENSATION FOR MANNESMANN

Claim element	Claim amount (USD)	Recommended Compensation (USD)
Loss of tangible property	51,445	nil
Total	51,445	nil

199. Based on its findings regarding Mannesmann’s claim, the Panel recommends no compensation.

IX. CLAIM OF NEW TEL AVIV CENTRAL BUS STATION LIMITED

200. The New Tel Aviv Central Bus Station Limited ("Central Bus Station") is an Israeli registered limited liability public company, which seeks compensation in the amount of USD 8,245,000 relating to income producing property, compensatory payments to tenants, real property, payment or relief to others, financial losses and damage to reputation.

Table 14. CENTRAL BUS STATION'S CLAIM

Claim element	Claim amount USD
Income producing property	2,600,000
Compensatory payments to tenants	1,300,000
Real property	290,000
Payment or relief to others	2,075,000
Financial losses	980,000
Damage to reputation	1,000,000
Total	8,245,000

A. Income producing property

1. Facts and contentions

201. The project for the New Tel Aviv Central Bus Station ("the project") is located in the middle of Tel Aviv, Israel. According to Central Bus Station, the project covers an area of 230,000 square metres, with 62,000 of these being commercial areas. The traffic area of the project included a central terminal, roads, bridges, halls and lanes for passengers to alight from buses. It was intended to deal with some 1,000,000 passengers a week, with 1,500 shops, restaurants, cinemas and entertainment centres.

202. The project was initiated in 1967 by the Kikar Levinsky Corporation ("KLC"). It encountered financial difficulties which resulted in the termination of the building project. KLC went into receivership on 17 September 1979. Central Bus Station purchased the project from the receivers and the purchase was approved by the High Court in July 1983. It thereafter, until early 1988, "was engaged in getting organized to renew the building of the Project".

203. Central Bus Station stated that it had entered into lease and purchase agreements with prospective tenants and purchasers and undertook to open the project in April 1993. It also had offered to sign contracts with those who had purchased shops from KLC and undertook to make these "available" in 1992.

204. Central Bus Station stated that it was involved in stages of construction and building the project in Tel Aviv at the time of Iraq's invasion and occupation of Kuwait. According to Central Bus Station, the invasion resulted in a cessation of its building and construction activities for three to four months. Central Bus Station asserted that a number of its foreign workers departed from Israel. During this period, Central Bus Station indicated that the economy of Israel came to an almost standstill due to the "apprehension and fear of war".

205. Central Bus Station asserted that it suffered a loss of "four months income from leasing of shops and fees from the transportation cooperatives for use of the NCBS in the sum of $2,600,000, calculated at $650,000 per month x 4 months." It is not entirely clear as to when the four month period commences and ceases. The Project was eventually opened to the public on 17 August 1993.

2. Analysis and valuation

206. Central Bus Station stated that Israel was divided into a number of areas of risk from "possible hits from rockets". Central Bus Station asserted that Tel Aviv was designated as an area "A" of risk, "which means the highest level of risk."

207. Central Bus Station submitted a schedule of the tenants and a sample copy of a letter to one of the tenants indicating the amount of compensation to which it would be entitled in the event of a delay. In its reply to a claim development letter, Central Bus Station submitted copies of lease agreements relating to only four entities. These lease agreements are dated 19 November 1991, 14 February 1993, 17 August 1993 and 15 January 1996.

208. Central Bus Station had made reference to the first and last page of each contract of lease and purchase in its reply to a claim development letter, but these documents were not submitted.

209. The Panel finds that Central Bus Station failed to submit sufficient evidence of the lease or purchase agreements. Moreover, the evidence submitted does not establish how Iraq's invasion and occupation of Kuwait

directly resulted in the alleged losses suffered as the agreements submitted are all signed after 2 March 1991

3. Recommendation

210. The Panel recommends no compensation for income producing property losses.

B. Compensatory payments to tenants

211. Central Bus Station seeks compensation of USD 1,300,000 relating to asserted compensatory payments made to tenants. This alleged loss had been submitted as part of the claim for "payment or relief to others". The payments appear to have resulted from the delays in completion of the complex. As a consequence of such delays, Central Bus Station stated that it had to make compensatory payments to tenants. The amounts in question appear to have been calculated "after negotiations and settlements with the shopkeepers."

212. Central Bus Station submitted summons issued against it, "compromise agreements" and statements of claim as evidence of its liability. These documents were intended to be a representative sample of the claims against it. However, they do not assist in determining the number and nature of the claims allegedly made against Central Bus Station.

213. The Panel recommends no compensation for the claim for alleged compensatory payments to the tenants as Central Bus Station did not submit sufficient evidence of its liability nor submitted sufficient evidence of payment.

