

United Nations  Nations Unies  
INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

INTERNAL AUDIT DIVISION I  
OFFICE OF INTERNAL OVERSIGHT SERVICES

TO: Mr. Rolf Knutsson, Executive Secretary  
A: United Nations Compensation Commission,

DATE: 08 June 2005

REFERENCE: AUD-7-7:7 (Outline No. 336/05 /04)

FROM: Patricia Azarias, Director  
DE: Internal Audit Division I, OIOS

*P. Azarias*

SUBJECT: OIOS Audit No. AP2005/820/01: Audit of UNCC F-4 Claims: 5<sup>th</sup>  
OBJET: Installment

1. I am pleased to present herewith our report on the audit of the above subject, which was conducted during January to May 2005.
2. The report incorporates as appropriate the UNCC Secretariat's comments on eight of OIOS's preliminary audit queries/comments issued between April and May 2005. Please consider that OIOS considers all of the recommendations in this report as being of critical importance.
3. IAD is assessing the overall quality of its audit process and kindly requests that you consult with your managers who dealt directly with the auditors and complete the attached client satisfaction survey form.
4. I take this opportunity to thank the management and staff for the assistance and cooperation provided to the auditor in connection with this assignment.

Copy to: UN Board of Auditors  
M. Tapio, OIOS  
D. Knutsen

# Office of Internal Oversight Services

## Internal Audit Division I



### OIOS audit of UNCC F-4 Claims-5<sup>th</sup> Installment

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**Audit no:** AF2005/820/01  
**Report date:** 08/06/2005  
**Audit team:** Venkata Bendapudi, Auditor-in Charge

**EXECUTIVE SUMMARY**  
**Audit of UNCC F-4 Claims: 5<sup>th</sup> Installment**

OIOS conducted an audit of the fifth instalment of "F-4" claims consisting of nineteen claims submitted to the Panel, which recommended awards totalling \$252,028,468 for claims with an asserted value of \$49,936,562,997. These claims relate to natural resource damage, damage to cultural heritage and public health submitted by seven countries. The Governing Council (GC) is expected to review the recommendations made by the Panel of Commissioners in its June 2005 session.

OIOS' findings were communicated in writing to United Nations Compensation Commission as audit queries before the Governing Council approved the Panel's recommendations. UNCC's comments are incorporated in this report as appropriate.

OIOS noted improper involvement of UNCC in the procurement process of expert consultants. Although UNCC is expected to follow UN procurement rules on selection of expert consultants to assist the Panel of Commissioners in the review of F4 claims, UNCC as a requisitioner, on the grounds of urgency, directly approached and obtained the cost estimates from the consulting firm. Procurement of consultants to review F4 fifth installment claims with financial implication of \$1.7 million, have been carried out by issuing amendment to the existing contractor, without any competitive bidding.

OIOS reviewed the status of monitoring and assessment studies approved in the first installment of F4 claims. In OIOS' opinion, the primary objective of reasonable monitoring and assessment activities envisaged in Governing Council decision 7, to support the substantive claims could not be fully achieved, as only 55 percent of these studies, were completed before 15 September, which was the deadline set to receive monitoring and assessment information to the F4 Panel. OIOS noted disconnect between the criteria used by United Nations Environmental Programme (UNEP) and United Nations Compensation Commission (UNCC) to determine continuation of unfinished monitoring and assessment studies. In OIOS opinion, the Governing council should institute proper mechanism to recover funds from claimant Governments in respect of unfinished monitoring and assessment studies not recommended for continuation. Amounts to the tune of \$8 million should be recovered from claimant Governments. As the claim processing activities of UNCC are coming to an end, appropriate measures to ensure that monitoring and assessment studies which are recommended for continuation, be monitored for proper utilization.

OIOS also concluded that established evidentiary standards were not applied resulting in the overpayment of \$ 1.2 million in one of the claims. We noted that claims submitted to the UNCC are overstated and grossly inflated. It is evident from the fact that recommended award in this installment is only 0.5 percent of the asserted amount. We pointed out that the issue of claim preparation costs, which has a heavy financial implication, is yet to be resolved by Governing Council. The issue of making the monitoring and assessment information stored in the UNEP database, available to the larger community also needs to be decided by the Governing Council.

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## **LIST OF ABBREVIATIONS USED IN THE REPORT**

United Nations Environmental Programme	UNEP
United Nations Compensation Commission	UNCC
Office of the Internal Oversight Services	OIOS
Verification and Valuation Support Branch	VVSB
Legal Services Branch	LSB
Procurement and Transport Section	PTS
United Nations Office at Geneva	UNOG
Committee on Contracts	COC
Governing Council	GC
Monitoring and Assessment	M&A
Professional Judgement Reports	PJR

## I. INTRODUCTION

1. OIOS conducted an audit of the report and recommendations made by the F4 Panel of Commissioners concerning the fifth installment of "F-4" claims. The F4 fifth installment consist of 19 claims submitted to the Panel by nine countries seeking compensation for natural resources damage, cultural heritage damage and damage to public health. The total asserted value of these claims was \$49,936,562,997 and the Panel has recommended a total award of \$252,028,468.

2. The panel finalised the report in April 2005. The Governing Council is expected to review the Panel report and recommendations in it's June 2005 session.

3. The Panel has recommended award to eight out of nineteen claims submitted for review. It did not make any recommendation in respect of claims submitted by the Governments of Syria and Turkey. Summary of recommendations of the F4 panel on fifth instalment are shown in Figure 1.

**Figure 1: Summary of Recommendations**

Submitting Entity	Number of claims not recommended for award	Number of claims recommended for award	Original amount claimed (\$)	Amount Recommended (\$)
Government of Iran	1	4	11,090,762,249	27,780,752
Government of Jordan	1	1	5,217,117,182	161,926,734
Government of Kuwait	2	2	2,715,934,222	16,207,276
Government of Saudi Arabia	3	1	28,742,311,029	46,113,706
Government of Syria	3	0	2,165,021,052	NIL
Government of Turkey	1	0	5,417,263	NIL
Total	11	8	49,936,562,997	252,028,468

4. OIOS submitted eight audit queries containing preliminary findings to the UNCC Secretariat (Secretariat) between 11 April and 17 May 2005, prior to the Governing Council's review of the Panel's report which will be on 30 June 2005. The Secretariat's responses to these were received between 25 April and 31 May 05 and have been incorporated as appropriate in the audit report.

## II. AUDIT OBJECTIVES

5. The objectives of the audit were to:

- (a) Assess compliance with and adherence to resolutions of the Security Council and decisions of the Governing Council and other relevant UN Regulations and Rules for processing of F-4 claims;

- (b) Evaluate the adequacy of internal controls over processing of F4, 5<sup>th</sup> installment claims including economy and efficiency of operations;
- (c) Determine if evaluation methodologies and evidentiary standards have been consistently applied in processing of claims; and
- (d) Determine consistency of procedures and decisions in dealing with similar claims

### **III. AUDIT SCOPE AND METHODOLOGY**

6. We test checked the six claims included in the Panel's report for the compensability of the claims, the procedures and methodology applied for valuation and verification of the asserted losses by the Secretariat, the supporting evidence submitted by the claimants, and the Panel's recommendations on the compensation to be awarded. We also looked into the reasonableness of monitoring and assessment studies and compliance with procedures on procurement of expert consultants.

