United Nations Compensation Commission
Governing Council Report and Recommendations
Made by The Panel of Commissioners
Concerning the Fifth Instalment of “F4” Claims

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Author’s Note: The 1992 IMAX movie *Fires of Kuwait*, depicts the environmental disaster caused by Iraqi military forces as they withdrew from Kuwait near the close of the 1991 Persian Gulf War (PGW). The UN Panel’s discussion of the various claims and defenses provides excellent insight into the environmental damage associated with war.

The Council created this Commission in 1991 to adjudicate the 2.5 million claims against Iraq as a result of the PGW. The amount of damages recommended to the UN Security Council by its UN Compensation Commission panel were calculated in US dollars. An overview of the Commission’s work is available in R. Lillich (ed.), *The United Nations Compensation Commission* (Irvington, NY: Transnat’l, 1995).

The Iranian claims are the focus of this edited version of the Panel’s opinion regarding the six nations that submitted claims against Iraq. Iraq’s neighbor had the broadest range of environmental damages. Kuwait was of course the most damaged of all countries. It was the situs of the more than 600 oil wells set afire by retreating Iraqi troops.

Commission’s Opinion:

INTRODUCTION

1. The Governing Council of the United Nations Compensation Commission (the “Commission”) . . . appointed the “F4” Panel of Commissioners (the “Panel”) . . . to review claims for direct environmental damage and depletion of natural resources resulting from Iraq’s invasion and occupation of Kuwait.

3. The fifth “F4” instalment consists of 19 claims submitted by six governments (collectively “the Claimants”) concerning damage caused by Iraq’s invasion and occupation of Kuwait. Five claims were submitted by the Government of the Islamic Republic of Iran (“Iran”); two claims were submitted by the Government of the Hashemite Kingdom of Jordan (“Jordan”); four claims were submitted by the Government of the State of Kuwait (“Kuwait”); four claims were submitted by the Government of the Kingdom of Saudi Arabia (“Saudi Arabia”); three claims were submitted by the Government of the Syrian Arab Republic (“Syria”); and one claim was submitted by the Government of the Republic of Turkey (“Turkey”).

4. The claims in the fifth “F4” instalment are for compensation for damage to or depletion of natural resources, including cultural heritage resources; measures to clean and restore damaged environment; and damage to public health. The claims relate to damage resulting from, inter alia:

(a) Pollutants from the oil well fires and damaged oil wells in Kuwait;
(b) Oil spills into the Persian Gulf from pipelines, offshore terminals and
tankers;
(c) Influx of refugees into the territories of some of the Claimants;
(d) Operations of military personnel and equipment;
(e) Mines and other remnants of war; and
(f) Exposure of the populations of the Claimants to pollutants from the oil well fires and oil spills in Kuwait and to hostilities and various acts of violence.

I. PROCEDURAL HISTORY

10. The Commission received written comments from Iraq on the claims on 23 and 30 August 2004 and 29 October 2004.

20. Oral proceedings were held at the Palais des Nations in Geneva on 14 and 15 September 2004. Representatives and experts of each of the Claimants and Iraq attended the oral proceedings and presented their views.

II. LEGAL FRAMEWORK

A. Mandate of the Panel

21. The mandate of the Panel is to review the “F4” claims and, where appropriate, recommend compensation.

22. In discharging its mandate, the Panel has borne in mind the observations of the Secretary-General of the United Nations, in his report to the Security Council of 2 May 1991, that:

The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the Commissioners to provide this element.

B. Applicable law

23. Article 31 of the Rules sets out the applicable law for the review of claims, as follows:

In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the [UN] Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law.
24. Paragraph 16 of Security Council resolution 687 (1991) reaffirms that Iraq is “liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq’s unlawful invasion and occupation of Kuwait.”

C. Compensable losses or expenses

25. Governing Council decision 7 (S/AC.26/1991/7/Rev. 1) provides guidance regarding the losses or expenses that may be considered as “direct loss, damage, or injury” resulting from Iraq’s invasion and occupation of Kuwait in accordance with paragraph 16 of Security Council resolution 687 (1991).

