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STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

CASE NO. 302
CHAMBER THREE
AWARD NO. 196-302-3

INTERNATIONAL TECHNICAL PRODUCTS CORPORATION
and ITP EXPORT CORPORATION, its wholly-owned subsidiary
Claimants,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN
and its agencies, THE ISLAMIC REPUBLIC IRANIAN AIR FORCE
and the MINISTRY OF NATIONAL DEFENSE, acting for THE
CIVIL AVIATION ORGANIZATION,
Respondents.

FINAL AWARD

Appearances:

For the Claimants:
Mr. Eugene T. Herbert
Mr. Nicholas H. Zumas
Special Counsel
Washington, D.C.

For the Respondents:
Mr. Khoshrow Tabassi,
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the Islamic Republic of Iran
Mr. Mohammad Taghi Naderi,
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Mr. Golamreza Davarian,
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Republic Iranian Air Force
Mr. Mansur Tehrani
Mr. Ali Azizi
Mr. Mohammad Reza Pedram,
Representatives of the Islamic
Republic Iranian Air Force
Mr. Hassan Sheikh-al-Islam,
Assistant to the Islamic
Republic Iranian Air Force
Delegation
Mr. Mohsen Kakavand,
Representing Bank Tejarat

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران ـ ایالات متحده
FILED - ثبت شد
Date 28 OCT 1985 تاریخ
No. 302 شماره

Also present:
Mr. John R. Crook,
Agent of the
United States of America
Mr. Daniel M. Price,
Deputy Agent of the
United States of America

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I. PROCEEDINGS

On 19 August 1985, the Tribunal issued a Partial Award in this case (Award No. 186-302-3) reserving decision on four elements of the Claim and deciding all others. The four aspects of the Case with respect to which the Tribunal reserved decision comprised (1) claims and counterclaims relating to the Civil Works Contract, (2) letters of credit claims, likewise relating to the Civil Works Contract, (3) the claim for expropriation of a building in Tehran, and (4) costs.

By Order dated 19 August 1985, the Tribunal requested comments from the Parties concerning certain issues raised by the forum selection clause contained in the Civil Works Contract.

Claimants INTERNATIONAL TECHNICAL PRODUCTS CORPORATION ("ITPC") and ITP EXPORT CORPORATION ("ITP Export") (collectively "Claimants") filed a Memorial in response to the aforesaid Order of 19 August 1985, with accompanying affidavits, on 10 October 1985.

The Iranian Agent filed a letter on 9 October 1985, likewise in response to the Order of 19 August 1985, and this was followed on 16 October 1985 by a similar submission of Respondent AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN ("AFIRI"), the successor in interest to the IMPERIAL IRANIAN AIR FORCE ("IIAF"), and frequently referred to hereinafter in place of IIAF.

With respect to the expropriation claim, the Tribunal did not request further submissions.

II. REASONS FOR AWARD

A. Claims and Counterclaims Relating to Civil Works Contract

1. Background

As outlined in the Partial Award, ITP Export and IIAF concluded an agreement (No. 5411) on 1 July 1975 to provide for the construction of certain civil works at each of nine IIAF bases ("Civil Works Contract") to permit the installation of Radar Approach Control ("RAPCON") systems. The Contract price was 920,354,823 rials, in the form of a global award, subject to later adjustment according to the actual work performed, materials used, and certain escalations for inflation.

In order to fulfill its obligations under the Civil Works Contract, ITP Export entered into a teaming arrangement with Iran Advanced Technologies Corporation ("IATCO"), an Iranian joint stock company. IATCO, in turn, contracted with a second Iranian corporation, Faridan Construction Company ("Faridan"), to perform the necessary construction work.

Claimants allege that they virtually had completed their performance obligations under the Contract prior to leaving Iran in December 1978 and that any work remaining was completed by IATCO's subcontractor, Faridan. Consequently, Claimants seek compensation in accordance with the Contract's payment terms and return of good performance retentions. Claimants' claim initially totalled 229,144,972 rials; later filings adjusted the claim to 230,857,091 rials. Claimants also seek interest on this amount.

The Civil Works Contract claim comprises four elements. First, Claimants seek 59,326,000 rials for services rendered

and billed prior to their departure from Iran that remain unpaid. This amount appears to be net of three withholding deductions totalling 15.7 percent forseen under the Contract: 10 percent good performance retention, 5.5 percent social insurance withholding, and 0.2 percent education tax withholding. Second, Claimants request payment for 136,633,091 rials worth of unbilled additional work, less withholding deductions, performed under the Contract but outside the scope of the works initially contemplated.[1] The actual amount requested is thus 115,181,696 rials, which amount represents the gross price of 136,633,091 rials less 13,663,309 rials good performance retention (10%) and 7,789,796 rials tax withholding (5.7%). Third, Claimants ask for 37,827,000 rials in inflation escalation payments, which amount is net of tax withholding but not of good performance retentions. Lastly, Claimants demand the return of bank guarantees and good performance retentions which, adjusting for the increase in the value of the additional works reported in Claimants' rebuttal memorial, total 37,369,309 rials. This amount reflects 13,663,309 rials good performance retention on the additional works plus 23,706,000 rials in outstanding bank guarantees.[2]

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[1]The Civil Works Contract recognized that the exact scope of the works to be performed could not be determined at the time of the Contract's execution. It therefore provided that the Contract price would be adjusted to reflect any additional works necessary to fulfill the goals of the Civil Works project.

[2]It should be noted that the individual elements of the claim aggregate to 249,704,005 rials, some 19 million rials more than Claimants' stated claim. Because this differential appears to arise from arithmetic errors made by Claimants in recalculating their claim after receiving necessary data from Respondents and Faridan, and the actual amount claimed is discernible from the pleadings and memorials, the Tribunal rules that its Award need not be limited by the stated claims total.

At the Hearing, Claimants conceded that their claim did not take into account a 4 November 1978 progress payment made by AFIRI in the amount of 48,521,917 rials. Claimants concede that this payment should be accounted for by reducing the claim by the grossed-up amount of the progress payment, because the payment received was net of withholding deductions. In other words, the payment received was less than the amount due for the services rendered because the 15.7 percent withholding deductions had been made; such deductions must therefore be added back to the net payment amount to determine the gross value of the payment. The relevant computations reveal a gross value of 57,558,620 rials [(48,521,917)/(100%-15.7%)], consisting of the 48,521,917 rials paid by AFIRI, 5,755,862 rials in good performance retentions and 3,280,841 in tax withholding. Claimants argue, however, that they are entitled to the good performance retention.

Respondent AFIRI contests the Tribunal's jurisdiction over this claim on the basis of the forum clause contained in the Civil Works Contract.

With respect to the merits of the claim, AFIRI asserts that it paid all invoices for work completed prior to December 1978. It denies that Claimants completed any of the nine sites prior to departing Iran. Rather, AFIRI asserts that substantial work remained to be performed and that such work was performed by Faridan, for which AFIRI paid Faridan directly.

As to the claim for additional work payments, AFIRI argues that the Civil Works Contract required both that IIAF approve any additional work and that ITP Export provide provisional progress reports of additional work carried out. AFIRI alleges that the requisite approvals were not given and that progress reports were not submitted. Respondent AFIRI also objects to release of the good performance

guarantee on the ground that Claimant failed to perform 100 percent of its obligations.

In opposing the claimed escalation payments, AFIRI contends that no such payments are due in light of alleged delays in performance by ITP Export.

Both AFIRI and Faridan have submitted counterclaims; these are addressed later in this Award.

2. Jurisdiction

The jurisdictional issues posed by the forum selection clause embodied in Article 53 of the Civil Works Contract were set forth in detail in the Partial Award and need not be repeated here. In summary, the Civil Works Contract was executed in Farsi only. The Parties have presented varied English translations of Article 53, and the Tribunal requested and received an additional translation from its Division of Language Services. The various translations differ from one another in critical, material respects. Moreover, the original Farsi text appears to be identical in all material respects to the forum clause before the Full Tribunal in Zokor Int'l Inc. and Gov't of Iran, Interlocutory Award No. 7-254-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 271. In that case, the Tribunal held that the forum clause did not divest the Tribunal of jurisdiction.

In light of these circumstances, the Tribunal requested comments from the Parties on the following issues:

(1) Is the Tribunal bound here by the decision in Zokor?

(2) If the Tribunal is not bound by Zokor, then

(a) Does a clause "specifically provid[e] that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian" courts within the meaning of Article II(1) of the Claims Settlement Declaration if said clause is ambiguous in any respect; and

(b) If such clause may be ambiguous, how are any ambiguities presented here to be resolved?

Article II(1) of the Claims Settlement Declaration excludes from the Tribunal's jurisdiction "claims arising under a binding contract between the parties specifically providing that any dispute thereunder should be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position." (Emphasis added.) Respondent AFIRI requests the Tribunal to hold that Article 53 of the Civil Works Contract is within the scope of this exclusion and hence that any claims based on that Contract are excluded from our jurisdiction. As the agreed Farsi original of Article 53 is identical in all critical respects to the Farsi contract considered by the Full Tribunal in Zokor[3] AFIRI thus seeks a result wholly the reverse of the Full Tribunal's ruling in that case.

