IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 65
CHAMBER ONE
AWARD NO. 221-65-1

COMPUTER SCIENCES CORPORATION,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
MINISTRY OF FINANCE,
MINISTRY OF NATIONAL DEFENCE,
IRAN AIRCRAFT INDUSTRIES,
INFORMATION SYSTEMS IRAN,
BANK MELLAT, BANK TEJARAT,
THE SUCCESSORS OF THE FOLLOWING ENTITIES:
IMPERIAL IRANIAN AIR FORCE,
IMPERIAL IRANIAN GROUND FORCE,
IMPERIAL IRANIAN NAVY,
IMPERIAL IRANIAN GENDARMERIE,
IMPERIAL IRANIAN NATIONAL POLICE,
THE SUPREME COMMANDER'S STAFF,
Respondents.

AWARD

Appearances:

For the Claimant : Mr. B. Fishburne
Ms. C. Welu
Mr. M. Clodfelter, Attorneys
Mr. E. Gambaro
Mr. T. Robinson

Mr. J. Printy, Claimant's Representatives

For the Respondents : Mr. M. K. Eshragh, Agent of the Government of the Islamic Republic of Iran,
Mr. S. K. Khalilian, Legal Adviser to the Agent,
Mr. S. Rabie, Assistant to the Agent,
Mr. A. Azizi, Representative of the Ministry of Finance,
Mr. M. Nabavi
Mr. A. Zargar
Mr. M. Sajadi, Counsel to ISIRAN,
Mr. N. Salemi
Mr. J. B. Shanjani, Representatives of ISIRAN,
Mr. H. Amiri, Representative of IACI,
Mr. S. Ashtari, Attorney for Bank Mellat,
Mr. M. Aghamalian, Representative of Bank Mellat,
Mr. M. Kakavand, Representative of Bank Tejarat

Also present : Mr. D. M. Price, Deputy Agent of the United States of America,
Mr. J. Alvarez, Adviser to the Agent

The claims in this case arise out of three contracts concerning automated data processing services for Iranian military management information systems. The Claimant COMPUTER SCIENCES CORPORATION ("CSC") alleges that the Respondents IRAN AIRCRAFT INDUSTRIES ("IACI") and INFORMATION SYSTEMS IRAN ("ISIRAN") breached the contracts and a subsequent settlement agreement by failing to pay amounts due thereunder. It also alleges that other Respondents have expropriated certain office equipment and wrongfully taken or withheld funds deposited in bank accounts in Iran. The Respondents have brought counterclaims for damages allegedly incurred under the contracts, alleged excess payments under the contracts, taxes and social security premiums. On 18 April 1985, the Tribunal rendered an Interlocutory Award in this case concerning the validity of a Settlement Agreement covering part of the claims (Interlocutory Award No. ITL 49-65-1).

I. Procedural Issues

The Tribunal first disposes of several procedural issues the decision of which it had reserved until after the Hearing.

By an Order filed on 6 February 1985 a Hearing was scheduled in this case for 27 and 28 June 1985.

On 15 March 1985, the Tribunal issued an Order requesting the Parties to file by 30 April 1985 all evidence not already submitted on which they intended to rely, and by 31 May 1985 all evidence in rebuttal. On 1 May 1985, the Claimant filed three volumes of evidence together with a Pre-Hearing Memorial. In its Pre-Hearing Memorial the Claimant discussed all of its claims in great detail. In addition, in the Interlocutory Award issued on 18 April 1985, the Tribunal had held that the Settlement Agreement referred to above was valid and binding, and that the case should proceed on the basis of that agreement and not of the original contracts. Consequently, much of the Claimant's evidence and argument on its claim for breach of the Settlement Agreement was presented for the first time on 1 May 1985. The Respondents did not file any evidence by the date set for submission of all evidence on which they intended to rely in their case-in-chief. The Tribunal extended the date for submission of rebuttal evidence until 21 June 1985, and on that date the Claimant submitted argument and evidence with regard to the counterclaims.

Also on 21 June 1985, ISIRAN filed a Memorial in connection with the Hearing of 27 and 28 June 1985 containing argument and evidence on its defences and counterclaims, and on 25 June 1985 Bank Tejarat filed a Brief in Response to the Claimant's Pre-Hearing Memorial. At the Hearing the Agent of the Government of the Islamic Republic of Iran and ISIRAN requested another Hearing, arguing that the Claimant's Pre-Hearing Submissions had been so late and so voluminous that the Respondents did not have sufficient time to answer them before

or at the Hearing. Alternatively, they requested leave to file Post-Hearing submissions. The Tribunal reserved its decision on these requests until after the Hearing.

By Order filed on 2 July 1985 the Tribunal allowed the Respondents "in the exceptional circumstances of this case" to file by 5 August 1985 a Post-Hearing Submission, "having regard to the particular procedural history of this case, including the rendering of Interlocutory Award No. ITL 49-65-1, and in view of the submissions received after the rendering of that Award." The Post-Hearing Submission was to be restricted to rebuttal of evidence and argument that were offered in support of the Claimant's claims and that were presented for the first time in the Claimant's Pre-Hearing Submissions of 1 May 1985. The Tribunal stated in the Order that it would not grant any extensions for the Respondents' Post-Hearing Submission.

On 5 August 1985, the Farsi text of a Post-Hearing Memorial was submitted by ISIRAN. Having been submitted in only one language, this written statement was not formally filed by the Registry of the Tribunal nor sent to the Claimant. See Article 17, note 2 of the Tribunal Rules. At the same time the Agent of the Government of the Islamic Republic of Iran requested an extension of 15 days to file the English text of this and the other Respondents' Post-Hearing Submissions. The Claimant objected to the Respondents' extension request and reserved its right to request an opportunity to respond to any Post-Hearing Submissions the Respondents might be allowed to file. On 8 August 1985, ISIRAN submitted Annexes to its Post-Hearing Memorial in Farsi. On 12 August 1985, IACI filed a Post-Hearing Memorial. On 14 August 1985, Bank Mellat filed a Post-Hearing Submission. On 20 August 1985, ISIRAN's Post-Hearing Memorial together with the Annexes was filed in English and Farsi. The Claimant requested that the Respondents' Post-Hearing Submissions be disallowed or, in the alternative, that the Claimant be granted leave to submit a response.

By Order filed on 4 September 1985, the Tribunal disallowed the Post-Hearing Submissions of ISIRAN, IACI and Bank Mellat. Pointing to its express statement in its Order filed on 2 July 1985 that it would not grant any extensions for the Post-Hearing Submissions, the Tribunal "not[ed] that no reasons were given by the Respondents for the lateness of their submissions, nor was the Tribunal's attention drawn to any unforeseen circumstances which might have affected the filing" of the Post-Hearing Submissions.

On 24 September 1985, the Agent of the Government of the Islamic Republic of Iran requested that the Tribunal revise its Order filed on 4 September 1985 and admit all of the Respondents' Post-Hearing Submissions. He argued that "in view of the prevailing critical conditions and the pressures, to which Iran's internal as well as external communication routes are subjected", the statement in his extension request filed on 5 August 1985 to the effect that the submissions not yet submitted then had already been prepared and dispatched from Iran, but had not reached his office yet, "expressly and eloquently presents to the Tribunal an acceptable, justifiable reason for the untimely filing" of those submissions. He argued that, "in view of the well-known prevailing difficult conditions" that the Respondents face, the time set for the Respondents' Post-Hearing Submissions was too short to begin with, and further that short delays in filing should be tolerated, as previously done by the Tribunal, in order to give each party a full opportunity of presenting its case as is required by Article 15 of the Tribunal Rules. Since the Claimant could be given the opportunity to respond to them, the Respondents' Post-Hearing Submissions did not prejudice the Claimant, the Agent lastly argued. The Claimant thereafter asked the Tribunal to uphold its decision not to allow the Respondents' Post-Hearing Submissions.

The Tribunal notes that the Iranian Agent's request filed on 24 September 1985 does not point to any unforeseen circumstances which might have affected the filing of the Post-Hearing

Submissions, nor does it give any new reasons for their lateness. The Tribunal is aware of the communication problems that Iranian Respondents face, and it has taken them into account in this case. In view of this, the procedural history of this case and the exceptional character of Post-Hearing Submissions, the Tribunal sees no need to reverse its decision not to allow the Respondents' Post-Hearing Submissions.

II. Facts and Contentions

There are three basic contracts involved in this case. The first was signed on 18 September 1972 by CSC and IACI ("1972 Contract"), the second was signed on 15 July 1974 by CSC and ISIRAN ("1974 Contract"), and the third was signed on 19 October 1975 by CSC's subsidiary, CSC SYSTEMS INTERNATIONAL, INC. ("CSCSI") and by ISIRAN ("1975 Contract"). The Contracts called for CSC or CSCSI to provide "technical assistance" or "expertise" "in the general area of Computer Science." The expertise or assistance referred to consisted of services such as computer systems engineering, programming, management of computer facilities, training of Iranian personnel and similar services supporting the development of information systems for military management. Each of these agreements referred to Exhibits signed at the time or subsequently that defined the Iranian agency for which services were to be performed, the personnel required, the period of performance, the price to be paid and other details of the parties' obligations. It is undisputed that in March 1975 ISIRAN assumed from IACI the rights and obligations under the 1972 Contract and that CSC's performance under the agreements was generally provided by CSCSI. In addition, the Parties agree that the nature of their relationship was altered in March 1977, with ISIRAN requiring greater responsibility for the management and control of the various projects, and other changes. It is also undisputed that all three Contracts came to an end in February 1979. By letter dated 3 February 1979 CSCSI requested from ISIRAN a "temporary release from its contractual obligations without penalty", due

to the political situation in Iran and due to ISIRAN's financial situation. By letter dated 24 February 1979, ISIRAN stated that it "would like to terminate permanently all the contracts between the ISIRAN company and CSCSI, as of 1st February 1979."

In the Statement of Claim and subsequent pleadings, the Claimant sought, inter alia, $15,900,107 from ISIRAN for services rendered from 1 August 1974 through 19 February 1979. It acknowledged that on 2 July 1978 CSCSI and ISIRAN entered into a Settlement Agreement for amounts outstanding from the inception of its relationship with ISIRAN through 21 March 1978. It asserted, however, that this Settlement Agreement had been abrogated by ISIRAN's alleged failure to comply with its terms and was no longer valid. ISIRAN asserted that the Settlement Agreement was still binding on the Parties and that the only basis for a possible claim of CSC could be this Agreement.

In Interlocutory Award No. ITL 49-65-1 filed on 18 April 1985, the Tribunal found that the 1978 Settlement Agreement superseded the three original Contracts, and that it was binding when concluded and is still binding on the Claimant and ISIRAN. It directed that the case was to proceed on the basis of the Settlement Agreement and not on the superseded original contracts.

As a result, the Claimant's claims are as follows: First, the Claimant no longer presses its claim for payment based on the underlying contracts for services rendered prior to 21 March 1978, but instead seeks damages for breach of the 1978 Settlement Agreement. It alleges that ISIRAN failed to pay five of six instalment payments due under that Agreement. It seeks $5,000,000 as the value of the unpaid instalments.

Second, the Claimant seeks $3,921,240 for services rendered after 21 March 1978. The Claimant bases this claim on two theories: breach of contract, and, as an alternative, quantum meruit and unjust enrichment.

Third, the Claimant seeks termination costs in the form of termination pay for the Claimant's employees assigned to the ISIRAN projects, and the costs of repatriating its expatriate employees and terminating its local employees. This claim amounts to $459,775.

Fourth, the Claimant alleges that IACI is obligated to reimburse the Claimant for taxes on income earned in fiscal years 1973 and 1974 that it paid in excess of amounts deducted by IACI. Furthermore, the Claimant alleges that ISIRAN is obligated to reimburse the Claimant for taxes on income earned in fiscal years 1975 through 1978 that it paid in excess of the amount the parties had allegedly agreed CSCSI would bear under the 1972, 1974 and 1975 Contracts. The Claimant asserts that each of those Contracts provide that the excess amounts were to be reimbursed to it. It argues that these excess-tax claims, totalling $1,963,118 were not released by the 1978 Settlement Agreement.

Fifth, the Claimant seeks payment of the balance of seven rial and dollar bank accounts in Bank Tejarat and Bank Mellat that were held in the names of several of the Claimant's subsidiaries. The Claimant asserts that the banks have refused to honor demands for payment on the ground that foreign exchange restrictions of the Government of Iran barred payment. The Claimant argues that the exchange restrictions violated the Articles of Agreement of the International Monetary Fund ("IMF Agreement") and the Treaty of Amity, Economic Relations and Consular Rights between Iran and the United States ("Treaty of Amity"). It claims that the Government of Iran is liable for unlawfully taking the funds, or, in the alternative, that the banks are liable for wrongfully withholding them. The amount of this claim is $219,678.