26. Paragraph 34 of Governing Council decision 7 provides that “direct loss, damage, or injury” includes any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation.

27. Paragraph 35 of Governing Council decision 7 provides that “direct environmental damage and the depletion of natural resources” includes losses or expenses resulting from:

(a) Abatement and prevention of environmental damage, including expenses directly relating to fighting oil well fires and stemming the flow of oil in coastal and international waters;
(b) Reasonable measures already taken to clean and restore the environment or future measures which can be documented as reasonably necessary to clean and restore the environment;
(c) Reasonable monitoring and assessment of the environmental damage for the purposes of evaluating and abating the harm and restoring the environment;
(d) Reasonable monitoring of public health and performing medical screenings for the purposes of investigation and combating increased health risks as a result of the environmental damage; and
(e) Depletion of or damage to natural resources.

E. Legal issues

36. Iraq contends that some of the damage for which the Claimants seek compensation cannot be attributed solely to Iraq’s invasion and occupation of Kuwait. It
alleges that some of the damage resulted from other factors that existed before and after the invasion and occupation of Kuwait. According to Iraq, the environments in the Claimants’ countries were not in pristine condition before the invasion and occupation. In particular, Iraq refers to [their] exploration for oil; operation of refineries and petrochemical industries; overgrazing; extraction of groundwater; operation of oil tankers in the Persian Gulf; and contamination resulting from the [1980-1988] Iran-Iraq conflict as sources of environmental damage both before and after the invasion and occupation.

37. The Panel has previously stated that Iraq is not liable either for damage that was unrelated to its invasion and occupation of Kuwait or for losses or expenses that are not a direct result of the invasion and occupation. However, the Panel has also noted that the fact that other factors might have contributed to the loss or damage does not exonerate Iraq from liability for loss or damage that resulted directly from the invasion and occupation. Whether or not any environmental damage or loss for which compensation is claimed was a direct result of Iraq’s invasion and occupation of Kuwait will depend on the evidence presented in relation to each particular loss or damage.

38. As in previous instalments, the Panel has recommended no compensation where it has found that damage resulted from causes wholly unconnected with Iraq’s invasion and occupation of Kuwait. Where damage resulted directly from Iraq’s invasion and occupation of Kuwait but also from other factors, due account has been taken of such other factors in order to determine the level of compensation that is appropriate for the portion of the damage which is directly attributable to Iraq’s invasion and occupation of Kuwait. No compensation is recommended where it has not been possible to determine what proportion of the damage, if any, can reasonably be attributed directly to Iraq’s invasion and occupation of Kuwait.

3. Duty of Claimants to prevent and mitigate environmental damage

40. In previous instalments, the Panel has stressed that Claimants have a duty to mitigate damage to the extent possible and reasonable in the circumstances. Indeed, in the case of environmental claims, the duty to prevent and mitigate damage is a necessary consequence of the common concern for the protection and conservation of the environment, and entails obligations toward the international community and future generations. This duty encompasses both a positive obligation to take appropriate measures to respond to a situation that poses a clear threat of environmental damage, as well as the duty to ensure that any measures taken do not aggravate the damage already caused or increase the risk of future damage. However, the Panel has clarified that whether an act or omission of a claimant constitutes failure to mitigate damage depends on the circumstances of each claim and the evidence available.

42. In the third “F4” report, the Panel stated that the appropriate objective of remediation is to restore the damaged environment or resource to the condition in which it would have been if Iraq’s invasion and occupation of Kuwait had not occurred. However, the Panel stressed that regard must be had to a number of considerations in applying this objective to a particular claim, including, inter alia, the location of the damaged environment or resource and its actual or potential uses; the nature and extent of the damage; the possibility of future harm; the feasibility of the proposed remediation
measures; and the need to avoid collateral damage during and after the implementation of the proposed measures.

6. Damage to public health

59. The claims in the fifth “F4” instalment include claims by governments for losses or expenses resulting from damage to public health, in terms of adverse health effects on specific categories of residents of the claimant countries or on the general population. The damage or losses for which compensation is claimed include expenses of medical treatment for specific diseases and mental conditions as well as general claims for loss of life or reduced quality of life of the population.

