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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS  
CONCERNING THE FIFTH INSTALMENT OF "F1" CLAIMS

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# Introduction

1. This is the sixth report (the "Report") submitted to the Governing Council of the United Nations Compensation Commission (the "Commission") pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules") 1/ by the Panel of Commissioners (the "Panel") appointed by the Governing Council at its twenty-first session on 22-23 July 1996 to review "F1" claims. 2/ This Report sets forth the Panel's determinations and recommendations to the Governing Council with respect to the fifth instalment of "F1" claims, comprising 16 claims (the "Claims") submitted by four Governments (collectively the "Claimants").

2. The fifth instalment was submitted to the Panel in accordance with article 32 of the Rules on 2 December 1999. The Claims seek compensation in the approximate original amount of 8,575,069,804 United States dollars ("USD"). The Claimants are listed in Table 1 below, together with the original and amended amounts of compensation claimed.

Table 1. Summary of amounts claimed in the fifth instalment  
of "F1" claims

<u>Claimant</u>	<u>Original amount</u> <u>claimed 3/</u> <u>(USD)</u>	<u>Amended amount</u> <u>claimed 4/</u> <u>(USD)</u>
Federal Republic of Germany - Ministry of Foreign Affairs <u>5/</u>	131,605,001	130,906,469
State of Israel - Consolidated Claim <u>6/</u>	1,071,000,000	1,071,300,000
Syrian Arab Republic - Central Bank of Syria	848,000,000	425,000,000
Syrian Arab Republic - Ministry of Defence	1,366,995,121	1,366,995,121
Syrian Arab Republic - Ministry of Economy and Foreign Trade	180,000,000	188,516,000
Syrian Arab Republic - Ministry of Finance	383,005,161	383,005,161
Syrian Arab Republic - Ministry of Health	58,978,000	59,362,142
Syrian Arab Republic - Ministry of Irrigation	462,222,220	465,625,000
Syrian Arab Republic - Ministry of Petroleum and Mineral Resources	360,000,000	360,000,000
Syrian Arab Republic - Ministry of Tourism	455,921,280	590,972,400
Republic of Turkey - Ministry of Public Works and Settlement, General Directorate of Highways	12,656,698	12,656,698
Republic of Turkey - Prime Ministry, General Directorate of Rural Services	55,937,337	55,937,337
Republic of Turkey - Ministry of National Defence	929,652,349	929,652,349
Republic of Turkey - Ministry of National Education	53,509	55,625
Republic of Turkey - Ministry of Tourism	1,395,006,573	1,395,006,573
Republic of Turkey - Central Bank of the Republic of Turkey <u>7/</u>	864,036,555	992,726,102
<u>Total</u>	<u>8,575,069,804</u>	<u>8,427,716,977</u>

## I. PROCEEDINGS

3. In accordance with article 16 of the Rules, the Executive Secretary of the Commission reported the Claims and their significant legal and factual issues to the Governing Council in the nineteenth, twentieth, twenty-third and twenty-eighth reports, dated 11 April 1997, 16 July 1997, 2 April 1998 and 23 July 1999, respectively. Those reports were circulated to all Governments and international organizations that had filed claims before the Commission and to the Government of the Republic of Iraq ("Iraq"). A number of Governments, including Iraq, submitted their information and views concerning the reports to the Commission. These responses have been considered by the Panel during its review of the Claims.

4. In April 1999, pursuant to article 36 of the Rules and after a competitive bidding process, the services of expert consultants in accounting and loss adjusting were retained to assist the Panel in the verification and valuation of the Claims. After a preliminary review of the Claims, notifications pursuant to article 34 of the Rules ("article 34 notifications") were issued to the Claimants in June 1999 requesting additional information and documents to assist the Panel in its review of the Claims.

5. Upon submission of the Claims to the Panel on 2 December 1999, procedural orders were issued informing the Claimants that their Claims were under review and had been classified as "unusually large or complex" within the meaning of article 38(d) of the Rules, and that, accordingly, the Panel would complete its review of the Claims and submit its report and recommendations thereon to the Governing Council within twelve months. At the instruction of the Panel, copies of the procedural orders were sent to Iraq.

6. The Panel considered that Iraq could provide information that would assist its review of the claim of the Central Bank of the Republic of Turkey and issued a procedural order directing that a copy of that claim as filed by the Republic of Turkey be transmitted to Iraq. In accordance with article 36 of the Rules, Iraq was invited to submit a response to the claim. A response was received from Iraq, and the Panel has considered the response during its review of the claim.

7. On 7 April 2000, the secretariat informed the Permanent Mission of Israel to the United Nations Office at Geneva of the Panel's intention to hold an on-site inspection of documents and materials to assist in the verification and valuation of its claim. An inspection team composed of members of the secretariat and the expert consultants visited Israel from 22 to 25 May 2000 to clarify questions arising from the review of the claim.

8. In the course of the review of the Claims, the Panel noted that some Claimants sought compensation for costs incurred in evacuating individuals,

for payments made to reimburse Government employees, civilians and/or corporations for loss of real and tangible property, and for support payments made to individuals who had lost their source of income as a result of Iraq's invasion and occupation of Kuwait. As the individuals and corporations concerned might themselves have filed claims with the Commission in categories "C", "D" or "E" for the same losses, in order to avoid multiple recovery of compensation across categories, the Panel instructed the secretariat to carry out cross-category checks to ascertain whether there was any duplication of claims. 8/

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

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

## II. LEGAL FRAMEWORK

11. In its report on part one of the first instalment of "F1" claims, the Panel discussed the legal framework within which it would decide the "F1" claims. 9/ The discussion covered the applicable law, the procedural requirements and evidentiary standard imposed on claimants, and the Panel's role in the proceedings. The Panel's findings concerning the applicable law, procedural requirements and evidentiary standard set out therein are also applicable to the Claims.

## III. VERIFICATION AND VALUATION

12. In applying the aforesaid procedural requirements and evidentiary standard to the Claims, the Panel undertook a careful examination of the claim forms, statements of claim and evidence filed by the Claimants as well as the materials submitted by Claimants in their responses to the article 34 notifications. The Panel found that, within many Claims, individual loss elements or portions thereof failed to meet the directness requirement as formulated in paragraph 16 of Security Council resolution 687 (1991), or the Commission's procedural requirements set out in the Rules, or the evidentiary standard also provided for in the Rules. In such cases, the Panel recommends that compensation should not be awarded.

13. With respect to the loss elements that the Panel considered compensable in principle, the Panel proceeded to verify that the losses had, in fact, been sustained and then proceeded to quantify such losses. In addition to verifying that the claimed losses had in fact been sustained, the Panel also considered the reasonableness of the Claimants' conduct and of the amounts claimed. For example, in the case of claims for

costs of evacuation on scheduled flights, the Panel only recommends compensation for one-way economy fares.

14. In some of the Claims, the documentary and other evidence submitted established that an alleged loss had, in fact, occurred. The evidence was insufficient, however, to support the full amount of the claimed loss. In such cases, the Panel, in conformity with general principles of law, exercised its discretion in assessing the amount of compensation to be recommended. In exercising such discretion, the Panel considered the level and type of evidence that should reasonably be required of a claimant given the circumstances prevailing at the time of the losses, particularly for those losses sustained in Iraq and Kuwait, and received advice from the expert consultants. 10/

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

#### IV. COMMON LEGAL ISSUES

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

##### A. Supplements or amended claims

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

##### B. Losses outside Kuwait or Iraq

18. Security Council resolution 687 (1991) refers to "any direct loss or damage" resulting from Iraq's invasion and occupation of Kuwait, but does not expressly indicate where such direct loss or damage should have occurred. Moreover, the decisions of the Governing Council do not limit the Commission's jurisdiction in terms of the place where the direct loss or damage was suffered. 12/ The Panel finds that there is no jurisdictional limitation, in principle, to the award of compensation for losses sustained outside Kuwait or Iraq. 13/

C. Military operations and threat of military action

19. The Panel considers that, given the nature of the Claims, the facts supporting many of the losses allegedly sustained outside Kuwait or Iraq are such that, in order for them to meet the requirement of directness, it must be demonstrated that they fall within the ambit of paragraph 34(a) of Governing Council decision 7, which provides as follows:

"34. These payments are available with respect to any direct loss, damage, or injury to Governments or international organizations as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991". 14/

20. The Panel has previously considered the meaning of paragraph 34(a). In the First Report, in the context of a Government's claim for evacuation costs of its citizens (primarily diplomats and their families) from countries other than Iraq and Kuwait, the Panel decided that a direct link can be shown where "actual military operations" or "an actual - as opposed to speculative - threat of military action" existed against the country from which individuals were evacuated. 15/ The Panel further stated, concurring with the "C" Panel, that a claim based upon an incident occurring outside Iraq or Kuwait needs to be more fully substantiated in order to establish the necessary causal link between Iraq's invasion and occupation of Kuwait and the alleged loss. 16/

21. In considering the issue, this Panel took account of, inter alia, the range and use of Iraqi Scud missiles during the period of Iraq's invasion and occupation of Kuwait, and the location of military operations conducted by either Iraq or the Allied Coalition Forces in countries other than Iraq and Kuwait. Based on its investigation, the Panel found that military operations or the threat of military action were directed against Saudi Arabia and Israel, in addition to Kuwait and Iraq. The Panel therefore decided that "the costs incurred by Governments in evacuating citizens from Saudi Arabia and Israel should be compensated on the same basis as those costs incurred by Governments in evacuating persons from Iraq or Kuwait". The Panel did not, however, recommend an award of compensation for costs of evacuating individuals from other countries in the Middle East, including Turkey, Iran and Syria. 17/

22. The "F2" Panel has also considered the meaning of paragraph 34(a) of Governing Council decision 7. In its first report, the "F2" Panel determined that, even though a State may not have been the subject of military operations or a threat of military action, an award of compensation may still be made in exceptional circumstances where military operations in Iraq or Israel could have had effects that spilled over and caused damage in an immediately adjacent land territory. 18/



#### D. Military costs

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

24. The Panel finds that the costs of a claimant's preparation for, participation in, or provision of support in relation to, the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait fall within the scope of Governing Council decision 19 and are therefore not eligible for compensation. The Panel further finds that the costs of a State's military response to Iraq's invasion and occupation of Kuwait, regardless of whether or not the State was a member of the Allied Coalition Forces, are military costs as contemplated by the Governing Council. 20/

25. The Panel considers that the fact that a claimant is a military entity, while a factor to be considered, is not determinative of the question of whether an asserted cost is a "military cost". Rather, the Panel must also examine the nature of the activity in respect of which the cost was incurred and the purpose of that activity. In this regard, the Panel finds that claims for protective measures undertaken by military entities are compensable, in principle, if those measures were for the benefit of the civilian population and are normally carried out in other countries by civilian entities.

#### E. Payments made or relief provided by Governments

26. A number of the Claimants seek compensation for payments made or relief provided to others. Paragraph 36 of Governing Council decision 7 provides that compensation is, in principle, available "to reimburse payments made or relief provided by Governments or international organizations to others ... for losses covered by any of the criteria adopted by the Council."

27. The Panel considers that the effect of this provision is to make compensable claims for payments made or relief provided by Governments in respect of losses for which the recipient would have been otherwise entitled to file a claim before the Commission, to the extent that the underlying losses are compensable in accordance with the criteria developed by the Commission. However, where the claims are for relief contributions made by Governments to intermediaries such as international organizations or other entities, the Panel considers that additional requirements must be met.

28. In the Fifth Report, the Panel noted, inter alia, that specific and non-regular relief contributions made by Governments are compensable,

pursuant to paragraph 36 of Governing Council decision 7, where three conditions are met. 21/ First, the purpose of the contribution must be to respond to a state of necessity in the form of a specific and urgent need that resulted directly from Iraq's invasion and occupation of Kuwait. Second, the contribution must have been for losses that are covered by any of the criteria adopted by the Governing Council. Third, the contribution must have been actually used to respond to the specific and urgent need. The Panel considers that the same requirements and conditions are applicable to the Claims.

#### F. Currency exchange rates

29. Some of the Claimants have sustained losses or stated their claims in currencies other than USD. Since the Commission issues awards in USD, the Panel is required to determine and to apply the appropriate rates of exchange. The Panel has consistently determined that applying the currency exchange rates as at the date of loss is the most appropriate method of calculating the applicable exchange rates. 22/

30. The Panel notes that the majority of the losses claimed in this instalment occurred quite regularly throughout the period of Iraq's invasion and occupation of Kuwait. However, in general, it is not possible to identify the precise date of their occurrence. Therefore, the Panel considers 16 November 1990, the mid-point of the invasion and occupation period, to be the most appropriate date for determining the applicable exchange rates in connection with the Claims, except as specified in the paragraph below.

31. The Panel considers that the rates of exchange used by the Government of the State of Israel ("Israel") to convert their losses sustained in new Israeli shekels ("NIS") into USD amounts represent reasonable approximations of the applicable market exchange rates prevailing at the relevant times. Therefore the Panel does not need to adopt a different exchange rate.

32. In calculating the rates of exchange used as at 16 November 1990 for currencies other than NIS, the Panel has, in accordance with previous practice, adopted and used the monthly exchange rates as reported in the United Nations Monthly Bulletin of Statistics of April 1991.

#### G. Interest

33. Certain of the Claims include a claim for interest on the principal amount claimed. In decision 16 the Governing Council stated that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." The decision added that "[t]he methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time" and that "[i]nterest will

be paid after the principal amount of awards". 23/ Thus, the Panel needs only to set the date from which interest will run.

34. The Panel determines that, for the same reasons that it adopted 16 November 1990 as the date of loss for the purpose of determining exchange rates for losses in currencies other than NIS, this same date should be used for calculating interest. However, with regard to the claim of Israel, the Panel finds that the losses for which compensation is sought by the Ministry of Finance occurred between 18 January and 25 February 1991. The Panel therefore determines that 6 February 1991, the mid-point of this period, is the appropriate date from which interest should run for the compensable losses of Israel's Ministry of Finance. 24/

35. Accordingly, 16 November 1990 is the date from which interest should run in respect of all compensable claims in this instalment other than that of Israel's Ministry of Finance, for which 6 February 1991 is the date from which interest should run.

#### H. Classification of loss types

36. The standard claim form for category "F" claims contains the following loss types: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs; public service expenditures; environmental damage; depletion of natural resources; and other. 25/ In the first instance, Claimants classified their losses pursuant to these loss types. On a number of occasions, after reviewing the Claimants' contentions and supporting documents, the Panel has considered it more appropriate to review a particular loss under a different loss type. The Claims are discussed below as reclassified.

V. THE CLAIMS

A. The Federal Republic of Germany

37. The Claim submitted by the Government of the Federal Republic of Germany ("Germany") includes claims for:

- a. Costs allegedly incurred in evacuating and relocating Germany's nationals, including its diplomatic staff, from Iraq and Kuwait and other countries in the Persian Gulf area in response to Iraq's invasion and occupation of Kuwait;
- b. Reimbursements to nationals for personal property lost as a result of Iraq's invasion and occupation of Kuwait;
- c. Reimbursements of certain salary payments and subsistence allowances;
- d. Damage to property belonging to Germany; and
- e. Humanitarian relief contributions made to international organizations and other entities.

1. Ministry of Foreign Affairs (UNCC Claim No. 5000105)

38. Germany's Ministry of Foreign Affairs (the "Claimant") originally sought compensation for six loss types, reclassified by the Panel as contract, real property, other tangible property, payment or relief to others, evacuation costs, and other, in the total amounts of DEM 204,771,954 and USD 509,000. However, by way of its article 34 response filed in September 1999 and a supplemental response filed in March 2000, the Claimant increased the total amount of DEM claimed to 223,417,784. The admissibility of these amendments to the quantum of the Claim is considered below in the discussion of the various loss types.

