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

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CONTENTS

Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. John Tackaberry (Chairman), Pierre Genton and Vinayak Pradhan, at its twenty-eighth session in June 1998, 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 of 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 the claims of thirteen corporations included in the fifth 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.

2. A fourteenth claim initially included in this instalment, that of C. Haushahn GmbH & Co.("Haushahn"), filed with the Commission by the Government of the Federal Republic of Germany, was also before the Panel but was withdrawn by Haushahn during the proceedings. (See paragraph 230, infra).

3. Each of the claimants had the opportunity to provide the Panel with information and documentation concerning their claims. As discussed more fully in chapter I, the Panel has considered evidence from the claimants and the responses of Governments to the reports of the Executive Secretary issued pursuant to article 16 of the Rules. The Panel has retained consultants with expertise in valuation and construction and engineering. The Panel has also taken note of certain findings by other panels of Commissioners, approved by the Governing Council, regarding the interpretation of relevant Security Council resolutions and Governing Council decisions. Finally, the Panel was mindful of its function to provide an element of due process in the review of claims filed with the Commission.

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

4. The status and functions of a Panel of Commissioners operating within the framework of the Commission is set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) dated 2 May 1991 (S/22559). In his report, the Secretary-General described the function of the Commission as follows:

> "The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying

their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element." (S/22559, paragraph 20).

"The processing of claims will entail the verification of claims and evaluation of losses and the resolution of any disputed claims. The major part of this task is not of a judicial nature; the resolution of disputed claims would, however, be quasi-judicial. It is envisaged that the processing of claims would be carried out principally by the commissioners. Before proceeding to the verification of claims and evaluation of losses, however, a determination will have to be made as to whether the losses for which claims are presented fall within the meaning of paragraph 16 of resolution 687 (1991), that is to say, whether the loss, damage or injury is direct and as a result of Iraq's unlawful invasion and occupation of Kuwait." (S/22559, paragraph 25).

5. The Panel is entrusted with three tasks in the present proceedings. First, the Panel is required to determine whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission, i.e., whether the losses were caused directly by Iraq's invasion and occupation of Kuwait. Secondly, the Panel has to verify whether the alleged losses that are in principle compensable have in fact been incurred by a given claimant. Thirdly, the Panel is required to determine whether these compensable losses were incurred in the amounts claimed, and if not, the appropriate quantum for the loss based on the evidence before the Panel.

6. In fulfilling these tasks, the Panel considered that the vast number of claims before the Commission and the time limits in the Rules necessitated the use of an approach which is unique, but has principal characteristics rooted in generally accepted procedures for claim determination, both domestic and international. This involves the employment of well established general legal standards of proof and valuation methods in a process that is generally documentary rather than oral and inquisitorial rather than adversarial. This method carefully balances the twin objectives of speed and accuracy and permits the efficient resolution of the thousands of claims filed by corporations with the Commission.

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

7. 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. These include the date of filing and compliance by claimants with the requirements established for claims submitted by corporations and other legal entities (the "category 'E' claims").

8. On 29 July 1998, the Panel issued a 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 them as unusually large or complex within the meaning of article 38(d) of the Rules. The Panel thus had an obligation to complete its review of the claims within 180 days of the date of the procedural order, pursuant to article 38(c) of the Rules.

9. In view of the review period available and the often sparse information and evidence submitted by claimants, the Panel determined that it was able to evaluate the claims without additional information or documents from the Government of Iraq. In particular, due process, the provision of which is the responsibility of the Panel, has been achieved through the critical approach to the evidence adopted by the Panel before recommending payment of compensation.

10. Prior to presenting the fifth instalment to the Panel, the secretariat performed a preliminary assessment of each claim in order to determine whether the claim met the formal requirements established by the Governing Council in article 14 of the Rules. Where claims did not meet the formal requirements, the claimant was notified of the deficiencies and invited to provide the necessary information.

11. Further, the secretariat's review of the legal and evidentiary basis of each claim identified specific questions as to the evidentiary support for the alleged loss and also identified areas of the claim in which further information and documentation was required. Consequently, questions and requests for additional documentation were transmitted to the claimants pursuant to the Rules. Upon receipt of the responses and additional documentation, a detailed factual and legal analysis of each claim was conducted and presented to the Panel pursuant to article 32 of the Rules.

12. That analysis highlighted the fact that many claimants lodged little material of a genuinely probative nature when they initially filed their claims. It may be that the claimants did not consider it likely that the process would yield any result in the foreseeable future. Further, it appears that many claimants did not retain clearly relevant documentation and were unable to provide such documentation when requested. Indeed, some claimants have appeared to destroy documents in the course of a normal administrative process without distinguishing between documents with no long term purpose and documents necessary to support the claims which had already been put forward. In addition, some claimants did not think it

worthwhile to respond to requests for further information and evidence. The consequence has inevitably been that for a large number of loss elements the Panel has been unable to recommend any compensation.

13. As already noted, the Panel performed a thorough and detailed factual and legal review of the claims. The Panel has assumed an investigative role that goes beyond reliance merely on information and argument supplied with the claims as presented. 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. The Panel then directed its consultants to prepare comprehensive reports on each of the claims, to state opinions on the appropriate valuation of each of the compensable losses and to set forth the evidence supporting those opinions.

14. In drafting this report, the Panel has not included specific citations from restricted or non-public documents that were produced or made available to it for the completion of its work. At the same time, the Panel has ensured that this report clearly indicates those parts of the claims that were found to be outside the jurisdiction of the Commission.

C. The claimants

15. This report contains the Panel's findings with respect to the following claims:

(a) Šipad Invest OOUR Export Inñenjering, a public sector enterprise organized under the laws of Bosnia and Herzegovina, which seeks compensation in the total amount of US$4,743,760 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(b) Bimont d.d. Rijeka, a corporation organized under the laws of the Republic of Croatia, which seeks compensation in the total amount of US$271,180 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(c) YIT Corporation, a corporation organized under the laws of the Republic of Finland, which seeks compensation in the total amount of US$2,399,593 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(d) East Hungarian Water Construction Company, a corporation organized under the laws of the Republic of Hungary, which seeks compensation in the total amount of US$3,928,536 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(e) Toshiba Corporation, a corporation organized under the laws of Japan, which seeks compensation in the total amount of US$1,477,196 for

losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(f) Munir Said Moh'd Dawud Samara (Emirate General Contracting Establishment), a Jordanian individual who is a shareholder in Emirate General Contracting Establishment, a Jordanian-registered partnership, who seeks compensation in the total amount of US$3,814,189 for his share of the partnership losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(g) Eben S.A., a corporation organized under the laws of the Kingdom of Morocco, which seeks compensation in the total amount of US$2,112,600 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(h) Dutch Agro Products B.V., a corporation organized under the laws of the Kingdom of the Netherlands, which seeks compensation in the total amount of US$89,627 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(i) EEI Corporation, a corporation organized under the laws of the Republic of the Philippines, which seeks compensation in the total amount of US$998,872 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(j) Gestiones Reunidas de Construcción S.A. (GRECSA), a corporation organized under the laws of the Kingdom of Spain, which seeks compensation in the total amount of US$4,179,240 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(k) Kvaerner Generator AB, a corporation organized under the laws of the Kingdom of Sweden, which seeks compensation in the total amount of US$697,836 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait;

(l) Inpro AG K. Wirth, a corporation organized under the laws of the Swiss Confederation, which seeks compensation in the total amount of US$648,921 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait; and

(m) W.J. White Ltd., a corporation organized under the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the total amount of US$183,998 for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait.

II. LEGAL FRAMEWORK

A. Applicable law

16. In paragraph 16 of resolution 687 (1991), the Security Council:

> "Reaffirms that Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

17. The sources of the law and principles to be applied by the Panel are set out in article 31 of the Rules:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

B. Liability of Iraq

18. When adopting resolution 687 (1991), the Security Council acted under chapter VII of the Charter of the United Nations which provides for maintenance or restoration of international peace and security. The Security Council also acted under chapter VII when adopting resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991). Specifically, under resolution 687 (1991), the issue of Iraq's liability for losses falling within the Commission's jurisdiction is resolved and is not subject to review by the Panel.

19. In this context, it is necessary to address the meaning of the term "Iraq". In Governing Council decision 9 (S/AC.26/1992/9) and other Governing Council decisions, the word "Iraq' was used to mean the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. For the purposes of the present report, the Panel goes further. It notes that, 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. (See Iraq Country Profile 1990-91, The Economist Intelligence Unit, London, 1990, p. 10.) In light of the term as used in decision 9 and the wider analysis referred to above, the Panel adopts the presumption that for contracts

performed in Iraq and at issue in the present claims, the other contracting party was an Iraqi Government entity.

C. The “arising prior to” clause

20. The Panel recognizes that it is difficult to establish a fixed date for the exclusion of its jurisdiction that does not contain an arbitrary element. With respect to the interpretation of the “arising prior to” clause in paragraph 16 of Security Council resolution 687 (1991), the Panel of Commissioners that reviewed the first instalment of “E2” claims concluded that the “arising prior to” clause was intended to exclude from the jurisdiction of the Commission the foreign debt of Iraq existing at the time of Iraq’s invasion of Kuwait. As a result, the “E2” Panel found that:

> “In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990.” (S/AC.26/1998/7, paragraph 90).

21. Persuaded by practical considerations that a three month delay period adequately reflects the business practices prevailing in Iraq at the time and does not depart from ordinary commercial practices, the Panel adopts these conclusions for the “E3” claims. Therefore, for the purposes of this and future reports, the Panel interprets the “arising prior to” clause in the following manner:

(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., such debts and obligations are not compensable by the Commission;

(b) the limitation contained in the clause “arising prior to 2 August 1990" was intended to leave unaffected the debts and obligations of Iraq which existed prior to Iraq’s invasion and occupation of Kuwait; and

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

22. In the context of (b) above, it is the view of the Panel that the use of a three month payment delay period to define the jurisdictional period is generally reasonable and not inconsistent with ordinary commercial practices. Thus, the Panel finds that, in general, a claim relating to a “debt or obligation arising prior to 2 August 1990" means a debt and/or

obligation that is based on work performed or services rendered prior to 2 May 1990.

D. Application of the "direct loss" requirement

23. Paragraph 21 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) is the seminal rule on "directness" for category "E" claims. It provides in relevant part that compensation is recoverable for:

"... any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention."

24. The text of paragraph 21 of decision 7 is not exhaustive and leaves open the possibility that there may be causes of "direct loss" other than those specified. Paragraph 6 of decision 15 of the Governing Council (S/AC.26/1992/15) confirms that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait". Should that be the case, the claimants will have to prove specifically that a loss that was not suffered as a result of one of the five categories of events set out in paragraph 21 of decision 7 is nevertheless "direct". Paragraph 3 of decision 15 emphasizes that for any alleged loss or damage to be compensable, the "causal link must be direct". (See also paragraph 9 of decision 9).

25. While the phrase "as a result of" contained in paragraph 21 of decision 7 is not further clarified, Governing Council decision 9 provides guidance as to what may be considered "losses suffered as a result of" Iraq's invasion and occupation of Kuwait. It identifies the three main categories of loss types in the "E" claims: losses in connection with contracts, losses relating to tangible assets and losses relating to income-producing properties. Thus, decisions 7 and 9 provide specific

guidance to the Panel as to how the “direct loss” requirement must be interpreted.

26. In the light of the decisions of the Governing Council identified above, the Panel has reached certain conclusions as to the meaning of “direct loss”. These conclusions are set out in the following paragraphs.

27. With respect to physical assets in Iraq or in Kuwait as at 2 August 1990, a claimant can prove a direct loss by demonstrating two factors. First, that the breakdown in civil order in these countries, which resulted from Iraq’s invasion and occupation of Kuwait, caused the claimant to evacuate its employees. Secondly, that the evacuation resulted in the abandonment of the claimant’s physical assets in Iraq or in Kuwait.

28. 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 defense to its obligations.

29. 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 Iraq’s invasion caused the claimant to evacuate the personnel needed to perform the contract.

30. In the context of the losses set out above, reasonable costs which have been incurred in mitigating those losses are direct losses. The Panel bears in mind that the claimant was under a duty to mitigate any losses that could have been reasonably avoided after the evacuation of its personnel from Iraq or Kuwait.

31. In the view of the Panel, 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 authorized 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.

32. These findings regarding the meaning of “direct loss” are not intended to resolve every issue that may arise with respect to the Panel’s interpretation of Governing Council decisions 7 and 9. Rather, these findings are intended as initial parameters for the review and evaluation of the claims in the present report.

E. Date of loss

33. There is no general principle with respect to the date of loss. The date of loss needs to be addressed on a case by case basis, and the individual loss elements of each claim may give rise to different dates

when analyzed strictly. Applying a different date to each loss element within a particular claim is inefficient and, accordingly, the Panel has decided to determine a single date of loss for each claim, which in most cases coincides with the date of the collapse of the project.

F. Currency exchange rate

34. 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.

35. Several of the claimants have argued that their contracts contain currency exchange rates and that these contractually agreed exchange rates should therefore apply to all of their losses. The contract exchange rate was usually higher than the prevailing commercial rate on 2 August 1990 or the date the alleged losses occurred. The Panel agrees that, as a general rule, the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically agreed to by the parties.

36. For losses that are not contract based, however, a contract rate is not an appropriate rate of exchange. In the claims before the Panel, the valuation of tangible assets was not contemplated by the parties when agreeing to an exchange rate in the underlying contracts. In addition, these types of items are readily traded on the international markets. The United Nations Monthly Bulletin of Statistics has been the source of commercial exchange rates for all preceding Commission awards. Therefore, 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.

G. Interest

37. On the issue of the appropriate interest rate to be applied, the relevant Governing Council decision is decision 16 (S/AC.26/1992/16). According to that decision, “[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 any decision on the methods of calculation and payment.

38. The Panel finds that interest shall run from the date of loss.

H. Evacuation losses

39. 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 and are reasonable in the circumstances. Urgent temporary liabilities and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation are, in principle, compensable.

I. Consultants' evaluation

40. The valuation analysis used by the consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

41. After receipt of all claim information and evidence, the consultants applied the verification program. Each loss element was individually analysed according to a set of instructions provided by the Panel. These instructions required the consultant to ask each claimant the same questions concerning the evidence presented. The consultant's analysis resulted in one of the following recommendations: (a) full compensation for the alleged loss; (b) an adjustment to the amount of the alleged loss; or (c) rejection of the alleged loss. In those instances where the consultants were unable to respond decisively to a review question, the issue was brought to the attention of the Panel for further discussion and development prior to a valuation of the loss element.

42. The consultants presented claim-specific reports for each claim to the Panel. The reports included, but were not limited to:

(a) the claimant's name and identifying claim number;

(b) a table detailing the amount claimed in United States dollars (or other currency shown on the claim form) by loss element and total;

(c) a brief description of the nature of the claimant's business and the project for which the claimant performed work, if any;

(d) the date that the claimant ceased work and, if relevant, the date that the claimant recommenced work;

(e) an analysis of the evidence submitted and an explanation of the basis of the valuation of each loss element; and

(f) a recommendation as to the quantum of the alleged loss, if any, by category of loss along with a total for all categories.

43. Upon receipt of the report from the consultants, the Panel reviewed the valuation analysis in conjunction with the claim analysis prepared by the secretariat.

J. Evidentiary requirements

44. Pursuant to article 35(3) of the Rules, corporate claims must be supported by documentary and other appropriate 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 justify a recommendation for compensation.

45. The category "E" claim form requires each corporation and other legal entity that has filed a claim to submit with its 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". In addition, claimants were instructed to include within the statement of claim the following particulars:

(a) the date and type of each element of loss together with the basis of the Commission's jurisdiction;

(b) the facts supporting each element of loss;

(c) the legal basis for recovery of each element of loss; and

(d) the quantum of each element as well as an explanation of how the quantum was calculated.

46. 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 claimants requesting specific information and documentation regarding the loss. In reviewing the responses, the Panel noted that in many cases the claimants still did not provide sufficient evidence to support the alleged losses.

47. The Panel takes this opportunity to emphasize that what is required of a claimant by article 35(3) of the Rules is the presentation to the Commission and the Panel of persuasive evidence that must go to both causation and quantum. The Panel's interpretation of what is appropriate and sufficient evidence will vary according to the nature of the claim. That standard is also affected by the fact that, in the case of the claims which are the subject of this report, Iraq's input is limited to the participation defined by article 16 of the Rules. In implementing this

approach, the Panel applied the relevant principles extracted from those within the corpus of principles referred to in article 31 of the Rules.

III. THE CLAIM OF ŠIPAD INVEST OOUR EXPORT INðENJERING

48. Šipad Invest OOUR Export Inñenjering of Bosnia and Herzegovina ("Šipad") describes itself as a public sector enterprise dealing with engineering, construction and furnishing of hotels, hospitals, tourist settlements, residential houses, schools, and stores. Šipad stated it incurred losses on three separate phases of the Aradet Housing Complex in Baiji, Iraq: (a) construction works ("Project A"); (b) furnishing ("Project B"); and (c) the second stage ("Project C"), (collectively the "Project").

49. Šipad seeks compensation in the amount of US$4,743,760 for unpaid contractual amounts together with interest, loss of tangible property, evacuation of personnel and head office and branch office expenses.

A. Contract losses

1. Facts and contentions

50. Šipad seeks compensation in the amount of US$1,305,203 for contract losses under the contracts for Projects A, B and C.

51. Šipad also seeks compensation in the amount of US$1,417,387 for interest on the outstanding contractual amounts. Šipad's claim for interest was calculated at the rate of 12 per cent per annum. Šipad stated that this is the appropriate rate applicable to overdraft credits in Iraq on unpaid contractual amounts from 2 August 1990 for Projects A and B, and from 20 December 1990 for Project C.

52. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

(a) Project A

53. The contract for the construction of fifty residential units and a recreation centre at the Aradet Housing Complex in Baiji was signed on 1 October 1988 between Šipad and the Employer, the Arab Company for Detergent Chemicals, Baghdad (the "Project A Contract"). Šipad commenced performance under the Project A Contract in November 1988. With the exception of the recreation centre, Šipad completed performance in March 1990. The "taking over certificate" for the Project (with the exception of the recreation centre) was issued on 1 April 1990, but was effective as of 31 December 1989. The recreation centre was completed in August 1990 and the final acceptance certificate was allegedly not issued due to Iraq's invasion and occupation of Kuwait.

54. Šipad seeks compensation under the Project A Contract in the amount of US$439,090 for unpaid work and for the performance bond and retention money that were not released by the Employer when Šipad completed the correction of certain faults in the recreation centre.

(b) Project B

55. The contract for the supply and installation of furniture at the Aradet Housing Complex in Baiji (Project B) was signed on 10 August 1989 between Šipad and the Employer (the "Project B Contract"). Šipad completed the furnishing of the fifty residential units pursuant to the Project B Contract in January 1990. Šipad was performing the remaining portion of the Project B Contract, which related to the furnishing of a recreation centre, at the time of Iraq's invasion of Kuwait. Šipad alleged that, although it completed this work, no payment was received.

56. Šipad seeks compensation under the Project B Contract in the amount of US$33,500 for the unpaid portion of the contract that was due upon final approval of Project B (less the value of certain items of furniture that were rejected due to faults and damage).

(c) Project C

57. The contract for the second stage of the Aradet Housing Complex at Baiji (the "Project C Contract") was signed on 27 March 1990 between Šipad and the Employer as an addendum to the Project A Contract. Under clause 3 of the Project C Contract, Šipad was required to complete and hand over the construction works within 280 days of the date of the Project C Contract. Šipad commenced preparation of the project site immediately after signature of the Project C Contract. On 8 December 1990, the parties entered into a protocol for the suspension of Project C. Šipad alleged that its performance under the Project C Contract continued until 20 December 1990, when the last of Šipad's crew left Iraq. At the time Project C was suspended, Šipad had issued three progress payment certificates that had not been paid by the Employer.

58. Šipad seeks compensation under Project C in the amount of US$304,244 for payment of three progress certificates and other unpaid contractual amounts. Šipad included in its claim for Project C a claim for loss of expected profits in the amount of US$528,369 (calculated at the rate of 12 per cent of the contract value).

59. The Panel notes that Šipad drew the Panel's attention to the fact that Šipad's ability to produce relevant documents was severely hampered by the effects of the civil unrest in the former Yugoslavia and especially in Sarajevo. While having sympathy with the hardship faced by Šipad, the Panel notes that there is nothing in Security Council resolution 687 (1991) that entitles the Panel to take account of these special circumstances. Destruction of primary evidence merely gives rise to a need for a claimant to produce secondary evidence. However, such secondary evidence is also lacking in this claim.

2. Analysis and valuation

60. The Panel finds that the Employer in all three projects, the Arab Company for Detergent Chemicals, Baghdad, is an agency of the State of Iraq.

(a) Project A Contract

61. Šipad completed the original works under the Project A Contract in March 1990, at which time the Employer issued the "taking over certificate". The taking over certificate was dated 1 April 1990, but was effective as of December 1989. Payments under the Project A Contract were in conformance with the terms of that contract.

62. Under the terms of the Project A Contract, 5 per cent of the Iraqi dinar portion and 2.5 per cent of the United States dollar portion of the retention money, in the amount of ID 29,262 and US$87,191, was due upon issue of the taking over certificate. The amounts to be so released were obligations of the Employer that arose, at the latest, on 1 April 1990, the date of the taking over certificate. The retention money due on issue of the taking over certificate is thus a debt that arose prior to 2 May 1990 and, therefore, is not within the jurisdiction of the Commission.

63. The correspondence between Šipad and the Employer indicates that the Employer withheld the sum of US$258,000 for correction work to be performed with respect to the recreation center, sewage system, telephone exchange and work at the campsite after issue of the taking over certificate.

64. On 21 August 1990 the Employer sent a facsimile to Šipad which stated that the correction works had been inspected on 20 August 1990. The Employer agreed to release all of the amounts withheld, with the exception of amounts that it intended to further withhold pending correction of certain faults in the recreation centre. There is no evidence that any portion of the US$250,000 released by the Employer was paid to Šipad.

65. On 20 December 1990, in a letter addressed to the Employer, Šipad requested payment of the retention money as well as the additional amount withheld for the correction works. The final progress payment certificate enclosed with the letter was signed by the Project manager and Šipad's Baghdad branch manager. The Employer responded to Šipad's letter by a telex dated 30 December 1990 in which it stated that there were still several items that had not been completed satisfactorily, and, accordingly, it was unable to issue the final acceptance certificate.

66. The Panel finds that there is no evidence that non-payment of the US$250,000 withheld for corrective work was the direct result of Iraq's invasion and occupation of Kuwait.

67. The Panel recommends no compensation for Project A losses.

(b) Project B Contract

68. Šipad alleges a loss of US$33,500, representing final payment under the Project B Contract after deduction of US$10,000 for damaged items. On 8 December 1990, the parties executed a document entitled “Protocol” that discussed the outstanding obligations of the parties under the Project B Contract. In that document, the Employer agreed to release the Project B Contract funds in the amount of US$33,500, previously withheld pending the final delivery and installation of the furniture.

69. The Panel finds that such documentation is sufficient evidence to establish performance by Šipad and acceptance of such performance by the Employer under terms of the Project B Contract.

70. The Panel recommends compensation in the amount of US$33,500 for losses incurred on Project B.

(c) Project C Contract

71. The claim for contract losses in respect of the Project C Contract is, in actual fact, partly a claim for unpaid amounts due (US$304,244) and partly a claim for loss of profits (US$528,369). The Panel deals with the loss of profits claim separately in sub-section (d) below.

72. At the commencement of Project C, the Employer paid Šipad an advance of US$601,438 against the issue of a performance bond. Šipad alleged that progress payments of US$356,455 were not received for work completed for the months of July 1990 up to and including the first 2 weeks of November 1990. The Panel finds that the progress certificates signed by the Employer indicate that Šipad performed the work and that the Employer accepted the work performed in the total amount of US$356,455.

73. On 2 October 1990, Šipad sent a letter to the Employer stating that it had incurred costs of US$655,000 at the start of Project C, requesting payment in this amount, and requesting suspension of Project C in order to allow its employees to return home safely. On 8 December 1990, Šipad and the Employer entered into a mutual agreement to suspend work on Project C.

74. Based on the analysis of the progress payment certificates, the Panel finds that Šipad incurred costs of US$475,274 for work performed and retention money withheld on Project C. The Panel is, however, not persuaded that Šipad incurred start up costs of US$655,000. The only evidence of costs in that amount is Šipad’s statement in its letter of 2 October 1990 to the Employer.

75. Because Šipad received an advance payment that exceeded its costs on Project C, the Panel recommends no compensation for Project C losses.

(d) Loss of profits

76. Šipad seeks compensation in the amount of US$528,369 in respect of loss of profits on the Project C Contract.

77. Governing Council decision 9, paragraph 9, provides that where "continuation of the contract became impossible for the other party as a result of Iraq's invasion and occupation of Kuwait, Iraq is liable for any direct loss the other party suffered as a result, including lost profits".

78. The effects of the language of decision 9 on claimants seeking compensation for loss of profits are threefold. First, the phrase "continuation of the contract" imposes a requirement on the claimant to prove that it had an existing contractual relationship at the time of the invasion. Second, the provision requires the claimant to prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. This provision indicates a further requirement that profits should be measured over the life of the contract. The importance of this requirement is that the claimant must demonstrate that there was a very high probability that the contract would have been profitable as a whole. It is not sufficient to prove a profit at any stage before the completion of the Project. Thus, a claimant must demonstrate that it would have been profitable to complete the contract.

79. Paragraph 5 of Governing Council decision 15 (S/AC.26/1992/15) expressly states that a claimant seeking compensation for business losses such as loss of profits, must provide "detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for compensation to be awarded. Accordingly, the Panel requires sufficient evidence of ongoing profitability.

80. The Panel finds that only the work performed pursuant to Project C was ongoing on 2 August 1990. In support of this alleged loss, Šipad offered a calculation that shows a loss of profits of 12 per cent of the value of the work not completed due to the suspension of the Project. However, Šipad did not provide any evidence to demonstrate that the Project would have been profitable as a whole. There is no evidence before the Panel regarding Šipad's recovery of profits on other similar projects.

81. Accordingly, the Panel recommends no compensation for loss of profits.

3. Recommendation for contract losses

82. Based on the above, the Panel recommends compensation in the amount of US$33,500 for contract losses.

B. Loss of tangible property

83. Šipad seeks compensation in the amount of US$1,195,797 for loss of tangible property, including US$295,792 for loss of tools, vehicles, equipment and machinery and US$900,005 for materials left at the Project site.

1. Facts and contentions

84. In respect of the lost tools, vehicles, equipment and machinery valued at US$295,792, Šipad provided evidence (in the form of invoices and certificates of origin showing Iraqi customs stamps) that these were imported into Iraq between 20 December 1988 and 22 February 1989. The customs documents indicate the stated value of each item.

85. Šipad alleged that, at the time of suspension of Projects A, B, and C, it left materials at the Project sites with a value of US$900,005. Šipad provided a list of these items together with its estimate of their value. In contrast to the evidence submitted for tools, vehicles, equipment and machinery, Šipad provided no invoices or other proof of ownership or evidence of the whereabouts of these materials at the time of their alleged loss.

2. Analysis and valuation

86. The Panel finds that the documents submitted by Šipad demonstrate that the tools, vehicles, equipment and machinery were owned by Šipad and present in Iraq as of February 1989. The projects for which these tangible assets were used were ongoing on 2 August 1990. Šipad provided evidence that the tangible assets were present at the project sites as of 2 August 1990. While Šipad used the cost stated on the customs documents as the stated value of the loss of these items, it failed to deduct any depreciation over the two year period prior to the completion of the Projects. Applying appropriate depreciation, the Panel finds that the value of the lost items is US$147,896.

87. With respect to the materials allegedly left on site at the suspension of the Projects, the Panel finds that Šipad did not provide sufficient evidence of (a) its ownership of the materials, (b) the cost of the materials, or (c) these materials being in Iraq on 2 August 1990. Accordingly, the Panel does not recommend compensation for these items.

3. Recommendation for loss of tangible property

88. Based on the above, the Panel recommends compensation in the amount of US$147,896 for loss of tangible property.

C. Payment or relief to others

1. Facts and contentions

89. Šipad seeks compensation in the amount of US$88,998 for costs incurred in evacuating 69 people (workers and their families) from Iraq to their home countries. Šipad listed the names of the evacuees, their respective current addresses, passport numbers, dates of departure, routes taken and costs of the evacuation. Šipad also provided copies of the passports of the evacuees showing Iraqi entry and exit visas and stated their dates of departure as between 22 August 1990 to 22 November 1990. There were two routes taken: one from Jordan by air and another via Turkey by bus.

90. The claim is for bus fares, air fares, accommodation and daily travel allowances paid to the evacuees. Šipad provided air tickets in support of this alleged loss.

2. Analysis and valuation

91. Šipad has established that it evacuated 69 people between 20 August and 21 December 1990 by bus and air transport. Šipad acknowledged that the normal cost of repatriating 69 persons would be US$45,145. Because the Project was nearly completed, the Panel finds that the cost of US$75,861 for the 69 evacuees must be reduced by the normal cost of US$45,145 of repatriation, for a total of US$30,716.

3. Recommendation for payment or relief to others

92. The Panel recommends compensation in the amount of US$30,716 for payment or relief to others.

D. Unproductive labour

93. Šipad seeks compensation in the amount of US$197,640 for what it describes as “floating time expenses”. The alleged loss is for unproductive labour costs resulting from the payment by Šipad of the salaries of 69 employees during the first three months after their return home from Iraq. The amounts claimed were calculated on the basis of the average domestic monthly salary under applicable law in 1990, making allowance for social security contributions.

94. While Šipad stated that local applicable law required it to pay its repatriated employees three months' salary, Šipad submitted no evidence to prove the existence of the applicable law or the fact of payment.

95. The Panel recommends no compensation for unproductive labour.

E. Head and branch office expenses

96. Šipad seeks compensation in the amount of US$538,735 for head office expenses in Sarajevo and branch office expenses in Baghdad. Both items were calculated at a percentage of the contract value for Project Contract C: 7 per cent in the case of head office expenses and 3.5 per cent in the case of branch office expenses.

97. The Panel finds that it is normal commercial practice to include head office and branch office expenses in the contract price. These expenses are also more appropriately considered as business expenses that are not normally charged as a line item cost on a project.

98. The Panel therefore recommends no compensation for head office or branch office expenses.

F. Summary of recommended compensation for Šipad

99. Based on its findings regarding Šipad's claim, the Panel recommends compensation in the amount of US$212,112. The Panel finds the date of loss to be 31 December 1990.

IV. THE CLAIM OF BIMONT D.D. RIJEKA

100. Bimont d.d. Rijeka ("Bimont") is a Croatian corporation that was involved in the manufacture and supply of equipment for, and the construction of, water towers for the Hilla and Mosul Water Supply Scheme in Iraq (the "Projects"). Bimont seeks compensation for unpaid contractual amounts including interest, loss of expected profits, loss of tangible property and loss of Iraqi dinars left in Iraq in the total amount of US$271,180.

101. Bimont agreed with Kovinotehna, a Slovenian company, (acting as export agent on behalf of Bimont), and AB Electro-Invest ("ABE"), a Swedish company, to act as a sub-contractor to an Indian construction company for the supply and erection of two water towers. A contract, dated 29 May 1986, between Kovinotehna and ABE set forth the terms of performance for Bimont to supply equipment to ABE for use on the Project (the "Contract"). The total contract price was US$2,063,880, but was reduced to US$1,883,250 under an amendment to the Contract executed by the parties on 19 February 1987. The revised Contract stated separate prices for materials (US$1,449,050) and erection of the towers (US$384,200). Bimont stated that the Contract was a sub-contract to the main Project contract between ABE, Som Datt Builders, India, and the Cabinet of Local Management of the State Organization for Water Supply and Sewerage System, Iraq (the "Employer") pursuant to which Som Datt Builders was required to construct water towers on the Projects.

A. Contract losses and interest

1. Facts and contentions

102. Bimont seeks compensation in the amount of US$127,481 for contract losses, including unpaid work (US$92,877), interest (US$19,504) and loss of profits (US$15,100).

103. Bimont claims interest on the unpaid contractual amounts from 1 September 1991 to 1 September 1994 at the rate of 7 per cent per annum. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

104. Bimont alleged the majority of the work on the Projects had been completed by August 1990, with the exception of some work involving water-proofing to be performed by Som Datt Builders and anti-corrosive protection to be performed by Bimont. Bimont alleged it abandoned the Project and left Iraq in March 1990 with the intention of returning to complete the additional work on the Project at a later date. As a result of Iraq's invasion of Kuwait, the outstanding work by the main contractor was not completed. Thus, Bimont was prevented from completing its remaining portion of the contract. The amount claimed of US$92,877 is for the unpaid portion of work performed and invoiced by Bimont.

105. In support of its claim for unpaid work, Bimont provided copies of the Contract, the Addendum to the Contract, invoices for the supply and installation of the equipment, and bank account statements showing receipt by Kovinotehna of the amounts due under the Contract.

106. The invoices are dated from 26 December 1987 to 31 August 1988, in the case of the delivery of the equipment to the Project sites, and 7 February 1989 to 29 June 1989, in the case of the installation of the equipment.

2. Analysis and valuation

(a) Unpaid work

107. The Panel finds that the amount sought by Bimont as unpaid work is for retention money withheld pursuant to the terms of the contract. Bimont completed the contract works in March 1990. Bimont seeks compensation in the amount of US$92,877 for retention money withheld over the course of the contract.

108. Under the terms of the contract, five per cent of the total contract price was withheld as retention money. This retention money should have been paid to Bimont upon issue of the final acceptance certificate. Because of Iraq's invasion and occupation of Kuwait, neither the preliminary acceptance certificate nor the final acceptance certificate was issued. Accordingly, the Panel finds that the claim for retention money is compensable in the amount of US$92,877.

(b) Loss of profits

109. Bimont seeks compensation in the amount of US$15,100 for loss of profits, based on its calculation of 15 per cent of the price of installation of the equipment. However, Bimont did not provide the Panel with details or evidence of the contract's profitability as a whole to support this allegation.

110. Governing Council decision 9, paragraph 9, provides that where "continuation of the contract became impossible for the other party as a result of Iraq's invasion and occupation of Kuwait, Iraq is liable for any direct loss the other party suffered as a result, including lost profits".

111. As previously stated in paragraphs 77-79, supra, the Panel requires that a claimant provide sufficient evidence of the ongoing profitability of an existing contract at the time of Iraq's invasion and occupation of Kuwait in order to recover compensation for loss of profits.

112. The Panel finds that Bimont was paid on a work performed basis, but was unable to verify the basis of the alleged profit margin from the

documents and information provided. Accordingly, the Panel recommends no compensation for loss of profits.

3. Recommendation for contract losses

113. The Panel recommends compensation in the amount of US$92,877 for contract losses. The Panel is aware that Som Datt Builders has filed a claim for compensation with the Commission. Insofar as the Panel has recommended that Bimont's claim for the retention money be paid, Som Datt Builders' claim will be recommended for rejection.

B. Loss of tangible property

1. Facts and contentions

114. Bimont seeks compensation in the amount of US$137,248 for loss of equipment, vehicles and machinery that it allegedly left at the Hilla Project site in August 1990 under the guard of Som Datt Builders.

2. Analysis and valuation

115. Bimont did not provide the Panel with any evidence of ownership, acquisition cost or importation of the equipment or machinery allegedly left on the Project site. Further, Bimont did not state what happened to the equipment and machinery or whether it has been able to effect any recovery since the time of the alleged loss.

116. Bimont increased its alleged loss by adding an invoice in the amount of US$57,904 for three Toyota Land Cruisers. A response to an inquiry for additional evidence is not an opportunity for a claimant to increase the quantum of a claim previously submitted. This increase was not accepted by the Panel, as the Panel reviews only the claim as initially presented.

117. The only evidence provided in support of this loss element is a list compiled by Bimont dated 20 May 1992 setting out the assets that are the subject of its claim together with their asserted value. The Panel finds that there is insufficient evidence that Bimont was the owner of the relevant assets or that they were located at the Project in Iraq at the time of their alleged loss. Indeed, it is to be noted that Bimont made no attempt at all to support this part of its claim with evidence.

3. Recommendation for loss of tangible property

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

C. Loss of Iraqi dinars

119. Bimont claims US$6,451 (original currency ID 2,010) for loss of Iraqi dinars. Bimont stated that on 4 March 1990, during the temporary abandonment, it deposited ID 2,010 in the safe of Som Datt Builders in Iraq.

120. In support of its claim for loss of Iraqi dinars, Bimont provided what appear to be petty cash records dated from July 1987 to September 1989. It also provided a copy of a letter dated 4 March 1990 from Som Datt Builders, acknowledging receipt of ID 2,010 from Bimont.

121. The Panel finds that the account records submitted by Bimont indicate that it was being paid under the Contract as the Contract work progressed. The account shows the amount due at 19 April 1990 to Bimont from Som Datt Builders was ID 69,981. In fact, Bimont was paid ID 74,930. The account further shows that the ID 2,010 received by Som Datt Builders was treated as a repayment by Bimont of an overpayment to Bimont by Som Datt Builders.

122. The Panel recommends no compensation for the loss of Iraqi dinars.

D. Summary of recommended compensation for Bimont

123. Based on its findings regarding Bimont’s claim, the Panel recommends compensation in the amount of US$92,877. The Panel finds the date of loss to be 31 August 1991.

V. THE CLAIM OF YIT CORPORATION

124. YIT Corporation ("YIT"), a Finnish public limited liability company, was engaged as a contractor by the Ministry of Public Works of Kuwait to work on the construction of the Amiri Diwan Project in Kuwait City (the "Project"). YIT seeks compensation in the amount of US$2,399,593 for contract losses, loss of tangible assets, demobilization costs, payment or relief to others, financing costs and loss of overheads and profits.

A. Contract losses

1. Facts and contentions

125. The work on the Project was carried out pursuant to Contract C/42, Amiri Diwan Project, Building 'N', entered into between YIT and the Ministry of Public Works on 4 September 1989 (the "Contract"). The total value of the Contract was US$11,778,547. YIT alleged that the Project was 60 per cent complete on 2 August 1990.

126. YIT stated that, following the liberation of Kuwait, it attempted to negotiate with the Ministry of Public Works with a view to recommencing the Project. However, its attempts were unsuccessful and, on 9 February 1992, the Ministry of Public Works informed YIT by letter that it considered the contract terminated in accordance with the Minister's decision 148(19/91) dated 27 January 1991.

127. The Finnish Export Guarantee Board had provided YIT with credit risk guarantee cover equal to 90 per cent of the total value of the Contract. In September 1991 and again in February and June 1994, YIT filed claims with the Finnish Export Guarantee Board for a total amount of US$474,154. YIT provided a copy of the compensation decision of the Finnish Export Guarantee Board dated 23 June 1994. The following information can be ascertained from Finnish Export Guarantee Board's compensation decision:

(a) Under the relevant credit risk guarantee policy, YIT was entitled to receive 90 per cent of the total amount awarded by the Finnish Export Guarantee Board (i.e., US$461,413);

(b) The Finnish Export Guarantee Board made an award of compensation in YIT's favour in the amount of US$512,681 in three separate decisions dated 13 June 1991, 17 January and 21 April 1994;

(c) On 19 June 1991, the Finnish Export Guarantee Board paid YIT the amount of US$1,034,450;

(d) Under the compensation decision, YIT was required to repay the Finnish Export Guarantee Board the amount of US$686,995, being the excess payment of compensation as well as an additional amount relating to recovery expenses, together with interest at 10 per cent per annum from 23 June 1994 until payment.

128. YIT seeks compensation in the amount of US$445,028 for contract losses, including lost or damaged materials at site, lost advance payments, mobilization costs, planning, procurement and submittal costs, guarantee fees and demobilization costs.

2. Analysis and valuation

(a) Lost or damaged materials at site

129. YIT withdrew its claim for this loss element during the proceedings, as the amount originally claimed was compensated by the Finnish Export Guarantee Board on 27 June 1994.

(b) Lost advance payments

130. YIT seeks compensation in the amount of US$13,211 for lost advance payments made in June and July 1990 to two Kuwaiti suppliers of materials. YIT alleged that the materials ordered from the Kuwaiti suppliers could not be delivered as a result of Iraq's invasion and occupation of Kuwait. YIT revised and reduced the amount of its original claim after it received a partial refund from one of the suppliers.

131. In support of its claim for lost advance payments, YIT provided copies of two orders dated June and July 1990 requiring advance payment by YIT of the amounts due. YIT also provided cheque payment vouchers showing payments made by YIT on 13 June and 8 July 1990.

132. YIT did not explain the direct link between its inability to recover the advance payments and Iraq's invasion and occupation of Kuwait. YIT provided no evidence that the Kuwaiti suppliers were rendered insolvent as a consequence of the invasion and occupation. Accordingly, the Panel finds that YIT failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait.

133. The Panel recommends no compensation for lost advance payments.

(c) Mobilization costs

134. YIT seeks compensation in the amount of US$96,850 for unrecovered mobilization costs incurred by YIT between the time the Project was mobilized in August 1989, and 30 November 1989. The costs include salaries, travel between Helsinki and Kuwait, labour, temporary works, insurance premiums paid in Kuwait for which YIT received no payment under the relevant policies and other miscellaneous costs. YIT seeks compensation for 40 per cent of the costs incurred. According to YIT, this represents the portion of the uncompleted Contract.

135. YIT claims for the balance between the losses allegedly incurred by it and the amount of compensation awarded by the Finnish Export Guarantee Board in its decision of 23 June 1994 (i.e. US$81,367), 90 per cent of which was paid to YIT.

136. In support of its claim for unrecovered mobilization costs, YIT provided a summary of "not repaid mobilization costs", which lists the relevant amounts claimed, and receipts and invoices for some, but not all, of those costs. However, the receipts were predominately in Finnish with no English translations. Further, it is not clear what items they relate to, as YIT provided no explanations or cross-references which would link them to the summary of "not repaid mobilization costs".

137. The Panel finds that YIT provided insufficient evidence of its stated losses. The Panel recommends no compensation for mobilization costs.

(d) Planning, procurement and submittal costs

138. YIT seeks compensation in the amount of US$257,541 for unamortised expenses in respect of head office overheads, staff salaries and accommodation incurred during the tender period (between the dates 1 April to 30 June 1989) and during the construction period (between the dates 1 September 1989 to 30 August 1990) of the Project.

139. YIT alleged that it would have recovered those costs over the lifetime of the Contract and calculated its loss as 40.1 per cent of its total expenditure on the Project.

140. In support of its claim for planning, procurement and submittal costs, YIT provided a summary listing of the relevant costs and head office technical overheads allegedly incurred by it during the tender period and during the construction period.

141. YIT stated that it has no evidence in support of its claim, as it destroyed the relevant documentation after the five year minimum document retention period required by Finnish law.

142. The Panel finds that YIT provided insufficient evidence of its stated losses. The Panel recommends no compensation for planning, procurement and submittal costs.

(e) Guarantee fees paid

143. YIT seeks compensation in the amount of US$32,475 for guarantee fees. The relevant guarantees were issued in respect of the Project. They included an advance payment guarantee, a performance guarantee and a supply of labour guarantee issued for works under the Contract, and three guarantees issued by the Finnish Export Guarantee Corporation.

(i) Advance payment guarantee

144. The advance payment guarantee in the amount of US$1,177,855 was issued by the Commercial Bank of Kuwait on 7 September 1989. Its expiry date was 7 May 1991. YIT seeks compensation in the amount of US$1,379 for fees paid for the advance payment guarantee between 2 August 1990 and 7 May 1991.

145. YIT was required to take out the advance payment guarantee pursuant to clause 60(4) of the Conditions of Contract upon payment of the advance payment equal to 10 per cent of the total Contract value.

146. In support of its claim for fees paid in respect of the advance payment guarantee, YIT provided a copy of the advance payment guarantee. YIT also provided a copy of a letter dated 21 June 1990 in which the Ministry of Public Works requested the Commercial Bank of Kuwait to reduce the amount of the guarantee to US$721,730.

147. The Panel finds that YIT provided sufficient evidence that the Project was ongoing as of 2 August 1990. The advance payment guarantee was required under the Conditions of Contract. The Panel, therefore, finds that the loss was a direct result of Iraq's invasion and occupation of Kuwait. YIT provided evidence that the advance payment guarantee was outstanding as of 2 August 1990.

148. The Panel recommends compensation in the amount of US$1,379 for fees paid in respect of the advance payment guarantee.

(ii) Performance guarantee

149. The performance guarantee in the amount of US$1,177,855 was issued by the Commercial Bank of Kuwait. Its expiry date was 2 June 1991. YIT seeks compensation in the amount of US$2,461 for fees paid for the performance guarantee between 2 August 1990 and 2 June 1991.

150. YIT was required to take out the performance guarantee pursuant to clause 10 of the General Conditions of the Contract.

151. In support of its claim for fees paid for the performance guarantee, YIT provided a copy of a letter dated 21 September 1989 from the Commercial Bank of Kuwait to YIT confirming that the expiry date of the performance guarantee was 2 June 1991.

152. The Panel finds that YIT provided sufficient evidence that the Project was ongoing as of 2 August 1990. The performance guarantee was required under the General Conditions of the Contract. The Panel, therefore, finds that the loss was a direct result of Iraq's invasion and

occupation of Kuwait. YIT provided evidence that the performance guarantee was outstanding as of 2 August 1990.

153. The Panel recommends compensation in the amount of US$2,461 for fees paid in respect of the performance guarantee.

(iii) Supply of labour guarantee

154. The supply of labour guarantee in the amount of US$216,263 was issued by the Commercial Bank of Kuwait. Its expiry date was 17 September 1991. YIT seeks compensation in the amount of US$518 for fees paid between 2 August 1990 and 17 September 1991.

155. YIT was required to take out the supply of labour guarantee pursuant to clause 24 of the General Conditions of the Contract, which provides for insurance against accidents to workers.

156. In support of its claim for fees paid for the supply of labour guarantee, YIT provided ledgers and bank vouchers, which were mostly in the Finnish language with no English translations. YIT did not provide a copy of the supply of labour guarantee.

157. The Panel finds that YIT provided sufficient evidence that the Project was ongoing as of 2 August 1990. The supply of labour guarantee was required under the General Conditions of the Contract. However, YIT did not provide sufficient evidence of its losses.

158. The Panel recommends no compensation for fees paid in respect of the supply of labour guarantee.

(iv) Guarantees issued by the Finnish Export Guarantee Board

159. YIT seeks compensation in the amount of US$28,117 for fees paid to obtain three guarantees issued by the Finnish Export Guarantee Board. Under the credit risk guarantee cover provided by the Finnish Export Guarantee Board, the Finnish Export Guarantee Board issued guarantees indemnifying YIT against non-payment of the amounts due under the Contract. YIT stated that to obtain the relevant credit risk guarantee cover, it was “obliged to pay the rest of the guarantee fees if the right to compensation arises”.

160. In support of its claim for this loss item, YIT provided copies of payment vouchers showing payments made to the Finnish Export Guarantee Board for the periods March to September 1990, September 1990 to March 1991 and March 1991 to September 1991. YIT did not provide copies of the guarantees.

161. The Panel finds that YIT failed to establish the direct link between its stated loss and Iraq's invasion and occupation of Kuwait. The guarantee fees were akin to insurance premiums paid under the credit risk guarantee cover. The Panel finds that the guarantee fees were amounts that a contractor would ordinarily expect to lose whether or not recompense was received under the relevant insurance cover. YIT filed claims for, and was paid, substantial amounts of compensation under the credit risk guarantee cover provided by the Finnish Export Guarantee Board. Therefore, the Panel finds that these fees are not properly described as a loss and, in any event, were not incurred as a direct result of Iraq's invasion and occupation of Kuwait.

162. The Panel recommends no compensation for fees paid to obtain the guarantees issued by the Finnish Export Guarantee Board.

(f) Demobilization costs

163. YIT seeks compensation in the amount of US$44,951 for expenses allegedly incurred by YIT as a result of demobilizing staff after Iraq's invasion of Kuwait. The expenses include staff salaries, hotel expenses, travel expenses, airfares, freight and other miscellaneous charges. YIT stated that its claim also includes costs incurred in negotiating with the Ministry of Public Works in an attempt to recommence the Contract after work was suspended. It also includes its attempts to reach a settlement with the Ministry of Public Works for amounts owed to it after it became clear that it would not be possible to recommence the Project.

164. The Finnish Export Guarantee Board made a partial award of the amounts claimed by YIT. The amount awarded was US$67,220, 90 per cent of which was paid to YIT, i.e., US$60,498. The Finnish Export Guarantee Board in its compensation decision of 23 June 1994 stated that it rejected part of YIT's claim for demobilization losses since "they are not costs which could have been covered by ordinary forms of insurance". In addition, it found that the project manager's travel expenses could not be considered as demobilization costs under the insurance policy. Under the relevant insurance policy, YIT was precluded from obtaining any further amounts in respect of demobilization costs due to applicable maximum levels of cover.

165. In support of its claim for this loss item, YIT provided a summary of demobilization costs, which lists the expenses and contains a brief description of the nature of the expenses. YIT also provided copies of what appear to be receipts for the majority of the items claimed for. YIT further provided a certificate dated 13 December 1991 from its auditors approving the summary of demobilization costs.

166. The Panel finds that on the evidence provided, the amounts claimed in respect of demobilizing the Project were incurred as a direct result of

Iraq's invasion and occupation of Kuwait. The Panel finds that YIT provided sufficient evidence of its losses.

167. The Panel recommends compensation in the amount of US$44,951 for demobilization costs.

3. Recommendation for contract losses

168. The Panel recommends compensation in the amount of US$48,791 for contract losses.

B. Loss of tangible property

1. Facts and contentions

169. YIT seeks compensation in the amount of US$224,008 for loss of tangible property. The claim is for construction machinery, office furniture, equipment and consumer products that YIT allegedly left behind at the Project site after Iraq's invasion of Kuwait.

170. YIT stated that when YIT's representatives returned to the Project site in the first half of 1991, they found that the construction machinery and equipment were no longer there. The site barracks and office furniture had been either badly destroyed or stolen. Workshop tools had been stolen.

2. Analysis and valuation

171. In support of its claim for this loss item, YIT provided a summary of lost fixed assets listing the relevant assets. YIT also provided a fixed assets report, which contains four separate lists of equipment, their respective alleged values and dates of purchase. YIT also provided invoices and cheque payment vouchers showing that the assets in question were purchased in Kuwait at the end of 1989 and in the first half of 1990.

172. The Finnish Export Guarantee Board made an award of US$205,529 for lost fixed assets, 90 per cent of which was paid to YIT. However, the compensation decision of 23 June 1994 does not contain details of the assets that were included in the award of compensation under the credit risk guarantee policy. YIT did not provide any explanation concerning this.

173. The Panel finds that YIT did not provide sufficient evidence that the assets in respect of which it seeks compensation have not already been compensated by the Finnish Export Guarantee Board.

3. Recommendation for loss of tangible property

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

C. Payment or relief to others

1. Facts and contentions

175. YIT seeks compensation in the amount of US$400,451 for payment or relief to others. YIT deducted from its claim for this loss item the amount of US$1,443 for some items of furniture that were sold in Kuwait. The claim is for costs incurred in respect of five employees of YIT who were working on the Project at the time of Iraq's invasion of Kuwait. YIT stated that those employees stayed in Kuwait for some time before being given documents by the Iraqi authorities authorizing them to depart to Turkey via Iraq. They then commenced their journey to the Iraqi/Turkish border and, after two weeks at the border, the employees' wives were permitted to leave Iraq to travel to Turkey. However, YIT's employees were taken to Baghdad and detained as hostages. They were released in November 1990.

2. Analysis and valuation

176. In support of its claim for payment or relief to others, YIT provided a document entitled "summary of payment and relief to others". This document lists expenses incurred between 10 August 1990 and 31 March 1991. YIT also provided copies of receipts, invoices and payment vouchers in support of the majority of items listed in the summary. YIT also provided a statement dated 16 September 1998 by YIT's Senior Vice President, International Operations, concerning the circumstances of the evacuation.

177. The summary of expenses incurred provided by YIT divides this loss item into the sub-categories: costs of rescue operations in Finland (attempts to secure the release of the hostages), hostage expenses, travel expenses of members of the Finnish Parliament to Iraq, consulting and travel costs of the chairman of the Finnish-Arabic society, and hostage salaries.

(a) Costs of rescue operations in Finland

178. YIT seeks compensation in the amount of US$14,325 for costs incurred at its head office in Finland in attempting to secure the release of the hostages.

179. YIT states that while the hostages were being detained in Iraq and Kuwait, the Project Manager, (who happened to be visiting Finland at the time of Iraq's invasion of Kuwait), was trying to arrange help for them via the Finnish Government and other official sources.

180. The amounts claimed are identified by entries in the "summary of payment and relief to others" document provided by YIT. The majority of

items are also supported by copies of receipts, invoices and payment vouchers.

181. The statement by YIT's Senior Vice President, International Operations, supports YIT's assertion that its staff at the head office in Finland made concerted efforts to secure the release of the hostages.

182. The Panel finds that the amounts claimed are directly related to Iraq's invasion and occupation of Kuwait. The Panel finds that YIT provided evidence that it incurred most of the expenses claimed for. However, there are some claimed amounts that are not supported by primary evidence. Accordingly, the Panel recommends a reduced award of 80 per cent of the amount of the claim.

183. The Panel recommends compensation in the amount of US$11,460 for the costs of its rescue operations in Finland.

(b) Hostage expenses

184. YIT seeks compensation in the amount of US$98,590 for hostage expenses, including cash advances (US$12,829), hostage care (US$21,237), travel expenses (US$6,984) and compensation for lost personal belongings (US$57,540).

185. The amounts claimed are identified by entries in the "summary of payment and relief to others" document provided by YIT. The majority of items are also supported by copies of receipts, invoices and payment vouchers. However, the Panel was unable to identify any items described as "lost personal belongings" in the receipts, invoices and payment vouchers provided by YIT. The receipts, invoices and payment vouchers were presented in such a way as to make the task of finding any cross-references relating to lost personal belongings impossible for the Panel.

186. YIT provided no explanations concerning the item described as "lost personal belongings".

187. The Panel finds that the amounts claimed are directly related to Iraq's invasion and occupation of Kuwait. The Panel finds that, with the exception of the item described as "lost personal belongings", YIT provided sufficient evidence of the claimed expenses.

188. The Panel recommends compensation in the full amount in respect of YIT's claim for cash advances and hostage care. The Panel recommends no compensation for lost personal belongings. The Panel recommends an adjustment to YIT's claim for travel expenses to take account of the normal travel costs that YIT would have incurred but for Iraq's invasion and occupation of Kuwait.

189. The Panel recommends compensation in the amount of US$38,954 for hostage expenses.

(c) Travel expenses of members of the Finnish Parliament

190. YIT seeks compensation in the amount of US$20,532 for the travel expenses of members of the Finnish Parliament who travelled to Iraq in an attempt to secure the release of YIT's employees who were being held hostage.

191. In support of this loss item, YIT provided a statement by YIT's Senior Vice President, International Operations, describing the parliamentarians' trips to Iraq. According to this statement, the members of the Finnish Parliament travelled to Iraq to try to secure the release of a number of Finnish hostages, including employees of other Finnish companies who were working on projects in Iraq and Kuwait at the time of Iraq's invasion of Kuwait.

192. The amounts claimed are identified by entries in the "summary of payment and relief to others" document provided by YIT. However, the Panel was unable to cross-reference the entries in the summary to the relevant receipts, invoices and payment vouchers provided by YIT. The receipts, invoices and payment vouchers were presented in such a way as to make this task impossible for the Panel.

193. The Panel finds that YIT did not adequately explain the direct link between its stated losses and Iraq's invasion and occupation of Kuwait. Further, YIT did not provide sufficient evidence of its losses. Accordingly, the Panel recommends no compensation for the travel expenses of members of the Finnish Parliament who travelled to Iraq.

(d) Consulting costs of the chairman of the Finnish-Arabic Society

194. YIT seeks compensation in the amount of US$47,708 in respect of consulting costs of the chairman of the Finnish-Arabic Society. YIT stated that it engaged the services of the Finnish-Arabic Society in an attempt to facilitate the release of the hostages.

195. The amounts claimed are identified by entries in the summary of payment and relief to others provided by YIT. However, YIT provided no evidence (such as receipts, invoices or payment vouchers) that it incurred the amounts claimed.

196. The Panel finds that YIT did not adequately explain the direct link between its stated losses and Iraq's invasion and occupation of Kuwait. Further, YIT did not provide sufficient evidence of its losses. Accordingly, the Panel recommends no compensation for the consulting costs of the chairman of the Finnish-Arabic Society.

(e) Hostage salaries

197. YIT seeks compensation in the amount of US$81,602 for the salary costs (including Finnish social costs) of its five employees who were held hostage for the period of their detention. It is, in effect, a claim for lost productivity of YIT's employees. Although YIT paid the salaries of its employees, it did not receive any benefit from them during the period of their detention.

198. In support of its claim for hostage salaries, YIT provided copies of its employee salary ledgers for the relevant employees. YIT also provided evidence from an independent source in Finland of the social costs applicable to the construction industry at the relevant time.

199. The Panel finds that the amounts claimed are directly related to Iraq's invasion and occupation of Kuwait. The Panel finds that YIT provided sufficient evidence of the salary expenses. The Panel is satisfied that YIT did not receive any benefit from the employees during the relevant period.

200. The Panel recommends compensation in the amount of US$81,602 for hostage salaries.

(f) Salary costs of YIT's area manager

201. YIT seeks compensation in the amount of US$139,137 in respect of the salary costs of its area manager for one year.

202. YIT stated that the area manager was involved in coordinating the rescue operations of the hostages. After the release of the hostages, the area manager attempted to negotiate a recommencement of the Project with the Ministry of Public Works. He then spent most of 1991 and 1992 in Kuwait trying to obtain payment from the Ministry of Public Works of the amounts outstanding under the Contract. The area manager was also involved in preparing claims for compensation to be filed with the Finnish Export Guarantee Board and the Commission.

203. In support of its claim for salary costs, YIT provided a detailed calculation of the area manager's salary costs at the relevant time.

204. The Panel makes no recommendation with respect to the portion of the area manager's salary relating to the preparation of YIT's claim with the Commission, as the compensability of claim preparation costs will be decided upon separately by the Governing Council.

205. The Panel finds that YIT failed to explain the direct link between its stated loss and Iraq's invasion and occupation of Kuwait. The explanations provided by YIT indicate that the area manager was a salaried

employee included in YIT's head office structure. The Panel finds that YIT would have incurred the salary costs of the area manager even if Iraq's invasion and occupation of Kuwait had not occurred.

206. The Panel recommends no compensation for the salary costs of its area manager.

3. Recommendation for payment or relief to others

207. The Panel recommends compensation in the amount of US$132,016 for payment or relief to others.

D. Financing costs

1. Facts and contentions

208. YIT seeks compensation in the amount of US$467,349 in respect of financing costs, including the inability to use funds that were frozen in three bank accounts in Kuwait (US$156,323), interest on the delayed payment under Contractor's Payment Certificate No. 9 (US$283,254) and lost petty cash (US$27,772).

209. YIT claims the additional amount of US$23,702 for interest from 30 November 1993 to 23 September 1996. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

2. Analysis and valuation

(a) Frozen bank accounts in Kuwait

210. YIT seeks compensation in the amount of US$156,323 in respect of its inability to use funds that were frozen in three bank accounts in Kuwait. The claim is for interest allegedly lost as a result of YIT's funds being frozen in Kuwait during Iraq's occupation.

211. YIT alleged that it could have achieved the rate of 12 per cent per annum on its funds had it deposited the funds with banks in Finland during the relevant period. The rate of 12 per cent per annum was substantially higher than the rates applicable to its bank accounts in Kuwait.

212. In support of its claim for loss of interest on funds frozen in Kuwait, YIT provided copies of bank statements issued by the Commercial Bank of Kuwait showing YIT's bank balances as of 2 August 1990.

213. The Panel finds that YIT did not demonstrate the direct link between its stated loss and Iraq's invasion and occupation of Kuwait. The decision to deposit funds in banks located in particular countries is a commercial

decision, which a corporation engaged in international operations is required to make. In making this decision, a corporation would normally take into account the relevant country or regional risks involved. The Panel finds that the causal link in respect of this loss item, (which is essentially a claim for a potential increase in interest earnings), is not direct. Accordingly, the amount claimed by YIT is not compensable under Security Council resolution 687 (1991).

214. The Panel recommends no compensation for YIT's inability to use funds that were frozen in its bank accounts in Kuwait.

(b) Delay of Contractor's Payment Certificate No. 9

215. YIT seeks compensation in the amount of US$283,254 for loss of interest at the rate of 12 per cent per annum as a consequence of the delayed payment of Contractor's Payment Certificate No. 9 (the "Certificate").

216. The Certificate relates to work completed by YIT in July 1990. It was first issued by YIT on 1 August 1990. The amounts included in the Certificate (US$7,374,130) were due for payment by the Ministry of Public Works on 30 August 1990.

217. YIT stated that it submitted the Certificate to the Ministry of Public Works for the fourth time on 15 October 1991. On 27 October 1991, the Ministry of Public Works agreed to pay the amounts included in the Certificate. The Ministry of Public Works paid part of the amount due in May and July 1992 and the balance on 9 February 1994.

218. In support of its claim for loss of interest due to the delayed payment of the Certificate, YIT provided a copy of a revised Certificate dated 2 May 1992. YIT did not provide a copy of the original Certificate.

219. The Panel finds that YIT failed to demonstrate that the delay on the part of the Ministry of Public Works in paying the amount due under the Certificate was a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation for this loss item.

(c) Lost petty cash

220. YIT seeks compensation in the amount of US$27,772 for petty cash that was allegedly lost as a result of Iraq's invasion of Kuwait. YIT did not explain how the amount was lost.

221. In support of its claim for lost petty cash, YIT provided a hand-written document showing movements of petty cash for the month of July 1990 and a cash balance of the claimed amount as at 1 August 1990. The source

of this document is unclear. The document makes reference to a "daily journal", which allegedly contains details of the transactions for July 1990. However, YIT did not provide a copy of the daily journal.

222. The Panel finds it likely that a working cash balance would have been available for the Project. The Panel finds that YIT did not provide sufficient evidence that the amount of petty cash existed at the Project site. The document provided by YIT is insufficient evidence of this.

223. The Panel recommends no compensation for lost petty cash.

3. Recommendation for financing costs

224. The Panel recommends no compensation for financing costs.

E. Lost head office overheads and profits

225. YIT seeks compensation in the amount of US$839,055 for lost head office overheads and profits on the value of the unexecuted Contract works. YIT calculated the claimed amount by applying a margin of between 4 and 15 per cent in respect of lost profits and head office overheads to the unfinished portion of the civil works, mechanical works and electrical works.

226. In support of its claim for lost head office overheads and profits, YIT provided a copy of the price analysis for the Project prepared by YIT. The price analysis, (which forms part of the Contract), contains the estimated percentages for YIT's head office overheads and profits for the Project. YIT provided no further evidence in support of the amounts claimed. YIT's corporate financial statements for the years 1987 to 1989 (inclusive) do not contain sufficient information about the quality of performance of YIT's operations in the Middle East during the relevant periods to enable the Panel to draw any conclusions about the expected profitability under the Contract.

227. The Panel finds that the price analysis alone cannot be considered as evidence of expected ongoing profitability or a measure of YIT's actual performance for its work on the Project. YIT did not provide any documentation that would verify the amounts stated in the price analysis. Accordingly, the Panel finds that YIT failed to provide sufficient evidence of expected ongoing profitability and anticipated overhead costs.

228. The Panel recommends no compensation for lost head office overheads and profits.

F. Summary of recommended compensation for YIT

229. Based on its findings regarding YIT's claim, the Panel recommends compensation in the amount of US$180,807. The Panel finds the date of loss to be 16 November 1990.

VI. THE CLAIM OF C. HAUSHAHN GMBH & CO.

230. On 30 October 1998, the Commission received from the Government of the Federal Republic of Germany a notice of withdrawal of the claim by C. Haushahn GmbH & Co. In the light of this communication, the Panel issued a procedural order on 30 November 1998, pursuant to article 42 of the Rules, acknowledging the withdrawal and terminating the Panel's proceedings with respect to the claim by C. Haushahn GmbH & Co.

VII. THE CLAIM OF EAST HUNGARIAN WATER CONSTRUCTION COMPANY

231. East Hungarian Water Construction Company ("East Hungarian Water") is a Hungarian supplier of raw and manufactured materials for use on construction projects. East Hungarian Water seeks compensation in the amount of US$3,928,536 for contract losses, loss of tangible assets, loss of income-producing property, evacuation costs and interest on a loan in connection with several construction projects in Kuwait.

232. In June 1989, East Hungarian Water, through a Hungarian entity, Hydroexport, Joint Company for Hydraulic Export Contracting ("Hydroexport"), (which appears to have been acting as East Hungarian Water's agent), entered into several contracts with a Kuwaiti customer pursuant to which it agreed to supply steel structures and to erect those structures at the project site at Ahmadi, Kuwait.

233. In addition, on 26 July 1990, Hydroexport, (presumably on behalf of East Hungarian Water, although East Hungarian Water did not state this), entered into a contract for the Ardiya Sewage Treatment Plant Project with the Ministry of Public Works of Kuwait. East Hungarian Water stated that, prior to the execution of this contract, it carried out preparatory work in connection with the tender and preparing staff to go to Kuwait to work on the project. East Hungarian Water seeks compensation in respect of this initial preparatory work.

A. Contract losses

1. Facts and contentions

234. East Hungarian Water seeks compensation in the amount of US$2,807,529 for contract losses. The relevant project contracts were entered into between Hydroexport and Kuwaiti entities in each case. Hydroexport entered into the following contracts on behalf of East Hungarian Water:

(a) Four contracts (each dated 19 June 1989) with Sa'ad Murshed General Trading and Contracting Establishment ("SAAD") relating to the first ring road and sixth ring road extension projects, pursuant to which East Hungarian Water agreed to supply and erect steel structures at the project site at Ahmadi, Kuwait (the "Ring Road Projects"). The main project contracts for the Ring Road Projects were entered into between the Ministry of Public Works of Kuwait and various contractors. SAAD was a party to a sub-contract with each of the contractors; and

(b) Contract No. SE/S/52 dated 26 July 1990, relating to the Ardiya Sewage Treatment Plant Project with the Ministry of Public Works of Kuwait.

235. East Hungarian Water provided a copy of an "Agreement on Enforcement of Claim for Compensation for War Losses in Kuwait" dated 19 October 1993, entered into between East Hungarian Water and Hydroexport, which refers to each of the project contracts. This agreement stated that Hydroexport

acted on behalf of East Hungarian Water, but that East Hungarian Water had full responsibility and liability under the contracts. The Agreement authorizes East Hungarian Water to file a claim directly with the Commission for all losses suffered under the agreement.

236. The following table summarizes the contracts that are the subject of the claim, the main contractors under each contract and the amounts claimed.

Claim of East Hungarian Water

Contract	Main contractor	Amount claimed (US$)
1. Contracts with Sa'ad Murshed dated 19 June 1989 (Ring Road Projects)		67,045
i. RA 64 (overhead sign supports)	Bess Engineering Company	
ii. RA 64 (aluminum barrier)	Bess Engineering Company	
iii. RA 157 (overhead sign supports)	United Gulf Construction Co.	
iv. RA 157 (galvanised rail)	Hyundai Engineering and Construction Co.	
2. Contract with Ministry of Public Works of Kuwait dated 26 July 1990 (Ardiya Sewage Treatment Plant Project)	Hydroexport	2,740,484
Total		2,807,529

(a) Ring Road projects

237. East Hungarian Water requests compensation for "ceased benefit" under the four Ring Road Project contracts and calculates its alleged loss at 10 per cent of the work that was not performed under the contracts. East Hungarian Water stated that work on the Ring Road Projects was 60 per cent complete at the time of Iraq's invasion. Although East Hungarian Water stated that its employees were evacuated from Kuwait at the end of August 1990, it is unclear at what point in time East Hungarian Water ceased work.

238. According to East Hungarian Water, the value of the uncompleted work was US$670,450. East Hungarian Water seeks 10 per cent of this amount, or US$67,045, as compensation for its alleged loss.

(b) Ardiya Sewage Treatment Plant project

239. East Hungarian Water calculated its alleged loss on this project at 2.5 per cent of the total contract price of US$109,619,377. As of the date of Iraq's invasion, East Hungarian Water had not performed work under the project contract, but it alleged it had incurred costs in connection with preparatory work, including negotiating and preparing the initial tender for the contract, travel expenses and staff preparations to commence work on the project. In support of its losses, East Hungarian Water submitted copies of the project contracts.

2. Analysis and valuation

240. While East Hungarian Water presented the claim as one for contract losses, it is in reality one for loss of profits.

(a) Ring Road projects

241. The Panel finds that East Hungarian Water's alleged loss relating to the contracts with SAAD (Ring Road Projects) is simply based on a statement that 60 per cent of the work was completed on all four contracts. East Hungarian Water then seeks 10 per cent of the price of the the remaining 40 per cent of the uncompleted work, or KD 19,376. However, East Hungarian Water did not provide any evidence that the contracts with SAAD were in progress at the time of Iraq's invasion, nor any evidence to demonstrate the level of work performed or work remaining. Nor was any evidence of the likely profitability of the projects provided. Also, the Panel considers it unlikely that all four contracts, which were with different main contractors, were at exactly the same stage of completion.

(b) Ardiya Sewage Treatment Plant project

242. The copies of the project contracts contain merely an outline of the contracts and do not include copies of the annexes that contain the general and technical conditions, tender documents and pricing information. East Hungarian Water failed to provide these additional documents. There is no evidence in support of the work performed by East Hungarian Water or amounts invoiced or paid under the project contracts. Furthermore, East Hungarian Water did not demonstrate on the evidence the direct link between its alleged losses and Iraq's invasion and occupation of Kuwait.

243. With respect to the contract with the Ministry of Public Works (Ardiya Sewage Treatment Plant Project), East Hungarian Water also failed to provide sufficient evidence of the ongoing profitability of the contract.

3. Recommendation for contract losses

244. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

245. East Hungarian Water seeks compensation in the amount of US$859,536 for tangible property allegedly left behind at the Ring Road Project sites. East Hungarian Water alleged that during Iraq's invasion and occupation of Kuwait materials were removed from the Project sites where they had been left, semi-finished products were destroyed, and East Hungarian Water's offices, workshops and lodgings were ransacked and ruined.

2. Analysis and valuation

246. The tangible property claim has three loss items: (a) destruction of tools and machinery located in Kuwait; (b) loss of materials left at the site; and (c) loss of furniture and accommodation for employees. East Hungarian Water submitted considerable evidence of these alleged losses and provided a complete breakdown of its assets.

247. With respect to the tools and machinery, the Panel finds that East Hungarian Water adequately demonstrated that it owned such assets and that such assets were in Kuwait at the time of Iraq's invasion. East Hungarian Water also established to the satisfaction of the Panel the acquisition price of such assets. Many of the items were imported in 1989 and included a mixture of equipment and consumables. On this basis, the Panel finds that at least some of the consumables would have been used up at the time of Iraq's invasion. The Panel recommends compensation in the amount of US$12,000 for tools and machinery.

248. With respect to the materials left on site at the time of Iraq's invasion, the Panel considers that such materials would normally have been incorporated without delay into the permanent works. However, East Hungarian Water did not even demonstrate that such materials had arrived in Kuwait. With respect to the purchase of materials in Kuwait, East Hungarian Water did not demonstrate that these materials were delivered or paid for. The failure to produce English translations of shipping documents made it impossible for the Panel to determine whether a loss occurred and, if so, in what amount.

249. Finally, with respect to the lost furniture and employee accommodation, the Panel finds that East Hungarian Water demonstrated its ownership, the acquisition price and the presence of such furniture and accommodation in Kuwait at the time of Iraq's invasion. However, East Hungarian Water significantly over-estimated its alleged loss by failing to

account for depreciation of these items. Applying an appropriate rate of depreciation, the Panel recommends compensation in the amount of US$5,000 for loss of furniture and accommodation.

3. Recommendation for loss of tangible property

250. Based on its findings, the Panel recommends compensation in the amount of US$17,000 for loss of tangible property.

C. Payment or relief to others

251. East Hungarian Water seeks compensation in the amount of US$10,381 for costs incurred in evacuating nine of its workers from Kuwait to Hungary. East Hungarian Water stated that the workers were evacuated at the end of August 1990 by a plane chartered by the Ministry of Foreign Affairs of Hungary.

252. Based on its review of the East Hungarian Water files and the claim filed by the Government of Hungary, the Panel determined that nine of East Hungarian Water's employees were evacuated from Kuwait. The evacuation of Hungarian workers was organized by the Hungarian Embassy in Kuwait. Although East Hungarian Water alleged that it paid the Ministry of Foreign Affairs, the Panel finds no evidence of such payment in either claim file.

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

D. Business transaction costs

254. East Hungarian Water seeks compensation in the amount of US$251,090 for "interest on credit borrowed in Hungary as a preliminary loan of export income".

255. This alleged loss is a business transaction cost. East Hungarian Water did not explain which of the projects this loan relates to, or the status of the loan on 2 August 1990. East Hungarian Water alleged that it was required to take out this loan to finance its activities after the loss of its assets and income caused by Iraq's invasion and occupation of Kuwait. The Panel finds that East Hungarian Water provided no evidence in support of its claim for interest on the loan.

256. The Panel recommends no compensation for business transaction costs.

E. Summary of recommended compensation for East Hungarian Water

257. Based on its findings regarding East Hungarian Water's claim, the Panel recommends compensation in the amount of US$17,000. The Panel finds the date of loss to be 2 August 1990.

VIII. THE CLAIM OF TOSHIBA CORPORATION

258. Toshiba Corporation ("Toshiba") is a Japanese corporation which was involved in the construction of two power station projects in Kuwait at the time of Iraq's invasion of Kuwait. The relevant projects were the Az-Zour South Power Plant and the Ahmadi/Hawalli/Wafra Substations, which were governed by separate contracts.

259. Toshiba seeks compensation in the amount of US$1,477,196 for tangible property losses and payment of relief to others.

A. Loss of tangible property

1. Facts and contentions

260. Toshiba seeks compensation in the amount of US$1,428,266 for loss of, and damage to, tangible property. Toshiba supplied extensive lists of such items including assets allegedly lost at the site office and in the employee dormitories, spare parts, tools and equipment, storage yard and warehouse, and personal assets. For all asset types except personal assets, Toshiba submitted the acquisition cost or unit price. Toshiba also submitted photographs depicting some damage to the site office.

2. Analysis and valuation

261. While Toshiba presented this claim as one for contract loss, in fact it is a claim for loss of tangible property.

262. Toshiba submitted schedules listing the quantity, unit price and total price of each of the assets that it alleged were lost. In the case of the assets allegedly lost at the site office, the relevant schedule also sets out the month of purchase of the assets. Toshiba also submitted photographs depicting the damage. The photographs demonstrate that its site office at Az-Zour was ransacked and some minor assets were damaged. Other assets were said to have been stolen.

263. In the case of the personal assets of the employees, a list of individuals and the amount of each of their claims was submitted. No further details were provided by Toshiba. In the case of the storeyard, warehouse and other assets, the alleged losses were not listed by individual item, but were grouped into four categories without further details.

264. With respect to the assets lost at the site office, the Panel finds that Toshiba demonstrated its ownership, the acquisition costs and the presence of the assets in Kuwait at the time of Iraq's invasion. Making an appropriate adjustment to the value of the assets, the Panel finds that the value of the loss is US$30,000. In respect of the other assets, the Panel finds that Toshiba, even after further requests from the secretariat, did

not submit any evidence of Toshiba's ownership, the acquisition costs and the presence of the assets in Kuwait at the time of Iraq's invasion.

3. Recommendation for loss of tangible property

265. The Panel recommends compensation in the amount of US$30,000 for loss of tangible property.

B. Payment or relief to others

266. Toshiba seeks compensation in the amount of US$48,930 for payment or relief to others.

267. Toshiba provided no details concerning the factual background of, or legal basis of, this loss element. It is unclear whether this loss element is a claim for evacuation costs or for another type of payment or relief to others, or, alternatively, whether (contrary to what is stated on the category "E" claim form), it is in actual fact a claim for loss of tangible assets owned by the relevant employees of Toshiba.

268. Toshiba did not provide any of the information or documentation requested to support the alleged losses.

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

C. Summary of recommended compensation for Toshiba

270. Based on its findings regarding Toshiba's claim, the Panel recommends compensation in the amount of US$30,000. The Panel finds the date of loss to be 2 August 1990.

IX. THE CLAIM OF MUNIR SAID MOH'D DAWUD SAMARA (EMIRATE GENERAL CONTRACTING ESTABLISHMENT)

271. Munir Said Moh'd Dawud Samara ("Munir Samara") is a Jordanian individual holding a 68.5 per cent share in the Jordanian-registered partnership, Emirate General Contracting Establishment (the "Partnership"). The Partnership performed construction work on the Baghdad Alqaim Akashat Railway Project (the "Railway Project") and the Takrit Hotel Project (the "Hotel Project") in Iraq.

272. Munir Samara seeks compensation in the amount of US$3,814,189 for contract losses, loss of tangible property (fully furnished camp and construction equipment) and losses related to a performance bond. Munir Samara seeks 68.5 per cent of the losses allegedly incurred by the Partnership. Munir Samara stated that the Partnership has ceased operating permanently and has been placed into liquidation. The whereabouts of the second partner in the Partnership is unknown.

A. Contract losses

1. Facts and contentions

273. Munir Samara seeks compensation in the amount of US$2,492,478 for contract losses, including US$2,163,562 for the Railway Project and US$328,916 for the Hotel Project.

274. Munir Samara's original claim neither described the nature of his claim for contract losses nor contained supporting evidence. However, Munir Samara did submit a letter of explanation together with several documents in support of the alleged losses.

2. Analysis and valuation

(a) The Railway Project

275. Munir Samara provided a copy of the project contract (the "Railway Project Contract") dated 11 May 1982 entered into between the Partnership and the State Company for Industrial Projects of Iraq (the "First Employer"), which provides for the construction of passenger buildings and houses. The total contract price in the Railway Project Contract is US$6,294,682. Under the Railway Project Contract, the Partnership was required to complete the work within 20 months of commencement.

276. It is unclear to the Panel how Munir Samara calculated the amount of his alleged loss. A letter dated 27 August 1986 from the Iraqi employer to the State Tax Authority, Baghdad, indicates that the balance outstanding to the Partnership was ID 504,923. Using the exchange rate set forth in the letter (the contract rate), the United States dollar equivalent of this amount is US$1,620,803. Munir Samara did not explain the basis of his claim for the remaining amount, namely US$542,759.

277. The letter dated 27 August 1986 from the Iraqi employer to the State Tax Authority states that interim payments under the Railway Project Contract were made between 1982 and 1985 and that the Railway Project was completed on 18 January 1986.

278. Munir Samara also submitted a letter dated 17 May 1988 from the Iraqi employer, which indicates that the Iraqi employer awarded the Partnership a further contract for the construction of 30 additional transfer stations to be completed within a 24 month period. Munir Samara made no further reference to this other contract.

279. This Panel has interpreted the "arising prior to" clause in resolution 687 (1991), which limits the jurisdiction of the Commission, so as to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990. The Panel finds that the State Company for Industrial Projects of Iraq is an agency of the State of Iraq.

280. The supporting documentation provided by Munir Samara indicated that the performance that created the debts in question occurred between 1982 and 1986. The Panel finds that the contract losses alleged by Munir Samara relate entirely to work that was performed prior to 2 May 1990.

281. The claim for contract losses under the Railway Project Contract is outside the jurisdiction of the Commission and is not compensable under Security Council Resolution 687 (1991). Accordingly, the Panel is unable to recommend compensation for the Railway Project.

(b) The Hotel Project

282. In support of his claim for this project, Munir Samara provided a letter dated 23 October 1985 from the State Establishment for Tourism of Iraq (the "Second Employer") addressed to the Partnership, which stated that the second Iraqi employer had decided to award the Partnership the Hotel Project and invited the Partnership to "come to sign the contract".

283. In addition, Munir Samara provided a letter dated 25 October 1992 from the Ministry of Finance of Iraq, Directorate of Liquidation of the General Tourism Organization (dissolved), to the Partnership, which set out the interim payments transferred in respect of the Hotel Project. According to this letter, interim payments totalling ID 83,771 and representing 70 per cent of the interim payments to be paid under the Hotel Project Contract were made between 8 January 1986 and 23 February 1987 for the account of Antone Yaquob Andon. The claim documentation contains no information about the identity of this person or his connection (if any) with the Partnership.

284. Munir Samara failed to provide a copy of the Hotel Project Contract and evidence that either he or the Partnership had any existing rights to receive payments under the Hotel Project Contract. The reference to the payee of interim payments under the Hotel Project Contract raises doubts as to the rights of Munir Samara or the Partnership under the Hotel Project Contract. The Panel is unable to recommend that compensation be awarded for amounts allegedly due under the Hotel Project Contract.

3. Recommendation for contract losses

285. Accordingly, the Panel is unable to recommend compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

286. Munir Samara seeks compensation in the amount of US$1,190,741 for loss of tangible property, including a fully furnished campsite (US$200,000) and plant, equipment and vehicles used on the Railway Project (US$990,741).

2. Analysis and valuation

287. Munir Samara alleged that the campsite furnishings were abandoned due to Iraq's invasion, but provided no evidence in support of this allegation. It is unclear which items are included in the claim and what the values of these items are. The costs of the campsite furnishings were not a separate item charged to the relevant Iraqi employer, but a cost built into the rates charged under the relevant project contract. The Panel, therefore, recommends no compensation for lost campsite furnishings.

288. Munir Samara alleged that the plant, equipment and vehicles used on the Railway Project were not able to be re-exported and were subsequently used by the Government of Iraq on the Sadam River project. The only document provided by Munir Samara in support of its alleged loss is a letter dated 13 August 1986 from the Ministry of Finance of Iraq addressed to Alqaim Customs requesting it to provide a "receipt report stipulating missing items" from the attached list of equipment and machinery belonging to the Partnership. A list attached to the letter and entitled, "List of equipment confiscated by the Government of Iraq for the construction of Sadam River" lists 17 items of equipment (vehicles, loaders and an excavator) together with their respective vehicle plate numbers and cost.

289. The total value of the equipment is stated in the list attached to the letter from the Ministry of Finance of Iraq as US$742,200 (in 1986). Munir Samara stated the value of the equipment "up to 1993, including interest for 7 years" as US$1,446,338. Munir Samara did not explain how he

calculated the amount claimed. Munir Samara ignored depreciation and made no allowance in the claim for the cost of transportation and re-export to Jordan.

290. Munir Samara failed to show the direct link between the alleged loss and Iraq's invasion and occupation of Kuwait. It appears from the evidence provided by Munir Samara that the equipment and machinery belonging to the Partnership were confiscated by the Government of Iraq as early as 1986, four years prior to Iraq's invasion of Kuwait. Accordingly, the Panel recommends no compensation for loss of plant, equipment and vehicles.

3. Recommendation for loss of tangible property

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

C. Lost performance bond

292. Munir Samara seeks compensation in the amount of US$130,970 for losses related to a performance bond. Under the Railway Project Contract, the Partnership was required to provide the State Company for Industrial Projects of Iraq with a performance bond in the amount of US$313,176 to be issued by the Jordan-Kuwait Bank, Jabal Amman branch.

293. According to Munir Samara, the Jordan-Kuwait Bank kept extending the guarantee until 15 October 1991 "without any justified reason". Munir Samara provided no evidence in support of this allegation.

294. The Railway Project Contract does not state the length of time the performance bond was to be held after completion of the Railway Project. The Panel finds that the usual practice on projects of this nature was for the performance bond to be cancelled upon completion of the work on the project, which, in the case of the Railway Project was 1 September 1985. Munir Samara provided no indication as to why the performance bond was not cancelled upon completion of the work on the Railway Project and failed to establish that the extension of the performance bond was a direct result of Iraq's invasion and occupation of Kuwait.

295. For the reasons stated above, the Panel recommends no compensation for lost performance bond.

D. Summary of recommended compensation for Munir Samara

296. Based on its findings regarding Munir Samara's claim, the Panel recommends no compensation.

X. THE CLAIM OF EBEN S.A.

297. Eben S.A. (“Eben”) is a Moroccan corporation specializing in cabinetmaking and the manufacture of contemporary furniture for the Government of Iraq. In 1990, it was engaged as a contractor by the Government of Iraq to carry out work on the presidential palace in Basra, Iraq. Eben requests compensation in the amount of US$2,112,600 for contract losses, business transaction costs (amounts due to suppliers), tangible property losses, payments or relief to others and financial losses.

298. Eben alleged that it worked exclusively for the Government of Iraq, and lost its sole market when Iraq’s invasion occurred. It alleged that, as a result of this, it was forced to dismiss unproductive workers. Additionally, various items of stock and materials, which it had manufactured for exclusive use by the Government of Iraq, were devalued and unusable resulting in storage costs for Eben.

299. In response to an enquiry by the secretariat for additional evidence, Eben increased its alleged loss by adding claims for “legal proceedings for unpaid insurance premiums” and sale of property and by increasing the amounts requested for loss of profit and loss of sole client/market. Eben withdrew its claims for business transaction costs and “contention with staff”. A response to an inquiry for additional evidence is not an opportunity for a claimant to increase the quantum of a claim previously submitted. This increase was not accepted by the Panel, as the Panel reviews only the claim as initially presented.

A. Contract losses

1. Facts and contentions

300. Eben seeks compensation in the amount of US$337,000 for contract losses under two contracts. Eben entered into the following contracts with the Government of Iraq (acting through the Embassy of Iraq in Rabat, Morocco):

(a) Contract relative to the execution of Shanashil Works Project 520 in Basra, Iraq (dated 21 June 1990) (the “first Project Contract”); and

(b) Contract relative to the execution of works of wooden roofs and various finishing works in the residence of the Nakib of Al Basra (dated 24 June 1990) (the “second Project Contract”) (collectively referred to as the “Project Contracts”.)

301. The deadline for execution of the works was 24 September 1990 under the first Project Contract and 25 September 1990 under the second Project Contract. Under both Project Contracts, Eben was required to provide the services of 15 workers and one technical supervisor at each project site in

Iraq. The contract prices for execution of the works were US$320,000 for the first Project Contract and US$803,053 for the second Project Contract.

302. It appears that Eben calculated its stated loss based on a 30 per cent profit on the contract prices.

303. Finally, Eben stated that, prior to Iraq's invasion, it had anticipated being able to enter into future contracts with the Government of Iraq. However, as a consequence of Iraq's invasion and occupation of Kuwait, the negotiations relating to these future contracts came to an end.

2. Analysis and valuation

304. In support of its claim for contract losses, Eben submitted copies of the Project Contracts. Eben 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 favor of Eben in the amount of US$449,221.

305. Eben stated that on 24 October 1995, it received an amount of US$119,507 from the Government of Morocco by way of compensation for its losses suffered under the Project Contracts.

306. The Panel considers the letter dated 19 December 1992 addressed to Eben from the Embassy of Iraq in Rabat to be evidence of an acknowledgment of debt owed by the Government of Iraq to Eben. The Panel finds that the acknowledgment of debt relates to the work performed by Eben under the Project Contracts.

307. The Panel is satisfied that Eben's stated losses under the Project Contracts were a direct result of Iraq's invasion and occupation of Kuwait, as Eben was unable to continue work under the Project Contracts after the invasion. The Panel considers that Eben provided sufficient evidence to establish that it was owed the amount of US$449,221 by the Government of Iraq. From this amount, the amount of compensation already paid to Eben by the Government of Morocco (US$119,507) should be deducted.

3. Recommendation for contract losses

308. The Panel recommends compensation in the amount of US$329,714 for contract losses.

B. Business transaction costs

309. Eben withdrew its claim for business transaction costs.

C. Loss of tangible property

310. Eben seeks compensation in the amount of US$479,000 for loss of tangible property. Eben alleged that its furniture and machinery stocks, including sculpted wood, decorated and turned, were devalued by approximately 60 per cent and that it incurred storage expenses. Eben also alleged that it purchased new woodwork machinery to satisfy the specifications of the Government of Iraq. All of this machinery rapidly became inoperative and non-productive. The total claim amount is broken down into US$467,000 for stock devaluation and US$12,000 for stock storage expenses.

311. Eben submitted no evidence in support of its claim for loss of tangible property.

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

D. Payment or relief to others

313. Eben withdrew its claim for losses incurred with respect to dismissing redundant staff.

E. Financial losses

1. Facts and contentions

(a) Cessation of group company

314. Eben seeks compensation in the amount of US$210,000 for “cessation of Gamma-Design”. Eben alleged that the damage caused by workers to the group company Gamma-Design in January 1991 required the cessation of activity and sale of the company for the price of a symbolic dirham.

(b) Loss of sole client

315. Eben seeks compensation in the amount of US$1,011,000 for loss of the Government of Iraq as its sole client.

316. Eben alleged that, in the months following Iraq’s invasion, it attempted to implement a more commercial approach by writing to potential Moroccan customers, attending a trade fair in Casablanca and launching a press campaign in specialized publications in Morocco. The object of this new approach was to adapt its staff to the requirements of the Moroccan market with a view to winning new customers in its home country. However, by June 1991, Eben’s creditors were threatening liquidation.

317. Eben alleged 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 and, on

the basis of a 30 per cent benefit margin, amounted to US$337,000 multiplied by three years, or US$1,011,000.

(c) Loss of capital

318. Eben seeks compensation in the amount of US$75,600 for loss of capital revenues (which it describes on the "E" claim form as "3 years payment of capital") for the three years preceeding the claim. The amount claimed was calculated using the 12 per cent creditor rates granted to Moroccoan companies. Eben provided no further details, and, consequently, both the factual background to, and the legal basis of, the claim are unclear.

2. Analysis and valuation

(a) Cessation of group company

319. Eben submitted no evidence in support of the alleged damage to the Gamma-Design company.

(b) Loss of sole client

320. This alleged loss is a loss of future profits. First, Eben did not demonstrate that its loss of future profits was a direct result of Iraq's invasion and occupation of Kuwait. Second, Eben made no showing of its ability to earn a profit on the existing contracts. Finally, as discussed in paragraphs 77-79, supra, the Panel recommends compensation for loss of profits only on contracts that were in existence at the time of Iraq's invasion of Kuwait and could not be fully performed as a result of Iraq's invasion and occupation of Kuwait. Alleged loss of profits on anticipated future contracts is not a direct result of Iraq's invasion and occupation of Kuwait.

321. The Panel recommends no compensation for loss of future profits.

(c) Loss of capital

322. It appears that the alleged loss of capital is an alternative claim for the recovery of the alleged loss of the related company, Gamma-Design. The Panel finds that Eben did not submit any evidence to establish that the loss was a direct result of Iraq's invasion and occupation of Kuwait or that such a loss was incurred.

3. Recommendation for financial losses

323. The Panel recommends no compensation for financial losses.

F. Summary of recommended compensation for Eben

324. Based on its findings regarding Eben's claim, the Panel recommends compensation in the amount of US$329,714. The Panel finds the date of loss to be 19 December 1992.

XI. THE CLAIM OF DUTCH AGRO PRODUCTS B.V.

325. Dutch Agro Projects B.V. (“Dutch Agro”), a Dutch corporation, entered into a contract dated 10 July 1990 (the “Contract”) with the Kuwait Institute for Scientific Research (“KISR”) for the supply, installation, construction, testing and commissioning of an automated greenhouse project (the “Project”) on a turnkey basis in Kuwait.

326. Dutch Agro seeks compensation in the amount of US$89,627 for loss of profits, loss of interest on performance bond, extra labour hours and storage costs.

A. Loss of profits

1. Facts and contentions

327. Dutch Agro seeks compensation in the amount of US$36,107 for loss of profits. Dutch Agro calculated its loss of profits at 15 per cent of the total value of the Contract. Dutch Agro alleged that, due to Iraq’s invasion and occupation of Kuwait, work on the Project could not be performed as scheduled, and that Dutch Agro agreed with KISR to suspend work on the Project for two years and six months. Dutch Agro stated in its original claim in February 1993 that it entered into new agreements with KISR for the execution of the Contract after a delay of more than two and a half years. However, Dutch Agro did not provide copies of the new agreements.

328. Dutch Agro also seeks interest in the amount of US$21,063 measured by the retail price index. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

2. Analysis and valuation

329. In support of its allegation of loss of profits, Dutch Agro provided a copy of the Contract. However, it failed to provide a number of documents forming an integral part of the Contract, such as KISR’s general conditions of tenders and contracts and Dutch Agro’s tender for the Project. Dutch Agro did not provide financial statements, balance sheets, copies of the original calculations of profit as incorporated within the make-up of the Project, management reports on actual financial performance or copies of the new agreements entered into with the KISR. Dutch Agro stated that such documents were unavailable.

330. The Panel was unable to verify the alleged profit margin (15 per cent) from the documents and information provided by Dutch Agro. Further, Dutch Agro failed to provide sufficient evidence of the ongoing profitability of the Contract. Moreover, since Dutch Agro recommenced work under the Contract in 1993, Dutch Agro’s profit under the Contract appears to have been, at most, merely delayed and not lost.

3. Recommendation for loss of profits

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

B. Loss of interest on performance bond

1. Facts and contentions

332. Dutch Agro seeks US$2,889 for loss of interest on a performance bond that it allegedly maintained for one year (from 17 July 1990 to 28 August 1991). Under the terms of the Contract, Dutch Agro was required to establish a performance bond in favor of KISR in the amount of 10 per cent of the total Contract value. The performance bond was to become effective from the date on which KISR opened an irrevocable letter of credit in favour of Dutch Agro and was to be valid for one year after the issue of a Completion Certificate for the works.

2. Analysis and valuation

333. Dutch Agro provided a copy of a document dated 17 July 1990, issued by the Credit Lyonnais Bank Nederland N.V., requesting the Commercial Bank of Kuwait S.A.K. to issue to KISR, on behalf of Dutch Agro, the performance bond attached to the request. Dutch Agro further provided a letter of credit dated 26 December 1991, issued by the Commercial Bank of Kuwait S.A.K. in favour of the Credit Lyonnais Bank Nederland N.V., for the benefit of Dutch Agro. Dutch Agro stated that the performance bond was in effect from 17 July 1990 to 28 August 1991. However, given that the letter of credit, a pre-condition to the commencement of the project, is dated 26 December 1991 (i.e., eight months after the liberation of Kuwait), it is unclear how this could be relevant either to this loss item or the Contract dated 10 July 1990.

334. Dutch Agro stated that the Commercial Bank of Kuwait S.A.K. refused to cancel the performance bond due to operational regulations. Dutch Agro did not state what those operational regulations were. Dutch Agro did not provide copies of any correspondence exchanged with either the Commercial Bank of Kuwait S.A.K. or Credit Lyonnais Bank Nederland N.V. that would establish that Dutch Agro attempted to cancel the performance bond. Finally, Dutch Agro did not explain how the alleged loss is a direct result of Iraq’s invasion and occupation of Kuwait.

3. Recommendation for loss of interest on performance bond

335. The Panel recommends no compensation for loss of interest on performance bond.

C. Extra labour hours

1. Facts and contentions

336. Dutch Agro seeks compensation in the amount of US$6,996 for extra labour hours spent drafting new agreements and making new drawings. Dutch Agro calculated the amount by multiplying the hourly rate of 80 Netherlands guilders (f.) by a total of 154 hours.

2. Analysis and valuation

337. Dutch Agro was asked to provide details of the number of its employees who worked on the new agreements and drawings and their respective hourly rates. In response, Dutch Agro stated that the rate was correct, but failed to attach copies of the relevant pay slips in support. Dutch Agro provided an invoice dated 15 March 1998 issued by a Dutch company operating from the same business premises as Dutch Agro and with similar telephone and facsimile numbers. The invoice is for a total of 154 hours at f. 80 per hour for preparing new technical specifications and new drawings. However, Dutch Agro failed to provide evidence that it actually paid the invoiced amount.

338. The Panel finds that, in accordance with general commercial practice, the costs of drawing up a new contract with new specifications would normally have been included in the rates charged in the new contract. Dutch Agro failed to provide a copy of the new contract.

3. Recommendation for extra labour hours

339. The Panel recommends no compensation for extra labour hours.

D. Storage costs

340. Dutch Agro seeks compensation in the amount of US$22,572 for costs relating to the storage of construction materials for a three year period. Dutch Agro stated that, due to Iraq’s invasion and occupation of Kuwait, it had to cancel orders placed with third parties and store materials already delivered to it.

341. Dutch Agro provided an invoice for storage dated 31 December 1992, issued by a company operating from the same business premises as Dutch Agro and with similar telephone and facsimile numbers. The invoice is for 30 months of storage (between July 1990 and December 1992) at f. 1,325 per month. However, Dutch Agro failed to provide evidence of payment of the invoice. The Panel finds that Dutch Agro did not submit sufficient evidence to support these allegations.

342. The Panel recommends no compensation for storage costs.

E. Summary of recommended compensation for Dutch Agro

343. Based on the findings regarding Dutch Agro's claim, the Panel recommends no compensation.

XII. THE CLAIM OF EEI CORPORATION

344. EEI Corporation ("EEI"), a Philippine corporation, entered into a sub-contract agreement dated 26 June 1988 (the "Contract") with Al-Khamis & Al-Aryan Trading & Contracting Company (the "Main Contractor") for the construction of 93 housing units in the Al Qurain Housing Area, Kuwait (the "Project"). The main Project contract was signed between the Main Contractor and the National Housing Authority of Kuwait (the "Employer"). EEI seeks compensation in the amount of US$998,872 for contract losses, loss of profits, loss of tangible assets, staff wages and evacuation expenses.

A. Contract losses

1. Facts and contentions

345. EEI seeks compensation in the amount of US$483,375 for unpaid invoices for work on the Project.

346. Under the Contract, EEI was required to construct 93 housing units. In order to carry out the construction work, EEI recruited and supervised 370 labourers and other staff. EEI commenced its performance on the Project on 1 August 1988 and was required to complete the Project by 31 October 1989. EEI did not state the date on which the work on the Project was abandoned, the circumstances of the abandonment or whether it subsequently recommenced work on the Project.

2. Analysis and valuation

347. Pursuant to the terms of the Contract, EEI was entitled to invoice the Main Contractor on a monthly basis. The Main Contractor was required to make payment within the earlier of seven days after receipt of the respective payment from the Employer or 45 days after the date of receipt of the relevant invoice. EEI provided copies of five invoices for the period March to July 1990, which it alleged were unpaid by the Main Contractor. EEI did not provide any information as to why the invoices remained unpaid on 2 August 1990 or the steps taken by EEI to ensure the timely payment of the unpaid invoices.

348. EEI did not provide details of the work that it performed under the Contract or evidence of how the amounts claimed were calculated. Furthermore, it did not provide evidence that the amounts claimed were not paid by the Main Contractor. Accordingly, the Panel finds that EEI did not submit sufficient evidence of its alleged loss.

3. Recommendation for contract losses

349. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

350. EEI seeks compensation in the amount of US$416,038 for "lost production contribution". This alleged loss is a loss of profits for the work that could not be completed under the Contract due to Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

351. Other than a copy of the Contract, EEI provided no documents or details about how the claimed amount was calculated in support of its allegation of loss of profits. The Contract provides for invoices to be issued on a monthly basis based on the percentage of the total work completed. The Panel finds that this payment regime indicates that the profits accrued on a monthly basis.

352. The Panel finds that EEI failed to provide sufficient evidence in support of its alleged loss. Furthermore, in light of the fact that the profits under the Contract accrued on a monthly basis, EEI failed to prove that it sustained a loss.

3. Recommendation for loss of profits

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

C. Loss of tangible property

354. EEI seeks compensation in the amount of US$47,235 for tangible assets that were lost after EEI left Kuwait. The assets consisted mainly of office equipment, computers, air conditioners and electronic consumer items, such as televisions and video recorders. EEI stated that the assets in question were left behind at its Kuwait office, the Project site office, a rented warehouse space in Aoha and a boiler project in Mina Az-Zour.

355. EEI stated that accounting records and invoices relating to the purchase and ownership of the assets were left behind at its offices when EEI's employees were forced to depart Kuwait. EEI provided a list of the relevant assets, including the serial and the model numbers of the assets together with their value. EEI gave no indication of the age of the assets and did not make any adjustment for depreciation. The Panel finds that EEI did not provide sufficient evidence (a) of its ownership of the assets, (b) of the cost of the assets, or (c) that these items were in Kuwait on 2 August 1990.

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

D. Payment or relief to others

1. Facts and contentions

357. EEI seeks compensation in the amount of US$52,224, including expenses incurred in evacuating its employees from Kuwait (US$25,125) and financial assistance provided to its employees who were evacuated from Kuwait (US$27,099).

358. EEI evacuated approximately 100 staff members between 26 August and 13 September 1990. The expenses incurred during the evacuation included taxi fares, hotel bills and food as well as cash advances that were given to some of the evacuees.

359. EEI allegedly paid each of its employees evacuated from Kuwait financial assistance in the amount of one month's salary upon their return to Manila. This amount was intended to cover the period between Iraq's invasion and their return to Manila. EEI alleged that it paid some managers who took responsibility to ensure the safety and well-being of all evacuated staff an additional amount of salary for one half-month.

2. Analysis and valuation

360. In support of EEI's claim for evacuation expenses, EEI provided a copy of an "expense liquidation report" prepared by the supervisor in charge of the evacuation. The expense liquidation report is an unusually detailed contemporaneous record, which, in the circumstances, the Panel considers to be sufficient secondary evidence of EEI's losses. On the basis of the expenses incurred by EEI, as evidenced by the expense liquidation report, the Panel recommends compensation in the amount of US$25,125 for evacuation expenses.

361. In respect of EEI's claim for financial assistance given to its employees, EEI provided various typed lists containing the names of the employees together with the corresponding amounts paid. EEI also provided 93 forms, each entitled "Release Waiver and Quitclaim". These forms, which have been signed by employees of EEI, essentially state that the employee signing the form received the amount stated therein, that his or her employment with EEI ceased as of 2 August 1990 and that EEI is released and discharged from any further claims.

362. The Panel finds that the Release Waiver and Quitclaim forms constitute sufficient evidence that EEI paid the amounts claimed to its evacuated employees. The Panel finds that the amounts claimed for financial assistance given to EEI's employees were a direct consequence of Iraq's invasion and occupation of Kuwait. For these reasons, the Panel recommends compensation in the amount of US$27,099 for financial assistance paid to the employees of EEI.

3. Recommendation for payment or relief to others

363. The Panel recommends compensation in the amount of US$52,224 for payment and relief to others.

E. Summary of recommended compensation for EEI

364. Based on its findings regarding EEI's claim, the Panel recommends compensation in the amount of US$52,224. The Panel finds the date of loss to be 4 September 1990.

XIII. THE CLAIM OF GESTIONES REUNIDAS DE CONSTRUCCION S.A.

365. Gestiones Reunidas de Construcción, S.A. (“GRECSA”), a Spanish construction company, seeks compensation in the amount of US$4,179,240 for contract losses and interest, loss of tangible assets and payment or relief provided to its employees.

366. GRECSA entered into a contract (the “Contract”) with the Government of Iraq, represented by the Directorate of Air Defence Works (“AFADW”) acting on behalf of the Ministry of Defence, pursuant to which it agreed to design, construct and erect 108 aircraft shelters at six sites in Iraq (the “Project”). The Contract was dated 28 December 1977. Pursuant to fourteen different appendices to the Contract subsequently entered into between GRECSA and AFADW, GRECSA agreed to carry out additional works on the Project, including the construction of fourteen supplementary shelters at Kirkuk.

367. In its claim, GRESCA made allowance for certain deductions in the amount of US$94,895, which were agreed between GRESCA and the Government of Iraq in October 1992.

A. Contract losses

1. Facts and contentions

368. GRECSA seeks compensation for unpaid work completed by it under the Contract (US$1,576,823), for the work it had to abandon due to Iraq’s invasion and occupation of Kuwait (US$280,055) and for payments due under the final acceptance certificate (US$691,083).

369. GRECSA also claims interest on the unpaid contractual amounts in the amount of US$501,158. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

370. GRECSA stated that it was forced to abandon work on the Project between September 1980 and June 1981 due to the war between Iran and Iraq. GRECSA alleged it abandoned the Project again on 2 August 1990 and had no information of the whereabouts or state of its machinery and facilities until October 1992, when it sent a representative to Amman to meet with representatives of the Government of Iraq in order to settle the pending affairs.

371. The minutes of the meeting between representatives of GRECSA and representatives of the Government of Iraq in Amman, from 10 to 16 October 1992, were signed by both parties. At the meeting, the parties agreed that, as soon as the minutes were approved by the Government of Iraq, the Contract and the bank guarantee issued by the Rafidain Bank in favor of GRECSA would both be cancelled. GRECSA maintained that the minutes constituted an acknowledgment of debt by the Government of Iraq. GRECSA

expected the approval of the Government of Iraq to take place within two weeks of the meeting.

372. On 28 January 1993, the Embassy of the Republic of Iraq, Madrid, sent a letter to GRECSA, which stated that the responsible departments of the Government of Iraq had authorized the cancellation of the Contract and the implementation of the agreement evidenced by the minutes signed in Amman on 16 October 1992. The letter requested GRECSA to cancel the bank guarantee issued by the Rafidain Bank in the amount of US$20,227,026. GRECSA sent a response to this letter on 9 February 1993 in which it stated that it would proceed to cancel the bank guarantee in exchange for, first, a document signed by Iraq evidencing the cancellation of the Contract and, secondly, payment by Iraq of US$2,232,433 less ID 2,000. It is unclear how this amount was calculated by GRECSA. It does not appear to relate to any of the amounts that Iraq agreed in (Amman) it would pay GRECSA.

2. Analysis and valuation

(a) Unpaid work

373. In support of its claim for unpaid work completed by GRECSA under the Contract, GRECSA provided copies of the relevant invoices issued in 1988 and 1989. The invoices relate to work performed between January 1988 and November 1989. The amounts invoiced were due to be paid on 31 July 1990, 31 January 1991, 31 July 1991 and 31 January 1992, pursuant to the terms of an Agreement for Deferred Payment entered into between GRECSA and AFADW on 26 May 1988 (the “deferred payment agreement”).

374. This Panel has interpreted the “arising prior to” clause in resolution 687 (1991), which limits the jurisdiction of the Commission, so as to exclude debts of the Government of Iraq if the performance relating to that obligation took place prior to 2 May 1990. The Panel finds that AFADW is an agency of the State of Iraq.

375. The supporting documentation provided by GRECSA indicated that the performance that created the debts in question occurred between January 1988 and November 1989. The Panel finds that the contract losses alleged by GRECSA relate entirely to work that was performed prior to 2 May 1990.

376. The Panel finds that the parties entered into the deferred payment agreement as a result of the financial difficulties experienced by AFADW, which led to an increasing delay in payments due under the Contract throughout the 1980's. The Panel further finds that the deferred payment agreement did not create new obligations on the part of AFADW for the purposes of resolution 687 (1991).

377. The Panel finds that the claim for unpaid work completed by GRECSA under the Contract is outside the jurisdiction of the Commission and is not compensable under resolution 687 (1991).

378. Accordingly, the Panel is unable to recommend compensation for unpaid work completed by GRECSA.

(b) Abandoned work

379. In respect of the claim for abandoned work by GRECSA due to Iraq's invasion and occupation of Kuwait, GRECSA provided a table containing a breakdown of the claimed amount. The table showed that the claimed amount relates to unpaid invoices for work performed on the Project, described by GRECSA as "work in progress". However, GRECSA's calculations are not supported by copies of the relevant invoices or other evidence. The list of invoices provided by GRESCA makes clear that all but two of the invoices were definitely issued prior to 2 May 1990; the two exceptions were issued at some uncertain date in 1990. In the absence of copies of these invoices, their precise dates are not identifiable.

380. Although requested to do so, GRESCA failed to describe the work that was in progress on 2 August 1990 and to provide a copy of the Contract.

381. Although GRECSA stated that it abandoned the Project on 2 August 1990, it failed to provide details of any work that was performed on or after 2 May 1990. The supporting documentation provided by GRECSA indicated that the performance that created the debts in question occurred prior to 2 May 1990.

382. The Panel finds that the claim for abandoned work is not shown to be within the jurisdiction of the Commission and is, therefore, not compensable under resolution 687 (1991).

383. Accordingly, the Panel is unable to recommend compensation for abandoned work.

(c) Payments due under the final acceptance certificate

384. In respect of the claim for payments due under the final acceptance certificate, GRECSA provided a table containing a breakdown of the claimed amount. The tables show that the claimed amount relates to amounts allegedly due under the final acceptance certificate. However, GRECSA's calculations are not supported by the final acceptance certificate or other evidence. It is not clear from the evidence provided when the final acceptance certificate was issued.

385. The minutes of the meeting held in Amman from 10 to 16 October 1992 indicate that the parties agreed that GRECSA was owed the amount of

US$691,083 for "invoices corresponding to the accepted FAC" and that Iraq acknowledged a debt to GRECSA in this amount.

386. Although GRECSA stated that it abandoned the Project on 2 August 1990, it failed to provide details of the date of issue of the final acceptance certificate or of any work that was performed on or after 2 May 1990. The supporting documentation provided by GRECSA indicates that the performance that created the debts in question occurred prior to 2 May 1990.

387. The Panel finds that the claim for payments due under the final acceptance certificate is not shown to be within the jurisdiction of the Commission and is not compensable under resolution 687 (1991).

388. Accordingly, the Panel is unable to recommend compensation for payments due under the final acceptance certificate.

3. Recommendation for contract losses

389. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

390. GRECSA seeks compensation in the amount of US$1,125,016 for loss of tangible property, including heavy trucks, bulldozers, cranes, cars and other construction equipment. GRECSA stated that the machinery was mainly acquired in 1978 and 1979. However, because of the interruption to the work on the Project that occurred as a result of the war between Iran and Iraq, the machinery arrived at the Project site in 1982 and 1983.

391. GRECSA further stated that, in accordance with the accounting standard relating to annual depreciation in force in Spain in 1990, the machinery had been totally written off in GRECSA's accounts. GRECSA stated that the purchase value of its tangible assets located at the Project site as of 2 August 1990 was US$11,250,163. For the purposes of its claim, GRECSA applied a depreciation rate of 10 per cent per annum to the relevant assets, taking into account the nine year period between 1981 and 1990 and ending on 2 August 1990. Accordingly, GRECSA calculates its loss as the residual value of 10 per cent of the listed tangible assets.

2. Analysis and valuation

392. In support of its claim for loss of tangible assets, GRECSA provided a list of its assets that were allegedly present in Iraq at the time of Iraq's invasion. In addition, GRECSA provided a list of machines, tools and vehicles, which appear to have been used as collateral to obtain an

Iraqi dinar loan from the Rafidain Bank. This list demonstrates that the relevant assets were owned by GRECSA and were in Iraq on 2 August 1990.

393. GRECSA also provided shipping transport insurance documents and bills of lading, which establish that GRECSA purchased insurance coverage for certain assets that were to be shipped from Madrid to Iraq and that the assets to be shipped were delivered and received by the shipper for shipment. However, the Panel finds that these documents do not establish either GRECSA's ownership of the assets or the importation of the assets into Iraq.

394. GRECSA also provided a customs declaration relating to the importation of certain materials into Iraq. The Panel finds that, whilst this document is evidence of the importation of those assets into Iraq, GRECSA did not provide evidence of its ownership of the assets.

395. GRECSA also provided a report, dated 17 July 1998, prepared by the former Deputy Head of Mission of the Spanish Embassy in Iraq. The report arose out of an official mission to Iraq led by the former Deputy Head of Mission in June 1991. Photographs attached to the report were presented by GRECSA to confirm the "total uselessness" of its machinery and equipment. The report states that when the former Deputy Head of Mission visited the installations at the Project site at Abu Ghraib, he found that office installations had been damaged and vehicles and their parts had been stolen and damaged.

396. The Panel finds that, although the report and photographs confirm that some machinery and equipment was in Iraq at the time of the mission, and that some of this machinery and equipment clearly had been damaged, they do not provide evidence of the time of the damage, the theft, GRECSA's ownership of the assets, or of the magnitude of the alleged loss.

397. GRECSA stated that it kept no invoices relating to the acquisition of the machinery and equipment, as it destroyed these after the five-year minimum retention of documents period in force in Spain.

398. The minutes of the meeting held in Amman from 10 to 16 October 1992 indicate that the parties agreed that Iraq would reimburse to GRECSA the amount of US$500,000 plus ID 100,000 in respect of "temporary input equipment machinery and spare parts". The minutes do not identify the machinery and spare parts in respect of which agreement for reimbursement was allegedly reached between GRECSA and Iraq. GRECSA stated that the amount agreed upon at this meeting was inappropriate as it did not reflect the true value of the assets as at the date of their alleged loss.

399. In order to maintain this claim, it was necessary for GRECSA to demonstrate that it had machinery in Iraq that was available to it on 2 August 1990, and that at that date the machinery had some value. The Panel

finds that GRECSA failed to identify the machinery and equipment, imported into Iraq in the early 1980's, to satisfy this requirement. Indeed, the Panel noted that all the machinery and equipment had been written off in GRECSA's books.

3. Recommendation for loss of tangible property

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

C. Payment or relief to others

401. GRECSA seeks compensation in the amount of US$100,000 in respect of the detention of two of its employees by the Iraqi authorities. The operations manager and the chief engineer for the Project were allegedly detained in Iraq from 2 August 1990 to 16 October 1990 after Iraqi authorities had refused to issue them exit visas.

402. The only documents provided by GRECSA in support of this loss element are a copy of the passport of the operations manager and the death certificate of the chief engineer, dated 23 March 1997. The report dated 17 July 1998 prepared by the former Deputy Head of Mission of the Spanish Embassy in Iraq also refers to the circumstances of the detention.

403. GRECSA did not specify how it sustained a loss of US$100,000 due to the detention of its employees. However, GRECSA stated that the amount requested was not calculated exactly and was considered to be an indemnity for the detention of its two employees for two and a half months.

404. GRECSA failed to demonstrate that it incurred a loss in respect of the detention of its employees. The Panel finds no evidence that GRECSA made any payment to its detained employees.

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

D. Summary of recommended compensation for GRECSA

406. Based on its findings regarding GRECSA's claim, the Panel recommends no compensation.

XIV. THE CLAIM OF KVAERNER GENERATOR AB

A. Facts and contentions

407. Kvaerner Generator AB ("Kvaerner"), a Swedish private limited company, seeks compensation in the amount of US$697,836 for the non-productivity of eight of its employees who were detained in Iraq during the occupation of Kuwait. Kvaerner alleged that the eight employees were held captive in Iraq for a total of 886 man-days during which the employees were idle and, as a result, Kvaerner suffered economic damage in the above amount.

B. Analysis and valuation

408. While Kvaerner submitted its claim as one for losses due to non-productivity, it is, in actual fact, a claim for loss of profits and overheads. Kvaerner allegedly suffered loss of profits in the amount of US$552,795 and an increase in overhead costs at its head office in Sweden in the amount of US$145,041.

409. In order to prove the claim for loss of profits Kvaerner must demonstrate that its employees were working on projects in Iraq prior to Iraq's invasion of Kuwait, that the amounts sought by Kvaerner were actually paid to them, that, but for Iraq's invasion and occupation of Kuwait, they would have been profitably employed, and that no productive work could be performed by Kvaerner's employees in the circumstances.

410. Kvaerner provided a copy of a set of general terms and conditions of a Swedish trade association, which states the hourly charge-out rates for Supervising Engineers and Chief Erectors as 3,000 Swedish krona (SKr) and SKr 3,200, respectively, based on a 48 hour work week. In addition, Kvaerner charged a daily allowance at the rate of SKr 540.

411. The Panel finds that Kvaerner's calculations assume 100 per cent recovery of chargeable time for seven days per week without substantiation of work that would have been performed had Iraq not invaded and occupied Kuwait. Without evidence of work that the employees would have performed had they not been taken hostage, there is no evidence of a loss. Finally, Kvaerner did not submit any evidence of payment to its employees during their detention.

412. With regard to the alleged head office losses, Kvaerner seeks compensation for the salary of an administrative coordinator, telephone charges, and travelling costs. Kvaerner provided no documentation concerning the factual background to, or legal basis of, this loss element.

C. Summary of recommended compensation for Kvaerner

413. Based on its findings regarding Kvaerner's claim, the Panel recommends no compensation.

XV. THE CLAIM OF INPRO AG K. WIRTH

414. Inpro AG K. Wirth ("Inpro") was a Swiss private limited company with operations and bases in other countries. The main business of Inpro was the engineering and construction of plants for manufacturing use. Inpro seeks compensation in the amount of US$648,921 for contract losses.

415. Inpro has been liquidated. An apparent successor in interest, Inpro-Engineering Ltd., provided additional information and documentation regarding the claim. The successor-in-interest stated that the file relating to Inpro's claim for compensation was transferred to it and it was requested to pursue the claim with the Commission.

A. Facts and contentions

416. Inpro and another Swiss company, Luem AG, entered into a contract with the Ministry of Industry and Minerals State Organization for Engineering Industries, State Enterprise for Automotive Industries of Iraq ("SEAI") dated 24 May 1980 (the "Contract") to build an automotive plant located in Iskandariyah, Iraq for bus painting, steel profile preserving, small parts handling and other associated uses (the "Project"). The total price of the Contract was US$6,257,249. Inpro ceased work on the Project on 26 January 1982. The Project was completed and handed over to SEAI in 1985.

417. Inpro seeks compensation in the amount of US$648,921 as contractual debt in relation to unpaid work it performed on the Project. Inpro alleged that SEAI owed Inpro US$317,784 under the contract as well as US$331,137 for work performed under related contracts. Inpro alleged that it finished the project itself after Luem AG became insolvent in 1984.

B. Analysis and valuation

418. Inpro stated that it sought final payment from Iraq for a period of over five years after the work was completed. The Final Acceptance Certificate ("FAC") was never issued because the guarantee period was not satisfactorily completed. As part of its efforts to collect the alleged outstanding amounts, Inpro provided minutes of a meeting held between Inpro and SEAI between 4 and 11 July 1989. These minutes demonstrate that a performance bond in the amount of US$269,600 was collected by SEAI as payment for repairs due to poor quality work. Further, the minutes indicate that the final payment was withheld due to the poor quality of work. Finally, it appears the parties reached a settlement of all obligations due and owing in July 1989.

419. The Panel finds that Inpro completed its performance pursuant to the terms of the Contract in 1982. The debt in question arose nine years prior to 2 August 1990. Under the rule governing compensability, such debt is a debt "arising prior to" 2 August 1990 and is, therefore, not compensable

before this Commission. The settlement agreement reached in 1989 did not give rise to a new obligation.

C. Summary of recommended compensation for Inpro

420. Based on its findings regarding Inpro's claim, the Panel recommends no compensation.

XVI. THE CLAIM OF W.J. WHITE LTD.

421. W.J. White Ltd. ("W.J. White"), a limited company incorporated in the United Kingdom, was a sub-contractor to Interiors International Ltd. who entered into a contract with the Ministry of Housing and Construction in Baghdad to work on Project 304X, later known as Al Sijood Palace in Iraq. W.J. White seeks compensation in the amount of US$183,998 for contract losses and interest thereon.

422. W.J. White seeks compensation in the amount of US$140,191 for the expenses that it incurred in relation to two of its employees who were detained in Iraq, loss of overheads and profit and loss of wages paid to the two employees during the relevant period of detention.

423. W.J. White also seeks compensation for interest in the amount of US$43,807. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

A. Payment or relief to others

1. Facts and contentions

424. Two of W.J. White's employees, having completed their work, were due to leave Iraq on 3 August 1990 but were detained by the Iraqi authorities until 6 December and 16 December 1990, respectively. W.J. White alleged that, during their detention, these employees were made to work 12 hours a day on the modifications to the palace that were being carried out by the Iraqis.

425. W.J. White seeks compensation in the amount of US$8,362 as accommodation expenses paid for its employees for 29 days in August and two days in September 1990. W.J. White alleged that, after these dates, the accommodation expenses were paid by the Government of the United Kingdom. W.J. White also seeks compensation in the amount of US$13,403 for expenses incurred on meals and laundry during the detention period in Iraq for the months of August, September, October, November and December 1990.

426. Finally, W.J. White seeks compensation in the amount of US$25,799 for the wages that it paid to the two employees for the months of August, September, October, November and December 1990. W.J. White alleged that during the period of detention of its employees, it paid wages to those employees but did not receive any reimbursement from Iraq for the work performed during this period.

2. Analysis and valuation

427. Because the two employees of W.J. White were illegally detained by the Iraqi authorities, in accordance with paragraph 21(e) of Governing Council decision 7 any payment made or relief provided by W.J. White in connection with the illegal detention of its employees are losses suffered

directly because of Iraq's invasion and occupation of Kuwait. However, W.J. White did not provide any evidence in support of its claim for accommodation, meals and laundry expenses. W.J. White stated that it had no receipts for these expenses because all expenses were paid in cash. The only evidence provided by W.J. White were copies of Iraqi exit visas.

428. The alleged loss incurred by W.J. White with respect to the wages paid to its two employees in Iraq after productive work had ceased and until the employees were repatriated to their home countries is compensable to the extent proven by W.J. White. The only evidence provided by W.J. White are illegible photocopies of the work permits of its two employees supposedly covering the period of their regular work under the project.

429. As proof of such losses, W.J. White had been requested to provide affidavits from its employees describing their detention in Iraq. W.J. White failed to provide these affidavits.

430. W.J. White stated that it no longer has in its possession the files relating to the project. Further, it stated that it no longer has copies of the payroll records of the relevant employees, as it did not keep these beyond the six year minimum retention period required by applicable law.

3. Recommendation for payment or relief to others

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

B. Specially manufactured goods

432. W.J. White seeks compensation in the amount of US$32,631 for loss of profit for specially manufactured goods, specifically ten bedside chests. W.J. White alleged it delivered those chests to its shipper, but the chests were not shipped to Iraq due to Iraq's invasion and occupation of Kuwait.

433. W.J. White submitted photographs of sample bedside chests and unit prices for small and large chests. W.J. White did not submit a copy of the contract for manufacture or other supporting documentation that would allow the Panel to determine the loss of profits based on a calculation of the unit price of the samples less the contract rates or manufacturing costs of the bedside chests. W.J. White provided no other information or supporting documentation for this loss alleged loss.

434. The Panel recommends no compensation for specially manufactured goods.

C. Loss of overheads

435. W.J. White seeks compensation in the amount of US$59,996 for overheads incurred in August, September, October, November and December 1990, allegedly in relation to its two employees who were held in detention and made to work for 12 hours a day.

436. W.J. White did not provide any information or documentation with respect to costs allegedly incurred by it. W.J. White stated that it did not retain internal management reports and budgetary information on completed projects beyond its product warranty period of five years.

437. The Panel recommends no compensation for loss of overheads.

D. Summary of recommended compensation for W.J. White

438. Based on its findings regarding W.J. White's claim, the Panel recommends no compensation.

XVII. SUMMARY OF RECOMMENDED COMPENSATION BY CLAIMANT

439. 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) Šipad Invest OOUR Export Inñenjering (Bosnia and Herzegovina): US$212,112;

(b) Bimont d.d. Rijeka (Croatia): US$92,877;

(c) YIT Corporation (Finland): US$180,807;

(d) East Hungarian Water Construction Company (Hungary): US$17,000;

(e) Toshiba Corporation (Japan): US$30,000;

(f) Munir Said Moh'd Dawud Samara (Jordan): nil;

(g) Eben S.A. (Morocco): US$329,714;

(h) Dutch Agro Products B.V. (Netherlands): nil;

(i) EEI Corporation (Philippines): US$52,224;

(j) Gestiones Reunidas de Construcción S.A. (GRECSA) (Spain): nil;

(k) Kvaerner Generator AB (Sweden): nil;

(l) Inpro AG K. Wirth (Switzerland): nil; and

(m) W.J. White Ltd. (United Kingdom): nil.

Geneva, 2 December 1998

(Signed) John A. Tackaberry
Chairman

(Signed) Pierre M. Genton
Commissioner

(Signed) Vinayak P. Pradhan
Commissioner