61. . . . Iraq argues that there is no basis for awarding compensation for such expenses since this is a basic service which governments provide in general whether there is only one patient or more patients to be treated. According to Iraq, a government may only be entitled to compensation for medical treatments if it can demonstrate that these expenses were additional to what it would normally have incurred.

68. The Panel . . . concludes that expenses incurred by a State in combating increased public health problems or public health risks caused by environmental damage that resulted directly from Iraq’s invasion and occupation of Kuwait are, in principle, compensable in accordance with Security Council resolution 687 (1991). As with all claims, the test to be applied is whether the expense or loss for which compensation is claimed has actually occurred and can reasonably be demonstrated to be a direct result of Iraq’s invasion and occupation of Kuwait.

7. Valuation methodologies

80. In the view of the Panel, international law does not prescribe any specific and exclusive methods of measurement for awards of damages for internationally wrongful acts by states. The general rule is to restore what has been damaged to integrity or, if this is not possible, to provide an equivalent for it. The overall criterion is always that of effective reparation for the wrongful act. Hence, even in the absence of precise rules or prescriptions on the methods for evaluating damage, courts and tribunals are entitled and required to evaluate damage and determine appropriate compensation, relying on general principles for guidance, particularly the principle that reparation must, as far as possible, wipe out all the consequences of the illegal act. As the Tribunal in the Trail Smelter Arbitration stated in its interim award: “Where the [wrongful act] itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate.”

81. The Panel recognizes that there are inherent difficulties in attempting to place a monetary value on damaged natural resources, particularly resources that are not traded in the market.
III. REVIEW OF THE FIFTH INSTALMENT OF “F4” CLAIMS

87. A . . . panel of Commissioners may “(a) in unusually large or complex cases, request further written submissions and invite individuals, corporations or other entities, Governments or international organizations to present their views in oral proceedings” and “(b) request additional information from any other source, including expert advice, as necessary”.

89. At the direction of the Panel, the secretariat and the Panel’s expert consultants undertook site visits to Iran, Jordan, Kuwait, Saudi Arabia and Syria.

IV. CLAIMS OF THE ISLAMIC REPUBLIC OF IRAN

A. Overview

99. Iran states that it suffered damage as a result of pollution from the oil well fires in Kuwait; the oil spills into the Persian Gulf; and the influx of refugees who departed from Iraq or Kuwait as a result of Iraq’s invasion and occupation of Kuwait.

100. Iran claims that pollutants from the oil well fires in Kuwait were deposited in parts of its territory. Iran notes that many international and national reports, supported by extensive visual, satellite and remote-sensing data collections, show that significant quantities of pollutants were dispersed in the southern and south-western provinces of Iran in the form of wet and dry deposition. Iran states that its territory was exposed to wet deposition from approximately 350,000 tonnes of soot, as well as nitrogen and sulphur oxides, organic carbons, heavy metals and polycyclic aromatic hydrocarbons from the oil well fires in Kuwait. According to Iran, its analysis of satellite images and meteorological data clearly reveal that the soot was mainly over the southern and south-western provinces of Iran. Iran further states that analysis of “black rain” samples following Iraq’s invasion and occupation of Kuwait show “increased concentrations of anions, cations, and heavy metals” in the rain.

101. Iran presented evidence intended to show that the oil spills created oil slicks in an extended area of the Persian Gulf, and that the oil well fires resulted in the deposition of particulate matter over large areas of land and sea. Iran submitted an analysis of satellite images used to track the movements of the oil spills and contaminants from the oil well fires from Kuwait to Iran. Iran also presented analytical data, including chemical and fingerprinting information. According to Iran, analyses and field observations undertaken by it provide a strong indication that some of the oil from the oil spills reached the coast of Iran.

B. Claim No. 5000286—Agricultural resources

102. Claim No. 5000286 comprises three claim units, with an asserted value of USD 441,895,991, for alleged losses to agricultural crops caused by air pollution and acid rain resulting from Iraq’s invasion and occupation of Kuwait. . . . The first claim unit is for a reduction in crop yields; the second claim unit is for a reduction in the quality of
crops; and the third claim unit is for a proposed long-term monitoring and assessment project.