### **IV. OVERALL ASSESSMENT**

7. Monitoring and assessment studies approved in the first installment of the F-4 claims failed to completely meet the primary objective of providing additional evidence to substantive claims of F-4 claims in fifth installment due to delayed completion of the studies. Recommendations proposed by OIOS for recovery of funds from claimant Governments in respect of unfinished monitoring and assessment studies, which are not recommended for continuation, could lead to potential saving of \$6 million in addition to \$2 million recovery of unspent funds in respect of Jordan monitoring and assessment studies.

8. Procedures are in place in UNCC to avoid duplicate claims, where the same claim elements occur, in one to five installments of F-4 claims. Certain key issues like compensability of claim preparation costs and possibility of sharing the monitoring and assessment information stored in UNEP database with the public are yet to be decided by Governing Council. Non-compliance with UN rules on the procurement of consultants was also identified.

9. Furthermore, the Panel decided to recommend award for revised monitoring and assessment study with very limited scope, which in the opinion of OIOS does not fit in the overall objective of reasonable monitoring and assessment activities envisaged in Governing Council Decision 7. A summary of the financial implications of OIOS' findings and recommendations appears in Figure 2.

**Figure 2: Summary of financial implication of audit findings**

<b>Claim number</b>	<b>Description</b>	<b>Amount Claimed (\$)</b>	<b>Amount recommended (\$)</b>	<b>OIOS Recommended adjustment (\$)</b>
5000287	Iran Public health claim-overtime and other payments to medical and support personnel	5,639,273	3,366,964	-1,288,594
5000394	Iran monitoring and assessment study	332,300	332,300	-332,300
	Recovery unfinished monitoring and assessment studies which are not recommended for continuation			-6,005,087
Jordan M&A Studies	Recovery of unspent funds in respect of Jordan's monitoring and assessment activities.			-2,018,746
<b>TOTAL</b>				<b>9,644,727</b>

## **V. AUDIT FINDINGS AND RECOMMENDATIONS**

### **A. Improper involvement of requisitioner in the procurement process**

10. According to article 36 of UNCC's Rules, the Panel of Commissioners may request additional information from any other source including expert advice as necessary. Paragraph 56 of the Verification and Valuation Support Branch (VVSF) standard operating procedures stipulates the need for adherence to UN rules as they pertain to expert consultants including all matters relating to procurement, contract management and payment of invoices. Procurement and Transportation Section (PTS) of United Nations Office at Geneva is responsible for providing procurement services to UNCC.

11. Upon the advice of the F4 Panel of Commissioners, UNCC outsourced services of expert consultants from reputed consulting firms. Expert consultants are extensively used to assist in the F4 Panel in reviewing complex F4 environmental claims. A separate procurement exercise was carried out to select consultants for each installment of F4 claims. UNCC as a requisitioner, conducted extensive market research to source suitable environmental consulting firms to assist the F4 panel in its review.

12. F4 claims are processed in five installments, on the basis of loss types, identified by the Secretariat. Claims in the fifth installment are compensation claims for damage to or depletion of natural resources, including cultural heritage resources, and damage to public health. On 11 July 2003, the Panel of Commissioners decided to schedule a review of F-4 fifth installment natural resources damage claims to coincide with review of related fourth installment remediation claims. Further, the Panel directed that instead of resorting to separate bidding exercise for procurement of expert consultants for the review of fifth installment claims, the scope of work of existing consulting firm for fourth installment could be expanded to cover said claims. Details of



contracts for consultancy services entered into for the review of F-4 fifth installment claims is given figure 3.

**Figure 3: Summary of consultancy contracts for F-4 claims fifth installment**

Nature of Claim	Number of claims	Name of the expert consultancy firm	Contract amount (\$millions)	Remarks
Damage to natural resources and damage to cultural heritage	12	Industrial Economics Inc	1.70	No competitive bidding. Issued as variation to existing contract for review of fourth installment claims
Damage to the public health	07	Industrial Economics Inc	2.93	Single bid received out of three participated in pre bid conference
	19		4.63	

13. On 23 July 2003, the F4 claims team leader from Legal Services Branch (LSB) sent a request for cost estimate to carry out review of damage to natural resources and cultural heritage damage claims, to Industrial Economics Incorporated (IEC). Industrial Economics Inc, who was involved in the reviewing of fourth installment claims, in their letter addressed to the F-4 team leader, provided proposal with cost estimates of \$ 1.7 million for expanded scope of work. The Legal Services Branch in consultation with VVSB carried out both technical and price analysis of the proposal and determined that global savings of \$1.2 million could be achieved by issuing variation to the existing contract.

14. Proposal from Industrial Economics Inc. along with detailed technical and price analysis carried out by Legal Services Branch and VVSB was then sent to PTS through the Executive Office of UNCC, with a request to issue required variation of contract. In view of high financial implication, PTS submitted the proposal from UNCC to UNOG Committee on Contracts. According to the minutes of the meeting, concerns were expressed with issuing variation of \$1.7 million without any competitive bidding. Upon the approval of minutes of the COC meeting by Director General of UNOG, PTS issued an amendment to increase the contract price from \$2,745,113 by \$1,709,282 to \$4,454,395 to include the review of F-4 fifth installment natural resources damage and cultural heritage damage claims. In addition, contract duration was also extended from 30 April 2004 to 31 Dec 2004.

15. We enquired about the involvement of Legal Services Brach in the procurement process such as dealing directly with contractor on financial matters, receiving price estimates from the contractor and carrying out both technical evaluation and commercial evaluation etc. We also enquired whether any special dispensation was given to UNCC on procurement matters in view of special nature of claim processing, contrary to the provisions in UNCC SOP and UN

Procurement Rules. UN Procurement Manual stipulates clear distinction between the roles of requisitioning and procurement entities.

16. In response to the audit inquiry in this regard, Secretariat stated that, *while confirming that UNCC has no "dispensation" or other arrangement for acting in contravention of the relevant UN Regulations and Rules, indicated that UNCC and PTS, with the support of the Office of Internal Oversight Services, worked together in 1997/1998 to establish procedures to address the huge project of contracting consultants to assist the UNCC Panels of Commissioners in their review of claims. In initial stages, i.e. 1997/1998, when systems were being finalized, OIOS was part of the team that worked on the procedures. Initial work and cost estimates were provided to PTS, which then refined and clarified those requests as necessary before presenting matter to the Committee on Contracts. In addition, the extreme time constraints for completing the programme also served as factor in direct approach by UNCC. With Panel of Commissioners working closely with the consultants, developing and refining its requirements as it reviewed the claims, UNCC communications with consultants were ongoing to address the changing technical aspects of their work and related time and cost implications.*

17. During our discussions with the Chief of PTS of UNOG, who agreed with this finding, stated that requisitioners should not directly receive price estimates from supplier. Moreover, our discussions with the OIOS team leader in 1997/98 indicated that OIOS was not involved in the development of any procedures in contravention of UN Procurement Rules. Although OIOS was not provided with any documentation relating to "agreed procedures" by UNCC and PTS, it is pertinent to mention that the UNCC SOP and VVSB SOP clearly indicate the need for segregation of duties. This internal control of segregation of duties is reflected in the Para 58 of VVSB SOP which states that 'all communications with potential contractors is carried out only by PTS during the procurement process. The Secretariat and teams can commence contact with contractor (s) once the contract is awarded'.

18. OIOS is of the opinion that procurement process adopted by UNCC is not only in contravention of UN Procurement Rules but also deviation from their own standard operating procedures. Complex nature of claim processing and extreme time constraints should not be reasons for violating internal control of segregation of duties in the procurement process. Documenting the irregularity does not reflect the transparency of the process instead adhering to the established internal controls would result in transparency of procurement process as envisaged in UN Financial Regulations and Rules.

