IRAN-UNITED STATES CLAIMS TRIBUNAL

[redacted]

دیوان داوری دعاوی ایران

68-233

DUPLICATE ORIGINAL

«نسخه برابر اصل»

CASE NO. 68 233

CHAMBER TWO

AWARD NO. 244 -68-2

IRAN UNITED STATES CLAIMS TRIBUNAL

دادگاه داوری دعاوی ایران ـ ایالات متحده

FILED - ثبت شد

Date 8 AUG 1986 تاریخ

۱۳۶۵/۵/۱۷

No. 68 شماره

HOWARD NEEDLES TAMMEN & BERGENDOFF,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, MINISTRY OF ROADS AND TRANSPORTATION, and BANK TEJARAT (successor to International Bank of Iran and Japan),
Respondents.

AWARD

Appearances

For Claimant:

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Ms. Florence R. Keenan
Ms. Agnes Tabah
Attorneys
Mr. William Wachter
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For Respondents:

Mr. Mohammed K. Eshragh
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Mr. Ali Asghar Assari
Representatives of
Ministry of Roads
Mr. Saied Niazi
Representative of
Bank Tejarat
Mr. Hassan Shikhol Eslami
Representative of
Social Security
Organization

Also Present:

Mr. John Crook
Agent of the United
States of America
Mr. David Balton
Adviser to the Agent

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I. THE PROCEEDINGS

1. The Claimant HOWARD NEEDLES TAMMEN & BERGENDOFF ("HNTB"), a Missouri, U.S.A. partnership, filed a Statement of Claim on 17 November 1981 against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran"), the MINISTRY OF ROADS AND TRANSPORTATION ("MORT") and the INTERNATIONAL BANK OF IRAN AND JAPAN ("International Bank" or "Bank Tejarat") (collectively, the "Respondents"). The Claim sought (1) payments allegedly owed by MORT under a July 1976 consulting engineering contract (the "Contract") with Howard Needles Tammen & Bergendoff-Iran Limited Liability Company ("HNTB-Iran"), an Iranian corporation purportedly controlled by HNTB, (2) recovery of monies deposited by HNTB-Iran with the International Bank, and (3) compensation for the alleged expropriation of certain of HNTB-Iran's assets.

2. Pleadings in defense were filed by Bank Tejarat and MORT. Bank Tejarat interposed a counterclaim against HNTB, the Government of the United States of America, and the First National Bank of Chicago ("FNBC"). MORT filed several counterclaims against HNTB alone.

3. By Order dated 23 March 1982, Chamber Two relinquished jurisdiction over the Case to the Full Tribunal for the limited purpose of deciding whether the forum selection clause contained in Article 21 of the Contract excluded those claims arising out of the Contract from the Tribunal's jurisdiction by virtue of Article II, paragraph 1, of the Claims Settlement Declaration. In Interlocutory Award No. ITL 3-68-FT (5 Nov. 1982), the Full Tribunal held that Article 21 of the Contract did not fall within the scope of the Claims Settlement Declaration's forum clause exclusion. The Full Tribunal then referred the Case back to Chamber Two for further proceedings. This Award does not discuss issues decided in the Interlocutory Award.

4. In response to the counterclaim of Bank Tejarat, FNBC and the United States of America filed replies objecting to the assertion of counterclaims against third parties. By Order dated 2 June 1983, the Tribunal confirmed to FNBC, in response to a request, "that as the Bank did not present itself as a Claimant in the above mentioned case, the Tribunal does not consider it as such." Similarly, the United States is not a party in this Case.

5. By submission filed on 10 February 1986, the Claimant withdrew its expropriation claim and its claim for bank deposits. The Respondents indicated no objection to such withdrawals. As a result, only the claims arising under the Contract, and all counterclaims against the Claimant, remain before the Tribunal.

6. A Hearing was held on 3 March 1986.

7. Two procedural issues were raised at the Hearing. The first involves the admissibility of a volume of documentary evidence submitted by the Claimant at the Hearing relating to a claim for demobilization expenses. The second issue involves the admissibility of a rebuttal Memorial relating to a counterclaim, also submitted by the Claimant at the Hearing.

8. These late filings both arose out of the Tribunal's 3 December 1985 Order advising the Parties that no filings in advance of the Hearing would be permitted without leave. Both Parties thereupon requested permission to file certain materials and the Tribunal granted these requests, except it instructed the Claimant to submit a copy of its proposed demobilization expense documentation at the Hearing, after which the Tribunal would rule on its admissibility.

9. The rebuttal Memorial at issue contains no new evidence and is merely a summary response to materials MORT filed in support of its counterclaims, with the Tribunal's permission, on 10 February 1986. As the Claimant's submission is nothing more than written argumentation that the Claimant could have presented orally at the Hearing, the Tribunal decides to admit it.

10. The demobilization expense documentation, which the Claimant in its request had proposed to submit on 17 February 1986, i.e., less than two weeks before the Hearing, comprises a voluminous set of invoices and payment orders that had previously been submitted in evidence in the form of representative samples. Because this evidence is duplicative in part, and because the Respondents were afforded the opportunity to submit new material prior to the Hearing without restriction, the Tribunal decides to take note of the submission.

II. FACTS

A. Background

11. The Claimant HNTB is a consulting engineering partnership. In late 1975, MORT selected HNTB as its representative to supervise the design and construction of a six-lane motorway in Iran from Qom to Bandar Shahpur. HNTB sought an Iranian partner for the project and, in March 1976, the partners of HNTB established a joint venture with Parsconsult Company Limited, an Iranian company, in the form of an Iranian limited liability company, HNTB-Iran. The initial shareholders of HNTB-Iran consisted of fifteen "Group A Partners" and two "Group B Partners." The Group A Partners all were partners of HNTB; the Group B Partners represented Parsconsult. Collectively, the Group A Partners held 60 percent of the shares of HNTB-Iran, while the Group B Partners held the remaining 40 percent.

B. The Contract

12. On 28 July 1976, HNTB-Iran and MORT concluded the Contract, titled "Bandar Shahpur Motorway, Contract for Consulting Engineering Services". Pursuant to the Contract's terms, HNTB-Iran was to supervise and to control the design and construction of the motorway by other contractors. HNTB-Iran's duties encompassed five stages: (Stage I) project management, including cost control and quality control; (Stage II) management of design; (Stage III) procurement management; (Stage IV) management of construction mobilization; and (Stage V) construction management, including consulting engineering and inspection work. The project management stage was to be performed concurrently with the other, successive stages of HNTB's consulting engineering services. Stages II through V were to commence with the effective dates of agreements with contractors to perform the relevant work; each stage was to be completed within 90 days of the completion of that stage by the contractors.

13. As compensation for its services, HNTB-Iran was to be paid a monthly fee, 50 percent in Iranian rials and 50 percent in U.S. dollars. Article 11 provided that the fee was to comprise four elements, as follows:

1. The actual salaries paid to all employees of Consulting Engineer, plus;

2. An amount equal to the salaries paid above to cover the living allowances and mobilization costs of employees, plus;

3. An amount equal to 167% of the salaries paid above to cover general expenses and overhead.

4. High supervision including a) a fixed fee of $37,000 per month during the construction planning period (stage II), and b) increased to a fixed fee of $198,000 per month during the procurement, mobilization or construction contracts, (stages III, IV, V).

Thus, HNTB-Iran was to be reimbursed for actual salaries, plus a 267 percent multiplier, in addition to its fixed monthly high supervision fee.

14. Ten percent of the total estimated fee was to be paid to HNTB-Iran as an advance payment against a bank guarantee. Payments by MORT were due within 30 days of MORT's receipt of an invoice by HNTB; late payments were subject to a charge of 6 percent per annum.

15. All payments made to HNTB-Iran were subject to a 10 percent good performance retention, which percentage was to be reduced as the project progressed and released upon HNTB-Iran's submission of its final report. The Contract permitted HNTB-Iran to substitute a bank guarantee for accumulated retentions. HNTB-Iran eventually did so, obtaining in May 1978 a letter of guarantee (No. 78/1319) with the International Bank in the amount of 21 million rials. The guarantee was, in turn, secured by a standby letter of credit (No. GT6320F) issued by FNBC in favor of the International Bank.