2. Second claim unit—Reduced crop quality

119. Iran seeks compensation in the amount of USD 174,648,879 for losses due to reduced quality of several varieties of agricultural crops in the Southern Provinces in 1991. Iran states that the reduction in the quality of crops . . . was caused by exposure of crops to pollutants from the oil well fires in Kuwait and the resulting adverse environmental conditions.

123. The Panel . . . concludes that the evidence presented is not sufficient to establish the extent of loss due to a reduction in the quality of the specified crop varieties in the Southern Provinces. Consequently, Iran has failed to meet the evidentiary requirements for compensation.

3. Third claim unit–Long-term monitoring and assessment project

125. Iran seeks compensation in the amount of USD 50,000,000 for a long-term monitoring and assessment project to ascertain damages to its agricultural resources.

126. Iran claims that because of the pollutants from the oil well fires in Kuwait, its agriculture could suffer long-term losses as a result of damage to the soil from the deposition of heavy metals (such as vanadium, cadmium and lead), soot and hydrocarbons. Iran points out that some of the hydrocarbons, such as polycyclic aromatic hydrocarbons, are very toxic. Iran further states that these compounds will not only harm plant growth but will also disturb soil microbiology, killing many micro-organisms (such as Rhizobium and Mycorrhizae) and that this will result in lower soil fertility and reduced sustainability in crop production.

127. Although Iran was requested to submit details of the proposed project, such as a description of the objectives, proposed research methods and work schedule, it failed to provide the requested information.

128. The Panel, therefore, concludes that Iran has not submitted sufficient evidence to link the proposed programme to Iraq’s invasion and occupation of Kuwait or to justify the claimed costs of the project. Consequently, Iran has failed to meet the evidentiary requirements for compensation . . .

129. Accordingly, the Panel recommends no compensation for this claim unit.

4. Recommended award

130. The Panel’s recommendations in respect of claim No. 5000286 are summarized in table 2. [For this segment of Iran’s claim—amount claimed: $441,895,991.00. Award recommended: $24,034,892.00.]

C. Claim No. 5000301–Fisheries resources

131. Claim No. 5000301 is a claim for compensation for losses incurred by the Iranian Fisheries Company (“IFC”), due to decreases in fisheries production and a delay in the implementation of a fisheries-related project as a result of Iraq’s invasion and occupation of Kuwait. The claim comprises four claim units with an asserted value of USD 161,000,000. The first claim unit is for a decrease in fish catches; the second claim
unit is for a decrease in catches in the Bushehr shrimp fishery; the third claim unit is for expenses incurred as a result of the delay in a project with FAO and the United Nations Development Programme (“UNDP”); and the fourth claim unit is for long-term damage to the marine environment and fisheries.

133. Iran states that its marine resources were exposed to pollution resulting from Iraq’s invasion and occupation of Kuwait, and that the pollution resulted in reductions in fisheries production, especially in the Bushehr and Khuzestan provinces of Iran. Iran also claims that the invasion and occupation caused a delay in the implementation of a fisheries project and that the delay caused financial loss to the IFC.

134. Iraq states that Iran has not provided sufficient evidence to demonstrate that oil pollution in Iranian waters as a consequence of the conflict affected Iranian fisheries resources. It argues that the entire claim is unjustified because no loss has been demonstrated, and it is unreasonable because the information on costs provided by Iran is incomplete and flawed.

5. Recommended award

160. The Panel finds that, although there is evidence that parts of Iran’s marine environment were exposed to the oil spills resulting from Iraq’s invasion and occupation of Kuwait, Iran has not provided sufficient evidence either to demonstrate the nature of the alleged long-term damage to the marine environment and fisheries, or to show that any such damage is a direct result of the oil spills resulting from the invasion and occupation. Iran has neither fully explained the nature of the losses nor distinguished them from other similar losses for which it claims compensation in other claim units of this claim or in its other claims. The Panel also finds that there is insufficient evidence to quantify damage to mangroves and coral reefs, if any, that can be attributed directly to Iraq’s invasion and occupation of Kuwait. In the circumstances, the Panel does not find that there is any justification for any rehabilitation programmes. Consequently, Iran has failed to meet the evidentiary requirements for compensation.[Amount claimed: $161,000,000.00. Recommended award: “nil.”]

D. Claim No. 5000288–Other resources

163. Claim No. 5000288 comprises six claim units, with a total asserted value of USD 7,916,024,475, for losses resulting from Iraq’s invasion and occupation of Kuwait.

165. The first claim unit is for damage to or depletion of terrestrial resources in Iran caused by the presence of refugees who departed from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991.

166. The second claim unit is for damage to or depletion of terrestrial and agricultural resources in Iran caused by contamination from the oil well fires in Kuwait.

167. The third claim unit is for damage to cultural heritage resources in Iran caused by contamination from the oil well fires.

168. The fourth claim unit is for damage to or depletion of marine resources in Iran caused by:
(a) The oil spills in the Persian Gulf; and
(b) Pollutants from the oil well fires.

169. The fifth claim unit is for monitoring of groundwater resources in Iran to identify and assess damage by pollutants from the oil well fires.

170. The sixth claim unit is for claim preparation costs.

171. Iran seeks compensation in the amount of USD 1,541,408 for loss of rangeland resources and USD 654,420 for loss of forest resources resulting from the presence in Iran of refugees who departed from Iraq or Kuwait between 2 August 1990 and 2 March 1991 as a result of Iraq’s invasion and occupation of Kuwait.

2. Second claim unit–Terrestrial and agricultural resources damaged by oil well fires

185. Iran seeks compensation in the amount of USD 4,714,349,378 for losses due to adverse impacts on its terrestrial and agricultural resources of the pollutants from the oil well fires in Kuwait resulting from Iraq’s invasion and occupation of Kuwait. The adverse impacts include:

(a) Reduction in the production of rangeland forage;
(b) Damage to or depletion of forestry resources;
(d) Increased morbidity and mortality of livestock and poultry, reduction in livestock and poultry production, and quarantine and vaccination costs; and
(d) Loss of production of medicinal plants.

190. The Panel . . . concludes that Iran has not provided sufficient evidence to demonstrate the circumstances and amount of the losses claimed. Consequently, Iran has failed to meet the evidentiary requirements for compensation.

3. Third claim unit–Cultural heritage resources

192. Iran seeks compensation in the amount of USD 900,000,000 for the cost of future remediation of damage to cultural heritage resources in Iran caused by pollution from the oil well fires in Kuwait resulting from Iraq’s invasion and occupation of Kuwait.

194. Iran proposes to consolidate, clean and protect archaeological sites and objects in Iran that were damaged by pollution from the oil well fires. Iran also proposes to train cultural heritage staff, although it does not give details of the training to be provided.

196. According to Iran, the purpose of the claim is to address the impacts of air pollution resulting from the oil well fires in Kuwait on its archaeological sites and objects. The information provided by Iran suggests that the claim is for surface blackening and chemical deterioration. Iran states that the oil well fires in Kuwait produced massive air pollution that spread to all the surrounding regions. Iran asserts that its territory was among the most affected by the air pollution, especially the provinces of
Khuzestan, Bushehr, Isfahan, Fars, Kerman, Sistan, Baluchistan, Ilam and Yadz in the southern part of the country.

197. Iran asserts that dry and wet depositions of dangerous pollutants, including rains rich in salt, have greatly increased the potential of chemical deterioration to cultural artefacts and sites in its territory. According to Iran, average winds in Kuwait are from the northwest, frequently turning south, south-west on rainy days. As a result, smoke plumes from the burning oil wells in Kuwait were transported to the Iranian basin and affected cultural and natural heritage artefacts and sites in the basin.

202. Iraq contends that Iran has failed to meet the evidentiary standard required to establish this claim. In the first place, Iraq challenges Iran’s claim that smoke from the oil well fires reached cultural heritage sites in Iran. Secondly, Iraq states that Iran’s assessment of pollutant deposition is unreliable because of its use of inappropriate models, the paucity and inaccuracy of some of the data used and the poor interpretation of the data by Iran. According to Iraq, Iran uses inconclusive photographic evidence and eyewitness accounts to assess the extent of damage to cultural resources. Iraq contends that these factors are confounded by Iran’s history of poor protection of cultural heritage artefacts, and extensive cleaning programmes that have occurred in the period between the oil well fires and the conduct of the monitoring and assessment programmes by Iran.