C. Real property losses

214. Central Bus Station seeks compensation in the amount of USD 290,000 for alleged cost of repairs to the project complex. Central Bus Station asserted that the complex that it was building was used as a shelter by the local residents during the period of the invasion and occupation of Kuwait by Iraq. This, Central Bus Station asserted, resulted in damage to the building, which necessitated it carrying out repairs and maintenance work to the building. Central Bus Station stated that damage was caused to the electricity boxes, air conditioning and plumbing. The alleged costs of these repairs totalled USD 290,000.

215. Although Central Bus Station submitted an affidavit from the project manager on the project at the time, newspaper cuttings and a video, it did not provide evidence of the alleged expenses. Invoices and receipts of the expenses allegedly incurred by Central Bus Station were not provided. The Panel finds that Central Bus Station did not submit sufficient evidence of the alleged costs.

216. The Panel recommends no compensation for real property losses.

D. Payment or relief to others

1. Facts and contentions

217. Central Bus Station submitted two claims related to what appear to be unproductive labour costs. First, it seeks compensation for USD 1,775,000 for alleged payment of its employees' salaries. Central Bus Station stated that it paid its employees' full salaries for half of the month of January 1991, full salaries for February 1991 and March 1991. In April 1991 (80 per cent), May 1991 (50 per cent) and June 1991 (30 per cent) of the employee's salaries was allegedly paid.

218. Central Bus Station also seeks compensation for an amount of USD 300,000 for what it describes as "fixed expenses". These asserted expenses related to "maintenance offices and advisors (including legal, engineering etc) for a total estimated sum of $300,000, according to a calculation of $100,000 per month x 3 months".

2. Analysis and valuation

219. Central Bus Station did provide a copy of its personnel cost report. It also submitted information relating to certain entities called "KAM Ltd" and "C.E.M. Special Manpower Services Inc". This information consists of payment advices which appear to relate to the payment of salaries. It also included untranslated schedules. The Panel finds that the documents submitted do not provide the required information relating to the employees, which should include details of the family name, first name, employee identification number, Israeli civil identification number or residency permit number, and passport number with issuing country. Furthermore, there is an inadequate explanation of the link between itself and the companies, "KAM Ltd" and "C.E.M. Special Manpower Services Inc" that it asserted that it paid nor is there a reconciliation provided between the amounts allegedly paid to these companies and the amount that Central Bus Station is claiming.

220. The Panel also finds that Central Bus Station did not provide invoices and receipts of the alleged expenses relating to “fixed expenses”.

221. The Panel finds that Central Bus Station failed to submit sufficient evidence of the alleged expenses relating to the employees’ salaries and the “fixed expenses”.

3. Recommendation

222. The Panel recommends no compensation for payment or relief to others.

E. Financial losses

1. Facts and contentions

223. Central Bus Station seeks compensation for USD 980,000 for interest allegedly payable in connection with bonds that it stated it registered on the Tel Aviv Stock exchange. The information supplied on this particular element of the claim is scant. In its reply to the claim development letter, Central Bus Station stated that it issued “40,000,000 Registered Bonds” on the Tel Aviv Stock exchange which were repayable over 14 years. It asserted that USD 42,000,000 was raised from the public. The amount of interest payable for the period of the “four months of the Gulf War” was asserted as USD 980,000.

2. Analysis and valuation

224. Central Bus Station submitted a balance sheet from its Financial Report dated 30 September 1993, which does not aid the analysis of the basis of the claim. In its reply to a claim development letter, Central Bus Station also submitted copies of a portion of the prospectus for the issue of the bonds.

225. The Panel finds that the evidence submitted by Central Bus Station does not establish what amounts, if any, were paid to the bond holders relating to the claimed amount of USD 980,000. Central Bus Station provided no explanation of how the USD 42,000,000 had been determined, and failed to indicate the exchange rate or provide an adequate explanation as to how it had derived 7 per cent as the effective rate of interest.

226. The Panel finds that Central Bus Station did not submit sufficient evidence of its alleged loss nor how the alleged losses were the direct result of Iraq’s invasion and occupation of Kuwait.

3. Recommendation

227. The Panel recommends no compensation for financial losses.

F. Damage to reputation

228. Central Bus Station seeks compensation for USD 1,000,000 for "damages to the company's good name and other indirect damages". In its reply to the claim development letter, Central Bus Station submitted a breakdown of how it arrived at the claimed amount. It had submitted a claim for USD 500,000 relating to "injury to the corporation's good name", which is based on its alleged failure to complete the project on time. Central Bus Station stated that it received "tens of angry letters from lessees".

229. Second, Central Bus Station also asserted a decline in the sales and leasing of the shops in the complex. Central Bus Station asserted that it had to increase its marketing activities. It estimated its loss as being the amount of USD 300,000. Central Bus Station alleged "injury to the corporations' connections with contractors and suppliers" arising out of alleged delays in payments and various legal actions that were instituted against it. Central Bus Station alleged that its professional standing was damaged. It estimated the damage as being the amount of USD 200,000.

230. The Panel finds that Central Bus Station did not provide sufficient evidence supporting its losses or the basis of its estimation of these losses. In addition, Central Bus Station did not provide adequate evidence which demonstrates that these alleged losses arose as a direct result of Iraq's invasion and occupation of Kuwait.

231. The Panel recommends no compensation for damage to reputation.

G. Recommendation for Central Bus Station

Table 15. RECOMMENDED COMPENSATION FOR CENTRAL BUS STATION

Claim element	Claim amount (USD)	Recommended compensation (USD)
Income producing property	2,600,000	nil
Compensatory payments to tenants	1,300,000	nil
Real property	290,000	nil
Payment or relief to others	2,075,000	nil
Financial losses	980,000	nil
Damage to reputation	1,000,000	nil
Total	8,245,000	nil

232. Based on its findings regarding Central Bus Station's claim, the Panel recommends no compensation.

X. CLAIM OF MORANDO IMPIANTI I.I.M.C. S.p.A.

233. MORANDO IMPIANTI-Impianti per l'Industria dei matériali da Costr. S.p.A, ("Morando") is an Italian registered limited liability company. Morando specialises in the field of structural clay products. It seeks compensation in the amount of USD 4,763,303 for contract losses, tangible property losses and financial losses.

Table 16. MORANDO'S CLAIM

Claim element	Claim amount USD
Contract losses	4,637,442
Loss of tangible property	23,181
Financial losses	102,680
Total	4,763,303

A. Contract losses

1. Facts and contentions

234. Morando stated that in "early 1984" it entered into a contract with the Iraqi Ministry of Industry and Minerals for the provision of maintenance and technical assistance contracts for Salah-El-Deen and Diwaneyiah projects in Iraq. Morando asserted that it supplied spare parts totalling USD 5,471,837 between 1987 to June 1990. Pursuant to the terms of the contract, "at sight, against presentation of shipping documentations", 15 per cent of the purchase price was payable. According to Morando's calculations, 15 per cent of the supplied spare parts amounted to USD 767,557. The balance of 85 per cent was payable "at 24 months of Bill of Lading" representing an amount of USD 4,704,280.

235. Morando stated that in May 1990, it entered into "a new payment scheme for USD 1,263,000 proposed by the Ministry of Industry Financial Committee and covering almost all of the instalments which had then become due." Under the new payment scheme, payments were to be made in instalments commencing in May 1990. Morando received a number of payments for a total amount of USD 404,401 in the period May 1990 to 3 July 1990. No other payments were received after 3 July 1990. Morando asserted that the amount outstanding was in the sum of USD 4,637,442.

2. Analysis and valuation

236. The Panel finds that for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) Morando had a contract with Iraq.

237. Morando was specifically requested in a claim development letter to provide details of the exact dates of delivery relating to the spare parts. It did not state the exact delivery dates but instead referred to copies of invoices, irrevocable letters of credit and telexes of reminders. The documents submitted reflect that the deliveries took place before 2 May 1990. Morando did not submit sufficient evidence to demonstrate that some or any deliveries occurred after 2 May 1990.

238. While those debts were in part covered by a deferred payment agreement, the Panel finds that the deferred payment agreement did not have the effect of novating the debt. The Panel finds that the claims for such losses are, therefore, outside the jurisdiction of this Commission.

3. Recommendation

239. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

240. Morando seeks compensation in the amount of USD 23,181 for alleged tangible property losses. Morando submitted little detail relating to this particular element of its claim, apart from identifying the amount of the asserted loss in its statement of claim and in the "E" claim form. Morando asserted that "the cars and movable goods of our branch office are unserviceable and confiscated".

241. Morando submitted two invoices relating to the purchase of the motor vehicles and a document relating to the alleged confiscation. Morando did not submit evidence such as certificates of title, receipts, bills of lading, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements, transportation documents and other relevant documents generated prior to 2 August 1990.

242. The Panel finds that Morando did not submit sufficient evidence of its title to or right to use the property or that the property was in Iraq prior to 2 August 1990. In addition, the Panel finds that the alleged loss of

tangible property is not compensable as Morando failed to demonstrate how the alleged confiscation of its assets by the Government of Iraq resulted directly from Iraq's invasion and occupation of Kuwait.

243. The Panel recommends no compensation for tangible property losses.

C. Bank account in Iraq

244. Morando seeks compensation in the amount of USD 102,680 relating to a deposit account in the Rafidain Bank.

245. Morando submitted a copy of a bank statement from the Rafidain Bank dated 30 November 1990. The Panel finds that Morando failed to provide sufficient evidence to prove ownership of the bank account or that the funds in the account were appropriated, removed, stolen, or destroyed and therefore how it did suffer any loss. In addition, the Panel finds that Morando failed to show how the losses it may have suffered, if any, were directly caused by Iraq's invasion and occupation of Kuwait.

246. The Panel recommends no compensation for the bank account losses.

D. Recommendation for Morando

Table 17. RECOMMENDED COMPENSATION FOR MORANDO

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	4,637,442	nil
Loss of tangible property	23,181	nil
Financial losses	102,680	nil
Total	4,763,303	nil

247. Based on its findings regarding Morando's claim, the Panel recommends no compensation.

XI. CLAIM OF V.I.P.P. S.p.A.

248. V.I.P.P. S.p.A.(“VIPP”) an Italian registered publicly held corporate entity seeks compensation in the amount of LIT 547,000,000 (USD 471,836) for tangible property losses in Iraq.

Table 18. VIPP’S CLAIM

Claim element	Claim amount (USD)
Loss of tangible property	471,836
Total	471,836

249. In its reply to the claim development letter, VIPP included an additional claim relating to payment or relief to others which it asserted totalled USD 9,040. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by VIPP.

A. Loss of tangible property

1. Facts and contentions

250. VIPP had entered into a subcontract agreement on 27 February 1989 to provide foundation piles for the Youssifiyah station in Iraq. The work’s execution required VIPP to temporarily import equipment. VIPP asserted that it had completed a portion of its contract work in Iraq and that part of the equipment was due to be loaded for export from Iraq on 7 August 1990. The balance of the equipment was being readied for export upon completion of that respective portion of the contract on 20 August 1990.

251. VIPP asserted that Iraq’s invasion and occupation of Kuwait on 2 August 1990 prevented it from re-exporting its equipment from Iraq.

2. Analysis and valuation

252. The requirements to substantiate a loss of tangible property claim have been stated by the Panel at paragraphs 64 and 65.

253. VIPP had provided bills of lading and several untranslated documents which appear to relate to bills of lading. VIPP also submitted a number of documents which are in the name of the other contracting party but does not

explain its right to seek compensation with respect to such tangible property. It also submitted an untranslated copy of what appears to be its contract. VIPP failed to submit evidence such as certificates of title, receipts, purchase invoices, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements, transportation documents and other relevant documents generated prior to 2 August 1990.

254. The Panel finds that VIPP did not submit sufficient evidence of its title to or right to use the property or that the property was in Iraq prior to 2 August 1990.

3. Recommendation

255. The Panel recommends no compensation for loss of tangible property.

B. Recommendation for VIPP

Table 19. RECOMMENDED COMPENSATION FOR VIPP

Claim element	Claim amount (USD)	Recommended Compensation (USD)
Loss of tangible property	471,836	nil
Total	471,836	nil

256. Based on its findings regarding VIPP’s claim, the Panel recommends no compensation.

XII. CLAIM OF NAZIR AND COMPANY (PRIVATE) LIMITED

257. Nazir and Company (Private) Limited ("Nazir"), a Pakistani registered limited liability corporate entity seeks compensation in the amount of IQD 671,581 (USD 2,243,080) for the loss of tangible property and cash in its bank account.

Table 20. NAZIR'S CLAIM

Claim element	Claim amount USD
Loss of tangible property	1,881,475
Financial losses	361,605
Total	2,243,080

A. Loss of tangible property

1. Facts and contentions

258. Nazir seeks compensation for loss of tangible property in the amount of IQD 563,316 (USD 1,881,475). The asserted loss relates to heavy construction equipment, vehicles, tools, equipment and fixtures and fittings, which Nazir alleged that it left behind on site when it evacuated Iraq.

259. Nazir contended that at the time of Iraq's invasion and occupation of Kuwait it had been working on three different projects in Iraq as a subcontractor. The three projects were for a road project, a telephone network cable project and a transmission line project.

260. Nazir asserted that its assets in Iraq were left under guard as its employees evacuated Iraq. Nazir did not submit any other information or documentation establishing the evacuation of its employees. It concluded that its machinery was either taken away by the Iraqi army or stolen.

261. Nazir provided, as evidence of its loss, a schedule of assets drawn from its accounts. In its reply to a claim development letter, it also included its statement and final account for the financial year ended 31 December 1989 as well as copies of the three subcontract agreements.

2. Analysis and valuation

262. The requirements to substantiate a loss of tangible property claim have been stated by the Panel at paragraphs 64 and 65. The Panel finds that Nazir failed to submit sufficient evidence to substantiate its loss of tangible property claim.

263. The Panel finds that Nazir did not provide sufficient evidence of its title to or right to use the asset, the value and the presence of the tangible property located in Iraq. Further, the Panel finds that Nazir did not provide evidence of the evacuation of its workers from Iraq.

3. Recommendation

264. The Panel recommends no compensation for loss of tangible property.

B. Bank account in Iraq

265. Nazir seeks compensation of IQD 108,265 (USD 361,605) for the loss of an alleged cash deposit with the Rafidain Bank.

266. Nazir submitted a copy of a statement from the Rafidain Bank which is partly in Arabic and illegible in parts. The Panel finds that Nazir failed to provide sufficient documentary evidence to prove ownership of the bank account or that the funds in the account have been appropriated, removed, stolen, or destroyed and therefore how it has suffered any loss. In addition, the Panel finds that Nazir failed to show how any losses it may have suffered were directly caused by Iraq’s invasion and occupation of Kuwait.

267. The Panel recommends no compensation for the bank account losses.

C. Recommendation for Nazir

Table 21. RECOMMENDED COMPENSATION FOR NAZIR

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of tangible property	1,881,475	nil
Financial losses	361,605	nil
Total	2,243,080	nil

268. Based on its findings regarding Nazir's claim, the Panel recommends no compensation.

XIII. CLAIM OF NAFTOBUDOWA HOLDING COMPANY

269. Construction Engineering and Maintenance, NAFTOBUDOWA Holding Company ("Naftobudowa") is a Polish joint stock company. Naftobudowa seeks compensation in the amount of USD 4,643,401 for contract losses relating to unpaid invoices, loss of earnings, evacuation costs, interest and claim preparation costs.

Table 22. NAFTOBUDOWA'S CLAIM

Claim element	Claim amount USD
Contract losses	1,702,610
Loss of earnings	2,657,942
Evacuation costs	104,257
Interest	(--)
Claim preparation costs	178,592
Total	4,643,401

A. Contract losses

1. Facts and contentions

270. Naftobudowa seeks compensation for USD 1,702,610 for contract losses arising out of three contracts. For each contract, Naftobudowa asserted that Iraq's invasion and occupation of Kuwait resulted in the suspension of the contract works. Naftobudowa indicated that its specialists were unable to leave Iraq due to the refusal by the Iraqi authorities to grant them exit visas until December 1990. According to Naftobudowa, the Iraqi authorities continued to make payment of the Iraqi dinar portion of the invoiced work, but began to fall into arrears with respect to the remittable United States dollar amounts.

(a) Daura-Basra contract

271. Naftobudowa entered into a contract on 25 February 1989 (the "Daura-Basra contract") with the Ministry of Oil, Republic of Iraq, State Establishment of Pipeline, Daura. This contract involved the supply of 60 Polish specialists for the operation and maintenance in the oil industry. The total value of the Daura-Basra contract was USD 10,189,392.

272. The alleged outstanding payments relating to invoices made out in May 1990 to December 1990 amounted to USD 1,295,047.

(b) Baiji contract

273. Naftobudowa entered into an agreement on 7 March 1989 with the Ministry of Oil, Republic of Iraq, North Refinery, Baiji, ("the Baiji contract") for the provision of 65 Polish specialists. In terms of the contract, the Polish experts were to undertake operational and maintenance work on the Baiji refinery. The contract was extended to 3 March 1991 in terms of an addendum to the original contract dated 16 June 1990, although the number of specialists was reduced to 49. The value of the extended contract was USD 1,509,950.

274. The claimed losses for June 1990 to December 1990 related to allegedly unpaid invoices for work done and leave pay for the amount of USD 256,847.

(c) New Tyre Project contract (Najaf)

275. Naftobudowa entered into a contract on 10 May 1989 with the New Tyre Project Committee, Ministry of Industry (the "New Tyre Project contract"). The 60 specialists comprised engineers and technicians who were to be employed at the Najaf Tyre Factory site. The contract value was USD 2,439,024.

276. Naftobudowa asserted a loss for alleged unpaid invoices and leave due for the period June 1990 to September 1990 as being the amount of USD 150,716.

2. Analysis and valuation

277. The Panel finds for the purposes of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) that Naftobudowa had contracts with Iraq with respect to the Daura-Basra, Baiji, and the New Tyre Project contracts.

278. With respect to the contracts for Daura-Basra, Baiji, and the New Tyre Project, the Panel finds that Naftobudowa was still providing a service at the time of Iraq's invasion and occupation of Kuwait on 2 August 1990. Accordingly, those claims relating to performances from 2 May 1990 to 31 December 1990 are within the jurisdiction of the Commission.

279. With respect to the Daura-Basra contract, Baiji contract, and the New Tyre Project contract, Naftobudowa did submit copies of the contracts, copies of invoices, copies of time sheets and copies of correspondence with the Ministry of Oil and Ministry of Industry. Naftobudowa stated in its reply to a claim development letter that the remuneration of its specialists was made on the basis of hourly rates charged for its specialist services. Invoices were consequently issued on the basis of time sheets.