### **Recommendation 1**

UNCC should investigate thoroughly the reasons for improper involvement legal services branch in procurement process with a view to identify any possible irregularity and for taking appropriate action. (AF05/820/01/01).

19. In respect of review of claims for damage to public health in the same installment, PTS sent a Request for Proposal (RFP) to the potential bidders selected by UNCC, from the list of pre qualified environmental consulting firms. Only three perspective bidders participated in the in

the pre bid conference and out of which only one firm, Industrial Economics Inc submitted a bid. On the basis of technical evaluation carried out by UNCC, upon the approval of the minutes of committee on contracts by Director General of UNOG, PTS awarded a contract to Industrial Economics Inc for maximum amount not to exceed \$2,930,497. It is evident from the minutes of the COC meeting that Industrial Economics Inc intended to contract the consultants of the other two potential bidders who did not bid. It is pertinent to mention that Industrial Economics also worked on first, third and fourth installment claims.

20. *In response an audit query in this regard the Secretariat, indicated that proposal was discussed in committee on contracts meeting on 6 November with regard to the range of very specific expertise required for review of public health claims necessitated a further process of identifying potential consultants. An initial list of 25 potential consulting firms from wide range of geographical regions was first prepared, which was then reduced to 18 firms who, in the opinion of the secretariat, had relevant knowledge and experience to manage the examination of the public health claims. The list of 18 was forwarded to PTS with a recommendation that they be included in the list of firms receiving the RFP, alongside any other firms that PTS could identify. In the event, only the 18 firms identified by UNCC were sent the RFP, and only three of these 18 recipients responded favorably and sent representatives to pre bidding document review exercise. At that time, one of the three ("CANTOX") indicated to the others that it was seeking to join another bidder, as it did not possess the full range of required expertise itself. Another ("RAND") decided to not to proceed with a bid for internal policy reasons, although some of its proposed experts subsequently offered their services to Industrial Economics Inc. IEC acted with full transparency in disclosing its inclusion of CANTOX and RAND experts. When above facts were explained to committee on contracts, COC stated that the fact that IEC had acted in full transparency and disclosed the participation of experts from its competitors supported the UNCC analysis and that there was no collusion or anti competitive behavior on the part of the companies involved. In actual fact IEC used only a single expert from CANTOX and none from RAND.*

21. The UNCC responses reinforce OIOS earlier finding of improper involvement of the requisitioner in the procurement process. Everything from the selection of consulting firms to receive RFP and to carrying out technical and commercial evaluation was carried out by UNCC. It appears that role of PTS and the committee on contracts was reduced to ratifying the procurement action carried out by UNCC. It is surprising that the Committee on Contracts instead of commenting on the poor bid response for the contract with financial implication of more than two million dollars, supported UNCC analysis that there was no collusion on the part of companies involved. Mere fact that, IEC used only one expert from CANTOX and none from RAND as against what was stated earlier to use consultants from other two firms is an indication that actions of IEC were questionable. OIOS is of the opinion that IEC resorted to unethical means to eliminate competition and did not adhere to their statement to employ consultants from the other two firms. We are not sure why UNCC did not ask IEC the reasons for not employing consultants from other two firms as stated in the pre bid conference.

## Recommendation 2

UNCC should ascertain why Industrial Economics Inc did not contract the consultants from the other two firms who did not bid, against their earlier statements (AF2005/820/01/02).

### B. Status of Monitoring and Assessment Studies

22. Governing Council decision 7 (9S/Ac.26/199/71 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. Under the same decision, reasonable monitoring and assessment of the environmental damage and reasonable monitoring of public health, qualify for compensation.

23. The main purpose of monitoring and assessment is to enable the claimant to develop evidence to establish whether environmental damage has occurred and to quantify the extent of the resulting loss. Based on the above criterion, the Governing Council in its twenty ninth session directed the claimants to file monitoring and assessment claims separately and also directed the Executive Secretary to give appropriate priority to process such claims so that the claims could be resolved quickly and separately from resolution of related claims for the environmental damage. Accordingly the F-4 Panel of Commissioners considered claims for monitoring and assessment studies in the first installment of F-4 claims. Details of awards in the first installment are shown in figure 4 below.

**Figure 4: Details of awards in the first installment of F4 claims**

Country	Number of claims received award (\$)	Amount of compensation awarded (\$)
Iran	24	17,007,070
Jordan	10	7,060,625
Kuwait	15	108,908,412
Saudi Arabia	17	109,584,660
Syria	3	674,200
Turkey	-	NIL
TOTAL	69	243,234,967

24. The Governing Council's decision to authorize expedited review of monitoring and assessment claims, in large part, intended to make funds available to claimants to finance activities that might produce information to support the substantive F-4 claims. According to Paragraph 14 of the F-4 fifth installment report, the Panel accepted monitoring and assessment information from claimants up to 15 September 2004 and informed the claimants and Iraq that it would not consider any monitoring and assessment reports or data submitted after that date. Figure 5 sets out to what extent monitoring and assessment studies helped the claimants to support their substantial claims and also assisted the Panel in terms of providing additional evidence.

**Figure 5: Status of monitoring and assessment studies as at 15 September 04**

Country	Number of studies completed before 15 September 05. (receipt of final reports)	Studies completed after September 04 (Up to March 05)	Pending studies	Total
Iran	22	0	2	24
Jordan	0	10	0	10
Kuwait	1	2	12	15
Saudi Arabia	12	1	4	17
Syria	3	0	0	3
TOTAL	38	13	18	69

25. It is clear from Figure 5 that only 38 out of 69 monitoring and assessment studies were completed before 15 September, which was the deadline set to receive information by the F-4 Panel. Only 55 percent of the studies were available for the claimants to support their substantive claims. In other words, 45 percent of the monitoring and assessment studies could not substantially help the claimants to support their claims and provide useful information to the Panel. In paragraph 782 of the report, the Panel confirmed that the results of monitoring and assessment projects had been valuable to it in the review of substantive environmental claims. We are aware of the fact that studies were done in phase wise manner and there has been flow of information in stages. Nevertheless, it appears from the above facts that the F-4 panel is deprived of the benefit of having full and complete monitoring information on time. OIOS believe that due to delayed completion, monitoring and assessment studies could not completely achieve the objectives set out in the Governing Council Decision 7.

26. *In detailed response to OIOS audit query in this regard, UNCC pointed out that enabling Governments to develop information about claimed environmental damage and to quantify resulting losses was not the sole purpose of funded monitoring and assessment projects. UNCC would thus add to the fundamental aspects of the monitoring and assessment programme which OIOS highlights, this recognition by the F4 Panel, at the start of its review process, that some of the monitoring and assessment projects "may not become available in time for use in the review of any substantive claims or may not be needed for such review". Because of this recognition the Panel emphasized "the importance of early submission of results of monitoring and assessment activities" with an understanding that some of the results it would receive would only be preliminary results of longer-term monitoring and assessment projects.*

27. *When the Council considered the report and recommendation of Panel of on the first installment claims the Council focused on the points that that not all monitoring and assessment work the Panel recommended would necessarily relate to substantive claims and not all potentially funded monitoring and assessment projects would be completed by end of claims review period. Following the discussion of these matters, council decided to adopt the recommendations made by the F4- Panel in its first installment report and awarded funds for the conduct of 69 of the proposed monitoring and assessment projects.*

28. *There are few adjustments to OIOS's table which are needed to accurately reflect which of the funded assessment and monitoring activities were completed before 15 September 2004. Figure of 38 to be amended as 50.*

29. The figure of 38 completed studies has been derived from VVSB's monitoring and assessment awards tracking project summary and from UNEP technical report dated 8 September 04. We considered studies complete only after receipt of final reports. In OIOS' view, if the sole purpose of the assessment and monitoring activities is not to support the later substantial claims whole purpose of Governing Council decision to advance the studies in the first installment is defeated.

#### Decision on the future of unfinished monitoring and assessment studies

30. According to the Secretariat's note to the GC on 2 December 04, that 18 out of 69 approved studies i.e. 26 percent of studies, valued at \$42.9 million as at 30 November 04, are still to be completed. These include studies from Iran (2) Kuwait (12) and Saudi Arabia (4). In order to assess the reasonability of continuation of unfinished monitoring and assessment studies after the completion of F4 claims review, the F4 Panel asked UNEP for a technical evaluation report.

31. In assessing the reasonableness of having the unfinished M & A studies continue after the F4 claims review work is completed, UNEP used the following criteria:

- (a) Scientific nature of the work, which necessitates that long term monitoring, should be undertaken in order to draw valid conclusions.
- (b) Uniqueness of the subject matter being studied which makes the output from the study of value to national, regional or scientific community and environmental decision makers.
- (c) Uniqueness of approach, which makes the out put from the study of value to the scientific community at large.

32. Using the above criteria UNEP recommended continuation of 14 M & A studies citing that continuation of such studies would be valuable and useful from the perspective of environmental authorities, scientists and the general public. However, for four monitoring and assessment studies UNEP recommended non-continuation stating that continuation of those studies will not result in substantial additional information of value for resource management or scientific interest.

33. According to the F4 Panel report, as of 21 February 2005, 53 of 69 M&A studies were completed. The F4 Panel recommended continuation of 12 out of 16 such studies based on UNEP technical evaluation report and other information. The Panel recommended discontinuation of 4 studies, as they were no longer necessary as far as the Commission work was concerned.

34. OIOS believes that there is a disconnect between the criteria used by UNEP for the feasibility study and rationale behind reasonable monitoring and assessment activities in

accordance with paragraph 35 (c) and (d) of Governing Council Decision 7. UNEP adopted an academic approach from the perspective of usefulness to larger scientific community rather than looking from the perspective of the Commission while analyzing the unfinished monitoring and assessment studies. Although we acknowledge that panel has also taken other information into consideration while arriving at the decision to recommend continuation of 14 unfinished studies beyond the F4 claim review, the fact that the Panel recommendations coincided with that of UNEP, the Panel said recommendation based mainly on the technical report of UNEP.

35. *In response to preliminary query in this regard Secretariat indicated that the Panel of Commissioners was very attentive to the definition of roles and responsibilities set forth in UNCC Provisional Rules for Claims Procedure. Pursuant to the structure created by Rules, all of the F4 Panel's technical consultants were directed to provide requested technical analysis but not to draw legal conclusions from that analysis. The Memorandum of Understanding between the UNCC and UNEP implemented this UNCC approach with respect to tasks UNEP was requested to undertake. The criteria OIOS summarizes in its observations were used by UNEP to evaluate the monitoring and assessment projects on their technical merits, as requested by the F4 Panel. Given the technical focus and limitation of UNEP in its work for the UNCC, it is not surprising that the criteria used may have some academic flavor. UNEP's technical comments were an important part of the Panel's decision making but by no means did UNEP's analysis dictate the conclusions reached by the Panel.*

36. As the Secretariat response confirmed OIOS finding on the criteria used by UNEP having academic flavor and the fact that UNEP's technical comments were important part of the Panel's decision making, OIOS is of the opinion that the Panel should have insisted on realistic criteria from the point of the Commission interests from UNEP.

37. Governing Council in its decision 132 expressed concerns about the need for proper controls in the utilization of funds provided for monitoring and assessment activities and their continued reasonableness. If the Governing Council decides to continue recommended unfinished monitoring and assessment studies, even after completion of UNCC claim processing activity, then there is a need to establish necessary fund tracking mechanism to ensure that funds are spent for intended purpose.

38. *In response the audit enquiry in this regard, the Secretariat stated that questions posed by OIOS in this regard have received considerable attention from the Secretariat and Governing Council. The matters of whether a future tracking mechanism will be developed for monitoring use the use of F4 claim awards, nature of such mechanism, whether ongoing monitoring and assessment activity will be part of any such future tracking mechanism, and whether UNEP will be asked to assist with any future tracking programme, are all open issues under active consideration of the council.*

39. The Secretariat's response has reinforced OIOS line of thinking for the need to have a proper mechanisms in place to ensure that funds for unfinished monitoring and assessment studies will be spent in fair and transparent manner since their activities will continue even after the completion of claim review activities by UNCC. Analysis of the expected completion dates of 12 recommended unfinished monitoring studies reveal that four (4) studies are expected to be

completed by December 2007, two studies by October 2006, four studies by December 2005, and two studies by July 2005. Until June 2005, (VVS) and UNEP will carry out the financial tracking of monitoring and assessment funds and technical monitoring of the studies respectively. In the event of Governing Council's favourable decision on continuation of unfinished studies beyond June 2005, options like continuing technical cooperation with UNEP and entrusting financial tracking responsibility to UNCC payment section, which is likely to continue for some more time, need to be considered.

**Recommendation: 3**

UNCC should with the approval of the Governing Council, institute a mechanisms for financial and technical tracking of unfinished monitoring and assessment studies with a view to ensure that the funds are spent for intended purpose (AF2005/820/01/03).

Need for mechanisms to ensure recovery of unspent funds in respect of Jordan

40. Jordan was awarded \$7,060,625 for monitoring and assessment activities in the first installment. Jordan could finish monitoring and assessment activities with 71 percent of awarded amount. Details of monitoring and assessment awards to Jordan and progress of expenditure are shown in Figure 6.

**Figure 6: Progress of expenditure on monitoring and assessment funds awarded to Jordan**

Claim number	Description	Awarded amount (\$)	Expenditure as of 30.11.04	Remaining funds (\$)	Percentage of fund utilization
5000353	Departure of persons from Iraq or Kuwait	1,144,000	673,539	470,461	58
5000354 through 5000358	Ground water and surface water	2,400,542	2,048,374	352,168	85
5000396	Marine and Coastal	1,016,435	987,857	28,578	97
5000429	Terrestrial	1,060,000	624,894	435,106	58
5000430	Terrestrial	640,000	415,349	224,651	64
5000431	Terrestrial	799,648	291,866	507,782	36
SUBTOTAL		7,060,625	5,041,879	2,018,746	71

41. It is clear from Figure 6 that Jordan spent 71 percent of the awarded amount to complete monitoring and assessment studies. Jordan explained the reasons for under spending of funds due to use of in country consultants instead of international consultants, contemplated in the original claim, reduction in the scope of some activities originally contemplated. Jordan's request for



additional scope of work to spend the left over funds was not agreed to by the F4 Panel. OIOS is of the view that immediate measures should be taken to recover unspent funds from Jordan.

**Recommendation: 4**

UNCC should ensure that unspent funds of \$2,018,746 should be recovered from Jordan by deducting from pending award payments or future awards to Jordan approved by Governing Council (AF2005/820/01/04).

42. *In response to OIOS comment in this regard Secretariat responded that due to several factors, most prominently a decision by Jordan to rely more extensively on in country experts than originally envisioned, Jordan incurred less in costs to complete its monitoring and assessment projects than it originally projected would be necessary to do the proposed work. As is summarized in paragraph 8 of the Panel's eight report, Jordan presented various additional tasks, which it intended to carry out with the remaining funds. The Panel reviewed those tasks and concluded that they weren't reasonable monitoring and assessment activities pursuant to Governing Council decision 32. The Panel recommended to the Governing Council that the Council consider appropriate measures to ensure that Jordan returns unused funds. The Panel's recommendation to the council, to seek a return of funds in question, is on the council's active agenda.*

43. OIOS is pleased to note that the F4 Panel concurs with the views of OIOS on recovery of unspent monitoring and assessment funds relating to Jordan.

Recovery of funds from unfinished monitoring and assessment studies, which are not recommended for continuation

44. In addition to the above, F-4 Panel recommended non-continuation of four monitoring and assessment studies as shown below in Figure 7.

Claim number	Country	Description	Awarded amount (\$)	Expenditure (\$)	Balance (\$)
5000432	Kuwait	Terrestrial	10,484,988	7,884,852	2,600,136
5000433	Kuwait	Terrestrial	160,344	121,094	39,250
5000434	Kuwait	Terrestrial	7,246,880	5,109,712	2,137,168
5000398	Kuwait	Marine and Coastal	8,237,792	7,009,259	1,228,533
SUBTOTAL			26,130,004	20,124,917	6,005,087

45. OIOS is of the view that balance funds in respect of M & A studies not recommended for continuation should be recovered from Kuwait.

**Recommendation 5:**

UNCC should ensure that balance funds of \$6,005,087 in respect of four M&A studies which are not recommended for continuation

are recovered from the unpaid awards or future awards of Kuwait, with the approval of the Governing Council (AF2005/820/01/05).

46. In responding to preliminary comment in this regard Secretariat stated that F-4 Panel eighth report recommends, in two separate instances, that the Governing council consider taking steps to ensure that Governments return unused monitoring and assessment funds. The modalities for obtaining a return of funds were left for the council, as the Panel did not interpret its mandate to extend to claim payment matters.

47. OIOS is pleased that the F4 Panel's views coincide with those of OIOS in this regard.

Need for comprehensive account statement on monitoring and assessment funds

48. The eighth report of the F4 Panel of commissioners dated 25 February 2005 submitted to the Governing Council, provided after OIOS preliminary comments, contains financial statement of monitoring and assessment funds as reported by claimant Governments shown below in Figure 8.

**Figure 8: Financial statement of monitoring and assessment funds**

<b>Amount expended on completed projects (\$)</b>	<b>Amount being spent on on going projects (\$)</b>	<b>Amount recommended For continued use (\$)</b>	<b>Amount not recommended for continued use (\$)</b>	<b>Amount to be clarified (\$)</b>	<b>Total funds (\$)</b>
108,099,131	91,930,314	34,972,345	8,023,833	209,334	243,234,967

49. As noted in Figure 8, funds to the tune of \$209,334 need to be clarified. The F4 Panel in their eighth report stated that there is a question concerning the above amount in accounts submitted by the one claimant Government and the Secretariat has been asked to seek the necessary clarification. The F4 panel did not specify the name of the claimant Government in their report.

**Recommendation: 6**

UNCC should make an expeditious efforts to obtain the required clarification with a view to provide comprehensive statement of accounts to the Governing Council relating to monitoring and assessment funds (AF2005/820/01/06)

Improvements needed in the quality of reporting

50. The Secretariat provided information notes to the Governing Council on a regular basis on all-important matters including status of monitoring and assessment studies. We noted variances between the Secretariat's note dated 2 December 04 relating to unfinished monitoring

and assessment studies, and UNEP technical evaluation reports on the same subject. It is pertinent to mention that UNEP is responsible for technical monitoring of the studies. For example: M & A studies 5000350,5000352,5000374 shown as unfinished in UNEP technical reports were missing in the Secretariat's note to Governing Council on unfinished monitoring and assessment studies.

51. *In response to preliminary query in this regard, Secretariat stated that Secretariat received most current status available on the status of monitoring and assessment reports towards the end of November 2004. In November 2004 projects No.s 5000350,5000352,and 5000374 were reported by Iran and Kuwait, respectively, as completed.*

52. The response of the Secretariat does not appear correct because the latest F4 M & A awards tracking projects summary table by country as at 17 February 2005, provided to OIOS still show studies 5000350, 5000352, and 5000374 as ongoing indicating November 2008, February 2006, October 2006, respectively, as expected completion dates. It is interesting to note that in spite of complete utilization of allotted funds, these studies were shown as ongoing. The need for clarity in reporting need not be overemphasized. There is a need for improvement in the clarity of reports produced by UNCC.

**Recommendation: 7**

UNCC should ensure that reports submitted to the Governing Council are accurate and efforts should be made to improve quality of reporting (AF2005/820/01/07)

**C. Duplicate Claims**

53. F4 claims are grouped into four installments on the basis of loss types as shown in figure 9.

**Figure 9: F4 installments based on loss types**

<b>F4 claims installment</b>	<b>Category of issues/loss types</b>
First	Studies to monitor and assess environmental damage
Second	Past expenses related to the abatement and prevention of environmental damage and reasonable measures already taken to clean and restore the environment
Third	Future remediation of environmental damage
Fourth	Future remediation of environmental damage
Fifth	Damage to or depletion of natural resources, including cultural heritage resources, and damage to public health.

54. The fifth installment of F4 claims included all claim elements that had not been fully dealt with in the previous installments. Paragraph 97 of the Panel report for the fifth installment

states, "the Secretariat was asked to carry out cross claim and cross category checks to avoid multiple recovery of compensation and also to ensure consistency with other Panel of Commissioners. Based on the checks carried out by Secretariat, the Panel expressed satisfaction that there is no risk of duplication". We enquired what were the cross claim and cross category checks carried out by the Secretariat to ensure that there is no duplication in claims submitted by claimant countries.

55. *The Secretariat in their detailed reply stated that " the members of the F4 unit within the UNCC saw their role with regard to duplication checks as two fold: first, to ensure that any duplication or possible duplication in claims was identified and reported to the Panel for consideration in its review: and second, to ensure that any proposed award did not duplicate previous awards made by UNCC duplication of awards of compensation that requires adjustment to the Panel's recommendations". To fulfill this role checks like carrying out extensive searches by country, claimant name and loss type for each fifth installment claim in UNCC Management Information system and UNCC index of jurisprudence. This process was on going through out the installment, and was completed toward the end of installment after all relevant information from the claimants and Iraq had been received and reviewed. Unlike the claim categories in the UNCC involving mass claims, the F4 claims category has relatively low number of claims, making potential duplication search an easier matter.*

56. We also enquired from UNCC what controls are in place in the process of transfer and severance of claims on the basis of loss elements within various F4 installments, and existence of mechanism to verify any approved earlier awards are deducted from subsequent awards for the same claim elements of the same claimant.

57. *UNCC stated in their elaborate reply that "the procedures for severance and transfer of claim elements included several steps to assure that only the amounts relevant to the claim element to be severed were transferred with that element to another location. Whenever a decision was made to sever and transfer a claim element, concerned legal officer analyzed claimant Government submissions to determine the amounts associated with the claim element to be severed. VVSB Officer working with F4 claims unit performed the same analysis independently. The Panel's expert consultants also performed this analysis. The system developed for categorizing and allocating claim elements /loss types to the appropriate installments, was designed in part to eliminate any need to make any deductions*

58. In view of the comprehensive response and test checks, there appear to be little risk of duplication in this claim installment.