203. Iraq also contends that much of the damage was due to factors unrelated to the invasion and occupation of Kuwait. Iraq states, in particular, that air pollution from vehicle emissions, especially in urban areas, refinery operations, and industrial emissions currently pose a more significant problem to cultural heritage artefacts in Iran.

206. In the view of the Panel, Iran has not provided sufficient evidence to establish a direct link between the alleged damage to its cultural heritage and Iraq’s invasion and occupation of Kuwait. Consequently, Iran has failed to meet the evidentiary requirements for compensation, as specified in article 35(3) of the Rules.

4. Fourth claim unit—Marine resources

208. Iran seeks compensation in the amount of USD 2,293,923,269 for damage to or depletion of its marine resources resulting from the oil spills in the Persian Gulf and pollutants from the oil well fires in Kuwait. The claim relates to damage to shoreline areas, wetlands, mangroves, intertidal and subtidal areas and coral reefs.

210. Iraq argues that Iran has failed to provide any conclusive evidence to show that the oil on its coastline (or any ascertainable proportion of the oil) came from the 1991 spills. According to Iraq, there are many other potential sources of oil pollution in the Gulf that can equally well, or even better, explain the presence of oil on the Iranian coast.

212. However, in the view of the Panel, although some contamination of Iran’s marine resources might be attributable to the oil spills or the oil well fires resulting from Iraq’s invasion and occupation of Kuwait, there are other possible major causes of such pollution. These include the 1983 Nowruz oil spill and other events during the Iran-Iraq war; the operation of oil platforms, terminals and oil processing facilities; as well as
natural seeps in the Persian Gulf. The evidence submitted by Iran, including chemical and fingerprinting data, is not sufficient to enable the Panel to determine the proportion of damage attributable to Iraq’s invasion and occupation of Kuwait and what proportion is attributable to any of the other potential causes.

213. The Panel, therefore, finds that Iran has not provided sufficient evidence to demonstrate the circumstances and the amount of the losses claimed. Consequently, Iran has failed to meet the evidentiary requirements for compensation.

5. Fifth claim unit—Monitoring of groundwater resources
215. Iran seeks compensation in the amount of USD 1,056,000 for expenses of proposed measures to collect and analyse samples from springs, wells, qanats and rivers that have been damaged by contamination from the oil well fires in Kuwait.

218. As previously noted by the Panel, there is evidence that pollutants from the oil well fires reached some parts of Iran. Data provided by Iran, including near-infrared satellite imagery and data on black rain, suggest that some of the pollutants were deposited in south-western Iran.

219. However, the evidence submitted by Iran in support of this claim unit is not sufficient to enable the Panel to determine the nature and purpose of the proposed monitoring programme, the appropriateness of the methods to be used or the reasonableness of the costs to be incurred. In the absence of such information, the Panel is unable to determine whether the proposed monitoring activities would constitute reasonable monitoring and assessment. . . .

220. The Panel, therefore, finds that Iran has failed to meet the evidentiary requirements for compensation.

6. Sixth claim unit—Claim preparation costs
222. Iran seeks compensation in the amount of USD 4,500,000 for administrative, technical and legal expenses of the preparation of this claim. The Panel considers that this claim unit is for claim preparation costs.

223. In a letter dated 6 May 1998, the Executive Secretary informed all panels of Commissioners that the Governing Council intends to resolve the issue of the compensability of claims preparation costs in the future.

224. The Panel, therefore, makes no recommendation in respect of this claim unit.

7. Recommended award
225. The Panel’s recommendations in respect of claim No. 5000288 are summarized in table 4. [Amount claimed: $7,916,024,475.00. Recommended award: $46,596.00.]