16. MORT also retained 5.5 percent for taxes[1] and an additional 10 percent as an offset against the advance payment.

17. HNTB's standard of performance was specified in Article 15:

> The Consulting Engineer shall carry out the requirements of the Contract by using the best procedures and current technical principles and using prevailing professional standards and expertise.

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[1]Article 13(2) of the Contract provided for deductions of taxes and charges as required by law, but did not specify a percentage.

> The Consulting Engineer shall use the utmost skill, care and endeavor in fulfilling the requirements of this Contract.

In the event of defective performance by HNTB, the Contract required MORT to give notice to HNTB and an opportunity to cure defects and shortcomings "within a reasonable time not exceeding one and one-half (1½) months." If the necessary corrective actions were not taken within such period, the Contract gave MORT the right to cancel upon 15 days written notice. In the event of such cancellation, MORT was obligated to pay HNTB-Iran 95 percent of the value of services performed up to the date of cancellation, after deducting prior payments and reasonable damages.

18. The Contract was drafted in both Farsi and English, and provided that only the Farsi text would be authentic and valid. The Contract also provided that it would be governed by the legislation of the Imperial Government of Iran.

19. The Contract became effective on 20 November 1976 upon HNTB-Iran's receipt of an advance payment. Apparently, two advance payments were ultimately made, in the amounts of 99 million rials and 27 million rials. HNTB-Iran secured the first advance payment with a second May 1978 letter of guarantee (No. 78/1318) by the International Bank for 99 million rials, and FNBC issued a corresponding standby letter of credit (No. GT6120F). Whether earlier guarantees were obtained and whether the 27 million rial advance payment was secured are not evident from the record before the Tribunal.

20. Concurrent with its execution of the Contract, MORT executed contracts with a consortium of engineering concerns to design and implement the motorway project (the "Consortium"). Under the terms of the Contract, HNTB-Iran was to act as MORT's on-site representative with the

Consortium, while the Consortium was responsible for the actual design, procurement, mobilization, and construction of the motorway.

C. Progress on the Works

21. On 28 July 1976, the same date on which the Contract was signed, MORT and the Consortium executed a Contract for Engineering Services for Sections A (Qom--Arak) and C (Andimeshek--Bandar-e-Shapur) of the motorway. This Contract became effective on 21 December 1976 and covered preliminary studies and design services. Section B was handled by other consulting engineers and contractors and was not encompassed by the Contract. To supervise this work (Stages I and II under the Contract), the first of HNTB-Iran's expatriate staff arrived in Iran on 25 November 1976. By January 1977, HNTB-Iran had a staff of 24 in Iran working on the project.

22. On 4 June 1977, the Consortium and MORT concluded a Contract for Mobilization and Construction Service for Sections A and C. On the same date, these parties executed an Agreement for Procurement Services relating to the same sections of the project. These two contracts, however, were effective only upon funding, which did not occur until nine months later on 2 March 1978.

23. In October 1977, an agreement in principle was reached to add a new Section D (Ahwaz--Khorramshahr) to the motorway. Contract addenda to that effect were executed on 19 November 1977 thereby necessitating additional work for all project stages.

24. By 21 March 1978, Stage II work on Sections A and C was roughly 75 percent complete. Section D work as well as work on Stages III and IV was only beginning. At this point in the project, HNTB-Iran's staff totalled 41.

25. With the entry into effect of the Procurement and Mobilization Contracts on 2 March 1978, the pace of work accelerated. By the end of July 1978, work on Stage II was nearly complete for sections A and C. All preliminary studies had been completed and approved on 11 June 1978 (Phase I of Stage II); only the construction drawings and specifications remained to be completed (Phase II). HNTB-Iran's staff then totalled 97.

26. By 22 September 1978, actual procurement commenced with the issuance of purchase orders for equipment from overseas. HNTB-Iran's monthly progress report, submitted on 28 November 1978 and covering the month ending 23 October 1978, shows a total staff of 138 and progress on the total works as follows:

Project Management	(Stage I)	33%
Design and Planning	(Stage II)	97%[2]; 67%[3]
Procurement	(Stage III)	35%
Mobilization	(Stage IV)	50%
Construction	(Stage V)	--

27. Until the fall of 1978, MORT essentially paid in full all of HNTB-Iran's invoices. With respect to HNTB-Iran's first thirty-four invoices, aggregating over 400 million rials, MORT failed to pay only 114 rials. During this period, the Parties had renegotiated part of the payment formula and agreed not to apply the 100 percent multiplier for living allowances and mobilization costs to services rendered by personnel in the United States.

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[2]Sections A and C.

[3]Section D.

D. Reassessment and Winding Down

28. In September 1978, MORT began a review and reassessment of the motorway project. By letter dated 21 October 1978, MORT instructed HNTB-Iran to avoid recruitment and mobilization of additional personnel, both Iranian and expatriate. HNTB-Iran implemented that instruction by delaying the transfer to Iran of twelve of fourteen individuals then being mobilized. The remaining two were already enroute to Iran. On 4 November 1978, MORT instructed HNTB-Iran to take steps to reduce the Consortium's staff and activity under their mobilization contract by 70 percent. During November, HNTB-Iran terminated 45 of its then 122 employees. By letter dated 2 December 1978, MORT advised HNTB-Iran that no construction contract would be executed. HNTB-Iran terminated an additional 26 employees in December 1978.

29. During this period, MORT began to withhold payments to HNTB-Iran. Beginning with Invoice No. 35, dated 17 October 1978, MORT made only partial payments on certain invoices. These partial payments took several forms. In some instances, MORT's Highway Project Office expressly disapproved certain amounts such as multipliers on overtime salaries. In other instances, MORT's Highway Office approved an invoice amount but did not authorize full payment. Finally, MORT's Financial Office failed to pay in full certain amounts its Highway Office had approved and authorized.

30. At approximately the same time, HNTB-Iran began to evacuate its remaining expatriate staff in response to revolutionary conditions prevailing in Iran. These evacuations occurred in January and February 1979. A small staff of Iranian employees, headed by Mr. Alex Amini, remained in Iran. All expatriate employees returned home, with the exception of three members of HNTB-Iran's

expatriate high supervision staff. These three, William Wachter, Jack Thompson, and Robert Smithem, initially went to Greece to continue operations under the Contract. By letter dated 22 January 1979, HNTB-Iran notified MORT that:

> [P]resent conditions in Iran have deteriorated to the point where our expatriate employees cannot safely continue to reside in Iran. We therefore will evacuate them from Iran until such time as it is safe for them to return, and expect to accomplish this evacuation by January [illegible], 1979. This action is being taken under ARTICLE 20, FORCE MAJEURE of Contract No. 8507/2-4.[4]
>
> During this period, our work will be competently supervised by Mr. Amini of our High Supervision Staff. He will be in contact with members of our expatriate staff and we will continue to carry out our responsibilities under Contract No. 8507/2-4 to the fullest extent possible under the circumstances as they exist.

31. The high supervision personnel who temporarily resided in Greece eventually returned to the United States. According to their affidavits, Mr. Smithem returned in March 1979, while Mr. Thompson returned in May 1979. Mr. Wachter testified that he returned in August 1979.

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[4]Article 20 provides as follows:

> In cases of force majeure, where the performance of the present Contract becomes impossible for either of the Parties, the party concerned can declare the termination of the Contract to the other party. In such event, the Consulting Engineer shall, within one (1) month after such declaration of termination of the Contract, submit to the Employer a bill listing the amounts that are to be paid to him by the Employer, and the latter will, within thirty (30) calendar days after the receipt of the said bill consider and pay all the payable amounts to the Consulting Engineer.

32. The Claimant contends that it continued work on Phase II of Stage II throughout 1979 and early 1980. Phase II included the review and approval of the Consortium's preparation of design and construction drawings, technical calculations, specifications, and an estimate of the cost of construction. HNTB delivered the construction drawings, reports and final plans for the motorway to MORT in Tehran in February 1980.

33. The Consortium's Mobilization Contract expired on 1 April 1979; its Procurement Contract apparently was terminated in March 1980. With respect to Stages III and IV, it appears that, sometime prior to 2 March 1980, MORT instructed HNTB-Iran to terminate the services of the remainder of its employees by early April 1980.[5]

34. HNTB-Iran submitted its final invoice to MORT on 10 March 1980.

III. JURISDICTION

A. The Claims

35. The Claimant's remaining claims, which are all based on the Contract, comprise four elements. First, the Claimant seeks fees for services rendered under the Contract. This services claim comprises both amounts invoiced

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[5] A 2 March 1980 memorandum from Mr. Daneshgar, MORT's Director of Highway Projects, to Mr. Amri, MORT's Deputy of Financial Affairs, transmitting for payment HNTB-Iran's Invoice No. 65 for services accomplished in Bahman 1358 (Jan.-Feb. 1980), notes that "we have instructed the consulting engineers to proceed with the termination of their employees so they shall have no employees on the second half of the month Favardin 1358 . . .". As Favardin (corresponding to March-April) is the first month of the new year, it thus appears that the reference to Favardin 1358 should be Favardin 1359, or April 1980.

but unpaid and amounts not invoiced but allegedly due. Second, the Claimant requests restitution of accumulated good performance retentions. Third, the Claimant seeks restitution of amounts it expended to provide facilities which the Contract required the Respondents to provide. Fourth, the Claimant claims demobilization expenses incurred in connection with the Contract's termination.

36. It is not disputed that these claims all arise out of a contract and were outstanding on 19 January 1981. All claims relate to the contractual relationship between the Parties, which relationship was concluded in early 1980. It also is not disputed that MORT is an entity controlled by Iran. Finally, the Tribunal is satisfied that HNTB is a partnership organized and existing under the laws of the State of Missouri at all relevant times and that its partners were all United States nationals from the date the claims arose through 19 January 1981. This too is not contested. The claims thus fall within the scope of the Tribunal's jurisdiction, as defined in Article II, paragraph 1, of the Claims Settlement Declaration.

37. The Respondents, however, contest HNTB's standing to raise claims on behalf of HNTB-Iran. First, the Respondents argue that the Tribunal lacks jurisdiction over claims owned by Iranian companies. Second, the Respondents contend that HNTB neither has any ownership interest in, nor control over, HNTB-Iran.

38. Article VII, paragraph 2, of the Claims Settlement Declaration defines "claims of nationals" within its jurisdiction as including:

> claims that are owned indirectly by [United States or Iranian] nationals 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 under the terms of this Agreement.

The Tribunal has held in numerous cases that it has jurisdiction over indirect claims by controlling U.S. shareholders in third-country corporations. As Article VII, paragraph 2, does not distinguish between Iranian and third-country corporations in defining the scope of the Tribunal's jurisdiction over indirect claims, the Tribunal finds the Respondents' first contention to be without merit. Accord Blount Brothers Corp. and Government of the Islamic Republic of Iran, Award No. 215-52-1, p. 9 (6 Mar. 1986); International Technical Products Corp. and Government of the Islamic Republic of Iran, Award No. 196-302-3, pp. 35-39 (28 Oct. 1985).

39. As to the Respondents' second contention, the evidence indicates that the individual partners of HNTB who purchased shares of HNTB-Iran did so with funds provided by the HNTB partnership and that they held such shares as nominees for HNTB. The individual statements of ownership prepared at the time the capital contributions were made each record that "all consideration for the investment" was furnished by HNTB, that HNTB "is the true equitable owner of such interest" and that the individual shareholder "is holding legal title for and on behalf of" HNTB. Moreover, an accountant's audit of HNTB's investment in HNTB-Iran confirms that these capital contributions were made through a cashier's check issued by the HNTB partnership. The evidence also indicates that HNTB partners have continued to hold these shares, as departing shareholders have transferred their shares to new or remaining HNTB partners.

40. That HNTB controlled HNTB-Iran at the time the claim arose is manifest not only by its 60 percent equity interest, but also from HNTB-Iran's Articles of Association and the partnership agreement executed by the HNTB and

Parsconsult partners. These documents provide that HNTB-Iran was to be directed by an elected three-member executive committee, two of whose members, including the chairman, were required to be Group A (i.e., HNTB) Partners.

41. In these circumstances, the Tribunal holds that HNTB has standing to maintain an indirect claim against MORT on the Contract by virtue of its ownership interest in and control of HNTB-Iran. Under United States law, which governs the relationship of the individual HNTB partners to their partnership, property acquired with partnership funds is partnership property, unless the contrary intention appears. Uniform Partnership Act, Section 8(2). See also 60 Am. Jur. 2d Partnership §92 (1972). Here, the U.S. partners expressly intended that HNTB would own the shares in HNTB-Iran. Even if this ownership interest is regarded as only a beneficial interest, the Tribunal has recognized the standing of beneficial owners of a claim to assert that claim before the Tribunal when the legal owners are mere nominees. See, e.g., International Technical Products Corp., supra, p. 39.

42. The question remains whether HNTB, as an indirect claimant, is entitled to recover 100 percent of the claim of HNTB-Iran, or whether its recovery is limited in proportion to its interest in HNTB-Iran. The Claimant advances two alternative arguments in this connection. The Claimant first contends that, under the Claims Settlement Declaration, it is entitled to bring the claim of HNTB-Iran, which is not divisible, and that they should therefore recover 100 percent. Alternatively, the Claimant argues that, should the Tribunal adopt a proportionate recovery theory, the Claimant's recovery should not be limited strictly to its ownership interest as reflected in its share of the company's capital stock. Rather, the Claimant urges, the Tribunal should adopt a more flexible "proprietary interest" approach, granting recovery based proportionately upon the

Claimant's overall investment in the company, including debt and other investments as well as equity.

43. In Richard D. Harza et al. and The Islamic Republic of Iran et al., Awd. No. 232-97-2 (2 May 1986), para. 32, the Tribunal held that:

> On balance . . . at least where the Claimants have not proved that they are legally obligated to pay over any recovery they may receive to the corporation, the most prudent decision the Tribunal can take is that . . . their recovery should be limited to the percentage of [the foreign entity] owned by U.S. nationals during the period from the date the claims arose until 19 January 1981 and owned by or assigned to the Claimant for purposes of this proceeding . . . The fact that the Tribunal cannot compel sharing of awarded amounts with the Corporation or the other shareholders is the decisive consideration compelling this conclusion.

In the instant case, the Claimant has not offered any such evidence. Rather, the Claimant has offered to accept the award in trust for HNTB-Iran's shareholders, including its two Iranian Group B shareholders. However, the Respondents have submitted a September 1982 certified statement from these individuals in which they "[a]dmit, acknowledge and declare that the said company (H.N.T.B. Iran) has no demand or claim whatsoever against the Ministry of Roads and Transportation. Any claim under any title is, in our opinion, to be rejected and cannot be entertained." In the circumstances of this Case, involving an indirect claim on behalf of an Iranian corporation whose non-U.S. shareholders have apparently waived or released their claims against the Respondent, the Tribunal determines that a recovery of the full claim of the corporation is not warranted.

44. As to the percentage to which the Claimant is entitled, the Tribunal rejects Claimant's "proprietary interest" test and rules that they are entitled to recover on their claim only in proportion to their ownership

interest in HNTB-Iran, i.e., 60 percent. Claimant's proprietary interest test, which seeks recovery based not only on its equity interest in HNTB-Iran but also based on debts owed it by HNTB-Iran, ignores the distinction between debt and equity and the differences in the rights accorded to holders of each. As already noted, the Tribunal's jurisdiction over indirect claims is defined in terms of "ownership of capital stock or other proprietary interests". Creditors of a non-bankrupt corporation have no ownership or property interest in that corporation, and the debts owed them by the corporation do not affect their recovery on unrelated claims. The Claimant does not claim here directly for debts owed it by HNTB-Iran; it follows that the Claimant cannot then recover on such debts indirectly.

