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

GE.00-60573

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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 seventeen claims included in the fourteenth 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 directly resulted from Iraq's invasion and occupation of Kuwait. Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

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

4. On 7 February 2000, 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 the date of 7 February 2000.

5. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by the

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-ninth report of the Executive Secretary issued on 11 November 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 its 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 fourteenth 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) Eteco S.A., a corporation organised according to the laws of Belgium, which seeks compensation in the amount of United States dollars (USD) 687,464;

(b) Mohamed Ahmed Mohamed Abdel Maksoud, an individual personal company organised according to the laws of Egypt, which seeks compensation in the amount of USD 1,913,748;

(c) Germot International S.A., a corporation organised according to the laws of France, which seeks compensation in the amount of USD 601,879;

(d) Kyudenko Corporation, a corporation organised according to the laws of Japan, which seeks compensation in the amount of USD 920,117;

(e) Shimizu Corporation, a corporation organised according to the laws of Japan, which seeks compensation in the amount of USD 1,465,455;

(f) Karim Bennani and Partners, a corporation organised according to the laws of Morocco, which seeks compensation in the amount of USD 2,892,403;

(g) Petrogas, Gas-Systems B.V., a corporation organised according to the laws of the Netherlands, which seeks compensation in the amount of USD 1,242,225;

(h) Institute Hydroproject, a public joint-stock company organised according to the laws of the Russian Federation, which seeks compensation in the amount of USD 1,596,882;

(i) SwedPower AB, a corporation organised according to the laws of Sweden, which seeks compensation in the amount of USD 447,890;

(j) MŞM-Endüstri AŞ, a corporation organised according to the laws of Turkey, which seeks compensation in the amount of USD 68,196;

(k) Sezai Türkeş Feyzi Akkaya Construction Company, a joint-stock corporation organised according to the laws of Turkey, which seeks compensation in the amount of USD 506,171;

(l) Alfred McAlpine Services and Pipelines Ltd., 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 1,191,952;

(m) Mivan Overseas Limited, 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 5,471,045;

(n) Mivan Overseas Limited and Interiors International Limited (joint claimants), corporations organised according to the laws of the United Kingdom of Great Britain and Northern Ireland, which seek compensation in the amount of USD 6,286,800;

(o) The Morris Singer Foundry Limited (in administrative receivership), 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 1,052,019;

(p) Rotary (International) Limited, 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 8,539,754; and

(q) Sutton Services International Limited, 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 148,726.

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 paragraphs 79-81 of 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 profits 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 decision 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, 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, from 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 "article 34 notification"). 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. ETECO S.A.

32. Eteco S.A. ("Eteco") is a publicly owned company registered in Belgium. Eteco seeks compensation in the amount of 22,071,023 Belgian francs (BEF) (USD 687,464) for contract losses, loss of tangible property, payment or relief to others, other losses and interest.

Table 1. Eteco's claim

Claim element	Claim amount (USD)
Contract losses	118,678
Loss of tangible property	73,864
Payment or relief to others	305,586
Other losses	17,537
Interest	171,799
Total	687,464

A. Contract losses

1. Facts and contentions

33. Eteco seeks compensation in the amount of BEF 3,810,166 (USD 118,678) for contract losses allegedly incurred in connection with a sub-contract (the "Sub-Contract"), entered into on 6 April 1988, for the internal finishing works and external marble works of the Al-Sijood Palace in Iraq. At the time of Iraq's invasion of Kuwait, Eteco was engaged in the performance of the Sub-Contract for a company incorporated in the United Kingdom, Mivan Overseas Limited ("Mivan").

34. Under the Sub-Contract, the agreed period for performance of the works was from March 1988 to November 1989. Due to delays in the progress of the works, completion of the Al-Sijood Palace was considerably delayed.

35. Eteco's claim for contract losses relates to manufactured goods (marble pieces) that were ordered from Europe to be used in the provision of services under the Sub-Contract. The manufactured goods were paid for by Eteco, however, they were allegedly not permitted to be shipped to Iraq from Europe due to the trade embargo imposed on Iraq. Eteco alleges that it has not been reimbursed by Mivan for the purchase price of the goods.

2. Analysis and valuation

36. The Panel notes that in paragraph 6 of decision 9 (S/AC.26/1992/9), the Governing Council set out guidelines for awarding compensation for business losses caused by Iraq's invasion and occupation of Kuwait where the trade embargo and related measures were also a cause. In decision 9

the Governing Council stated: “Compensation will be provided to the extent that Iraq’s unlawful invasion and occupation of Kuwait constituted a cause of direct loss, damage or injury which is separate and distinct from the trade embargo and related measures”.

37. The Panel finds that Eteco did not demonstrate that its contract losses directly resulted from Iraq’s invasion and occupation of Kuwait. Eteco did not demonstrate that its inability to ship the goods, and Mivan’s subsequent failure to pay for the goods, was the direct result of Iraq’s invasion and occupation of Kuwait. Nor did Eteco demonstrate that Mivan was rendered unable to pay through insolvency or bankruptcy caused by the destruction of its business during Iraq’s invasion and occupation of Kuwait. Eteco failed to establish that Iraq’s invasion and occupation of Kuwait constituted a cause of direct loss, damage or injury which was separate and distinct from the trade embargo and related measures.

3. Recommendation

38. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

39. Eteco seeks compensation in the amount of BEF 2,371,397 (USD 73,864) for loss of tangible property. The claim is for the alleged loss of equipment and machinery, furniture and vehicles from its project sites in Iraq.

40. Eteco alleges that when it left Baghdad in October 1990, all of its tangible property was stocked in its rented guesthouse. Upon its return, nine years later, all of its property was missing.

2. Analysis and valuation

41. Eteco provided as evidence of its alleged losses invoices and purchase receipts for a portion of the tangible property loss claim. However, Eteco failed to provide evidence of the presence of the claimed items in Iraq prior to 2 August 1990.

42. With respect to claims for physical assets in Iraq on 2 August 1990, the Panel has held that a claimant must establish its ownership, the value and the presence of such physical assets in Iraq.

43. The Panel finds that, although Eteco provided evidence of ownership of some of the items of tangible property, it failed to provide sufficient evidence of the presence of the tangible property in Iraq.

3. Recommendation

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

C. Payment or relief to others

1. Facts and contentions

45. Eteco seeks compensation in the amount of BEF 9,810,850 (USD 305,586) for payment or relief to others. The claim is for salaries paid to Eteco's employees after Iraq's invasion and occupation of Kuwait until the time of their repatriation, other expenses incurred during this period, such as subsistence and accommodation, and the costs of repatriating its European workers.

(a) Salaries

46. Eteco claims BEF 6,195,138 for salaries it allegedly paid to its staff who were unable to leave Iraq. The claimed amount includes an administration fee and advance payments made to Eteco's employees.

(b) Accommodation and pocket money

47. Eteco claims BEF 1,045,500 for the cost of rent, BEF 1,908,400 for food and fuel and BEF 503,316 for "pocket money".

(c) Repatriation expenses

48. Eteco claims USD 300 for the cost of repatriation of one person from Baghdad to Amman on 25 August 1990 and USD 4,607 for the cost of repatriation of 24 people from Baghdad to Amman on 25 October 1990.

2. Analysis and valuation

49. Eteco provided as evidence of its alleged losses copies of invoices, certificates from a chartered accountant, a list of names of the employees who were repatriated, a copy of a bank statement, a summary of expense claim forms, extracts from its cash book, and a partially translated application form for the conversion of foreign currency.

(a) Salaries

50. With regard to salary payments, the Panel finds that Eteco failed to demonstrate that the salary payments would not have been incurred under normal circumstances.

51. With regard to the administration fee and the advances paid to the European workers, the Panel finds that Eteco failed to provide sufficient evidence to support its claim.

(b) Accommodation and "pocket money"

52. With regard to the accommodation and "pocket money" expenses, the Panel finds that Eteco failed to provide sufficient evidence to support its claim and failed to show how these costs would not have been incurred under normal circumstances.

(c) Repatriation expenses

53. With regard to repatriation expenses, the Panel finds that Eteco failed to provide sufficient evidence to support its claim.

3. Recommendation

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

D. Other losses

55. Eteco seeks compensation in the amount of BEF 563,015 (USD 17,537) for other losses. Eteco claims BEF 128,280 for the cost of accident insurance premiums and BEF 434,735 for the cost of war risk insurance premiums.

(a) Accident insurance premiums

56. As evidence of its alleged losses, Eteco provided a declaration dated 2 January 1990 in respect of the accident insurance policy. Eteco alleges that the policy commenced on 16 April 1990. Eteco failed to explain the nature of the insurance or to identify the employees it allegedly insured. Further, Eteco failed to demonstrate that such expenditures were of a temporary and extraordinary nature.

57. The Panel recommends no compensation for the accident insurance premiums, as Eteco failed to provide sufficient evidence of its alleged loss.

(b) War risk insurance premiums

58. Eteco's claim is for premiums paid in respect of its employees in Iraq for the period 9 September to 8 October 1990 and 9 October to 8 November 1990. The risks covered under the policy include death, permanent disability and medical fees. The number of employees covered under the war risk insurance policy accords with the number of Eteco's employees in Iraq during the period of coverage.

59. The Panel finds that Eteco's loss regarding the premiums for war risk insurance was a direct result of Iraq's invasion and occupation of Kuwait and that such expenditures were of a temporary and extraordinary nature.

60. The Panel finds that Eteco provided adequate evidence of the cost of the premiums as well as proof of payment in the form of bank transfers.

61. The Panel finds that the amounts of BEF 235,265, for premiums paid for the period 9 September to 8 October 1990, and BEF 109,387, for premiums paid for the period 9 October to 25 October 1990 (the date on which Eteco's employees left Iraq), are compensable in principle. From these amounts, the Panel deducted the amount of BEF 73,942 to account for the refund Eteco received for the cancellation of the war risk element made under a separate

"collective accidents policy". The Panel therefore recommends compensation in the amount of BEF 270,710 (USD 8,657).

Recommendation

62. The Panel recommends compensation in the amount of USD 8,657 for premiums paid for war risk insurance.

E. Interest

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

F. Recommendation for Eteco

Table 2. Recommended compensation for Eteco

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	118,678	nil
Loss of tangible property	73,864	nil
Payment or relief to others	305,586	nil
Other losses	17,537	8,657
Interest	171,799	(--)
Total	687,464	8,657

64. Based on its findings regarding Eteco's claim, the Panel recommends compensation in the amount of USD 8,657. The Panel finds the date of loss to be 1 October 1990.

IV. MOHAMMED AHMED MOHAMMED ABDEL MAKSOUD

65. Mohamed Ahmed Mohamed Abdel Maksoud ("Maksoud") is classified as an "individual personal company" under the laws of Egypt.

66. In the "E" claim form, Maksoud sought compensation in the amount of USD 1,787,769 for contract losses, loss of tangible property, real property losses and interest. However, in its accompanying Statement of Claim, Maksoud claimed contract losses in the amount of USD 674,568, which increased the total amount claimed to USD 1,914,351. The Panel considered that this failure to refer to the higher total amount of USD 1,914,351 in the "E" claim form was a genuine arithmetic error on Maksoud's part and, accordingly, treated the original submission as a claim for USD 1,914,351.

67. In an unsolicited submission dated 5 July 1999, Maksoud made significant changes to its claim. Although Maksoud reduced the total claimed amount for loss of tangible property, it purported to increase the claimed amounts for contract losses and interest. The Panel has only considered those losses contained in the original claim. Where Maksoud reduced the amount of losses in the unsolicited submission, the Panel has considered the reduced amount of USD 1,913,748.

68. The Panel reclassified some elements of Maksoud's losses for the purposes of this report. The Panel, therefore, has considered the reduced amount in respect of contract losses, loss of tangible property, financial losses and interest.

Table 3. Maksoud's claim

Claim element	Claim amount (USD)
Contract losses	674,568
Loss of tangible property	502,710
Financial losses	63,270
Interest	673,200
Total	1,913,748

A. Contract losses

1. Facts and contentions

69. Maksoud seeks compensation in the amount of USD 674,568 for contract losses allegedly incurred in connection with contracts on various projects of the Government of Iraq in relation to which it was engaged as a sub-contractor to two Belgian companies, Acomal Company and Sidcontract Company, and a company incorporated in the United Kingdom, Mivan Overseas Limited ("Mivan").

70. In its original submission, Maksoud sought compensation in the amount of USD 436,710 for loss of tools and equipment from the Al-Emara project site. The claim was originally classified as a contract loss, but is more appropriately classified as a loss of tangible property.

(a) Contract with Acomal Company

71. Maksoud seeks compensation in the amount of USD 147,000 for contract losses allegedly incurred in connection with its contract with Acomal Company.

72. On 11 November 1981, Maksoud entered into a contract with Acomal Company to work as a sub-contractor on projects concerning the construction of military establishments for the Ministry of Defence of Iraq. The value of the contract was 11,000 Iraqi dinars (IQD). The works were extended for a further ten year period pursuant to a contract entered into between Maksoud and Acomal Company on 14 October 1982. The value of the contract was IQD 4,750,000. In 1986, Acomal Company became insolvent and was declared bankrupt by the Commercial Court of Gent, Belgium, on 14 June 1988. Maksoud was a creditor of Acomal Company at the time of its declared bankruptcy. Acomal Company's contract with the Ministry of Defence and the related sub-contract were assigned to Sidcontract Company. Maksoud continued to work as a sub-contractor for Sidcontract Company until its departure from Iraq on 8 September 1990.

73. Maksoud alleges that it is owed USD 147,000 resulting from Acomal Company's failure to fulfil its contract with the Government of Iraq due to its insolvency and subsequent bankruptcy.

(b) Contract with Sidcontract Company

74. Maksoud seeks compensation in the amount of USD 429,166 for contract losses allegedly incurred in respect of three separate contracts entered into with Sidcontract Company.

75. The first contract, dated 23 November 1986, was in relation to the "Mosul City Project". The total value of the contract was USD 124,000. Work under the contract commenced in 1987 and was completed in December 1988. Sidcontract Company paid Maksoud USD 51,426 in June 1987. In 1989, Sidcontract Company informed Maksoud that "no further payments were due". Maksoud seeks compensation in the amount of USD 72,576 for the outstanding payment.

76. The second contract, dated 18 August 1987, was in relation to the "Arbil site". The work was carried out by Maksoud and a third party and was completed by 3 March 1988. Maksoud seeks compensation in the amount of USD 5,508 for construction of an extra base on the site.

77. The third contract (undated) was for construction work on the Al-Emara military hospital in Basra. The contract provided for the works to be

completed by 30 March 1989. Maksoud seeks compensation in the amount of USD 351,082 for work performed under the contract, which has allegedly not been paid by Sidcontract Company.

(c) Contract with Mivan

78. On 25 January 1987, Maksoud entered into a contract with Mivan for steel erection and cladding work at the Al-Emara military hospital. Maksoud states that it completed work under this contract by 15 August 1987.

79. Maksoud seeks compensation in the amount of USD 98,402 for contract loses allegedly incurred in respect of the contract. The claimed amount is based on the total contract value less an interim payment received of USD 23,716.

2. Analysis and valuation

80. In its previous reports, the Panel has found that, in the case of contracts to which Iraq was not a party, claimants must provide specific proof that the failure of a debtor to pay was the direct result of Iraq's invasion and occupation of Kuwait.

81. The Panel finds that the age of the debts in question makes it highly unlikely that the failure of the contracting parties to pay in each case was the direct result of Iraq's invasion and occupation of Kuwait. Indeed, Maksoud did not demonstrate that the failure of the contractor, in each case, (Acomal Company, Sidcontract Company and Mivan) to pay was the direct result of Iraq's invasion and occupation of Kuwait. The Panel finds, therefore, that Maksoud failed to establish that its alleged loss was a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

82. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

83. Maksoud seeks compensation in the amount of USD 502,710 for loss of tangible property. Maksoud claims USD 436,710 for the alleged loss of tools and equipment left on the Al-Emara military hospital site when Maksoud left Iraq and USD 66,000 for furniture and equipment left behind in a villa which was rented by Maksoud.

84. In its original submission, Maksoud sought compensation in the amount of USD 66,000 for loss of furnishings from its Baghdad villa and office. The claim was originally classified as real property losses, but is more appropriately classified as a loss of tangible property.

2. Analysis and valuation

85. Maksoud provided as evidence of its alleged losses an invoice dated 25 May 1987 for the sum of USD 1,516, relating to tools and equipment on the Al-Emara site. It also provided photographs of a hydraulic apparatus for tower construction. Maksoud failed to provide any evidence of its title to the equipment, and of the presence of the equipment in Iraq at the time of Iraq's invasion and occupation of Kuwait.

86. As evidence of Maksoud's claim for loss of furnishings, Maksoud provided two photographs. However, it failed to provide any evidence of its ownership of the furnishings.

87. In order to establish a loss of tangible property claim, this Panel has 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.

88. The Panel finds that Maksoud failed to submit sufficient evidence to demonstrate its title to or right to use the assets, the value and the presence of the tangible property in Iraq. The Panel finds that Maksoud failed to submit sufficient evidence to substantiate its loss of tangible property claim.

3. Recommendation

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

C. Financial losses

90. Maksoud seeks compensation in the amount of USD 63,270 for loss of the amount of IQD 19,000, which was allegedly held in Maksoud's bank account with the Rafidain Bank in Iraq.

91. In its original submission, Maksoud sought compensation in the amount of USD 63,270 for loss of funds in a bank account held with the Rafidain Bank in Iraq. This claim was originally classified as a loss of tangible property, but is more appropriately classified as financial losses.

92. The only evidence provided by Maksoud are receipts from the Rafidain Bank in respect of deposits for IQD 5,000 and IQD 14,000. The receipts are dated 20 May and 20 July 1987, respectively. Maksoud failed to provide evidence of the balance of its bank account with the Rafidain Bank at 2 August 1990.

93. The Panel finds that Maksoud did not submit sufficient information or documentation to support its asserted losses. Maksoud failed to demonstrate that the account is no longer in existence or that Maksoud was denied access to the funds. Further, Maksoud did not demonstrate that Iraq

was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorise the transfer of the converted funds out of Iraq. Finally Maksoud did not demonstrate that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

94. The Panel recommends no compensation for financial losses.

D. Interest

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

E. Recommendation for Maksoud

Table 4. Recommended compensation for Maksoud

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	674,568	nil
Loss of tangible property	502,710	nil
Financial losses	63,270	nil
Interest	673,200	nil
Total	1,913,748	nil

96. Based on its findings regarding Maksoud's claim, the Panel recommends no compensation.

V. GERMOT INTERNATIONAL S.A.

97. Germot International S.A. ("Germot") is a publicly held construction corporation registered in France. Germot seeks compensation in the amount of 3,155,044 French francs (FRF) (USD 601,879) for contract losses, loss of profits, loss of tangible property and payment or relief to others.

98. In its reply to the article 34 notification, Germot included an additional claim for loss of tangible property relating to a container that was detained in Turkey en route to Iraq following Iraq's invasion and occupation of Kuwait. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by Germot.

Table 5. Germot's claim

Claim element	Claim amount (USD)
Contract losses	351,550
Loss of profits	20,031
Loss of tangible property	11,446
Payment or relief to others	218,852
Total	601,879

A. Contract losses

1. Facts and contentions

99. Germot seeks compensation in the amount of FRF 1,842,823 (USD 351,550) for contract losses allegedly incurred in connection with two sub-contracts in Iraq. The first sub-contract was with a United Kingdom company, Interiors International Limited ("Interiors"), and related to the supply and execution of architectural work on the Al Sijood Palace Project in Iraq, also known as Project 304X ("Project 304X"). The second sub-contract was with an Iraqi entity, "Consulting Group", and related to the provision of architectural works on Project 304X.

(a) Sub-contract with Interiors

100. Under the terms of an agreement dated 27 October 1989, Germot was assigned sub-contract works relating to Project 304X, originally awarded to Eurisol SA BP 84 in a sub-contract dated 12 July 1988. Since Germot did not provide a copy of the sub-contract, the Panel was unable to establish the precise scope of the works. However, it appears that Germot agreed to manufacture and install fibrous plaster units on the project site.