E. Claim No. 5000287—Public health

2. Second claim unit—Medical treatment and health services for the general population
262. Iran seeks compensation in the amount of USD 3,717,688 for expenses incurred in the provision of medical treatment and health services to its general
population due to an increase in the number of treatments provided for 13 diseases as a result of exposure to pollutants from the oil well fires in Kuwait.

263. Iran states that the inhabitants in 10 of its western provinces were exposed to pollutants from the oil well fires, such as smoke, black rain, oil mist and other toxic agents, in sufficient quantities to cause an increase in the number of treatments provided for 13 diseases in Iran in 1990 and 1991. The diseases are: respiratory ailments, streptococcal pharyngitis, conjunctivitis, typhoid and paratyphoid, viral hepatitis, skin diseases, anaemia, hypertension, ischemic heart disease, ictus, mental disorders, tuberculosis and malaria.

269. As previously noted by the Panel, there is evidence in the scientific literature that the smoke plume from the oil well fires moved over some parts of Iran in 1991. However, Iran has not provided any evidence to demonstrate that there is a causal link between certain of the diseases referred to in the claim, including typhoid, viral hepatitis, anaemia, hypertension, tuberculosis and malaria, and pollution from the oil well fires. The Panel, therefore, finds that Iran has failed to demonstrate that the claimed increase in the number of treatments for these diseases was a direct result of Iraq’s invasion and occupation of Kuwait.

270. With regard to acute respiratory diseases and asthma, streptococcal pharyngitis, conjunctivitis, skin diseases, ischemic heart disease, and ictus, the Panel observes that, although these diseases may be associated with air pollution, Iran did not make any allowances for other possible causes, such as population growth, underlying trends in disease rates, changes in lifestyles and habits, and increased air pollution levels resulting from economic and industrial development. Similarly, no allowance was made for other potential causes for the increase in mental disorders among its population.

272. In the view of the Panel, the evidence available does not provide a sufficient basis for determining the extent to which the effects of the oil well fires might have contributed to the increase in medical treatments in Iran. Consequently, Iran has failed to meet the evidentiary requirements for compensation.

4. Fourth claim unit–Post-traumatic stress disorder and panic disorder cases

283. Iran claims that the “stressors” resulting from Iraq’s invasion and occupation of Kuwait led to an increase in cases of post-traumatic stress disorder (“PTSD”) and panic disorder requiring treatment in Khuzestan and Bushehr. Examples of stressors identified by Iran include: fear of air strikes and chemical contamination, especially after natural resources were contaminated and many blasts of ordnance accompanied by smoke were observed; fear of blast sounds which were frequently heard in Abadan and Khorramshahr; fear of direct chemical or biological attacks; fear of the possibility of missiles of the Allied Coalition Forces accidentally hitting Abadan and Khorramshahr; and fear of possible harm from Iraqi and American aircraft flying over the border zone and Iranian territory that had been attacked during the Iran-Iraq conflict.

288. In the view of the Panel, the results of Iran’s monitoring and assessment study do not establish that the increase in the number of cases of PTSD and panic
disorder requiring treatment in Iran was a direct result of Iraq’s invasion and occupation of Kuwait. The Panel notes that the stressors to which Iran claims the population in the affected areas were subjected are not of the type that would cause PTSD. In this regard, the Panel notes that no combat activity took place in Iran during Iraq’s invasion and occupation of Kuwait. The Panel further notes that the zone analysis used by Iran to link cases of PTSD and panic disorder to Iraq’s invasion and occupation of Kuwait is not supported by the data that Iran submitted.

6. Recommended award

294. The Panel’s recommendations in respect of claim No. 5000287 are summarized in table 5. [Amount claimed: $2,571,509,483.00. Recommended award: $3,366,964.]

F. Claim No. 5000394–Monitoring of incidence of cancers

295. Iran seeks compensation in the amount of USD 332,300 for expenses of a proposed monitoring and assessment study to investigate possible links between pollution resulting from Iraq’s invasion and occupation of Kuwait and the incidence of cancers and haematological disorders in Iran.