280. The Panel finds that Naftobudowa did submit sufficient evidence to establish its entitlement to USD 1,278,097 arising out of the Daura-Basra contract, Baiji Contract, and the New Tyre Project contracts.

3. Recommendation

281. The Panel recommends compensation in the amount of USD 1,278,097 for contract losses.

B. Loss of earnings

282. Naftobudowa seeks compensation in the amount of USD 2,657,942 for alleged loss of earnings. The alleged loss of earnings was calculated on the basis of "the reduction of the period of implementation of that part of the contract specified....which deprived Naftobudowa of the anticipated revenues." The asserted loss for each of the contracts is as follows:

i. Daura-Basra contract - USD 1,873,950;

ii. Baiji contract - USD 377,488; and

iii. New Tyre Project contract - USD 406,504

283. Naftobudowa did not provide any evidence of direct costs associated with each contract, or evidence of a profit margin it may have been earning on each contract. The Panel finds that Naftobudowa did not submit sufficient information to establish its loss of earnings claim.

284. The Panel recommends no compensation for loss of earnings.

C. Evacuation losses

285. Naftobudowa seeks compensation of USD 104,257 for the costs of evacuating its employees from Iraq. Naftobudowa stated that in 1989-1990, there were more than 300 of its employees in Iraq. Under the contracts, the

Iraqi authorities were obliged to pay for the transportation of the workers to Poland.

286. The Panel finds that Naftobudowa did not provide sufficient detail relating to the employees that it allegedly evacuated. The following information about each employee should have been provided: family name, first name, employee identification number, Iraqi residency permit number, and passport number with issuing country. Copies of Naftobudowa's payroll records for the employees for the period relevant to the Claim (both before and after 2 August 1990) were not provided.

287. The Panel recommends no compensation for evacuation costs.

D. Interest

288. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20 of this report.

E. Claim preparation costs

289. Naftobudowa seeks compensation in the amount of USD 178,592 for asserted claim preparation costs. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claim by Naftobudowa for such costs.

F. Recommendation for Naftobudowa

Table 23. RECOMMENDED COMPENSATION FOR NAFTOBUDOWA

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	1,702,610	1,278,097
Loss of earnings	2,657,942	nil
Evacuation costs	104,257	nil
Interest	(--)	(--)
Claim preparation costs	178,592	(--)
Total	4,643,401	1,278,097

290. Based on its findings regarding Naftobudowa's claim, the Panel recommends compensation of USD 1,278,097.

XIV. CLAIM OF SÖRMAÔ SÖ—ÜT REFRAKTER MALZEMELERI AÔ

291. SörmaÕ Sö—üt Refrakter Malzemeleri AÔ (“SörmaÕ”) is a Turkish registered legal entity whose business activity includes the production of refractory supplies. SörmaÕ seeks compensation in the amount of USD 85,839 for contract losses.

Table 24. SÖRMAÔ’S CLAIM

Claim element	Claim amount
	USD
Contract losses	85,839
Total	85,839

A. Contract losses

292. SörmaÕ entered into an agreement to supply the Iraqi Cement State Enterprise Baghdad with refractories for their cement rotary kilns. The contract value was USD 858,392. SörmaÕ did not submit a copy of the contract. The dates on a letter of credit submitted by SörmaÕ suggest that the contract was entered into in December 1988.

293. The letter of credit made reference to what appears to be a delivery date and indicates “not later than 10.7.1989.” SörmaÕ stated that the goods were delivered to the purchaser and it received 90 per cent of the purchase price in terms of the letter of credit. SörmaÕ acknowledged that the outstanding amount should have been paid in 1989.

294. The Panel finds for the purposes of the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991) that SörmaÕ had a contract with Iraq.

295. The Panel finds that the contract losses stated by SörmaÕ relate entirely to services that were performed prior to 2 May 1990. Accordingly, the claim for contract losses is outside the jurisdiction of the Commission.

296. The Panel recommends no compensation for contract losses.

B. Recommendation for SörmaÕ

Table 25. RECOMMENDED COMPENSATION FOR SÖRMAÔ

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	85,839	nil
Total	85,839	nil

297. Based on its findings regarding SörmaÕ's claim, the Panel recommends no compensation.

XV. CLAIM OF CLEVELAND BRIDGE AND ENGINEERING MIDDLE EAST(PVT)LTD

298. Cleveland Bridge and Engineering Middle East (Private) Limited ("Cleveland") is a United Arab Emirates registered limited liability company involved in structural steel fabrication and construction. Cleveland seeks compensation of AED 21,987,416 (USD 5,989,490) for loss of profits and losses relating to under recovery of overheads and the cost of capital expenditures.

Table 26. CLEVELAND'S CLAIM

Claim element	Claim amount (USD)
Loss of profits	5,989,490
Total	5,989,490

A. Loss of profits

299. Cleveland signed a subcontract (the "subcontract") on 25 July 1990 with Turkish Joint Venture (BMB, Soyteck, Soyut, Yapi Merkezi & Guris)("TJV") for the design, preparation of drawings, supply, fabrication, painting and delivery of some 18,025 tons of structural steelwork with a value of AED 75,542,775 for the Sabiya Power Project in Kuwait ("the project").

300. Following Iraq's invasion and occupation of Kuwait on 2 August 1990, all work on the project halted. Cleveland asserted that, as a result of Iraq's invasion and occupation of Kuwait, it was prevented from continuing the subcontract and suffered loss of profits and losses relating to under recovery of overheads and the cost of capital expenditures, accordingly.

301. The Panel notes that according to the terms of the subcontract, the approval of the owner of the project, the Ministry of Electricity and Water of Kuwait and the approval of the board of TJV were required before the subcontract became binding. Cleveland failed to submit evidence of such approvals having being granted.

302. The Panel finds that Cleveland failed to demonstrate that it had an existing contractual relationship as of 2 August 1990.

303. The Panel recommends no compensation for loss of profits, capital expenditures and alleged under recovery of overheads.

B. Recommendation for Cleveland

Table 27. RECOMMENDED COMPENSATION FOR CLEVELAND

Claim element	Claim amount (USD)	Recommended Compensation (USD)
Loss of profits	5,989,490	nil
Total	5,989,490	nil

304. Based on its findings regarding Cleveland Bridge's claim, the Panel recommends no compensation.

XVI. CLAIM OF DAL-STERLING GROUP PLC

305. Dal-Sterling Group PLC ("Dal-Sterling") is a United Kingdom registered public limited liability company. Dal-Sterling seeks compensation for loss of earnings, payment or relief to others, and financial losses in the amount of GBP 140,751 (USD 267,587).

Table 28. DAL-STERLING'S CLAIM

Claim element	Claim amount USD
Loss of earnings	162,192
Payment or relief to others	26,591
Financial losses	78,804
Total	267,587

A. Loss of earnings

1. Facts and contentions

306. Dal-Sterling seeks compensation in the amount of GBP 85,313 (USD 162,192) relating to alleged loss of earnings in the form of fees. Dal-Sterling had entered into a contract in Iraq with Biwater International Construction Limited ("BIC") on 15 September 1989 to advise on BIC's contract for the provision of services for the construction of the Akashat Railway Water Supply contract ("Akashat Project") in Iraq. Under the contract, Dal-Sterling was to prepare and negotiate BIC's contractual claims on the Akashat Project. Dal-Sterling's Operations director (the "employee") made several visits to Iraq to negotiate with BIC's employer, the Ministry of Transport and Communications, Iraq (the "Ministry"). The last visit was made on 31 July 1990 when the employee visited Baghdad to continue negotiations with the Ministry. Dal-Sterling's employee was due to return to his office in Paris by 8 August 1990. The employee was detained in Iraq from 9 August 1990 to 10 December 1990. On his return home, the employee was allegedly suffering from "nervous exhaustion" and took leave of absence from work. He allegedly resumed his duties only at the beginning of February 1991.

307. Dal-Sterling asserted that its employee also had special responsibility to Dal-Sterling's French speaking clients as he was the only fluent French speaker in Dal-Sterling's employ at senior management level. Due to the detention of its employee, Dal-Sterling stated that it was unable

to adequately service the French speaking segment of its clients and it consequently lost the business of many of these clients. According to Dal-Sterling, the effect of the loss of the French speaking market segment of Dal-Sterling's client base was noticeable in 1991. Dal-Sterling stated that the fee earning work was reduced compared to 1989 and the first seven months of 1990.

308. Dal-Sterling calculated that fees were lost from 8 August 1990 to the end of December 1991, representing a total of 16.8 months. Dal-Sterling calculated its loss of fees on the basis of fees generated in the twelve months preceding the detention and multiplying that amount by 16.8 months. It offset against this amount the salary claimed relating to the employee.

2. Analysis and valuation

309. Dal-Sterling submitted copies of time sheets and analysis in support of its claim for loss of fee earnings. Dal-Sterling stated it was unable to provide copies of the specific contracts as these are no longer available in its archives.

310. Dal-Sterling submitted budgets for 1989 and 1991. In a claim development letter, Dal-Sterling was requested to provide copies of the original calculations of fee earnings with respect to each project for which loss of fee earnings is claimed, and all revisions to these calculations made during the projects. Dal-Sterling indicated that individual project fees were not available.

311. Dal-Sterling stated in its reply to the claim development letter that it was unable to "list and provide documentary evidence of potential individual and specific jobs or clients 'lost' during Mr Smith's absence from the Paris office. It is the overall loss of fee earnings during the period August 1990 and December 1991 that the Claimant is seeking."