B. Bank Tejarat's Counterclaim

45. Bank Tejarat's counterclaim alleges that the United States Government, FNBC, and HNTB are jointly liable for losses allegedly suffered due to FNBC's refusal to honor Bank Tejarat's demand for payment pursuant to two letters of credit issued by FNBC with HNTB-Iran as the account party. As noted above, these letters of credit, Nos. GT6120F and GT6320F, secured, respectively, the bank guarantees for advance payments and good performance retentions provided by the International Bank. The former was initially issued for the amount of 99,000,000 rials and later was reduced to 68,011,956 rials; the latter stood at 21,000,000 rials. For the reasons discussed below, the Tribunal dismisses the counterclaim for lack of jurisdiction as against all named counter-respondents.

46. First, none of the named counter-respondents are proper parties to the Counterclaim. As to the United States Government and FNBC, counterclaims may properly be filed only against claimants, not third parties. Harza, supra at para. 84; R. N. Pomeroy et al. and Government of the Islamic

Republic of Iran, Awd. No. 50-40-3 (8 June 1983), p. 13. With respect to HNTB, neither HNTB nor HNTB-Iran are parties to the letters of credit; thus, neither is liable thereunder. The sole obligor vis-à-vis the beneficiary, i.e., the International Bank, is the issuing bank, i.e., FNBC. Thus, neither HNTB nor HNTB-Iran are proper parties to a claim based on the letter of credit.

47. Second, the Counterclaim does not "arise[] out of the same contract, transaction or occurrence that constitutes the subject matter" of any claim, as required by Article II, paragraph 1, of the Claims Settlement Declaration. As the Tribunal noted in International Technical Products Corp. et al. and Government of the Islamic Republic of Iran, Award No. 186-302-3 (19 Aug. 1985), pp. 39-40:

> Letters of credit and bank guarantees are autonomous obligations independent of the underlying obligations to which they are ancillary. See Harza Engineering Co. and Islamic Republic of Iran, Award No. 19-98-2 at 14 (30 Dec. 1982). Thus, the obligations of the banks vis-a-vis one another are distinct and independent from the obligations of the parties to the underlying transaction vis-a-vis one another.
>
> Where, as in this case, Claimants' claim relates solely to the obligations of the Parties on the underlying obligations, a counterclaim relating to the documentary credits and the obligation of the parties thereto does not arise out of the same contract, transaction or occurrence as the claim . . . .

48. Finally, the Counterclaim was not outstanding as of 19 January 1981, the date of the Claims Settlement Declaration, as required by Article II, paragraph 1, of that Declaration. The evidence submitted by Bank Tejarat indicates that it did not demand payment of the letters of credit at issue until 30 December 1981. Thus, the wrong complained of -- FNBC's refusal to honor the demand for

payment -- did not occur before 19 January 1981, as jurisdictionally required.

C. MORT Counterclaims

49. As more fully discussed in Section IV.B of this Award, the counterclaims raised by MORT fall into three general categories: (1) letters of guarantee; (2) defective performance under the Contract; and (3) taxes and social security premiums.

1. Letters of Guarantee

50. MORT's first counterclaim seeks the amount of two letters of guarantee which HNTB-Iran obtained from its Agent Bank and submitted to the Ministry of Roads & Transportation and failed to extend. MORT predicates HNTB-Iran's liability on its "causing" the expiration of these letters of guarantee. It seeks damages in the amount of 89,011,956 rials.

51. The two guarantees referred to are Bank Guarantee Nos. 78-1318 and 78-1319, provided by the International Bank and corresponding to the standby letters of credit upon which Bank Tejarat's counterclaim is based. By their terms, these guarantees expired on 31 May 1980 and were "subject to extension on request of the employer [MORT]."

52. Claimant objects to the Tribunal's jurisdiction over this counterclaim, arguing that HNTB-Iran was not a party to the bank guarantees and that the counterclaim does not arise out of the same subject matter as any of the claims.

53. The Tribunal, however, determines that it has jurisdiction over this counterclaim. Read broadly, the counterclaim alleges a breach by HNTB-Iran of its obligation

under the Contract to maintain certain bank guarantees. As such, it arises under the Contract, the subject matter of the Claim.

54. A second counterclaim alleges that HNTB-Iran bears responsibility for the non-extension of seven additional guarantees obtained by the Consortium. These guarantees comprise seven surety bonds obtained by members of the Consortium with various banks and insurance companies in the United States and France. All have expiration dates of either 1 March 1979 or 1 May 1979 and were extendable at MORT's request. Neither HNTB nor HNTB-Iran was a party to these bonds.

55. MORT has failed to articulate a legal theory linking the Claimant or HNTB-Iran to the surety bonds. Moreover, MORT has failed to introduce any evidence in connection with this counterclaim which would suggest that HNTB-Iran violated its obligations under the Contract or is otherwise responsible for the alleged failure of the Consortium and its sureties to renew their surety bonds. MORT thus has failed to demonstrate a basis upon which the Tribunal's jurisdiction can be founded. Accordingly, it must be dismissed.

2. Defective Contractual Performance

56. MORT's second set of counterclaims, as amplified by several "technical reports" submitted as evidence, allege various defects in HNTB-Iran's performance under all stages of the Contract. These counterclaims clearly arise under the Contract, which forms the subject matter of the claim, and are thus within the Tribunal's jurisdiction.

3. Taxes and Social Insurance Premiums

57. MORT's final counterclaim alleges in broad terms a contractual responsibility on the part of HNTB-Iran "to pay taxes, insurance and other legal deductions and make settlement at the end of the works." MORT clarifies this counterclaim in its Rejoinder to include a claim for taxes of 9,264,450 rials and social insurance premiums of 155,098,209 rials.

58. With respect to counterclaims for tax and social insurance premiums (other than withholding taxes specified in a contract or applied by the Parties in practice), interposed in response to a contract-based claim, the Tribunal has held that such counterclaims do not fall within the Tribunal's jurisdiction. The Tribunal has decided that such counterclaims arise by operation of the relevant tax and social insurance laws and not out of the contract, as required by Article II, paragraph 1, of the Claims Settlement Declaration. See, e.g., T.C.S.B., Inc. and Iran, Award No. 114-140-2, p. 24 (16 Mar. 1984) (income tax and social insurance contributions); Sylvania Technical Systems, Inc., Award No. 180-64-1, pp. 40-41 (27 June 1985) (social insurance contributions); International Technical Products Corp., supra at p. 29 (social insurance premiums and education taxes); Questech, Inc. and Ministry of National Defence, Award No. 191-59-1, pp. 37-40 (25 Sept. 1985) (income taxes, municipal taxes and social insurance premiums); General Dynamics Telephone Systems Center, Inc. and Islamic Republic of Iran, Award No. 192-285-2, p. 25 (4 Oct. 1985) (taxes). See also Behring Int'l, Inc. and Islamic Republic Iranian Air Force et al., Interim and Interlocutory Award No. 52-382-3, p. 43 (21 June 1985) ("For a counterclaim to 'arise out of' a contract, it must allege a breach of an obligation created by that contract").

59. The Tribunal notes that the Respondents have submitted a detailed Memorial concerning the Tribunal's jurisdiction over social insurance premiums. The Tribunal has also examined the general tax Memorial submitted by Iran. None of the arguments contained in these Memorials, however, compels a conclusion contrary to the holding in the cases cited above.

60. A distinction must be made between expropriation claims and contract claims. In the case of expropriation, a claimant's recovery is limited to the value of the property taken. In determining this value, the Tribunal will consider all encumbrances on the property, including outstanding taxes as well as other liabilities. In this context, outstanding taxes are not considered as counterclaims; thus, no jurisdictional issue is presented. In the case of a claim for breach of contract, on the other hand, recovery is limited to the damages caused by that breach. The general financial condition of the claimant, including any tax and social insurance liabilities, is not relevant to this determination and is not affected by it. In this context, outstanding tax, social security, and other obligations of the Claimant can only be addressed as counterclaims, thereby raising jurisdictional issues.