Sixth, the Claimant seeks compensation for office equipment allegedly expropriated by representatives of the Iranian

Revolutionary Committee about 1 April 1979. It claims the net book value of the equipment, which it says amounts to $24,397.

The Claimant seeks a total of $11,588,208 as damages for these six claims. In addition, it seeks interest amounting to $10,570,249 as of 30 April 1985, calculated at the applicable monthly prime rate, and costs of arbitration in a total amount of $361,625. It also seeks a declaration that CSC and CSCSI are released from liability for any Iranian taxes on amounts due for income earned in fiscal years 1975 through 1978, and for amounts paid pursuant to this Award, and that IACI is liable to further indemnify the Claimant for any liability for taxes on amounts awarded against it. In the event all of the above relief is awarded, its claim is to be reduced by $238,820 to reflect Iranian taxes that the Claimant acknowledges it must pay under the Agreements on the amounts awarded.

The Respondents have raised a number of jurisdictional objections. It is asserted that the Claimant has not proven its United States nationality, and that CSC cannot bring "indirect claims" on behalf of its subsidiaries under Article VII, paragraph 2, of the Claims Settlement Declaration.

ISIRAN also disputes that it is an "entity controlled by the Government of Iran" within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration, as alleged by the Claimant. The Government of Iran asserts that, in the absence of a contractual or other legal relationship with the Claimant, no claim is attributable to it. The same is asserted by the successors of the following entities, which have also been named as Respondents: the Imperial Iranian Ground Force, the Imperial Iranian Navy, the Imperial Iranian Gendarmerie and the Imperial Iranian National Police. Three other Respondents, the Ministry of National Defence, the successor of the Imperial Iranian Air Force and the successor of the Supreme Commander's Staff, did not file Statements of Defence.

A further objection raised by several of the Respondents, and disputed by the Claimant, is that clauses in the three original agreements that select the governing law and the forum for disputes exclude the claims from the Tribunal's jurisdiction.

The Respondents make several counterclaims. ISIRAN originally asserted, as part of its defence to the claims, that it had overpaid the Claimant by a total of $27,771,128 during the life of the three Contracts. It recognized that a request for return of this amount would be barred by the terms of the Settlement Agreement, which released the Claimant from claims arising out of services rendered prior to 21 March 1978. At the Pre-hearing Conference on this case, the representative of ISIRAN stated that ISIRAN sought recovery of this amount only if the Settlement Agreement were found invalid. By Order of 30 January 1984, the Tribunal accepted this as an amendment of the counterclaims. Nevertheless, although the Interlocutory Award held that the Settlement Agreement was valid, at the Hearing ISIRAN continued to assert a counterclaim for return of the $27,771,128.

IACI seeks $4,600,000 plus interest as damages that it allegedly incurred due to the Claimant's defective and unacceptable services under the Contracts.

The Ministry of Finance of the Islamic Republic of Iran claims allegedly unpaid income taxes in an amount of Rials 1,180,421,972 plus "damages related to non-payment". ISIRAN requests payment of social security premiums in an amount of Rials 1,324,215,653, plus penalties for delay in payment.

All Respondents seek costs of the arbitration.

The Parties' assertions and arguments with regard to the merits of each of the claims and counterclaims are stated more fully in the relevant sections of Part III of this Award, infra.

III. Reasons for Award

1. The Claims

a) Jurisdiction

The Tribunal first examines the various jurisdictional issues that were raised with regard to the claims.

aa) The Forum Selection Clauses

With regard to the 1972 Contract, IACI asserts that since the Contract was signed in Iran, it is governed by Iranian law, according to which all disputes must be settled in arbitration or court proceedings in Iran. The Claimant disputes this assertion, arguing that the clear language of the Contract speaks against it. The two relevant clauses of the 1972 Contract are as follows:

> "Article XVII - Governing Law
>
> The rights and duties of the parties under this Agreement shall for all purposes be governed by and constructed [sic] under the laws of the State of California, U.S.A., regardless of where any action or proceeding is brought in connection with this Agreement.
>
> Article XVIII - Arbitration
>
> Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration in Los Angeles, California U.S.A., in accordance with the procedures prescribed by the American Arbitration Association; and judgement upon the award rendered by the arbitrators may be entered in any Court having jurisdiction thereof."

(CSC has its principal place of business in California.) Under Article II, paragraph 1, of the Claims Settlement Declaration, the Tribunal's jurisdiction does not extend to claims "arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the

Majlis position." It is obvious from the language of the two quoted contractual clauses that the Contract does not provide for application of Iranian law nor does it refer disputes thereunder to Iranian courts. The Tribunal's jurisdiction over claims arising from the 1972 Contract is therefore not excluded.

The 1974 and the 1975 Contract contain virtually identical governing law and dispute settlement clause which, according to ISIRAN, confer exclusive jurisdiction over any dispute thereunder on the Iranian Courts. The Government of Iran has made the same assertion with regard to the 1974 Contract, the relevant clauses of which read as follows:

> "Article XV - Governing Law
>
> The rights and duties of the parties under this Agreement shall for all purposes be governed by and constructed [sic] under the laws of IRAN, regardless of where any action or proceeding is brought in connection with this Agreement.
>
> Article XVI - Arbitrantion [sic]
>
> Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration in IRAN, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof."

These two provisions do not exclude the Tribunal's jurisdiction. The Tribunal has held previously that arbitration is in essence an alternative to litigation in courts and that a contract provision requiring recourse to arbitration in Iran is not a provision for the "sole jurisdiction" of Iranian courts. See Gibbs & Hill, Inc. and Iran Power Generation and Transmission Company et al., Interlocutory Award No. ITL 1-6-FT (Part III), p. 6 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 236, 240. An Iranian law clause, even when found in combination with such a dispute resolution clause, does not exclude claims arising under that contract from the Tribunal's jurisdiction.

bb) The Claimant's United States Nationality

Based on the evidence submitted by the Claimant, which fulfills the requirements laid down by the Tribunal in its Order of 20 December 1982 in Flexi-Van Leasing, Inc. and The Islamic Republic of Iran, Case No. 36, Chamber One, reprinted in 1 Iran-U.S. C.T.R. 455, for the proof of corporate nationality, the Tribunal is satisfied that the Claimant is a national of the United States within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration.

cc) The Claims as Indirect Claims

The Claimant brings a number of claims indirectly through its alleged ownership and control of three of its subsidiaries.

With regard to claims relating to CSCSI, it is undisputed that CSCSI is a Panamanian corporation. ISIRAN argues, however, first, that the Claimant has not proven that CSCSI is a wholly owned subsidiary of CSC, and, second, that Article VII, paragraph 2, of the Claims Settlement Declaration "cannot be relied upon for bringing claims owned by [....] non-American nationals." In addition, the question of whether an indirect claim may be brought on behalf of a foreign corporation is before the Full Tribunal in Case No. A22. The Government of the Islamic Republic of Iran has requested that the Tribunal defer decision of all cases in which this jurisdictional point is at issue until Case No. A22 is decided. Cases before the Tribunal involving indirect claims are numerous. As has previously been observed in Futura Trading Incorporation and Khuzestan Water and Power Authority, Award No. 187-325-3, p. 7 (19 Aug. 1985), in connection with a similar request concerning determination of corporate nationality, "suspension of jurisdictional determinations would for an indeterminate time bring the work of the Tribunal to a halt", given the frequency with which such issues occur. For these reasons, the Chambers have consistently

ruled upon the admissibility of indirect claims, and the request for postponement is therefore denied.

Article VII, paragraph 2, provides for jurisdiction over

> "claims that are owned indirectly by [nationals of Iran or the United States] through ownership of capital stock or other proprietary 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."

There is nothing in this language that bars indirect claims on behalf of non-American nationals, nor may such a limitation be implied. Furthermore, the Tribunal has decided in a number of cases that United States nationals are entitled to bring such claims on behalf of their foreign subsidiaries. See, e.g., Schering Corporation and The Islamic Republic of Iran, Award No. 122-38-3, p. 8 (16 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 361, 365; Cal-Maine Foods Inc. and The Government of the Islamic Republic of Iran et al., Award No. 133-340-3, p. 9 (11 June 1984); Harnischfeger Corporation and Ministry of Roads and Transportation, Award No. 144-180-3, p. 12 (13 July 1984); R. J. Reynolds Tobacco Company and The Government of the Islamic Republic of Iran et al., Award No. 145-35-3, pp. 8-9 (6 Aug. 1984). The Claimant has submitted documentary evidence establishing that CSCSI was at all relevant times a wholly owned subsidiary of CSC. In 1974 it changed its prior name of New CSC Corporation into CSCSI under which name it was registered in Iran on 7 October 1974 for the purpose of conducting business there. Because CSCSI is itself not entitled to bring a claim under the Claims Settlement Declaration, the Claimant's claims on behalf of CSCSI fulfill the requirements of Article VII, paragraph 2, of the Claims Settlement Declaration for indirect claims of a United States national. The Claimant has withdrawn its initial reliance on an assignment of CSCSI's claims to it.

The Claimant brings an indirect claim for the balance of bank accounts held by Bank Mellat in the name of COMPUTER CONSULTANTS IRAN ("CCI"), a private joint stock company organized under the laws of Iran. CCI was at the relevant times wholly-owned by Computer Sciences Systems GmbH, a German company, which was in turn a wholly-owned subsidiary of CSC. There is no dispute that Bank Mellat falls under the definition of Iran in Article VII, paragraph 3, of the Claims Settlement Declaration. The jurisdictional issue presented by this claim, which the Tribunal has not decided in previous cases, however, is whether a United States claimant is entitled to bring an indirect claim on behalf of a subsidiary which is not only a foreign company, but also one that is incorporated in Iran. Cf. Schering Corporation and The Islamic Republic of Iran, Award No. 122-38-3, p. 9 (16 Apr. 1984) (leaving the question open), reprinted in 5 Iran-U.S. C.T.R. 361, 365. While Bank Mellat, against which the claim relating to CCI is directed, has in its defense not specifically dealt with the fact that CCI is an Iranian corporation, it has asserted "the Claimant's lack of capacity to bring such an action" on the ground that it has not presented proof of "its being a locum tenens" for CCI and its other subsidiaries. In addition, in Case No. A22, the Government of Iran has raised the question of whether an indirect claim may be brought on behalf of an Iranian corporation. In any event, since the Tribunal must be satisfied of its jurisdiction, it must decide proprio motu on the admissibility of the claim.

The express wording of Article VII, paragraph 2, imposes two relevant conditions on what constitutes an indirect claim for the purposes of the Tribunal's jurisdiction. There must be "ownership interests" which were sufficient "to control the corporation or other entity" at the time the claim arose; and the entity in question must not itself be entitled to bring a claim. There is no requirement that the entity in question be a United States national; nor, indeed, is any distinction drawn for this purpose between Iranian entities and those of other nationalities. Whatever may be the position under general

international law in this respect, the Tribunal is bound by the express terms of its governing instrument. This is the interpretation which has been applied consistently by the Tribunal in its practice to date. (See the examples cited above of indirect claims admitted involving a non-United States corporation.) Further, it is clear from the decision in William Bikoff et al. and the Islamic Republic of Iran, Award No. 138-82-2 (29 June 1984), that the Tribunal was prepared to assume jurisdiction over a claim belonging to an Iranian corporation but did not do so only because the required level of control was not established.[1] The Tribunal therefore finds that it has jurisdiction over this claim.

In view of its finding with regard to jurisdiction over claims for Rial account funds (see III.1.b)ee) below), the Tribunal does not need to decide on the status of Systems Sciences Iran ("SSI"), another Iranian company named as the owner of one of these Rial accounts.

dd) ISIRAN as a Controlled Entity

With regard to ISIRAN's contention that it is not a proper Respondent because it is not a controlled entity in the sense of Article VII, paragraph 3, of the Claims Settlement Declaration the Tribunal notes that it has previously held ISIRAN to be an entity controlled by the Government of Iran; see Ultrasystems Incorporated and The Islamic Republic of Iran et al., Partial Award No. 27-84-3, pp. 8-9 (4 Mar. 1983), reprinted in 2 Iran-U.C. C.T.R. 100, 105. The documentary evidence submitted in this case supports the finding that claims against ISIRAN fall within the Tribunal's jurisdiction.