(a) Contract

(i) Facts and contentions

39. The Claimant originally sought compensation in the amount of DEM 1,414,887 for reimbursements that it allegedly made to diplomatic staff whose household goods were lost or damaged in Iraq and Kuwait. The reimbursements were made pursuant to statutory regulations governing the employment contracts of German diplomatic staff.

40. In its September 1999 response to the article 34 notification, the Claimant increased the amount of its claim for household goods reimbursements to DEM 1,641,909. In its supplemental response, however, the Claimant explained that in some cases it had sold the household goods of staff members in 1992 and used the proceeds to pay various Embassy expenditures. The Claimant therefore adjusted the "actual damage amounts" claimed for household goods reimbursements to DEM 1,415,341.

41. The Claimant also originally sought compensation in the amount of DEM 1,772,778 for "removal expenses" allegedly paid to or on behalf of its diplomatic staff evacuated from Iraq and Kuwait. The "removal expenses" consisted of the cost of shipping household effects out of Iraq and Kuwait following the liberation of Kuwait, and the cost of "rent compensation" paid in respect of diplomatic staff who incurred "double rent charges both inside and outside the crisis area". In its response to the article 34 notification, the Claimant increased the amount claimed in respect of "removal expenses" to DEM 1,868,302.

42. In its statement of claim, the Claimant also asserted that "[i]n the period from August 1990 to March 1991, compensation prescribed by pay regulations in the form of danger pay, rent compensation (rent for accommodation no longer used) and separation allowance (separation from family) was paid to the staff of the Embassies in Kuwait and Baghdad in the amount of DM 1,630,000.00". The Claimant stated that "[a]s of August 1990, the staff of the Embassies in the Gulf region, apart from Kuwait and Iraq, received danger pay as prescribed by law totalling DM 801,750.00". In its response to the article 34 notification, however, the Claimant noted that payments totalling only DEM 1,346,022 were made to German diplomatic staff "stationed in the Gulf region and the Mediterranean" in respect of rent compensation (DEM 694,122), separation allowance (DEM 351,986) and danger pay (DEM 299,914).

(ii) Analysis and valuation

43. The Panel finds that, in accordance with the principles set out in paragraph 17 above, the Claimant is not permitted to increase the amounts claimed by way of the article 34 claim development process. However, the Claimant's reduction to the original amount claimed in respect of rent compensation, separation allowance and danger pay is admissible. Therefore, the amount claimed in respect of contract losses is limited to DEM 4,533,687.

44. With regard to the claim for reimbursements paid to diplomatic staff whose household goods were lost or destroyed in Iraq and Kuwait, the Panel notes that in the Fourth Report it considered similar claims for indemnification made in respect of personal property losses. The Panel found such claims to be compensable, provided they were adequately supported by documentary and other appropriate evidence. 26/ The Panel determines that the same approach is applicable here and that, to the extent that they are supported by sufficient evidence, the household goods reimbursements are compensable, with appropriate adjustments for depreciation.

45. With regard to the claim for "removal expenses", the Panel determines that the cost of shipping household effects from Iraq following the liberation of Kuwait was a reasonable expense incurred in mitigating damage resulting from Iraq's invasion and occupation of Kuwait. Accordingly, this

cost is compensable, to the extent that it is supported by sufficient documentary and other appropriate evidence. 27/

46. The Panel finds, however, that the cost of shipping household effects from Kuwait after its liberation is not compensable. After Kuwait's liberation, the household effects in Kuwait were, in contrast to those in Iraq, no longer in jeopardy of being lost, damaged or destroyed, and therefore the cost of shipping them from Kuwait at that time was, in the Panel's view, an expense already provided for in the normal course of diplomatic relations.

47. Regarding the claims for "rent compensation" and "separation allowance" paid to Government officials and family members, the Panel notes that it has previously found that analogous subsistence allowances paid to such persons after their arrival in their home State are not compensable since they represent "payments for ongoing ordinary living expenses ... incurred after a person has left the region". 28/ For the same reason, the Panel finds that the claims for rent compensation and separation allowance payments are not compensable.

48. With regard to "danger pay", the Panel recalls that in its Fifth Report it considered a Government's claim for, inter alia, employee overtime and danger pay, that it incurred to operate its diplomatic and consular posts in Kuwait, Iraq, Saudi Arabia, Israel and Bahrain during the period from 2 August 1990 to 2 March 1991. The Panel found that the Government had incurred the employee overtime and danger pay expenses in the exercise of its "protective functions in times of emergency" and that the expenses were not therefore of such an extraordinary nature as to warrant their compensability. 29/ The Panel considers that the same reasoning is applicable here, and that, accordingly, the claims for danger pay are not compensable.

(iii) Recommendation

49. The Panel recommends an award in the amount of USD 889,564 (DEM 1,338,794) for contract losses.

(b) Real property

(i) Facts and contentions

50. The Claimant seeks compensation in the amount of DEM 202,653 for the costs it allegedly incurred in repairing damage caused to the security entrance, pavement and roller shutters of the chancery building at the German Embassy in Kuwait. It is asserted that Iraqi troops repeatedly occupied the Embassy's chancery during the period of Iraq's invasion and occupation of Kuwait, and that the damage was sustained in the course of such occupation.

(ii) Analysis and valuation

51. The Panel considers that the Claimant has established a causal link between the damage at its Embassy in Kuwait and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that the claimed repair costs are compensable to the extent that they are reasonable and are supported by sufficient documentary and other appropriate evidence. In this regard, the Panel finds that the Claimant has provided sufficient evidence to support only part of the amount claimed.

(iii) Recommendation

52. The Panel recommends an award of USD 2,814 (DEM 4,235) for real property losses.

(c) Other tangible property

(i) Facts and contentions

53. The Claimant originally sought DEM 54,068 as compensation for "cipher machines" and related items of equipment that allegedly "had to be rendered unserviceable for security reasons" on 23 August 1990 by its staff in connection with the evacuation of the German Embassy in Kuwait. However, in its response to the article 34 notification, the Claimant stated that total damages amounted to DEM 48,688.

(ii) Analysis and valuation

54. In its Fifth Report, the Panel considered a claim for the replacement value of communications equipment disabled by diplomatic staff for security reasons prior to the closure of a Government's missions in Kuwait and Iraq. The Panel found that, since the diplomatic staff were unable to protect the communications equipment in Kuwait and Iraq from damage or capture during the period of Iraq's invasion and occupation of Kuwait, the causal link between the Government's communications equipment losses and Iraq's invasion and occupation of Kuwait had been established. 30/

55. The Panel considers that this reasoning is applicable here. Accordingly, the Panel finds that, to the extent that the claim is supported by sufficient documentary and other appropriate evidence, it is compensable, adjustment being made for depreciation.

(iii) Recommendation

56. The Panel recommends an award of USD 3,235 (DEM 4,869) for other tangible property losses.

(d) Payment or relief to others

(i) Facts and contentions

57. The Claimant originally sought compensation for "[c]osts involved in granting humanitarian emergency and refugee assistance (Kurd aid)" in the total amounts of DEM 196,801,023 and USD 509,000. A list of the specific measures allegedly taken and costs incurred was included in the Claimant's original submission to the Commission. They included the direct provision of food, clothing, medicine, equipment and personnel by Germany, as well as relief contributions made to international organizations and other entities.

58. As part of its response to the article 34 notification, the Claimant submitted an amended list of the measures in respect of which it sought compensation, with amended total costs of DEM 216,436,874 and USD 509,000.

59. The measures appear to have been taken to assist: (1) non-Iraqi persons who left Iraq or Kuwait during or after the period of Iraq's invasion and occupation of Kuwait; and (2) Iraqi Kurds and other Iraqi refugees who left or sought to leave Iraq after the period of Iraq's invasion and occupation of Kuwait.

60. The Claimant also originally sought DEM 98,909 as compensation for "[e]vacuation costs (medicine, food, NBC protection equipment)" and DEM 26,747 as compensation for "[e]vacuation and ancillary costs for hostages from Iraq" (respectively, the "Protection claim" and the "Care claim"). In its response to the article 34 notification, the Claimant explained that costs totalling DEM 98,909.06 were incurred for "[m]edicines for German citizens in Iraq [DEM]35,157.48", "[f]ood for German community in Iraq [DEM]2,320.00" and "ABC protective gear including ABC antidotes and batteries for children of German communities in Abu Dhabi, Amman, Damascus, Doha, Dubai, Manama, Riyadh and Tel Aviv [DEM]61,431.58". The Claimant further stated that, with respect to the Care claim, costs totalling DEM 31,855.46 were incurred for "[w]inter clothing for German hostages in Iraq [DEM]26,463.00" and "[m]aterial for the care of German hostages in Iraq (e.g. short-wave radios, books) [DEM]5,392.46".

(ii) Analysis and valuation

61. The Panel finds that, in accordance with the principles set out in paragraph 17 above, the increased claim amounts for the "[c]osts involved in granting humanitarian emergency and refugee assistance (Kurd aid)" submitted by the Claimant in its response to the article 34 notification are time-barred. Similarly, the Panel finds that the Claimant's increase of the amount of the Care claim from DEM 26,747 to DEM 31,855 is also time-barred.

62. With regard to the claim for the "[c]osts involved in granting humanitarian emergency and refugee assistance (Kurd aid)", the Panel finds



that the compensability of each of the measures is to be determined in accordance with the considerations and requirements set forth in paragraphs 26-28 above. The following additional considerations are also applicable to these claims:

(a) Assistance or relief provided to assist Kurdish and other Iraqi refugees who fled Iraq after 2 March 1991 is not compensable, since such exodus of refugees was not a direct result of Iraq's invasion and occupation of Kuwait; 31/ and

(b) If the assistance or relief does not relate to a loss which occurred during the period of Iraq's invasion and occupation of Kuwait or a reasonable period immediately thereafter, then, absent an adequate explanation from the Claimant regarding the directness of the loss, such assistance or relief is not compensable. 32/

63. The Panel therefore determines that the claim for "[c]osts involved in granting humanitarian emergency and refugee assistance (Kurd aid)" is compensable only to the extent that the measures and costs concerned (1) satisfy the conditions and requirements set forth in paragraphs 26-28 above; (2) are not of the sort referred to in subparagraphs 62(a) and (b) above; and (3) are supported by sufficient documentary and other appropriate evidence.

64. With regard to the Protection claim and the Care claim, the Panel considers that, in accordance with reasoning expressed in the Third and Fourth Reports, claims for the costs of safety measures taken by Governments for the protection of individuals and property are compensable, provided that the safety measures constitute a reasonable form of protection and were taken in Iraq, Kuwait, Israel or Saudi Arabia. 33/ The Panel also considers that, consistent with its findings in the First Report, "temporary and extraordinary" living expenses that result from individuals' inability to leave Iraq or Kuwait during the period 2 August 1990 to 2 March 1991 are a direct result of Iraq's invasion and occupation of Kuwait. 34/

65. The Panel therefore finds that, to the extent they satisfy the requirements referred to in paragraph 64 above and are supported by sufficient documentary and other appropriate evidence, the Protection claim and the Care claim are compensable.

(iii) Recommendation

66. The Panel recommends an award in the amount of USD 3,366,803 (DEM 5,067,039) for payment or relief to others.

(e) Evacuation costs

(i) Facts and contentions

67. The Claimant seeks DEM 109,925 as compensation for evacuation costs allegedly paid to and/or on behalf of its diplomatic staff and their families who were evacuated from Kuwait and Iraq after 2 August 1990. The evacuation costs, which included transportation costs, unaccompanied luggage costs and daily and overnight accommodation allowances, were paid by the Claimant pursuant to statutory regulations governing the employment contracts of German diplomatic staff.

68. The Claimant also seeks DEM 366,956 as compensation for the costs it allegedly incurred to evacuate its diplomatic staff and their families from Abu Dhabi, Amman, Damascus, Doha, Manama, Riyadh and Tel Aviv in accordance with a "crisis plan to protect lives".

69. Additionally, compensation in the amount of DEM 950,171 is sought for the costs the Claimant allegedly incurred to evacuate both German and foreign nationals on six flights from Baghdad, Riyadh and Amman. <sup>35/</sup> These flights took place during September and November 1990, and January 1991.

(ii) Analysis and valuation

70. In the First and Third Reports, the Panel established a number of principles governing the compensability of claims for evacuation costs. <sup>36/</sup> The Panel determined, inter alia, that costs incurred by Governments in evacuating individuals from Iraq, Kuwait, Israel and Saudi Arabia during the period 2 August 1990 to 2 March 1991 are compensable, to the extent they are supported by sufficient documentary and other appropriate evidence. The Panel also determined that compensation should be awarded for costs incurred for necessities such as transport, accommodation, food and urgent medical treatment provided to evacuees, as well as for the costs of transporting the evacuees' baggage.

71. The Panel finds that the majority of the Claimant's evacuation costs fall within these principles. The evidence does not, however, support the full amount claimed. For example, the Panel notes that, in its response to the article 34 notification, the Claimant answered a request for invoices or other primary documents evidencing the costs allegedly incurred to evacuate diplomatic staff from Riyadh and Tel Aviv by stating that such documents "are not available".

(iii) Recommendation

72. The Panel recommends an award in the amount of USD 641,884 (DEM 966,035) for evacuation costs.

(f) Other

(i) Facts and contentions

73. The Claimant seeks DEM 542,087 as compensation for various losses and damage sustained by German schools in Kuwait, Baghdad, Riyadh, Abu Dhabi and Cairo, and by "cultural institutions" in Israel "[i]n connection with the invasion of Kuwait by Iraqi troops". The Claimant is claiming for:

- a. Reimbursement of personal property, salary and rent losses sustained by teachers and administrative officials employed at the German schools and cultural institutions;
- b. Reimbursement of travel and relocation expenses incurred by teachers and administrative officials;
- c. Damage and destruction of school property in Kuwait; and
- d. Loss of school fees and other income.

74. The claim for rent losses is in respect of a DEM 25,000 rent deposit that was retained and used by a teacher's landlord in Kuwait to set-off rent not paid by the teacher during her absence from Kuwait after 1 August 1990. The Claimant effectively reimbursed the teacher in October 1992 for the loss of her rent deposit by waiving the repayment of DEM 25,000 owed by the teacher on a loan granted to her by the Claimant in May 1990.

(ii) Analysis and valuation

75. With respect to the claim for reimbursements for personal property losses, the Panel considers that the principles and guidelines set out in paragraph 44 above are applicable. Therefore, to the extent that they are supported by sufficient evidence, the personal property reimbursements are compensable, with appropriate adjustments for depreciation.

76. With respect to the claims for reimbursements for salary losses, the Panel finds that the Claimant did not provide sufficient evidence in support of these claims to permit the Panel to verify or quantify the losses claimed. Consequently, these claims are not compensable.

77. With respect to the claim for rent losses, the Panel finds that the Claimant's reimbursement of the teacher's rent deposit constituted an ex gratia payment for a loss that was not a direct loss resulting from Iraq's invasion and occupation of Kuwait. As such, the claim for rent losses is not compensable.

78. The Panel considers that the claims for reimbursements of travel and relocation expenses incurred by the teachers and administrative officials employed at the German schools and cultural institutions are compensable, to the extent that they fall within the principles for the compensability of evacuation costs discussed in paragraph 70 above.

79. With regard to the claims for damage and destruction to school property in Kuwait, the Panel finds that the Claimant did not provide sufficient evidence to permit it to verify or value the losses claimed. Consequently, these claims are not compensable.