312. The Panel finds that Dal-Sterling did not submit sufficient information to establish its loss of earnings claim.

3. Recommendation

313. The Panel recommends no compensation for the loss of earnings claim.

B. Payment or relief to others

1. Facts and contentions

314. Dal-Sterling, seeks compensation relating to salary payments of GBP 12,334 (USD 23,448). It asserted that its employee was detained in Iraq from 9 August 1990 to 10 December 1990 for a period of 124 days. The employee was allegedly detained on the project site for the Akashat Project during the duration of his detention. Dal-Sterling stated that although he was at the site, the employee was unable to be productive as he had completed his particular assignment and was in fact due to depart Iraq by 8 August 1990.

315. Upon his return home, the employee allegedly did not return to his duties until the end of February 1991 due to "nervous exhaustion", a further period of 52 days. Dal-Sterling stated that it continued to pay the employee his salary and employment related expenses, such as pension and medical aid, during this period amounting to GBP 23,511. Dal-Sterling did receive an ex gratia payment from BIC totalling GBP 11,177 as a "retainer" during the period of detention. It asserted that its client was under no obligation to make this payment. Dal-Sterling, therefore, asserts a loss relating to salary payments of GBP 12,334.

316. Dal-Sterling had also submitted a claim for alleged payments made to the employee's wife in the amount of GBP 1,653 (USD 3,143). These payments related to reimbursements for costs allegedly incurred by her as she sought to secure the release of her husband.

2. Analysis and valuation

317. Dal-Sterling provided the number of a passport issued in 1978 and part of its payroll records for the employee. As proof of detention, Dal-Sterling submitted copies of correspondence between itself and the British Foreign and Commonwealth Office and an affidavit confirming the detention in Iraq. However, Dal-Sterling did not submit medical evidence relating to the employee's inability to return to work until 1 February 1991.

318. The Panel finds that Dal Sterling's salary payments during the period of the detention from 9 August 1990 to 10 December 1990 are compensable in principle. However, Dal-Sterling did not submit copies of its payroll records relating to that period. With respect to the balance of the claim for payment of salary, the Panel finds that Dal-Sterling did not submit sufficient evidence of the alleged inability of the employee to work after

his release from detention. With respect to the claim relating to the alleged expenses of the spouse, Dal-Sterling submitted a number of receipts but did not submit evidence of its reimbursement of these expenses.

3. Recommendation

319. The Panel recommends no compensation for payment or relief to others.

C. Financial losses

320. Dal-Sterling seeks compensation in the amount of GBP 41,451 (USD 78,804) for losses relating to financing charges it allegedly incurred with its commercial bank for the provision of an overdraft facility. It contended that with effect from 9 August 1990 up “to the present” (the statement of claim is dated 14 February 1994 and Dal-Sterling calculated its losses up to that date) it did incur losses and expenses relating to its claim. This loss element is calculated on the amounts that Dal-Sterling asserted as losses before this Commission. As a result, it alleged that it had to incur costs amounting to GBP 41,451 for the costs of servicing its overdraft.

321. Dal-Sterling submitted a schedule of its calculations and its Annual Report for the year ended 31 December 1991 as evidence of its alleged loss. However, it did not submit sufficient evidence of the costs incurred on the overdraft related to the specific loss elements and proof of payment relating to the loss elements. The Panel finds that Dal-Sterling did not submit sufficient evidence to support its claim for alleged financial losses. Accordingly, the Panel recommends no compensation for alleged financial losses.

D. Recommendation for Dal-Sterling

Table 29. RECOMMENDED COMPENSATION FOR DAL-STERLING

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of earnings	162,192	nil
Payment or relief to others	26,591	nil
Financial losses	78,804	nil
Total	267,587	nil

322. Based on its findings regarding Dal-Sterling's claim, the Panel recommends no compensation.

XVII. RECOMMENDATIONS

323. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

a. China Metallurgical Construction Corporation: USD 334,912

b. Erection and Industrial Services Corporation: NIL

c. Eman Establishment For Contracting Nan Tawfik Boules: NIL

d. El-Tadamone El-Araby Company For Contracting: NIL

e. Lindner Aktiengesellschaft: NIL

f. Mannesmann Demag Hüttentechnik: NIL

g. The New Tel Aviv Central Bus Station Limited: NIL

h. MORANDO IMPIANTI-Impianti per l'Industria dei materiali da Costr. S.p.A,: NIL

i. VIPP S.p.A.: NIL

j. Nazir and Company (Private) Limited: NIL

k. Construction Engineering and Maintenance, NAFTOBUDOWA Holding Company: USD 1,278,097

l. SörmaÕ Sö—üt Refrakter Malzemeleri AÔ: NIL

m. Cleveland Bridge and Engineering Middle East (Private) Limited: NIL

n. Dal-Sterling Group PLC: NIL

Geneva, 13 December 1999

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner