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[1] In the Bikoff Award, the Tribunal noted, "Aside from the question of the Claimants' control over ZMC [the Iranian corporation], there are no serious jurisdictonal issues in this case." p.7.

b) Merits

The Tribunal now turns to the merits of CSC's claims.

aa) Breach of the 1978 Settlement Agreement

As noted above, on 2 July 1978 CSCSI and ISIRAN entered into a Settlement Agreement covering amounts outstanding under the original contracts through 21 March 1978. In Interlocutory Award No. ITL 49-65-1 the Tribunal held that the Settlement Agreement was binding on the Claimant and ISIRAN and it directed that the case was to proceed on the basis of the Settlement Agreement and not on the superseded original contracts.

The Claimant asserts that ISIRAN breached the Settlement Agreement by failing to pay five of six instalment payments due under that Agreement. It seeks damages for breach of the Agreement in the amount of $5,000,000 as the balance it alleges is still due under the Agreement. It is undisputed between the Parties that after having paid the first $1,460,000 in July 1978, ISIRAN did not pay any further instalments as it was required to do by the Settlement Agreement. The Tribunal found in its Interlocutory Award that this "apparent breach of the Settlement Agreement [...] entitles the Claimant to all damages which the law applicable to the Agreement and its breach provides for such a breach". At the Hearing and in its Memorial submitted in connection with the Hearing ISIRAN alleged that the payment of the further instalments was withheld as security for the Claimant's alleged tax and social security obligations. This assertion is contradicted by ISIRAN's recognition in its earlier written submissions that it owed the Claimant the unpaid balance of the Settlement Agreement (less 5.5 percent, which deduction, it asserts, is required by Iranian law). ISIRAN also gave no indication in August 1978 or later until its recent submissions that it was withholding payments under the Agreement as an incentive for the Claimant to pay back taxes. ISIRAN's further assertion that the freezing of Iran's foreign exchange

reserves following the victory of the Islamic Revolution also prevented it from performing its obligations under the Settlement Agreement is contradicted by the terms of that Agreement, which required ISIRAN to pay the remaining five instalments monthly from August to December 1978, i.e., before the victory of the Revolution in February 1979. The Tribunal therefore determines that ISIRAN breached the Settlement Agreement by failing to pay the required instalments, and that it is obligated to pay the Claimant the unpaid balance of $5,000,000.

ISIRAN's further assertion that Article 76 of the Iranian Direct Taxation Act requires it to deduct 5.5 percent from all payments it makes to the Claimant and that thus $355,300 should be deducted from the $5,000,000 balance cannot be upheld. (In calculating this amount, ISIRAN deducts 5.5 percent from both the unpaid balance of $5,000,000 and from the first instalment of $1,460,000 which it paid in 1978.) Whether such a deduction would actually be required by Iranian law can be left open here. First, the Settlement Agreement states that ISIRAN "will pay to CSCSI the sum of $6,460,000" which figure is composed of the $5,000,000 balance plus the first instalment paid by ISIRAN. There is no mention of a deduction for taxes. In the 1972 Contract, on the other hand, taxes that were to be deducted from payments were specifically mentioned. It cannot be said that the parties did not think of the issue, because the Settlement Agreement mentions a separate claim for "reimbursement of Iranian tax liability" arising out of the services covered by the Settlement Agreement. This claim was in the process of separate settlement. Second, the person who negotiated the Settlement Agreement for ISIRAN submitted an affidavit and appeared at the Hearing and stated that it was never intended by either party that ISIRAN would withhold any taxes from the settlement amount. Rather, that amount was to be net of taxes. Third, this testimony is supported by ISIRAN's conduct. ISIRAN paid the first instalment in 1978 without any deduction for taxes, and it appears generally to have made such deductions

only when they were specifically stipulated in the relevant agreement. This practice casts doubt on the present assertion that the parties intended a deduction for taxes. Cf. Intrend International, Inc. and The Imperial Iranian Air Force et al., Award No. 59-220-2, p. 10 (27 July 1983), reprinted in 3 Iran-U.S. C.T.R. 110, 115 ("the behavior of the Air Force in not deducting the tax on the U.S. Dollar payments and in not demanding the amount of such tax prior to bringing this counterclaim casts doubt on its present assertion that the tax is applicable to the U.S. dollar payments").

bb) Services Rendered after 21 March 1978

The 1978 Settlement Agreement supersedes the Claimant's invoice claims against ISIRAN only for services rendered prior to 21 March 1978. Article I of the Agreement provides that the settlement amount

> "is intended by Isiran and CSCSI as full and complete settlement for all services rendered by CSCSI and CSC to Isiran and Isiran's customers [...] through 21 March 1978"

and Article III stipulates that upon execution of the Agreement ISIRAN and its employees would be released and discharged

> "from any and all claims and causes of actions [...] which claim or cause of action arose at any time prior to 21 March, 1978".

The Claimant asserts that it performed services after 21 March 1978 both pursuant to the 1974 Contract and Exhibit A thereto, and pursuant to the 1975 Contract with ISIRAN. It further asserts that, while the Exhibits to the 1975 Contract had expired by 21 March 1978, ISIRAN later continued to authorize additional work on the projects covered by that Contract which, like the 1974 Contract, was only terminated by ISIRAN's letter of 24 February 1979. The Claimant asserts that all amounts for such services were properly invoiced and performance was accepted by ISIRAN. Applying the agreed rate of $8,900 per man-month of service provided, the Claimant claims a total of

$3,921,240 from ISIRAN for services rendered after 21 March 1978.

ISIRAN contends, first, that in view of the political situation at the time no services could have been authorized or approved by ISIRAN nor performed by the Claimant after March 1978 by CSCSI for ISIRAN's military customers. Second, ISIRAN asserts that some of the services were not satisfactorily rendered and thus were not accepted or paid for by its customers. Under the 1975 Contract, ISIRAN states, it was not required to pay CSCSI if it was not paid by its customers. Finally, ISIRAN asserts that from any payments due the Claimant it would be bound to deduct 5.5 percent pursuant to Article 76 of the Iranian Direct Taxation Act, and that any damages awarded the Claimant should be reduced in a like amount. The Claimant refutes ISIRAN's defences as unsupported and without merit asserting that it has submitted evidence proving the contrary.

Based on the evidence submitted the Tribunal is satisfied that the services for which the Claimant claims payment under this heading were in fact performed and were rendered pursuant to ISIRAN's authorization and direction. The Claimant has filed extensive correspondence between CSCSI and ISIRAN showing that ISIRAN authorized and directed the scope of work to be performed after 21 March 1978. ISIRAN itself has stated in its Statement of Defence that in most cases between 1972 and February 1979 the Claimant had direct control over the technical performance of the projects and was fully responsible for their satisfactory performance "(except for the year 1978 and part of 1977 during which period the claimant provided man months of effort to ISIRAN)". None of the invoices submitted monthly to ISIRAN was objected to at the time, nor was there any contemporaneous allegation of non-performance. In its letter dated 24 February 1979 ISIRAN expressed appreciation to CSCSI for the "very good performance carried out by the staff of your company" and indicated that it "would like to terminate permanently all of the contracts between ISIRAN company and CSCSI". This shows

that ISIRAN itself regarded performance under the 1974 and 1975 Contracts as continuing until February 1979. Finally, ISIRAN in its Statement of Defence acknowledged that, leaving aside objections to the quality of the work performed, it had authorized, and CSCSI had performed, work in excess of $2.6 million (less taxes). Thus there is little question that some work was authorized and performed after 21 March 1978.

The Tribunal is also satisfied that the amounts claimed were invoiced in the manner and at the rate specified by ISIRAN and agreed to by CSCSI. The record shows that CSCSI submitted monthly invoices and outstanding invoice summaries to ISIRAN. In February 1979 ISIRAN acknowledged receipt of the summary for all unpaid invoices after 21 March 1978, which noted a total of over $3.9 million outstanding. The invoices provide detailed breakdowns of the employees assigned to the various projects, the dates and hours worked, and the rate used. As noted, ISIRAN has submitted no evidence that it made any contemporaneous objections to CSCSI that these invoices were incorrect. Even in these proceedings, it has offered no detailed evidence of failures of performance or miscalculations. It cannot now rely on general assertions that CSCSI did not perform or that ISIRAN did not approve the services invoiced.

ISIRAN also disputes any obligation to pay for services rendered after 21 March 1978 by invoking Article III(d) of the 1975 Contract which stipulates:

> "It is understood and agreed that, since services provided to ISIRAN under this subcontract relate to a contract which ISIRAN has with its customer, payments to subcontractor under this contract will be directly proportional to payments received by ISIRAN from its customer."

ISIRAN alleges that it did not receive payments from its customers and therefore does not owe any amounts to the Claimant.

With respect to services performed under the 1974 Contract, this cannot apply because that Contract does not contain a comparable clause. As for the 1975 Contract, the Claimant argues that the invocation of Article III(d) is without merit for the following reasons: ISIRAN did receive payment from its customers; ISIRAN has not demonstrated that it made payments to CSCSI proportional to the amounts that it received from its customers; since CSCSI only delivered man-months of effort, payment to CSCSI should not be conditioned on payment from the customers; and one Iranian Government agency should not be permitted to avoid liability on the basis that no payment was received from another Government agency.

ISIRAN's invocation of Article III(d) cannot be accepted. First, the Parties agree that effective 21 March 1977 the Parties altered the nature of their relationship. Previously, CSCSI had been closely involved in the design and management of the various projects on which it worked. It had apparently been responsible for delivering completed projects, which would then be paid for by the customers. As of March 1977, management control and responsibility was shifted to ISIRAN and CSCSI was then to be responsible only for providing man-months of work. In addition, it was agreed that CSCSI was to be paid immediately -- that is within 60 days -- upon submission of invoices. Thus, while many provisions of the 1975 Contract continued to apply after 21 March 1977, this new agreement replaced Article III(d), which was therefore not applicable to the services for which payment is now sought. (The March 1977 arrangement also shifted to CSCSI the burden for payment of all taxes on the income received, which had previously been the responsibility of ISIRAN for most of the projects conducted under the 1975 Contract. In exchange, CSCSI received a higher man-month rate but with a lower anticipated profit margin commensurate with its decreased responsibility for the projects.)

In any case, even if Article III(d) were to be applied, the evidence submitted by the Claimant demonstrates that ISIRAN

received regular payments from its military customers. A former ISIRAN employee responsible for the administration of ISIRAN contracts from 1976 through February 1979 stated in an Affidavit that the major military customers, with the exception of the Ministry of War, made regular payments to ISIRAN. In a letter of 26 April 1978 to CSCSI's auditors, Touche Ross & Co., ISIRAN itself confirmed that by 27 January 1978 it had collected from its customers approximately 80 percent of the invoiced amounts that it then owed to CSCSI. ISIRAN thus has failed to demonstrate that it made proportional payments as required under Article III(d). Rather the evidence suggests that payments received under particular projects were applied to obligations unrelated to those projects. Having failed to comply with the terms of Article III(d), ISIRAN may not invoke it against CSCSI.

ISIRAN's final assertion is that Article 76 of the Iranian Direct Taxation Act requires it to deduct 5.5 percent from all payments it makes to the Claimant and that thus any sums awarded the Claimant for services under this heading should be reduced in a like amount. While it can be left open here whether such a reduction would actually be required by Iranian law, it follows from the legal character of such a reduction that the Tribunal has no jurisdiction to grant it unless it is provided for by the contract itself or its application by the parties. The request for a deduction of 5.5 percent from any sums awarded the Claimant amounts to a set-off or a counterclaim and may therefore be entertained only if the jurisdictional requirements for counterclaims and set-offs are fulfilled. As discussed more fully in Part III.2.c) below, a counterclaim or set-off must arise out of the same contract, transaction or occurrence as the claim. This requirement is not met here.

The Tribunal has in other cases taken into account deductions of taxes that were specified in a contractually provided withholding provision when it calculated the amounts to which claimants were entitled on the basis of contractual claims. E.g., T.C.S.B. Inc. and Iran, Award No. 114-140-2, p. 15 (16

Mar. 1984), reprinted in 5 Iran-U.S. C.T.R. 160, 168. In this case, none of the relevant Contracts provided for the Iranian contract party to withhold 5.5 percent in taxes, nor did the Iranian contract party withhold 5.5 percent from payments made to the Claimant. Rather, the Contracts identified which contract party was responsible for the payment of taxes, and for which portion of it. Similarly, the new payment arrangement instituted in March 1977 merely allocated to CSCSI the tax burden that had formerly been the responsibility of ISIRAN. The burden itself was imposed by operation of law. During the period after March 1977 ISIRAN did not deduct 5.5 percent from payments it made, thus making clear that the parties had not agreed in their contract to have such withholding. Therefore, any obligation to pay a 5.5 percent tax would not arise out of the Contracts, but from the application of the tax laws of Iran, and the Tribunal therefore does not have jurisdiction to make any such deduction. See, e.g., id. p. 24, reprinted in 5 Iran-U.S. C.T.R. p. 173; International Technical Products Corporation and The Government of the Islamic Republic of Iran et al., Award No. 196-302-3, p. 29 (28 Oct. 1985).

ISIRAN is therefore obligated to pay the Claimant $3,921,240 for services rendered after 21 March 1978.

cc) Termination Costs

The Claimant seeks $459,775 for termination pay and repatriation costs resulting from ISIRAN's termination of the Contracts. The Claimant originally claimed $308,761; it increased the amount sought in its Pre-Hearing Memorial.

The Claimant relies on Article XV of the 1975 Contract as the basis for this claim. This clause provides in pertinent part

> "that ISIRAN, in the event of termination of this contract for the convenience of ISIRAN, during its validity and for no default of subcontractor, shall give thirty (30) days notice of such termination, and ISIRAN shall pay to subcontractor the actual cost for returning its expatriate

> employees to their point of departure. Such actual cost shall include, and is limited to, economy air fare for the employee and his family and shipment of personal belongings of no more than the weight brought to Iran. No payment as indicated in the preceding sentence shall be made to subcontractor if this contract is terminated for default or breach of contract by subcontractor."2

The Claimant asserts that ISIRAN terminated the Contracts by its letter to CSCSI dated 24 February 1979, which stated that the termination was effective as of 1 February 1979. The Claimant takes the position that the termination was effective as of 24 March 1979. As a result of ISIRAN's failure to give 30 days' notice of termination the Claimant is, in its view, entitled to the contractually agreed $8,900 per man-month for each of the 35 expatriate employees assigned to ISIRAN projects in February 1979, totalling $311,500. It further claims "in excess of $148,275" for costs of repatriating its employees and for termination pay to local employees.

ISIRAN argues that the closing down of CSCSI's operations was "due to the political situation in Iran" and "a result solely of the Islamic Revolution of Iran", and that ISIRAN therefore has no responsibility for costs that the Claimant might have incurred as a consequence of such a termination of operations. Its letter of 24 February 1979, ISIRAN asserts, was merely a final confirmation of the suspension of the contractual obligations that CSCSI itself had declared when it invoked force

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2 The Parties agree that this clause of the 1975 Contract was in effect as to all but one of the projects on which CSCSI was engaged in February 1979. That project (the IIN Project), was conducted under an exhibit to the 1974 Contract, which contains a clause that is similar to Article XV of the 1975 Contract. The 1974 Contract provision does not, however, explicitly provide for 30 days' notice of termination. The Claimant argues that it was the Parties' understanding that 30 days' notice was required as it was for termination for cause. The Tribunal does not decide whether such notice was required under the 1974 Contract, because, as detailed below, the claim based on the failure to give notice would be denied even if there were such a requirement.

majeure in a letter to ISIRAN dated 3 February 1979. Finally, ISIRAN asserts that, whereas under the termination provisions of the Contract CSCSI's employees should have stayed for another 30 days after ISIRAN's letter of 24 February 1979 and should have offered their services, CSCSI's personnel had already left Iran by that time, and the invoices for services rendered covered only the period until 19 February 1979.

With regard to the costs of repatriating CSCSI's expatriate employees, the Tribunal determines that most of these costs arose out of the temporary force majeure suspension that CSCSI announced in its letter of 3 February 1979, rather than out of ISIRAN's termination letter of 24 February 1979. In its letter of 3 February 1979 CSCSI announced that it was "releasing all its personnel from their personal contract agreements" and that "nearly all expatriates will elect to leave immediately". The letter stated that CSCSI would provide "a few volunteer personnel on a mutually agreed basis to remain until mid-March". It appears from the evidence of termination costs that as of 19 February 1979 only eleven CSCSI expatriates were still assigned to ISIRAN projects. Only seven of these eleven appear on the lists of employees who received reimbursement for repatriation expenses. The contractual force majeure clause does not specify who should bear the costs of suspensions for that reason. It appears from the invoices submitted by the Claimant that in the normal course of business CSCSI billed only for man-months and not for the costs of sending terminated employees home. Under these circumstances the Tribunal concludes that each party should bear its own costs in this case of suspension for force majeure. The only repatriation costs that ISIRAN is obligated to reimburse are those which are covered by Article XV. This provision requires the Iranian party to pay such costs if and when it terminates the Contract for its convenience. As the Claimant itself asserts, ISIRAN did this by its letter of 24 February 1979, and not earlier. The Claimant is therefore entitled to repatriation costs for those expatriate employees who were still assigned to ISIRAN projects in Iran as of the

date of the termination letter. The Claimant's invoices show eleven employees assigned to ISIRAN as of 19 February 1979, and repatriation costs of $25,763 are claimed for seven of these eleven. The Claimant is thus entitled to $25,763 in repatriation costs from ISIRAN.

As for termination pay to CSCSI's local payroll employees, the Tribunal does not find any contractual basis for this claim. Article XV does not provide for it, nor does any other contract clause. This part of the claim must therefore by dismissed.

The same applies to the claim for termination pay that the Claimant seeks for one man-month for its expatriate employees. This part of the claim essentially seeks damages for breach of the provision guaranteeing 30 days' notice. In the Claimant's view one purpose of this clause is to reimburse the contractor for the costs of seeking reassignment of its employees and for the costs of paying its employees until their reassignment. As noted above, most of the employees had already left for home or were soon to leave on the date of termination. Thus, CSCSI would not have been able to bill ISIRAN for the 35 man-months of work that it claims even if it had received 30 days' notice on 24 February 1979. As to the employees who were still in Iran on that date, the Claimant has not proved the damages caused by the failure to give 30 days' notice. It has not shown, for example, when it was able to reassign those employees to other projects; the fact that these employees were in any event to be removed from Iran in mid-March suggests that it may have been possible to reassign them in less than 30 days. In addition, it may be expected that CSCSI was able to avoid costs that it would have incurred had it continued performance for 30 more days. Yet the Claimant has provided not details of its costs of performance or the costs incurred after termination. In short, the provision for notice may not automatically serve the function of a liquidated damages clause; there must at least be a showing that the amount claimed reasonably approximates the damages actually incurred.

dd) Reimbursement of Excess Taxes

The Claimant seeks reimbursement from IACI of taxes which CSCSI paid on income earned during fiscal years 1973 and 1974 under the 1972 Contract and which, it asserts, are in excess of the taxes that CSCSI was obligated to pay under the Contract. The Claimant contends that in accordance with instructions from IACI, CSCSI paid these taxes according to "arbitrary assessments made by the Iranian tax authorities". Under the Contract, IACI was obligated to reimburse CSCSI for all company taxes paid in excess of a "2.5% Sub-Contract Tax" that was to be deducted by IACI from payment to CSCSI. IACI was invoiced for the excess taxes paid and has acknowledged its liability, the Claimant asserts, but has not reimbursed CSCSI. The Claimant claims $777,290, being the invoiced amount. This amount consists of $555,704 in excess taxes paid, plus taxes on this amount. CSCSI says that the reimbursement would constitute taxable income under Iranian law, and that IACI would be responsible for any such additional taxes. As an alternative the Claimant seeks $555,704 and a release from liability for, and indemnification by IACI of, any Iranian taxes which might accrue upon the reimbursement when awarded.

IACI does not dispute that CSCSI paid taxes in the amount claimed. It disputes, however, that it acknowledged its obligation for reimbursement of such taxes. Rather it asserts that reimbursement was conditioned upon prior receipt of payment from its customers and that it had so informed CSCSI. Since it claims to have received no payments from its customers, IACI denies any liability for reimbursement of taxes.

When IACI and CSCSI negotiated the 1972 Contract they assumed that the tax liability upon payments received by CSCSI would be limited to the tax on subcontractors then in effect of 2.5 percent of gross contract payments. This assumption was set forth in a worksheet attached to a Memorandum of Understanding

which was executed before the Contract. The assumption is also reflected in Article III of the Contract which provides that

> "[t]he total cost for the services provided hereunder shall be the cumulative sum of the amounts as shown in the Exhibits attached hereto. Payments shall be made 100% in U.S. Dollars, after 2.5% Sub-Contract Tax is deducted."

The parties' agreement that IACI would bear the expense of taxes in excess of this amount was set forth in Article VI, which states:

> "It is understood and agreed that IACI shall be responsible for the payment of Government of Iran Social Insurance Premiums and Government of Iran Income Tax on Personal Income earned under this Agreement or its Exhibits.
>
> It is further understood and agreed that the price of the Exhibits excludes any consideration for any taxes, imposts, or levies of any kind whatsoever othe[r] th[a]n Government of Iran Subcontract Taxes on this Agreement."

Article VI further states that CSCSI could request an adjustment of the contract price pursuant to the contract provision dealing with "changes", should "[a]ny changes in tax rate or structure" affect Article VI.

In accordance with these provisions, IACI withheld 2.5 percent of all payments made under the 1972 Contract during fiscal years 1973 and 1974 and paid them to the Iranian tax authorities. CSCSI calculated its tax liabilities according to the subcontractor tax provisions of Articles 76 and 79 of the Iranian Direct Taxation Act, filed tax returns accordingly, and paid additional taxes for 1973 and 1974 in the amount of Rials 1,468,476 or $21,674. On 26 February 1975, the Iranian tax authorities issued an assessment upon CSCSI for fiscal years 1973 and 1974 on the basis that the services provided under the 1972 Contract were in the nature of training and technical assistance and therefore subject to Article 81, Note 2, of the Direct Taxation Act, rather than to Articles 76 and 79 covering subcontractor taxes. This resulted in an effective tax

equalling 30 percent of gross receipts for 1973 and 27 percent for 1974.

On 3 March 1975, CSCSI informed IACI of the assessments, also notifying it that "this increase is subject to the changes clause (reference Article VI - Taxes) and as such is the responsibility of IACI". Subsequently IACI and CSCSI discussed orally and in writing what to do about the assessments, and as a result CSCSI contested them before the competent Iranian authorities. Eventually a ruling was rendered holding that CSCSI's services under the 1972 Contract fell under the provisions of Article 81, Note 2, of the Direct Taxation Act. Based upon final assessments, CSCSI paid under protest additional taxes of Rials 37,097,386, or $534,544.

During their discussions on how to proceed with the assessments IACI wrote a letter to CSCSI that the Claimant interprets as an acknowledgement of IACI's obligation to reimburse CSCSI for the additional taxes. IACI relies on this same letter for its argument that such reimbursement was conditioned upon prior receipt of payment from its customers. The letter, inter alia, requested CSCSI to

> "1. Negotiate the lowest possible assessment through the use of local expert tax professionals.
>
> 2. Bill IACI for the taxes by applicable contract.
>
> 3. Determine [its] Corporate Foreign Tax Credit gain and pass same onto IACI."

The letter further stated that in a previous meeting of the parties

> "it was indicated that the tax assessment could be passed onto IACI under the changes clause, however, penalties and interest was another subject.
>
> Upon receipt of properly documented billing including copies of the paid official receipt, IACI will pass your tax claim onto the appropriate customers in accordance with

> the term of the contract. Upon payment to IACI, prompt reimbursement will be made to CSC."

This letter shows that it was IACI's understanding at the time - and it still is - that reimbursement to CSCSI of the additional taxes paid was, pursuant to the Contract, conditioned upon receipt of payment from its customers. Since CSCSI objected to this interpretation at the time - and the Claimant does in the present proceedings - the question is whether it is in fact based on the provisions of the Contract. Reading together the provision of Article VI that excluded from the agreed contract price any tax other than "Government of Iran Subcontract Taxes" with the provision of Article VI that entitled CSCSI to request "adjustments" under the Article XIII procedure should a change occur in the tax rate or structure affecting the allocation of tax liability laid down in Article VI, it seems quite clear that CSCSI could have requested - and IACI would have been obligated to pay - a reimbursement of the additional taxes assessed. CSCSI in fact did seek such reimbursement from IACI. No condition of prior payment from IACI's customers can be inferred from the relevant provisions of the Contract. Accordingly, IACI cannot invoke the failure of its customers to meet their obligations to avoid its own obligation.

The Claimant claims $777,290 of excess taxes, which is the equivalent of Rials 53,943,928 which CSCSI claimed from IACI in an invoice dated 12 April 1976. This amount claimed in the invoice was arrived at by adding to the additional taxes paid a sum which, when the reimbursement payment was taxed according to the criteria applied in the February 1975 assessment, would yield a net amount equal to the Rials 38,565,864, or $555,704, additional taxes actually paid by CSCSI. The Claimant represents that the Rial amounts are converted at the then prevailing exchange rates.

Should the Tribunal declare that CSC and CSCSI are released from liability for any Iranian taxes on the amount awarded and that IACI is liable to further indemnify them from any such

liability, then the Claimant seeks only $555,704 for excess taxes paid.

The Tribunal first finds that the Claimant is only entitled to reimbursement of $555,704[3] from IACI which is equivalent to the amount that CSCSI actually paid in excess taxes. CSCSI has not paid or been assessed any additional taxes on this amount, nor has IACI or any other Respondent claimed such taxes. There is therefore no legal basis for the reimbursement of any higher amount.

Second, as noted above, under the 1972 Contract CSCSI was only obligated to bear taxes on contractual payments at a rate of 2.5 percent, and IACI was obligated to reimburse CSCSI for all taxes that the latter paid in excess of this rate. Any claim for Iranian taxes, that would be levied on the $555,704 awarded herein, which claim would be made following this Award, would be outside the Tribunal's jurisdiction, and thus the Tribunal also lacks jurisdiction to grant a release or an indemnification from any such potential future liability.[4]

In addition to the above-described reimbursement from IACI, the Claimant seeks reimbursement from ISIRAN of taxes which CSCSI paid on income earned or which was withheld from contract payments made during fiscal years 1975 through 1978 under the 1972, 1974 and 1975 Contracts and which, it asserts, exceeded the amounts that the parties had agreed CSCSI would have to bear under these Contracts. Each of the three Contracts established

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[3] To calculate the Dollar equivalent to the amount of reimbursable taxes, the Claimant properly used the exchange rate prevailing at the time it paid such taxes in Rials; this was not contested.

[4] In this context, it is also noted that the Claimant has originally sought a tax clearance certificate from the Iranian Ministry of Finance. It has later withdrawn this claim. For further details see III.2.c) below.

a different formula for allocating the economic burden of Iranian taxes arising out of income earned by CSCSI under the Contracts. As noted, the 1972 Contract required IACI, and later ISIRAN, to reimburse CSCSI for any company taxes it paid above a rate of 2.5 percent on income earned under that Contract; the 1974 Contract required reimbursement of taxes above 4 percent; the 1975 Contract exempted CSCSI from payment of any taxes on income earned under the Contract and required ISIRAN to reimburse CSCSI for any such taxes paid. By allocating its income earned in fiscal years 1975 through 1978 to one or another of the Contracts, the Claimant has calculated the total amount of taxes for which it says CSCSI was responsible based on the respective formulae. It then deducted this amount from the total amount of taxes which CSCSI allegedly paid or which was withheld during this period, to arrive at an amount of $1,407,414 in excess taxes the reimbursement of which it claims from ISIRAN. The Claimant further requests the Tribunal to declare that CSCSI is released from any Iranian taxes which might be assessed upon the amount awarded and from any additional taxes which might be held to be due for income earned in fiscal years 1975 through 1978.

ISIRAN puts forth the following defences against this claim which are rebutted by the Claimant. The tax allocation formulae of the Contracts violate Iranian law and are therefore not enforceable. Subsequent Exhibits to the 1975 Contract superseded the original tax allocation of that Contract and provide for CSCSI's liability for all taxes. The fact that CSCSI made direct tax payments is inconsistent with the claim for reimbursement. The Claimant has not proven that the taxes it allegedly paid were related to income earned under the three Contracts, nor has it given any evidence how it allocated these payments to the Contracts.

The Tribunal concludes that the Claimant is entitled to some reimbursement from ISIRAN for the taxes it paid in excess of the contractually stipulated amounts. ISIRAN has not shown that the

tax reimbursement provisions under which the Claimant asserts its claim violate Iranian law. The Tribunal has previously held that a similar clause providing for an exemption from taxes and reimbursement of any taxes paid was not contrary to Iranian law; see American Bell International Inc. and The Government of the Islamic Republic of Iran et al., Interlocutory Award No. ITL 41-48-3 p. 32 (11 June 1984). In addition, there is no inconsistency between paying taxes and seeking reimbursement from a contracting party under a contractual reimbursement clause.

It should be noted that this conclusion is not inconsistent with the Tribunal's finding that it has no jurisdiction to grant a deduction of a 5.5 percent tax from all payments to the Claimant (see III.1.b)bb) above): whereas the Contracts do not provide for such a deduction, the reimbursement claim discussed here its indeed based on the Contract itself. In calculating the claimed reimbursement, the Claimant has subtracted the amount of tax it should have paid from the total tax it paid for the years in question. Except as to a small amount of interest and sundry income that is discussed below, ISIRAN has offered no evidence to rebut the Claimant's showing that these Contracts were CSCSI's only source of taxable income during the years in question. Moreover, a comparison of the tax return for the year ended 31 March 1978 submitted by the Claimant and ISIRAN's own record of payments made under the Contracts supports this conclusion.

Nevertheless, the Tribunal is of the view that in allocating its income among the Contracts, the Claimant has not taken adequate account of different tax allocation formulae in certain Exhibits to the 1975 Contract and in the new payment agreement adopted in 1977. Exhibits A, B and C to the 1975 Contract contain clauses that provide that the price of the Exhibit would be "subject to taxes in accordance with Iranian laws and regulations at the time of signing" of the Exhibit. The clauses state that they "supercede[]" the provision in the 1975 Contract providing for

an exemption from taxes and reimbursement of any taxes paid. The Claimant contends that the amounts earned under Exhibits A and C were not taxable because they were earned in the United States, not in Iran, and that it never received any payments under Exhibit B. However, both Exhibits A and C (which relate to a single project) state that they were to be performed in part in the United States and in part in Iran, and the Tribunal considers that these clauses must have been specifically added in the contemplation of some Iranian taxes being imposed on the income arising under these Exhibits. As for Exhibit B, the Claimant admits that it received large amounts of unallocated payments under the Contracts, part of which should be attributed to that Exhibit.

In addition, it is clear from testimony presented by the Claimant itself that as of 21 March 1977 the tax allocation and payment scheme of the 1975 Contract was altered entirely. Thereafter, CSCSI was to submit invoices at a new increased rate of $8,900 per man-month and was to bear responsibility for all taxes. While it appears that none of the post-March 1977 invoices were paid by allocated payments, part of the unallocated payments must be attributed to those invoices and excluded from the calculation of reimbursable taxes. Thus, the taxes on any amounts paid that were attributable to these invoices must be borne in full by the Claimant.

Finally, the Claimant is liable to bear all taxes on interest and other sundry income it earned in connection with the Contracts. None of the Contracts require ISIRAN to bear any portion of these taxes.

In summary, in addition to the amounts of tax that the Claimant acknowleges it must bear under the Contracts, it had to bear the full taxes on: (1) income earned under Exhibits A, B, or C of the 1975 Contract; (2) income earned in payment of invoices at the rate of $8,900 per man-month after 21 March 1977; and (3) interest and other sundry income.

The Tribunal has therefore recalculated the amounts of the Claimant's income on which, under the Contracts, it must bear the taxes. First, the Tribunal calculated the amounts of the unallocated payments that are attributable to each project. The Tribunal allocated these amounts to each project for each year in proportion to the total of outstanding invoices due under each project at the end of the relevant fiscal year. Second, these allocations were added to amounts paid directly on each project to determine the total payments for each project. Third, the Tribunal applied the applicable rate of tax specified in the Contracts: 2.5 percent in the case of income earned under the 1972 Contract; 4 percent in the case of income earned under the 1974 Contract; and the average tax rate indicated on the Claimant's tax returns in the case of the $8,900 invoices, the interest and sundry income, and Exhibits A, B and C (as to which the Claimant is required to bear the full tax burden).[5] Using this approach, the Tribunal determines that of the $2,244,618 in taxes paid by the Claimant during fiscal years 1975 through 1978, it was required under the Contracts to bear a total of $1,480,088. Accordingly, ISIRAN is liable to reimburse the Claimant for $764,530 in excess taxes.[6]

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[5] In fact, only the average rate for fiscal year 1978 is relevant. There were no payments attributable to any of the fully taxable items in 1975; and in 1976 and 1977 the Claimant incurred substantial losses in Iran and thus paid no taxes. For fiscal year 1978, the Claimant's average tax rate was 10.1967 percent.

[6] Included in the amount of taxes that the Claimant must bear are the contractually provided taxes of 2.5 percent and 4 percent on certain income earned in fiscal year 1979. These taxes total $26,518. In its calculations of its claimed reimbursement for excess taxes, the Claimant has effectively reduced the amount of the reimbursement it seeks by the amount of these taxes, even though its claim otherwise covers only fiscal years 1975 to 1978. Because the Claimant is thus willing to reduce its claim for reimbursement by these amounts, the Tribunal has used the same approach in its calculations. As to the exchange rate applied, see footnote 3 above.

The Claimant's request for a declaration that it is "released" from taxes on the $764,530 awarded is denied for the same reasons advanced in connection with the excess tax claim against IACI. The same would be the case for any additional taxes which, after the rendering of this Award, might be found due for income earned by CSCSI in fiscal years 1975 through 1978.[7]

ee) Bank Funds

The Claimant seeks the credit balance of a total of seven bank accounts that CSCSI, CCI and SSI held in Bank Tejarat and Bank Mellat. Some of these accounts were Rial accounts, and some were Dollar accounts. With the exception of one Rial savings account, they all were current deposit accounts. The Claimant asserts that the banks refused to honor repeated demands for payment from these accounts, basing their refusals on the foreign exchange regulations in force in Iran. The Claimant seeks an aggregate credit balance of $219,678.

The Claimant has named the Government of the Islamic Republic of Iran as the principal Respondent from which it claims the balance of the bank accounts. It argues that the exchange regulations adopted by the Government of Iran required that Iranian banks seek Bank Markazi's approval for foreign exchange transactions; that to the extent Bank Tejarat and Bank Mellat were prevented from honoring the demands for payment from the accounts, the application of the exchange regulations constitutes a taking; and that in particular, the refusals to permit payments on the accounts under the exchange regulations constitute a taking because these regulations were promulgated in violation of the IMF Agreement and the Treaty of Amity.

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[7] In this context, it is also noted that the Claimant has originally sought a tax clearance certificate from the Iranian Ministry of Finance. It has later withdrawn this claim. It is further noted that the tax counterclaim by the Iranian Ministry of Finance has been dismissed. For details see III.2.c) below.

In the alternative, even if the exchange regulations do not violate the IMF Agreement or the Treaty of Amity, Bank Tejarat and Bank Mellat would in the Claimant's view be liable for not observing the requirements of these regulations. No foreign exchange transaction may be made by an Iranian bank without Bank Markazi's approval, and Iranian banks must present any demand for payment or transfer of foreign exchange to Bank Markazi for approval. The Claimant contends that it is not clear whether in the present case Bank Markazi's approval was ever sought. If Bank Tejarat and Bank Mellat did not seek Bank Markazi's permission, the Claimant argues that they failed to adhere to Iranian law and that they are liable for the value of all the wrongfully withheld bank funds regardless of whether the exchange regulations are valid.

As a third alternative, the Claimant seeks the balance of the Dollar accounts from Bank Tejarat and Bank Mellat. The Claimant argues that the withdrawal from a Dollar account is not a foreign exchange transaction covered by the Iranian exchange regulations and that, even if those regulations are valid, the banks wrongfully applied them to the demands for payment on the Dollar accounts. It further contends thtat the banks have failed to even allege that their refusals to make payments from the Dollar accounts were justified under the exchange regulations.

Bank Tejarat's and Bank Mellat's defences to the claim for the bank funds, although submitted separately, will be dealt with together since they basically raise the same contentions and arguments. Whereas the banks do not dispute the ownership and the balances of the accounts (a minor discrepancy is dealt with hereinafter), they generally assert that remittance of the balances of the accounts outside Iran was not possible because "following the culminaton in victory of the Islamic Revolution, the transfer of foreign exchange outside Iran was restricted, owing to the prevalance of certain exchange restrictions". The banks are of the opinion that the Iranian exchange regulations

are justified in view of the particular circumstances prevailing in Iran, that they do not discriminate against foreigners and that they do not violate the IMF Agreement. Both banks submit that they have been and still are prepared to pay out the balances of the Rial accounts in Iran, but that since no demand has been made on these accounts they were previously not required to pay them. The banks also submit that, should the proper authorization be provided in compliance with current regulations, the balances of the Dollar accounts will be paid out. Finally, the banks contend that certain demands concerning the Dollar accounts were improper because they were for higher amounts than the balance in the accounts.

The Tribunal has previously held that a mere right to payment from a bank account is not a "claim" within the meaning of the Claims Settlement Declaration, but that a claim that the use of the account has been interfered with unreasonably or that the account has in some other manner been taken is such a claim; see Harza Engineering Company and The Islamic Republic of Iran, Award No. 19-98-2, pp. 8-9 (30 Dec. 1982), reprinted in 1 Ira-U.S. C.T.R. 499, 504. The Claimant has made such a claim with regard to all bank accounts, and in all its three alternative claims.

In order for such a bank claim to be outstanding, a demand for payment from the account must have been made prior to 19 January 1981; see Tippetts, Abbett, McCarthy, Stratton and Tams-Affa Consulting Engineers of Iran et al., Award No. 141-7-2, p. 7 (29 June 1984). The Claimant has submitted contemporaneous correspondence evidencing to the Tribunal's satisfaction that demands were made for payment from all Dollar accounts in such a way as to make the claims for these amounts outstanding. Bank Tejarat argues that the demand with respect to the Dollar account held by it in the name of CSCSI was improper because it was higher than the balance in the account, which was $990. In March 1979 the Claimant drew a check on this account in an amount approximately 20 percent higher than the balance. Bank

Tejarat returned the check unpaid. It gave as the reason for not honoring the check not its amount, however, but rather that the check was "returned due to Central Bank of Iran's regulation prohibiting remittance of foreign exchange." A second demand in a letter of October 1979 remained unanswered altogether. The Claimant submits that at the time its books showed a higher balance than actually was in the account and that it later discovered the amount of the actual balance, which it now claims. The Tribunal finds that in the circumstances of this case, and because Bank Tejarat did not deny payment of the check for the reason that the account would be overdrawn, the drawing of such a check in a somewhat higher amount than the balance of a current account constitutes a demand sufficient to make the claim for the actual balance of the account outstanding.

Bank Mellat likewise argues that a demand by a check for the Dollar account held by it in the name of CSCSI was improper because it was for a higher amount than the balance in the account. Here also the bank did not mention this reason when it returned the check unpaid, nor did it answer a subsequent demand in a letter. In addition, the amount of $44,943.86 then demanded and now claimed, which is about 1 percent higher than the amount that Bank Mellat asserts is the balance in the account, is shown as the "balance" in the notification by the Claimant's bank that the check was being returned unpaid. Bank Mellat has submitted no documentary evidence to rebut this showing of the balance. The Tribunal finds that the claim for the balance of this account with Bank Mellat in an amount of $44,943.86 was outstanding.

With respect to the Dollar account held by it in the name of CCI, Bank Mellat contends that CCI is an Iranian company which is not controlled by the Claimant and that the Claimant therefore does not own the claim for the balance of this account. The Claimant does not dispute that CCI was organized under the laws of Iran in October 1976, with 51 percent of its capital stock held by an "Iranian group" and 49 percent held by

Computer Sciences Systems GmbH, a German wholly-owned subsidiary of CSC. The Claimant asserts, however, that the "Iranian group" subsequently transferred its 51 percent interest in CCI to Computer Sciences Systems GmbH. As evidence for the transfer the Claimant submitted the minutes of a meeting of CCI's board of directors of 8 October 1978, at which it was announced that the members of the "Iranian group" wished to transfer their shares, the transfer was approved and it was noted that the directors of the "Iranian group" had tendered their resignations as required for such a transfer. On 23 January 1979, the "Iranian group" and the "CSC group" confirmed the transfer of the shares in writing. In a statement filed in November 1979 with the United States Internal Revenue Service, CSC submitted that the steps required by Iranian law to finalize the transfer had been completed on 26 February 1979. Bank Mellat has not discussed or rebutted this evidence, on the basis of which the Tribunal is satisfied that as of 26 February 1979 CCI was, through Computer Sciences Systems GmbH, a wholly-owned subsidiary of CSC.

In January 1979, CCI wrote two checks payable to CSCSI in an aggregate amount of $33,000 which Bank Mellat returned unpaid in March 1980 citing Iran's exchange regulations. On 28 March 1979, CCI wrote a check payable to CSCSI for $43,050. The Claimant was informed on 2 April 1979 by its United States bank that Bank Mellat had "[r]eturned [this check] unpaid re Exchange Control". In the circumstances of this case, CCI's demands must be regarded as sufficient to make the Claimant's claim for the balance of $86,073 in CCI's Dollar account with Bank Mellat outstanding.

With respect to the alleged violation of the Iranian exchange regulations the Tribunal notes that neither Bank Tejarat nor Bank Mellat stated explicitly whether they had refused to pay out the balances of the Dollar accounts because Bank Markazi had refused to approve the transaction, or whether they had not sought Bank Markazi's approval at all. Both banks assert that

remittance of the balances of the accounts outside Iran had not been possible because "the transfer of foreign exchange outside Iran was restricted, owing to the prevalance of certain exchange restrictions". The reasons stated at the time of the banks' refusals to pay out Dollars refer to the existence of the foreign exchange regulations rather than to Bank Markazi refusing to provide its approval. The Claimant having raised the issue of whether approval was duly sought, the Respondent banks had the burden of showing that they had in fact sought such approval, as they were required to do by the relevant regulations. See Benjamin R. Isaiah and Bank Mellat, Award No. 35-219-2, p. 14 (30 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 232, 239. This they have not done, so Bank Tejarat and Bank Mellat must be deemed to have violated their obligation to seek that necessary approval and thus to have withheld the funds improperly. Bank Tejarat is therefore obligated to pay the Claimant $990, and Bank Mellat to pay $131,037.

With respect to the Rial accounts the Tribunal finds that no demands have been made on them so as to make the claims for the balances outstanding. The Claimant concedes that no demands were made for the transfer of the balances of the Rial accounts into Dollars. It asserts, however, that in view of the banks' refusals to make payments from the Dollar accounts there was no reason to expect that any transfers from Rial accounts into foreign currency would be allowed, and that it therefore decided that from then on any demands on Rial accounts would be pointless. In this context, it is first noted that, as submitted by the Claimant, it learned of a refusal by Bank Mellat for the first time on 2 April 1979, and by Bank Tejarat on 3 July 1979. The Claimant's efforts to draw funds from the Dollar accounts and the refusals by the banks extended from 23 January 1979 until March 1980. Considering that the last Contract was terminated by ISIRAN's letter of 24 February 1979, and further considering that over such a considerable period of time the requirement of demands for Dollar accounts has been acknowledged by the Claimant itself, the Tribunal finds no

reason why this general requirement to make claims for bank funds outstanding should not have been complied with also for the Rial accounts at least once during this time. Second, the Claimant has not shown that at that time any demands were made to withdraw Rials from these accounts, although it claims to have expended Rials until after 24 February 1979, for example for termination pay of its local payroll employees in Iran. The claim for the Dollar equivalent of the balance of the Rial accounts is thus dismissed as not having been outstanding on 19 January 1981.

ff) Expropriated Office Equipment

The Claimant contends that on or about 1 April 1979 the furniture and equipment in CSCSI's Tehran office was expropriated. It states that representatives of the Iranian Revolutionary Committee entered the office and made all CSCSI employees leave, ordering that nothing in the office be removed. It further states that CSCSI was thereafter denied access to the office. The Claimant seeks compensation from the Government of the Islamic Republic of Iran for the net book value of the furniture and equipment left behind in the office in the amount of $24,397.

Other than by its general exception of non-attributability of any of the claims to it, the Government of Iran has not specifically responded to this expropriation claim. ISIRAN, however, denies that it had control over CSCSI's office property, or that it or any other Respondent took possession or expropriated that property. ISIRAN also states that the Claimant "has not produced any documents showing the delivery of its property to the Government agent".

The Claimant has submitted an Affidavit by CSCSI's comptroller at the time in Iran who attested that he was present in CSCSI's Tehran office in April 1979 when representatives of the Revolutionary Committee entered and ordered that the employees

vacate the premises and that nothing in the office be removed. This evidence has not been rebutted, and the Tribunal is satisfied that CSCSI was thus denied the use of its office equipment and that it was thereafter denied access to the equipment. As the Tribunal has previously held, "[t]he unilateral taking of possession of property and the denial of its use to the rightful owners may amount to an expropriation even without a formal decree regarding title to the property"; see Dames & Moore and The Islamic Republic of Iran et al., Award No. 97-54-3, p. 22 (20 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 212, 223. The interference with the use of CSCSI's office equipment as factually established in the present case amounts to a taking.

The final question remains whether the Government of Iran is responsible for this taking. The Tribunal has held in William L. Pereira Associates, Iran and Islamic Republic of Iran, Award No. 116-1-3, p. 43 (19 Mar. 1984) reprinted in 5 Iran-U.S. C.T.R. 198, 227, that under public international law the Government of the Islamic Republic of Iran must be deemed responsible for confiscatory actions of the Revolutionary Guards. The same applies to the actions of representatives of the Revolutionary Committee at issue in the present case. Accordingly, the Claimant is entitled to receive from the Government of the Islamic Republic of Iran the value of CSCSI's Tehran office furniture and equipment as of 1 April 1979. The amount of such value, which the Claimant has calculated on the basis of the net book value and which was not contested by the Respondents, is $24,397.

gg) Interest

In its Award in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985), this Chamber expressed its intention to develop and apply a consistent approach to the awarding of interest in cases before it. In the absence of a contractually stipulated

rate of interest, it is the Tribunal's policy to derive a rate of interest based approximately on the amount that the successful Claimant would have been in a position to have earned if it had had the funds available to invest in a form of commercial investment in common use in its own country. Six-month certificates of deposit in the United States are such a form of investment for which average interest rates are available from an authoritative official source.

In the Sylvania case itself, the Tribunal applied a rate of interest approximating the average rate of interest on six-month certificates of deposit for the relevant period in that case, which was about 1979 through 1984. The rate used was 12 percent. In the present case, the relevant periods for the various claims begin at different times during the years 1976, 1978 and 1979. Therefore, the Tribunal applies different interest rates to each claim. To facilitate the interest calculations, the Tribunal first calculates the interest on each amount awarded from the date the respective claim arose until 31 December 1979, using the rate of interest applicable to each period. Then the Tribunal applies a single interest rate to the principal amount of each claim from 1 January 1980 through the date of this Award. Since this period begins somewhat later and ends later because this Award comes several months later than the Sylvania Award, the rate applied here must reflect the change in interest rates that has occurred since then. The average rate of interest paid on six-month certificates of deposit from the beginning of 1980 through the date of this Award is approximately 11.5 percent, and it is that rate which the Tribunal applies for that period.[8]

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[8] The Tribunal uses the last published rate available to it and rounds the rate awarded to the nearest quarter of a percentage point.

2. The Counterclaims

a) Return of Payments Made

As noted, at the Hearing in this case ISIRAN renewed its request for recovery of $27,771,128 in overpayments allegedly made to CSC and CSCSI under the Contracts. In calculating its alleged overpayments, ISIRAN itself has submitted that, except for an amount of $11,947, all payments it asserts to have made under the Contracts were made before 21 March 1978, the date of the Settlement Agreement. Therefore, according to ISIRAN's own submission, the bulk of this counterclaim is barred by Article IV of the 1978 Settlement Agreement which states in pertinent part:

> "Upon execution of this agreement, Isiran does hereby release and discharge CSCSI and CSC [...] from any and all claims and causes of action arising in connection with the performance of any and all services rendered by CSCSI and CSC and with respect to any and all contracts and agreements between Isiran and CSCSI and between Isiran and CSC, whether written or otherwise, which claims or causes of action arose at any time prior to 21 March, 1978."

ISIRAN's representative stated at the Pre-hearing Conference held in this case that the request for the return of ISIRAN's payments had only been "raised as a defence, not as a counterclaim, and that it was relevant only if the Tribunal held the 1978 Settlement Agreement had been abrogated. If, on the other hand, the Settlement Agreement was still valid, [...] the release clause in that Agreement would bar the request for the return of the payments."

The Claimant made no objection at the Hearing to ISIRAN's renewed request for recovery of the alleged overpayment. Therefore, and because the Claimant has fully argued the issue, the Tribunal addresses the merits of the counterclaim with respect to the $11,947 paid after the date of the Settlement Agreement. This portion of the counterclaim must also be dismissed. In calculating the alleged overpayment, ISIRAN has

not included in the total amount of the Claimant's invoices (from which it deducted its payments to arrive at the overpayment) invoices that had been paid through "applied payments", i.e. payments specifically allocated to particular invoices. Adding these invoice amounts to the amounts taken into account by ISIRAN eliminates any overpayment.

b) Damages for Breach of the 1972 Contract

IACI has counterclaimed for $4,600,000 as "indemnification of damages incurred" by it, plus interest. To support this counterclaim, IACI asserts that the Claimant's services were in the view of IACI's customers defective and unacceptable and that therefore many of those customers had "stated their intention to bring legal suit". At the Pre-hearing Conference IACI's representative confirmed that no "formal action" had been taken. Furthermore, IACI has not asserted that any damages were actually incurred due to the alleged threat of such actions. IACI's counterclaim is thus outside the Tribunal's jurisdiction because, according to IACI's own submission, no harm occurred prior to 19 January 1981.

IACI's counterclaim would also be barred by Article IV of the 1978 Settlement Agreement. Effective 21 March 1975, ISIRAN succeeded to all of IACI's rights and obligations under the 1972 Contract. With this assignment, any right or claim relating to defective performance of CSCSI under that Contract was transferred to ISIRAN. As described above at III.2.a), whatever claim might have existed prior to 21 March 1978 in connection with the Contracts was waived by ISIRAN in the 1978 Settlement Agreement.

c) Taxes

The Ministry of Finance of the Islamic Republic of Iran makes a

counterclaim for Rials 1,180,421,942 for taxes allegedly owed on income earned by CSCSI from operations in Iran during fiscal years 1975 through 1979, "plus damages related to non-payment thereof". The Ministry asserts that Article 81, Note 2 of the Iranian Direct Taxation Act ("DTA") applies to the income earned by CSCSI in Iran, and that this income was taxable at the rates specified in Article 134 DTA. The Ministry has submitted copies of tax assessments covering fiscal years 1975 through 1979 (ending 31 March 1979), with a final tax assessment for 1977 for which year CSCSI had appealed against the original assessment.

With respect to the Tribunal's jurisdiction over the tax counterclaim the Ministry argues that CSCSI's obligation to pay Iranian income tax arises out of the relevant provisions of the Contracts, and that CSCSI acknowledged this by claiming refund of taxes allegedly paid in excess of those contractually stipulated. Since "taxes were taken into consideration by [CSCSI] in the determination of the total contract price", the Ministry is of the opinion that "there was no need to stress the Tribunal's jurisdiction over tax claims" and that "the award rendered by the Tribunal must not grant the winning party an amount in excess of what would have been due the same party had the dispute not occurred".

The Claimant asserts that the Ministry's counterclaim for taxes should be dismissed for lack of jurisdiction as well as on its merits.

First, the Claimant "takes note of the General Brief of the Islamic Republic of Iran in Support of Claims Based on Unpaid Taxes filed with the Tribunal on April 24, 1985, and which the Agent of Iran has requested to be considered 'in any case in which the refusal of the Claimant to pay his tax dues is at issue'". Although in its view none of the arguments made there has merit, the Claimant "addresse[s]" the arguments set forth in the General Brief for the proposition that the Tribunal does enjoy jurisdiction over tax counterclaims filed by Iranian

respondents, whether or not they are treated strictly as counterclaims. Consequently, the Tribunal in the present case also deals with the arguments set forth in the General Brief and with the Claimant's responses thereto.

The first argument made by the Government of Iran in the General Brief is that under international law any outstanding taxes owed by a claimant to a respondent State are merely a factor to be considered in calculating the damages due that claimant, and that such taxes must be deducted from the loss which was caused by the wrongful act of that State, because damages awarded under international law must not exceed the degree of injury suffered so as to unjustly enrich the injured party. According to this argument, the issue of taxes owed by a claimant presents a question of substantive law rather than one of the Tribunal's jurisdiction.

The Claimant does not dispute the premise that damages awardable for breach of contract must equal the amount that would have been received under the contract if it had not been breached. In determining that amount, it is necessary to take into consideration both the amount payable under the contract to the injured party as well as any debt by the injured party to the wrongdoer that forms an essential part of the injury. The disagreement exists with regard to what the "relevant liabilities" are that need to be deducted from damages. Whereas in the General Brief it is argued that any debt owed by the injured party to the wrongdoer must be taken into account, the Claimant submits that only those debts that would have been created as a result of performance of the obligation breached affect the amount of damages, and that taxes owed do not constitute such "corresponding liabilities". Both the Claimant and the Government of Iran in its General Brief assert that their respective propositions find support in state practice and decisions of international courts and tribunals.

For the purpose of the present case, the Tribunal does not need to determine what the general the rule on damages and "corresponding liabilities" is in general international law.[9] With respect to taxes the Tribunal follows its decision in T.C.S.B., Inc. and Iran, Award No. 114-140-2, p. 15 (16 Mar. 1984), reprinted in 5 Iran-U.S. C.T.R. 160, 168, where it deducted the amount of an Iranian contract tax from the amount of contract payments due to the claimant because the parties' practice showed that they had agreed to deduct the amount of such tax from payments under the contract. In that case, however, the Tribunal dismissed for lack of jurisdiction the counterclaim for taxes other than that withholding tax, because it deemed it to arise out of the application of Iranian tax law.[10] Thus, since the Contracts at issue in the present case did not provide for the withholding of taxes from payments to be made to the Claimant, and since neither IACI nor ISIRAN did in fact withhold any taxes from their payments, the income tax sought in the Ministry's counterclaim is not deductible from the damages awarded the Claimant herein under these Contracts.[11]

The second argument advanced in the General Brief is that a counterclaim for tax arrears must be considered a request for a

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[9] It is noted that in the expropriation cases referred to in the General Brief the issue was not the calculation of damages for breach of contract, but rather the valuation of taken property.

[10] The same result was reached in General Dynamics Telephone Systems Center, Inc. et al. and The Islamic Republic of Iran, Award No. 192-285-2, p. 25 (4 October 1985) and in International Technical Products Corporation and The Government of the Islamic Republic of Iran et al., Award No. 196-302-3, p. 29 (28 October 1985).

[11] It appears that ISIRAN and the Ministry of Finance rely on different provisions of the DTA by which the Claimant's alleged tax dues are covered. While these provisions have in common that they provide for withholding taxes, taxes were in fact not withheld, and the Claimant filed tax returns under yet another provision of the DTA, to which no objections were raised at the time.

set-off against damages claimed and, "consist[ing] of facts which are put forward for the purpose of defense", is not subject to the requirements for counterclaims set forth in Article II, paragraph 1, of the Claims Settlement Declaration. The Government of Iran regards the right to set-off as a general principle "recognized by all modern legal systems", the application of which by the Tribunal it sees particularly warranted by Article 19, paragraph 3, of the Tribunal Rules which provides in pertinent part that

> "... the Respondent may make a counter-claim or rely on a claim for the purpose of a set-off, if such counter-claim or set-off is allowed under the Claims Settlement Declaration".

In support of its argument that a claim for set-off need not arise out of the same contract, transaction or occurrence that constitutes the subject matter of the claim, as is required for a counterclaim, the Government of Iran cites the Tribunal's decision in Owens-Corning Fiberglass Corp. and The Government of Iran et al., Interlocutory Award No. ITL 18-113-2, p. 4 (13 May 1983) reprinted in 2 Iran-U.S. C.T.R. 322, 324, where Chamber Two held that

> "... the royalties [the Claimant] was entitled to receive were net of taxes; therefore the question of the amount of any taxes which might be owing on unpaid royalties would necessarily arise as an offset against any recovery of those royalties, even if no affirmative recovery of such amounts could be allowed as a counterclaim".

The Claimant contends that public law debts may not be offset against private law claims. Even if a tax counterclaim was justifiable as a claim for set-off, in the Claimant's view it is clear from Article II, paragraph 1, of the Claims Settlement Declaration that such a set-off is governed by the same jurisdictional standards as a counterclaim. According to the Claimant, Article 19, paragraph 3, of the Tribunal Rules subjects counterclaims and claims for the purpose of a set-off to the same jurisdictional restrictions.

The Tribunal determines that as far as its jurisdiction is concerned claims for set-off are generally governed by the same standards as counterclaims. The concept of set-off necessarily presupposes the existence of a claim that can be used for such set-off. When a respondent seeks to offset alleged tax arrears against contract claims, he can use his alleged right to the payment of taxes for set-off only if this right is an admissible claim under the Claims Settlement Declaration. As the Full Tribunal has decided in Case No. A2, Decision DEC 1-A2-FT (13 Jan. 1982), the Claims Settlement Declaration does not grant the Tribunal jurisdiction over claims against nationals of either State party unless those claims are brought as counterclaims. Claims for taxes can thus only be used for set-off if they fulfill the requirements for counterclaims as laid down in Article II, paragraph 1, of the Claims Settlement Declaration. This conclusion is confirmed by the provision of Article 19, paragraph 3, of the Tribunal Rules which states that

> "... the Respondent may make a counter-claim or rely on a claim for the purpose of a set-off, if such counter-claim or set-off is allowed under the Claims Settlement Declaration" (emphasis added).

This provision incorporates by explicit reference the requirements of the Claims Settlement Declaration for counterclaims. The Claims Settlement Declaration does not mention set-off explicitly. But it is clear from a comparison of Article 19, paragraph 3, of the UNCITRAL Rules with that provision as modified in the Tribunal Rules that counterclaims and claims for the purpose of set-off must meet the same jurisdictional requirements. Article 19, paragraph 3, of the UNCITRAL Rules stipulates that

> "... the Respondent may make a counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of set-off".

Because the description of the qualification of admissible counterclaims in the Claims Settlement Declaration was different from the one in the UNCITRAL Rule, this qualification was

modified accordingly. By substituting the two identical qualifications in the UNCITRAL Rules of counterclaims and claims for the purpose of set-off with the single reference to the Claims Settlement Declaration, Article 19, paragraph 3, of the Tribunal Rules makes clear that, as under the original UNCITRAL Rule, both counterclaims and claims for the purpose of set-off are governed by the same jurisdictional standards.

The Tribunal's holding in Owens-Corning Fiberglass Corporation is consistent with this rule. There it found that the Claimant was entitled under the contract to receive royalties net of taxes, and that therefore the question of set-off with taxes against the claim for unpaid royalties would arise. The set-off in that situation would amount to taking into account debts (taxes) which were to be and had been in the parties' practice withheld from payments (royalties) under the contract. As decided for other withholding taxes, the Tribunal indicated that they should be deducted from amounts awarded on the contract claim. Claims for taxes other than withholding taxes could only come under the Tribunal's jurisdiction, however, if they fulfill the requirements for counterclaims.

Even if the Tribunal did not take into account the Claimant's alleged tax arrears by deducting them from amounts awarded as contract damages, or by way of set-off against such amounts, the Ministry of Finance contends that the claim for those tax arrears is admissible as a counterclaim since it complies with the requirements of Article II, paragraph 1, of the Claims Settlement Declaration. The Ministry maintains that the counterclaim arises out of the Contracts because taxes were taken into consideration in setting the price of the contract and because of the tax reimbursement provisions on which the Claimant bases its claim for excess taxes. The General Brief elaborates on why such a tax counterclaim "arises out of the same contract ... that constitutes the subject matter of [a claimant's contract] claim", rather than out of the application of Iranian tax law. The Claimant takes the opposite view.

The Tribunal has held in a number of cases that the obligation to pay taxes other than withholding taxes specifically provided for in the parties' contract, arises from the tax laws of Iran rather than from the contract, even where the contract otherwise identifies which contractual party is responsible for the payment of taxes. It consequently has dismissed tax counterclaims other than counterclaims for such withholding taxes for lack of jurisdiction; see International Technical Products Corporation et al. and The Government of the Islamic Republic of Iran, Final Award No. 196-302-3, p. 29 (28 October 1985), and decisions cited therein. The Tribunal confirms these holdings in the present case and finds that the Ministry's tax counterclaim does not arise out of the Contracts, none of which required IACI or ISIRAN to deduct income tax from payments.

The Claimant's argument that claims to taxes for 1975 through 1978 are waived in the 1978 Settlement Agreement would only apply if taxes were sought by ISIRAN (or IACI) by way of a contractual counterclaim. Because the counterclaim of the Ministry of Finance does not arise out of the Contracts, the Settlement Agreement cannot affect this counterclaim.

In the present case this is not the end of the matter, however. In its Statement of Claim the Claimant requested the Tribunal to "[a]djudge and declare that CSC be delivered a tax clearance for all taxes due under the [1974 and 1975 Contracts]". It named the Ministry of Finance as the Respondent for this request.[12] Thus, while the Ministry's counterclaim in this case does not arise out of the same contract, it does arise out of the same transaction or occurrence as the Claimant's original claim for a tax clearance: the Claimant sought a judgment that it had paid

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[12] An additional request for a "tax clearance" for taxes due under the 1972 Contract named only IACI as a Respondent. This appears to have been in substance a request for a declaration that, under the 1972 Contract, IACI is required to bear any further taxes. See Part III.1.b)dd) above.

all taxes in connection with its income-producing activities in Iran for certain years, and the Ministry countered that view and sought unpaid back taxes in connection with those same activities.

The Claimant has since withdrawn its claim against the Ministry of Finance. In its Pre-Hearing Memorial, filed on 1 May 1985, it states that it could "obtain its requested relief with respect to excess taxes paid from IACI and ISIRAN", and that it had "determined that the tax clearance certification originally sought from the [Ministry] is unnecessary for the effective and proper resolution of the issues before this Tribunal". At the time this withdrawal was made, the Ministry had filed and supplemented its tax counterclaim.

Althouh the Claimant states that "there is no need for the Tribunal to retain jurisdiction over the Ministry of Finance", it does not argue that the counterclaim should be dismissed on this basis, nor could it. When the Claimant invoked the Tribunal's jurisdiction over the Ministry, the Ministry was entitled to file a counterclaim. "While [the] Claimant remains free to withdraw any and all of its claims for relief, such withdrawal can have no effect on the Tribunal's jurisdiction over the counterclaims, unless the Tribunal were to determine that it had no jurisdiction over the claims as originally filed"; Behring International, Inc. and Islamic Republic Iranian Air Force et al., Interim and Interlocutory Award No. ITM/ITL 52-382-3, p. 38 (21 June 1985).

In this case, however, the Tribunal lacked jurisdiction over the claim for a tax clearance certificate. Such a claim is essentially a request that this Tribunal enforce the tax laws of a sovereign state, in that what it seeks is a binding declaration of the taxes owed by the Claimant. Under Article V of the Claims Settlement Declaration, the Tribunal is bound to apply these "choice of law rules and principles of ... international law" that it finds are applicable to the case at

hand. It is a "universally accepted rule that public law cannot be extraterritorially enforced."[13] Tax laws are manifestations of jus imperii which may be exercised only within the borders of a state. In addition, revenue laws are typically enormously complex, so much so that their enforcement is frequently assigned to specialized courts or administrative agencies. For these reasons, actions to enforce tax laws are universally limited to their domestic forum. It makes little difference for present purposes whether the rule is considered one of public or private international law.[14] States may of course vary the rule by treaty, but "in view of the firmly established practice and the deeply rooted and universally accepted conviction of the international unenforceability of claims jure imperii, any qualification of the customary rule will presuppose the clearest possible expression of the international legislators' intention."[15] No such explicit expression appears in the Claims Settlement Declaration, and the Tribunal considers that it would be unwise to imply one. The Tribunal thus had no jurisdiction over the claim for a tax clearance certificate.

Since the Tribunal had no jurisdiction over the claim for a tax clearance certificate, it lacked jurisdiction over the Ministry of Finance's counterclaim based on that claim. There being no other jurisdictional basis for the counterclaim, it must be dismissed.

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[13] F. A. Mann, Conflict of Laws and Public Law, 132 Recueil des Cours 107, 166 (1971). See also Dicey & Morris on the Conflict of Laws 90 (10th ed. 1980); F.A. Mann, Prerogative Rights of Foreign States and the Conflict of Laws, 40 Transactions of the Grotius Society 25, 28 (1955); Cheshire & North's Private International Law 131-134 (10th ed. 1979); A. von Mehran & D. Trautman, The Law of Multistate Problems 797 (1965).

[14] See F.A. Mann, supra, 40 Transactions of the Grotius Society p. 29.

[15] Id. p. 32.

d) Social Security Premiums

ISIRAN makes a counterclaim for payment of social security premiums in the amount of Rials 1,324,215,653. It alleges that these premiums are due on employee salaries in connection with the Claimant's and its subsidiaries' operations in Iran. It contends that the Claimant was obligated under provisions of the 1974 and 1975 Contracts to pay such premiums. If the Tribunal did not grant ISIRAN's counterclaim, it would in fact oblige the latter to pay the premiums a second time because ISIRAN will under Article 38 of the Iranian Social Security Act be held finally responsible for paying the premiums to the Social Security Organization. In its Memorial filed before the Hearing on 21 June 1985, ISIRAN made in a more summarized manner the same arguments with respect to the admissibility of this counterclaim that the Government of Iran made with respect to tax counterclaims in its General Brief discussed in detail at III.2.c) above. In this Memorial ISIRAN also submitted for the first time details of the basis and calculation of the amount of Rials 1,324,215,653 which it now seeks; this amount is substantially higher than the Rials 725,508,634 that it sought in its Rejoinder, then based on a letter of the Social Insurance Organization to it, dated 16 January 1982. In addition to the principal amount, ISIRAN seeks Rials 259,086 daily from 21 March 1985 up to the date of payment of the principal.

The Claimant contends that this counterclaim should be dismissed for lack of jurisdiction because it does not arise out of the Contracts which are the subject matter of the Claimant's claims, because ISIRAN lacks standing to bring this counterclaim, and because it was not outstanding on 19 January 1981. In addition, the Claimant asserts that the counterclaim lacks merit for three reasons: most of it was waived in the 1978 Settlement Agreement, no credible evidence to support it has been submitted, and no damage has been alleged or proven by ISIRAN.

Examining whether it has jurisdiction over this counterclaim, the Tribunal first looks to the relevant contract provisions. The 1974 Contract states in the pertinent part of its Article III that "[t]he gross price for each Exhibit will include ... SIO premium on employees salaries". Article III e. of the 1975 Contract provides that "[p]ayments are subject to withholding for ... Social Insurance and Security Tax as set forth in Article XXI herein", and the latter provision stipulates:

> "[CSCSI] shall observe and comply with all provisions of the Social Insurance Law and Regulations with respect to [CSCSI] personnel performing services under this contract. [CSCSI] shall indemnify ISIRAN for any payments which ISIRAN may be obligated to make due to failure by [CSCSI] to observe Social Insurance Law and Regulations".

Under the 1974 Contract, CSCSI was to pay social security premiums. However, the provision requiring payment is in the nature of allocation of the economic burden to make such payment rather than of imposition of the burden itself. In the case of the 1974 Contract the asserted obligation to pay social security premiums is thus imposed by operation of the applicable Iranian social security law. Any such obligation is, as the Tribunal previously found with regard to social security premiums, a "legal relationship[ ] arising out of the application of the law to a situation in which either party individually finds itself" rather than a "contractual relationship between the parties to the contract inter se"; see Questech, Inc. and The Ministry of National Defence of the Islamic Republic of Iran, Award No. 191-59-1, p. 40 (25 Sept. 1985), and decisions cited therein.

The provisions of the 1975 Contract are ambiguous in this respect. While Article III permits ISIRAN to withhold premiums as provided for in Article XXI, Article XXI provides for no withholding, but requires CSCSI to comply with Iranian law. In view of its finding on ISIRAN's standing to bring a counterclaim for social security premiums, the Tribunal does not need to decide, however, whether these two contractual clauses are

together sufficiently clear to make such a counterclaim arise out of the 1975 Contract.

ISIRAN is quite explicit throughout its submissions in stating that it brings the counterclaim for social security premiums not on behalf of the Iranian Social Security Organization, but on its own behalf. It insists on "its [ISIRAN's] rightfulness in claiming the premiums", based on "the existence of contractual relations and joint responsibility arising from Article 38 of the Social Security Act" authorizing "ISIRAN to bring [this] counterclaim", since "the Counterclaimant [ISIRAN], in accordance with Article 38 of the Social Insurance Act, was obligated to claim such an amount and to pay it to the Social Insurance Fund" (emphases added). Article 38 of the Social Security Act, on which ISIRAN primarily relies to establish its standing, reads in pertinent part:

> "If the employer should pay the contractor's last instalment without demanding the Organisation's clearance certificate he shall be held liable for payment of the outstanding insurance premiums and penalties. He shall have the right to demand a refund from the contractor and collect the amount from him equal to the money he has paid the Organisation in this respect".

(English translation from Supplement No. 232 to The Echo of Iran, Documents, March 1976). From ISIRAN's own submissions it is clear that neither before 19 January 1981 nor until today has it paid any social security premiums.[16] ISIRAN's counterclaim for social security premiums was thus not outstanding within the meaning of Article II, paragraph 1, of the Claims Settlement

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[16] The Claimant submitted in evidence a judgment by the General Court of Tehran dated 2 October 1982, which had previously been filed by the Deputy Agent of the Islamic Republic of Iran in other cases pending before the Tribunal, and which held that "claims for insurance premiums, damages for delayed payment of Social Security Premiums and non-transmittal of insurance lists ... may be set forth upon actual payment of the amounts involved". Consequently, such claims were dismissed because actual payment had not been made.

Declaration, and the Tribunal therefore lacks jurisdiction over it.

In view of this finding the Tribunal does not need to decide on the admissibility of the increase in the amount sought under this counterclaim.

3. Costs

The Claimant seeks reimbursement for $299,936.82 in attorneys' fees and $48,013.27 in disbursements, plus interest thereon. These amounts include $35,170 in attorneys' fees and $5,880.90 in disbursements expended for litigation in the United States "prior to the suspension of litigation in the United States and the establishment of the Tribunal in the Hague".

As it has previously done, the Tribunal determines that the costs incurred by the Claimant in the litigation in the United States do not come within the application of Article 38 of the Tribunal Rules. Having regard to criteria of the kind outlined in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1, pp. 35-38 (27 June 1985), and taking into account the result of the Interlocutory Award rendered in this case as well as the factual and legal issues of this case, the Tribunal determines that $40,000 is a reasonable amount of the Claimant's costs to be paid by the Respondents.

IV. Award

For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

The Respondent INFORMATION SYSTEMS IRAN is obligated to pay the Claimant COMPUTER SCIENCES CORPORATION the sum of Ten Million Nine Hundred and Seventy One Thousand Nine Hundred and Fifty

Three United States Dollars (U.S. $10,971,953), representing $9,711,533 in principal awarded plus $1,260,420 in simple interest on that principal up to and including 31 December 1979. The Respondent INFORMATION SYSTEMS IRAN is further obligated to pay the Claimant COMPUTER SCIENCES CORPORATION simple interest at the rate of 11.5 percent per year (365-day basis) on $9,711,533 from 1 January 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

The Respondent IRAN AIRCRAFT INDUSTRIES is obligated to pay the Claimant COMPUTER SCIENCES CORPORATION the sum of Seven Hundred Twelve Thousand Three Hundred and Two United States Dollars (U.S. $712,302), representing $555,704 in principal awarded plus $156,598 in simple interest on that principal up to and including 31 December 1979. The Respondent IRAN AIRCRAFT INDUSTRIES is further obligated to pay the Claimant COMPUTER SCIENCES CORPORATION simple interest at the rate of 11.5 percent per year (365-day basis) on $555,704 from 1 January 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

The Respondent BANK MELLAT is obligated to pay the Claimant COMPUTER SCIENCES CORPORATION the sum of One Hundred Forty Two Thousand Five Hundred and Sixteen United States Dollars (U.S. $142,516), representing $131,037 in principal awarded plus $11,479 in simple interest on that principal up to and including 31 December 1979. The Respondent BANK MELLAT is further obligated to pay the Claimant COMPUTER SCIENCES CORPORATION simple interest at the rate of 11.5 percent per year (365-day basis) on $131,037 from 1 January 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

The Respondent BANK TEJARAT is obligated to pay the Claimant COMPUTER SCIENCES CORPORATION the sum of One Thousand and Seventy Seven United States Dollars (U.S. $1,077), representing

$990 in principal awarded plus $87 in simple interest on that principal up to and including 31 December 1979. The Respondent BANK TEJARAT is further obligated to pay the Claimant COMPUTER SCIENCES CORPORATION simple interest at the rate of 11.5 percent per year (365-day basis) on $990 from 1 January 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

The Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay the Claimant COMPUTER SCIENCES CORPORATION the sum of Twenty Six Thousand Five Hundred and Thirty Four United States Dollars (U.S. $26,534), representing $24,397 in principal awarded plus $2,137 in simple interest on that principal up to and including 31 December 1979. The Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is further obligated to pay the Claimant COMPUTER SCIENCES CORPORATION simple interest at the rate of 11.5 percent per year (365-day basis) on $24,397 from 1 January 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

The Respondents INFORMATION SYSTEMS IRAN, IRAN AIRCRAFT INDUSTRIES, BANK MELLAT, BANK TEJARAT and THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN are obligated to pay the Claimant COMPUTER SCIENCES CORPORATION costs of arbitration in the amount of $40,000.

These obligations shall be satisfied by payment 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.

The remaining claims and the counterclaims are dismissed.

This Award is hereby submitted to the President of the Tribunal

for notification to the Escrow Agent.

Dated, The Hague,
16 April 1986

Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God

Mohsen Mostafavi
Dissenting in part, concurring in part

Howard M. Holtzmann
I join fully in the Award, except that as to the award of only $40,000 in costs I join only in order to form a majority. See my Separate Opinion in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985).