80. The Claimant was unable to provide any evidence in support of all but one of its claims for the loss of school fees and other income. The one exception concerned the German school in Abu Dhabi, where nine families were refunded school fees for the period from February to April 1991. The Panel finds, however, that since this loss of school fees was sustained in a geographic area that it has not found to be subject to military operations or threat of military action, it is not compensable.

(iii) Recommendation

81. The Panel recommends an award of USD 27,528 (DEM 41,430) for other losses.

2. Recommendation for the Federal Republic of Germany

82. Based on its findings regarding the Claim of the Federal Republic of Germany, the Panel recommends compensation in the amount of USD 4,931,828.

Table 2. Recommended compensation for the Federal Republic of Germany

<u>Loss type</u>	<u>Review amount 37/ (original currency) (DEM)</u>	<u>Review amount (USD)</u>	<u>Recommended compensation (USD)</u>
Contract	4,533,687	2,902,489	889,564
Real property	202,653	129,739	2,814
Other tangible property	48,688	31,170	3,235
Payment or relief to others	196,926,679 and USD 509,000	126,582,418	3,366,803
Evacuation costs	1,427,052	913,606	641,884
Other	542,087	347,047	27,528
<u>Total</u>	203,680,846 and USD 509,000	130,906,469	4,931,828

B. The State of Israel

83. The Claim submitted by Israel (the "Claimant") includes claims for:

- a. Costs allegedly incurred for reimbursing real and tangible property damage caused by Scud missile attacks launched by Iraq in January and February 1991;
- b. Costs incurred in respect of Israel's military response to Iraq's invasion and occupation of Kuwait; and
- c. Costs incurred to implement precautionary and protective measures in Israel during the period of Iraq's invasion and occupation of Kuwait.

1. Consolidated Claim (UNCC Claim No. 5000062)

84. The Claimant seeks compensation totalling USD 1,059,300,000 <sup>38/</sup> for costs incurred by three Government ministries: the Ministry of Finance (USD 103,000,000); the Ministry of Defence (USD 909,000,000); and the Ministry of Health (USD 47,300,000). The claims of the three ministries, as reclassified by the Panel, are addressed in turn below.

85. On its claim form, the Claimant acknowledged that it had received a grant of USD 650,000,000 from the Government of the United States of America ("United States") in May 1991. The Panel's consideration of the grant is discussed below, following its review of the claims of the three ministries.

(a) Ministry of Finance

(i) Payment or relief to others

a. Facts and contentions

86. The Ministry of Finance (the "MOF") seeks compensation in the amount of USD 103,000,000 <sup>39/</sup> for reimbursement of payments that were made from its Property Tax Compensation Fund (the "Tax Fund") to persons who suffered real and tangible property damage as a result of Iraqi Scud missile attacks. According to the MOF, Iraq launched a total of 38 Scud missiles against the territory of Israel during the period 18 January to 25 February 1991, resulting in damage to the structure and contents of thousands of buildings in Israel.

87. The Property Tax and Compensation Fund Law <sup>40/</sup> (the "Fund Law"), passed in 1961, established a programme and fund for the payment of real and personal property damage arising from, inter alia, "war damage", defined as "damage caused to the substance of a property as a result of warlike operations by the regular armies of the enemy or as a result of other hostile acts against Israel or as a result of warlike operations by the Israel Defence Forces". The funding for the payments was derived from

property taxes levied against landowners in Israel and deposited each year into the Tax Fund pursuant to the Fund Law.

88. In accordance with the provisions of the Fund Law, and immediately following the first Scud missile attacks, the MOF began to administer a compensation scheme that assessed, processed and paid the "war damage" claims of Israelis whose homes and chattels had been damaged or destroyed by Iraqi Scud missiles. Claims were required to be filed within one month of the date on which the Scud missile damage occurred. Officials of the Tax Fund, with the assistance of loss adjusters and surveyors, were then required to make expedited decisions in each case regarding the right to compensation under the Fund Law, the repair of the damage and the amount of compensation.

89. The payments from the Tax Fund were made either directly to individual claimants to repair or replace their property or to contractors appointed by the Tax Fund to reconstruct or repair damaged property. According to the MOF, all payments made directly to individual claimants included Israel's value added tax ("VAT"), the rate of which was set at 18 per cent during 1991; however, VAT was not included in payments made directly to contractors.

90. In support of its claim, the MOF provided computer-generated lists detailing more than 15,000 payments that were allegedly made from the Tax Fund to or on behalf of individual claimants who suffered property damage as a result of Iraqi Scud missile attacks. The MOF also provided copies of the Fund Law and its regulations, relevant pricing indexes, representative claim files and contemporaneous photographs of damaged areas.

b. Analysis and valuation

91. The Panel considers that each of the individuals or entities who suffered real or tangible property damage in Israel as a result of Iraqi Scud missile attacks could have filed a claim before the Commission for that damage under categories "C", "D" or "E". The Panel also considers that each such claim would be compensable in principle pursuant to paragraph 34(a) of Governing Council decision 7. Accordingly, the Panel finds that, for the reasons set out in paragraphs 26-28 above, the claim for reimbursement of payments made from the Tax Fund to persons who suffered real or tangible property damage as a result of Iraqi Scud missile attacks against Israel is compensable in principle.

92. The Panel also finds, however, that while the compensation scheme was reasonable and administered generally in accordance with the Fund Law provisions, the evidence provided by the MOF does not support the full amount claimed. The claim files indicate that, in some instances, repair work to damaged buildings was overpriced, and in other instances that insufficient adjustments were made for depreciation of tangible property. Therefore, the Panel has made an adjustment to the amount claimed.

93. In addition, the Claimant provided no evidence in support of its statement that VAT was not included in the compensation payments made directly to contractors. In the absence of such evidence, an additional adjustment has been made in order to account for VAT.

94. The Panel recognizes that the underlying loss to the Israeli property owners included the property taxes that had already been collected and deposited into the Tax Fund. As such, the Panel has made no adjustment for property taxes received into the Tax Fund. 41/

c. Recommendation

95. The Panel recommends compensation in the amount of USD 69,800,000 to the MOF for payment or relief to others, subject to paragraphs 147 and 150 below.

(b) Ministry of Defence

(i) Public service expenditures

a. Facts and contentions

96. The Ministry of Defence (the "MOD") originally sought USD 910,000,000 as compensation for incremental defence expenditures allegedly incurred as a result of Iraq's invasion and occupation of Kuwait. However, this amount appears to be an arithmetical error on the face of the statement of claim, since the component items total USD 909,000,000 42/. The claim is broken down as follows:

- a. Air Force - USD 182,000,000;
- b. Intelligence and Early Warning - USD 46,000,000;
- c. Ground Forces - USD 201,000,000;
- d. Navy - USD 5,000,000;
- e. Civil Defence - USD 325,000,000; and
- f. Defence expenditures for March and April 1991 - USD 150,000,000.

97. According to the MOD, although Israel was not a member of the Allied Coalition Forces and did not participate in their military response to Iraq's invasion and occupation of Kuwait, the Israeli Defence Forces (the "IDF") entered into an advanced state of alert during this period and initiated or intensified certain "defensive" actions described below. The MOD states that the costs of these actions were primarily covered by budget increases beyond the original or normal budget, with the majority of the costs being incurred in fiscal year 1990, which ended in March 1991.

98. The MOD contends that none of the claimed costs should be considered as military costs. It alleges that the sole purpose of the actions taken

by the IDF and the Civil Defence Authority, a civilian authority which operates in close co-ordination with the IDF, during the period of Iraq's invasion and occupation of Kuwait, was to protect the civilian population of Israel.

99. The MOD also contends that the actions taken by the IDF and the Civil Defence Authority represented a more practical and less costly alternative to the evacuation of the Israeli civilian population from Israel's cities. It asserts that the costs of such an evacuation of the Israeli civilian population would have been compensable under the Commission's guidelines, and therefore the less costly alternative should also be compensable.

100. While the MOD's budgets generally include taxes, the MOD states that "due to several reasons (such as exemption of customs for defence import, tax relief for developing areas, no tax effects of payments to reservists, and the economic situation prevailing at that time), the actual tax paid from the defence budget is relatively low." The MOD estimates that the amount of taxes included in its claim is less than 10 per cent of the claim amount and asserts that the large majority of these taxes were for VAT.

i. Air Force

101. The MOD alleges that the actions of its Air Force intensified based on intelligence analyses regarding the launch of Iraqi ballistic missiles and the penetration of Iraqi aircraft into Israeli airspace. As a result, the Air Force's use of aircraft, flight hours, spare parts, communications equipment, Patriot missile defence batteries, and reserve forces increased significantly during this period, and the Air Force allegedly incurred incremental costs of USD 182,000,000 in respect thereof.

ii. Intelligence and Early Warning

102. The MOD also alleges that the actions of its Intelligence Forces intensified during the invasion and occupation period, and that additional items of equipment, spare parts, communications lines and computerized systems were purchased and used to assist with the early identification of Iraqi missile launches and aircraft penetrations into Israeli airspace. As a result, the Intelligence Forces allegedly incurred incremental costs of USD 46,000,000.

iii. Ground Forces

103. The MOD asserts that the actions of its Ground Forces also intensified. It claims that incremental costs were incurred in the general logistical areas of transportation, communications, training, and construction and fortification of installations, and states that additional items of equipment, ammunition, food and biological-chemical protective equipment were purchased for use by Ground Forces personnel. The MOD also asserts that the Ground Forces increased their utilization of reserve



forces during and as a result of Iraq's invasion and occupation of Kuwait. The Ground Forces allegedly incurred incremental costs of USD 201,000,000.

iv. Navy

104. According to the MOD, its Navy incurred incremental costs of USD 5,000,000 as a result of the actions it undertook to fortify its bases and protect its personnel against conventional and biological-chemical attacks by Iraq. These actions allegedly included the purchase of biological-chemical detection kits and air filtering kits, and the installation of "announcement" and "fire control" systems. The Navy also increased the deployment of its ships in order to protect them from being damaged by Iraqi missile attacks, and expended USD 100,000 to repair the damage caused by an Iraqi Scud missile to the roofs, windows, doors and walls of a number of buildings at a naval base.

v. Civil Defence

105. The MOD further asserts that incremental costs of USD 325,000,000 were incurred by the Civil Defence Authority as a result of the protective measures it undertook during and as a result of Iraq's invasion and occupation of Kuwait. These measures included:

- a. Distribution of biological-chemical protective kits (including gas masks and anti biological-chemical injections) to the population in Israel;
- b. Rental of warehouse space for protective kit storage;
- c. Procurement and maintenance of siren systems;
- d. Preparation and maintenance of biological-chemical and conventional shelters;
- e. Production and distribution of posters, leaflets and videotapes regarding the usage of biological-chemical protective kits;
- f. Establishment of a public information centre;
- g. Purchase of fire extinguishing and rescue equipment; and
- h. Computerization of protective kit distribution and renewal information.

106. According to the MOD, the Civil Defence Authority also increased its utilization of reserve forces to assist with the implementation of protective measures undertaken during the period of Iraq's invasion and occupation of Kuwait.

107. The Civil Defence Authority claim is based on budget requests received by the MOD at the beginning of 1991. Except for incremental costs

of the reserve forces, the MOD's general calculation of the incremental costs for the Civil Defence Authority claim is based on a comparison of the actual Civil Defence Authority budgets for fiscal years 1990-1994 and the average annual budget of the Civil Defence Authority during fiscal years 1985-1989.

108. According to the MOD, due to budgetary difficulties, the incremental costs were spread over a five-year period from 1990-1994. For example, the MOD states that the costs of replacing gas mask filters and batteries used during the period of Iraq's invasion and occupation of Kuwait were primarily covered in Civil Defence Authority budgets after 1990.

109. The MOD contends that the budget requests it received on behalf of the Civil Defence Authority at the beginning of 1991 are consistent with the "excess" budget utilized by the Civil Defence Authority during the fiscal years 1990-1994. The MOD also contends that the "excess" budget from each of these years represents incremental costs that were incurred as a direct result of Iraq's invasion and occupation of Kuwait. The MOD admits, however, that it is unable to demonstrate that the costs of sirens and shelters in 1992-1994, totalling USD 27,000,000, were "directly related to the crisis", and not merely the result of lessons learned therefrom.

110. With respect to the incremental costs of the reserve forces, the MOD alleges that an additional 434,800 "reserve duty days" were utilized by the Civil Defence Authority in fiscal year 1990 at a cost of USD 76 per reserve duty day. This cost was based on the compensation paid to a reservist for loss of a work day and the cost of providing a reservist with food, transportation and other basic necessities. The MOD multiplied the number of additional reserve duty days by the cost of a reserve duty day in 1990 in order to arrive at the round figure of USD 33,000,000 included in the Civil Defence Authority claim of USD 325,000,000.

vi. Defence expenditures for March and April 1991

111. The MOD states that during March and April 1991, following the liberation of Kuwait, a "certain state of alert" continued within the IDF as concerns of renewed hostilities by Iraq and possible missile launches remained. As a result, the IDF allegedly incurred incremental costs of "approximately" USD 150,000,000 during this two-month period. The MOD asserts that these incremental costs were covered by "internal sources", such as the cancellation of training and the depletion of stocks, but it also states that "it is not possible to give a detailed list of actions and costs" due to the time that has passed.

b. Analysis and valuation

112. Paragraph 34(a) of Governing Council decision 7 provides that any loss, damage or injury suffered by a Government as a result of "[m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991" is a direct loss for which Iraq is liable.

However, as noted in paragraphs 23-25 above, claims for "military costs", including those of States that were not members of the Allied Coalition Forces, are not eligible for compensation by the Commission.

113. The Panel finds that the claims for the incremental costs of the Israeli Air Force, Intelligence Forces, Ground Forces and Navy in the total amount of USD 434,000,000 are claims in respect of Israel's military response to Iraq's invasion and occupation of Kuwait. This includes the claim for damage caused to a number of buildings at an Israeli naval base, since the evidence indicates that this naval base was, at the time of the damage, mobilized as part of Israel's military response to Iraq's invasion and occupation of Kuwait. For the reasons stated in paragraphs 23-25 above, these claims constitute claims for military costs and are not, therefore, eligible for compensation.

114. The MOD's assertion that the actions of the IDF and the Civil Defence Authority represented a more practical and less costly alternative to the evacuation of the Israeli civilian population from Israel's cities is not supported by any evidence. Indeed, nothing in the documentation or other evidence submitted suggests that such an alternative was considered by the Claimant during the period of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that no further consideration of this assertion is required.

115. With regard to the USD 150,000,000 claim for incremental costs incurred by the IDF in March and April 1991, the MOD did not, despite a request in the article 34 notification, provide any specific information regarding the nature of these costs. In the absence of such information, the Panel is unable to determine whether any portion of the claim is compensable in principle, nor is it able to verify or value a loss. Consequently, the Panel recommends no award of compensation for this portion of the Claim.

116. With regard to the USD 325,000,000 claim for Civil Defence Authority costs, the Panel has previously decided that claims for the costs of measures undertaken by Governments for the protection of individuals and/or property are compensable, provided that such measures were directly related to Iraq's invasion and occupation of Kuwait, were a reasonable form of protection, and were undertaken in either Iraq, Kuwait, Saudi Arabia or Israel. 43/ The Panel considers that these previous decisions are applicable here and finds that the actions undertaken by the Civil Defence Authority during the period of Iraq's invasion and occupation of Kuwait were, in view of the military operations and threat of military action directed against Israel, reasonable measures taken to protect the lives and property of Israeli nationals. 44/

117. The Panel has previously drawn a distinction between general expenditures and expenditures directly incurred in providing assistance to others. 45/ This reasoning applies to the Civil Defence Authority claim

for incremental reserve forces costs incurred during the period of Iraq's invasion and occupation of Kuwait. These costs are compensable, since reservists participated in the distribution of biological-chemical protective kits and other measures taken to protect the lives and property of civilians.

118. The Panel considers that the evidence establishes that the Claimant incurred incremental Civil Defence Authority costs during the period of Iraq's invasion and occupation of Kuwait. However, the Claimant did not provide sufficient evidence to support the full amount claimed. Therefore, after first deducting the USD 27,000,000 claimed for siren and shelter costs in 1992-1994, the Panel has made appropriate adjustments to account for evidentiary deficiencies.

119. A further adjustment has been applied to the amount of the Civil Defence Authority claim to account for taxes, including VAT, that were eventually collected and remitted back to the Claimant.

c. Recommendation

120. The Panel recommends compensation in the amount of USD 161,200,000 to the MOD for public service expenditures, subject to paragraphs 148 and 150 below.

(c) Ministry of Health

(i) Payment or relief to others

a. Facts and contentions

121. The Ministry of Health (the "MOH") originally sought compensation in the amount of USD 47,000,000 for reimbursement of incremental costs incurred by the health establishment in Israel as a result of precautionary measures mandated in January and February 1991. In December 1997, the MOH increased the total amount of its claim to USD 47,300,000. 46/

122. The MOH asserts that on 16 January 1991, the Supreme Hospitalization Authority, a body established by the MOH that sets hospitalization and health care policy in Israel during times of emergency, issued a number of directives instructing health care workers to be on 24-hour standby and directing hospitals to operate at reduced bed-occupancy rates. The Supreme Hospitalization Authority also issued directives instructing hospitals in Israel to activate their biological-chemical casualty facilities, close outpatient clinics and stop performing elective surgery. The goal of the directives was to ensure that the Israeli health care system would be prepared, if necessary, to absorb large numbers of casualties resulting from Iraqi Scud missile attacks. According to the MOH, the operative "status of alert" period of these directives did not extend beyond 27 February 1991.

123. The MOH asserts that, as a result of the Supreme Hospitalization Authority's directives, various public, private and Government health care institutions in Israel incurred additional operating costs and revenue losses. Following the end of the "status of alert" period, these health care institutions submitted loss reports requesting compensation from the MOH. The MOH, in turn, assessed the reports and compensation requests and allocated reimbursements to the institutions. The notifications of reimbursements to be paid to the health care institutions were sent by the MOH in March 1991. The stated reimbursements were less than the costs claimed because, according to the MOH, it had received only a restricted allocation of monies from the MOF for the purpose of compensation. The MOH seeks compensation from the Commission only in respect of the reimbursements that were paid to health care institutions.

124. The MOH asserts that Government-operated hospitals were reimbursed in total amounts as follows:

- a. USD 14,700,000 for incremental "manpower" (i.e., overtime and standby pay) costs incurred during the "status of alert" period;
- b. USD 7,600,000 for income losses sustained as a result of reduced bed-occupancy and therefore reduced billings during the "status of alert" period;
- c. USD 2,100,000 for incremental operating costs, including costs incurred to activate biological-chemical casualty facilities and seal rooms against biological-chemical warfare during the "status of alert" period; and
- d. USD 300,000 for costs incurred to operate childcare facilities for the children of hospital staff who had to work overtime.

125. The MOH also asserts that Government-operated psychiatric hospitals were reimbursed USD 1,200,000 for incremental operating costs incurred during the "status of alert" period; that Government-operated community centres were reimbursed USD 300,000 for incremental costs they incurred in providing additional psychiatric services to persons with anxiety; and that Government-operated geriatric centres were reimbursed for income losses and incremental operating costs incurred during the "status of alert" period in the amount of USD 1,900,000.

126. Incremental operating costs totalling USD 1,300,000 were also allegedly incurred by and reimbursed to public medical institutions, such as the Hadassah Medical Center and Magen David Adom, as well as private medical institutions. In addition, the MOH alleges that the Clalit Sick Fund, a non-government health insurance and medical care provider in Israel, incurred and was reimbursed for incremental "manpower" costs, operating costs and drug procurement costs totalling USD 5,400,000.

127. The MOH asserts that Israel's Emergency Services Division, which assists in emergency and security matters in Israel, "had to increase the extent of its activity during the time of the war, including the extent of manpower employed". As a result, the MOH allegedly reimbursed the Emergency Services Division in an amount of USD 200,000 for incremental operating costs.

128. The MOH asserts that it purchased large quantities of special equipment and medications capable of treating casualties of biological-chemical attacks. Although the MOH states that there was ultimately no need to use these purchases, it also asserts that "they could not be used for any other purpose after the war, and after a time were all time-expired and had to be destroyed". The MOH seeks USD 8,000,000 as compensation for the cost of the special equipment and medications.

129. Finally, the MOH asserts that following the liberation of Kuwait, legal proceedings were commenced by Israeli health care workers demanding compensation for the overtime work they had performed during the "status of alert" period. These legal proceedings were settled in May 1991. Pursuant to the terms of the settlement agreement, the MOH was required to compensate health care workers for their "emergency period work". The MOH asserts that it paid a total of USD 4,300,000 pursuant to the terms of this settlement. The MOH did not, however, explain whether this claim overlaps with the USD 14,700,000 claim for incremental "manpower" costs incurred by Government-operated hospitals.

b. Analysis and valuation

130. The Panel considers that, as discussed in paragraphs 26-28 above, the effect of paragraph 36 of Governing Council decision 7 is to render compensable claims for payments made by Governments in respect of losses for which the recipients themselves would have been entitled to file a claim before the Commission, to the extent that the underlying losses satisfy the directness requirement.

131. The Panel also considers that the precautionary measures undertaken during the period of Iraq's invasion and occupation of Kuwait to ensure that the Israeli health care system would be ready, if necessary, to absorb large numbers of victims of Iraqi missile attacks were reasonable. The Panel therefore finds that the reimbursements allocated by the MOH to Israeli health care institutions in respect of the costs they incurred as a result of the Supreme Hospitalization Authority directives are compensable in principle.

132. The Panel finds, however, that the evidence provided by the MOH does not permit it to determine whether the relevant Israeli health care institutions actually incurred all of the underlying costs in respect of which the MOH allocated reimbursements, or whether all such costs were in fact incremental. In addition, the MOH failed to provide proof of payment for many of the reimbursements and other costs for which it is seeking

compensation. Accordingly, the Panel has made adjustments to account for these evidentiary deficiencies.

c. Recommendation

133. The Panel recommends compensation in the amount of USD 26,600,000 to the MOH for payment or relief to others, subject to paragraphs 149 and 150 below.

(d) Other compensation or recovery

(i) Facts and contentions

134. The category "F" claim form asks whether the Government or international organization has received any compensation, whether in funds or in kind, from any source. If the answer to this question is in the affirmative, the claim form requests that the Government or international organization attach a separate statement that lists the amount and source of compensation and indicates with respect to which loss or losses such compensation was received.

135. On its claim form, the Claimant acknowledged that it had received compensation from another source. In an appendix attached thereto, the Claimant stated that:

"In May 1991 the US Government has granted the State of Israel an amount of USD 650 million to cover the following estimated losses:

	<u>USD million</u>	
- Additional Defense Expenditures	500	
- Property Tax Compensation Fund	100	
- Additional costs to Health Establishment	<u>50</u>	
TOTAL	<u>650</u>	"

136. The article 34 notification requested that the Claimant indicate whether the grant total had been deducted from the amount of the Claim, explain the reason for the grant and provide documents evidencing payment of the grant. In response, the Claimant provided a document titled "US Grant to Israel in Connection with the Gulf War" which stated, in part, that:

"The contention of Israel is that the US grant was given on a wide basis of the social, economic, and political needs of Israel at the time in which the crisis occurred. The calculation of the grant in relation to the specific items of expenditure (outlined in Appendix 2 to Israel's claim form) was made merely in order to arrive at some final figure, while still recognising that Israel's expenses were much greater, and the grant as a whole may go towards covering the overall Israeli expenses."

137. In a supplemental response, the Claimant stated that, though the global sum of the grant was calculated on the basis of certain expenses as outlined in the appendix to the original claim, the grant was intended to cover "the general financial burden that resulted from the war". The Claimant asserted further that, as with other grants from the United States, the "funds were put into ESF (Economic Support Fund) account in the Bank of Israel, and were credited to the general revenues of the government". The Claimant continued as follows:

"Needless to mention that the amounts allotted in the expenditure side of the budget in FY 1991/1992 to cover expenses, which were [a] direct result of the Gulf War, were much higher, and were met as the need arose. The majority of these expenses were mentioned in Israel's claim before the Commission."

138. The grant was included in legislation passed in the United States in April 1991. Chapter III of Title I of the "Dire Emergency Supplemental Appropriations for Consequences of Operation Desert Shield/Desert Storm, Food Stamps, Unemployment Compensation Administration, Veterans Compensation and Pensions, and Other Urgent Needs Act of 1991" 47/ (the "Appropriations Act") reads, in part, as follows:

"For an additional amount for the 'Economic Support Fund', \$850,000,000, to provide for additional costs resulting from the conflict in the Persian Gulf, of which \$650,000,000 shall be made available only for Israel, ... Provided, That such sums shall be made available on a grant basis as cash transfers and shall remain available for obligation until September 30, 1991: Provided further, That such sums may be used by Israel ... for incremental costs associated with the conflict in the Persian Gulf, notwithstanding section 531(e) of the Foreign Assistance Act of 1961."

139. Section 531(e) of the Foreign Assistance Act of 1961 states that "amounts appropriated to carry out this chapter shall be available for economic purposes and may not be used for military or paramilitary purposes". The fact that waiver of section 531(e) was provided for indicates that the grant could be used for a military purpose.

140. At the request of the Panel, and in order to ascertain the donor's intent, the secretariat requested that the United States provide contemporaneous documents explaining the reason for the grant. In its response, the United States enclosed a number of contemporaneous Senate Committee Reports, House of Representatives Committee Reports and Statements of Administration Policy issued in connection with the passage of the Appropriations Act.



141. According to the United States:

"The above-referenced documents indicate that the purpose of the cash grant was to provide Israel with 'assistance as reimbursement for the incremental Israeli defense costs of the Gulf War'. (See Statement of Administration Policy (House Rules), March 6, 1991 at p.5; Statement of Administration Policy (House Floor), March 7, 1991 at page 5; and Statement of Administration Policy (Senate Floor), March 19, 1991 at page 19); and further that the cash grant was in response 'to a request from the Government of Israel for assistance in meeting extraordinary defense and related costs arising from the war'. (See Senate Committee Report, 102 S.Rpt. 24, at page 11)."

(ii) Analysis and valuation

142. Paragraph 3.b. of Governing Council decision 13 provides that:

"When the Commission learns, either through information provided by the claimant or through other means, and before paying compensation from the Fund, that a claimant in categories 'C', 'D', 'E' and 'F' has received compensation elsewhere for the same loss, the amount already received will be deducted from the compensation to be paid from the Fund to that claimant for the same loss." 48/

143. The Panel has previously deducted financial contributions received by a Government from other sources from the total amount of evacuation costs and repatriation relief costs that it would have otherwise recommended for compensation. 49/ These deductions were based on the Panel's findings that each of these financial contributions had been provided to the Government in question in order to offset the same costs (i.e. evacuation and repatriation relief) that the Panel would have otherwise recommended for compensation.

144. Here the Panel finds that both the basis for the Claimant's request for assistance from the United States and the stated purpose of the grant was to cover the Claimant's incremental costs associated with Iraq's invasion and occupation of Kuwait. The Panel also finds that the Claimant received assistance from the United States for the same incremental costs that form the subject of the Claim.

145. The Panel notes that the Claimant, subsequent to its initial statement as to the allocation of the grant, asserted that the grant funds were, upon receipt, credited to its general revenues. However, the Panel finds that the Claimant's initial statement is the best evidence regarding the allocation of the grant.

146. Accordingly, the Panel finds, relying on the Claimant's initial statement, that out of the USD 650 million grant, USD 100 million was

provided to the Claimant to offset the same costs claimed by the MOF, USD 500 million was provided to offset the same costs claimed by the MOD, and USD 50 million was provided to offset the same costs claimed by the MOH. However, not all of these costs have been found by the Panel to be compensable. In accordance with paragraph 3.b. of Governing Council decision 13, the Panel finds that the total amount of the grant should be apportioned between compensable and non-compensable components of the Claim in such a manner that no portion of the grant provided to offset non-compensable costs is deducted from the total amount that the Panel has recommended for compensation.

147. The Panel notes that the total amount of its recommended award for the MOF is USD 69,800,000. This figure is 67.767 per cent of the asserted MOF claim of USD 103 million. Accordingly, 67.767 per cent of the USD 100 million provided to offset the costs claimed by the MOF, which is USD 67,767,000, is the amount that should, in the Panel's view, be deducted from the amount recommended for the MOF.

148. Similarly, the Panel notes that the total amount of its recommended award for the MOD is USD 161,200,000, which is 17.734 per cent of the asserted MOD claim of USD 909 million. Accordingly, in the Panel's view, 17.734 per cent of the USD 500 million provided to offset the costs claimed by the MOD, which amounts to USD 88,670,000, is the amount that should be deducted from the amount recommended for the MOD.

149. With respect to the MOH claim, the Panel notes that the total amount of its recommended award is USD 26,600,000. This is 56.237 per cent of the total amount claimed in respect of the MOH. Therefore, in the Panel's view, 56.237 per cent of the USD 50 million provided to offset the costs claimed by the MOH, which amounts to USD 28,118,500, is the amount that should be deducted from the amount recommended for the MOH.

(iii) Recommendation

150. Based on the foregoing, the Panel recommends that USD 67,767,000 be deducted from the USD 69,800,000 recommended amount for the MOF; that USD 88,670,000 be deducted from the USD 161,200,000 recommended amount for the MOD; and that USD 28,118,500 be deducted from the USD 26,600,000 recommended amount for the MOH.

2. Recommendation for the State of Israel

151. Based on its findings regarding the Claim of the State of Israel, the Panel recommends a total net award in the amount of USD 74,563,000, after deduction of the set-off amounts referred to in paragraph 150 above.

Table 3. Recommended compensation for the State of Israel

<u>Loss type</u>	<u>Review amount</u> <u>(original</u> <u>currency)</u> <u>(USD)</u>	<u>Recommended</u> <u>amount prior</u> <u>to set-off</u> <u>(USD)</u>	<u>Set-off</u> <u>amount 50/</u> <u>(USD)</u>	<u>Recommended</u> <u>compensation</u> <u>(USD)</u>
(a) Ministry of Finance				
Payment or relief to others	103,000,000	69,800,000	67,767,000	2,033,000
(b) Ministry of Defence				
Public service expenditures	909,000,000	161,200,000	88,670,000	72,530,000
(c) Ministry of Health				
Payment or relief to others	47,300,000	26,600,000	26,600,000	nil
<u>Total</u>	1,059,300,000	257,600,000	183,037,000	74,563,000

C. The Syrian Arab Republic

152. The Claims submitted by the Government of the Syrian Arab Republic ("Syria") include claims for:

- a. Losses relating to Syria's preparation for, participation in and provision of support in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait;
- b. Economic losses allegedly incurred by Syria's Central Treasury and Central Bank, as well as by other entities;
- c. Assistance provided to refugees; and
- d. Costs incurred to implement precautionary measures during the period of Iraq's invasion and occupation of Kuwait.

1. Central Bank of Syria (UNCC Claim No. 5000123)

(a) Other

(i) Facts and contentions

153. The Central Bank of Syria (the "Claimant") originally sought compensation in the amount of USD 848,000,000 for losses resulting from a decrease in the value of private transfers and remittances into Syria from "Syrian residents of Gulf countries". In its January 1998 response to a notification issued pursuant to article 15 of the Rules, the Claimant reduced its Claim to USD 425,000,000.

154. According to the Claimant, the transfers and remittances of Syrian expatriates are an important element of Syria's balance of payments and, consequently, of the Claimant's foreign currency resources. Following Iraq's invasion of Kuwait, however, many Syrian expatriates residing in Persian Gulf States either returned to Syria or could not transfer income earned abroad back to Syria. As a result, the Central Bank of Syria asserts that it was deprived of part of its anticipated foreign currency resources in each of the years 1990-1994.

155. The amount of the loss allegedly suffered by the Claimant is calculated as the difference between the value of actual private remittances into Syria in each of the years 1990-1994 and the value of private remittances that the Claimant anticipated in each of those years. The calculation is based on the Claimant's own balance of payments data as follows:

<u>Year</u>	<u>Expected transfers</u> <u>(USD)</u>	<u>Actual transfers</u> <u>(USD)</u>	<u>Loss (USD)</u>
1990	500,000,000	385,000,000	115,000,000
1991	550,000,000	350,000,000	200,000,000
1992	600,000,000	550,000,000	50,000,000
1993	650,000,000	600,000,000	50,000,000
1994	700,000,000	690,000,000	10,000,000
<u>Total</u>	-	-	<u>425,000,000</u>

(ii) Analysis and valuation

156. The Claimant was requested in the article 34 notification to explain the precise nature of the financial loss it sustained as a result of the alleged decrease in private transfers and remittances. The Claimant responded by stating that it "prepares the Balance of Payments, and the reduction in the private transfers of Syrians abroad is one of the factors which affects the Central Bank's foreign exchange assets". In the Panel's view, neither this response nor the other information and evidence submitted by the Claimant demonstrates the circumstances and amount of the claimed loss. <sup>51/</sup> In the result, the Panel is unable to determine whether the Claim is for losses sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait, nor is it able to verify or value a loss.

157. The Panel notes that the Claimant refers to a 1991 Note Verbale <sup>52/</sup> addressed to the Secretary-General of the United Nations that includes a reference to "law No. 109 of 1989" that requires every Syrian working abroad to pay a yearly duty to Syria in foreign currency. However, the Claimant did not claim for the loss of such duties, nor did it provide any evidence in support thereof.

(iii) Recommendation

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

2. Ministry of Defence (UNCC Claim No. 5000126)(a) Public service expenditures(i) Facts and contentions

159. The Ministry of Defence (the "Claimant") originally sought USD 1,366,995,121 as compensation for costs incurred due to the participation of Syrian forces in the "Gulf War".

160. In an April 1999 communication, the Claimant stated that it reserves its right to ask for compensation for material damages sustained by its forces as a result of its participation in the "Gulf War" in the amount of USD 1,366,995,121. The Commission was also advised that several committees had been formed by the Claimant "to study the effects on Syrian troops and

equipments which participated in the Gulf and Liberation of Kuwait war because of both the use of Depleted Uranium in shells and ammunitions, and the effects of the burning of Oil fields". The communication stated that the Claimant would "later communicate the estimated value of the material damage with a request for Compensation".

(ii) Analysis and valuation

161. The Claimant was requested in the article 34 notification to explain the nature of the participation of the Syrian forces that forms the basis of the Claim, to indicate whether any portions of the Claim relate to expenditures incurred in activities of a non-military nature carried out by the Claimant, and to provide documentation to substantiate each expenditure in respect of which compensation is sought. The Claimant did not, however, provide a response to the article 34 notification or otherwise provide any explanation or evidence in support of the Claim. The Claimant also failed to communicate the estimated value of or provide any further explanation for a claim for the alleged damage caused to its troops by depleted uranium and burning oil fields.

162. The Panel finds that the Claimant did not provide sufficient evidence to demonstrate the circumstances and amount of the claimed loss. In particular, the Panel is unable to determine whether any portion of the Claim is for non-military direct losses resulting from Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no award of compensation for the Claim.

(iii) Recommendation

163. The Panel recommends no award of compensation for public service expenditures.

3. Ministry of Economy and Foreign Trade (UNCC Claim No. 5000127)

164. The Ministry of Economy and Foreign Trade (the "Claimant") originally sought compensation in the total amount of USD 180,000,000. In a December 1996 submission the Claimant increased the total amount of the Claim to USD 185,948,780. In a January 1998 submission the Claimant further increased the total amount of the Claim to USD 188,516,000.

(a) Business transaction or course of dealing

(i) Facts and contentions

165. The Claimant alleges that losses totalling USD 188,516,000 were suffered by the Syrian national economy as a result of a decline in the expected value of Syrian exports to Middle Eastern countries during the period 1990-1991. According to the Claimant, Iraq's invasion and occupation of Kuwait halted the air and road transport of Syrian exports within the Middle East region, thereby causing a sharp decline in Syrian export sales to nearby countries such as Kuwait, Saudi Arabia, Qatar,

Bahrain, United Arab Emirates and Jordan and resulting in a loss of hard currency.

166. The Claimant asserts that the halt in exports deprived the Commercial Bank of Syria of that proportion (generally 25 per cent) of foreign currency which exporters are obligated by Syrian law to exchange at the Commercial Bank of Syria based on the value of their exports.

167. The claimed amount is stated to be the difference between the expected and actual value of Syrian exports to Middle Eastern countries during the period 1990-1991, plus an additional 5 per cent in order to account for the value of commodities that are exported without official customs clearances. The Claimant's calculation of its losses is based on the total decline in the value of Syrian exports, and not merely the corresponding decline in the value of foreign currency exchanges received by the Commercial Bank of Syria.

(ii) Analysis and valuation

168. The Panel considers that the evidence submitted by the Claimant indicates only the value of sales made by individual Syrian exporters during the years 1989-1995, and the amount of foreign currency that was received by the Commercial Bank of Syria as a result of these export sales. The evidence does not demonstrate that the Claimant suffered a loss as a result of a decline in the expected value of exports.

169. Although the Claimant's assertion may be correct that hard currency is necessary for execution of the investment and production plans of Syria as well as to import certain required materials from abroad, the Claimant did not provide any evidence upon which the Panel can verify or value a loss based on the asserted foreign currency losses. Consequently, the Panel finds that the Claim is not compensable.

(iii) Recommendation

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

4. Ministry of Finance (UNCC Claim No. 5000128)

171. The Ministry of Finance (the "Claimant") seeks compensation in the amount of USD 383,005,161 for losses allegedly sustained by Syria's Central Treasury.

172. In its initial submission to the Commission in 1993, the Claimant sought compensation for, inter alia, "Exports Losses" in the amount of USD 7,620,719 and "Exemption of Kuwaiti Hotel Lodgers" losses in the amount of USD 15,066,666. These losses were not referred to, however, in a 1996 submission, which included an amended claim form and a letter from the Claimant asserting the total losses sustained by the Central Treasury "due to the Gulf Crisis". In this latter submission, the Claimant introduced a

claim for "Other burdens" in the amount of USD 22,687,385, and explained that this claim represented the "value of primary services" provided to refugees from Kuwait.

173. The Panel considers that the claim for "Other burdens" in the amount of USD 22,687,385 has been substituted for the original claims for "Export Losses" and "Exemption of Kuwaiti Hotel Lodgers" losses in the total amount of USD 22,687,385.

(a) Payment or relief to others

(i) Facts and contentions

174. The Claimant seeks compensation in the total amount of USD 233,005,161 for claims for payment or relief provided to others, as described more fully below.

175. The Claimant alleges that in an effort to facilitate the entry into Syria of Syrian and other Arab residents fleeing Kuwait, a "Ministerial Committee" made a number of decisions at a meeting held on 21 August 1990. One of the decisions was to exempt the owners of private passenger cars from paying the "crossing book" fees, road maintenance fees and "extension of stay" fees normally charged in respect of vehicles entering and/or remaining in Syria. In this regard, the Claimant alleges that 35,000 private passenger cars entered Syria from Kuwait during the period 1 August 1990 to 31 March 1991. It further asserts that, based on the average number of cars that entered Syria during the years 1988 and 1989, a further 3,700 private passenger cars that it had expected to enter Syria during this period did not do so due to Iraq's invasion and occupation of Kuwait.

176. The Claimant therefore seeks compensation in the total amount of USD 118,610,750 in respect of the various fees that were "lost" by the Central Treasury on the 35,000 private passenger cars that entered Syria and on the estimated 3,700 that did not. The Claimant states that the "crossing book" fee normally payable for a private passenger car temporarily entering Syria was USD 185. The Claimant did not, however, provide an explanation, evidence or any basis of calculation for the amounts that were normally payable in respect of road maintenance fees and "extension of stay" fees.

177. According to the Claimant, after the liberation of Kuwait and the return to Kuwait of most private passenger cars that had entered Syria during the invasion and occupation, the status of 3,000 private passenger cars that remained in Syria was not regularized and they were therefore considered as "smuggled". The Claimant alleges that duties payable on these private passenger cars, in the average amount of 300,000 Syrian pounds ("SYP") per car, were "lost" by the Central Treasury. The total amount of compensation sought in respect of these lost duties is USD 80,000,000.



178. Another of the decisions made by the Ministerial Committee on 21 August 1990 was to grant temporary entry into Syria, and consequently an exemption of customs duty for shipments of household furnishings and accompanying baggage, for Syrian residents evacuating Kuwait. After the temporary entry period of one year expired, Syria attempted to locate the owners of household furnishings with declared customs values totalling SYP 148,910,000 in order to ensure that the furniture was re-exported or to have the customs duties paid. The Claimant asserts that the owners could not be located, allegedly because they had given false addresses on their customs declarations. The Claimant therefore seeks compensation in the amount of USD 9,927,382 for the foregone customs duties lost by the Central Treasury on temporarily imported tangible property.

179. The Claimant also seeks compensation for losses sustained by the Central Treasury as a result of a decision made by the Ministerial Committee on 21 August 1990 to provisionally accept the children of Syrian and other Arab residents from Kuwait at Syrian schools and universities until such time as they could undergo a test and/or "present the required school documents". The losses allegedly consisted of registration fees, university and laboratory fees and books paid for by the Central Treasury on behalf of those children for the 1990-1991 academic year in the total amount of USD 1,779,644.

180. In addition, as noted above, the Claimant seeks compensation in the amount of USD 22,687,385 for the "value of primary services" provided to refugees from Kuwait. According to the Claimant, the primary services provided to these persons included first aid, meals, and tents.

(ii) Analysis and valuation

181. The evidence submitted in support of the claims of the Ministry of Finance for lost fees and duties on private passenger cars and tangible property items does not demonstrate that these items of property would have entered Syria absent Iraq's invasion and occupation of Kuwait.

Accordingly, the Panel cannot determine whether, prior to Iraq's invasion and occupation of Kuwait, the Claimant had an expectation of earning these fees and duties, or whether it was the invasion and occupation of Kuwait that gave the Claimant an opportunity to earn such fees and duties. 53/ In the result, the Panel recommends no award of compensation for these claims.

182. With regard to the claim for registration, university and laboratory fees and books paid for on behalf of Syrian and other children who fled from Kuwait, the Panel has previously found that "discretionary payments for on-going ordinary living expenses that are incurred after a person has left the region and taken up a new residence should not normally be considered to be direct consequences of the invasion and occupation of Kuwait". 54/ The Panel considers that this finding is applicable here, and that, absent any evidence to the contrary, the school fees and book costs paid by Syria are on-going ordinary living expenses. 55/ As such, they are

not compensable. Further, and in any event, the Claimant has failed to provide any evidence upon which the Panel could verify or value a loss.

183. With regard to the claim for primary services provided to refugees from Kuwait, the Panel considers that, as a general rule, emergency humanitarian relief provided by a Government to individuals who fled from Iraq or Kuwait during the period of Iraq's invasion and occupation of Kuwait falls within the scope of paragraphs 34(b) and 36 of Governing Council decision 7 and constitutes a direct loss resulting from Iraq's invasion and occupation of Kuwait. However, despite a request in the article 34 notification, the Claimant did not provide the Commission with further information regarding, inter alia, the nationality or citizenship of the individuals in question; the dates of their arrival in and departure from Syria; their numbers; and the specific costs incurred in respect of the services provided. Further, the Claimant did not submit any evidence demonstrating that Syria incurred the alleged costs.

184. In the result, the Panel is unable to verify that the Claimant incurred any of the asserted costs and, if so, whether the costs were direct losses resulting from Iraq's invasion and occupation of Kuwait. Consequently, this portion of the Claim is not compensable.

(iii) Recommendation

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

(b) Other

(i) Facts and contentions

186. The Claimant states that in 1988 the Government of Kuwait offered to provide Syria with annual grants of fertilizer and sulphur valued at USD 50,000,000 per year. According to the Claimant, the 1988-1989 grant was wholly delivered. However, only part of the 1989-1990 grant and none of the 1990-1991 grant could be delivered to Syria as a result of Iraq's invasion and occupation of Kuwait. The Claimant seeks compensation in the amount of USD 50,000,000 for the value of the lost grants of fertilizer and sulphur.

187. The Claimant also asserts that, as a result of Iraq's invasion and occupation of Kuwait, 32,873 fewer than expected transport trucks crossed through Syria during the "Gulf Crisis". The Claimant further asserts that the volume of "duties and charges" normally payable per truck crossing through Syria was USD 304.20, and that each truck made 10 journeys through Syria per year. Using these figures as a basis, the Claimant seeks compensation in the amount of USD 100,000,000 for transit fees not collected by the Central Treasury.

(ii) Analysis and valuation

188. The Panel considers that the Claimant did not demonstrate that there was a binding commitment for the Government of Kuwait to provide annual grants of fertilizer and sulphur to the Claimant after 1989. 56/ Thus, the Panel finds that the Claimant failed to prove that it was entitled to receive the grants of fertilizer and sulphur in question or that, in the absence of Iraq's invasion and occupation of Kuwait, they would have been received during the relevant period. Accordingly, this claim is not compensable.

189. With regard to the claim for lost transit fees, the Panel finds that, despite a request in the article 34 notification, the Claimant did not submit any documentation in support of its assertion that 32,873 fewer transport trucks crossed through Syria "during the Gulf Crisis". The Claimant also did not provide any evidence that demonstrates that some or all of these trucks would have, absent Iraq's invasion and occupation of Kuwait, crossed Syria on their way to or from Iraq, Kuwait, Saudi Arabia or Israel. The Panel is therefore unable to verify whether the Claimant sustained any of the asserted losses, or determine whether they are direct losses resulting from Iraq's invasion and occupation of Kuwait. Consequently, this portion of the Claim is not compensable.

(iii) Recommendation

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

5. Ministry of Health (UNCC Claim No. 5000130)

(a) Public service expenditures

(i) Facts and contentions

191. The Ministry of Health (the "Claimant") originally sought USD 58,978,000 57/ as compensation for the costs of mobilizing doctors, health assistants and other medical staff, as well as hospitals and other medical facilities in Syria during the period of Iraq's invasion and occupation of Kuwait. The amount claimed was increased to USD 59,362,142 58/ in an amended claim form filed with the Commission in December 1996.

192. The Claimant alleges that it maintained medical services on a stand-by basis as a result of the "Gulf crisis", but particularly during the period from 15 December 1990 to 15 April 1991. In so doing, the Claimant allegedly expended resources for the mobilization of 3,000 physicians and 6,500 health assistants who were charged with emergency duty and overtime. Additionally, the Claimant asserts that 200 ambulances with 600 drivers and accompanying staff were mobilized, resulting in additional maintenance and staff costs.

193. The Claimant also alleges that it provided supplementary support to 625 health centres and 39 hospitals in the form of equipment, supplies and

medicines. The Claimant further asserts that in planning for emergencies during the period of Iraq's invasion and occupation of Kuwait, it kept 3,500 hospital beds reserved, amounting to 50 per cent of its public hospital beds, and, where necessary, it transferred public hospital patients awaiting surgical operations to private hospitals. The Claimant seeks the costs of reserving hospital beds, transferring some patients to private hospitals and re-transferring them at the end of Iraq's occupation of Kuwait. 59/

(ii) Analysis and valuation

194. The Panel has previously considered the compensability of safety measures taken by claimants for the protection of individuals and property, and determined that the cost of such measures are compensable provided they are reasonable in relation to the type of risk to which the individual and/or property is exposed. 60/ In its Fourth Report, the Panel set forth guidelines dealing with the geographic limitations within which protective measures might be considered to be compensable. The Panel determined that "a geographic limitation is implied in the requirement that safety equipment is only compensable if it is reasonable in relation to the type of risk to which the individual and/or property is exposed, namely that only protective measures taken within a specific geographical area will be compensated." 61/ Consequently, the Panel limited the compensability of such costs to those reasonable protective measures taken in the countries that the Panel has found to be subject to military operations and/or to threat of military action, namely Iraq, Kuwait, Israel and Saudi Arabia. 62/ The Panel finds that these principles apply to the Claim.

195. Given that all of the claimed expenses were allegedly incurred in respect of health districts located within Syria, the Panel finds that, based on the geographic limitation noted in paragraph 194 above, they are not compensable.

(iii) Recommendation

196. The Panel recommends no award of compensation for public service expenditures.

6. Ministry of Irrigation (UNCC Claim No. 5000131)

197. The Ministry of Irrigation (the "Claimant") initially sought compensation in the amount of USD 462,222,220 63/ for damage caused to irrigation and land reclamation projects located within Syria. In December 1996, the Claimant increased the total amount of the Claim to USD 465,625,000. 64/

(a) Income-producing property

(i) Facts and contentions

198. The Claimant seeks SYP 2,400,000,000 as compensation for losses "in national income" resulting from the delayed start and completion of a contract for the design, supply, installation and operation of mechanical and electrical equipment at a pipe production plant in Syria. The contract was concluded between Syria and a German contractor in June 1989, but had not been implemented by the time of Iraq's invasion and occupation of Kuwait. The contractor was apparently unable to put the contract into effect because the "Gulf Crisis" made it impossible for the contractor to obtain insurance against all risks associated with the contract. The Claimant asserts that, "owing to the continued existence of force majeure, the plant's completion was delayed for two years". This in turn resulted in a two-year delay in the reclamation and irrigation of 30,000 hectares of land in the Euphrates basin. As a result, the land was unavailable to grow cotton during 1992 and 1993, as scheduled, thereby leading to the claimed losses.

199. The Claimant also seeks SYP 400,000,000 as compensation for losses resulting from the delayed start and completion of a contract for the supply of hydromechanical equipment to an irrigation and drainage project in Syria. The contract was concluded between Syria and a French company in August 1990. The company was allegedly unable to perform the contract "due to the force majeure resulting from the circumstances of [the] region and the matter of [the] invasion". As a result, the irrigation and drainage project's completion was allegedly delayed by one year, thereby leading to the loss of one year's production of cotton on 10,000 hectares of land in the Euphrates basin.

200. In addition, a total of SYP 1,615,000,000 is sought by the Claimant as compensation for losses caused by the departure of foreign experts from Syria during the period of Iraq's invasion and occupation of Kuwait. According to the Claimant, a large number of foreign experts were working in Syria under contract to Syria during 1990 and 1991 to carry out investigations, studies, designs, and other works in connection with various irrigation, drainage and dam projects in the Orontes and Balikh basins. Many of these foreign experts decided, on the advice of their Governments, to depart from Syria during the period of Iraq's invasion and occupation of Kuwait, and to not return until February or March 1991.

201. The Claimant asserts that these departures delayed the completion of the foreign experts' work, thereby causing a delay in the execution of the projects. As a result, thousands of hectares of land were rendered less productive, and two hydroelectric plants were delayed in producing power and energy for one year and two years, respectively.

202. The Claimant additionally seeks SYP 80,000,000 as compensation for losses sustained at certain unidentified irrigation and land reclamation

projects in the Euphrates basin. The Claimant provided no further explanation, and advised the Commission that it "could not obtain supporting details and primary documents from the concerned authorities".

203. Lastly, the Claimant seeks SYP 720,000,000 as compensation for losses resulting from the inability to "put" 18,000 hectares of land "in exploitation due to the war circumstances" for a period of one unspecified year, as had been "planned according to the executive time schedule". In its response to the article 34 notification, the Claimant explained that the claim was based on estimates that were themselves based on certain unspecified "complicated data". The Claimant also explained in its response that it was unable to obtain supporting details and primary documents for this claim.

(ii) Analysis and valuation

204. The Claimant was requested in the article 34 notification to explain why it considered that the claimed losses were direct losses resulting from Iraq's invasion and occupation of Kuwait. It responded by stating that, due to possible military confrontation in the area, insurance companies refused to insure all material and equipment intended to be shipped to Syria and foreign experts departed and did not return to Syria until after the end of Iraq's invasion and occupation of Kuwait.

205. As noted in paragraph 21 above, the Panel has previously found that Syria was not subject to military operations or the threat of military action during the period 2 August 1990 to 2 March 1991. Accordingly, the Panel considers that the Claimant needed to demonstrate factual circumstances other than those of a possible military confrontation in Syria in order to establish a causal link between Iraq's invasion and occupation of Kuwait and the alleged losses. The Panel finds, however, that the Claimant did not demonstrate that the claimed losses were direct losses resulting from Iraq's invasion and occupation of Kuwait.

206. For example, the Claimant did not demonstrate that any equipment or materials required for the projects had to be transported to, from or within a location that was subject to military operations or an actual, as opposed to speculative, threat of military action.

207. In addition, the Panel finds that the Claimant did not establish the nature of its ownership or interest in the relevant projects and agricultural lands, and therefore did not demonstrate that it sustained any loss.

208. Consequently, on the basis of these findings, the Panel finds that the Claim is not compensable.

(iii) Recommendation

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

7. Ministry of Petroleum and Mineral Resources (UNCC Claim No. 5000132)(a) Contract(i) Facts and contentions

210. The Ministry of Petroleum and Mineral Resources (the "Claimant") originally sought compensation in the amount of USD 360,000,000 for losses associated with the freezing of an agreement in principle which had been reached prior to Iraq's invasion of Kuwait between Syria and Iraq to resume pumping of Iraqi oil through a Syrian pipeline and to provide Syria with certain quantities of oil at reduced prices. The Claimant asserted that Syria's compliance with the trade embargo imposed on Iraq by Security Council resolution 661 (1990) led to the freezing of the agreement and to the loss of pipeline fees and discounted prices on oil from Iraq.

211. In a December 1997 communication to the Commission, the Claimant introduced a claim in the amount of USD 42,120,000 for losses caused by the delayed completion of two gas compression and transportation projects in Syria. The Claimant explained that, during a review of its original claim, it became clear that portions of the original claim either were not compensable in principle in the light of Governing Council decisions or could not be supported by the necessary documentation.

(ii) Analysis and valuation

212. The Panel considers that the claim raised by the Claimant in its December 1997 communication is a new claim from that originally filed. In accordance with the principles set out in paragraph 17 above, the Panel finds that this claim for losses caused by the delayed completion of two projects in Syria is not admissible as it is time-barred.

213. Further, the Panel considers that the time-barred claim was raised as an amendment or supplement to the original claim which, in the Claimant's own assessment, did not meet the Commission's criteria for the processing of claims and was not supported by any evidence. Accordingly, the Panel determines that it need not consider further the compensability of the original claim.

(iii) Recommendation

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

8. Ministry of Tourism (UNCC Claim No. 5000133)(a) Other(i) Facts and contentions

215. Syria's Ministry of Tourism (the "Claimant") originally sought compensation in the total amount of USD 455,921,280 for losses sustained by the Syrian tourism sector. In December 1996, the Claimant increased the

amount of its Claim to USD 590,972,400, on the basis of more recently published tourism statistics.

216. The Claimant asserts that Iraq's invasion and occupation of Kuwait suddenly halted the arrival of tourists to Syria, and that this situation continued for one year after Iraq's invasion of Kuwait. As a result, revenue losses were allegedly sustained in all public and private sector areas affected by tourism. The Claimant derives its loss figure of USD 590,972,400 from the estimated drop in the total number of nights spent by tourists in Syria during 1990 and 1991, and from the average daily expenditure of a tourist in Syria on items such as food, accommodation and internal transportation. The latter is estimated at USD 176 per day for 1990 and USD 239 per day for 1991.

217. The article 34 notification requested the Claimant to explain why it had filed the Claim on behalf of some private companies and individuals in the tourism industry in Syria who may have sustained some of the losses being claimed. The Claimant responded that had private entities submitted claims, this would have caused confusion both for the Commission and Syria. The Claimant asserted that it undertook necessary measures to ensure that no individuals or private companies had filed claims with the Commission for the same losses, and that it would distribute any compensation received from the Commission equally among all affected parties. However, the Claimant provided the names of only some of the parties affected by the alleged losses. The Claimant also did not prove that it was authorized to claim for the alleged losses on behalf of private companies and individuals.

(ii) Analysis and valuation

218. The Panel considers that the facts and contentions supporting the Claim are such that, in order for the asserted losses to meet the requirement of directness, the Claimant must demonstrate that the losses were a result of either "[m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991" pursuant to paragraph 34(a) of Governing Council decision 7, or "[d]eparture of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period" pursuant to paragraph 34(b) of decision 7.

219. As noted in paragraph 21 above, the Panel has previously found that Syria was not the subject of military operations or the threat of military action within the meaning of paragraph 34(a) of Governing Council decision 7. Furthermore, the Panel considers that a general apprehension that may have been felt by visiting and potential tourists to Syria during the period of Iraq's invasion and occupation of Kuwait does not meet the directness requirement independent of the circumstances or events enumerated in paragraph 34 of Governing Council decision 7. 65/

220. The Panel takes note of the finding of the "C" Panel that approximately 60,000 persons, of whom some 50,000 were Syrian nationals,



left Iraq for Syria after 2 August 1990. 66/ Although this influx of persons into Syria was not insignificant, the Claimant did not demonstrate that it affected Syria's ability to receive tourists at ports of entry or hindered the ability of tourists to travel within Syria. 67/ Accordingly, the Panel finds that there is no direct causal link between the claimed tourism revenue losses and the "[d]eparture of persons from or their inability to leave Iraq or Kuwait" within the meaning of paragraph 34(b) of Governing Council decision 7.

221. Furthermore, and in any event, the Panel finds that the Claimant did not demonstrate that it sustained the losses claimed or that, in respect of the losses allegedly sustained by private companies and individuals, it has the authority to claim for such losses on behalf of others. 68/ The Claimant also did not provide any evidence that would allow the Panel to verify the numbers of tourists visiting Syria during 1990 and 1991.

222. On the basis of these findings, the Panel finds that the Claim is not compensable.

(iii) Recommendation

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

9. Recommendation for the Syrian Arab Republic

224. Based on its findings regarding the Claims filed by the Syrian Arab Republic, the Panel recommends no award of compensation.

Table 4. Recommended compensation for the Syrian Arab Republic

<u>Loss type</u>	<u>Review amount</u> <u>(original</u> <u>currency)</u> <u>(USD)</u>	<u>Recommended</u> <u>compensation</u> <u>(USD)</u>
1. Central Bank of Syria Other	425,000,000	nil
2. Ministry of Defence Public service expenditures	1,366,995,121	nil
3. Ministry of Economy and Foreign Trade Business transaction or course of dealing	188,516,000	nil
4. Ministry of Finance Payment or relief to others	233,005,161	nil
Other	150,000,000	nil
5. Ministry of Health Public service expenditures	59,362,142	nil
6. Ministry of Irrigation Income-producing property	465,625,000	nil
7. Ministry of Petroleum and Mineral Resources Contract	360,000,000	nil
8. Ministry of Tourism Other	590,972,400	nil
<u>Total</u>	3,839,475,824	nil

D. The Republic of Turkey

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

- a. Losses relating to Turkey's preparation for, participation in and provision of support in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait;
- b. Outstanding debt owed by Iraq;
- c. Damage to property belonging to Turkey;
- d. Assistance provided to refugees; and
- e. Tourism revenue losses.

1. Ministry of Public Works and Settlement, General Directorate of Highways  
(UNCC Claim No. 5000150)

(a) Payment or relief to others

(i) Facts and contentions

226. The Ministry of Public Works and Settlement, General Directorate of Highways (the "Claimant") seeks compensation in the amount of USD 543,363 for "immigrant expenditures" allegedly incurred as a direct result of Iraq's invasion and occupation of Kuwait.

227. According to the Claimant, support services and aid were provided to refugees who arrived in south-east Turkey from Iraq in 1991. As a result, the Claimant states that it incurred personnel expenses, including salaries, overtime and other allowances in the amount of USD 23,902 and transportation expenses for the provision of fuel and oil in the amount of USD 519,461.

(ii) Analysis and valuation

228. Despite a request in the article 34 notification, the Claimant did not provide the Commission with detailed information regarding, inter alia, the nationality or citizenship of the refugees from Iraq; the dates of their arrival in and departure from Turkey; their numbers; and the specific type of aid provided to them. In the absence thereof, the Panel is unable to determine whether this portion of the Claim is for direct losses resulting from Iraq's invasion and occupation of Kuwait. Furthermore, the Claimant did not demonstrate that it incurred the claimed expenses. Consequently, this portion of the Claim is not compensable.

(iii) Recommendation

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

(b) Public service expenditures

(i) Facts

230. The Claimant alleges that it incurred certain equipment costs as a direct result of Iraq's invasion and occupation of Kuwait. In particular, the Claimant seeks compensation in the amount of USD 837,257 for fuel, spare parts, tyre and overtime costs it allegedly incurred "during the crisis".

231. The article 34 notification requested that the Claimant provide a more detailed explanation of the equipment costs claim, including particulars of the use to which the relevant equipment had been put and the period during which the costs were incurred. However, the Claimant's response provided none of the particulars requested and attached evidence that was unaccompanied by an English translation.

232. The Claimant also seeks a total of USD 11,276,078 as compensation for an "allowance" allegedly required to rehabilitate and resurface Turkish highways that suffered pavement deterioration during the period of Iraq's invasion and occupation of Kuwait.

233. In the article 34 notification, the Claimant was requested to explain its claim for pavement deterioration in detail, including particulars of the cause of the deterioration. In its response, the Claimant stated that highways near the Habur border gate and the military bases in Adana, Tatvan and Diyarbakir had deteriorated as a result of the traffic of heavy vehicles, military tanks and other tracked military vehicles.

(ii) Analysis and valuation

234. The Panel finds that the information and evidence provided by the Claimant is insufficient to demonstrate that the alleged equipment costs and pavement deterioration losses were direct losses resulting from Iraq's invasion and occupation of Kuwait and were non-military in nature. The Panel also finds that the evidence is insufficient to demonstrate that the Claimant incurred such costs and losses. Consequently, these items are not compensable.

(iii) Recommendation

235. The Panel recommends no award of compensation for public service expenditures.

2. Prime Ministry, General Directorate of Rural Services  
(UNCC Claim No. 5000151)

(a) Public service expenditures

(i) Facts and contentions

236. The Prime Ministry, General Directorate of Rural Services (the "Claimant") seeks compensation in the amount of USD 55,937,337 for expenditures incurred in relation to the temporary settlement of refugees from Iraq in the Turkish provinces of Hakkari, Diyarbakir, Sivas and Kayseri. According to the Claimant, various settlement works and infrastructure services were undertaken in these provinces, including road construction and repair, land arrangement for camping, domestic water supply and sanitation construction in order to assist these refugees. Machinery, equipment and personnel were allegedly transferred to the area in order to carry out the required works and services.

237. The article 34 notification requested that the Claimant explain the nature of the Claim in detail, including the nationality or citizenship of the refugees; the dates of their arrival in Turkey; the length of their stay in Turkey; and the dates on which the relevant infrastructure was set up. In its response, the Claimant explained that the settlement works and infrastructure services were carried out during the period February to May 1991, and that the refugees remained in Turkey for approximately two years after their arrival. In a supplemental response, the Claimant further explained that the reference to refugees in the Claim included Iraqi citizens of Kurdish origin, Turkomans and Assyrians who fled to Turkey from Northern Iraq. The Claimant did not, however, provide any further details regarding the dates of arrival of the refugees in Turkey.

(ii) Analysis and valuation

238. As previously noted above at paragraph 183, the Panel considers that emergency humanitarian relief provided by a Government to individuals who fled from Iraq or Kuwait during the period of Iraq's invasion and occupation of Kuwait falls within the scope of paragraphs 34(b) and 36 of Governing Council decision 7 and therefore constitutes a direct loss resulting from Iraq's invasion and occupation of Kuwait.

239. The Panel recognizes, however, that there are limitations on the availability of compensation for relief provided to refugees or evacuees. One such limitation is set out in subparagraph 62(a) above.

240. Based on the information and evidence provided by the Claimant, the Panel concludes that the Claimant is seeking compensation for works and services that were provided to assist Kurdish and other Iraqi refugees who fled from Iraq after 2 March 1991. Consequently, the Panel finds that the Claim is not compensable.

241. Further, and in any event, the Panel finds that the Claimant did not provide sufficient evidence in support of the Claim to permit the Panel to verify and quantify the losses claimed.

(iii) Recommendation

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

3. Ministry of National Defence (UNCC Claim No. 5000154)

(a) Public service expenditures

(i) Facts and contentions

243. The Ministry of National Defence (the "Claimant") seeks USD 929,652,349 as compensation for expenses incurred by the Turkish Armed Forces "as a result of military operations or threat to secure Kuwait from the unlawful invasion and occupation of Iraq". The Claimant describes the claimed expenses as either "Operations and Maintenance Appropriations" or "Military (Personnel) Pay Appropriations" and notes that they were incurred in relation to, *inter alia*, the transportation of units and materials, the procurement and supply of operational supplies and repair parts, the use of aircraft for patrol, security and training missions, and the payment of wages and salaries to "Officers and NCOs".

244. The Claimant was requested in the article 34 notification to provide a detailed explanation of the nature of the operations that form the basis of the Claim and to indicate whether any portions of the Claim relate to expenditures incurred in activities of a non-military nature. The Claimant responded by explaining that its Air Forces, Land Forces and Naval Forces either reinforced existing defences or undertook new military measures in response to Iraq's invasion and occupation of Kuwait.

(ii) Analysis and valuation

245. The Panel finds that the claimed expenses were either incurred in respect of Turkey's own military response to Iraq's invasion and occupation of Kuwait or related to the Allied Coalition Forces' military response to Iraq's invasion and occupation of Kuwait. As such, the Panel finds that the claimed expenses constitute military costs that are, for the reasons set out in paragraphs 23-25 above, not eligible for compensation.

(iii) Recommendation

246. The Panel recommends no award of compensation for public service expenditures.

4. Ministry of National Education (UNCC Claim No. 5000155)(a) Contract(i) Facts and contentions

247. The Ministry of National Education (the "Claimant") originally sought USD 53,509 as compensation for certain expenses that it incurred in relation to the Educational Counsellor's Office in Baghdad. According to the Claimant, these expenses consisted of the salary paid to the Deputy Educational Counsellor during the period August 1990 to March 1991, the salary paid to the Secretary of the Educational Counsellor's Office during the period August 1990 to February 1993, and the rent paid for the premises of the Educational Counsellor's Office within the Turkish Embassy in Baghdad for the period October 1990 to May 1996.

248. In an October 1997 submission, the Claimant increased the amount claimed for these expenses by a total of USD 2,116. In the same submission, the Claimant sought compensation for a new claim: USD 9,034 for "travel funds and daily payments" paid to the Educational Counsellor of Baghdad between 1992 and 1996. 69/

249. In the article 34 notification, the Claimant was requested to explain why it continued to pay the salaries of the Deputy Educational Counsellor and the Secretary and why it sought compensation for rent paid after October 1990. The Claimant's response indicated that, although the services of the Educational Counsellor's Office ceased following Iraq's invasion and occupation of Kuwait, Turkey continued to operate the Office as a Cultural Centre and to employ the Deputy Educational Counsellor and the Secretary. The response also indicated that, because the Educational Counsellor's Office was unable to perform its normal functions or services, even after Kuwait's liberation, the Claimant is seeking compensation for the rent paid for the premises.

(ii) Analysis and valuation

250. The Panel finds that the claim for "travel funds and daily payments" is a new claim introduced after the 1 January 1997 deadline. Accordingly, it is not admissible.

251. The Panel has previously considered claims for salaries paid to individuals who were members of a Government's permanent staff at the time of Iraq's invasion of Kuwait. The Panel found that the payment of the salaries could not be considered to result directly from Iraq's invasion and occupation of Kuwait because the expense would have been incurred in any event. 70/ The Panel considers that this reasoning is applicable here. Accordingly, the claim for the salaries paid to the Deputy Educational Counsellor and the Secretary of the Educational Counsellor's Office is not compensable.

252. With regard to the claim for the rent paid for the premises of the Educational Counsellor's Office in Baghdad, the Panel notes that the premises continued to be used as a Cultural Centre after October 1990. The Panel therefore considers that the Claimant did not suffer a loss. Accordingly, the Panel finds that the claim for rent expenses is not compensable.

(iii) Recommendation

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

5. Ministry of Tourism (UNCC Claim No. 5000157)

254. Turkey's Ministry of Tourism (the "Claimant") originally sought compensation in the total amount of USD 1,395,000,000 for tourism revenue losses incurred in the period 1990-1992 and USD 6,573 for destruction of office equipment and material in Kuwait. In January 1998, the Claimant asserted a new claim for USD 2,271,495 in respect of increased advertising and promotional expenses incurred by the Claimant in 1991. In September 1999, the Claimant amended its Claim to include losses of income sustained in the tourism and other related sectors during the period 1990-1995 in the total amount of USD 3,230,000,000.

255. The Panel finds that, in accordance with the principles set out in paragraph 17 above, the claims introduced by the Claimant after 1 January 1997 are not admissible. Similarly, the Claimant's increase of the total quantum of the Claim after 11 May 1998 is also not admissible. Therefore, the total amount claimed is limited to USD 1,395,006,573.

(a) Other tangible property

(i) Facts and contentions

256. The Claimant seeks USD 6,573 as compensation for the value of office material and equipment lost at its information office in Kuwait.

(ii) Analysis and valuation

257. The Panel has previously determined that, for the reasons given by it with respect to the compensability of claims for damage to real property, claims for loss of tangible property located in Iraq or Kuwait are also compensable to the extent that they are supported by sufficient documentary and other appropriate evidence. <sup>71/</sup> The Panel considers that those reasons are also applicable here. Accordingly, the Panel finds that, to the extent they are supported by sufficient evidence, the claimed office material and equipment losses are compensable, with an adjustment being made for depreciation.

(iii) Recommendation

258. The Panel recommends an award of USD 1,800 in respect of other tangible property.



(b) Other(i) Facts and contentions

259. The Claimant seeks compensation in the amount of USD 1,395,000,000 for the loss of tourism revenues suffered by the "Turkish tourism sector" in the period 1990-1992. The Claimant asserts that "[t]he political changes that took place in the countries of Eastern Europe in 1989, and the Gulf Crisis led to significant changes in the composition of tourists visiting Turkey". While the Claimant admits that the overall number of tourists visiting Turkey did not decline during this period, it asserts that the number of tourists from Organization for Economic Co-operation and Development ("OECD") countries decreased.

260. According to the Claimant, Iraq's invasion and occupation of Kuwait caused a number of OECD countries to declare Turkey an "insecure destination" and to "hinder" travel to Turkey by increasing travel costs thereto. As a result, the total number of tourists visiting Turkey from OECD countries dropped below growth projections for 1991 and 1992. The Claimant explains that, even though the drop in the number of OECD tourists was offset by an increase in the number of tourists visiting Turkey from Eastern European countries, the Turkish tourism sector lost revenue. According to the Claimant, the expenditures of tourists from Eastern European countries "were rather low compared to OECD countries' tourist expenditures".

261. In its response to the article 34 notification, the Claimant requested that an unspecified amount of interest be awarded on the total amount sought by it for the alleged loss of tourism sector revenue.

(ii) Analysis and valuation

262. The Panel considers that the facts and contentions supporting the Ministry of Tourism's claim for tourism revenue losses are such that, in order to meet the requirement of directness, the Claimant must demonstrate that the tourism revenue losses were a result of either "[m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991" as provided for in paragraph 34(a) of Governing Council decision 7, or "[d]eparture of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period" as provided for in paragraph 34(b) of decision 7.

263. As noted in paragraph 21 above, this Panel has previously found that Turkey was not the subject of military operations or the threat of military action within the meaning of paragraph 34(a) of Governing Council decision 7. Furthermore, the Panel considers that a general apprehension that may have been felt by visiting and potential tourists to Turkey during the period of Iraq's invasion and occupation of Kuwait does not meet the directness requirement independent of the circumstances or events enumerated in paragraph 34 of Governing Council decision 7. 72/

264. The Panel takes note of the finding of the "C" Panel that approximately 60,000 persons, most of whom were from Bangladesh, Pakistan, Sri Lanka and Vietnam, left Iraq or Kuwait for Turkey after 2 August 1990. 73/ Although this influx of persons into Turkey was not insignificant, the Claimant did not demonstrate that it affected Turkey's ability to receive tourists at ports of entry or that it hindered the ability of tourists to travel within Turkey. 74/ Moreover, the Claimant asserted there was no overall decline in the number of tourists that visited Turkey in the period 1990-1992. Accordingly, the Panel finds that there is no direct causal link between the claimed tourism revenue losses and the "[d]eparture of persons from or their inability to leave Iraq or Kuwait" within the meaning of paragraph 34(b) of Governing Council decision 7.

265. In the light of its findings, the Panel finds that this portion of the Claim is not compensable.

266. Further, and in any event, the Panel finds that the Claimant did not demonstrate that it sustained the claimed losses, or that it has standing or authority to claim for such losses on behalf of the entire Turkish tourism sector, which includes both state-owned and private enterprises.

(iii) Recommendation

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

6. Central Bank of the Republic of Turkey (UNCC Claim No. 5000299)

268. The Central Bank of the Republic of Turkey (the "Claimant") originally sought USD 864,036,555 as compensation for losses related to the extension of export credits, the collapse of the Bekhme Dam project, and the purchase of Iraqi dinar and Kuwaiti dinar banknotes.

269. As noted previously in this Report, the portion of the Claim that related to the collapse of the Bekhme Dam Project in Northern Iraq was severed and transferred to the "E3" Panel. It was included with similar claims and reported in the first instalment of "E3" claims. 75/ The remaining portions of the Claim total USD 742,596,146.

270. In submissions dated 21 January 1997, 9 September 1999 and 2 February 2000, the Claimant increased the total amount of the Claim before this Panel by USD 128,689,547, USD 133,910,530 and 7,613 Iraqi dinars ("IQD"), respectively. These increases are discussed below.

(a) Contract

(i) Facts and contentions

271. During the period 1983-1986, the Claimant entered into a number of "Banking Arrangements" with the Central Bank of Iraq (the "CBI") in an effort to increase the value of Turkish exports to Iraq. Under the terms

of these arrangements, the Claimant agreed to extend export credits to the CBI to cover a percentage of the value of Turkish goods imported by Iraq.

272. Although the CBI agreed under the terms of the Banking Arrangements to repay the Claimant for the export credits that were utilized, the CBI was unable to repay, on a timely basis, its outstanding accounts with the Claimant. As a result, the Claimant agreed in 1986, 1987 and 1989 to enter into a number of deferred payment arrangements with the CBI.

273. Under the terms of a "final Banking Arrangement" dated 3 May 1989 (the "1989 Contract"), the Claimant and the CBI agreed to settle all outstanding export credit debts by "payments of crude oil liftings" and cash payments from Iraq to Turkey during the period 1989-1991. According to the Claimant, the last of these payments was due to be made by Iraq in October 1991. However, the Claimant asserts that Iraq ceased to make the payments to Turkey after August 1990 "because of the Gulf Crisis".

274. As of 1 October 1991, the principal and interest amounts owed to the Claimant under the 1989 Contract totalled USD 682,051,262. The amount of USD 742,587,769 originally sought as compensation for losses relating to the 1989 Contract also included, however, interest that had accrued on the outstanding balance to 31 January 1994. In its submission dated 21 January 1997, the Claimant advised that, as of 31 December 1996, the total amount owed to it under the 1989 Contract had reached USD 871,277,316 as a result of the further accrual of interest. In its submission dated 9 September 1999, the Claimant advised that, as of 31 August 1999, the total amount owed to it under the 1989 Contract had reached USD 1,005,187,846 as a result of the further accrual of interest.

275. In its response to the Claim, Iraq submitted that it attempted, after 2 August 1990, to continue to make crude oil payments to Turkey, but that Turkey refrained from accepting such payments.

(ii) Analysis and valuation

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

"[T]hat Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss ... as a result of Iraq's unlawful invasion and occupation of Kuwait."

277. The Panel notes that in the First "E2" Report, the "E2" Panel considered the issue of the compensability of Iraq's debts existing at the time of the invasion and occupation of Kuwait and made the following determination:

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

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

'Performance' as understood by the Panel for purposes of this rule can mean complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance." 76/

278. The "E2" Panel also found that "the object and purpose of the Security Council's insertion of the 'arising prior to' clause was to exclude from the jurisdiction of the Commission Iraq's old debt". 77/ The Panel considers that the same reasoning is also applicable here.

279. The Panel finds that the existence of the 1989 Contract demonstrates that long before Iraq's invasion and occupation of Kuwait, Iraq could not pay, on a timely basis, amounts owed for the export credits provided. Consequently, the claim for amounts owed under the 1989 Contract is not compensable, since performance was fully completed by the Claimant long before 2 May 1990.

(iii) Recommendation

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

(b) Other

(i) Facts and contentions

281. The Claimant seeks USD 4,065 as compensation for Kuwaiti dinar banknotes that the Central Bank of Kuwait refused to accept from it. The Claimant alleges that it sent a total of 55,066.25 Kuwaiti dinars ("KWD") to the Central Bank of Kuwait for exchange in August 1991, and that the Central Bank of Kuwait returned banknotes totalling KWD 1,170 to the Claimant on the basis that they formed part of the series that had been stolen by Iraqi forces in Kuwait and subsequently cancelled during the period of Iraq's invasion and occupation of Kuwait. According to the Claimant, it purchased KWD 22,236.25 of the banknotes submitted for exchange prior to 2 August 1990, while the remaining KWD 32,830 were purchased from Turkish commercial banks between 2 August 1990 and 30 April 1991.

282. The Claimant also seeks USD 4,312 as compensation for Iraqi dinar banknotes totalling IQD 13,800 that were allegedly "withdrawn from circulation according to the decision of [the] Iraqi Government dated May 5, 1993". However, in a submission dated 2 February 2000, the Claimant advised that Iraqi dinar banknotes totalling IQD 21,413 had "not been sent to Iraq after August 2, 1990 because of the decision of the United Nations

Security Council related to Iraq". The Claimant also advised that these Iraqi dinar banknotes were purchased by it prior to 2 August 1990.

(ii) Analysis and valuation

283. In accordance with the principles concerning supplements and amendments set out in paragraph 17 above, the Claimant's attempt to increase the amount of its existing claim for Iraqi dinar banknotes from IQD 13,800 to IQD 21,413 is not admissible.

284. The compensability of the claim for the cancelled Kuwaiti dinar banknotes depends upon the circumstances under which the banknotes came into the Claimant's possession. In this regard, the Panel finds that the Claimant did not explain whether it received the Kuwaiti dinar banknotes in the usual course of its business, or whether it took reasonable measures to avoid the losses for which it claims (e.g., whether it stopped accepting Kuwaiti dinars after notice of the cancelled banknotes was circulated to banks). Consequently, the Panel finds that this claim for the cancelled Kuwaiti dinar banknotes is not compensable.

285. With regard to the claim for the Iraqi dinar banknotes, the Panel considers that the Claimant has failed to demonstrate that the alleged losses were direct losses resulting from Iraq's invasion and occupation of Kuwait. Although the Claimant may have suffered a loss from holding the Iraqi currency, the Claimant has failed to demonstrate that the trade embargo imposed on Iraq by Security Council resolution 661 (1990) was not the sole cause of the losses, or that the losses could not reasonably have been avoided. <sup>78/</sup> Consequently, the Panel finds that this claim is not compensable.

(iii) Recommendation

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

7. Recommendation for the Republic of Turkey

287. Based on its findings regarding the Claims filed by the Republic of Turkey, the Panel recommends compensation in the amount of USD 1,800.

Table 5. Recommended compensation for the Republic of Turkey

<u>Loss type</u>	<u>Review amount</u> <u>(original</u> <u>currency)</u> <u>(USD)</u>	<u>Recommended</u> <u>compensation</u> <u>(USD)</u>
1. Ministry of Public Works and Settlement, General Directorate of Highways		
Payment or relief to others	543,363	nil
Public service expenditures	12,113,335	nil
2. Prime Ministry, General Directorate of Rural Services		
Public service expenditures	55,937,337	nil
3. Ministry of National Defence		
Public service expenditures	929,652,349	nil
4. Ministry of National Education		
Contract	55,625	nil
5. Ministry of Tourism		
Other tangible property	6,573	1,800
Other	1,395,000,000	nil
6. Central Bank of the Republic of Turkey		
Contract <u>79/</u>	871,285,693	nil
Other	8,377	nil
<u>Total</u>	3,264,602,652	1,800

VI. SUMMARY OF RECOMMENDATIONS

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

- a. The Federal Republic of Germany: USD 4,931,828;
- b. The State of Israel: USD 74,563,000;
- c. The Syrian Arab Republic: nil;
- d. The Republic of Turkey: USD 1,800;

Geneva, 1 December 2000

(Signed) Mr. Bjørn Haug  
Chairman

(Signed) Mr. Georges Abi-Saab  
Commissioner

(Signed) Mr. Michael Bonell  
Commissioner

Notes

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

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

3/ The "Original amount claimed" is the amount of compensation requested by the claimant on the original claim form filed with the Commission. If this amount was not expressed in USD, then, for the sole purpose of comparison, it is expressed in USD using the August 1990 mid-point rate of exchange as indicated in the United Nations Monthly Bulletin of Statistics, Vol. XLV, No. 4, April 1991, (ST/ESA/STAT/SER.1/120). The Original amount claimed does not reflect any subsequent amendments that may have been made by the claimant.

4/ The "Amended amount claimed" is the Original amount claimed as amended in a timely manner by the claimant. It includes any reductions to or partial withdrawal of claims made before the Panel finalized this Report.

5/ The Original amount claimed in respect of this claim was 204,771,954 German deutsche mark ("DEM") and USD 509,000.

6/ The portion of the consolidated claim of the State of Israel in the original amount claimed of USD 11,000,000 that related to insurance losses was severed and transferred to the "E/F" Panel, appointed to review export guarantee and insurance claims.

7/ The portion of the claim of Central Bank of the Republic of Turkey in the original amount claimed of USD 121,440,409 that related to the Bekhme Dam Project in Northern Iraq was severed and transferred to the "E3" Panel, appointed to review non-Kuwaiti construction/engineering claims. The Amended amount claimed includes an interest component; see para. 274 of this Report.

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



necessary to carry out cross-category checks in respect of claims in categories "A" and "B".

9/ "Report and Recommendations made by the Panel of Commissioners concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)", (S/AC.26/1997/6), (the "First Report"), paras. 47-64. See also "Report and Recommendations made by the Panel of Commissioners concerning Part Two of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)", (S/AC.26/1998/4), (the "Second Report"), para. 45; "Report and Recommendations made by the Panel of Commissioners concerning the Second Instalment of 'F1' Claims", (S/AC.26/1998/12), (the "Third Report"), para. 75; "Report and Recommendations made by the Panel of Commissioners concerning the Third Instalment of 'F1' Claims", (S/AC.26/1999/7), (the "Fourth Report"), para. 75; and "Report and Recommendations made by the Panel of Commissioners concerning the Fourth Instalment of 'F1' Claims", (S/AC.26/2000/13), (the "Fifth Report"), para. 12.

10/ See the First Report, para. 62.

11/ See letter dated 11 March 1998 from the secretariat to the Permanent Missions of States and Offices of International Organizations (UNCC/EXE/614/1998).

12/ See also "Report and Recommendations made by the Panel of Commissioners concerning the Second Instalment of 'E2' claims", (S/AC.26/1999/6), (the "Second 'E2' Report"), para. 54.

13/ This finding is also consistent with that of other panels; see, for example, "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of 'F2' Claims" (S/AC.26/1999/23), (the "First 'F2' Report"), para. 22.

14/ Governing Council decision 7, "Criteria for additional Categories of Claims", (S/AC.26/1991/7/Rev.1).

15/ The First Report, para. 94.

16/ Ibid.

17/ Ibid., paras. 40 and 96. The "E2" Panel also decided at paras. 122 and 123 of the Second "E2" Report that Turkey was not subject to military operations or threat of military action during the period of Iraq's invasion and occupation of Kuwait.

18/ The First "F2" Report, paras. 25, 257 and 363.

19/ Governing Council decision 19, "Military Costs", (S/AC.26/Dec.19 (1994)).

20/ The Panel notes that the "F2" Panel has previously considered a claim by the Government of Jordan for the cost of maintaining adequate military readiness during the period of Iraq's invasion and occupation of Kuwait. The "F2" Panel found that, although the Armed Forces of Jordan did not form part of the Allied Coalition Forces, the extra costs of wages, patrols, manoeuvres, training, equipment, clothing, spare parts, maintenance and depreciation of equipment were expended for the purpose of maintaining Jordan's military readiness and were military costs as contemplated by the Governing Council. See the First "F2" Report, paras. 138, 158 and 160.

21/ The Fifth Report, paras. 20-21.

22/ See, for example, the First Report, para. 100; the Second Report, para. 74; and the Third Report, para. 126. See also, "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of Individual Claims for Damages up to USD 100,000 (category 'C' claims)" (S/AC.26/1994/3), (the "First 'C' Report"), pp. 31-32; "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of 'E2' claims" (S/AC.26/1998/7), (the "First 'E2' Report"), para. 279; and "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of 'E4' claims" (S/AC.26/1999/4), para. 227.

23/ Governing Council decision 16, "Awards of Interest", (S/AC.26/1992/16).

24/ There is no need to set a date from which interest should run for Israel's Ministry of Health because no award of compensation is recommended after the set-off. See para. 149 of this Report.

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

26/ The Fourth Report, para. 88. See also, the First Report, paras. 67-68; the Third Report, paras. 83-85; and the Fifth Report, para. 35.

27/ The Panel notes that at para. 79 of the First Report, it considered a Government's claim for the costs it incurred following the liberation of Kuwait to recover several of its cars that had been left in Baghdad during the evacuation of its Embassy. In considering the compensability of the claim, the Panel took account of paragraph 6 of Governing Council decision 9, which recognizes that claimants are under a duty to mitigate and instructs the panels not to compensate losses that "could reasonably have been avoided". The Panel determined that reasonable expenses incurred by claimants in mitigating damage resulting from Iraq's

invasion and occupation of Kuwait are compensable, and that the Government's retrieval of its cars from Baghdad constituted a reasonable step in mitigation of its tangible property losses.

28/ See the Third Report, para. 106; the Fourth Report, paras. 129-131; and the Fifth Report, paras. 290 and 293.

29/ The Fifth Report, paras. 297-298.

30/ Ibid., para. 110.

31/ Ibid., para. 71.

32/ Ibid., para. 70.

33/ See the Third Report, para. 122; and the Fourth Report, paras. 137-140.

34/ See the First Report, para. 85.

35/ The Panel notes that Jordan was a transit point for many evacuees fleeing from Iraq and Kuwait after 2 August 1990.

36/ The First Report, paras. 92-96; and the Third Report, paras. 100-111.

37/ The "Review amount" is the Amended amount claimed as modified by the Panel's reclassification of loss types, correction for arithmetical errors and reductions to the Amended amount claimed requested by the claimant. It does not include those portions of claims that were severed and assigned to other panels. It also does not include attempts by claimants to increase amounts claimed or to introduce new claims by way of the claim development process, since they are not permitted. The Review amount is stated in the original currency in which the amount was claimed, and converted, if necessary, into USD.

38/ As noted previously in this Report, the Claim as originally submitted by the Claimant included a portion relating to insurance losses that was severed and transferred to the "E/F" Panel.

39/ This USD figure is based on the Claimant's conversion of NIS 228,658,463.

40/ Israel, Ministry of Justice, Laws of the State of Israel, vol. 15, 5721-1960/61 (Government Printer), p. 101.

41/ The MOF did not claim for loss adjusters' fees or any other costs that it may have incurred in administering the compensation scheme.

42/ The component items asserted in respect of the Ground Forces total USD 201,000,000, rather than the figure of USD 202,000,000. This figure of USD 201,000,000 was subsequently confirmed by the MOD in its September 1999 response to the article 34 notification.

43/ See the Third Report, para. 122; and the Fourth Report, paras. 137-141.

44/ The Panel notes that at paras. 101-103 of the Second "E2" Report, the "E2" Panel also found in the context of the corporate claims before it that Israel was the subject of a threat of military action. The "E2" Panel considered that the period of threat was from 15 January to 2 March 1991. However, this Panel considers that the context and factual circumstances underlying the "E2" Panel's determination are different from those faced by this Panel, which relate to a Government's provision of reasonable protective measures.

45/ The Third Report, para. 120; and the Fourth Report, para. 127.

46/ This USD figure is based on the Claimant's conversion of approximately NIS 100,000,000.

47/ United States of America, United States Statutes at Large, 1991 and Proclamations, vol. 105, part 1 (Washington, D.C., U.S. Government Printing Office, 1992), Public Law No. 102-27, p. 130.

48/ Governing Council decision 13, "Further Measures to Avoid Multiple Recovery of Compensation by Claimants", (S/AC.26/1992/13).

49/ The Fifth Report, paras. 136-137, 145-147, and 157-158.

50/ The USD 28,118,500 set-off amount for the MOH exceeds the recommended amount prior to set-off of USD 26,600,000. Accordingly, the figure of USD 26,600,000 is included in this column of the table.

51/ The Panel further refers to the discussion in its First Report stressing the procedural and evidentiary requirements imposed on claimants. See the First Report, paras. 56-60.

52/ Note Verbale dated 31 January 1991 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General, (S/22193, 4 February 1991).

53/ See also the Fifth Report, para. 161.

54/ The First Report, para. 85.

55/ The Panel notes that both the "C" and "D" Panels consider claims for "school fees" to be non-compensable claims for "on-going

ordinary living expenses". See, for example, the First "C" Report, pp. 78-79; and "Report and recommendations made by the Panel of Commissioners concerning Part One of the First Instalment of individual claims for damages above USD 100,000 (category 'D' claims)", (S/AC.26/1998/1), para. 128.

56/ The Panel notes that in the First "F2" Report, the "F2" Panel considered a claim by the Government of Jordan for the value of annual oil grants from the Government of Kuwait that were suspended immediately after Iraq's invasion of Kuwait and were never resumed. The "F2" Panel found that Jordan had a mere expectation that it would continue to receive oil grants, and that such expectation was not compensable. See the First "F2" Report, paras. 260 and 262.

57/ This USD figure is based on the Claimant's conversion of SYP 663,500,000.

58/ This USD figure is based on the Claimant's conversion of SYP 664,856,000.

59/ Although the Claimant mentions expenses for the construction of three refugee camps, the Panel does not consider such expenses as part of the claimed losses, because the Claimant states that such costs were covered by international assistance and does not specify a claimed amount for such expenses.

60/ The Third Report, para. 122.

61/ The Fourth Report, para. 140.

62/ Ibid., paras. 137-140. See also the Fifth Report, para. 59.

63/ This USD figure is based on the Claimant's conversion of SYP 5,200,000,000.

64/ This USD figure is based on the Claimant's conversion of SYP 5,215,000,000.

65/ See also the Second "E2" Report, para. 69.

66/ The First "C" Report, p. 62.

67/ Compare with the First "F2" Report, paras. 7-12 and 185-193. The Panel finds that the refugee and evacuee situation experienced in Syria after 2 August 1990 is distinguishable from the massive influx of approximately one million evacuees and returnees into Jordan as a result of Iraq's invasion and occupation of Kuwait. With regard to the particular circumstances relating to Jordan, the "F2" Panel considered that the massive influx of evacuees and returnees overwhelmed Jordan's ability to

receive tourists at ports of entry and hindered the ability of tourists to travel within Jordan. The "F2" Panel consequently determined that there was a direct causal link between a decline in the number of tourists visiting Government tourist sites in Jordan and Iraq's invasion and occupation of Kuwait.

68/ Individuals, corporations and other non-Governmental entities, were required to file their loss of income claims in categories "C", "D" and "E".

69/ In a submission dated 24 January 1997, the Claimant mentioned building maintenance expenditures, but did not specifically claim for such expenditures. In any event, the submission was made after the 1 January 1997 deadline for new claims.

70/ The Third Report, paras. 114 and 115.

71/ The First Report, paras. 76-78. See also, the Third Report, para. 94; and the Fourth Report, para. 100.

72/ See also the Second "E2" Report, para. 69, in which the "E2" Panel reached this same conclusion.

73/ The First "C" Report, p. 62. This figure of 60,000 includes approximately 5,000 Turkish nationals.

74/ Compare with the First "F2" Report, paras. 7-12 and 185-193, referred to at note 67 above. The Panel finds that the refugee and evacuee situation experienced in Turkey after 2 August 1990 is distinguishable from the massive influx of approximately one million evacuees and returnees into Jordan as a result of Iraq's invasion and occupation of Kuwait.

75/ The claim was assigned UNCC Claim No. 5000148, and was reported in the "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of 'E3' Claims", (S/AC.26/1998/13).

76/ The First "E2" Report, para. 90.

77/ Ibid., para. 72.

78/ See paragraph 6 of Governing Council decision 9, "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation", (S/AC.26/1992/9). See also the Fifth Report, para. 198.

79/ This loss type includes an interest component. See para. 33 of this Report.

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