101. At the date of the assignment of the sub-contract works to Germot, the outstanding value under the sub-contract was FRF 4,080,549.

102. Germot stated that it had completed 99 per cent of the work under the sub-contract (with a value of FRF 4,039,743) by the time of Iraq's invasion and occupation of Kuwait. It carried out no further work under the sub-contract after 2 August 1990. Germot alleges that it received payments from Interiors in the amount of FRF 2,956,326 and seeks compensation for the unpaid work in the amount of FRF 1,083,417.

(b) Sub-contract with Consulting Group

103. On 21 June 1990, Germot entered into a sub-contract with Consulting Group, which appears to be the main contractor on Project 304X. The sub-contract provided for the design and installation of plasterwork on the water garden element of Project 304X. The total value of the sub-contract was FRF 2,000,000. The sub-contract contemplated completion of the works by 15 September 1990.

104. Germot stated that its employees were detained by the Iraqi authorities after 2 August 1990 and that those employees continued to carry out works under the sub-contract. Germot calculated that it had completed 85 per cent of the work under the sub-contract (with a value of FRF 1,700,000) by the time its employees left Iraq in October 1990. Germot states that it received payments from Consulting Group in the amount of FRF 940,594 (including payments for work performed in August 1990) and seeks compensation for the unpaid work in the amount of FRF 759,406.

2. Analysis and valuation

105. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

106. In relation to the sub-contract with Interiors, the Panel notes that Consulting Group wrote to Germot on 3 November 1990 indicating that it was prepared to assume Interior's payment responsibilities if Germot completed its work on the Project. Although Germot did not complete its work, the Panel finds that this correspondence demonstrates that Germot had a direct payment demand against Consulting Group. The Panel finds that this sub-contract became a contract with Consulting Group in November 1990.

107. The Panel finds that Germot had, in each case, a contract with Iraq for the purposes of the "arising prior to" clause in paragraph 16 of the Security Council Resolution 687 (1991).

(a) Sub-contract with Interiors

108. As evidence of its claim for contract losses under the sub-contract with Interiors, Germot provided: two acceptance certificates signed by Interiors for work performed in May and June 1990; a monthly statement supporting the value of the work performed in May 1990; a letter from

Interiors to Germot dated 20 September 1990 confirming that Germot had carried out variations to the value of FRF 510,288, subject to Consulting Group's acceptance; a letter from Consulting Group dated 3 November 1990 indicating that Germot was owed FRF 897,738; and a letter from Germot to Interiors dated 19 November 1990.

109. Whilst correspondence provided by Germot indicates that there was some earlier disagreement between the parties concerning the acceptability of the work performed, the Panel finds that Consulting Group, in its letter dated 3 November 1990, acknowledged that Germot had carried out the invoiced work satisfactorily.

110. The Panel finds that the claims for work performed in May and June 1990 (including supplementary works) are within the jurisdiction of the Commission. The Panel finds that Germot provided the necessary evidence to substantiate its loss in the amount of FRF 897,738 (USD 171,259) and recommends compensation in this amount.

(b) Sub-contract with Consulting Group

111. As evidence for its claim for contract losses under the sub-contract with Consulting Group, Germot provided: copies of the sub-contract; the bank guarantee and performance bond required under the sub-contract; a summary of payments received; untranslated bank statements; internal letters from one of its detained employees; and a monthly progress statement (invoice) for September 1990, which is not signed by Consulting Group. Germot was asked in the article 34 notification to provide evidence establishing that it actually performed the work under the sub-contract for which it alleges it has not been paid, such as its employees' timesheets, correspondence from Consulting Group acknowledging the work; or signed monthly statements. Germot advised that it was unable to provide further documentation, as all relevant documents were left in Iraq.

112. The Panel finds that Germot did not provide the necessary evidence to prove that it performed work under the sub-contract and that it has not received payment for this work.

113. The Panel recommends no compensation for the alleged unpaid work under the sub-contract with Consulting Group as Germot did not provide sufficient evidence to support its claims for such alleged costs.

3. Recommendation

114. The Panel recommends compensation in the amount of USD 171,259 for contract losses.

B. Loss of profits

115. Germot seeks compensation in the amount of FRF 105,000 (USD 20,031) for loss of profits in relation to the sub-contract with Consulting Group.

Germot asserts that it suffered a loss of future benefits under the sub-contract based on a gross benefit margin of 35 per cent on the balance of the unperformed value of the sub-contract, FRF 300,000. Germot stated that the figure of 35 per cent represents "the minimum percentage for a gross profit in building company for secondary works".

116. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17, supra.

117. Germot provided no evidence to support its claims in relation to loss of profits apart from correspondence with French authorities and Consulting Group regarding the impossibility of completing the work under the sub-contract. Germot was requested in the article 34 notification to submit evidence such as audited financial statements, budgets, management accounts, turnover or profit/loss statements prepared by or on behalf of Germot. It provided untranslated accounts for the year ending 31 December 1990 but provided no other requested documents. The Panel finds that Germot provided insufficient evidence to substantiate its alleged loss.

118. The Panel recommends no compensation for loss of profits as Germot failed to provide sufficient evidence to substantiate its claim.

C. Loss of tangible property

119. Germot seeks compensation in the amount of FRF 60,000 (USD 11,446) for loss of tangible property. The claim is for the alleged loss of a car, a typewriter and a photocopier from the Project 304X site.

120. Germot provided no information regarding the alleged circumstances of the loss of the tangible property. Germot provided no evidence of its alleged losses. It stated that it was unable to do so because all the relevant documents were in Iraq.

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

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

D. Payment or relief to others

1. Facts and contentions

123. Germot seeks compensation in the amount of FRF 1,147,221 (USD 218,852) for payment or relief to others. Germot alleges that 12 of its employees were held as hostages in Iraq from August to October 1990. Germot claims FRF 367,436 for the alleged costs of the employees' salaries, FRF 20,855

for social insurance contributions and FRF 758,930 for catering and expatriation allowances during this period.

(a) Salaries and social insurance contributions

124. At the time of Iraq's invasion and occupation of Kuwait, Germot employed 12 people in Iraq carrying out work under the sub-contracts. Germot alleges that it paid the salaries and social insurance contributions of the detained employees for the months of August to October 1990 in the sum of FRF 859,428. Germot stated that, pursuant to agreements dated 2 and 14 October 1990 entered into between it and several French Governmental organisations responsible for assisting victims of acts of terrorism (the "Organisations"), the Organisations reimbursed Germot for 90 per cent of its salary payments and social insurance contributions to the eight employees who were French nationals in the amount of FRF 471,137. The agreements were not expressed to apply to the four employees who were not French nationals.

125. Germot accordingly seeks compensation for the balance of the payments to the eight employees who were French nationals and for all payments made to its four employees who were not French nationals.

126. The Panel notes that the Commission has previously awarded compensation in category "C" to four of Germot's employees for lost salary payments during their period of detention in the amount of USD 55,548 (the "lost income awards").

(b) Catering and expatriation allowances

127. The claim is for "catering and expatriation allowances" paid to the 12 employees. Germot asserted that its Iraqi agent paid these allowances in the sum of IQD 68,970 to Germot's employees and others on its behalf and at its direction. It further asserted that one of the Organisations partially reimbursed Germot the sum of FRF 275,620.

128. Germot alleges that it made a partial payment of FRF 150,000 to the agent in relation to these expenses. It expected to pay the balance to the agent when it received payment of the outstanding amounts under the two sub-contracts. Germot therefore claims the balance of the amount which it alleges its agent paid less the partial reimbursement from the Organisation.

2. Analysis and valuation

129. As evidence of its claim for the costs of salary payments and social insurance contributions, Germot provided copies of the contracts between Germot and the Organisations; correspondence regarding the payment of compensation by the Organisations; summaries of payments; and salary payment forms.

130. As evidence of its claim for catering and expatriation allowances, Germot provided originals of internal receipts containing information about the payments. Germot also submitted a letter from the agent setting out the expenses he incurred on behalf of Germot; an internal letter stating that Germot owed the agent the sum of FRF 1,034,550 for expenses which he incurred on Germot's behalf; and proof of payment of FRF 150,000 to the agent's account.

131. Germot stated in its reply to the article 34 notification that its employees worked between 2 August and the end of October 1990 on the sub-contract with Consulting Group "to occupy themselves". Germot was paid by the employer for the work carried out in August 1990. The Panel finds that the amounts claimed in respect of salary payments in August 1990 are, therefore, not compensable.

132. In relation to Germot's claim for salary payments made in September and October 1990 to its four employees who were not French nationals, the Panel finds that Germot failed to provide sufficient evidence of the payment of these amounts to the employees in September 1990, and, therefore, how it suffered any loss. In relation to October 1990, the Panel finds that Germot provided sufficient evidence that it paid these costs for two employees in the amount of FRF 24,976. The Panel refers to paragraph 126 above and notes that a reduction must be made for the previous lost income award to one of the employees. The Panel finds that his lost income award exceeds, and therefore extinguishes, Germot's claim for compensation for salary payments to him. The Panel recommends compensation in the amount of FRF 13,737 (USD 2,700) for the salary payment to the other employee who was not a French national.

133. In relation to Germot's claim for salary payments to its eight French employees made in September and October 1990, the Panel finds that Germot provided sufficient evidence that it paid these costs in the amount of FRF 45,779 for which it has not been reimbursed by the Organisations. The Panel refers to paragraph 126 above and notes that a reduction must be made for the previous lost income awards to three of the employees. The Panel finds that the lost income awards exceed, and therefore extinguish, each of Germot's claims for compensation for salary payments to the three employees. The Panel recommends compensation in the amount of FRF 26,279 (USD 5,165) for the salary payments to the remaining five French employees.

134. In relation to Germot's claim for social insurance contributions to all 12 employees, the Panel finds that Germot failed to provide sufficient evidence of the payment of these amounts to the employees, and, therefore, how it suffered any loss.

135. The Panel finds that the claim for compensation for the payment of FRF 150,000 is a claim for catering and expatriation allowances for August 1990. Germot was paid by the employer for the work carried out in August

1990. The Panel finds that the amounts claimed in respect of catering and expatriation allowances in August 1990 are, therefore, not compensable.

136. In relation to the claim for catering and expatriation allowances for September and October 1990, the Panel recommends no compensation. These expenses were incurred by Germot's Iraqi agent. Pursuant to Security Council resolution 687 (1991) and Governing Council decision 7, Iraqi entities shall not be compensated for losses incurred as a result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

137. The Panel recommends compensation in the amount of USD 7,865 for payment or relief to others.

E. Recommendation for Germot

Table 6. Recommended compensation for Germot

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	351,550	171,259
Loss of profits	20,031	nil
Loss of tangible property	11,446	nil
Payment or relief to others	218,852	7,865
Total	601,879	179,124

138. Based on its findings regarding Germot's claim, the Panel recommends compensation in the amount of USD 179,124. In relation to Germot's claim for contract losses, the Panel finds the date of loss to be 2 August 1990. In relation to Germot's claim for payment or relief to others, the Panel finds the date of loss to be 1 October 1990.

VI. KYUDENKO CORPORATION

139. Kyudenko Corporation ("Kyudenko") is a Japanese construction company. Kyudenko seeks compensation in the amount of 132,726,929 Yen (JPY) (USD 920,117) for loss of tangible property and payment or relief to others.

140. In its original submission, Kyudenko sought compensation for real property losses in the amount of JPY 121,738,314 (USD 843,940) and for other losses ("living fixtures for worker") in the amount of JPY 2,254,510 (USD 15,629). These losses have been reclassified for the purposes of this report as loss of tangible property as they relate to the loss of tangible assets from Kuwait.

Table 7. Kyudenko's claim

Claim element	Claim amount (USD)
Loss of tangible property	859,569
Payment or relief to others	60,548
Total	920,117

A. Loss of tangible property

1. Facts and contentions

141. Kyudenko seeks compensation in the amount of JPY 123,992,824 (USD 859,569) for loss of tangible property. Kyudenko was engaged as a sub-contractor to Shimizu Corporation, a Japanese corporation, on the Az-Zour South Power Station project in Kuwait (the "Project"). Kyudenko states that, at the time of Iraq's invasion and occupation of Kuwait, work on the Project had been completed and the maintenance period was under way.

142. Kyudenko's claim is for the alleged loss of spare parts, construction materials, tools and instruments, which had allegedly been stored in a warehouse on the Project site, as well as "living fixtures for worker". Kyudenko states that it ascertained its losses during an inspection at the Project site carried out in December 1991.

143. Kyudenko did not explain how the claimed amount was calculated. It appears from the documents provided by Kyudenko in support of its claim that it is claiming for items with original values in yen, French francs and Kuwaiti dinars (KWD).

2. Analysis and valuation

144. Kyudenko provided as evidence of its alleged losses a computer print-out of a list of spare parts. Further, in respect of the items with an

original value in yen, Kyudenko provided an "estimate" dated 18 July 1990 from Siemens for lighting fixtures and other spare parts with a value of JPY 10,495,236, a partially translated document showing a figure of JPY 7,916,003, a seven page partially translated list of spare parts with a stated total value of JPY 31,105,030, and a quotation from Osaka Lightning Protection & Earthing System Manufacturing Co. Ltd in respect of the grounding system for the Project.

145. In respect of the items with an original value in French francs, Kyudenko provided undated quotations for plugs, sockets and switches to be manufactured by Legrand, France.

146. In respect of the items with an original value in Kuwaiti dinars, Kyudenko provided an invoice dated 11 September 1987 from Mitsui & Shimizu Corporation showing assets with a CIF value of KWD 12,276. The invoice is made out to Thuwainy Trading Company, Kuwait.

147. Kyudenko also provided various untranslated documents and a packing list, none of which can be reconciled with the claimed amounts.

148. As evidence of its alleged losses in respect of "living fixtures for worker", Kyudenko provided a two page document in Japanese. It provided no evidence in English in support of its claim.

149. In order to establish a loss of tangible property claim, this Panel has 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.

150. The Panel finds that Kyudenko 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 in Kuwait. The Panel finds that Kyudenko failed to submit sufficient evidence to substantiate its claim for loss of tangible property.

3. Recommendation

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

B. Payment or relief to others

152. Kyudenko seeks compensation in the amount of JPY 8,734,105 (USD 60,548) for payment or relief to others. The claim is for the alleged costs of the detention of one of its employees, (who was released in December 1991), the temporary and compulsory repatriation of its Philippine workers and "other relief activities".

153. Kyudenko provided as evidence of its alleged losses various untranslated documents in Japanese. It provided no evidence in English in support of its claim for payment or relief to others.

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

C. Recommendation for Kyudenko

Table 8. Recommended compensation for Kyudenko

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of tangible property	859,569	nil
Payment or relief to others	60,548	nil
Total	920,117	nil

155. Based on its findings regarding Kyudenko’s claim, the Panel recommends no compensation.

VII. SHIMIZU CORPORATION

156. Shimizu Corporation ("Shimizu") is a Japanese construction company. Shimizu seeks compensation in the amount of JPY 211,391,858 (USD 1,465,455) for loss of tangible property and payment or relief to others.

157. In its original submission, Shimizu sought compensation for real property losses in the amount of JPY 108,489,481 (USD 752,094). This loss has been reclassified for the purposes of this report as loss of tangible property as it relates to the loss of tangible assets from Iraq and Kuwait.

Table 9. Shimizu's claim

Claim element	Claim amount (USD)
Loss of tangible property	752,094
Payment or relief to others	713,361
Total	1,465,455

A. Loss of tangible property

1. Facts and contentions

158. Shimizu seeks compensation in the amount of JPY 108,489,481 (USD 752,094) for loss of tangible property. The claim is for the alleged loss of construction plant and equipment, office and accommodation furniture and permanent material, which Shimizu states was either destroyed or stolen from its projects in Kuwait and Iraq.

(a) Project in Kuwait

159. Shimizu was engaged as a contractor on the Az-Zour South Power Station project in Kuwait. Shimizu states that, at the time of Iraq's invasion and occupation of Kuwait, work on the Az-Zour South Power Station project had been completed and the maintenance period was under way. The handover of workshop equipment and spare parts was also taking place as part of the final completion of the project.

160. Shimizu states that it had to abandon the project site due to Iraq's invasion and occupation of Kuwait and that it left behind construction plant and equipment, office and accommodation furniture and materials for the project.

161. Shimizu states that it ascertained that the property had either been stolen or destroyed during an inspection at the project site carried out after the cessation of hostilities.

(b) Projects in Iraq

162. Shimizu states that it was involved in several projects in Iraq. In its claim submission, it identifies two of these as “high rise project” and “office building project”. No further details are given. It states that, at the time of Iraq’s invasion and occupation of Kuwait, all of its projects in Iraq were completed and had been handed over to the owner. However, the final settlements for the projects were outstanding and Shimizu was in the process of obtaining final documentation to finalise the contracts.

163. The claim is for the alleged loss of construction plant and equipment and office and accommodation furniture used for the projects.

2. Analysis and valuation

164. In respect of its claim for construction plant and equipment in Kuwait, Shimizu provided a computer print-out in Japanese, which appears to be a list of assets with a value of JPY 25,539,731. The descriptions on the list are untranslated. Shimizu annotated the list in order to designate the following categories of loss: “used for the repatriation of third country staff and labour” and “taken by Iraq at Jordanian border”, “existing on the site or storage yard but not useful”, and “missing”.

165. In respect of its claim for construction plant and equipment in Iraq, Shimizu provided a list of six items of plant and machinery in respect of two project sites. The list appears to contain extracts of an asset register, however, Shimizu provided no translations of the descriptions.

166. The lists referred to above purport to show the original purchase price and the “present value” of the plant and equipment. Shimizu provided no explanation as to how these values were calculated.

167. Shimizu provided no documentation to support the validity of the data on the lists. It provided no evidence of its title to the construction plant and equipment, nor of the value and the presence of the tangible property in Kuwait or Iraq.

168. In respect of its claim for office and accommodation furniture, Shimizu provided lists of the assets giving a description, purchase price, quantity, depreciation and value at 2 August 1990. Shimizu provided no documentation to support the validity of the data on the lists. It provided no evidence of its title to the office and accommodation furniture. Nor did it provide evidence of the value and the presence of the tangible property in Kuwait or Iraq.

169. In respect of its claim for permanent material for the project in Kuwait, Shimizu provided copies of three invoices dated between 17 May 1989 and 9 May 1990. Each invoice was issued by the Mitsui & Shimizu Consortium and was made out to Ministry of Electricity and Water, Government of

Kuwait. They each show payment terms of "CIF Kuwait". The invoices are accompanied by packing lists.

170. The Panel finds that Shimizu 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 in Kuwait or Iraq. The Panel finds that Shimizu failed to submit sufficient evidence to substantiate its claim.

3. Recommendation

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

B. Payment or relief to others

1. Facts and contentions

172. Shimizu seeks compensation in the amount of JPY 102,902,377 (USD 713,361) for payment or relief to others.

(a) Project in Kuwait

173. Shimizu states that, at the time of Iraq's invasion and occupation of Kuwait, 256 of its employees were located in Kuwait. Of these employees, three were Japanese nationals and the remainder were Indian, Bangladeshi, Filipino, Pakistani and British nationals, (referred to by Shimizu as "third country staff").

174. Shimizu states that the three Japanese employees were transferred from Kuwait to Baghdad on 22 August 1990, where they were detained as hostages until 11 December 1990. The remaining employees were transferred from Kuwait, via Baghdad, to Amman, on 21 August 1990. They arrived in Amman on 26 August 1990, from where they were repatriated to their home countries on 30 August 1990. Shimizu states that it sent two of its staff from its Tokyo head office to Amman on 25 August 1990 to assist in the repatriation process. Those employees were also repatriated on 30 August 1990.

175. Shimizu seeks compensation in the amount of JPY 85,505,126 for "repatriation expenses of third country staff and labour" and JPY 13,920,389 for "repatriation expenses of Japanese staff".

(i) Repatriation expenses of "third country staff and labour"

176. This is a claim for expenses in the amount of JPY 15,611,878 allegedly incurred in respect of the airfares purchased for repatriating Shimizu's employees who were not Japanese nationals ("airfare from Amman to home country"), as well as costs in the amount of JPY 69,893,248 allegedly paid to Shimizu's employees who were not Japanese nationals after they were dismissed by Shimizu ("final settlement of salary due to dismissal").

(ii) Repatriation expenses of Japanese staff

177. This is a claim for expenses in the amount of JPY 53,718 allegedly incurred in respect of the airfares from Kuwait to Baghdad purchased for Shimizu's employees who were Japanese nationals, as well as salary payments in the amount of JPY 13,866,671 for the five month period of their detention (August to December 1990).

(b) Projects in Iraq

178. Shimizu states that three of its employees were repatriated from Amman to Dhaka and one of its employees (a Japanese national) was detained in Iraq until 27 August 1990, before being repatriated from Amman on 29 August 1990.

179. Shimizu seeks compensation in the amount of JPY 1,211,291 for "repatriation expenses of third country staff and labour" and JPY 2,265,571 for "repatriation expenses of Japanese staff".

(i) Repatriation expenses of "third country staff and labour"

180. This is a claim for the costs of repatriating three of Shimizu's employees from Amman to Dhaka. It includes amounts allegedly paid in respect of bus transportation from Jordan to Iraq, hotel charges in Amman, taxi fares and airfares from Amman to the employees' home countries.

(ii) Repatriation expenses of Japanese staff

181. This is a claim for the costs of repatriating one of Shimizu's employees (a Japanese national) from Amman to Tokyo. It includes amounts allegedly paid in respect of hotel charges in Amman, airport tax at Amman, airfares from Amman to Tokyo, and salary for the period of the employee's detention in Iraq during August 1990.

2. Analysis and valuation

(a) Project in Kuwait

(i) Repatriation expenses of "third country staff and labour"

a. "Airfare from Amman to home country"

182. Shimizu provided as evidence of its alleged losses relating to "airfare from Amman to home country" statements of, and applications for, remittance relating to a plane chartered from Amman to New Delhi, the transportation of 52 workers from New Delhi to Bombay, and the airfares for 28 Bangladeshi workers from Amman to Dhaka.

183. Shimizu provided various other invoices and receipts, dated 30 August and 1 September 1990, supporting the statements of remittance referred to above. It also provided an aircraft charter agreement dated 29 August 1990

for the charter of an Airbus A310 for a journey from Amman to Delhi on 30 August 1990.

184. The Panel finds that the statements of remittance and other supporting documentation provided by Shimizu constitute sufficient evidence of the expenses incurred by it in relation to airfares for the repatriation of its employees. The Panel notes, however, that the amount claimed for "Air fare for 28 Bangladeshi workers from Amman to Dhaka" was incorrectly calculated by Shimizu, and should be JPY 2,299,269 rather than JPY 2,678,405.

185. However, given that the project had been completed and there is no claim for contractual payments due and owing, the Panel finds that Shimizu failed to demonstrate that the expenses it incurred were in excess of the expenses it would have incurred ordinarily in repatriating its employees assuming normal completion of the contract works.

186. The Panel, therefore, recommends no compensation for "airfare from Amman to home country".

b. "Final settlement of salary due to dismissal"

187. Shimizu provided as evidence of its alleged losses relating to the "final settlement of salary due to dismissal", statements of, and applications for, remittance relating to amounts allegedly paid pursuant to final settlement agreements reached with 199 Indian employees, 47 Bangladeshi employees and six other individuals (two Indian nationals and four Pakistani nationals).

188. Shimizu provided other schedules and correspondence in support of the statements of remittance referred to above showing that the amounts had been paid.

189. The evidence provided by Shimizu shows that the amount claimed for "final settlement of salary due to dismissal" is calculated as the monthly salary for each employee for the period from 1 July 1990 to a specified date, (which appears to be the earlier of the date the relevant employee left Kuwait or 10 September 1990). To this amount, indemnities, overtime and other amounts owing to the employee have been added and the salary for July 1990 and overtime have been deducted.

190. However, the Panel finds that Shimizu failed to demonstrate other important aspects of its calculations, including the final date of employment for each employee. It also did not explain the reason for significant differences between salary payments before 2 August 1990 and those made after that date. The Panel accordingly finds that Shimizu failed to provide sufficient evidence of its loss.

(ii) Repatriation expenses of Japanese staff

191. Shimizu provided what appear to be payroll documents, purportedly relating to three Japanese members of staff. However, it did not provide English translations of these documents.

192. The Panel recommends no compensation for repatriation expenses of Japanese staff.

(b) Projects in Iraq

(i) Repatriation expenses of "third country staff and labour"

193. Shimizu provided as evidence of its alleged losses relating to the repatriation expenses of "third country staff and labour" invoices, copies of plane tickets and other documentation. The evidence provided shows that the repatriation took place from Amman on 15 August 1990. However, all of the invoices provided by Shimizu in support of this loss item are payable by Mitsubishi Corporation, and not by Shimizu. Shimizu did not explain the relevance of the reference to Mitsubishi Corporation and did not provide evidence that it paid the claimed amounts.

(ii) Repatriation expenses of Japanese staff

194. Shimizu provided as evidence of its alleged losses relating to the repatriation expenses of its Japanese employee invoices, copies of plane tickets and other documentation. The evidence provided shows that the repatriation took place from Amman on 28 August 1990. However, all of the invoices provided by Shimizu in support of this loss item are payable by Mitsubishi Corporation, and not by Shimizu. Shimizu did not explain the relevance of the reference to Mitsubishi Corporation and did not provide evidence that it paid the claimed amounts.

195. Shimizu provided as evidence of its alleged losses relating to the salary expenses of its Japanese employee untranslated payroll documents, purportedly relating to the employee who is the subject of its claim.

3. Recommendation

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

C. Recommendation for Shimizu

Table 10. Recommended compensation for Shimizu

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of tangible property	752,094	nil
Payment or relief to others	713,361	nil
Total	1,465,455	nil

197. Based on its findings regarding Shimizu's claim, the Panel recommends no compensation.

VIII. KARIM BENNANI AND PARTNERS

198. Karim Bennani and Partners ("Karim Bennani") is a limited liability company incorporated in Morocco specialising in Moroccan craftwork and decoration for the Government of Iraq. In its original submission Karim Bennani sought compensation in the amount of USD 3,238,700 for contract losses, loss of profits, loss of tangible property, payment or relief to others, other losses and loss of interest.

199. In an unsolicited submission dated 14 September 1998, Karim Bennani sought to increase the amounts claimed for loss of profits and financial losses. In its subsequent reply to the article 34 notification, Karim Bennani reduced the amount claimed for payment or relief to others and loss of profits but sought to increase the amount claimed for financial losses. The Panel has only considered those losses contained in the original claim except where such losses have been reduced by Karim Bennani. Where Karim Bennani reduced the amount of losses in its reply to the article 34 notification, the Panel has considered the reduced amount.

200. The Panel, therefore, has considered the reduced amount of USD 2,892,403.

Table 11. Karim Bennani's claim

Claim element	Claim amount (USD)
Contract losses	720,000
Loss of profits	1,515,000
Loss of tangible property	66,000
Payment or relief to others	331,403
Financial losses	260,000
Total	2,892,403

A. Contract losses

1. Facts and contentions

201. Karim Bennani seeks compensation in the amount of USD 720,000 for contract losses. The claim is for contract penalties in the amount of USD 100,000 and "benefit margin for unpaid contract" in the amount of USD 620,000, allegedly incurred in connection with several contracts with the Government of Iraq (acting through the Embassy of Iraq in Rabat, Morocco) (the "Employer").

202. In its original submission, Karim Bennani sought compensation for contract penalties imposed by the Employer in the amount of USD 100,000.

Karim Bennani classified this loss as “business transaction or course of dealing”. The loss has been reclassified for the purposes of this report as a contract loss.

203. Karim Bennani entered into a series of contracts with the Employer between August 1989 and May 1990 pursuant to which it agreed to supply copper craftwork to, and to carry out carving and engraving and plaster works in, presidential palaces in Iraq. The projects in respect of which Karim Bennani contracted with Iraq to carry out work included Project 304X, Project 158, the Gaiza Project, the Kasr Sakr Project and the “Plaster Project”.

204. Karim Bennani sent craftsmen to Iraq for the purpose of carrying out work on the projects. On 2 August 1990, Karim Bennani had 370 craftsmen working at different sites throughout Iraq.

205. After Iraq’s invasion of Kuwait, the craftsmen returned to Morocco via Jordan and Syria. Karim Bennani states that all of the craftsmen had returned to Morocco by September 1990.

206. When the craftsmen arrived back in Morocco, they made claims against Karim Bennani. However, the banks refused to finance Karim Bennani and, since Karim Bennani had allegedly received no payments from Iraq, it experienced cashflow problems, which meant that it could not pay the craftsmen’s wages. The workers invaded Karim Bennani’s premises and assaulted staff. One building was occupied and another was destroyed by fire.

207. After the cessation of hostilities in Iraq, work on the presidential palaces was not resumed because the palaces had been destroyed. Furthermore, Karim Bennani allegedly lacked sufficient funds to recommence work and does not believe it could have persuaded the craftsmen to return to Iraq.

208. Karim Bennani alleges that the Government of Iraq owed it an amount of USD 1,238,321 as at 2 August 1990.

(a) Contract penalties

209. The claim is for penalties in the amount of USD 100,000 allegedly imposed by the Employer due to the fact that Karim Bennani did not complete the work under its contracts with the Government of Iraq. Karim Bennani asserts that the Employer decided to reduce the debt owed to Karim Bennani by USD 100,000 by way of a penalty because Karim Bennani’s craftsmen left Iraq following Iraq’s invasion and occupation of Kuwait.

210. Karim Bennani provided as evidence of its alleged losses two letters from the Embassy of Iraq in Rabat. The first letter dated 11 October 1990 includes a list of craftsmen who were “sent back from Iraq as they refused to work and insisted on leaving, thus infringing the provisions of the

contract." The second letter dated 24 October 1990 states that USD 100,000 would be deducted from Karim Bennani's account as the Employer considered the abandonment of work to be a breach of contract.

(b) "Benefit margin for unpaid contract"

211. The claim for "benefit margin for unpaid contract" in the amount of USD 620,000 is a claim for the 50 per cent profit margin on the outstanding debt allegedly owed to it by Iraq. The amount of the outstanding debt was allegedly USD 1,238,321. Karim Bennani states that the "benefit margin" on its contracts with Iraq was 50 per cent.

212. Karim Bennani submitted evidence of the outstanding debt in the amount of USD 1,238,321. The Employer also acknowledged the full amount of this debt in a letter dated 19 December 1992.

213. Karim Bennani stated that on 24 October 1995, it received an amount of USD 329,433 from the Government of Morocco by way of compensation for its losses suffered under its contracts with the Government of Iraq.

2. Analysis and valuation

214. Karim Bennani provided as evidence of its alleged losses copies of the contracts with the Government of Iraq and schedules setting out the dates of the performance of the work under the contracts.

215. Karim Bennani also provided a letter dated 19 December 1992 addressed to it from the Embassy of Iraq in Rabat in which the Embassy acknowledges a "credit balance" in favour of Karim Bennani in the amount of USD 1,238,321. The Panel considers this letter to be evidence of an acknowledgement of the debt owed by the Government of Iraq to Karim Bennani with respect to the work performed by Karim Bennani under its contracts with the Government of Iraq, and that the Government of Iraq deducted USD 100,000 from its account.

216. Of the total amount of USD 1,238,321 acknowledged by the Government of Iraq to be owing to Karim Bennani, the Panel finds that Karim Bennani provided insufficient evidence of its performance of the work with a value of USD 218,307. This work was allegedly performed on Project 304X, Project 158, the Gaiza Project and Kasr Sakr project. The balance of the work (with a value of USD 1,020,014) was performed on the Plaster Project.

217. According to the schedules provided, Karim Bennani performed work with a total value of USD 2,196,050 on the Plaster Project. The Government of Iraq deducted the amount of USD 1,176,036 from the total amount to account for advances received,the unfinished portion of the work and other deductions. The Panel finds that Karim Bennani provided sufficient evidence of its performance of the work on the Plaster Project.

218. According to the schedules of work performed on the Plaster Project, Karim Bennani performed work with a value of USD 1,350,505 prior to 22 June 1990. Karim Bennani did not provide any evidence that this work was performed after 2 May 1990. In the absence of any evidence to the contrary, the Panel finds that the work was performed prior to 2 May 1990. The balance of the work on the Plaster Project, with a value of USD 845,545, was performed after 22 June 1990.

219. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

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

221. The Panel finds that the contract losses alleged by Karim Bennani relate partly to work that was performed prior to 2 May 1990.

222. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

223. With respect to the balance of the work (with a value of USD 845,545), the Panel is satisfied that this work was performed after 2 May 1990 and is, therefore, within the jurisdiction of the Commission. In arriving at an appropriate recommendation for compensation, the Panel finds that amounts should be deducted (on a pro-rata basis) from the value of the work performed to take account of (a) the amount of compensation already paid to Karim Bennani by the Government of Morocco; (b) work on the projects that was not completed by Karim Bennani; and (c) amounts already paid to Karim Bennani by the Iraqi employer in settlement of the amounts owed, including an advance payment paid on 11 July 1990 in respect of the Plaster Project. This results in a figure of USD 96,690 for "contract penalties" and "benefit margin for unpaid contract", which the Panel recommends be compensated to Karim Bennani.

3. Recommendation

224. The Panel recommends compensation in the amount of USD 96,690 for contract losses.

B. Loss of profits

1. Facts and contentions

225. Karim Bennani seeks compensation in the amount of USD 1,515,000 for loss of profits, which it describes as "loss of sole client and benefit

margin for three years". Karim Bennani's claim is for loss of the Government of Iraq as its sole client.

226. In its original submission, Karim Bennani sought compensation for "loss of sole client" and included this claim under "other losses". The loss has been reclassified for the purposes of this report as loss of profits.

227. In its original submission, Karim Bennani's calculations were based on its outstanding debt with Iraq, which was acknowledged in correspondence from the Embassy of Iraq in Rabat. However, in its reply to the article 34 notification, Karim Bennani changed the basis of its calculation of its profit margin using instead the profit margin appearing in its financial statements for the years 1989 and 1990.

228. Karim Bennani alleges that the claim for the loss of the Government of Iraq as its sole client entailed a benefit loss for a period of three years. Karim Bennani calculated its claim for loss of profits by taking its actual costs on the Iraqi projects for 1990, multiplying these by the profit margin reported in its 1989 financial statements and comparing the resulting figure by actual sales. It multiplied the resulting figure of USD 505,000 by three years.

2. Analysis and valuation

229. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

230. In support of its claim, Karim Bennani provided its financial statements for the years ending 31 December 1988, 1989 and 1990 as well as proposals for new contracts with the Government of Iraq.

231. The Panel finds that Karim Bennani did not demonstrate that its alleged loss of profits was a direct result of Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation as Karim Bennani failed to provide sufficient evidence to substantiate its loss of profits claim.

3. Recommendation

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

C. Loss of tangible property

233. Karim Bennani seeks compensation in the amount of USD 66,000 for loss of tangible property. The claim is for the alleged devaluation of stock which was destined for the Gaiza Project, but was "never taken away by Iraq".

234. Karim Bennani states that “zellige and wood elements inlaid with chiselled copper ... were kept in stock in the workshop of [its related company] Eben S.A.”

235. Karim Bennani provided no further explanations or evidence in support of its claim for loss of tangible property. It does not state how the claimed amount was calculated.

236. The Panel finds that Karim Bennani failed to provide sufficient evidence which demonstrated its title to or right to use the assets. The Panel further finds that Karim Bennani failed to explain how its alleged losses were a direct result of Iraq’s invasion and occupation of Kuwait.

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

D. Payment or relief to others

238. Karim Bennani seeks compensation in the amount of USD 331,403 for payment or relief to others. The claim is for the alleged costs of the workers’ travel expenses in the amount of USD 131,403 and salaries paid to workers upon their return to Morocco (“contention with staff”) in the amount of USD 200,000.

239. In its original submission, Karim Bennani sought compensation for travel expenses and included this claim under “business transaction or course of dealing”. The loss has been reclassified for the purposes of this report as payment or relief to others.

(a) Travel expenses

240. Karim Bennani states it compensated its workers for the travel expenses they incurred whilst fleeing Iraq. The contracts entered into between Karim Bennani and the Government of Iraq stipulate that Iraq was due to pay the costs of the workers’ travel back to Morocco. Accordingly, the Panel finds that the travel expenses are compensable in principle. However, Karim Bennani provided no explanation as to how the travel expenses were calculated and, in any event, no evidence that it actually paid those expenses.

241. The Panel recommends no compensation for travel expenses.

(b) “Contention with staff”

242. Karim Bennani states that, due to cash flow problems caused by Iraq’s failure to pay the outstanding debts owed to it, it was unable to pay its workers’ salaries. Several workers commenced legal proceedings against Karim Bennani for unpaid salary amounts and damages for unfair dismissal. Pursuant to court orders made by the Court of First Instance and the Court of Appeal of Rabat, Karim Bennani was required to pay USD 200,000 to several of its workers. Karim Bennani states that the legal proceedings are continuing.

243. Karim Bennani provided as evidence of its alleged losses extracts from the decisions of the Court of First Instance and the Court of Appeal of Rabat. Those extracts indicate that Karim Bennani was ordered to pay amounts to several of its workers for unpaid salary. The courts did not uphold the workers' claims for the other items, such as unfair dismissal, "unexpected dissolution" and "risks". The Panel was unable to reconcile the amounts included in the court awards with the amount of Karim Bennani's claim.

244. Karim Bennani also provided schedules of outstanding payments due to its employees. However, the Panel was unable to reconcile the amounts included in the schedules with the amount of Karim Bennani's claim. Further, Karim Bennani did not explain the relevance of these schedules to its claim.

245. In addition to these evidentiary deficiencies, the Panel finds that Karim Bennani failed to demonstrate how the salary payments in the amount of USD 200,000 exceed the salaries that it would have been liable to pay its workers in any event, had the invasion and occupation of Kuwait by Iraq not taken place. The Panel, therefore, finds that Karim Bennani failed to demonstrate that its alleged loss was a direct result of Iraq's invasion and occupation of Kuwait, and recommends no compensation.

Recommendation

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

E. Financial losses

247. Karim Bennani seeks compensation in the amount of USD 260,000 for financial losses.

(a) Sale of group company

248. Karim Bennani seeks compensation in the amount of USD 210,000 for the "sale of Gamma-Design". Karim Bennani alleges that the damage caused to the group company, Gamma-Design, when its premises were burnt down by workers in January 1991, required the cessation of activity and sale of the company for the price of a symbolic dirham.

249. Karim Bennani submitted no evidence in support of the alleged damage to the Gamma-Design company.

(b) Loss of capital

250. Karim Bennani seeks compensation in the amount of USD 50,000 for loss of capital revenues (which it describes in the "E" claim form as "associate current accounts and capital revenues") for the three years preceding the claim. Karim Bennani provided no further details, and, consequently, both the factual background to, and the legal basis of, the claim are unclear.

251. The Panel finds that Karim Bennani provided insufficient explanations and evidence of its alleged loss.

Recommendation

252. The Panel recommends no compensation for financial losses.

F. Recommendation for Karim Bennani

Table 12. Recommended compensation for Karim Bennani

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	720,000	96,690
Loss of profits	1,515,000	nil
Loss of tangible property	66,000	nil
Payment or relief to others	331,403	nil
Financial losses	260,000	nil
Total	2,892,403	96,690

253. Based on its findings regarding Karim Bennani's claim, the Panel recommends compensation in the amount of USD 96,690. The Panel finds the date of loss to be 2 August 1990.

IX. PETROGAS, GAS-SYSTEMS B.V

254. Petrogas, Gas-Systems BV ("Petrogas") is a private limited liability company registered in the Netherlands. It is involved in the design and execution of projects for the petrochemical industry. Petrogas seeks compensation in the amount of KWD 359,003 (USD 1,242,225).

255. Petrogas claimed the total amount of its claim as contract losses. However, the amounts claimed for contract losses are more appropriately classified as: USD 256,336 for contract losses; USD 114,187 for loss of profits; USD 189,353 for payment or relief to others; USD 200,692 for other losses and USD 481,657 for interest.

Table 13. Petrogas' claim

Claim element	Claim amount (USD)
Contract losses	256,336
Loss of profits	114,187
Payment or relief to others	189,353
Other losses	200,692
Interest	481,657
Total	1,242,225

A. Contract losses

1. Facts and contentions

256. Petrogas seeks compensation in the amount of KWD 74,081 (USD 256,336) for contract losses allegedly incurred in connection with a contract entered into with the Ministry of Electricity and Water in Kuwait (the "Employer"), to supply and erect gas scrubbers and pressure reducing stations at Az-Zour Power Station and Az-Zour Gas Turbine Station.

257. The contract was signed on 30 June 1988. The period for completion of the works was 11 months for the Az-Zour Power Station and 15 months for the Az-Zour Gas Turbine Station. Completion of the works was scheduled for May 1989 and September 1989, respectively. Petrogas alleges that, at the time of Iraq's invasion of Kuwait, the contract was 70 per cent complete.

258. Petrogas further alleges that, as a result of Iraq's invasion and occupation of Kuwait, it was unable to continue performance of its obligations under the contract. After the liberation of Kuwait, the Employer requested that Petrogas complete the performance of the contract at the original price. The Employer was allegedly unwilling to reimburse

Petrogas for the losses it suffered as a result of work stoppage, cancellation of materials, and interest lost.

259. On 10 May 1993, Petrogas and the Employer entered into a Settlement and Finalisation Deed (the "Settlement Deed"), which governed the method by which the parties to the contract would settle outstanding matters, including outstanding costs. The Settlement Deed was expressed to be "reached and declared by the contracting parties to settle all claims, demands for extra works and other contractual aspects and finalise" the contract.

260. Petrogas' claim is for storage costs and cancellation costs in respect of materials purchased for the contract, which allegedly could not be sent to Kuwait because of the trade embargo.

2. Analysis and valuation

261. The Panel finds that the terms of the Settlement Deed clearly demonstrate that a settlement agreement was entered into between Petrogas and the Employer. The Panel further finds that Petrogas failed to demonstrate that its claimed losses were not covered by the terms of the settlement.

3. Recommendation

262. The Panel recommends no compensation for contract losses.

B. Loss of profits

263. Petrogas seeks compensation in the amount of KWD 33,000 (USD 114,187) for loss of profits. Petrogas alleges that it was unable to complete the contract. It seeks compensation for loss of profits on the final stage of the contract and the additional costs incurred in negotiating the final contract price with the Employer.

264. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

265. In support of its claim, Petrogas provided a calculation of its loss, audited accounts for the period 1988 to 1993, accounts prepared for tax purposes, a profit assessment from the Kuwaiti tax authorities and original profit calculations used in preparation of its tender for the projects. The Panel finds that Petrogas failed to provide evidence that establishes that any loss of profit resulting from the early termination of the contract directly resulted from Iraq's invasion and occupation of Kuwait.

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

C. Payment or relief to others

267. Petrogas seeks compensation in the amount of KWD 54,723 (USD 189,353) for payment or relief to others. The claim is for the alleged costs of unproductive idle time of its employees in Kuwait.

268. Petrogas states that, after Iraq's invasion and occupation of Kuwait, it was unable to contact the Employer and was unsure of the status of the contract. It was advised by its insurers not to cancel the contract. As a result, Petrogas did not reallocate its staff working on the project for several weeks.

269. As evidence of its alleged losses, Petrogas submitted payroll records for the month of December (presumably for 1990, however, the year cannot be determined from the documents) and computer print-outs of payments from the agency which provided Petrogas with temporary workers. Petrogas also submitted the names and identity numbers of the members of staff concerned.

270. The Panel finds that Petrogas failed to provide sufficient evidence of these payments and, therefore, how it suffered any loss.

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

D. Other losses

272. Petrogas seeks compensation in the amount of KWD 58,000 (USD 200,692) for losses allegedly incurred in connection with legal fees, project co-ordinator expenses and travel and residence costs.

273. Petrogas states that it sought legal advice to pursue an insurance claim under its contract completion insurance policy. It also states that it retained a project co-ordinator at its head office until August 1991 in order to finalise the contract with the Employer. Petrogas' claim is for the time spent by the project co-ordinator on the project from October 1990 to August 1991. Petrogas also claims for travel and residence costs allegedly incurred during negotiations with the Employer to settle the contractual claims. Petrogas failed to provide information concerning the dates on which these costs were incurred.

274. Petrogas failed to submit any documentation to support its claim for other losses. The Panel recommends no compensation for other losses as Petrogas failed to provide sufficient evidence of the alleged losses.

275. The Panel recommends no compensation for other losses.

E. Interest

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

F. Recommendation for Petrogas

Table 14. Recommended compensation for Petrogas

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	256,336	nil
Loss of profits	114,187	nil
Payment or relief to others	189,353	nil
Other losses	200,692	nil
Interest	481,657	nil
Total	1,242,225	nil

277. Based on its findings regarding Petrogas' claim, the Panel recommends no compensation.

X. INSTITUTE HYDROPROJECT

278. Institute Hydroproject ("Hydroproject") is a public joint-stock company existing under the laws of the Russian Federation involved in the construction of dams. In its original submission Hydroproject sought compensation in the amount of USD 3,260,757 for contract losses and interest.

279. In its reply to the article 34 notification, Hydroproject made significant changes to its original claim by reducing its original claim for contract losses, including the substitution of some of its invoices, and increasing its claim for interest. The Panel has only considered those losses and invoices contained in the original claim except where such losses and invoices have been withdrawn or reduced by Hydroproject. Where Hydroproject reduced the amount of losses in its revised claim submission, the Panel has considered the reduced amount.

280. The Panel, therefore, has considered the reduced amount of USD 1,596,882.

Table 15. Hydroproject's claim

Claim element	Claim amount (USD)
Contract losses	821,745
Interest	775,137
Total	1,596,882

A. Contract losses

1. Facts and contentions

281. Hydroproject seeks compensation in the amount of USD 821,745 for contract losses allegedly incurred in connection with a design contract (the "Contract") for the Al-Baghdadi dam in Iraq. The Contract and its supplement were entered into between Hydroproject's legal predecessor and the Al Fao General Establishment of Iraq (the "Employer").

(a) The Contract

282. Under the Contract dated 7 July 1989, Hydroproject agreed to provide design related services for the Al-Baghdadi dam project (the "Project"). The total value of the Contract was USD 12,000,000. The parties contemplated that the Project would commence on 1 April 1990 and that the period of construction would be 48 months. The Contract came into force on 7 August 1989.

283. Under the terms of the contract, 97 per cent of the Contract price was to be invoiced quarterly. Hydroproject carried out work under the Contract both in Iraq and at its offices in Moscow. Work continued at both sites for a considerable period after Iraq's invasion and occupation of Kuwait. Hydroproject continued working in Moscow until 10 April 1991. Hydroproject stated that it carried out work after Iraq's invasion and occupation of Kuwait for which it rendered invoice no. 5A dated 9 October 1990.

284. Hydroproject seeks compensation in the amount of USD 554,625 in relation to this invoice, which allegedly has not been paid.

(b) Supplement No. 1

285. On 4 May 1990, the parties entered into Supplement No. 1 to the Contract pursuant to which Hydroproject agreed to provide design related services for fish-passing facilities at the Project, including the preparation of a design report. The total value of Supplement No. 1 was USD 1,400,000. Supplement No. 1 came into force on 4 June 1990.

286. Under Supplement No. 1, the Employer was required to pay USD 159,000 within three months of the effective date of Supplement No. 1 "without submission of the documentation by" Hydroproject. This payment was due on 4 September 1990. Hydroproject invoiced the Employer for this sum on 6 September 1990 (the "first invoice").

287. Under Supplement No. 1, Hydroproject was entitled to payment for its preparation of a draft report on fish-passing facilities "on submission of five copies of the draft" to the Employer. Hydroproject stated that it prepared the draft report and sent five copies to the Employer in February 1991. Hydroproject invoiced the Employer the amount of USD 265,000 on 26 February 1991 for its work (the "second invoice").

288. Hydroproject asserts that both the first invoice and the second invoice remain outstanding. It seeks compensation in the amount of USD 267,120 for 63 per cent of the amounts invoiced under Supplement No. 1.

2. Analysis and valuation

289. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

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

291. As evidence of its claim for contract losses, Hydroproject provided copies of the contracts, invoices, copies of correspondence including an acknowledgement of receipt by the Employer of invoice no. 5A, consultants'

reports, statements of work performed and services rendered under the contracts, and the draft report for the fish-passing facilities.

(a) The Contract

292. The Panel finds that the contract losses alleged by Hydroproject relate entirely to work that was performed between July and September 1990, i.e., after 2 May 1990. The claim is, therefore, within the jurisdiction of the Commission.

293. The Panel finds that Hydroproject provided sufficient evidence that the work was performed and that it was entitled to be paid for the work. The Panel recommends compensation in the amount of USD 554,625 for contract losses incurred under the Contract.

(b) Supplement No. 1

294. In relation to the claim for the first invoice, the Panel finds that, under the terms of the Contract, Hydroproject became entitled to the amount included in the invoice on 4 September 1990, without the need to carry out any work. The Panel finds that, in the absence of any evidence to the contrary, the Employer's failure to pay the invoice was a direct result of Iraq's invasion and occupation of Kuwait.

295. In relation to the claim for second invoice, the Panel finds that Hydroproject provided sufficient evidence that it prepared the draft report and submitted it to the Employer in accordance with the terms of Supplement No. 1. Hydroproject, therefore, had a contractual entitlement to the amount invoiced.

296. The Panel recommends compensation in the amount of USD 100,170 in respect of the first invoice (USD 159,000 times 63 per cent equals USD 100,170) and USD 166,950 in respect of the second invoice (USD 265,000 times 63 per cent equals USD 166,950).

3. Recommendation

297. The Panel recommends compensation in the amount of USD 821,745 for contract losses.

B. Interest

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

C. Recommendation for Hydroproject

Table 16. Recommended compensation for Hydroproject

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	821,745	821,745
Interest	775,137	(--)
Total	1,596,882	821,745

299. Based on its findings regarding Hydroproject's claim, the Panel recommends compensation in the amount of USD 821,745. In relation to Hydroproject's claim for contract losses (the Contract), the Panel finds the date of loss to be 9 October 1990. In relation to Hydroproject's claim for contract losses (Supplement No. 1), the Panel finds the dates of loss to be 6 September 1990 for the first invoice and 26 February 1991 for the second invoice.

XI. SWEDPOWER AB

300. SwedPower AB ("SwedPower") is a limited liability, consulting engineering company existing under Swedish law. SwedPower seeks compensation in the amount of 2,578,500 Swedish krona (SEK) (USD 447,890) for contract losses.

Table 17. SwedPower's claim

Claim element	Claim amount (USD)
Contract losses	447,890
Total	447,890

A. Contract losses

1. Facts and contentions

301. SwedPower seeks compensation in the amount of SEK 2,578,500 (USD 447,890) for contract losses allegedly incurred in connection with a contract for the provision of consulting services on a distribution network in Iraq.

302. On 29 January 1986, SwedPower entered into a contract with the Directorate General of Electrical Distribution for Governates of the Republic of Iraq (the "Employer") for the provision of consulting services in relation to a new distribution network in Basra. Under the terms of the contract, SwedPower was to provide design and detailed drawings, tender documents, and a field survey.

303. The total contract price was SEK 7,125,000 and IQD 203,500. The contract allowed for work to be carried out over an eleven-month period with a further two-year maintenance period to commence after completion of the works. Assuming the contract ran to schedule, the maintenance period was due to commence on 29 August 1986 and to finish on 28 August 1988.

304. The contract provided for an advance payment of 10 per cent of the contract price, payable on signing of the contract. A further 85 per cent of the contract price was to be paid in six equal monthly instalments commencing at the start of the field survey work, on presentation of invoices. The final five per cent retention money was to be paid on submission of the final tender documents, along with a bank guarantee to the same value valid throughout the 24 month maintenance period. The amount of IQD 36,000 was to be paid in four equal instalments at six-month intervals during the maintenance period.

305. SwedPower alleges that it did not receive the fifth and sixth monthly payments (invoice nos. 5 and 6 dated 19 January 1988) and the five per cent retention amount payable in Swedish krona (invoice no. 7).

306. SwedPower issued its final invoice (invoice no. 7), for the five per cent retention amount payable in Swedish krona, on 30 June 1990. However, it did not submit this invoice to the Employer. SwedPower states that all work on the project was completed during 1989.

2. Analysis and valuation

307. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

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

309. The Panel finds that the alleged contract losses relating to invoice nos. 5 and 6 relate entirely to work that was performed prior to 2 May 1990. The Panel recommends no compensation for contract losses relating to invoice nos. 5 and 6, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

310. With respect to invoice no. 7, the Panel finds that SwedPower failed to provide any evidence demonstrating that the retention money fell due after 2 May 1990. The Panel recommends no compensation in respect of SwedPower's claim for unpaid retention monies, as it relates to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, is outside the jurisdiction of the Commission.

3. Recommendation

311. The Panel recommends no compensation for contract losses.

B. Recommendation for SwedPower

Table 18. Recommended compensation for SwedPower

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	447,890	nil
Total	447,890	nil

312. Based on its findings regarding SwedPower's claim, the Panel recommends no compensation.

XII. MŞM-ENDÜSTRI AŞ

313. MSM Endustri AS ("MSM") is a manufacturing company incorporated in Turkey. MSM seeks compensation in the amount of 70,399 Deutsche Mark (DEM) (USD 45,070) and USD 23,126 for financial losses.

Table 19. MSM's claim

Claim element	Claim amount (USD)
Financial losses	68,196
Total	68,196

A. Financial losses

1. Facts and contentions

314. MSM seeks compensation in the amount of DEM 70,399 (USD 45,070) and USD 23,126 for financial losses allegedly incurred in connection with a contract that it entered into on 15 May 1990 with the Republic of Iraq, General Establishment of Iraqi Ports (the "Employer").

315. Under the terms of the contract, MSM was to manufacture and deliver two container cranes and train the Employer's personnel in using them. The value of the respective components of the contract were (a) DEM 14,103,000 (manufacture and delivery) and (b) DEM 250,000 (training). The performance of the contract was to be completed within 19 months of the issue of a letter of credit and payment by the Employer of an advance payment.

316. MSM employed two sub-contractors for the performance of the contract, Vulkan Hafentechnik GmbH (previously Krupp) and AEG AG ("AEG"), both German companies.

317. MSM alleges that it provided the Employer with a performance bond in the amount of IQD 133,500 and that AEG provided a counter-guarantee in support of the performance bond. MSM further alleges that AEG paid the Employer's stamp duties totalling DEM 25,311, for which it invoiced MSM.

318. MSM states that on 27 June 1990, the Employer sent a telex indicating that "the necessary steps were being taken to open the letter of credit". However, MSM alleges that the letter of credit was not opened, with the result that the contract was rendered "void".

319. MSM's claim is for costs in the amount of DEM 27,506 which it allegedly incurred in relation to the performance bond, stamp duty charges in the amount of DEM 25,311 relating to the supply, delivery and erection of the cranes, interest charges in the amount of DEM 17,582 relating to the cost of the performance bond and stamp duty charges, and personnel and

general administration costs in the amount of USD 23,126 relating to the four months of manpower allegedly required for the project.

2. Analysis and valuation

320. As evidence of its alleged losses in respect of the performance bond, MSM provided a copy of an invoice dated 1 June 1990 from AEG in the amount of DEM 27,506. It also provided an invoice from AEG for the interest expenses, dating from 1 July 1990 to 31 May 1993, indicating that the performance bond charges were not paid prior to 31 May 1993.

321. In relation to MSM's claim for stamp duty charges, it failed to provide proof of payment in relation to charges.

322. In relation to MSM's claim for bank and other expenses, it provided an invoice dated 2 June 1993 from AEG. The invoice indicates that these expenses relate to interest on the invoices issued by AEG for stamp duty and to the performance bond. MSM failed to provide proof of payment of these expenses.

323. In relation to the claim for personnel and general administrative costs, MSM failed to provide copies of payroll records or proof of payment of these expenses.

324. The Panel finds that MSM did not submit sufficient evidence to support its claim for alleged financial losses.

3. Recommendation

325. The Panel recommends no compensation for financial losses.

B. Recommendation for MSM

Table 20. Recommended compensation for MSM

Claim element	Claim amount (USD)	Recommended compensation (USD)
Financial losses	68,196	nil
Total	68,196	nil

326. Based on its findings regarding MSM's claim, the Panel recommends no compensation.

XIII. SEZAI TÜRKEŞ FEYZI AKKAYA CONSTRUCTION COMPANY

327. Sezai Türkes Feyzi Akkaya Construction Company ("STFA") is a construction company existing under Turkish law. STFA seeks compensation in the amount of USD 506,171 for other losses.

Table 21. STFA's claim

Claim element	Claim amount (USD)
Other losses	506,171
Total	506,171

A. Other losses

1. Facts and contentions

328. STFA alleges that, at the time of Iraq's invasion and occupation of Kuwait, it was in the process of contract document preparation and negotiations for the SS-8 Basra Region GIS Transformer Centre project, a turnkey project for the construction of a series of transformer buildings in Basra City and Amara City in Iraq (the "Project"). STFA appears to have led a consortium with two other companies, STFA ELTA Elektrik Tesisleri (a related company incorporated in Turkey) and Asea Brown Boveri AG, a German corporation.

329. In 1989 and 1990, STFA submitted tenders for a series of projects, including the Project, to the Iraqi authorities. STFA received a letter of intent for the Project dated 10 April 1989 from the Ministry of Industry and Military Manufacturing Executive Committee for Major Electrical Projects of Iraq (the "Ministry"). The letter of intent stated that the total price of the proposed contract was IQD 104,400,000. STFA alleges that Iraq's invasion and occupation of Kuwait prevented the parties from executing the proposed contract and stopped the Project's progress.

330. STFA seeks recovery of costs, which it alleges were primarily incurred by its Baghdad office in 1989 and 1990 in attempting to secure the Project. STFA claims costs in the amounts of USD 236,435 for "office and agent personnel expenses - 1989", USD 164,128 for "office and agent personnel expenses - 1990", USD 85,608 for "tender preparation and submission" and USD 20,000 for head office expenses.

2. Analysis and valuation

331. STFA's claim is very similar in nature to a claim for loss of profits. The Panel has accordingly approached the claim as if it were a claim for loss of profits. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

332. In support of its claim, STFA provided copies of correspondence between STFA and the Ministry (including the letter of intent) evidencing the contractual negotiations that took place with respect to the Project, and numerous original receipts, invoices and payment advice slips relating to the operation of the Baghdad office and preparation of the tender documents.

333. The Panel has considered the terms of the letter of intent issued by the Ministry. The letter of intent was issued "without any obligation from [the Ministry's] side" and was subject to each party's approval. Before the Project could begin, it appears that the Ministry was to issue a letter of award. The Panel finds that the issue of the letter of intent did not confer any rights or obligations upon either the Ministry or STFA. The Panel notes that no contract resulted from these negotiations, despite the fact that a period of almost 16 months elapsed between the date of the letter of intent and the date of Iraq's invasion and occupation of Kuwait.

334. STFA was requested in the article 34 notification to submit evidence to substantiate its assertion that the losses on the Project were directly caused by Iraq's invasion and occupation of Kuwait. STFA failed to provide the requested information. The Panel finds that STFA failed to establish any link between its costs or the failure to execute the proposed contract, and Iraq's invasion and occupation of Kuwait.

335. The Panel recommends no compensation for other losses as STFA failed to demonstrate that its claim for other losses was a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

336. The Panel recommends no compensation for other losses.

B. Recommendation for STFA

Table 22. Recommended compensation for STFA

Claim element	Claim amount (USD)	Recommended compensation (USD)
Other losses	506,171	nil
Total	506,171	nil

337. Based on its findings regarding STFA's claim, the Panel recommends no compensation.

XIV. ALFRED MCALPINE SERVICES AND PIPELINES LTD.

338. Alfred McAlpine Services and Pipelines Ltd. (“McAlpine”) is a public limited liability company incorporated in the United Kingdom, which is involved in the construction and petroleum industries. McAlpine claims compensation on behalf of itself and a wholly owned subsidiary, PMCS Ltd. (“PMCS”).

339. In the “E” claim form, McAlpine sought compensation in the amount of 626,967 Pounds sterling (GBP) (USD 1,191,952) for contract losses, loss of tangible property, payment or relief to others, head office overheads and financing costs.

340. In its reply to the article 34 notification, McAlpine increased the amounts claimed for the elements of payment or relief to others and financing costs. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by McAlpine. Where McAlpine reduced the amount of losses in its reply to the article 34 notification, the Panel has considered the reduced amount.

341. The Panel reclassified some elements of McAlpine’s losses for the purposes of this report. The Panel therefore considered the amount of GBP 626,967 (USD 1,191,952) for contract losses, loss of profits, tangible property losses, payment or relief to others, financial losses and interest.

Table 23. McAlpine’s claim

Claim element	Claim amount (USD)
Contract losses	375,044
Loss of profits	73,328
Loss of tangible property	259,261
Payment or relief to others	44,360
Financial losses	17,110
Interest	422,849
Total	1,191,952

A. Contract losses

1. Facts and contentions

342. McAlpine seeks compensation in the amount of GBP 197,273 (USD 375,044) for contract losses allegedly incurred in connection with two construction contracts with the State Establishment for Pipelines, Iraq (the “Employer”), in Iraq. The first contract was for the construction of a

number of pipeline crossings of the River Tigris and one pipeline crossing of the Basra Canal ("Project A"). The second contract was for the design and supply of a gas metering station ("Project B").

(a) Project A

343. In relation to the contract for Project A, McAlpine claims on behalf of PMCS, which was the party to the contract with the Employer dated 8 July 1989. Under the contract, PMCS was to receive the amounts of GBP 1,360,000 and IQD 290,000 from the Employer for these construction works. PMCS was required to construct the pipeline crossings of the River Tigris in two locations. First, PMCS was to build three crossings in the area of Daura Baghdad. The construction period was anticipated to be between September and November 1989. PMCS was then required to build two crossings of the River Tigris in an area approximately 20 kilometres north of Baghdad. The construction period was anticipated to be between November 1989 and January 1990. Finally, PMCS was required to build one crossing of the Basra Canal. The construction period was anticipated to be between December 1989 and February 1990, with demobilisation of Project A to take place at the beginning of March 1990. McAlpine stated that work commenced in July 1989 and "was completed in February/March 1990".

344. McAlpine seeks compensation for unpaid retention monies in the amount of GBP 68,000 and IQD 14,500. McAlpine stated that the retention monies were due to be paid by the Employer by April 1990 and that they remained outstanding at the time of Iraq's invasion and occupation of Kuwait.

(b) Project B

345. Under a purchase order issued by the Employer dated 24 January 1989, McAlpine was to receive the amount of GBP 668,490 for the design and supply of a gas metering station in Iraq. McAlpine stated that the first stage of the work under the purchase order, namely the design work, had been completed. McAlpine did not state when it completed the work. However, McAlpine provided a copy of an invoice for the design work dated 4 September 1989. McAlpine stated that the design document had to be approved by the Employer. McAlpine submitted documents containing conflicting information regarding the date when it obtained the Employer's approval for the design work. In its Statement of Claim it stated that the design work was approved in mid 1990. In a revised claim submission, McAlpine alleged that the design work was approved in April 1990. There is no reference in the purchase order to the alleged requirement for the Employer's approval.

346. McAlpine seeks compensation in the amount of GBP 100,273 for the design work invoiced on 4 September 1989. It does not seek compensation for any other performance under the purchase order.

2. Analysis and valuation

347. The Panel has defined the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

348. The Panel finds that for the purposes of the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991), PMCS and McAlpine had, in each case, a contract with Iraq.

349. The Panel finds in relation to Project A that PMCS completed the work under the contract in February/March 1990. The contract losses alleged by McAlpine therefore relate entirely to work that was performed prior to 2 May 1990.

350. The Panel finds in relation to Project B that the work invoiced under the purchase order was completed in September 1989 and was not contingent on the Employer’s approval. The contract losses alleged by McAlpine therefore relate entirely to work that was performed prior to 2 May 1990.

351. The Panel recommends no compensation for contract losses as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

3. Recommendation

352. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

353. McAlpine seeks compensation in the amount of GBP 38,570 (USD 73,328) for “head office costs”. McAlpine originally classified this element of loss as “other losses/ head office costs”, but it is more appropriately classified as loss of profits. McAlpine asserted that this figure represented operating costs. The figure was stated to be based on an average of percentages of operating costs for the years 1989, 1990 and 1991 multiplied by the amount of the other loss elements of the claim.

2. Analysis and valuation

354. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

355. McAlpine provided no evidence to support its claims in relation to loss of profits. McAlpine did not submit evidence such as audited financial statements, budgets, management accounts, turnover or profit/loss statements prepared by or on behalf of McAlpine or PMCS.

356. The Panel finds that McAlpine failed to provide sufficient evidence to substantiate its loss of profits claim.

3. Recommendation

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

C. Loss of tangible property

1. Facts and contentions

358. McAlpine seeks compensation in the amount of GBP 136,371 (USD 259,261) for loss of tangible property. The claim is for the alleged loss of PMCS' plant, equipment and spares from its Project A sites in Iraq. McAlpine stated that the property was retained in Iraq after completion of Project A in February/March 1990 as part of its proposed ongoing business. The tangible property comprising McAlpine's claim includes stock items (including vehicles), light plant items, a photocopier and office and villa stocks.

359. McAlpine stated that following Iraq's invasion and occupation of Kuwait, it was not possible to protect, remove or relocate the property because of the detention of its supervising employee in Iraq and the inability of its other employees to return to Iraq. McAlpine believes that representatives of Iraq took the property and it asserts that it has not retrieved any of the property or its value.

2. Analysis and valuation

360. McAlpine provided as evidence of its title to the property purchase invoices in relation to some, but not all, of the items, and an internally generated computer inventory (dated 1991) in relation to all light plant items.

361. As evidence of the presence of the items in Iraq at the time of its invasion and occupation of Kuwait, McAlpine provided a detailed truck consignment note dated 19 August 1989 for the vehicles which comprise part of the stock items. The note recorded that delivery of the vehicles to Iraq had taken place. McAlpine provided no evidence that any of the other items of property were in Iraq at the time of the invasion and occupation of Kuwait.

362. The Panel finds that McAlpine provided sufficient evidence of its title to or right to use, and the value and the presence in Iraq of, the vehicles. The Panel requested its expert consulants to perform a valuation of the losses. The Panel's expert consultants applied depreciation rates appropriate for such vehicles and concluded that the vehicles had a value of KWD 23,896 as at 2 August 1990 (although McAlpine's claim is for an amount in Pounds sterling, it purchased the vehicles in Kuwait for Kuwaiti

dinars). The Panel recommends compensation in the amount of KWD 23,896 (USD 82,684) for the vehicles.

363. In respect of the other items included in the claim for loss of tangible property, although McAlpine provided evidence of its title to some of the items, the Panel finds McAlpine failed to submit sufficient evidence of the presence of those items of property in Iraq prior to 2 August 1990.

3. Recommendation

364. The Panel recommends compensation in the amount of USD 82,684 for loss of tangible property.

D. Payment or relief to others

365. McAlpine seeks compensation in the amount of GBP 23,333 (USD 44,360) for payment or relief to others. The claim is for alleged salary payments made to an employee of PMCS during his detention by the Iraqi authorities. McAlpine stated that the employee was in Iraq at the date of its invasion and occupation of Kuwait. Following Iraq's invasion, he was detained in Iraq until January 1991, when he was allowed to return to the United Kingdom. He did not work during this period. McAlpine stated that during the period in question, it paid the employee's salary.

366. McAlpine provided as evidence of its alleged losses a copy of the employee's contract of employment and one internal letter authorising payment of the salary for August 1990 to the employee's wife. McAlpine did not submit any evidence of payment of that month's salary or of any other salary payments.

367. The Panel finds that McAlpine failed to submit sufficient evidence that it paid the employee during the period asserted in its claim.

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

E. Financial losses

369. McAlpine seeks compensation in the amount of GBP 9,000 (USD 17,110) for loss of the amount of IQD 4,500 allegedly held in PMCS' bank account in Baghdad. McAlpine originally classified this element of loss as "other tangible property losses", but it is more appropriately classified as financial losses. McAlpine asserted that following Iraq's invasion and occupation of Kuwait, it was not possible to protect, remove or relocate the monies because of the detention of its supervising employee in Iraq and the inability of its other employees to return to Iraq. McAlpine believes the monies were taken by representatives of Iraq and it stated that it has not retrieved the monies or their value.

370. McAlpine states that the claimed amount is an estimate. It states that it has no further records. The Panel finds that McAlpine failed to

submit sufficient evidence to prove the existence or ownership of the bank account or that the funds in the account have been appropriated, removed, stolen or destroyed and, therefore, how it suffered any loss.

371. The Panel recommends no compensation for financial losses.

F. Interest

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

G. Recommendation for McAlpine

Table 24. Recommended compensation for McAlpine

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	375,044	nil
Loss of profits	73,328	nil
Loss of tangible property	259,261	82,684
Payment or relief to others	44,360	nil
Financial losses	17,110	nil
Interest	422,849	(--)
Total	1,191,952	82,684

373. Based on its findings regarding McAlpine's claim, the Panel recommends compensation in the amount of USD 82,684. The Panel finds the date of loss to be 2 August 1990.

XV. MIVAN OVERSEAS LIMITED

374. Mivan Overseas Limited ("Mivan") is a construction company incorporated in the United Kingdom.

375. Mivan sought compensation in the amount of GBP 2,877,770 (USD 5,471,045) for contract losses, business transaction or course of dealing, loss of tangible property and claim preparation costs.

376. The Panel has reclassified elements of Mivan's claim for the purposes of this report. The Panel therefore considered the amount of GBP 2,877,770 (USD 5,471,045) for contract losses, loss of profits, loss of tangible property, financial losses, interest and claim preparation costs.

Table 25. Mivan's claim

Claim element	Claim amount (USD)
Contract losses	103,369
Loss of profits	4,860,898
Loss of tangible property	39,572
Financial losses	458,732
Interest (no amount specified)	(--)
Claim preparation costs	8,474
Total	5,471,045

A. Contract losses

1. Facts and contentions

377. Mivan seeks compensation in the amount of GBP 54,372 (USD 103,369) for contract losses. At the time of Iraq's invasion and occupation of Kuwait, a joint venture formed by Mivan and Rotary (International) Limited ("Rotary"), a company incorporated in the United Kingdom, was engaged as a sub-contractor on the the Al Sijood Palace Project in Iraq ("Project 304X"). The contractor on Project 304X was the Special Projects Implementation Authority ("SPIA"), an agency of the Ministry of Housing and Reconstruction of Iraq. The sub-contract was dated 29 June 1987.

378. On 23 November 1987, Mivan and Rotary entered into an agreement setting out the terms of the joint venture (the "joint venture agreement").

379. A summary of the relevant provisions of the sub-contract and the joint venture agreement is contained in the section of this report dealing with the separate claim filed by Rotary for the alleged losses of the joint venture on Project 304X. (See paragraphs 514 to 521, infra).

380. The total commissions due to Mivan under the joint venture agreement, calculated at the rate of three per cent of the total contract price of the sub-contract, were GBP 352,404 and IQD 15,000 (converted by Mivan to GBP 27,273). Mivan states that it received the amounts of GBP 281,797 and IQD 7,429 (converted by Mivan to GBP 13,508), resulting in a shortfall of GBP 84,372.

381. In March 1993, Mivan received the amount of GBP 30,000 from Rotary in settlement of the outstanding commissions. It seeks compensation for the shortfall of GBP 54,372 for amounts allegedly unpaid by Rotary.

2. Analysis and valuation

382. As evidence of its claim for contract losses, Mivan provided copies of correspondence confirming the commissions paid by Rotary. With the exception of a witness statement signed by the project manager for the joint venture on Project 304X, it did not provide evidence that the works carried out by Rotary had been satisfactorily completed as at December 1990.

383. In its claim submission, Rotary included a letter dated 24 February 1993 from Mivan to Rotary. The letter states:

> "... [W]e are pleased to confirm our acceptance of your offer of GBP 30,000 in full and final settlement of any further commission due to us under this joint venture agreement."

384. Enclosed with the letter is an invoice from Mivan addressed to Rotary for the amount of GBP 30,000 "in full and final settlement of all outstanding commissions in respect of [Project 304X, Baghdad]."

385. The Panel finds that the terms of the letter from Mivan to Rotary and the enclosed invoice clearly demonstrate that a settlement agreement was entered into between the joint venture partners pursuant to which Mivan relinquished its right to receive further commissions under the joint venture agreement. Rotary, in its claim before the Commission, seeks compensation for the entire amount of the contract losses allegedly incurred by the joint venture. The Panel finds that, under the terms of the letter dated 24 February 1993, Rotary is the appropriate claimant before the Commission and Mivan has no entitlement to claim for contract losses.

3. Recommendation

386. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

387. Mivan seeks compensation in the amount of GBP 2,556,833 (USD 4,860,898) for loss of profits. The claim is for the alleged loss of profits on future contracts in Iraq. Mivan states that, following Iraq's invasion and occupation of Kuwait, all its negotiations in Iraq to secure new business ceased and it was not possible to pursue any other business activities in Iraq, with the exception of Project 304X.

388. Mivan states that on 12 July 1990, shortly before Iraq's invasion and occupation of Kuwait, it had been awarded a contract by the Foreign and Commonwealth Office of the United Kingdom for the first phase refurbishment of the British Embassy compound in Baghdad. The contract was suspended by mutual consent on 23 August 1990. Mivan states that it had also expected to win further phases of the refurbishment, which were due to be awarded later in 1990.

389. In addition, Mivan was in an advanced stage of negotiations for several other contracts in Iraq, including the construction of two nuclear air raid shelters, a housing development and a dairy project.

390. Mivan calculated its claim for loss of profits by taking a margin of 13 per cent (the average net profit margin achieved between 1986 and 1990), and applying this to an assumed annual turnover of GBP 6,555,981 over a period of three years. The turnover of GBP 6,555,981 is that shown in the financial statements for the year ending 31 December 1989, being the last year of uninterrupted business.

2. Analysis and valuation

391. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

392. In support of its claim, Mivan provided a statement from the joint venture's project manager describing the various business negotiations and proposals in which he was personally involved on behalf of Mivan in Iraq at the time of Iraq's invasion and occupation of Kuwait.

393. Mivan also provided a statement from its auditors, and extracts from its financial statements for the years 1986 to 1990 in respect of its business activities in Iraq, and a copy of its financial statements for the year ending 31 December 1992.

394. Mivan also provided a copy of a letter dated 12 July 1990 from the Foreign and Commonwealth Office of the United Kingdom, accepting Mivan's tender for refurbishment works on the British Embassy compound in Baghdad. Further correspondence provided by Mivan confirms that the works were suspended on 23 August 1990.

395. In respect of the British Embassy compound project, Mivan provided no costings or projections supporting its tender, which would show the profitability of the project. The Panel finds that Mivan provided insufficient evidence to substantiate its alleged loss.

396. In respect of the other possible business opportunities in Iraq, Mivan states that all tender documents and related information, such as cashflow projections and construction time schedules, and all documents relating to negotiations ongoing at 2 August 1990, were kept at its office in Baghdad and were lost following its departure from Iraq in December 1990. It also acknowledged that it is not possible to calculate the exact timing, turnover, or profitability of each of the anticipated projects. The Panel finds that Mivan provided insufficient evidence to substantiate its alleged loss.

397. The Panel recommends no compensation as Mivan failed to provide sufficient evidence to substantiate its loss of profits claim.

3. Recommendation

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

C. Loss of tangible property

1. Facts and contentions

399. Mivan seeks compensation in the amount of GBP 20,815 (USD 39,572) for loss of tangible property (vehicles and other items of equipment). The assets were allegedly stolen after looting occurred at Mivan's branch office in Baghdad, and at a plant yard, stores and a camp used to house Thai workers located outside Baghdad.

400. In its original claim submission, Mivan sought compensation in the amount of GBP 262,108 for loss of tangible property. However, a review of the supporting documentation revealed that the amount of GBP 241,293 related to cash held in an Iraqi bank. This loss has, therefore, been reclassified for the purposes of this report as a financial loss. The balance of GBP 20,815 is dealt with under this section.

401. Mivan provided a witness statement signed by the project manager for the joint venture. The statement contains an account of the looting and destruction of the camp used to house the Thai workers. It states that, when the looting first began, Mivan moved equipment and plant from the camp to its plant yard and stores to try and safeguard the property. However, by the time of the project manager's departure from Iraq on 17 December 1990, this equipment and plant had been looted or destroyed.

402. A secretary who had been employed by Mivan (an Iraqi national), allegedly told the project manager after his return to the United Kingdom that Mivan's Baghdad office had been looted and no assets remained there.

2. Analysis and valuation

403. In addition to the witness statement referred to above, Mivan provided as evidence of its alleged losses extracts of its audited accounts for the year ending 31 December 1990 showing the fixed assets balances entered in those accounts. However, those extracts do not show evidence of title and the presence of the property in Iraq at the time of Iraq's invasion and occupation of Kuwait.

404. In the article 34 notification, Mivan was asked to provide evidence of ownership of each of the items of tangible property, such as certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers and other relevant documents generated prior to 2 August 1990.

405. In its reply, Mivan asserted that all documents concerning its property in Iraq were kept at its Baghdad office and were "stolen or destroyed following the departure of the last of [Mivan's] expatriate personnel in December 1990".

406. The extract from the accounts indicates that the majority of the assets had been written off and therefore had no commercial value. The items included in the extract of the accounts have very vague descriptions and it is not possible to identify from the accounts which items of property were in which location.

407. The Panel finds that Mivan failed to provide sufficient evidence which demonstrated its title to or right to use the assets, the value and the presence of the tangible property in Iraq.

3. Recommendation

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

D. Financial losses

1. Facts and contentions

409. Mivan seeks compensation in the amount GBP 241,293 (USD 458,732) for financial losses. The claim is for Iraqi dinar amounts with a value of GBP 131,678 held in two bank accounts with the Rafidain Bank and for cash held at its Baghdad office with a value of GBP 109,615. Mivan states that it was unable to obtain access to its funds in the bank accounts, and that the cash was looted from its office.

410. The claim for cash held in the bank accounts was originally classified as a loss of tangible property, but is more appropriately classified as a financial loss.

2. Analysis and valuation

411. Mivan provided as evidence of its alleged losses a letter from its auditors, Coopers and Lybrand, dated 23 September 1993, confirming the cash and bank balances entered in Mivan accounting records. It also provided a copy of its letter dated 1 December 1999 to Rafidain Bank seeking confirmation of its balance. Mivan states that it received no reply to its enquiry.

412. Mivan states that all bank statements and documents relating to its bank accounts were left in Iraq following the departure of its staff in December 1990.

413. The Panel finds that Mivan failed to prove that the funds in the accounts and the cash held at its project office had been appropriated, removed, stolen or destroyed and, therefore, how it suffered any loss.

3. Recommendation

414. The Panel recommends no compensation for financial losses.

E. Interest

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

F. Claim preparation costs

416. Mivan seeks compensation in the amount of GBP 4,457 (USD 8,474) 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 Mivan for such costs.

G. Recommendation for Mivan

Table 26. Recommended compensation for Mivan

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	103,369	nil
Loss of profits	4,860,898	nil
Loss of tangible property	39,572	nil
Financial losses	458,732	nil
Interest (no amount specified)	(--)	(--)
Claim preparation costs	8,474	(--)
Total	5,471,045	nil

417. Based on its findings regarding Mivan’s claim, the Panel recommends no compensation.

XVI. MIVAN OVERSEAS LIMITED AND INTERIORS INTERNATIONAL LIMITED

418. Mivan Overseas Limited is a company registered in the United Kingdom involved in the construction industry. Interiors International Limited is a company registered in the United Kingdom involved in the provision of furniture and floor coverings. The companies formed a consortium called the MIE Consortium (the "MIE Consortium") pursuant to a consortium agreement dated 4 March 1988. The MIE Consortium sought in its original submission compensation in the amount of GBP 3,309,950 for contract losses, payment or relief to others and other costs.

419. The Panel has reclassified elements of the MIE Consortium's claim and notes that in its Statement of Claim, the MIE Consortium seeks compensation in the amount of GBP 3,306,058 (USD 6,285,281). The Panel also notes that the MIE Consortium made an arithmetic error in the calculation of its reclassified claim for loss of profits. The nature of the error is described in paragraph 440, infra. The Panel has accordingly corrected the error and has considered the figure of GBP 3,306,857 (USD 6,286,800) for contract losses, financial losses, loss of profits, payment or relief to others, other losses, interest and claim preparation costs.

Table 27. The MIE Consortium's claim

Claim element	Claim amount (USD)
Contract losses	2,633,201
Financial losses	150,225
Loss of profits	1,552,707
Payment or relief to others	1,174,894
Other losses	753,020
Interest (no amount specified)	(--)
Claim preparation costs	22,753
Total	6,286,800

A. Contract losses

1. Facts and contentions

420. The MIE Consortium seeks compensation in the amount of GBP 347,227 (USD 660,127) and IQD 519,958 (USD 1,973,074) for contract losses allegedly incurred in connection with a sub-contract for the internal finishing work and external marble work comprising part of the redevelopment of the Al Sijood Palace Project in Iraq ("Project 304X").

421. The Special Projects Implementation Authority of Iraq ("SPIA") awarded the works to the MIE Consortium under a Sub-Contract dated 16 March 1988

(the “Sub-Contract”). The employer on Project 304X was the Ministry of Housing and Construction of Iraq. The agreed period of the Sub-Contract was 20 months, commencing on 16 March 1988 and concluding on 16 November 1989. The value of the works was GBP 14,154,021 and IQD 1,073,881.

422. The Sub-Contract provided for a retention fund for both the Pound sterling and Iraqi dinar elements. The payment terms relevant to the MIE Consortium’s claim required SPIA to pay the MIE Consortium 2.5 per cent of the Sub-Contract price on the issue of the Provisional Acceptance Certificate (the “PAC”) and 2.5 per cent on the issue of the Final Acceptance Certificate (the “FAC”) 12 months later, at the conclusion of the maintenance period. The Sub-Contract also required SPIA to pay a maximum of 10 per cent of the Sub-Contract price upon receipt of monthly certificates from the MIE Consortium evidencing installation of various components of the works.

423. In November 1988, during the MIE Consortium’s performance of the Sub-Contract, Al Rashid Contracting Company (“Al Rashid”) replaced SPIA as the main contractor on Project 304X. The MIE Consortium asserted that, henceforth, considerable delays in the progress of the works and a significant extension to the scope of the Palace were encountered. The extension to the works was formally recorded in variation orders which resulted in a small increase in the Sub-Contract price. The MIE Consortium sought consequential extensions to the duration of the Sub-Contract and these were agreed in practice, although not formally.

424. As a result of the employer’s delay in agreeing to the extensions to the Sub-Contract, the MIE Consortium’s work was incomplete at the time of Iraq’s invasion of Kuwait. Consequently, the Consortium’s personnel were present and working on site on 2 August 1990. The MIE Consortium asserts that it had substantially completed the works under the Sub-Contract by 23 August 1990. It carried out further work from August to December 1990 for which it issued five monthly certificates.

425. At the time that the last employee of the MIE Consortium left Iraq on 17 December 1990, Al Rashid had neither issued the PAC nor approved the five monthly certificates. The MIE Consortium prepared the final account for its works under the Sub-Contract as of 14 January 1991 and submitted it to Al Rashid. In the interim, the Palace was the subject of an air attack, which caused extensive damage. In May 1991 the MIE Consortium received the approved PAC dated 14 December 1990 and also the five monthly certificates, which Al Rashid had approved. It presented the PAC to the Bank of Ireland, which paid the Pound sterling elements due pursuant to a letter of credit.

426. The MIE Consortium states that, following the bombing of the Palace, it was unable to discharge its obligations under the maintenance and defects provisions of the Sub-Contract. It asserts that Al Rashid held the MIE Consortium responsible for repairing the damage done to the Palace following the bombing and, as such, refused to issue the FAC and

consequently to make any further retention payments or the Iraqi dinar payments which it was obliged to make for the monthly certificates. The MIE Consortium alleges that the FAC should have been issued on 13 December 1991 at the conclusion of the maintenance period. It claims that it is owed the Pound sterling element of the retention fund payable upon the issue of the FAC in the amount of GBP 347,227, the entire Iraqi dinar element of the retention fund in the amount of IQD 53,694 and the total of the amounts included in the monthly certificates, IQD 466,264.

2. Analysis and valuation

427. The MIE Consortium provided a significant amount of documentation in support of its claim, including copies of all relevant agreements, monthly certificates, its final account and correspondence between itself and the contractor.

428. 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.

429. 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, has submitted sufficient evidence of the amounts retained and has proven that all interim certificates were paid on a timely basis by the employer.

430. The Panel finds that Project 304X was effectively completed by 23 August 1990. However, the MIE Consortium carried out further work between August and December 1990 at the request of Al Rashid. One half of the retention money became due upon the issue of the PAC, which took place on 14 December 1990. The other half of the retention money became due upon the issue of the FAC. This event never occurred. The Panel finds that, in the absence of any evidence to the contrary, the employer’s failure to issue the FAC, the consequential non-payment of the retention money due upon the issue of the FAC, the non-payment of the Iraqi dinar element of the retention money due upon the issue of the PAC and the non-payment of the five monthly certificates were a direct result of Iraq’s invasion and occupation of Kuwait.

431. The Panel therefore recommends compensation in the amount of GBP 347,227 (USD 649,022) and IQD 53,694 (USD 172,650) for retention monies outstanding under the Sub-Contract and IQD 466,264 (USD 1,499,241) for unpaid monthly certificates.

3. Recommendation

432. The Panel recommends compensation in the amount of USD 2,320,913 for contract losses.

B. Financial losses

1. Facts and contentions

433. The MIE Consortium seeks compensation in the amount of GBP 79,018 (USD 150,225) for financial losses. The alleged losses are quarterly bank charges in respect of two bank guarantees (a performance guarantee and an advance payment guarantee) provided pursuant to the Sub-Contract for the period from 17 November 1989 until 13 December 1992. The performance guarantee was expressed to be valid until the issue of the FAC. The advance payment guarantee was expressed to be valid until approval by the employer of the final monthly certificate. The MIE Consortium states that the banks continued to impose charges in respect of these guarantees because the necessary certification under the Sub-Contract was not issued and a release from the Rafidain Bank could not be secured. The MIE Consortium seeks the costs of the charges for the period 17 November 1989 until 31 July 1990 in the amount of GBP 48,199 and for the period 24 August 1990 until 13 December 1992 in the amount of GBP 30,819.

434. The MIE Consortium originally classified the claim for bank charges as "contract losses", but they are more appropriately classified as financial losses.

2. Analysis and valuation

435. As evidence of its claim for bank charges, the MIE Consortium provided copies of the guarantees, correspondence from the banks which imposed the charges confirming the amount of the charges and the date they ceased, correspondence regarding the extension of the guarantees, and debit advice slips.

436. In relation to the claim for bank charges between 17 November 1989 and 31 July 1990, the Panel finds that the delays leading to the additional charges were caused by changes to the Palace's scope on the instructions of Saddam Hussein. The Panel finds that the MIE Consortium failed to demonstrate how these losses are a direct result of Iraq's invasion and occupation of Kuwait.

437. In relation to the claim for bank charges between 24 August 1990 and 13 December 1992 for the performance guarantee, the Panel finds that a proportion of the additional charges resulted from Al Rashid's failure to issue the FAC, which was a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that the effective date of the FAC was 13 December 1991. Because charges were invoiced quarterly and the quarter immediately following the issue of the FAC commenced on 23 December 1991, the Panel finds that the charges between 23 December 1991 and 13 December 1992 are compensable in the sum of GBP 6,571 (USD 12,469).

438. In relation to the claim for bank charges between 24 August 1990 and 13 December 1992 for the advance payment guarantee, the Panel finds that the final monthly certificate approved in December 1990 effectively terminated this guarantee. The charges were invoiced quarterly. The Panel finds that the charges between December 1990 and 13 December 1992 are compensable in the sum of GBP 10,084 (USD 18,849).

3. Recommendation

439. The Panel recommends compensation in the amount of USD 31,318 for financial losses.

C. Loss of profits

1. Facts and contentions

440. The MIE Consortium seeks compensation in the amount of GBP 676,339 and IQD 70,333 (total USD 1,552,707) for loss of profits. The MIE Consortium states that as a result of the extension of the Sub-Contract by 40 weeks, it incurred costs for the "shortfall in contribution to head office and divisional overheads" in the amounts of GBP 653,262 and IQD 49,564 and "office supplies and consumables" in the amounts of GBP 23,077 and IQD 20,769. In its Statement of Claim, the MIE Consortium alleged a loss in the amount of IQD 20,369. This appears to be an arithmetical error, which the Panel has corrected.

441. The MIE Consortium originally classified its claim as a claim for "contract losses", but it is more appropriately classified as loss of profits.

(a) Shortfall in contribution to head office and divisional overheads

442. The MIE Consortium alleges that its offices in Baghdad incurred extra costs as a result of the extension of the Sub-Contract until 23 August 1990. The MIE Consortium states that this element of cost had specific Pound sterling and Iraqi dinar figures allocated to it in the Sub-Contract price, reflecting the costs over the 20 month period of the Sub-Contract until 16 November 1989. It therefore calculated the Pound sterling and Iraqi dinar figures on a weekly basis over that period and multiplied the weekly figure by 40 to give the alleged extra cost resulting from the extension of the period of the Sub-Contract. It alleges that Al Rashid accepted this pro-rata method of calculation and it accordingly submitted its Final Account to Al Rashid on this basis on 14 January 1991.

(b) Office supplies and consumables

443. The MIE Consortium alleges that it incurred extra costs for office supplies and consumables as a result of the extension of the Sub-Contract until 23 August 1990. Because documentary evidence of these alleged costs

is unavailable, it valued the loss by the same mechanism as that adopted in relation to the shortfall costs in paragraph 442 above.

2. Analysis and valuation

444. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

445. In support of its claim, the MIE Consortium provided no documentary evidence specifically related to these alleged losses or of Al Rashid's alleged acceptance of the pro-rata method of calculation. It advised that all supporting documentation was left in Iraq. It relied on the two witness statements of the employee who was the MIE Consortium's project manager. Apart from some general comments on the tasks of the various offices in the 40 week period and identification of some sub-categories of alleged consequential extra costs, the witness statements essentially provide no more than a summary of the method used for detailing the calculations.

446. The Panel has also considered the accounts for the MIE Consortium's members, Mivan Overseas Limited's final job cost print-outs and its job contribution report, which were provided in reply to the article 34 notification. The MIE Consortium did not explain the connection between these documents and its asserted losses and did not attempt to verify its asserted losses making reference to these documents.

447. The Panel finds that the MIE Consortium failed to provide sufficient evidence to substantiate its loss of profits claim.

3. Recommendation

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

D. Payment or relief to others

1. Facts and contentions

449. The MIE Consortium seeks compensation in the amount of GBP 239,966 and IQD 189,393 (total USD 1,174,894) for payment or relief to others. The claim is for the alleged costs of maintaining its detained employees and sub-contractors, including salaries, accommodation and food costs between 23 August and 17 December 1990, when its last employee left Iraq. The MIE Consortium also seeks the costs of airfares for repatriation of certain of its employees.

450. The MIE Consortium states that at the time of Iraq's invasion and occupation of Kuwait, it had 52 expatriate (UK) personnel and 70 Thai workers resident in Iraq working on the Palace. Some of these personnel were sub-contractors. The MIE Consortium alleges that the Iraqi authorities detained its employees and coerced them to continue to work on

Project 304X. Most of the work was completed by the time the majority of the Thai workers left Iraq on 9 and 10 September 1990, but European personnel were prevented from leaving Iraq until approximately 17 December 1990. The MIE Consortium states that it had to pay the salaries and food and accommodation costs of its employees and sub-contractors for that period. It also states that it met the cost of the airfares for repatriation of the Thai employees from Jordan, and the costs of two of its employees in a hotel in Jordan immediately prior to repatriation.

451. The MIE Consortium states that its costs in repatriating the Thai workers were above the costs it would normally have incurred to repatriate the employees because it could not use return tickets for the Bangkok – Baghdad sector.

452. The MIE Consortium states that Al Rashid did not contribute towards the upkeep of staff in Iraq or the subsequent costs of repatriation.

453. The MIE Consortium claims GBP 206,302 for salaries, GBP 1,850 and IQD 189,393 for accommodation and GBP 31,814 for food and airfares.

2. Analysis and valuation

(a) Salaries

454. As evidence of its claim for salaries, the MIE Consortium provided a list of the names of its personnel including their date of release, number of days detained following 23 August 1990 and their daily rate of pay; invoices from the sub-contractors for employees' salaries; some payment authorisation slips; and correspondence to the Foreign and Commonwealth Office of the United Kingdom indicating that the MIE Consortium made payments to certain employees during 1995 and 1996. The MIE Consortium did not provide proof of payment of the salaries, whether direct (of its employees) or indirect (of its sub-contractors' employees). The MIE Consortium was requested in the article 34 notification to submit the payroll records. It replied that the relevant records were stolen or destroyed in the MIE Consortium's Baghdad office after 17 December 1990.

455. The Panel finds that the MIE Consortium failed to provide sufficient proof of payment of the salaries, and, therefore, how it suffered any loss.

(b) Accommodation and food

456. The MIE Consortium was unable to provide any documentary evidence of the majority of its claim for payment of accommodation and food costs for its detained employees because it states that all documentary evidence was left in Baghdad. It provided the project manager's witness statements in support of its calculations. The author of the statements was the last of the MIE Consortium's employees to leave Iraq. He stated that the figures were based on his personal knowledge and were "fair and reasonable".

457. As evidence of its claim for payment of the hotel expenses of two European employees in Jordan prior to repatriation (GBP 99), the MIE Consortium provided the hotel invoices evidencing proof of payment. The Panel has held that temporary and extraordinary costs of evacuation and associated activities are compensable in principle.

458. In relation to the claim for accommodation and food costs for its employees while they were detained in Iraq, the Panel finds that the MIE Consortium failed to submit sufficient evidence of payment of these alleged costs and, therefore, how it suffered any loss.

459. In relation to the hotel costs, the Panel finds that the MIE Consortium provided sufficient evidence that these costs were temporary and extraordinary in nature and that it paid these costs in the sum of GBP 99 (USD 193).

(c) Airfares

460. As evidence of its claim for the costs of the airfares, the MIE Consortium provided a facsimile from the airline confirming reservations for the September flight seats and requesting payment from the MIE Consortium; the payment authorisation which was paid on 4 September 1990; a facsimile from Royal Jordanian Airlines confirming reservations for the November flight and the cost. The MIE Consortium did not provide the payment authorisation for the November flights. It did not provide copies of the return tickets for the Bangkok – Baghdad sector as it states that these were left in Iraq and believed to be destroyed. However, the status of the original tickets was verified by the MIE Consortium's project manager. The MIE Consortium did not provide evidence of payment of the costs of the November flight.

461. The Panel finds that the MIE Consortium established that the costs of repatriating the Thai employees in September 1990 were additional and extraordinary in the amount of GBP 28,895 (USD 54,110).

462. The Panel finds that the MIE Consortium failed to provide sufficient evidence in support of its alleged loss for the November flights.

3. Recommendation

463. The Panel recommends compensation in the amount of USD 54,303 for payment or relief to others.

E. Other losses

1. Facts and contentions

464. The MIE Consortium seeks compensation in the amount of GBP 220,785 and IQD 87,828 (total USD 753,020) for other losses. The claim is for the alleged costs of maintaining its employees and sub-contractors between

18 November 1989 and 23 August 1990, including salaries, accommodation and food costs and prolonged commitment of site transport.

465. The MIE Consortium originally classified its claim as “contract losses”, but it is more appropriately classified as “other losses”.

466. The MIE Consortium advances the same arguments for compensation for these alleged losses as it does for its claim for loss of profits. The basis of its alleged losses for salaries, accommodation and food costs is the aggregate of its actual payments. The basis of calculation of its costs for prolonged commitment of site transport is an average cost of between GBP 51 and GBP 100 per week, for 40 weeks.

2. Analysis and valuation

467. As evidence of its alleged losses, the MIE Consortium provided similar evidence to that which it provided in support of its claim for payment or relief to others. It states that it was unable to provide proof of payment of the employees or their associated costs because the relevant records in the MIE Consortium’s Baghdad office were stolen or destroyed after 17 December 1990.

468. The Panel finds that the MIE Consortium failed to submit sufficient evidence of payment of these alleged costs and, therefore, how it suffered any loss.

3. Recommendation

469. The Panel recommends no compensation for other losses.

F. Interest

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

G. Claim preparation costs

471. The MIE Consortium seeks compensation in the amount of GBP 11,968 (USD 22,753) 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 the MIE Consortium for such costs.

H. Recommendation for the MIE Consortium

Table 28. Recommended compensation for the MIE Consortium

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	2,633,201	2,320,913
Financial losses	150,225	31,318
Loss of profits	1,552,707	nil
Payment or relief to others	1,174,894	54,303
Other losses	753,020	nil
Interest (no amount specified)	(--)	(--)
Claim preparation costs	22,753	(--)
Total	6,286,800	2,406,534

472. Based on its findings regarding the MIE Consortium's claim, the Panel recommends compensation in the amount of USD 2,406,534. In relation to the MIE Consortium's claim for contract losses, the Panel finds the dates of loss to be as follows: 14 December 1990 for half of the retention monies payable in Iraqi dinars; 13 December 1991 for the other half of the retention monies payable in Iraqi dinars, and the retention monies payable in Pounds sterling; and 14 December 1990 for the amounts outstanding for the unpaid monthly certificates. In relation to the MIE Consortium's claim for financial losses, the Panel finds the dates of loss to be 1 June 1992 (performance guarantee) and 1 December 1991 (advance payment guarantee). In relation to the MIE Consortium's claim for payment or relief to others, the Panel finds the date of loss to be 4 September 1990.

XVII. THE MORRIS SINGER FOUNDRY LIMITED

473. The Morris Singer Foundry Ltd. ("Morris Singer") is a private limited liability company incorporated in the United Kingdom and now in administrative receivership. It changed its name to Townstate Ltd. (in administrative receivership) after submitting its claim to the Commission. Prior to its entry into administrative receivership on 29 November 1993, Morris Singer was involved in the manufacturing and construction industries, carrying on business as sculpture founders in non-ferrous and precious metals.

474. In the "E" claim form, Morris Singer sought compensation in the amount of GBP 553,362 (USD 1,052,019) for contract losses. The Panel has reclassified certain elements of Morris Singer's claim as financial losses for the purposes of this report.

Table 29. Morris Singer's claim

Claim element	Claim amount (USD)
Contract losses	1,023,629
Financial losses	28,390
Total	1,052,019

A. Contract losses

1. Facts and contentions

475. Morris Singer seeks compensation in the amount of GBP 538,429 (USD 1,023,629) for contract losses allegedly incurred in connection with three contracts for the construction and erection of sculptures in Iraq. Morris Singer stated that it entered into two contracts with Amanat Al Assima, the local city government authority of Baghdad ("Amanat"), for the construction and erection of a flag sculpture (the "flag contract") and a parapet sculpture (the "parapet contract"). Both sculptures were to form part of the Martyrs Monument of Saddam Qaddissiya in Baghdad. The third contract was with the Ministry of Housing and Construction, Baghdad (the "Ministry"), for the construction and erection of four arches for the Arch of Victory (the "arches contract"). In this report, the Panel has addressed the flag contract and the parapet contracts together as they relate to the same monument and Morris Singer treated them as linked contracts.

(a) Flag and parapet contracts

476. The flag contract was signed on 7 January 1988. Under the flag contract, Morris Singer was to receive the sum of GBP 675,000 for the works (15 per cent payable in Iraqi dinars), which were to comprise the

construction of a large three-dimensional aluminium sculpture of the Iraqi flag from an existing small-scale model. Morris Singer was required to build the sculpture in the United Kingdom and then transport it to Baghdad where Morris Singer would install it at the Martyrs Monument site. The projected contract period was 16 months.

477. The parapet contract is dated 22 April 1988 and was signed on 27 April 1988. Under the parapet contract, Morris Singer was to receive the sum of GBP 280,000 for the works (15 per cent payable in Iraqi dinars), which were to comprise the construction of a large three-dimensional bronze parapet to surround the sculpture of the Iraqi flag. Morris Singer was required to build the sculpture in the United Kingdom and then transport it to Baghdad where Morris Singer would install it at the Martyrs Monument site. The projected contract period was 13 months.

478. Morris Singer provided invoices indicating that construction of the flag and parapet sculptures and the arrival of the sculptures in Iraq were completed by 6 June 1989. Erection of both sculptures on site commenced on 19 August 1989. Morris Singer asserted that it completed work under both contracts on 27 November 1989.

479. Morris Singer invoiced Amanat for the completed works under the flag and parapet contracts, which represented 95 per cent of the value under the respective contracts. It claimed that Amanat did not pay a number of the later invoices. In addition, Morris Singer claimed that under each of the contracts (which are almost identical in their terms), Amanat owed it the final contractual payment of a five per cent retention amount payable 12 months after completion of the contracts. Morris Singer accordingly asserted that the retention monies became payable on 27 November 1990.

480. Morris Singer seeks compensation in the amount of GBP 364,198 in respect of the flag and parapet contracts. It claims unpaid invoices in the amounts of GBP 207,500 and IQD 60,922.

481. In its claim submission, Morris Singer sought compensation in the amount of GBP 41,750 for retention monies under the flag and parapet contracts, rather than GBP 47,750 as the contracts themselves provide. The Panel has proceeded on the basis of the figure included in the “E” claim form, i.e., GBP 41,750.

(b) Arches contract

482. Morris Singer seeks compensation for unpaid invoices and outstanding retention monies stated to be payable under the arches contract.

483. Morris Singer did not provide a copy of the arches contract. It submitted an internal report dated 12 May 1991 which states that the contract was “received ... in 1988”. Morris Singer asserted it was to receive the sum of GBP 1,976,500 for the works.

484. On the basis of the documents submitted in support of its claim, it appears that Morris Singer seeks compensation in the amount of GBP 174,231. The claim is for unpaid invoices in the amounts of IQD 74,293 and retention monies in the amounts of GBP 23,056 and IQD 5,830.

485. In relation to the claim for retention monies, Morris Singer stated that retention monies were due on 27 November 1990 (as with the retention monies under the flag and parapet contracts) and that this was "12 months after completion of contract".

2. Analysis and valuation

486. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

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

(a) Flag and parapet contracts

(i) Unpaid invoices

488. In relation to the dates of performance, the Panel notes that Morris Singer submitted invoices establishing the outstanding amounts, with the exception of the retention monies, which it stated were not invoiced. The last of the invoices is dated 22 August 1989 and was submitted on the commencement of the erection of the flag and parapet sculptures, the milestone for payment of the penultimate instalment under the contracts (the retention monies being the final instalment). Morris Singer sent a document described as the "Completion Certificate" for the flag and parapet sculptures to Amanat on 7 December 1989. A representative of Amanat had signed the Certificate on 27 November 1989. Morris Singer asserted that its works under the contracts were completed by 27 November 1989 upon signature by Amanat's representative of the Completion Certificate.

489. The Panel finds that the unpaid invoices relate entirely to work that was performed prior to 2 May 1990.

490. The Panel recommends no compensation for the claim for unpaid invoices as the invoices relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

(ii) Retention money

491. Based on the evidence provided by Morris Singer, the Panel finds that Morris Singer had completed its work under the flag and parapet contracts by 30 November 1989, at the latest, and therefore prior to 2 May 1990. The Panel finds that the retention monies under the contracts fell due on 30 November 1990.

492. 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.

493. 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.

494. In this case, the work under the flag and parapet contracts was completed before 2 August 1990. However, the retention monies under the contracts became due on 30 November 1990. Although Amanat's payments for invoiced work were well overdue as at 2 August 1990, it had met invoices in the past. It did not challenge Morris Singer's request for payment made in April 1990. The Panel finds that Amanat's failure to pay the entire amount sought for retention monies was a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends compensation in the amount of GBP 41,750 (USD 80,911) for retention monies outstanding under the flag and parapet contracts.

(b) Arches contract

(i) Unpaid invoices

495. Morris Singer, by referring to retention monies becoming due on 27 November 1990 and that this date was "12 months after completion of contract", has indicated implicitly that the date of completion of its work under the contract was 27 November 1989. The only evidence available shows that Morris Singer performed its work prior to 2 May 1990.

496. The Panel finds that the unpaid invoices elements of the claim for contract losses alleged by Morris Singer relate entirely to work that was performed prior to 2 May 1990.

497. The Panel recommends no compensation for the unpaid invoices elements of the claim for contract losses as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

(ii) Retention money

498. With reference to the retention money, the only evidence provided by Morris Singer was a paragraph of an internal report dated 12 May 1991 and a computer generated schedule of the same date, which appears to record the payments required under the contract and the matching invoices and their status. Morris Singer was requested in the article 34 notification to submit the arches contract, invoices, payment certificates, progress reports and actual payments received. Morris Singer failed to submit the requested information which would have enabled the Panel to assess its assertions that it was owed retention monies and that those retention monies became due and payable on 27 November 1990.

499. The Panel recommends no compensation for the retention monies allegedly outstanding under the arches contract as Morris Singer did not provide sufficient evidence to support its claim for the alleged retention monies.

3. Recommendation

500. The Panel recommends compensation in the amount of USD 80,911 for contract losses.

B. Financial losses

1. Facts and contentions

501. Morris Singer seeks compensation in the amount of GBP 14,933 (USD 28,390) for loss of the value of IQD 3,141 cash alleged to have been left in the Mansour Hotel in Baghdad and for loss of the value of IQD 4,774 alleged to have been left in its bank account with Rafidain Bank in Baghdad. The account, which was in the name of Morris Singer’s overseas representative, was used for the receipt of the Iraqi dinar portions under the three contracts and payment of local expenses.

502. Morris Singer originally classified these elements of loss as “contract losses”, but they are more appropriately classified as financial losses.

2. Analysis and valuation

503. Morris Singer provided no evidence regarding its claim for cash left at the hotel in Baghdad.

504. As evidence of its claim for loss of funds in its bank account in Iraq, Morris Singer provided a schedule of payments into the bank account which formed part of its internal report of 12 May 1991, a description of how the account was set up and operated and details of the alleged lost amounts. Morris Singer provided no contemporaneous records, bank statements or the like.

505. The Panel finds that Morris Singer failed to submit sufficient evidence to prove the existence or ownership of the cash in the hotel or the account with the Rafidain Bank, or that the funds have been appropriated, removed, stolen or destroyed, and, therefore, how it suffered any loss.

3. Recommendation

506. The Panel recommends no compensation for financial losses.

C. Recommendation for Morris Singer

Table 30. Recommended compensation for Morris Singer

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	1,023,629	80,911
Financial losses	28,390	nil
Total	1,052,019	80,911

507. Based on its findings regarding Morris Singer's claim, the Panel recommends compensation in the amount of USD 80,911. The Panel finds the date of loss to be 30 November 1990.

XVIII. ROTARY (INTERNATIONAL) LIMITED

508. Rotary (International) Limited ("Rotary") is a company incorporated in the United Kingdom, which provides electrical and mechanical engineering services abroad.

509. In the "E" claim form, Rotary sought compensation for business transaction or course of dealing in the amounts of IQD 231,837, GBP 3,856,043 and USD 388,561, and compensation for tangible property losses in the amount of GBP 136,706. In relation to the amounts claimed for business transaction or course of dealing, as the claimed amounts relate to losses allegedly incurred under its contracts with respect to projects in Iraq, part of the claim has been reclassified as a claim for contract losses and the remainder of the claim as a claim for interest.

510. Rotary's Statement of Claim also referred to claim preparation costs in the amount of GBP 14,271. Although these costs were not included in the "E" claim form, the Panel has accordingly considered these costs as part of Rotary's claim.

511. The Panel also notes that Rotary's claim for payment or relief to others contained an arithmetic error, which is described at paragraph 581, infra. The Panel has corrected the error.

512. After taking into account these corrections and reclassifications, the Panel has considered Rotary's claim as a claim for compensation in the amount of IQD 231,837 (USD 745,456), GBP 4,006,920 (USD 7,617,717) and USD 176,581 for contract losses, loss of tangible property, payment or relief to others, financial losses, interest and claim preparation costs.

Table 31. Rotary's claim

Claim element	Claim amount (USD)
Contract losses	7,786,682
Loss of tangible property	191,456
Payment or relief to others	55,621
Financial losses	68,441
Interest	410,423
Claim preparation costs	27,131
Total	8,539,754

A. Contract losses

1. Facts and contentions

513. Rotary seeks compensation in the amounts of IQD 231,837, GBP 3,610,803 and USD 176,581 (total USD 7,786,682) for contract losses allegedly incurred in connection with the Al Sijood Palace Project in Iraq ("Project 304X") and Projects 400 and 600, also in Iraq.

(a) Project 304X

514. Rotary seeks compensation in the amounts of GBP 3,610,803 and IQD 215,104 for contract losses allegedly incurred under the sub-contract for works on Project 304X. The claim has four components: the deferred payment portion in the amount of GBP 763,542; the balance due under the credit loan agreement in respect of goods and materials originating in the United Kingdom ("UK goods") in the amount of GBP 1,590,017; the balance due under the letter of credit for goods and materials originating outside the United Kingdom ("non-UK goods") in the amount of GBP 222,370; and the residual balance of the sub-contract price including variations, described by Rotary as the "shortfall", in the amount of GBP 1,034,874.

515. At the time of Iraq's invasion and occupation of Kuwait, Rotary, together with its joint venture partner, Mivan Overseas Limited ("Mivan"), a company incorporated in the United Kingdom, was engaged as a sub-contractor on Project 304X. The contractor on the project was the Special Projects Implementation Authority of Iraq ("SPIA"). The employer on the project was the Ministry of Housing and Construction of Iraq (the "Employer"). The sub-contract entered into between the joint venture and SPIA was dated 29 June 1987. The works, which comprised mechanical and electrical services installations and the training of Iraqi engineers and technicians, were due to be carried out within a period of 21 months. During the term of the sub-contract, the parties agreed upon variations to the works, which resulted in a revised completion date for work of 31 August 1990.

516. The total price of the sub-contract (excluding variations) was GBP 11,746,800 and IQD 500,000. Rotary states that the variations (both agreed and non-agreed) had the effect of increasing the sub-contract price to GBP 13,559,476 and IQD 705,989.

517. Rotary signed an agreement with Mivan dated 23 November 1987 setting out the terms of the joint venture (the "joint venture agreement"). Under the terms of the joint venture agreement, Rotary was to pay Mivan a commission of three per cent of all monies certified for payment and paid to the joint venture under the sub-contract entered into for Project 304X, excluding any works carried out by Mivan. Payments of the commission were to be made to Mivan within seven days of Rotary receiving such monies from

the contractor. Under the joint venture agreement, Rotary was solely responsible for the execution of the project works.

518. The sub-contract stipulated that the portion of the price payable in Iraqi dinars, IQD 500,000, was to be paid locally in accordance with the progress of the works. Of the portion of the price payable in Pounds sterling, GBP 11,746,800, 15 per cent (or GBP 1,762,020) was financed by way of a loan made available by Midland Bank.

519. Of the 15 per cent portion, the amount of GBP 998,478 was paid in advance on 31 December 1987. This advance payment was to be repaid through 14 equal monthly instalments. The amount of GBP 763,542, plus interest, was to be deferred for 24 months, after the completion of various stages of the works. The deferred element was to be paid by means of an irrevocable letter of credit, dated 28 November 1987, in proportion to the payments made under the credit loan agreement with respect to the 85 per cent financed Pound sterling portion.

520. The remaining 85 per cent (or GBP 9,984,780) was provided to the Employer under a credit loan agreement entered into between the Governments of Iraq and the United Kingdom and supported by the Export Credits Guarantee Department of the United Kingdom ("ECGD"). The ECGD is a United Kingdom Government credit agency that provides financial support for international trade transactions.

521. As a result of variations to the project works and changes in design, some materials originating outside the United Kingdom were required. On 24 May 1989, the Employer established an additional letter of credit in the amount of GBP 777,802. Rotary states that this letter of credit failed to provide adequate coverage for the non-UK goods. At the time of Iraq's invasion and occupation of Kuwait, negotiations for another letter of credit were in progress to cover the shortfall with respect to the non-UK goods as well as the overall shortfall under the sub-contract for the works on Project 304X, which resulted from the increase in total price due to variations.

522. In November 1988, SPIA was replaced as the main contractor by Al Rashid Contracting Company ("Al Rashid"), an Iraqi entity.

523. Rotary states that, following Iraq's invasion and occupation of Kuwait, the Iraqi authorities "guaranteed" that personnel working on Project 304X would be allowed to leave as soon as work on the project had been completed, to the extent that the performance of the work was still possible. The majority of the joint venture's Thai workers were allowed to depart Iraq in September 1990. Another group left in October 1990. The last employees of Rotary working under the sub-contract were permitted to leave Iraq in December 1990, by which time the sub-contract works had been completed.

524. Although the work under the sub-contract was essentially completed by December 1990, the Employer did not issue a certificate of practical completion. The sub-contract provided for a maintenance period of 12 months from the date of practical completion. However, Rotary states that all defects already identified had been remedied prior to its departure from Iraq.

525. Rotary seeks compensation for the entire amount of the contract losses allegedly incurred by the joint venture notwithstanding that, under the terms of the joint venture agreement, Mivan was entitled to three per cent of the monies paid to the joint venture. Rotary states that a settlement agreement was entered into between the joint venture partners pursuant to which Mivan agreed to accept payment of GBP 30,000 “in full and final settlement” of any further commission due to it under the joint venture agreement. Rotary provided a copy of a letter dated 24 February 1993 from Mivan to Rotary evidencing this settlement.

526. Rotary provided as evidence of its alleged losses a substantial amount of documentation relating to the joint venture agreement, the sub-contract and the related financing arrangements, the shipment of materials to Iraq, and the variations to the sub-contract. It also provided copies of invoices relating to the deferred payment element of the Pound sterling portion of the sub-contract and relating to the Iraqi dinar portion of the sub-contract.

527. In its reply to the article 34 notification, Rotary stated that the remaining documentation detailing the work performed was left in Iraq.

(b) Projects 400 and 600

528. Rotary seeks compensation in the amounts of IQD 16,733 and USD 176,581 for contract losses allegedly incurred under the contracts for works on Projects 400 and 600.

529. In the “E” claim form, Rotary sought compensation in the amounts of IQD 16,733 and USD 388,561 for contract losses in respect of Projects 400 and 600. However, the Panel finds that Rotary, in the calculation of its claim, did not take into account payments received by it for work performed on Projects 400 and 600 in the amount of USD 211,980. The Panel considers that the correct amount for the United States dollar component of the claim should be USD 176,581.

530. On 22 January 1989, Rotary entered into two contracts with the Al Fao General Establishment of Iraq (“Al Fao”) in respect of Projects 400 and 600. The contracts were for the supply and installation of air conditioning at a factory complex. Project 400 was to be completed by 4 June 1989 and Project 600 by 16 July 1989.

531. Each contract stipulated a contract price of IQD 150,000. Of the total contract price, 37.5 per cent (or IQD 56,250) was to be paid in Iraqi dinars and 62.5 per cent (or USD 300,833) in United States dollars through an irrevocable letter of credit issued by the Central Bank of Iraq. Payments were to be made on a monthly basis, following the submission of progress certificates to Al Fao. The contracts also provided for an advance payment of 10 per cent of the total contract price.

532. On 25 January 1989, Rotary agreed to carry out variations of up to 20 per cent of the contract value for each contract, at the rates and prices contained in the bill of quantities.

533. Rotary states that it had completed work under both contracts by August 1989. Al Fao issued a practical certificate of completion in June 1989 and a final acceptance certificate (subject to clearances from the customs and tax authorities) on 18 August 1989. Between November 1989 and August 1990, the responsible Iraqi authorities confirmed that Rotary had complied with customs and tax formalities.

534. On 18 November 1989, Rotary submitted its final account to Al Fao.

535. On 18 August 1990, Al Fao wrote to Rotary stating that it had instructed the Central Bank of Iraq to pay the amount of USD 77,839 to Rotary on 16 June 1990, but that “due to the present circumstances” the sum had not yet been processed.

2. Analysis and valuation

(a) Project 304X

(i) Amounts payable in Pounds sterling

a. Deferred payment portion

536. In respect of the deferred payment portion of the sub-contract in the amount of GBP 763,542, Rotary states that, by 11 December 1990, it had issued five invoices for amounts falling due over the course of the project totalling GBP 522,588, plus interest for two years. Rotary states that it was prevented from billing the balance of the deferred payment portion, GBP 240,954, due to Iraq’s invasion and occupation of Kuwait.

537. Rotary provided as evidence of its alleged losses copies of invoice nos. 2001 to 2005 dated from 22 May to 1 August 1990. (Invoice no. 2005, although dated 1 August 1990, was sent to Al Rashid for payment on 11 December 1990).

538. From the evidence provided by Rotary, it is apparent that invoice nos. 2001 and 2002 in the total amount of GBP 408,307 relate to work performed during March and April 1990. The remaining three invoices (invoice nos. 2003, 2004 and 2005) in the total amount of GBP 114,280 relate to work

performed between May 1990 and Rotary's withdrawal from Iraq in December 1990.

539. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

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

541. The Panel finds that the contract losses alleged by Rotary in connection with invoice nos. 2001 and 2002 relate entirely to work that was performed prior to 2 May 1990. The Panel recommends no compensation for contract losses in connection with invoice nos. 2001 and 2002 as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

542. The Panel recommends compensation in the amount of GBP 114,280 (USD 218,677) in respect of invoice nos. 2003, 2004 and 2005.

543. In respect of Rotary's claim for the unpaid balance of GBP 240,954 for the deferred payment portion, which was not billed to the contractor, the Panel finds that Rotary did not provide sufficient evidence to indicate the level of work performed after the date of issue of invoice no. 2005 (1 August 1990) and its withdrawal from Iraq in December 1990. Although Rotary almost certainly performed further work after 1 August 1990, particularly in relation to variations, the Panel finds that Rotary provided insufficient evidence to enable it to quantify this work.

b. UK goods – loan finance

544. Rotary's claim for the balance due under the credit loan agreement for UK goods, GBP 1,590,017, is calculated as the difference between the payments received by Rotary upon shipment of the UK goods, and upon their delivery and installation at the project site in the amount of GBP 8,394,763, and the sub-contract price for the UK goods in the amount of GBP 9,984,780.

545. Rotary provided as evidence of its alleged losses handwritten schedules of site invoices and shipment qualifying certificates, which confirm the amounts received by Rotary. However, it did not provide evidence in support of the total value of the work allegedly performed, goods delivered to, and installed at, the project site.

546. The invoices provided by Rotary in respect of the deferred payment portion of the sub-contract (invoice nos. 2001 to 2005) indicate the value of the deferred payment portion of the work only. They do not indicate the total value of the work performed by Rotary. It is, therefore, not

possible to determine the value of work that was performed by Rotary prior to its withdrawal from Iraq in December 1990.

547. From the evidence provided, it is apparent that the amount claimed of GBP 1,590,017 includes retention monies in the amount of GBP 587,340. The sub-contract stipulates that amounts of up to five per cent of the total price would be retained by the contractor. There is no reference in the sub-contract as to when the retention monies were to be released.

548. The Panel recommends no compensation for the alleged unpaid amounts in respect of UK goods, as Rotary did not provide sufficient evidence to support its claims for such alleged losses.

c. Non-UK goods – letter of credit

549. Rotary claims GBP 222,370 for the balance due under the letter of credit for non-UK goods. This is calculated as the difference between the ceiling of the letter of credit issued on 24 May 1989, GBP 777,802, and the amount drawn under the letter of credit, GBP 555,432.

550. Rotary provided as evidence of its alleged losses a handwritten schedule of the payments received in respect of non-UK goods, indicating the amounts paid and the date of payment. The latest date of payment listed on the schedule is 8 August 1990. Rotary also provided a confirmation from the Bank of Ireland that, as at 4 February 1994, a total of GBP 555,432 had been drawn under the letter of credit in respect of non-UK goods shipped to Iraq and installed at the project site. The Panel was unable to reconcile the amounts appearing in the handwritten schedule of payments with the amount confirmed by the Bank of Ireland as having been drawn.

551. Rotary provided no other evidence to support this part of its claim.

552. The Panel finds that it is likely that Rotary would have completed delivery or installed a portion of the goods covered by the letter of credit after 2 May 1990, which were not included in the amount drawn under the letter of credit. However, the Panel recommends no compensation for the alleged unpaid amounts in respect of the non-UK goods, as Rotary did not provide sufficient evidence to support its claim for such alleged losses.

d. Shortfall

553. Rotary seeks compensation in the amount of GBP 1,034,874 for the alleged shortfall between the total price (revised to take account of variations to the sub-contract) and the total value of the available finance for Project 304X. Rotary states that, at the time of Iraq’s invasion and occupation of Kuwait, negotiations for an additional letter of credit were in progress. This letter of credit was intended to cover the shortfall with respect to the non-UK goods as well as the overall shortfall

under the sub-contract for the works on the project, which resulted from the increase in the total price due to variations. However, those negotiations had not been finalised.

554. Rotary provided a significant amount of documentation concerning the variations. However, it provided no evidence to indicate the value of the completed work under the sub-contract (as revised to take account of variations) or the dates of performance of the work. Further, it appears that none of the claimed amounts were invoiced by Rotary pending the issue of an additional letter of credit.

555. The Panel recommends no compensation for the alleged shortfall, as Rotary did not provide sufficient evidence to support its claim for such alleged losses.

(ii) Amounts payable in Iraqi dinars

556. Rotary seeks compensation in the amount of IQD 215,104 for the allegedly unpaid portion of the sub-contract payable in Iraqi dinars. Rotary's claim is calculated as the difference between the amount due under the terms of the sub-contract (including variations) in the amount of IQD 705,989 and payments received by it in the amount of IQD 490,885.

557. Rotary provided as evidence of its alleged losses copies of invoices, which confirm the amounts received by Rotary. However, it did not provide evidence in support of the total value of the work allegedly performed.

558. Although Rotary provided evidence to indicate approval by the main contractor of some of the variations to the sub-contract, it provided no evidence that it performed this work.

559. The Panel recommends no compensation for the unpaid Iraqi dinar portion of the sub-contract, as Rotary did not provide sufficient evidence to support its claim for such alleged losses.

(b) Projects 400 and 600

560. Rotary provided as evidence of its alleged losses copies of the contracts for both projects, each dated 22 January 1989. It also provided a copy of the letter of credit in respect of the projects issued on 15 February 1989 and stated to be valid until 12 September 1989, and documents showing drawings in the amount of USD 211,980 under the letter of credit.

561. Rotary also provided a copy of the final account in respect of the projects, and correspondence that shows that this final account was sent to Al Fao on 18 November 1989. Further correspondence provided shows Rotary's attempts to receive payment of the outstanding amounts.

562. In its reply to the article 34 notification, Rotary stated that it was unable to provide copies of the practical certificate of completion and the final acceptance certificate, as those documents were left in Iraq.

563. Based on the evidence provided and Rotary's own statement in its claim submission, the Panel finds that work under both contracts was completed by 18 August 1989, when the final acceptance certificate was issued by Al Fao subject to clearances.

564. The Panel has defined the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

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

566. The Panel finds that the contract losses alleged by Rotary relate entirely to work that was performed prior to 2 May 1990.

567. The Panel recommends no compensation for contract losses in connection with Projects 400 and 600 as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

3. Recommendation

568. The Panel recommends compensation in the amount of USD 218,677 for contract losses.

B. Loss of tangible property

1. Facts and contentions

569. Rotary seeks compensation in the amount of GBP 100,706 (USD 191,456) for loss of tangible property. The claim is for the alleged loss of office equipment, household appliances and vehicles located at Rotary's office in Baghdad and at its site office at Project 304X. Rotary's claim for loss of tangible property comprises: "airfreight consignments", "overland consignments", "household appliances", "office equipment" and "vehicles".

570. Rotary states that it was forced to abandon the tangible assets when it finally departed Iraq in December 1990.

2. Analysis and valuation

571. In respect of the claim for "airfreight consignments", Rotary provided as evidence of its alleged losses a detailed list of assets containing details of invoice numbers, dates of purchase, description, purported value as new and purported value at 2 August 1990. The majority of the items

detailed on the list are supported by a copy of the original purchase invoice together with air waybills and other transit documentation dated between June 1988 and October 1989. This documentation constitutes evidence of Rotary's title to the assets and of their exportation to Iraq.

572. In respect of the claim for "overland consignments", Rotary provided as evidence of its alleged losses a detailed list of assets containing details of the invoice numbers, dates of purchase, description, purported value as new and purported value at 2 August 1990. The items detailed on the list are supported by copies of the original purchase invoices, packing lists, and some certificates of origin. Rotary provided no transit or import documentation. Accordingly, although Rotary provided evidence of its title to the assets, it provided no evidence of their presence in Iraq.

573. In respect of the claims for "household appliances" and "office equipment", Rotary provided as evidence of its alleged losses a list detailing the description, value and the location in respect of each appliance. Rotary provided no further supporting documentation.

574. In respect of the claim for "vehicles", Rotary provided as evidence of its alleged losses extracts from its audited accounts for the years ending 1988 and 1989 showing that the value of the vehicles had been recorded as "fixed assets". Rotary provided no copies of the purchase invoices for the vehicles or other supporting documentation.

575. In its reply to the article 34 notification, Rotary stated that it was unable to provide any further documentation in respect of its claim for loss of tangible property, as "all papers and documents of any kind relating to the Iraqi branch remained in Iraq".

576. In order to establish a loss of tangible property claim, this Panel has 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.

577. The Panel finds that Rotary provided sufficient evidence of its ownership, the value and the presence in Iraq, of the tangible assets included in its claim for "airfreight consignments". The Panel recommends compensation in the amount of GBP 4,162 (USD 7,912) for "airfreight consignments".

578. In respect of the other items included in the claim for loss of tangible property, the Panel finds that Rotary 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 in Iraq. The Panel finds that Rotary failed to submit sufficient evidence to substantiate its loss of tangible property claim.

3. Recommendation

579. The Panel recommends compensation in the amount of USD 7,912 for loss of tangible property.

C. Payment or relief to others

1. Facts and contentions

580. Rotary seeks compensation in the amount of GBP 29,357 for payment or relief to others. The claim is for the alleged costs of evacuating Rotary's employees (106 Thai workers and 12 expatriate staff from the United Kingdom) from Iraq to their home countries.

581. In the "E" claim form, Rotary made an arithmetic error in the calculation of the claim amount. The correct claim amount is GBP 29,257 (USD 55,621).

582. Rotary classified its loss in respect of the additional cost of airfares as a contract loss. However, as this aspect of the claim relates to payment or relief to others, it has been reclassified as such.

583. Rotary calculated the amount of its claim as the difference between the alleged actual costs incurred by it in evacuating its personnel from Iraq and the costs of repatriating its employees, which it alleges it would have incurred under normal circumstances upon the natural completion of Project 304X.

584. Rotary states that it purchased airfares for the 106 Thai workers and 12 expatriate staff at a total cost of GBP 67,468. However, it states that, of these employees, 20 Thai workers and six expatriate staff would have remained in Iraq under normal circumstances, but were forced to return to their home countries in September and October 1990 as a result of Iraq's invasion and occupation of Kuwait. As a consequence, Rotary incurred additional costs in the amount of GBP 38,211 in connection with the airfares of the 20 Thai workers and six expatriate staff.

2. Analysis and valuation

585. Rotary provided as evidence of its alleged losses a schedule of the costs incurred and copies of the relevant invoices. It also provided an application for a telegraphic foreign transfer for the sum of USD 2,300 in favour of Orient Transport Company, Jordan, for "transport of Thais to Amman". The Panel is satisfied that the application constitutes sufficient evidence of payment of this expense and recommends compensation in the amount of USD 2,300. However, in relation to the other amounts claimed, the Panel finds that Rotary did not provide sufficient proof of payment.

586. The Panel finds that Rotary failed to provide evidence to support the actual costs incurred in repatriating its employees and its estimate of the

repatriation costs that it would have incurred in normal circumstances. Accordingly, the Panel recommends no compensation.

3. Recommendation

587. The Panel recommends compensation in the amount of USD 2,300 for payment or relief to others.

D. Financial losses

588. Rotary seeks compensation in the amount of GBP 36,000 (USD 68,441) for financial losses. The claim is for advance rent for the months September to December 1990 allegedly paid by Rotary in respect of three villas in Iraq.

589. Rotary included its claim for advance rent in its claim for loss of tangible property. However, as this aspect of the claim relates to an alleged financial loss, it has been reclassified as such.

590. Rotary states that as a result of the staffing levels required for Project 304X, it had to rent and furnish accommodation for its employees. The accommodation was allegedly abandoned after Iraq's invasion and occupation of Kuwait.

591. Rotary provided as evidence of its alleged losses a schedule summarising the advance payments allegedly made for each of the three villas. Rotary stated that it was unable to provide any supporting documentation for these costs.

592. The Panel finds that Rotary failed to provide sufficient evidence of its losses.

593. The Panel recommends no compensation for financial losses.

E. Interest

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

F. Claim preparation costs

595. Rotary seeks compensation in the amount of GBP 14,271 (USD 27,131) 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 Rotary for such costs.

G. Recommendation for Rotary

Table 32. Recommended compensation for Rotary

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	7,786,682	218,677
Loss of tangible property	191,456	7,912
Payment or relief to others	55,621	2,300
Financial losses	68,441	nil
Interest	410,423	(--)
Claim preparation costs	27,131	(--)
Total	8,539,754	228,889

596. Based on its findings regarding Rotary's claim, the Panel recommends compensation in the amount of USD 228,889. In relation to Rotary's claim for contract losses, the Panel finds the dates of loss to be as follows: 2 August 1990 for invoice no. 2003; 3 October 1990 for invoice no. 2004; and 11 December 1990 for invoice no. 2005. In relation to Rotary's claim for loss of tangible property, the Panel finds the date of loss to be 2 August 1990. In relation to Rotary's claim for payment or relief to others, the Panel finds the date of loss to be 12 September 1990.

XIX. SUTTON SERVICES INTERNATIONAL LIMITED

597. Sutton Services International Limited ("Sutton") is a limited liability company incorporated in the United Kingdom. Prior to its incorporation in 1991, Sutton was operating in the form of a partnership known as Sutton Group Services. Sutton seeks compensation in the amount of GBP 78,230 (USD 148,726) for loss of profits, loss of tangible property, payment or relief to others, other losses and interest.

Table 33. Sutton's claim

Claim element	Claim amount (USD)
Loss of profits	24,201
Loss of tangible property	27,409
Payment or relief to others	52,917
Other losses	4,647
Interest	39,552
Total	148,726

A. Loss of profits

1. Facts and contentions

598. Sutton seeks compensation in the amount of GBP 12,730 (USD 24,201) for loss of profits. At the time of Iraq's invasion of Kuwait, Sutton was engaged as a sub-contractor on the Al Sijood Palace Project in Iraq ("Project 304X"). The contractor on Project 304X was Rotary (International) Limited (the "contractor"). The sub-contract arrangement is evidenced by a purchase order issued by the contractor to Sutton dated 20 December 1989. Sutton was to test and commission the heating, chilled water, ventilation and air conditioning systems that were to be installed by the contractor.

599. Sutton's claim is for loss of overhead and profits, calculated as the difference between the contractual rate of GBP 16 per hour charged to the contractor and the rate of GBP 10.56 per hour paid to its employees. The claim is calculated for the months August to December 1990 based on a 10 hour day for one engineer and one technician.

2. Analysis and valuation

600. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 16 and 17.

601. In support of its claim, Sutton provided a letter dated 12 September 1989 addressed to the contractor in which it set out the hourly rates it

intended to charge the contractor for its services. It also provided a copy of a purchase order from the contractor dated 20 December 1989 confirming the hourly rates and correspondence between Sutton and the contractor evidencing the suspension of work following Iraq's invasion and occupation of Kuwait and the subsequent efforts by Sutton to be paid for the work performed. Sutton also provided copies of payroll records and an invoice dated 9 January 1991 addressed to the contractor requesting payment for work performed during the period 2 August to 20 December 1990.

602. The Panel recommends no compensation as Sutton failed to provide sufficient evidence to substantiate its loss of profits claim. Further, the Panel finds that Sutton failed to explain how its alleged loss was a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

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

B. Loss of tangible property

1. Facts and contentions

604. Sutton seeks compensation in the amount of GBP 14,417 (USD 27,409) for loss of tangible property. The claim is for the alleged loss of Sutton's test instrumentation, which was left behind at the project site after its employees departed Iraq. The Al Sijood Palace subsequently suffered bomb damage and the equipment is presumed destroyed.

2. Analysis and valuation

605. Sutton provided as evidence of its alleged losses a list of 13 items of equipment together with the manufacturer, type, cost, number of items and value. Sutton also provided copies of a telex dated 10 January 1990 to the contractor advising it that "two cartons of test equipment had dispatched" on the same date, an air waybill dated 10 January 1990, which refers to "two cartons of test equipment" (final destination – Baghdad), a rail consignment note dated 18 July 1990 (destination unclear), and an air waybill dated 17 July 1990 in respect of one package containing "passports". The documents described above do not contain itemised descriptions of the equipment that was dispatched to Iraq. There is no evidence that Sutton owned the equipment or that the 13 items of equipment included in Sutton's claim were actually dispatched to Iraq.

606. Sutton stated that it was unable to provide further documentation, as it retained its files for the statutory period of seven years only and, as such, all invoices had been destroyed.

607. The Panel finds that Sutton 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 in Iraq. The Panel finds that Sutton

failed to submit sufficient evidence to substantiate its loss of tangible property claim.

3. Recommendation

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

C. Payment or relief to others

1. Facts and contentions

609. Sutton seeks compensation in the amount of GBP 27,834 (USD 52,917) for payment or relief to others. The claim is for the salaries and bonuses allegedly paid to two of Sutton's employees who were working on Project 304X. The amounts claimed were allegedly paid to the two engineers during the period August 1990 to February 1991.

610. After Iraq's invasion of Kuwait, the contractor's project manager advised the two employees that it was in their best interests to continue to work on Project 304X as a display of good faith to ensure that they were able to leave Iraq at the first available opportunity.

611. The first employee attempted to flee the country, however, he was intercepted at the Syrian border on 1 September 1990 and was held hostage by the Iraqi authorities until 24 December 1990.

612. The second employee continued to work each day from 8 a.m. to 10 p.m. to placate the Iraqi authorities until his release on 20 December 1990.

613. Sutton states that it continued to pay its two employees their basic salary (at the rate of GBP 916.67 per month) as well as bonuses (calculated at GBP 5.25 per hour), plus extra hourly payments for working a sixth day every week.

614. After their return to the United Kingdom in December 1990, the second employee resumed work in February 1991 and the first employee resumed work at the end of March 1991.

615. Sutton claims that it attempted to recover the salary expenses from Rotary for the period August to December 1990, but was unsuccessful in doing so.

616. Sutton seeks compensation for the salary payments it allegedly made to the second employee during the period from August 1990 to February 1991 and to the first employee from August 1990 to March 1991 as well as bonus payments allegedly made to both employees from August to December 1990.

2. Analysis and valuation

617. Sutton provided as evidence of its alleged losses payroll records from August 1990 to March 1991 for its two employees along with copies of their

employment contracts. These records do not, however, make reference to the bonuses paid to the two employees.

618. The Panel finds that Sutton's salary payments during the period of the detention of its employees are compensable in principle.

619. The Panel finds that Sutton provided sufficient evidence that it paid the salaries of the two employees. However, it did not provide sufficient evidence that it paid the bonuses. The Panel, therefore, recommends compensation in the amount of GBP 9,124 (USD 17,752) for the salary payments made to the two employees from 3 August 1990 until their respective dates of departure from Iraq.

3. Recommendation

620. The Panel recommends compensation in the amount of USD 17,752 for payment or relief to others.

D. Other losses

621. Sutton seeks compensation in the amount of GBP 2,444 (USD 4,647) for "other losses". Sutton claims GBP 1,059 for consultants' fees allegedly incurred in September and October 1990 and GBP 1,385 for legal fees allegedly incurred in 1991.

622. Sutton states that it sought the advice of construction contract consultants after the contractor suspended the contract with Sutton. Sutton further states that it sought the advice of legal experts in trying to recover outstanding debts from the contractor.

623. In support of its claim for fees paid to construction contract consultants, Sutton provided invoices from the consultants dated 30 September and 31 October 1990. However, Sutton did not provide proof of payment of the consultants' fees.

624. In support of its claim for legal fees, Sutton provided invoices dated from 20 February to 23 August 1991. However, Sutton did not provide proof of payment of the legal fees.

625. The Panel recommends no compensation for other losses as Sutton failed to provide sufficient evidence of its alleged losses.

626. The Panel recommends no compensation for other losses.

E. Interest

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

F. Recommendation for Sutton

Table 34. Recommended compensation for Sutton

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of profits	24,201	nil
Loss of tangible property	27,409	nil
Payment or relief to others	52,917	17,752
Other losses	4,647	nil
Interest	39,552	(--)
Total	148,726	17,752

628. Based on its findings regarding Sutton's claim, the Panel recommends compensation in the amount of USD 17,752. The Panel finds the date of loss to be 1 October 1990.

XX. RECOMMENDATIONS

629. 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. Eteco S.A.: USD 8,657;

b. Mohamed Ahmed Mohamed Abdel Maksoud: NIL;

c. Germot International S.A.: USD 179,124;

d. Kyudenko Corporation: NIL;

e. Shimizu Corporation: NIL;

f. Karim Bennani and Partners: USD 96,690;

g. Petrogas, Gas-Systems B.V.: NIL;

h. Institute Hydroproject: USD 821,745;

i. SwedPower AB: NIL;

j. MŞM-Endüstri AŞ: NIL;

k. Sezai Türkeş Feyzi Akkaya Construction Company: NIL;

l. Alfred McAlpine Services and Pipelines Ltd.: USD 82,684;

m. Mivan Overseas Limited: NIL;

n. Mivan Overseas Limited and Interiors International Limited: USD 2,406,534;

o. The Morris Singer Foundry Limited (in administrative receivership): USD 80,911;

p. Rotary (International) Limited: USD 228,889; and

q. Sutton Services International Limited: USD 17,752.

Geneva, 27 June 2000

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner