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[3] In Zokor, the Full Tribunal was presented with two contracts containing identical forum clauses. The Tribunal relied upon the following English translation of the forum clauses there at issue, which the record in Zokor shows was rendered by an "Official Translator Of The Ministry Of Justice" of Iran:

Article 45 - Settlement of Disputes

Should a dispute arise between the Manufacturer and the Employer, whether related to the execution of the contractual works or about the interpretation of the Articles of the contract, general conditions of the

(Footnote Continued)

Careful analysis of the arguments made on this point demonstrate graphically the difficulties linguistic nuances may pose for an international tribunal such as this one. In Zokor the contracts in issue were "drawn up in Farsi" and the English translation of their identical dispute settlement provisions upon which the Tribunal relied had been provided by the Claimant and not materially disputed by the Iranian respondents.[4] After considering the pleadings

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(Footnote Continued)

contract and other contractual documents, and if the dispute is not resolved in an amicable way, the same shall be referred to competent judicial authorities and courts and shall be resolved in accordance with the laws in force in Iran unless there is a convention between the Imperial Government and the Government of the country of the Manufacturer.

Subsequent to the Full Tribunal decision, Award No. 168-254-3 (13 March 1985) was rendered on agreed terms involving, inter alia, payment out of the Security Account of $6,527,000.

[4]The Tribunal relied upon a translation which examination of the record in that case reveals was provided by Claimant in its Memorial on Jurisdiction, and which differed in several respects from the translation it had supplied earlier with its Statement of Claim. The Respondent in its Memorial on Jurisdiction both relied on Claimant's original translation and supplied its own.

Claimant's initial translation was as follows:

Article 45, Settlement of Disputes

If a disagreement arises between the Manufacturer and the Employer, because of expenses concerning the execution of the contractual works or about the interpretation of the Articles of the Contract, general conditions of the Contract and other contractual documents, and if the disagreement is not resolved in an amicable way, this disagreement will be taken to court according to the laws in force in Iran unless there is a Convention between the Imperial Government of Iran and the Government of the country of the Manufacturer.

Respondent's translation stated:

(Footnote Continued)

filed by the parties and after providing them an opportunity to be heard, the Full Tribunal determined that the cited provision failed to oust it of jurisdiction, on two grounds:

> Article 45 . . . does not contain any provision which unambiguously restricts jurisdiction to the courts of Iran . . . [It] does not with sufficient clarity fulfil the requirements laid down in the exclusion clause of Article II, paragraph 1, of the Claims Settlement Declaration. . . .
>
> * * * *
>
> Article 45 confers jurisdiction . . . only in respect of disputes concerning the execution of the contractual works or the interpretation of the contract and related documents . . . [T]his formulation means that the parties have left certain aspects of the contract outside the jurisdiction of the selected courts, if any. Interlocutory Award, dated 5 November 1982, in Case No. 159 [Ford Aerospace and Air Force of Iran, Interlocutory Award No. 6-159-FT, reprinted in 1 Iran-U.S. C.T.R. 268].

On its face, the instant case is governed by Zokor. Apart from the fact that the prevailing Farsi text of Article 53 is identical to that of Article 45 in Zokor insofar as the critical phrases are concerned, the Parties on both sides presented the Tribunal with English translations[5] which agreed that disputes are referred to

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(Footnote Continued)

> In the event a dispute arises between employer and manufacturer, irrespective of whether it relates to performance or interpretation of the provisions of the contract, the General Conditions, or other documentations appended to the contract, in case the parties are not capable of settling the dispute through compromise, the dispute shall be settled by reference to the competent courts of justice, under the laws of Iran, unless there is in force btween [sic] Iran and the manufacturer's Government a contract or other regulations in this respect.

[5] AFIRI submitted its own translation, as follows:

(Footnote Continued)

"competent judicial courts and fora," without any express mention of Iran. This reference is essentially identical to the English translation before the Full Tribunal in Zokor, i.e., "competent judicial authorities and courts."[6] Confidence in the accuracy of this agreed translation is enhanced by the fact that Claimant's translation is presented by a professional Farsi-English/English-Farsi translator previously licensed as such by the Iranian Ministry of Justice.

(Footnote Continued)

> Where disputes arise between the owner and the contractor including but not limited to those disputes arising out in relation to the performance of the operation under the contract and/or to the interpretation and construction of the provisions of the contract and of the General Terms and other instruments and documents attache there to [sic], if the parties fail to resolve such disputes through agreement, recourse shall be had to competent judicial courts and fora.

Claimants submitted this translation of Article 53:

> Article 53 - Settlement of Disputes
>
> Where disputes arise between the Owner and the Contractor, whether in relation to the performance of the operations under the contract or to the interpretation and construction of any of the provisions of the contract and of the general terms and other instruments and documents attached thereto, if the parties fail to resolve such disputes through agreement, recourse shall be had to competent judicial courts and fora.

[6]The two English versions presented here do differ, however, on the other point treated in Zokor. The translation provided by Claimants, referring to "disputes . . ., whether in relation to the performance of the operations . . . or to the interpretation and construction . . .," clearly would not preclude the Tribunal exercising jurisdiction under Zokor and Ford Aerospace. AFIRI's translation, however, using the phrase "including but not limited to," would appear, standing alone, not to bar application of the exclusionary provision.

Against this background AFIRI, in its Statement of Defense, advanced an argument which may not have been advanced to the Full Tribunal in Zokor, or at least not as precisely: AFIRI contends that the word "Iranian" or the phrase "Iran" or "Ministry of Justice of Iran" must be inferred from or read into "competent judicial courts and fora." While admitting that there is no express reference to Iran in the Farsi original, AFIRI argues that the particular Farsi phrase used here ordinarily should be understood as meaning courts administered by the Iranian Ministry of Justice:

> [C]onsidering the general meaning of Article 53, the use of words 'Ministry of Justice' and 'Iran' for the phrase 'competent judicial courts and fora' is understood. . . .

Incidental support for this proposition is drawn from an earlier, uncertified translation supplied by Claimant with the Statement of Claim, the origin of which has not been explained to the Tribunal, which referred to "the appropriate courts of the Ministry of Justice."[7] On the other hand, it is striking that no such argument was made in

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[7] Article 53 - Settlement of Disputes

> Any disputes that may arise between the Contractor and the Employer whether relating to execution of the works subject matter of the Contract or relating interpretation of any of the Articles of the Contract Booklet the General Conditions or other documents attached to the Contract, and which cannot be settle [sic] amicably through mutual agreements, shall be settled through the appropriate courts of the Ministry of Justice.

It is noted that the references in this translation to "disputes . . . whether relating to execution of the works . . . or relating interpretation" would, under Zokor and Ford Aerospace, require the Tribunal to exercise jurisdiction regardless of how the concluding reference to courts is viewed.

Zokor -- that the Iranian respondents there would have been aware of any such issue is apparent from their submission of a translation referring to "the competent courts of justice." See supra note 4.

In these circumstances the Tribunal consulted its own Division of Language Services. See Partial Award (especially Appendices A and B thereto) and Order of 19 August 1985. The results of such consultation confirmed that "Iran," "Iranian," or words to that effect are not unambiguously explicit in Article 53, but rather that the relevant phrase requires some degree of interpretation or construction to achieve such result.[8] The need for such inference is borne out by the variety of translations cited above. It appears, too, that the Farsi phrase the Division uniformly employs for translating the phrase "competent Iranian courts" appearing in Article II(1) of the Claims Settlement Declaration is not the one appearing in Article 53, or in Article 45 in Zokor, but instead is one including an explicit reference to Iran. In addition, the English-Persian Legal Glossary published by the Division uses the Farsi word in question in translating "International Court of Justice" and "Permanent Court of International Justice."

The special submissions of the Parties on this issue fundamentally support their respective prior contentions. Both the Iranian Agent and AFIRI have made submissions reiterating AFIRI's earlier stated position. The Claimants have submitted four expert affidavits or opinions confirming that any reference to "Iran," "Iranian" or "Ministry of

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[8]The Division of Languages Services report opines nonetheless that although the relevant phrase "can be translated into English as 'justice,' or 'administration of justice,'" "its normal meaning," and the only one "plausible" in context, is "Ministry of Justice."

Justice of Iran" would have to be implied in the term at issue and is not explicit:[9]

> (1) A statement of Dr. W. M. Thackston, Jr., Senior Preceptor of Persian at Harvard University, which notes that the Farsi term at issue "can be construed either as an abstract noun meaning 'administration of justice' (or 'judiciary') or as an adjective meaning 'judicial,'" and concluding that "Preferred translations of [the phrase in question] would be" either "recourse to the competent courts and authorities of the judiciary" or "recourse to competent judicial courts and authorities [or fora]."
>
> (2) A certified translation of Article 53 by Berlitz Translation Services, as follows:
>
> Article 53 - Resolution of Dispute
>
> In case of disputes between principal and contractor, whether related to performance of the contract or to the interpretation of the articles contained therein, the general conditions, or other attached documents, the parties, if unable to resolve the subject of dispute by way of agreement, will refer the matter to the courts of justice for resolution.
>
> (3) An extensive affidavit of the professional translator previously licensed by the Iranian Ministry of Justice, who had made the translation

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[9] By letter filed 15 October 1985 the Iranian Agent requests that the Tribunal reject this submission as being "contrary to the Tribunal's Order" of 19 August 1985 in response to which it and the Agent's letter of 9 October 1985 were submitted. That Order, however, noted that "In its Partial Award No. 186-302-3 in this Case, the Tribunal . . . determined that certain issues required comments by the Parties" and asked the Parties to advise it as to "how any ambiguities presented here [are] to be resolved." The pertinent portion of the Partial Award was attached to the Order and explicitly stated that the Parties were being afforded "an opportunity to comment on the response of the Division of Language Services . . . as it relates to these issues, and is granting them by separate order a period within which to do so." Claimants' submission clearly responded to this invitation and thus must be considered by the Tribunal.

of Article 53 on which Claimants rely, supporting his translation and conclusions.

(4) An affidavit of Hamid Sabi, "an Iranian lawyer admitted to practice in all courts of Iran," discussing the issues in detail and concluding that Article 53 "does not contain language which unambiguously vests sole and exclusive jurisdiction in competent courts of Iran."

The principal question thus facing the Tribunal (apart from the binding character of its previous decision in Zokor) is whether a forum selection clause can "specifically provid[e] that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts" if in such clause "Iranian" is not unambiguously expressed. (Emphasis added.) We hold that it cannot. A reference cannot be implicitly specific; specificity requires a definite statement. Concise Oxford Dictionary 1101 (sixth ed.) Where application of the reference in Article II(1) to "competent Iranian courts" has been in issue the Full Tribunal has held, in effect, that "specifically" means "unambiguously." See, e.g., Gibbs and Hill, Inc. and Tavanir, Interlocutory Award No. 1-6-FT at 4-5 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 236, 238, HNTB and Iran, Interlocutory Award No. 3-68-FT at 3-4 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 248, 250; T.C.S.B., Inc. and Iran, Interlocutory Award No. 5-140-FT at 3 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 261, 262-63; Zokor Int'l, Inc. and Iran, supra at 3, 1 Iran-U.S. C.T.R. at 273. The need for inference, however, is generated by ambiguity. Moreover, no decision of the Tribunal has denied jurisdiction under the forum clause provision of Article II(1) except on the basis of a forum selection clause explicitly referring to "Iranian" courts.[10] See, e.g., Halliburton Co.

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[10]While a few cases appear to have interpreted phrases, (Footnote Continued)

and Doreen/Imro, Interlocutory Award No. 2-51-FT at 4-7 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 242, 245-67; George W. Drucker, Jr. and Foreign Transaction Co., Interlocutory Award No. 4-121-FT at 2-7 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 252, 253-56 T.C.S.B., Inc. and Iran, supra at 4-8, 1 Iran-U.S. C.T.R. at 263-267; Stone and Webster and Nat'l Petrochemical Co., Interlocutory Award No. 8-293-FT at 3-6 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 274, 275-77. We therefore find no reason in this case to depart from Zokor and hence find that the Tribunal does have jurisdiction over claims arising out of the Civil Works Contract.[11]

3. Merits of Claim

a. Services Rendered and Billed

With respect to the claims for services rendered and billed, Claimants have submitted a copy of an invoice dated 27 August 1978 in the amount of 59,326,067 rials. Claimants also proffer the affidavit of Claimants' former Contracts Manager attesting that 59,326,000 rials worth of services had been performed under the Civil Works Contract prior to Claimants' departure from Iran. Respondent, however, has produced evidence indicating that it made a progress payment now conceded by Claimants to have been made. Such payment

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(Footnote Continued)
such as, for example, "legal authorities," in finding that they supply the reference to "courts," e.g., George W. Drucker, Jr. and Foreign Transaction Co., Interlocutory Award No. 4-121-FT at 3-4 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 252, 254, none has rejected jurisdiction on the basis of a forum selection clause in which the "Iranian" identity of such courts was implied rather than expressed.

[11]The Tribunal thus need not rule separately in respect of the other Farsi phrase at issue, which the Division of Language Services opined "might give rise to ambiguity in translation . . . which is not in the original Farsi."

accounts for 57,558,620 rials of the 59,326,000 rials invoiced and claimed. In view of the absence of any explanation by Respondent accounting for the differential of 1,767,380 rials, the Tribunal rules that AFIRI remains liable for such amount.

b. Additional Works

The amount requested by Claimants for additional work is drawn from computations dated 7 November 1979 made by Faridan and submitted to Claimants through Claimants' representative in Iran. Respondents have proferred no rebuttal evidence. Although the documents filed by Respondent AFIRI on 21 June 1982 in support of its Statement of Defense and Counterclaim include minutes of a meeting of 16 October 1978 in which Faridan, ITP Export and IATCO tentatively negotiated a settlement of this claim for a lesser amount, it would appear that the proposed settlement agreement attached thereto was never signed. Faridan's subsequent assertion on 7 November 1979 of the higher amount now sought by Claimants confirms this. Noting that Faridan has sought, in effect, to interpose itself as a counter-claimant in these proceedings, the Tribunal finds Faridan's computation of outstanding account balances to be credible and adequate to substantiate the additional works claim of 136,633,091 rials.

The Tribunal also determines that the legal defenses to payment raised by AFIRI are without merit. With respect to AFIRI's defense that ITP Export did not provide required progress reports, the Tribunal notes that the only progress reports required by the Contract are monthly statements of the works. Article 37 of the General Conditions provides that such monthly statements are to be prepared not by the Contractor (ITP Export) but by a supervisory body selected by the Employer (IIAF), in cooperation with a representative of the Contractor. Thus, preparation of the statements was

not the responsibility of ITP Export; a failure on the part of the supervisory body to prepare such reports, without proof that such failure was attributable to ITP Export, cannot excuse AFIRI's payment obligations.

Similarly, the Tribunal finds AFIRI's arguments in respect of approval requirements for additional work to be unavailing. Nowhere has AFIRI alleged that the additional works were unnecessary to achieve the Contract's objectives or that AFIRI has not accepted them. Therefore, irrespective of whether prior approval was given, or, indeed, required, it seems clear that AFIRI willingly benefited from the additional works and thus has a corresponding obligation to pay for such work under a theory of quantum meruit if not under the Contract itself.

The Civil Works Contract, however, provided for certain limitations on the amount of additional works. Article 30 of the General Conditions provides that the total cost of "new works" shall not exceed 10 percent of the initial Contract amount, which was 920,354,823 rials. However, "new works" encompasses only works beyond the scope of the original Contract for which unit prices were not specified. Article 29, governing "changes in quantities of the works" for which unit prices were specified in the original Contract, provides that such additional works cannot exceed 25 percent of the initial Contract amount. The Tribunal finds it reasonable to assume that the additional works specified in the Faridan statement consisted both of "new works" and "changes in quantities of the works" and that the amount thus specified by Faridan does not exceed the Contract limitations, since it constitutes only 12.5 percent of the original Contract price. Our conclusion is buttressed by the observation that AFIRI has not raised the limitation provisions as an issue.

Accordingly, the Tribunal determines that AFIRI is liable to Claimant in the amount of 115,181,696 rials, the net price of the additional works as valued by Faridan after withholding deductions.

c. Escalations

Article 7 of the General Conditions of Contract attached to the Civil Works Contract, "Article 30: (Repeat)" of its Attachment to General Conditions and Article 13 of the Special Terms of said Contract provided for stipulated price escalations. Claimants submitted the following computation of their claim for such escalation payments:

(Rials in 000's)

1.	Net escalation amounts collected	Rls	65,338
	Therefore, gross value 65,338 / 0.843		77,507
2.	Final escalation amount entitlement including indices consideration for CY 56(77)/57(78) up to and including progress payment statement no. 8	Rls	26,094
3.	Escalation on balance of original contract price entitlement assuming achieved provisional handover during 2nd/3rd quarter CY 57(78)	Rls	5,800
4.	Gross escalation claimed	Rls	109,401
	Net entitlement (i.e., less 5.7%)	Rls	103,165
	Credit for prior net escalation paid		(65,338)
5.	Net escalation entitlement balance	Rls	37,827

Respondent AFIRI has contended that Claimants are not entitled to any escalation payments because, AFIRI argues, such escalations arise only from the passage of time over a period extended by Claimants' alleged delays in performances. As the Tribunal notes infra, however, in dismissing a counterclaim based upon these same allegations, AFIRI has offered no supporting evidence. The Tribunal

determines that Claimants are entitled to the full amount claimed, less the 10 percent good performance retention, which amount Claimants did not deduct in their calculations. As with the amount claimed for additional works, the amount requested for escalation was derived from computations made by Faridan, which computations the Tribunal finds to be credible.[12] As Respondent AFIRI has not challenged the computations, the Tribunal rules that AFIRI is liable to Claimants in the amount of 26,887,043 rials for escalation payments, calculated as follows:

Rials 109,401,000	Gross escalation claimed
- 17,175,957	Withholding deductions (15.7%)
92,225,043	Net entitlement
	Credit for prior escalation
- 65,338,000	payments
26,887,043	Escalation amounts owed

d. Bank Guarantees and Good Performance Retentions

The fourth element of Claimants' claim under the Civil Works Contract relates to bank guarantees and good performance retentions. Article 35 of the General Conditions to the Contract provided for a 10 percent good performance retention from all statements submitted by ITP Export, to be held in a separate account by IIAF. One-half of the retained amount was to be repaid upon approval of the final statement of the works; the remaining one-half was to be repaid upon the expiration of a two-year guarantee period. Article 35 provided further that ITP Export could withdraw monies from the retention account by tendering bank guarantees for all amounts withdrawn. Such withdrawals were

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[12] The Faridan Statement also contains computations for escalations on the additional works. As Claimant has not sought such escalations, however, the Tribunal need not assess their entitlement to such.

made and bank guarantees issued. The bank guarantees thus represent good performance guarantees and their cancellation, like return of the retentions, is dependent contractually upon Claimants' good performance.

With respect to damages, Claimants allege that the amount of the bank guarantees stood at 23,706,000 rials at the time of their departure from Iran, and Respondents have not challenged this figure. Claimants assert that this amount reflects reductions in the original values of the guarantees, which reductions were permitted by AFIRI as provisional handover of six of the nine sites was effected. Claimants include the face amount of the guarantees in their computation of amounts owed by AFIRI. Claimants also seek return of retentions relating to the November 1978 progress payment, the additional works payment, and escalation payments, as noted above in connection with the claims for these payments.

In connection with Claimants' good performance obligation, the documentary evidence indicates that Claimants had been performing satisfactorily. Copies of proces-verbaux and acceptance certificates submitted to the Tribunal indicate that at least seven of the nine sites were provisionally handed over to IIAF and that an eighth site (Bandar Abbas) was scheduled for provisional handover on 1 November 1978, but that the IIAF representative could not attend the meeting due to an airline strike. According to the Contract, provisional handover was to occur when work at a particular site was at least 97 percent complete. Although the acceptance certificates cite deficiencies to be remedied, later documents signed by IIAF officials certifying that the deficiencies were remedied have been provided for most of the sites. The Tribunal finds no cause to believe that residual defects at other sites were not likewise rectified.

In light of the above, the Tribunal finds that Claimants were in compliance with their contractual obligation of good performance at the time of their departure from Iran. It is evident from the Tribunal's rulings in the Partial Award that Claimants' further performance was excused, and Claimants are therefore entitled to return of all good performance retentions from AFIRI. These retentions total 30,359,271 rials, as follows:

5,755,862	Retention on 4 Nov. 1978 progress payment
13,663,309	Retention on additional works (imputed)
10,940,100	Retention on escalation payments (imputed)
30,359,271[13]	Total due Claimants

No claim is made for retentions on other amounts billed and collected; the Tribunal must presume that all such retentions were withdrawn by Claimants subject to bank guarantees.

With respect to Claimants' demand for the value of the bank guarantees, the Tribunal fails to understand its legal foundation. Claimants have neither alleged nor proved that AFIRI collected on the guarantees; therefore, Claimants would, at most, be entitled to cancellation of the guarantees as the guarantees were designed to secure retention amounts Claimants had already withdrawn. Absent proof that the guarantees were paid and that Claimant thereby was damaged, an award of the value of the guarantees would constitute a double payment of performance retentions.

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[13]The total amount awarded exceeds the stated amount claimed by Claimants solely because the Tribunal has chosen to award the retentions on the progress payment and escalation payments separately rather than include such amounts in those elements of the claim, as requested by Claimant.

Moreover, the Tribunal cannot order cancellation of the guarantees as the bank or banks involved are not parties to this proceeding. Indeed, the Tribunal has not even been informed of the identity of the guarantor bank or banks.

Nonetheless, the Tribunal can and must adjudicate the rights of Claimants and AFIRI with respect to the obligations underlying the guarantees. Having concluded that Claimants had met their contractual obligation of good performance through the date of their departure from Iran and that performance after that date was excused, the Tribunal rules that the bank guarantees securing withdrawals of good performance retentions have no further purpose and orders AFIRI not to make any demands thereon. See Morrison-Knudsen Pacific Ltd. and Ministry of Roads and Transportation, Award No. 143-127-3 at 45 (13 July 1984); Gould Marketing, Inc. and Ministry of Defence of the Islamic Republic of Iran, Award No. 136-49/50-2 at 26, 27 (29 June 1984).

4. Counterclaims

AFIRI has filed three types of counterclaims, one of which is joined by Faridan. They include claims for payments allegedly made by AFIRI to Faridan, social security and education taxes, and breach of contract. (A fourth counterclaim, for taxes, was dismissed in Partial Award No. 186-302-3 (19 Aug. 1985) at 41.)

a. Faridan Payments

A separate Statement of Defense, filed jointly by AFIRI and Faridan, alleged that Faridan completed the civil works after Claimants departed Iran. AFIRI and Faridan asserted that Claimants failed to pay Faridan for its services, and claimed 60,381,540 rials, plus interest as damages. AFIRI later adjusted the amount claimed to 160 million rials,

which amount purportedly corresponds to payments made directly by AFIRI to Faridan in respect of work performed by Faridan.

AFIRI argues that Articles 22 and 24 of the General Conditions to the Civil Works Contract obligate ITP Export to reimburse AFIRI for the payments it allegedly made to Faridan. Moreoever, AFIRI asserts that it obligated itself to pay Faridan through a guarantee, and cites Articles 684 and 698 of the Iranian Civil Code as support for its counterclaim.

Claimants contend that the Tribunal lacks jurisdiction over the counterclaim insofar as it constitutes a claim of a private Iranian company against a private American company, in contravention of the Claims Settlement Declaration. See Article II(1). Claimants also contest the counterclaim on its merits, arguing that AFIRI was not obligated to pay Faridan and noting that AFIRI has failed to prove that it actually made any payments to Faridan.

The Tribunal rules that the counterclaim is within its jurisdiction only to the extent that it represents a claim of AFIRI, based upon obligations of ITP Export to AFIRI arising directly from the Civil Works Contract. The Tribunal holds, however, that the counterclaim must be dismissed for failure to prove such necessary jurisdictional facts.

Respondents have failed to demonstrate that AFIRI was obligated to pay Faridan and thus cannot trace the obligation to the Civil Works Contract. AFIRI's predecessor, IIAF, had no direct contractual relationship with Faridan. The Civil Works Contract does not require AFIRI to guarantee subcontractor obligations and AFIRI has not produced any evidence of a guarantee given to Faridan.

The provisions of the Iranian Civil Code upon which AFIRI relies, even if Iranian law is presumed to govern, do not demonstrate that a guarantee exists, either contractually or by operation of law. Article 684 merely defines a contract of guarantee, while Article 698 provides that a guarantee discharges the obligation of the original debtor and obligates the guarantor to the original creditor.

Similarly, Articles 22 and 24 of the Contract's General Conditions do not evidence an obligation on AFIRI's part to pay Faridan. Article 22 provides as follows:

> If the Contractor procrastinates or fails to fulfill part or all of the commitments stipulated in Article 21, which may cause losses or if the Contractor refuses to observe his undertakings under the reference Article, the Employer shall have the right to fulfill the commitments and recover the cost from the Contractor's dues or guarantees. In such cases the Contractor's objections to the payments or his objection to the Employer's judgement regarding the violation or the amounts paid shall be considered as null and void.

This article is inapposite here because it applies solely in respect of obligations stated in Article 21, which obligations relate to safeguarding the sites and installations against casualties, not to completion of the works.

Article 24 empowers IIAF to adjudicate payment disputes between ITP Export and any subcontractor and to pay the subcontractor on account of ITP Export if ITP Export refuses to comply with its decision. While this provision might justify a direction by AFIRI to ITP Export to pass directly to Faridan funds paid by AFIRI to ITP Export, AFIRI has produced no evidence indicating that the procedures specified in Article 24 were applied or, indeed, were applicable. No evidence exists of any payment dispute between ITP Export and Faridan. No evidence exists of any

adjudication by AFIRI. No evidence exists of ITP Export's failure to comply with any such decision. Finally, no evidence exists that AFIRI actually paid Faridan.

Having determined that AFIRI has failed to prove either that it was obligated as a matter of law to pay Faridan or that it in fact paid Faridan, the Tribunal orders the counterclaim relating to Faridan dismissed.

b. Social Security and Education Taxes

AFIRI's counterclaim as set forth in its Statement of Defense, which in all other respects relates to the RAPCON Contract, states that "Respondent has a debt of $1,613,012.75 on account of Insurance Premium." No indication is given as to the nature or basis of this debt. Subsequently, in its Memorial of 2 January 1985, AFIRI raised this counterclaim to $2,202,208 and related it to the Civil Works Contract.

In a Supplementary Memorial filed on 7 January 1985, AFIRI details counterclaims of 124,191,191 rials for social insurance premiums, exclusive of penalties, and 737,393 rials for education fees, exclusive of penalties. AFIRI argues that General Condition 23 and Article 24 of the Special Provisions of the Contract specifically requires that ITP Export pay the social insurance premiums.

Claimants object to the counterclaim on two jurisdictional grounds. First, Claimants argue that it is an improper direct claim by an Iranian agency against a citizen of the United States. Second, Claimants contend that the counterclaim is unrelated to the Contract claimed upon, because the Civil Works Contract does not impose upon AFIRI any obligation for social security tax owed by Claimants. Claimants also aver that they paid all relevant social security and education charges.

The Tribunal determines that the counterclaims for social security premiums and education taxes are not within the Tribunal's jurisdiction because neither counterclaim "arises out of the same contract, transaction or occurrence that constitutes the subject matter" of the claim, as required by Article II(1) of the Claims Settlement Declaration.

AFIRI relies upon Article 23 of the Contracts' General Conditions to tie its counterclaim to the Civil Works Contract. Its reliance, however, is misplaced. Article 23 provides as follows:

> The Contractor affirms that he is fully conversant with all the rules and regulations pertaining to Labour and Social Security Laws, Technical Safety as well as the rules and regulations governing taxes and other Government charges, and he undertakes to observe the above rules and regulations. In any case, the Employer shall have no responsibility for non-observance by the Contractor of such rules and regulations.

Instead of obligating AFIRI to pay ITP Export's social insurance premiums and education taxes, which obligation might give rise to a permissible counterclaim, Article 23 has precisely the opposite effect, making it clear that AFIRI had no such contractual obligation. Indeed, it is not even alleged that AFIRI in fact has been required to pay any such sums.

Similarly, Article 24 of the Special Provisions of the Contract does not specify precise tax and/or insurance obligations. Article 24 provides:

> Regulations of this contract are governed by Iranian laws and interpreted according to the same. Every type of taxes, charges and expenses relating to insurance, social insurance and other expenses connected to this Contract and the company's personnel are the liability of ITP, and that part of this amount which is to be deducted

> by the Employer shall be deducted from the ITP dues and paid to the authorities concerned, and the necessary documents given to ITP.

Because Article 24 does not specify the amount, if any, of tax and insurance retentions to be made, a claim for amounts not withheld likewise would fall outside the Tribunal's jurisdiction. However, the Tribunal notes that the amounts claimed by Claimants and awarded above already take into account the social insurance and education tax retentions ordinarily withheld by Iranian entities.

In conclusion, ITP Export's obligation to pay insurance premiums and taxes, if any, arose not under the Contract, but independently under the relevant provisions of Iran's municipal law. As such, the obligation upon which the counterclaim is based does not arise out of the Civil Works Contract or any other contract, transaction or occurrence relating to the claim. See T.C.S.B., Inc. and Iran, Award No. 114-140-2 at 23-24 (16 Mar. 1984); Sylvania Technical Systems, Inc. and Gov't of Iran, Award No. 180-64-1 at 40-41 (27 June 1985); Questech, Inc. and Ministry of National Defence, Award No. 191-59-1 at 37-40 (25 Sept. 1985); General Dynamics Telephone Systems Center, Inc. and Islamic Republic of Iran, Award No. 192-285-2 at 25 (4 Oct. 1985). Cf. Behring Int'l, Inc. and Islamic Republic Iranian Air Force, Interim and Interlocutory Award No. 52-382-3 at 43 (21 Jun. 1985). Accordingly, the Tribunal orders the counterclaim for social insurance premiums and education taxes dismissed for want of jurisdiction. In light of this disposition, the Tribunal need not address Claimants' other jurisdictional objection to this counterclaim.

c. Breach of Contract Counterclaims

In its Memorial filed 2 January 1985, just 22 days before the Hearing, AFIRI sets forth for the first time several counterclaims for damages allegedly caused by ITP

Export's breaches of the Civil Works Contract. These counterclaims were not timely filed, and no explanation for the delay has been provided. Tribunal Rules, Article 19, paragraph 3. The Tribunal orders that they be dismissed.

Even if these counterclaims had been timely filed, the Tribunal determines that they would have to be dismissed for failure of proof. AFIRI counterclaims for $2,214,229 for delays in the completion of the civil works, but has failed to adduce any evidence that delays were attributable to ITP Export or that it had contemporaneously complained of the delays. Moreover, AFIRI offers no proof of damage. Its exhibit that ostensibly shows its computation method has not been translated into English, as required, and is not otherwise explained. Similarly, AFIRI's claim for $2 million in damages alleged to result from burned out transformers and other defects and deficiencies lacks proof that such problems are attributable to ITP Export.

AFIRI's final counterclaim in this regard seeks repayment of all price adjustments (i.e. escalation payments) paid to ITP Export in view of the delays caused by the latter. AFIRI argues that ITP Export had given an express undertaking to repay these monies if it turned out that any delays were attributable to the company's non-performance. However, AFIRI offers no proof that, in fact, any delays were attributable to ITP Export. Moreover, the undertaking upon which AFIRI relies states simply, in pertinent part, that "in the event upon examination of the work progress it shall become evident that Contractor [ITP Export] is liable for payment of any penalty, or an over-payment . . . ITP company undertakes to make an immediate refund of such over-payment . . . ." This undertaking contains no reference to price adjustments or escalations and creates no new obligation on the part of ITP Export, which would have been liable for penalties or overpayments under the Civil Works Contract itself.

5. Conclusion and Currency Conversion

The aggregate award against AFIRI on the Civil Works Contract is 174,195,390 rials.[14] The obligation underlying this Award arose in December 1978, after which time further performance under the Contract became impossible. The Tribunal rules that the proper currency conversion rate to be used in converting the award to U.S. dollars is the market rate prevailing at that time, which was 70.475 rials per U.S. dollar. International Financial Statistics, Supplement on Exchange Rates (IMF, 1981). Accordingly, the Tribunal awards Claimants $2,471,733, against AFIRI, in respect of their claim on the Civil Works Contract.

B. Letters of Credit Claims Relating to Civil Works Contract and Counterclaims

In addition to their direct claims under the Civil Works Contract, Claimants seek cancellation of Letter of Credit No. S-13576, issued on behalf of ITP Export by First National Bank of Boston ("FNBB") to Iranians' Bank to secure the performance guarantee given to IIAF, as well as cancellation of all other bank guarantees and standby letters of credit issued in connection with the Civil Works Contract. Claimants also seek compensation for legal fees and expenses totalling $30,000, plus interest as from 30 June 1980, incurred in obtaining a preliminary injunction in a federal court in the United States to prevent payment on two of these letters of credit. Claimants do not name any of the banks involved as Respondents, although Bank Tejarat, successor to Iranians' Bank, has sought to intervene in the proceedings by filing defenses and counterclaims, which were dismissed in Partial Award No. 186-302-3.

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[14] Calculated as follows: 1,767,380 rials (services (Footnote Continued)

Pursuant to Article 34 of the General Conditions to the Civil Works Contract, ITP Export was to provide a bank guarantee to AFIRI in the amount of five percent of the initial amount of the Contract as a guarantee for "fulfillment of commitments arising therefrom." This guarantee was provided by Iranians' Bank as Bank Guarantee 6/204, which was secured by a matching standby letter of credit (S-13576) issued in favor of Iranians' Bank by FNBB. The amount of the letter of credit was reduced from its original value of $691,788 (46,017,741 rials) to 15,756,923 rials in September 1978, in proportion to the provisional handover of six of the nine sites, as provided in Article 37. Apparently, the letter of credit remained open thereafter in this amount.

Pursuant to Article 36 of the General Conditions, a second standby letter of credit (S-13575) was also issued to secure a second bank guarantee (6/216). This second guarantee was to secure advance payments made by AFIRI to Claimants, and, under the terms of Article 36, was to be reduced gradually as AFIRI made its monthly payments to Claimants on the Civil Works Contract, deducting a portion of amounts owed to repay amounts advanced. Apparently, by late 1978 the amount of the guarantee had been reduced to 38,959,170 rials but further reductions in the guarantee and corresponding letter of credit were never made.

Claimants further allege that in May 1980, Bank Tejarat demanded payment for the balance of S-13576, presumably, Claimants speculate, because it had paid the amount of 15,756,923 to AFIRI on its corresponding guarantee (6/204). Claimants also allege that AFIRI apparently has received an additional 38,959,170 rials from Bank Tejarat on Bank

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(Footnote Continued)
rendered and billed) + 115,181,696 rials (additional works) + 26,887,043 rials (escalation) + 30,359,271 rials (good performance retentions).

Guarantee 6/216 because Bank Tejarat has called the corresponding standby letter of credit (S-13575). Claimants apparently blocked both calls through judicial proceedings in the United States.

Bank Tejarat contends that the Air Force had requested extension of the guarantees and it therefore requested FNBB to extend the corresponding letters of credit. When FNBB allegedly refused the extension, Bank Tejarat demanded payment thereunder. FNBB allegedly responded that the funds were blocked by Executive Order No. 12170 of the President of the United States (14 Nov. 1979) freezing Iranian assets within the jurisdiction of the United States.[15]

With respect to Letter of Credit No. S-13576, relating to the performance guarantee, Claimants assert that AFIRI has refused wrongfully to cancel the credit although Claimants had essentially completed performance. AFIRI argues that it is entitled to retain the remaining value of the letter of credit pending completion and final handover of the nine sites, which it asserts has not occurred. It also contends that defects have been found in the work and therefore it is entitled to retain the fulfillment performance guarantee.

No specific arguments have been made by the Parties with respect to letter of credit No. S-13575, relating to advances.

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[15] Claimants have submitted court records indicating that the U.S. District Court for the District of Massachusetts issued on or about 15 May 1980 a Temporary Restraining Order barring Iranians' Bank from collecting on Letter of Credit S-13576. The Court issued a Preliminary Injunction to the same effect on 16 May 1980, which Injunction remains in effect.

The rights and obligations of the Parties with respect to these guarantees and letters of credit are identical to those determined with respect to the good performance bank guarantee discussed above. Because further performance under the Civil Works Contract has been made impossible by Iran, all bank guarantees and letters of credit relating to the Contract can have no further purpose. Correspondingly, the Tribunal orders AFIRI to withdraw any demands for payment of those guarantees and to refrain from making any further demands thereon.

The remaining element of the claim, i.e. the demand for $30,000 in legal fees and expenses, apart from the question it raises as to whether it constitutes a proper demand under applicable principles of law, has not been sufficiently documented and therefore is denied.

C. Expropriation Claim

1. The Claim

The third claim over which the Tribunal reserved decision in its Partial Award was Claimants' claim against the Government of Iran for the expropriation of real property. As noted in the Partial Award, Claimants purport to have been either the beneficial owners or legal owners, at all relevant times, of a building containing eight apartments located in Tehran. Claimants initially based their claim on the alleged failure of the Imperial Government of Iran and its successor, the present Iranian Government, to protect the building, thereby depriving Claimants of the use and benefit of the building even prior to Claimants' departure from Iran in December 1978. In their latest submission on the matter, their Reply Memorial and Rebuttal filed on 21 January 1985, Claimants contend that the building was appropriated through actions of Bank Tejarat with "the formal approval and active participation

of the Government of the Islamic Republic of Iran in the form of both its Revolutionary Prosecutor and the State Deeds and Property Registration Organization."

Claimants assert that the property, assessed by an engineer at 48 million rials in May 1978, was subject to an outstanding mortgage balance equivalent to $216,915 as of December 1978. Initially, Claimants sought recovery in the amount of 48 million rials ($682,303), the asserted value of the building as of December 1978, plus interest, if they remained obligated on the mortgage, or $465,388, the value net of mortgage, plus interest, if they were no longer so obligated. In their Reply Memorial and Rebuttal, however, Claimants contend that the building presently has an "estimated appraised value" of over 180 million rials.

2. Nationality as to the Claim

At the outset, the Tribunal must determine whether this claim is a claim of a national of the United States as defined by Article VII(2) of the Claims Settlement Declaration.

The evidence indicates that, at all relevant times prior to December 1978, legal title to the property in question was held by Mitchel and Roberts Corporation, an Iranian private joint stock company. Bank Tejarat, appearing as mortgagee of the property, and, for the purposes of this claim, apparently as the representative of Iran as well, challenges the authority of Claimants to file a claim on behalf of Mitchel and Roberts and the jurisdiction of the Tribunal to hear the claim of an Iranian company.

Claimants have submitted two affidavits of Mr. Alexander Patrick, attesting that he was the Managing Director and Chairman of the Board of Mitchel and Roberts

and legal owner, until December 1978, of a majority of the shares of Mitchel and Roberts, held "in trust" for Claimant ITP. He also attests that Mitchel and Roberts was the sole legal owner of the property at issue, subject only to a mortgage held by Iranians' Bank (now Bank Tejarat) in the principal amount of approximately $216,000. Mr. Patrick further attests that ITPC owned beneficially all of the stock of Mitchel and Roberts, having requested that it be formed and having funded it "to purchase ITP's headquarters building in Tehran," and that he transferred legal title to his 89 shares in Mitchel and Roberts to ITPC, for valuable consideration, in December 1978.[16] As evidence of their ownership interest, Claimants also have filed copies of the stock transfer agreement relating to the 89 shares, dated 14 December 1978, and an invoice dated 11 May 1976 sent to "I.T.P. Corp." by Iran American International Insurance Company for the 1976-77 insurance premium covering the building and its contents.

Claimants' beneficial ownership is substantiated further, and explained, by two affidavits of Claimants' former Controller, Mr. Philip M. Leitzinger. In the first he attests that "ITP put up the purchase money for [the] building and the money for the incorporation of Mitchel and Roberts which held title to the property. This was all done on the advice of our Iranian legal counsel." Mr. Leitzinger also certifies that Mr. Patrick held legal title to 89 of the 100 shares of Mitchel and Roberts.

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[16] Mr. Patrick also asserts that his wife had one percent of the shares and likewise transferred that legal interest to Claimant ITPC.

Mr. Leitzinger's second affidavit attests that when the building was mortgaged (which had happened once prior to the instance here in issue)

> The proceeds of each mortgage loan were transmitted to ITP . . . The mortgage obligation on the building in Tehran was at all times recognized by ITP and recorded as a liability in its accounting records. The building was similarly recorded as ITP's asset and both asset and liability were reported as such on ITP's financial statements for December 31, 1978 which were audited by Touche Ross & Co.

Touche Ross & Co. confirms in a statement under oath by two of its partners that

> ITPC beneficially owned, for financial accounting purposes, an office building in Iran . . . .

This evidence is bolstered by the statement under oath of Mr. Bakst, the Trustee in Bankruptcy of both Claimants, that "Mitchell and Roberts . . . is a 90% . . . owned subsidiary of [ITP]," and by the following account by Mr. Jarvis, given under oath, of the origin of Mitchel and Roberts:

> Another subsidiary which ITP owns is Mitchell and Roberts, a private Iranian joint stock company. Because of Iranian law concerning ownership of real property in Iran, I was advised that it was necessary to have an Iranian company hold title to our corporate headquarters building in Tehran. Accordingly, ITP's Vice President for Iran, Mr. Alexander Patrick . . . formed Mitchell and Roberts in 1975 or 1976 at ITP's request and held the majority of its shares in trust for ITP.

In addition, a letter addressed by ITPC's then President to Mr. Patrick dated 14 June 1976 confirms that ITPC is the owner of the property and authorizes Mr. Patrick to obtain the mortgage.

Mr. Patrick's U.S. nationality is established by his own statement under oath that he "was born in the United

States of America and [has] been an American citizen all [his] life," supported by submission of a Certificate of Birth recording his birth in Springfield, Ohio, U.S.A., and copies of U.S. passports valid for him for the periods from 27 February 1973 to 26 February 1978 and from 14 December 1982 to 13 December 1987. It is confirmed by the statement under oath of Mr. Jarvis that "Mr. Alexander Patrick . . . is known by me to be a U.S. citizen." In addition, Mr. John R. Whitford, former President of ITPC, testified at the Hearing that Mr. Patrick has always been a U.S. citizen.

Bank Tejarat counters that, under Iranian law, the real owner of the building is the one who holds the title deed and that the title deed to the building in question was held by Mitchel and Roberts, not Claimants.

Based upon the uncontroverted affidavits, testimony and documents submitted by Claimants, the Tribunal finds that at all relevant times prior to 14 December 1978 Claimants beneficially owned, in full, Mitchel and Roberts, and therewith the real property in question, as the evidence indicates that Mitchel and Roberts had no additional assets or liabilities, other than the mortgage, and that Mitchel and Roberts was created solely to hold title to the building. After that date, Claimants also held legal title to at least 89 of the 100 shares of Mitchel and Roberts. The Tribunal also finds that Mr. Patrick was, at all relevant times, a United States citizen.

Having considered these facts, the Tribunal rules that in view of the special circumstances in this case Claimants are entitled to bring their claim for the real property before this Tribunal. Mitchel and Roberts, as an Iranian corporation, is not itself entitled to bring a claim under

the terms of the Claims Settlement Declaration.[17] However, Article VII(2) of the Declaration permits claims by U.S. or Iranian nationals

> owned indirectly by such nationals through ownership of capital stock or other property interests in juridical persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this Agreement.

Claimants, by virtue both of their 100 percent beneficial ownership interest in Mitchel and Roberts prior to and since 14 December 1978, and their legal ownership of at least 89 percent of the company's capital stock thereafter,[18] own indirectly, within the meaning of this paragraph, the claim they here assert.[19]

3. Facts and Contentions of the Parties

With respect to the merits, the Tribunal notes that the factual explanations and legal theories advanced by

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[17]This conclusion is without prejudice to any decision by the Full Tribunal on the issue whether, as a general rule, a U.S. corporation under Article VII(2) of the Claims Settlement Declaration may bring as its indirect claim a claim of an Iranian entity, one of the issues before the Full Tribunal in Case A22.

[18]Having concluded that jurisdiction over the claim exists by virtue of Claimant's 100 percent beneficial ownership interest, the Tribunal does not decide whether an indirect claim involving less that 100 percent ownership by U.S. nationals is limited to the extent of such ownership interest. Dames & Moore and Islamic Republic of Iran, Award No. 97-54-3 at 10, 31-32 (20 Dec. 1983).

[19]Bank Tejarat's argument regarding ownership of the building under Iranian law simply is irrelevant to the jurisdictional considerations dictated by the Claims Settlement Declaration.

Claimants have changed over the course of the proceedings. Their initial theory of liability was one of de facto confiscation. Claimants argued that the Imperial Government of Iran rendered the building uninhabitable, prior to December 1978, by failing to protect the building and its occupants. Claimants alleged also that the building subsequently was occupied by military forces of Iran.

Claimants' own evidence, however, contradicts these allegations. A telex dated 4 March 1979 from Mr. Faramarz Attar, Claimant's representative in Iran after December 1978, indicates that Mr. Attar at that time was arranging for repairs and watchmen for the building, meeting with bank officials to seek relief on the mortgage, and visiting with people in the neighborhood of the building to convince them to leave the building alone. These acts by Claimants' representative clearly indicate that in March 1979 Claimants still were exercising dominion and control over it.

It is not disputed, however, that control of the building passed subsequently to Bank Tejarat. Bank Tejarat, in turn, has offered somewhat differing explanations of how the transfer of control of, and subsequently of legal title to, the property occurred. In its Statement of Defense Bank Tejarat suggests that at least originally the transfer was intended to take place pursuant to a contract of sale, negotiated by Mr. Attar on behalf of Mitchel and Roberts. On this point the Statement of Defense contains the following explanations:

> Repayment of the [mortgage] loan was to have been effected over a period of one year from 11.2.1357 to 11.2.1358 (May 1, 1978 to May 1, 1979). However, the recipient of the loan took no steps to repay the loan at the prescribed date.
>
> Since MRC [i.e. Mitchel and Roberts] was unable to repay the loan, following negotiations between the Bank and the MRC representative, MRC's Attorney proposed the sale of the building to the Bank at Rls. 21,200,000 and requested the Bank for

> payment of Rls. 1,000,000 on account to be used to pay off debts for utilities (water, electricity, telephone, etc.) . . . . Since the Bank did not intend to foreclose the property, it conveyed MRC's proposal to the Bank Staff and asked those interested to submit their offers. Furthermore, since the apartments were vacant, the building was handed over by the MRC representative to the Bank's representatives on 29.7.1358 (Oct. 21, 1979) as per a proces-verbal of the same date. At this time the Bank and MRC's Attorney agreed to have the eight residential apartments sold to the Bank Staff before any execution order was issued.

As evidence of such contract of sale, Bank Tejarat has submitted, in Farsi only, a copy of a letter dated 23 September 1979 from Mr. Attar to Iranian's Bank, in which Mr. Attar, as "official representative of Mitchel & Roberts Corporation", states: "we hereby convey to you our agreement to the sum of rials 21,200,000 as the price for Mitchel & Roberts Corporation's building . . . ." The letter is signed, however, with the following notation: "Owing to the situation which has arisen and to the impossibility of obtaining any monies from the Corporation in the present situation, I agree to the Bank's demand and to the employees' taking ownership of the houses." Bank Tejarat also has provided a copy of a power of attorney to Mr. Attar, signed at the British Embassy in Kuwait by Mr. William W. Burrows, who signed in the capacity of Managing Director of Mitchel and Roberts and was noted in the jurat as also being from "International Technical Products Corp.," dated 4 January 1979. This document empowered Mr. Attar, inter alia, unconditionally to "sell immovable . . . properties . . . including the office building . . . ."

Claimants concede that Mr. Attar had certain powers in respect of the Mitchel and Roberts building, but deny that an authorized sale was negotiated by him. Claimants' former President, Mr. Whitford, stated in his affidavit that "[s]ometime in 1977" Mr. Attar was "empowered to [sell our assets in Iran] under certain conditions." Claimants'

former Controller, Mr. Leitzinger, also stated in his affidavit that "We attempted to have . . . Mr. Attar sell the building after we left Iran." Mr. Whitford also stated, however, that the authorization was conditioned on his seeking approval of Mitchel and Roberts for any actual sale, and that later Mr. Attar informed him of the receipt of a "very low offer" which Mr. Whitford did not accept. Mr. Leitzinger, too, stated that, as of September 1979, he "had heard nothing" of a sale. In their Memorial Claimants state that "a measure of coercion may have been involved."

Bank Tejarat itself states that within a month of the alleged sale it actually began exercising dominion and control over the property. As noted above, its Statement of Defense records that on 21 October 1979 "the building was handed over . . . to the Bank's representatives . . . as per a proces-verbal of the same date," which, however, was not produced. According to the Statement of Defense the building "has been under the Bank's safekeeping" since then. As also noted above, there are indications that the Bank furnished 1,000,000 rials at that time to "pay off debts for utilities."

It is evident that the Bank regarded the alleged sale as a valid transaction subject only to completion of legal formalities. The Statement of Defense states:

> transfer documents were prepared, but the Notary Public refused to register the deal on the ground that execution of transactions by powers of attorney prepared outside Iran had been prohibited per a resolution adopted by the Revolutionary Prosecutor-General . . . .
>
> The Bank then tried to obtain the Revolutionary Prosecutor's authorization to have this exceptional transaction effected by use of a power of attorney prepared abroad . . . [and] the necessary permit was obtained and the deed was prepared . . . .

It appears that Mr. Attar, a "citizen of Iran,"[20] left the country, perhaps for India, thus making it impossible to secure his signature, as apparently required, on the actual deed of transfer. According to Bank Tejarat's Statement of Defense,

> in order to end the matter somehow, the Revolutionary Prosecutor's Office was requested to have the sale document signed by a representative of the Prosecutor's Office on behalf of the seller [i.e., in place of Mr. Attar]. The transaction is now [i.e., as of 2 July 1982] in the process of taking place.[21]

Bank Tejarat in its Statement of Defense agreed that

> the excess proceeds [21,200,000 rials] of the sale, after deduction of the loan [14,000,000 rials] and the one million Rials paid against the letter of guarantee . . . which is payable to the Taxation Office of the Ministry of Finance and Economic Affairs in settlement of the taxes for the years 1357 and 1358 (1978/79 and 1979/80) plus the accrued interest and delay penalties, shall belong to the Claimant which balance, in any case, must meet the relief sought under the Counterclaim herein.

Eventually Bank Tejarat decided also to pursue alternate means to confirm the formal transfer. Thus in its Statement of Defense Bank Tejarat explained as follows:

> The failure to effect the deal forced the Bank to proceed to have an execution order issued to

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[20] The power of attorney so describes him.

[21] Later, in its Rejoinder filed 4 April 1983, Bank Tejarat elaborated as follows: "[T]he only impediment for carrying out the transaction was the non-availability of the seller's representative to sign the documents [transfer deed], therefore, by resorting to law which in certain cases empowers the Prosecutor to sign a document on behalf of the absent party, the Revolutionary Prosecutor was requested to sign the aforesaid documents on behalf of the Seller's Representative on the strength of the agreement of Mitchel and Roberts Company."

> enable it to receive its outstanding dues. The execution order, which necessitated time-consuming formalities, was issued in 11.6.1359 (Sep.2, 1980). Since MRC had ceased its activities and its staff had left Iran, serving the execution order to the debtor was delayed and finally was effected in the form of a notice in the newspapers . . . .

The above refers to an "executive writ" in respect of the property issued on 2 September 1980 by the State Deeds and Property Registration Organization of the Iranian Ministry of Justice. The writ appears on its face to be in the nature of a legal demand for payment of the mortgage loan, setting 18,551,013 rials as the amount involved (based on a "Principal amount" of 15,000,000 rials), and threatening foreclosure in the absence of payment.

Claimants profess ignorance of these proceedings. Notice of the writ was served by publication in a Tehran newspaper fourteen months following issuance of the writ, on 9 November 1981. Explaining why more direct notification was not given, the published notice states simply that the address of Mitchel and Roberts "was not identified by the concerned bailiff."

Bank Tejarat asserts in its submission of 2 January 1985 that it finally acquired Claimants' property not through the sale purportedly agreed more than five years before, but rather by a deed of 17 September 1983 as a result of foreclosing on the mortgage in accordance with Article 34 of the Registration of Deeds and Realty Act of Iran. The Article provides as follows:

> [I]f the debtor fails to pay his debt within the time stipulated in the instrument, the creditor may seek receipt of his claim by applying to the notary public's office which drew up the instrument.
>
> Based on the creditor's position, the notary public's office shall issue an enforcement order for receipt of the demand, plus charges and late payment charges, and it shall send this order to

> the Registration Bureau. The debtor shall have eight months, from the date of service of the enforcement order, within which to pay his debt.
>
> The debtor may, within six months after service of the enforcement order, request that the property be sold at auction.
>
> * * * *
>
> [I]f no request reaches the enforcement section [of the Registration Bureau] or the local Registration Bureau branch from the debtor within the time provided for, the property shall be assigned to the creditor through an official conveyance deed, after the eight-month period provided for by the present statute has elapsed, upon payment of all fees, taxes and legal costs.

Article 34 of the Registration of Deeds and Realty Act, as revised on 18 January 1934 (translated by the Tribunal's Division of Language Services).

Respondent Bank Tejarat alleges that Claimants neither demanded an auction of the property within six months of the 9 November 1981 publication of notice nor paid the debt within eight months thereafter and thereby suffered lawful transfer of the property to Bank Tejarat.

4. Findings of the Tribunal

a. Attributability to The Government of Iran

This claim is directed against the Government of Iran on the basis of an allegation of expropriation or taking in violation of international law. It is uncontested that the alleged taking of the building did not occur through formal expropriation. This, however, does not exclude the possibility of an expropriation having taken place. In other cases the Tribunal has ruled "that a taking of property may occur under international law even in the absence of a formal nationalization or expropriation, if a government has

interfered unreasonably with the use of property." Harza Engineering Company and The Islamic Republic of Iran, Award No. 19-98-2 at 9 (30 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 499, 504. A basic condition for a finding of expropriation through "unreasonable interference" is that such interference be attributable to the Government.

In the present case it is Bank Tejarat that took control of the building and ultimately became its legal owner. To find the Government liable would presuppose either (1) that when acquiring the property Bank Tejarat itself acted in the capacity of a state organ[22], or (2) that the Government or one or another of its organs was an accessory to the transfer of the property.

Bank Tejarat is a government owned bank with a separate legal personality. Although in some respects it may be said to perform governmental functions, i.e., to be a "state organ," for the most part it appears to act in a private commercial capacity. One normally would assume that when acquiring real property Bank Tejarat acts in the latter role. In the present case the evidence does not suggest that Bank Tejarat when taking possession of the building acted on instructions of the Government or otherwise performed governmental functions. Therefore, even if it were found that the Bank came into possession of the

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[22] See Article 5 of the International Law Commission's Draft Articles on State Responsibility: ("For the purposes of the present articles, conduct of any state organ having that status under internal law of that state shall be considered as an act of the State concerned under international law, provided that organ was acting in that capacity in the case in question.") Text of draft and commentary at [1979] Y.B. Int'l L. Comm'n, Vol. II, part 2, at 90 et seq. and [1980] Y.B. Int'l L. Comm'n, Vol. II, part 2, at 14 et seq. See also Article VII(3), Claims Settlement Declaration, which makes clear that the phrase "Iran," as used in such Declaration (and including Bank Tejarat) is a broader concept than "the Government of Iran."

building in an illegal manner, this would not automatically establish responsibility of the Government under international law. Rather it must be established additionally that some other government organ (acting in that capacity) through acts or omissions participated in the transfer of the property to Bank Tejarat, thereby depriving Claimants of their property in violation of international law.

The only overt concrete acts attributable to the Government of Iran which are alleged in respect of this claim are those of the Revolutionary Prosecutor and the State Deeds and Property Organization. The only such act clearly taking place before 19 January 1981 was the issuance of an "executive writ" on 2 September 1980. It seems quite probable, too, that the prohibition by the Revolutionary Prosecutor of the utilization of powers of attorney executed outside Iran was imposed prior to 19 January 1981. It is a matter of pure conjecture as to whether the Revolutionary Prosecutor's subsequent approval of the power of attorney here involved was given before or after that date. It is also speculative on the present record whether the omission to serve the notice of the executive writ between its issuance on 2 September 1980 and 19 January 1981 rather than between that latter date and the date of actual service by publication, 9 November 1981, could provide an arguable basis for liability of the Government. On balance the Tribunal is not convinced that acts or omissions on the part of the Iranian Government arguably engaging its international responsibility occurred within the period necessary to our jurisdiction.

b. <u>The Alleged Sale</u>

Claimants argue in effect that the alleged sale to Bank Tejarat was a "forced sale" and therefore not bona fide. They argue that since Bank Tejarat took possession of the

building on 21 October 1979 on the basis of such "sale" the Bank is guilty of converting it in violation of Claimants' rights as of that time. They contend that the subsequent mortgage foreclosure, far from being an actual bona fide means to the Bank's acquisition of the building, was simply an auxiliary means of perfecting municipally the legal title to a building of which Claimants already had been definitively deprived.

The Tribunal notes that Bank Tejarat's explanation, given in its Statement of Defense (quoted supra), concerning the purpose of its taking possession of the building, is not implausible in view of the conditions prevailing in Iran at the relevant time: the building was unoccupied and apparently had been damaged some months earlier. It may be argued that in the circumstances Mr. Attar felt that he acted in the interest of his principal when concluding the sale agreements and handing over the building to the buyer, especially if he planned to leave the country shortly thereafter.

Even acknowledging that the issue may be a close one, the Tribunal is not persuaded that the sale was not bona fide. As it appears that the sale was never perfected, the Tribunal necessarily turns to a separate examination of the mortgage foreclosure.

c. The Foreclosure Proceedings

Title to the building was not transferred to Bank Tejarat until 17 September 1983. Therefore the question arises as to whether the mortgage foreclosure, even assuming it were in some way violative of Claimants' rights, was sufficiently perfected prior to 19 January 1981 to invoke our jurisdiction.

Bank Tejarat contends that it requested an "executive writ" on 25 August 1980 and was granted it on 2 September 1980. It alleges that service of the writ was made to the debtor through the publication of a newspaper notice on 9 November 1981. It further alleges that since no auction was requested by the debtor within the six month period prescribed in Article 34 it obtained, on 17 September 1983, a deed of title to the building. The validity of the evidence filed by Bank Tejarat on this point has not been challenged.

A claim for a taking is outstanding on the day of the taking of property. Where the alleged expropriation is carried out by way of a series of interferences in the enjoyment of the property, the breach forming the cause of action is deemed to take place on the day when the interference has ripened into more or less irreversible deprivation of the property rather than on the beginning date of the events.[23] The point at which interference ripens into a taking depends on the circumstances of the case and does not require that legal title has been transferred.

The fact that legal title was not transferred to the Bank until 17 September 1983 does not as such necessarily mean that the claim was not outstanding on 19 January 1981. What is decisive is the time by which Claimants had irreversibly lost possession and control of the property. According to Article 34 of the Registration of Deeds and Realty Act, the debtor had eight months from the service of the executive writ on 9 November 1981 (i.e., until 9 July

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[23] See Tippets, Abbett, McCarthy, Stratton and Tams-Affa Consulting Engineers of Iran, Award No. 141-7-2 (29 June 1984) (taking of property through various acts of interference deemed to have occurred, not when first interferences occurred, but later, with the consequence that interest was calculated from that later date of the taking or deprivation).

1982) within which to pay the debt and thereby retain title to the building. Alternatively, within six months after the same date, i.e., 9 November 1981, or until 9 May 1982, the owner of the property had, by virtue of the same provision, the right to request that the building be sold at auction with the surplus being returned to the debtor. Thus the alleged loss of property did not become irreversible until May 1982.

The Tribunal is conscious of Claimants' argument that publication notice was tardy and otherwise legally insufficient. Even if the periods of six and eight months, respectively, were measured from the very moment of issuance of the executive writ on 2 September 1980, however, and proper notice had been given as of that date, the conclusive deprivation would have occurred after 19 January 1981. Hence the Tribunal lacks jurisdiction.[24]

III. INTEREST

The Tribunal rules that Claimants are entitled to simple interest on the sums awarded at the annual rate of ten (10) percent as of the date the claim arose.[25] The Tribunal therefore finds that interest is due as from 1 March 1979 with respect to the amounts determined to be owing under the Civil Works Contract.

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[24] In light of this disposition of this claim the Tribunal need not decide whether Bank Tejarat, which was not named as a Respondent in the Statement of Claim but instead appeared in response to the assertion of this claim against the Iranian Government, is properly before the Tribunal as a Respondent in respect of the claim.

[25] Judge Brower would prefer that the Chamber adopt and apply consistently an interest formula related to market conditions so as to compensate more realistically for

(Footnote Continued)

IV. COSTS

Claimants have requested costs in the amount of $512,000, comprising $375,000 in legal fees and $137,500 in disbursements. The former is itemized as 2500 hours of special counsel services at $150.00 per hour; the latter comprises translation expenses, witness and technical consultant fees, travel costs, reproduction and binding charges, and other miscellaneous costs. The fees and expenses allegedly incurred by Claimants are simply asserted without any supporting documentation.

Article 38(1) of the Tribunal Rules obligates the Tribunal to fix the costs for legal representation and assistance of the successful party "if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable." The Tribunal notes that some of Claimants' claims have been rejected and one of the claims withdrawn at a late stage of the proceedings, and, furthermore, that Respondents have prevailed on certain counterclaims. In view thereof, and taking into account such considerations as are reflected in Sylvania, supra note 24 at 37, the Tribunal determines that $75,000 is a reasonable amount of costs for legal representation and assistance, to be paid by Respondents.[26]

(Footnote Continued)
damages suffered. See Sylvania Technical Systems, Inc. and Govt. of Iran, Award No. 180-64-1 at 30-34 (27 June 1985). On such basis he would award interest at 12 percent.

[26] Judge Brower would prefer tht the Chamber award the Claimants $300,000 in costs attributable to legal fees, viewing such sum as more appropriately reflecting application to this Case of the principles recited in Sylvania, supra note 24.

As none of the claimed disbursements has been documented, however, the Tribunal makes no allowance for them. See Sylvania, supra note 24, at 35.

V. AWARD

In view of the foregoing, THE TRIBUNAL HEREBY AWARDS AS FOLLOWS:

1. Guarantees No. 6/204, 6/216 and all other guarantees issued by the former Iranians' Bank, now Bank Tejarat, in connection with the Civil Works Contract have no further purpose and Respondent AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN is hereby ordered to withdraw any and all demands for payment in connection with the above guarantees and to refrain from making any further demand thereon.

2. Respondent AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay and shall pay Claimants INTERNATIONAL TECHNICAL PRODUCTS CORPORATION and ITP EXPORT CORPORATION the sum of Two Million Four Hundred Seventy-One Thousand Seven Hundred Thirty-Three Dollars ($2,471,733) plus simple interest at the annual rate of ten (10) percent (365 day year) from and including 1 March 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to pay the Award, in respect of the claim relating to the Civil Works Contract.

3. Respondents GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN, CIVIL AVIATION ORGANIZATION OF IRAN, and MINISTRY OF NATIONAL DEFENSE, jointly and severally, are obligated to pay Claimants INTERNATIONAL TECHNICAL PRODUCTS CORPORATION and ITP EXPORT CORPORATION the sum of Seventy-Five Thousand Dollars ($75,000) as costs of arbitration.

4. Such payments shall be made out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

5. The claims by Claimants INTERNATIONAL TECHNICAL PRODUCTS CORPORATION and ITP EXPORT CORPORATION for the full amount of good performance guarantees and the expropriation of a building in Tehran, and the counterclaims by Respondent AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN for payments made to Faridan, social security and education taxes, and breach of contract, made in connection with the Civil Works Contract, are hereby dismissed.

6. This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
24 October 1985

Nils Mangård
Chairman
Chamber Three

In the name of God

Charles N. Brower
Concurring and
Dissenting Opinion

Parviz Ansari Moin
Dissenting Opinion in part,
Concurring Opinion in part
in order to form majority.