305. The Panel considers that a study of possible increases in cancer incidence caused by Iraq’s invasion and occupation would be appropriate. The Panel notes that Iran’s preliminary review of data from Khuzestan and Fars provinces shows a significant increase in cancer incidence following 1991, particularly, hematopoietic malignancies (leukemias and lymphomas) which typically have latency periods of approximately four to five years, and are often used as initial indicators of possible environmental carcinogenic hazards. The data provide initial evidence that an increase in some cancers occurred following Iraq’s invasion and occupation of Kuwait. Hence, a more systematic investigation is justified. In the view of the Panel, this should involve the services of a qualified senior epidemiologist.

308. The Panel finds that, with these modifications, the proposed study constitutes reasonable monitoring of public health for the purposes of investigating and combating increased health risks. Consequently, expenses of the study qualify for compensation.

309. Accordingly, the Panel recommends compensation in the amount [claimed] of USD 332,300 for this claim.

G. Recommended awards for the claims of Iran

311. The Panel’s recommendations for Iran’s claims are summarized in table 7. [Total of all claims by Iran: $11,090,762,249.00. Total award recommended: $27,780,752.00.]

XII. COMPLETION OF THE REVIEW OF “F4” CLAIMS

778. This report completes the work of the Panel.
779. The Panel held 33 meetings in Geneva and reviewed a total of 168 claims for compensation with a total claimed amount of approximately USD 85 billion.

780. By its decision 132 (S/AC.26/Dec.132 (2001)) of 21 June 2001, the Governing Council approved awards for 69 monitoring and assessment projects recommended by the Panel in the first “F4” report. The Governing Council requested the Panel to ensure that the funds awarded were spent “on conducting the environmental monitoring and assessment activities in a transparent and appropriate manner and that the funded projects remain reasonable monitoring and assessment activities.”

781. Pursuant to the request of the Governing Council, the Panel, with technical assistance from the Post-Conflict Assessment Unit of the United Nations Environment Programme (“UNEP”), has tracked the progress of activities related to the funded projects. For this purpose, the Panel periodically requested progress reports from the Governments concerned on the conduct of their monitoring and assessment activities and expenditures of the funds awarded for those activities. The Panel reviewed these progress reports, including audit certifications on expenditures. Based on this review, the Panel submitted reports and, as appropriate, recommendations to the Governing Council on work undertaken on the projects and expenditures of the funds awarded for the projects. Altogether, eight reports were submitted by the Panel to the Governing Council.

782. As of 21 February 2005, 53 of the 69 projects were completed.

Geneva, 1 April 2005

Notes and Questions:
1. What law governed the resolution of the panel’s decision? See paragraph 42 above. Does this formulation comply with the §12.2 Bruntland Commission reparations approach?

2. The Panel noted that the Claimant nations all had the duty to mitigate their respective national damages. Why? In this Iranian segment of the Panel’s opinion, mitigation was not addressed any further, because of Iran’s supposed failure to prove most of the damages it claimed. Is it possible that: (a) these “failures” might be attributed to the Panel’s sense that Iraq was “piling it on,” by seeking excessive damages from Iraq— not only for the Kuwait fallout, but also from the 1980-1988 war between these two countries; and (b) that this 2004 decision would impact the amount of damages that the new post-Iraq War government would have to pay to a country with which the US has no diplomatic ties? This line of questions provides some insight into the importance of having objective panelists. (Note that Kuwait’s total claim was for $2,715,934,222. Its award was only $16,207,276.00, which is roughly within the same ballpark as Iran’s success rate.)

3. See paragraph 203 above. Does that help to explain why Iran was less successful than one might first expect?

4. See paragraph 223 above. What might be the Secretary-General’s reasoning for the panel not to consider this item claimed by Iran? Could it be delay, so as to effectively avoid this issue ever being considered? Could it be to expedite these proceedings, thus saving this ancillary matter for another day— as the work of the UN Compensation Commission had already been underway for thirteen years?
5. See paragraph 780-781 above. Would the §3.3 UN “Oil For Food” program in Iraq have any bearing on this limitation? Note how the panel’s work ties in with the purpose of §12.2 UN Environmental Development Programme.

6. Could the US be responsible to the people of Afghanistan and Iraq for the claims herein presented against Iraq?