#### **D. Overstated and grossly inflated claims**

59. Unlike other claim categories, F4 claims are submitted by claimant Governments themselves. Earlier OIOS audit reports commented on some grossly inflated or substantiated claims submitted by individuals and corporations in D and E claim categories. As the fifth installment claims are submitted by responsible Governments, one would expect that claimed amounts would be reasonable and realistic.

60. However, the F4 Panel report on the fifth installment pointed out apparent overstating of claims by almost all claimant countries. Examples are given below.

(a) Iran: Paragraph 177 of the Panel's report pointed out that Iran has overestimated the total area of rangelands that could have been damaged or depleted by presence of refugees. In view of the Panel, the evidence shows that total area damaged is not more than 220 hectares against 6,644 hectares claimed, which is thirty times more. Similarly, Paragraph 247 stated that the unit cost of vaccinations claimed by Iran is high.

(b) Kuwait: The Panel identified apparent overstating in claim 500046 in respect of remediation periods and post-remediation recovery times. The Panel also pointed out overstating of shoreline resources in terms of duration, size, and unit costs. In respect of claim 5000183, the Panel pointed out inflated figures relating to average cost of surgery, actual number of cases and cost of treatment.

(c) Saudi Arabia: According to paragraph 554 of the report, Saudi Arabia failed to respond to the request of the Panel to verify and substantiate amounts claimed in respect of livestock losses. The Panel also met with the same situation when Saudi Arabia was asked to verify and substantiate the amounts claimed in respect of reduced crop yields. The Panel also found inflated figures in respect of claim 5000463 relating to extent of damage to peripheral areas.

61. In addition, we note that out of \$50 billion asserted claims, the Panel recommended only \$252 million, which is less than 0.5 percent in terms of asserted amount, in the fifth installment. It is interesting to note that recommended award for monitoring and assessment studies in the first installment is higher than amount recommended for substantive claims in the fifth installment. In general, gross inflation or unsubstantiation of claims is indicated by the fact that until 7 April 2005, out of approximately \$302 billion asserted, only 52 billion was awarded by UNCC. The average success rate of claims resolved stands at approximately 17 percent in terms of amount. In terms of numbers, out of approximately 2.6 million claims that have been resolved, only approximately 1.5 million have been awarded with success rate of 58 percent.

62. From the point of economy and efficiency of the claims review process, these overstated claims put additional burden on the Secretariat in terms of human resources and technical assistance outsourcing costs. One would understand the efforts required to review these overstated and unsubstantiated claims. OIOS believes that had the claimed amounts been realistic, it would have, at least, reduced the burden on UNCC Secretariat especially on the F4 team.

63. From the perspective of the claimant, one would understand difficulties involved in providing satisfactory evidence to the Panel, in support of compensatory restoration, after 14 years of invasion of Iraq. Inability to provide satisfactory evidence is understandable, but intentional overstating of claim amounts is an issue of concern.

64. In this connection, in response to OIOS similar queries in the audit of D and E claims, the Secretariat stated that other than the rejecting the claim in its entirety, neither security council resolutions nor the Rules approved by Governing Council, provide for any sanction to be imposed by UNCC claim on claimants whose claims are not substantiated or grossly inflated.

OIOS believes that UNCC with the approval of the Governing Council should have expressed their above concerns to claimant Governments on the apparent overstating of claims. As the UNCC claim processing activity is coming to an end, it is necessary document these issues from the perspective of lessons learnt exercise. OIOS believe that UNCC in their lessons learnt exercise should reflect on issue of controls prior to submission of claims.

65. *UNCC in their detailed response to the preliminary query in this regard, strongly refuted OIOS finding that claims are overstated. However, from the context of another post conflict compensation forum in future, it is possible for a potential future forum to set guidelines prior to deadlines for claim submissions, to frame the scope of any environmental claims, something which was not possible for UNCC, in part, due to the novel aspects of the UNCC F4 review process.*

**Recommendation 8:**

UNCC should, from the perspective of lessons learnt exercise, establish guidelines prior to deadlines for claim submissions in order to prevent overstated claims (AF2005/820/01/08).

**E. Claim No. 5000287 – Iran Public Health Claim**

66. Paragraphs 29 and 30 of the F4 fifth installment Panel report stipulate following laid down evidentiary requirements for review of F4 claims as follows:

Article 35(1) of the Rules provides that “ each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that particular claim or group of claims is eligible for compensation pursuant to Security Council Resolution 687 (1991). Article 35(1) also provides that it is for the each Panel to determine “the admissibility, relevance, materiality and weight of any documents and other evidence submitted.

Article 35(3) of the Rules provides that category F claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amounts of the claimed loss.

In addition Governing Council decision 46 (S/AC.26/Dec.1998) states that for category F claims no loss shall be compensated by commission solely on the basis of the explanatory statement provided by the claimant.

67. Paragraph 31 of the report states that the Panel has in every case assured itself that applicable evidentiary requirement regarding the circumstances and amount of damage or loss claimed have been satisfied.

68. Iran submitted claim in question, with an asserted value of \$2,571,509,483 for losses due to the presence of refugees who entered Iran after departing from Iraq or Kuwait between 2 august 1990 and 2 March 1991 and the effects of oil well fires from Kuwait. This claim

comprises five claim units out of which first claim unit relates to costs incurred by Iran to provide medical treatment and public health facilities to refugees. This first claim unit has five subunits. The Panel's recommended awards against each subunit of first unit are shown in Figure 10.

**Figure 10: The F4 Panel's recommended award to claim**

Claim component		Amount claimed (\$)	Amount recommended (\$)
Medical and health treatment and public health facilities to refugees	Medical treatment for refugees	96,156	37,958
	Vaccination for refugees	2,596,883	875,300
	Family planning services for refugees	15,501	15,501
	Water and sanitation facilities and services to refugees	1,642,109	1,149,611
	<b>Overtime and other payments to medical and support personnel</b>	1,288,594	1,288,594
<b>TOTAL</b>		<b>5,639,273</b>	<b>3,366,964</b>

69. It is important to note that out of total cost for providing medical treatment and medical health facilities to refugees, cost of medical treatment to refugees is less than two percent where as overtime and other personnel costs constitute 22 percent. Iran did not submit any documentary evidence such as invoice payment ledgers or similar cost accounting records of actual costs incurred for refugees along with the claim. Expert consultants responsible for carrying out the technical analysis confirmed non-submission of documentary evidence in their professional judgment report. Review of claim documentation relating to overtime and other payments to medical and support personnel revealed a disconnect between number and types of workers and claimed overtime and other personnel costs. Examples are shown in Figure 11.

**Figure 11: Inconsistency in claimed personnel costs**

#	Name of the Province	Number of medical and health workers as shown employed in hospitals	Number of medical and health workers for which overtime claimed
1	Ilam	NIL	370
2	Hormozgan	NIL	645
3	Bushehr	NIL	397
4	Kerman	NIL	116
5	Lorestan	39	122
6	West Azrabaijan	54	105

70. In addition, there are other apparent inconsistencies relating to total number of medical, and logistics manpower residing in camps. For example, in page 258 of the claim document the total number of personnel employed was shown as 387 where as in page 263 of the claim total personnel for which compensation claimed were shown as 2,720. Expert consultants in their report have also noted these discrepancies. On an average Iran claimed 8.2 million Iranian Rials per day over a period of 211 days (2 August 1990-2 March 1991).

71. However, UNCC's June 2004 technical mission to Iran which was comprised of UNCC officials and expert consultants appeared to have found favorable evidence in support of this claim element. Expert consultants in their report noted that they could not conduct complete review of records linking specific claimed amounts to primary documents but only reviewed selected sample of documents. The numbers of samples and basis for sampling have not been indicated in their reports. On the sample review of data collection methods used by Iran, expert consultants expressed their opinion that Iran is more likely to understate rather than overstate the claim. In addition, based their limited review, they supported oral statement of the representatives of Iran on claimed personnel costs saying, "we have no reason to believe that these statements are untrue." It is pertinent to mention that expert consultants instead of confining themselves to thorough technical analysis inclined more to offer legal opinions.

72. In addition, as there is a direct link between the number of refugees and claimed personnel costs, we note that numbers of refugees in Iran, provided by Iran in this claim unit, appear to differ from number of refugees provided by Iran in other claims that it had submitted to the commission as shown in figure 12.

**Figure 12: Inconsistencies in refugee numbers**

<b>Iran Claim number</b>	<b>Number of refugees shown in the claim</b>
5000287	144,048
5000456	89,256
F-1 claim sixth installment claim	57,700 to 65,000

73. The Ministry of Interior, Iran was awarded \$7,875,000 compensation for costs it incurred to provide assistance to three waves of refugees that allegedly fled to Iran, in the sixth installment of F1 claims.

74. In spite of the fact that the claim is not supported by documentary evidence, inconsistencies in the claim, contradictions relating to refugee numbers, inadequate technical analysis by expert consultants, possible duplication of award for the same claim element the Panel recommended entire claimed amount \$1,288,594 as compensation to this part of the claim unit. OIOS is of the opinion that in the absence of documentary evidence, a site visit after 13 years of Iraq invasion (UNCC's June 2004 mission) involving discussions with claimant and test check of data collection methods, can not be considered as sufficient evidence. OIOS believes that appropriate evidentiary standards as stipulated in UNCC Rules, have not been applied in this case.



75. *In response to the preliminary query in this regard, UNCC provided a detailed response indicating reasons for disagreement with findings of OIOS. Relevant portions of the response are incorporated. On the inconsistencies in the number of personnel in the claim, UNCC indicated that number of medical personnel for which overtime and other payments were claimed is not related to number of medical personnel employed in the hospitals of provinces that hosted the refugees. The claimed amounts of overtime and other payments to medical and support personnel is not based on the calculations using the numbers of workers, instead, the claimed amount is based on the cost accounting documents showing actual expenditures. Thus, the relationship of numbers of medical and other workers with numbers of medical and other workers with the numbers of workers employed in certain hospitals is not relevant to the compensation claimed.*

76. *Although Iran did not submit documentary evidence along with the claim directly to UNCC Iran did provide evidence such as invoices, payment ledgers or similar cost accounting records of actual costs incurred for refugees. These records were presented to UNCC mission in June 2004. UNCC does not agree that the audit of documents conducted on site or technical analysis of the Panel's experts were incomplete. The audit of documents involves understanding of data collection methodology used and reviewing of a sample of the documents to assess whether the sample supported the stated methodology. Sampling of documents is a widely recognized and legitimate audit technique and is used where the sheer volume of material involved would render individual review of each document prohibitive from a time and cost perspective.*

77. *Apparent discrepancy in number of refugees provided by Iran in its various claims could be due to the fact that different time periods were considered at different times. Another possible reason for discrepancy is that different methods and sources of data were used to develop the claims, and certain camps must have included for purpose of one claim but not the others.*

78. *The F4 panel considered the fact that Ministry of Interior provided services for significantly smaller number of refugees a significantly smaller number of refugees, and for shorter duration, than those provided by Ministry of health and medical education. In addition, the Panel noted that claimant Government representatives from both ministries made representations to the UNCC stating that their respective claims involved different subject matters, and did not duplicate each other in any way.*

79. OIOS does not agree with UNCC's response that the number of medical personnel employed in hospitals in all provinces in Iran and number of medical employees for which overtime claimed are not related. It is not a best practice to rely only on selective sample of cost accounting documents showing actual overtime expenditure, without comparing with number of personnel employed. When arriving at the personnel costs like overtime, number of personnel employed is an important criterion, which cannot be ignored. While we agree that sampling is widely accepted audit technique, it is important to note that audit procedures stipulate the need for documenting sampling method adopted, sample size, and justification that selected sample is representative of whole group. These details were missing in the reports of the expert consultants, instead, more general remarks are given in the report. As we are spending millions of dollars on expert consultants, one would expect that professional judgment reports reflect high

degree of professionalism. OIOS is not convinced with quality of expert advice with reference to calculation personnel costs. OIOS believe that evidentiary standards established for review of F4 claims are not applied in this particular loss element of this claim, which would result in overpayment of to the tune of 1,288,594.

**Recommendation: 9**

UNCC should consider revising recommended award by reducing \$1,288,594 from the total recommended award of \$3,366,964 (AF2005/820/01/09).

**F. Claim 5000394- Monitoring and assessment study of Iran**

80. Iran sought compensation in the amount of \$332,300 for a monitoring and assessment study to investigate possible links between pollution resulting from Iraq's invasion and occupation of Kuwait and incidence of cancers and hematological disorders in Iran. F4 Panel originally considered this claim in the first F4 installments along with other monitoring and assessment studies. The F4 Panel noted that for the type of cancers that Iran proposed to study, particularly solid tumors cancers, there was a generally a latency period of 15 to 20 years between the time of initial exposure to a given carcinogen and the first clinical evidence of cancer. Since it was unlikely that significant evidence of increased cancer rates could be identified just after 10 years after the release of pollutants resulting from Iraq's invasion and occupation of Kuwait, the Panel directed that this claim be transferred to a later installment.

81. Subsequently, Iran submitted a revised proposal in which it proposed to investigate the impact of petroleum related radioactive contaminants from Iraq's invasion and occupation of Kuwait on the incidence of cancers having short latency periods. Iran proposed to retroactively examine the incidence of cancer in residents of Iran from 1991 to 2003. It is pertinent to mention that nature, scope, periodicity, and objectives of the revised study are different from the study proposed in the first installment as shown in figure 13 below.

**Figure 13: Difference between the studies**

<b>Installment in which claim was considered</b>	<b>Objectives of study</b>	<b>Scope of the Proposed study</b>	<b>Period of study</b>	<b>Support to any substantive claim</b>
F4 first installment	Investigate possible links between petroleum based pollutants from oil fires and oil spill in Kuwait and incidence of solid tumour cancers with long latency periods	To cover 12 provinces in Iran		NIL
F4 fifth installment	Investigate impact of petroleum related and radioactive contaminants on the incidence of cancers with short latency periods retroactively from 1991 to 2003.	To cover only 5 provinces	One year	NIL

82. Although Iran in its revised study proposed to calculate lost years of life for each additional cancer patient using the Disability Adjusted Lost life Year (DALY) index, the panel excluded from the study stating that the results of the study will not be available to support any claim before the commission. The F4 panel recommended entire claimed amount \$332,300 without any adjustments. The expert consultants did not propose any adjustment stating that the level of effort and associated labour costs claimed by Iran for this study is more likely understated than overstated.

83. As noted by the F4 panel in paragraph 38 of first installment report, most of the monitoring and assessment claims are related to substantive claims for environmental damage and depletion of natural resources, because claimants expect to use the information obtained from monitoring and assessment activities to support their substantive claims. This objective has been reinforced by Governing Council's decision to give priority to monitoring and assessment studies both in the review of claims and award payments. That was the reason why monitoring and assessment studies were considered in the first installment of F4 claims and award payments were effected on priority.

84. In addition, the proposed scope of study is restricted to only to five provinces of Iran. It is not clear how calculating additional cancer cases only in five provinces retrospectively from 1991 to 2003, would help the claimant Government in developing useful database. Moreover, future of the unfinished monitoring and assessment studies is pending with Governing Council for a decision. In the event of the Governing Council decision not to continue with the unfinished monitoring and assessment studies beyond June 2005, the F4 panel's recommendation in this claim will not be relevant. OIOS believes that recommending one more monitoring and assessment study in the fifth installment, with no role to support substantive claims, with restricted scope, would not fit in the reasonable monitoring and assessment activities envisaged in Governing Council decision 7.

85. *UNCC in their detailed reply disagreed with OIOS audit query in this regard, stating that Iran revised the study it initially proposed on the basis of scientific and technical considerations, as it was entitled to do. Because claim no.5000394 was transferred from first to fifth instalment, Iran had additional time to take account of scientific data that suggested an increase in short latency cancers in provinces that were exposed to pollutants from oil well fires in Kuwait. Iran used the time to available to it as result of the transfer to reconsider and revise its study. As a result, Iran was able to focus its study and reduce the claimed cost from original claimed amount of US\$ 2,112,500 to \$332,300, a reduction of more than 84 percent.*

86. *Neither Security Council Resolution 687(1991) nor any of the decisions of the Governing Council require that neither monitoring nor assessment claim to be related to substantive claims. The fact that the results of the study will not be used to support any of Iran's substantive claims doe not in any way detract from the appropriateness of the Panel's recommendation. Indeed, as the Panel noted at paragraph 31 of its first installment report, in assessing the reasonableness of a proposed assessment and monitoring activity, it took into account several considerations of which the ability of the study to produce results that could assist the Panel in reviewing related substantive claims was only one.*

87. OIOS is not convinced with the argument that monitoring and assessment study's ability to produce results that could assist the Panel in reviewing related substantive claim is just one of the considerations in assessing the reasonableness of the proposed study. It contradicts with Governing Council decision in its twenty-ninth session, to direct the claimants to file monitoring and assessment claims separately and to direct the Executive Secretary to give appropriate priority to process such claims on priority. The basic fact that monitoring and assessment studies were considered on priority in the first installment and concerned award payments were effected on priority against other pending award payments emphasizes the fact that primary purpose of the monitoring and assessment is to support the substantive claims. The Governing Council's concerns during the review of F4 Panel's first installment report and recommendations, particularly on the point that not all monitoring and assessment work the panel recommended would necessarily relate to substantive claims would be very much relevant in the present context. OIOS believes that the Panel's interpretation of reasonableness of monitoring and assessment in the claim is not in consistent with the decisions of the Governing Council.

#### **Recommendation 10**

UNCC should consider not recommending any award for compensation for proposed monitoring and assessment study with a financial implication of \$332,300, in order to comply with the Governing Council decision 7 (AF2005/820/01/10)

#### **F. Outstanding Issues**

##### **Compensability of claim preparation costs**

88. The issue of compensability of claim preparation costs to claimants in categories D, E, F has been under consideration and discussions within UNCC since June 1992. We observe that certain claimants have been claiming for claim preparation costs. The total of such claim preparation costs that has been asserted by the claimants is approx. \$280 billion.

89. Earlier OIOS audit reports on D and E category claims pointed out the delay in decisions on compensability of claim preparation and methods and calculation of interest and recommended that UNCC to consider requesting Governing Council for an early decision. We are pleased to note that Governing Council has taken a decision on methods and calculation of interest. However, the issue of compensability of claim preparation costs is still to be resolved.

90. The Panel of commissioners in their reports recommending awards of claimants, in the absence of a decision on compensability of claim preparation costs, have not been dealing with the asserted quantum of claim preparation cost and made no recommendations accordingly. In OIOS opinion, should a favorable decision be taken to compensate for the claim preparation cost, that would involve looking and processing all claims afresh, for the element of claim preparation costs in terms of assessing the reasonableness, admissibility or otherwise of quantum of claim. Thus, the decision on this issue has major impact on resources required.

91. In view of end of claim processing activities by June 05 and consequent reduction of UNCC staff, OIOS believes that there is a need to arrive at decision on the admissibility of claim preparation costs on priority.

**Recommendation 11:**

UNCC should consider requesting the Governing Council to decide on the issue of claim preparation costs as a priority. (AF2005/820/01/11).

Potential Public access to Environmental Monitoring and assessment information

92. The issue of possibility of sharing environmental monitoring and assessment information submitted by F4 claimant Governments and stored in UNEP's database with a larger community is in active consideration of the Governing Council, since September 2004. Upon the request of the Governing Council, taking into the consideration of views of UNEP, UNCC Secretariat submitted detailed note on the subject on 20 September 2004. The note points out that monitoring and assessment information has been submitted to the UNCC by claimant Governments, as a part of the UNCC claim process, and thus, subject to the confidentiality rules (Article 30) of UNCC. Article 30 of Provisional Rules states that unless otherwise provided in these procedures or decided by the Governing Council, all records received or developed by the Commission will be confidential. Nevertheless, as much of the information in the databank would be of interest and useful to the wider international environmental community, as the note points out, submitted for the consideration and decision of the Governing Council.

93. The Governing Council requested the Secretariat to provide additional information regarding, description of the documents in the databank proposed for public access, explanation of why the proposed documents are expected to be useful or of interest to environmental decision makers, analysis of the risks associated with providing limited or full public access, and analysis of how such risks might be minimized or managed. The Council further requested the Secretariat to obtain relevant claimant Government views on the matter.

94. To address the concerns of Governing Council, Secretariat with the assistance of UNEP prepared a list of documents recommended for public access with an explanation against each document its usefulness to the broader public. The Secretariat identified copyright related issues and accuracy of information as two possible risks associated with sharing the monitoring and assessment information with the general public. As, a number of data in the databank have copy rights associated with them, every document, which is to be placed in public domain, will need to be screened for IPR status and necessary permission to be obtained. Concerning the risk of accuracy of information provided by claimants, data that could be made available to public, would not be published by host of databank, and would still need to be referred to the sources of the data. Moreover, relevant claimant Governments, in general, expressed their willingness to providing public access to environmental and assessment information.

95. OIOS also believes that free access to environmental information is a key principle of modern environmental governance and one criteria of good environmental management. OIOS

shares with the view of UNEP that publishing of accurate information may raise the environmental awareness and stimulate further action to improve environmental situation.

**Recommendation 12:**

UNCC should request the Governing Council to consider favorably the issue of placing selected and identified monitoring and assessment information in public domain with a view to improve environmental awareness in the Persian gulf region (AF 2005/820/01/12).

**H. Conclusions**

96. As discussed above, OIOS audit of selected F4 5<sup>th</sup> installment claims raised questions concerning the awards recommended by the F4 panel of commissioners, which in OIOS's view would result in overcompensation of claimants. As the Secretariat's responses to preliminary comments have not fully addressed these concerns, OIOS believes that it is imperative for the UNCC to reexamine the issues discussed in this report and adjust the amounts of compensation recommended for award in these claims.

**Recommendation 13:**

OIOS recommends that the UNCC Secretariat inform the Governing Council of OIOS recommendations contained in this report for their consideration and appropriate action (AF2005/820/01/13).

**VI. Acknowledgement**

97. We wish to express our appreciation to the Management and staff for the assistance and cooperation extended to the auditor during this assignment.



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