61. In its recent Award in the Case of Computer Sciences Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 221-65-1 (16 April 1986), Chamber One of this Tribunal considered the arguments set forth in Iran's general tax Memorial and dealt with them at some length. That Award explicitly followed this Chamber's decision in T.C.S.B., Inc., supra, and that of Chamber Three in International Technical Products Corporation, supra, to the effect that counterclaims for taxes arise out of the application of Iranian tax law, not out of the contract that was the subject of the claim. Chamber One further held that claims can "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." Chamber One also stated that tax laws "cannot be extraterritorially enforced", that "actions to enforce tax laws are universally limited to their domestic forum, and that the terms of the Claims Settlement Declaration contain no qualification of that customary rule". We agree fully with those holdings by Chamber One.

62. With respect to social security dues, the Islamic Republic of Iran argues that they are different from taxes in various ways and, in particular, that any principle of non-enforceability of revenue laws should not be applied to them, because social insurance laws have a limited purpose for the protection of workers and are not general revenue laws. The Islamic Republic of Iran also asserts that, pursuant to Iranian law, the individual Iranian Respondents, such as MORT in the present Case, have a residual liability to pay unpaid Social Security dues owed by their contractors and therefore would be required to make double payments if any award by this Tribunal does not contain a deduction of amounts they will be required to pay to the Social Security Organization. This latter argument appears to suggest that this liability of MORT should be taken into account in determining the amount of MORT's debt to the Claimant pursuant to the Contract. The Tribunal notes, however, that any such liability of MORT to the Iranian Social Security Organization, like the liability of the Claimant to the Social Security Organization, arises out of Iranian law, not out of the Contract. The relevant provision of the Contract simply makes clear that the Claimant is entitled to no increase in fees because of taxes, customs duties, social security dues, or other relevant government dues and that MORT will make such deductions from payments to the Claimant as are required by laws and regulations. It is the laws that create and define any obligation. The practice of the Parties was only to deduct a certain percentage from each

invoice. In these circumstances, the social security counterclaim is not within the jurisdiction of the Tribunal. Therefore, the Tribunal need not decide the non-enforceability question noted above with respect to social security dues.

63. The Tribunal therefore dismisses the tax and social security counterclaims for lack of jurisdiction.

IV. REASONS FOR AWARD

A. The Claims

1. Fees for Services Rendered

64. The claim for fees for services rendered under the Contract, as stated in the Statement of Claim, totalled 299,157,694 rials. This amount was net of a 5.5 percent reduction for taxes, as was the Parties' practice, and included interest at the contractually specified rate of 6 percent through 30 April 1980.[6] Included were unpaid invoice claims aggregating 234,593,604 rials and claims for services rendered, but uninvoiced and unpaid, aggregating 64,564,090 rials. The original claim also incorporated a claim for 47,033,955 rials held by MORT as a good performance retention and never refunded.

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[6]The Claimant has calculated the contractual 6 percent rate of interest on late payments based on a period commencing 40 days after the actual date on which any given payment was due extending until 40 days following termination of the Contract, or 30 April 1980. This 40-day period is based on the assumption that 10 days would be required for delivery of an invoice. When this period is coupled with the contractually specified 30-day payment period, interest begins to accrue after 40 days. After 30 April 1980, the Claimant seeks a higher rate of interest.

65. The Claimant later adjusted and restructured its fee claim. As presently formulated, the claim seeks 426,143,926 rials, exclusive of good performance retentions and interest, which now are claimed separately. This amount reflects minor reductions in the amount claimed on invoices, in response to evidence submitted by MORT, and a major increase in the uninvoiced amount claimed as a result of a requested amendment, detailed below.

a. Invoiced Amounts

66. The Claimant subdivides its claim for invoices into three categories: (1) fees invoiced, approved and authorized; (2) fees invoiced, approved, but not authorized; and (3) fees invoiced, but not approved, and so also not authorized. The distinctions among the three categories relate to the manner in which MORT responded to the invoices. They do not reflect differences in the contractual basis for the amount claimed. For this reason, and because MORT's defenses cut across these categories, the Tribunal does not use this categorization in analyzing the claim.

The amount presently claimed for invoices is 181,804,249 rials, derived as follows:

Total amount invoiced	922,912,698 rials
Less gross amount paid	669,467,936
Total gross amount	253,444,762
Less unliquidated advance	(60,064,922)
Less Invoice No. 45 adjustment	(994,391)
Less 5.5% tax withholding	(10,581,200)
Total net amount claimed	181,804,249 rials

67. The Parties appear to be in substantial agreement on these figures, although certain minor discrepancies exist. The Parties agree on the amount of the unliquidated portion of the advance payment and on the adjustment necessary for Invoice No. 45. The Parties disagree on the total amount invoiced and the gross amount paid. The Tribunal, having analyzed the explanations of these differences provided by the Claimant, and noting that the Claimant's tabulations are based upon audited records, accepts the Claimant's tabulations.

68. The figures above reflect invoices prepared under Article 11 of the Contract, including high supervision fees, salaries (including overtime), and salary multipliers. In addition to these invoices, the amount claimed includes an additional invoice for the preparation of a detailed highway map of Iran, allegedly requested by MORT. The Claimant contends that this work was billed to and approved by MORT, but never paid. Also included are so-called "M" invoices, discussed below.

69. In response to the invoice claim, MORT interposes a variety of defenses. First, in response to the Claimant's categorization of its invoice claim, MORT denies that it ever approved the invoices submitted; rather, it contends that it only paid certain amounts on account. Second, MORT contends that the Claimant's invoices were insufficiently documented in that they failed to include salary scales, receipts, and the like. Third, MORT complains that the salary amounts invoiced far exceed the estimates appended to the Contract.

70. With respect to MORT's contention that all its payments were made on account, the Tribunal notes that any such practice was not authorized by the Contract. MORT was obligated to pay and settle invoices when due; it had no authority simply to make interim payments.

71. With respect to documentation, Enclosure No. 4, paragraph 1, to the Contract, which governs invoicing and payment, provides that HNTB-Iran fees will be "based upon a detailed summary of the Consulting Engineer's statement of salaries actually paid, plus the percentage amounts of those salaries indicated in the estimated fee schedule . . .". Thus, the Contract did not require HNTB-Iran to provide much of the documentation MORT now requests. As to salary information, the evidence indicates that HNTB-Iran did append salary information to its invoices. Moreover, there is no evidence of any contemporaneous complaints by MORT about invoice documentation. Indeed, MORT appears to have paid the Claimant's first 34 invoices without any complaint whatsoever. MORT's complaints now are thus unconvincing.

72. As far as the salary estimate is concerned, the Tribunal notes that the fee estimate, also contained in Enclosure No. 4, does not purport to be anything other than an estimate. No contractual provision binds HNTB-Iran to these amounts.[7]

73. In addition to these defenses applying to all invoices, MORT raises defenses relating to specific invoices and expense categories. These defenses are addressed individually below.

(1) Overtime

74. MORT objects to the Claimant's practice of invoicing salaries and multipliers relating to overtime and extra pay. Part of this dispute is longstanding. As early as

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[7]While paragraph 2 on page 4 of Enclosure No. 4 to the Contract provides for HNTB-Iran to prepare a revised estimate "[I]f it should appear to either the Employer or the Consulting Engineer that the total estimated fee for any stage will be exceeded . . ." (emphasis added), this provision does not excuse MORT from paying any excess.

September 1978, MORT complained to HNTB-Iran about excessive overtime and about the application of the salary multipliers to overtime compensation. The Parties held extensive discussions concerning these issues in September and October 1978.

75. By letter dated 17 October 1978, HNTB-Iran transmitted to MORT a proposed modification to the Contract, in the form of an Addendum No. 1, that would have applied a multiplier of only 100 percent to overtime pay, to cover general expenses and overhead, effective as of 23 September 1978. HNTB-Iran offered, in effect, to waive the 100 percent multiplier for living allowances and mobilization costs and to reduce the multiplier from 167 percent to 100 percent on overtime amounts. Its invoices covering the period 23 September 1978 through 20 April 1979 all reflect this proposal. No overtime was incurred thereafter.

76. The proposed Addendum was never executed, however. Instead, MORT began to apply a 50 percent multiplier to overtime on all invoices submitted after October 1978. MORT also did not process Invoice Nos. 35 and 37, covering the period 23 July 1978 through 22 September 1978, in their full amounts. By letter dated 3 December 1978, HNTB-Iran objected to this "unilateral change to our contract" and requested MORT to approve Addendum No. 1.

77. The Claimant contends that, in the absence of an agreement to the contrary, the full contractual multiplier should be awarded. It seeks payment for all overtime plus 267 percent. MORT objects to the payment of any fees relating to overtime, including both base overtime and multiplier amounts. MORT's invoice itemization shows overtime related objections totalling 92,462,523 rials. This amount includes amounts attributable to overtime that it previously paid, as well as amounts invoiced but unpaid.

78. The first issue to be addressed is whether Article 11(1) of the Contract, providing for reimbursement of "actual salaries paid", applies to overtime salaries. The Tribunal determines that it does. The plain meaning of the phrase encompasses all amounts actually paid to employees for services rendered, not merely base salaries. This conclusion is buttressed by the practice of the Parties. Until this proceeding, MORT never objected to charges for overtime salaries per se; rather, MORT objected to the levels of overtime and the application of the full multipliers to overtime salaries. Clearly MORT understood that it was obligated to reimburse overtime salaries and, in general, it did so.

79. The next issue concerns the application to overtime salaries of the Contract's 100 percent multiplier for living allowances and mobilization costs and the 167 percent multiplier for overhead expenses. Under the Contract, these multipliers are applicable to all actual salaries paid; no distinction is made between base and overtime salaries. The Tribunal cannot conclude that these provisions were modified by a subsequent agreement of the Parties. The Parties never executed the Addendum proposed by HNTB-Iran and there was no "meeting of the minds" to eliminate or to reduce to a specific level the two multipliers otherwise applicable.

80. As there is no dispute that the invoices reflect actual overtime incurred for services under the Contract, the Tribunal rules that HNTB-Iran is entitled to all amounts invoiced for overtime and overhead multipliers. Whether HNTB-Iran is entitled to the full 267 percent multiplier on amounts invoiced with only a 100 percent multiplier is discussed below in connection with the claim for uninvoiced fees.

(2) High Supervision

The second specific issue raised by MORT concerns high supervision fees. The Contract stipulates that MORT was to pay HNTB-Iran a fixed monthly fee of U.S.$ 37,000 (2,595,550 rials) for "high supervision" during Stage I of the Contract and a monthly fee of U.S.$ 198,000 (13,889,700 rials) during succeeding stages. HNTB-Iran invoiced MORT at the lower rate prior to 2 March 1978, the effective date of the Consortium's Mobilization and Procurement Contracts, and at the higher rate thereafter. These high supervision fees apparently compensated HNTB-Iran for the services of its senior management personnel. HNTB-Iran did not include the salaries of these personnel with those of its other employees in preparing its salary statements and invoices.

81. As work under the Contract wound down, MORT objected to paying the full high supervision fees. By letter dated 4 February 1979, MORT notified HNTB-Iran that it was reducing its payment for high supervision fees from the contractually stipulated 13,889,700 rials per month to 10,000,000 rials per month, and authorizing payment in proportion to the number of high supervision personnel continuing to work in Iran on the motorway project. MORT stated that its 3,889,700 rial reduction in the base fee was "on account of the agents abroad of the Consulting Engineers, which ultimately shall not be paid because of the cessation of activities." This practice of authorizing payment of a 10 million rial fee apportioned on the basis of the number of high supervision personnel in Iran continued over Invoices Nos. 48, 49, 50, and 53, covering services rendered during the period 21 January 1979 through 21 May 1979. The difference between the high supervision fee invoiced by HNTB-Iran and authorized by MORT on the four invoices totals 3,889,700 rials.

82. Apparently in response to these actions, HNTB-Iran, in May 1979, offered to apportion the Contract's full 13,889,700 rial high supervision fee into five equal parts (of 2,777,940 rials each), as the high supervision staff then consisted of five persons. HNTB-Iran's subsequent invoices were in accordance with this offer. HNTB-Iran invoiced for two high supervision managers in Invoice No. 48, covering the period 21 January 1979 through 19 February 1979, and one each in Invoices Nos. 49, 50, and 53, covering the period 20 February 1979 through 21 May 1979. All of these invoices were submitted in May 1979. MORT nevertheless authorized payment of only 4 million rials in high supervision fees on Invoice No. 48, and 2 million rials on each of Invoices Nos. 49, 50, and 53, reflecting application of its reduced 10 million rial base fee.

83. Beginning with Invoice No. 55, issued on 23 June 1979 and covering the period 22 May 1979 through 22 August 1979, HNTB-Iran invoiced high supervision fees at the rate of 2 million rials per supervisor, as demanded by MORT. This practice continued through HNTB-Iran's last invoice, No. 66, covering the period 21 February 1980 through 20 March 1980. Unlike prior invoices which had been signed by Mr. Wachter, HNTB-Iran's General Manager, these invoices were signed by Mr. Amini, HNTB-Iran's Office Manager.

84. The Claimant seeks all high supervision fee amounts invoiced and unpaid, as well as additional uninvoiced amounts. The latter aspect of the claim is discussed separately below. MORT contests all invoiced amounts claimed, contending that, once HNTB-Iran's management staff departed Iran, it did no work under the Contract. MORT also contends that the Contract did not permit work outside Iran. Finally, MORT argues that HNTB-Iran agreed to its fee modifications.

85. The Tribunal begins its analysis by observing that there is no dispute concerning high supervision fees invoiced for periods before 21 January 1979. With respect to the remaining invoices, which cover the period extending from 12 January 1979 to 20 March 1980, the Tribunal cannot agree with the Claimant's argument that it is entitled to the full monthly fee for all months prior to the Contract's termination, irrespective of actual work performed. Article 2(2) of the Contract, upon which MORT relies, provides:

> The Employer will reserve the right to revise at any time the required services to a reasonable and proportional intent and delete or add certain services. In such case, the Contract Period and the Consulting Engineer's fee will be reduced or increased in proportion to the work affected and the costs incurred.

This provision is broadly worded and, by its terms, applies to all fees, including high supervision fees. Indeed, Article 2(2) would be largely unnecessary if it applied only to salaries and multipliers; these charges already are tied implicitly to the scope of work, varying as employees are hired or released.

86. The Tribunal must thus determine appropriate fees for high supervision services rendered between 21 January 1979 and 20 March 1980. The Tribunal first notes that HNTB-Iran is entitled to fees for services rendered through the termination of the Contract, even though the Consortium's Mobilization and Procurement Contracts terminated in April 1979 and early March 1980, respectively, as Article 3 of the Contract extended HNTB-Iran's time limit for performing each stage to a date ninety days after completion of that stage by the Consortium. As to the means by which such fees are computed, the Tribunal further notes that Article 2(2) speaks of reducing fees "in proportion to the work affected" and that the Parties both sought to apportion high supervision fees based upon the number of high supervision

personnel actually working on the Contract. The Tribunal therefore concludes that such a method of determining fees is appropriate in this case. The Tribunal further finds that the appropriate base amount to be apportioned with respect to services rendered by high supervision managers resident in Iran is the full contract rate of 13,889,700 rials, not the rate of 10,000,000 rials used by MORT. MORT has supplied no indication of how it arrived at its figure; it simply indicates that it has reduced the fee because HNTB-Iran's high supervision personnel had left the country. This rationale clearly is inapposite with respect to personnel remaining in Iran.

87. There apparently is no dispute between the Parties concerning the number of high supervision managers working in Iran between 21 January 1979 and 20 March 1980 as MORT authorized high supervision fee payments in proportion to the number of such personnel invoiced, albeit at a reduced base rate. Accordingly, the Tribunal holds that the Claimant is entitled to payment for all invoiced amounts relating to high supervision fees, as the invoices at issue apportion the Contract's high supervision fee on the basis of the number of high supervision personnel in Iran working on the project.

88. The Tribunal notes, however, that the 10 invoices covering the period 22 May 1979 to 20 March 1980 for one high supervision manager, presumably Mr. Amini, were invoiced at MORT's reduced base fee amount, not on the apportioned full fee to which the Tribunal has found HNTB-Iran entitled. The issue of the claim for this uninvoiced differential is addressed below.

(3) Specific Invoice Challenges

89. In addition to its challenge to amounts invoiced for high supervision and overtime, MORT raises several

invoice-specific objections. The Claimant has accepted many of these objections, and they are reflected in its revised Claim. The remainder are discussed below.

(a) Invoices Nos. 57 and 59

90. MORT has made no payments on the Claimant's Invoices Nos. 57 and 59, covering the periods 27 April 1979 to 25 May 1979 and 26 May 1979 to 31 August 1979, respectively, totalling 6,800,699 rials. MORT objects to payment on the ground that these invoices relate solely to services allegedly performed in the United States and HNTB-Iran has not proved that it rendered such services. The Claimant mischaracterizes this objection as a general objection to the rendering of services in the United States, and notes that HNTB-Iran routinely invoiced MORT for U.S.-based services, without MORT's objection.

91. The Claimant has submitted copies of these invoices, accompanied by business records indicating the employees whose salaries were being billed, their rate of pay, the hours they worked, and a summary description of their position in the company and background. In the absence of evidence to the contrary, these records demonstrate that work was performed. The invoices, totalling 6,800,699 rials, therefore are payable.

(b) Invoice No. 53

92. MORT objects to a sum of 238,080 rials included in this invoice dated 23 May 1979, allegedly representing the salary and multiplier charges relating to one Gilan Ajanasian. MORT contends he was no longer employed during the period represented by the invoice.

93. The Claimant asserts that it no longer possesses a copy of the backup documentation submitted to MORT with

Invoice No. 53. The Claimant contends that, as MORT has failed to submit copies of this documentation or other evidence in support of its position, its defense must fail.

94. The evidence indicates that after receiving the invoice MORT simply disapproved an amount for salaries without offering any explanation. MORT apparently did not notify the Claimant of the reason for its action until filing its Rejoinder with the Tribunal on 30 December 1982. Having delayed over three years in detailing its objection to a particular invoice item, MORT bears the burden of proving its justification. Having submitted neither the invoice backup documentation nor other evidence in support of its contention, MORT's defense must fail. Article 24, paragraph 1, of the Tribunal Rules. See also D. Sandifer, Evidence Before International Tribunals 127 (rev. ed. 1975). Therefore, the Tribunal finds that the amount objected to in Invoice No. 53, totalling 238,080 rials, is payable.

(c) Map Invoice

95. MORT objects to the Map Invoice, referred to in paragraph 65 above, totalling 6,158,609 rials, contending that it neither requested nor contracted for the highway map prepared by the Claimant. MORT, however, does not argue that it did not receive the maps covered by the invoices, nor does it contest having been invoiced for them. The Claimant no longer possesses a copy of this invoice, but the amount was ascertained from a handwritten schedule of outstanding invoice amounts prepared by HNTB-Iran's Manager of Administration on 23 January 1979 just prior to his departure from Iran.

96. Article 2, paragraph 2, of the Contract provided for extra services as follows:

> The Employer will reserve the right to revise, at any time, the required services to a reasonable and proportional extent and delete or add certain

> services. In such cases, ... the Consulting Engineer's fee will be reduced or increased in proportion to the work affected and the cost incurred.

The Claimant submitted in evidence an internal memorandum dated 23 February 1978 of a telephone conversation between employees of HNTB and HNTB-Iran concerning the estimated printing costs for the map and the time schedule envisaged for delivery. HNTB-Iran's Status Report of 1 September 1978, sent to MORT, reported with respect to the tourist map project that: "This assignment was completed satisfactorily and on schedule. The client is well pleased with this work." There is no evidence before the Tribunal that on receipt of the Status Report, MORT made any contemporaneous objection either denying that it had requested such a map or indicating its disapproval of the statement. The Tribunal is satisfied, from the evidence, that MORT was aware of the preparation of the map and could have authorised it under Article 2, paragraph 2, of the Contract. In view of the nature of the services provided by the Claimant, MORT could not have expected that the work would have been done free of charge. The Tribunal finds, therefore, that MORT is liable for the extra costs incurred in connection with the map project to the extent they are substantiated by evidence.

97. The Claimant also submitted in evidence its invoice to HNTB-Iran totalling $79,024.52 for costs incurred in the United States in preparing, printing, and shipping the maps. This amount included labor and materials costs, overhead, and 10 percent profit. At the time, the dollar amount corresponded to 5,579,131 rials. The Claimant has not been able to substantiate the work presumably performed in Iran which would justify the additional amount invoiced by HNTB-Iran to MORT for the map services. Accordingly, the Tribunal awards only the portion of HNTB-Iran's invoice based on the cost incurred for the services performed by the Claimant in the United States, which the Tribunal finds amounted to 5,579,131 rials.

(d) M Invoices

98. Under an arrangement agreed to by the Parties, HNTB-Iran occasionally utilized MORT employees to perform services under the Contract. HNTB-Iran then paid the employees' salaries and invoiced MORT for the payment made on a specially-designated "M" invoice. Sixteen such invoices were sent. The Parties agree on the amount paid by MORT on these invoices but disagree as to whether such payments correspond to the total amounts invoiced. The Claimant contends that an unpaid balance of 258,539 rials remains, which MORT disputes. The Claimant asserts that it no longer possesses copies of the M invoices.

99. MORT alleges that the total amount of Invoices Nos. M1 through M16 was 10,116,800 rials; the Claimant contends that the correct figure is 10,375,339 rials. Although neither party has submitted copies of these invoices, the Claimant has filed a handwritten schedule of all its invoices prepared in connection with an audit for HNTB-Iran's 1980 fiscal year. These audit workpapers were verified by HNTB-Iran's auditors, Price Waterhouse. The workpapers indicate M invoices totalling 10,375,339 rials, thus confirming the Claimant's tabulations. The amount in dispute, 258,539 rials, corresponds exactly to the amount of Invoice No. M7, which the audited schedule lists as unpaid.

100. The Tribunal is satisfied that an unpaid balance of 258,539 rials remains on the M invoices, as the Claimant claims, and the Tribunal awards this amount.

(4) Conclusion

101. In conclusion, the Tribunal holds MORT liable on all of the HNTB-Iran invoices, net of the unliquidated advance payment, the adjustment for Invoice No. 45, the

unsubstantiated portion of the Map Invoice, and the 5.5 percent withholding for taxes. The Tribunal is satisfied that the invoiced amounts reflect services performed under the Contract. The Tribunal notes, moreover, that of this amount, MORT actually approved and authorized for payment, but did not pay, gross amounts totalling 159,802,022 rials.

102. Nonetheless, the amount claimed is overstated because the Claimant deducts 5.5 percent for taxes not from the gross amounts invoiced, as was the Parties' practice, but from invoiced amounts net of the advance payment liquidation and the adjustment for Invoice No. 45. Under the Claimant's approach, it would escape tax on services performed to the extent of the unliquidated advance payment and other adjustment. The correct arithmetic indicates that MORT is liable to HNTB-Iran for 177,948,381 rials, computed as follows:

Total gross amount claimed	253,444,762 rials
Less Map Invoice Adjustment	579,478
Total adjusted gross amount	252,865,284
Less 5.5% for taxes	(13,907,590)
Less unliquidated advance	(60,064,922)
Less Invoice No. 45 adjustment	(944,391)
Total net amount	177,948,381 rials

103. MORT's allegations of defective performance on the part of the Claimant are addressed in connection with the Counterclaims below.

b. Uninvoiced Amounts

104. The second element of the claim for services rendered under the Contract concerns uninvoiced fees. In

this connection, the Claimant initially sought 64,564,090 rials, but later amended its claim to include an additional 258,560,505 rials. The claim includes uninvoiced overtime salary multipliers for the period September 1978 through May 1979 and uninvoiced high supervision fees for the period January 1979 through March 1980.

(1) Overtime

105. As noted above, in October 1978, HNTB-Iran began to invoice general expenses and overhead at a rate of 100 percent of overtime salaries in the belief that the Parties had agreed or were about to agree to modify such compensation. The Claimant contends that, as no such agreement was reached, it is entitled to the full 267 percent multiplier with respect to all overtime salaries. As it actually invoiced overtime salaries with only a 100 percent multiplier on Invoices Nos. 39, 40, 43, 45, 48-50, and 53 (23 September 1978 -- 21 May 1979), it now claims 167 percent of overtime salaries in those invoices as amounts owing under the Contract but not previously invoiced. After a reduction of 5.5 percent for taxes, this amount totals 17,893,533 rials.

106. While HNTB-Iran stated in its letter of 17 October 1978 and in a reminder letter of 3 December 1978 that it was proposing to reduce the overtime multiplier to 100 percent as part of an amendment to the contract (and it enclosed an Addendum which stated that it was to be effective as of 23 September 1978), the Tribunal notes that HNTB-Iran continued to invoice MORT for only a 100 percent multiplier until May 1979, long after it was clear that MORT would not sign the Addendum or otherwise agree even to that reduced multiplier. The Tribunal further notes that each of the invoices at issue was accompanied by a cover letter, signed through January 1979 by HNTB-Iran's General Manager, William Wachter, and thereafter by others for him, stating that the

invoice was prepared in accordance with a letter dated 17 October 1978 "in which we indicate our agreement to a change in the multiplier to be applied to overtime salaries effective as of September 23, 1978."

107. The Tribunal also notes that MORT made partial payments on a number of invoices during the period from September 1978 to May 1979 but these represented application of a 50 percent multiplier to the overtime salaries. HNTB-Iran accepted these payments but continued to present its invoices based on a 100 percent multiplier. At no time during this period did HNTB-Iran state in the covering letter accompanying the invoices that it regarded MORT's payments as being in only partial satisfaction of MORT's contractual obligations. Neither did it specifically reserve its entitlement to the amounts it is now seeking. In fact it first claimed these additional amounts in a Memorial filed on 1 June 1983. The Tribunal concludes that HNTB-Iran's conduct, as outlined above, represents a unilateral concession by HNTB-Iran to accept a reduction to 100 percent of the multiplier applied to overtime salaries and a waiver of its rights under the contract to the additional multiplier. The Tribunal therefore denies this claim for uninvoiced overtime.

(2) High Supervision

108. The Claimant contends that it continued to perform consulting engineering services throughout 1979 by supervising and monitoring the Consortium's winding-down activities, including review of their final plans for certain engineering studies for the project. This activity culminated in HNTB signing the final plans and transmitting them to MORT in February 1980. The Claimant further contends that MORT requested and recognized that HNTB-Iran would continue to perform services after their departure from Iran and that MORT instructed them to proceed with terminating its

employees so that all employees would be terminated only as of April 1980.

109. The Claimant explains that high supervision fees earned by high supervision managers outside Iran between January 1979 and February 1980 were not previously invoiced because the invoices were prepared by HNTB-Iran Iranian personnel who were not fully aware of the precise nature of the work that the high supervision staff was then performing outside Iran. Initially, the Claimant sought 38,891,160 rials for these services, which amount ostensibly reflects a pro rata allocation of the full monthly rates specified in the Contract, based upon the number of high supervision staff members working outside Iran on the project.[8] The Claimant also claimed an additional 7,779,400 rials representing the difference between the 2 million rials invoiced for Mr. Amini, the Iranian high supervision employee who remained in Tehran, and the 2,777,940 rial one-fifth share of the full Contract price over the last ten high supervision invoices. The Statement of Claim asserts that the apportionment was not contractually required, but performed as an accommodation to MORT. In its Statement of Claim, the Claimant purported to reserve the right to amend its claim to reflect the full, unapportioned Contract fee.

110. The Claimant sought such an amendment in its Memorial of 1 July 1983, as modified by its Memorial of 10 February 1986. The amended Claim seeks (1) an additional 160,565,900 rials for the unapportioned high supervision fees not previously sought, such that the full monthly fee is claimed[9] and (2) an additional 79,059,449 rials based upon application of the higher Stages III and IV high

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[8]The Claimant contends that $152,205 of this amount could also be treated as a demobilization expense.

[9]On Invoices Nos. 48-50, 53, 55, 56, 58, and 60-66.

supervision fee of 13,889,700 as from 23 August 1977, the date the Claimant asserts MORT authorized commencement of work on these stages, even though the Consortium mobilization and procurement contracts did not become effective until 2 March 1978. The Claimant invoiced, and previously claimed, the higher rate only after the effective date.

111. As to the amendment to apply retroactively to 23 August 1977 the higher Stages III, IV, and V high supervision rate, the Tribunal determines that the Claim lacks merit and therefore need not decide whether the amendment is permissible. Enclosure No. 2 to the Contract indicates that Stages II through V of HNTB-Iran's work "will coincide with the effective dates of agreements to perform the work executed by the contractor and will extend ninety (90) days beyond the fulfillment on termination of the contractor's agreement." Thus, MORT was not contractually obligated to pay compensation, and HNTB-Iran was not contractually obligated to provide procurement and mobilization management services until 2 March 1978. While MORT could have authorized HNTB-Iran to commence preliminarily such services at an earlier time and to compensate HNTB-Iran accordingly, the record is devoid of evidence suggesting that the Parties ever reached such an understanding. HNTB-Iran's own progress reports indicate, moreover, that only minor, preparatory work was done in connection with these activities. Finally, HNTB-Iran's contemporaneous invoices, which applied the lower Stage II rate, cast doubt on the Claimant's assertions now that it has always been entitled to the higher rate as from 23 August 1977. In these circumstances, the Tribunal concludes that HNTB-Iran implicitly consented to perform incidental Stages III and IV services prior to the effectiveness of the corresponding Consortium contracts without any fee beyond its Stage II rate.

112. As to the claim for application of the full Stage II high supervision fee, rather than a per capita

apportionment of that fee, the Tribunal likewise finds no merit in the Claimant's argument. As held above, MORT was entitled to decrease the scope of work and to reduce proportionately HNTB-Iran's high supervision fee, and the Tribunal accepts the apportionment methodology as an appropriate means of computing the fee owed.

113. As to the claim for the uninvoiced services of high supervision personnel performed outside Iran, the Claimant has not submitted any business records or other evidence that it performed valuable services during this period. Rather, it appears to the Tribunal that HNTB-Iran's high supervision managers in Greece, for the most part, were simply waiting to return to Iran. The Claimant contends that the individuals continued to supervise and to monitor events in Iran. This contention, however, is rebutted by the invoices themselves. The very failure to invoice for these services demonstrates the low level of communications between HNTB-Iran personnel in Greece and Iran.

114. As to the uninvoiced additional 7,779,400 rials representing the difference between the 2,000,000 rials invoiced for Mr. Amini and the full apportioned amount of 2,777,940 per month, the Tribunal finds that HNTB-Iran is entitled to recover the additional amount. As noted earlier, in ten of its last invoices, covering the period 22 May 1979 to 20 March 1980, HNTB-Iran invoiced only one-fifth of MORT's reduced-base high supervision fee of 10 million rials rather than one-fifth of the full contract amount, to which the Tribunal has held MORT liable above. The difference of 777,940 rials per month totals 7,779,400 rials for 10 months. No evidence has been submitted indicating that the Parties reached an agreement to apportion and to lower the monthly fee, and given the circumstances then prevailing, the Tribunal cannot infer from the invoices alone that such an agreement to lower the fee was reached.

115. In sum, the Tribunal finds HNTB-Iran entitled to 7,779,400 rials in respect of uninvoiced high supervision fees. This amount must be reduced by 5.5 percent for taxes, leaving a balance owed of 7,351,533 rials.

(3) Conclusion

In conclusion, the Tribunal holds MORT liable for the uninvoiced high supervision fee differential on the 10 invoices covering the period 22 May 1979 to 20 March 1980 for the services of Mr. Amini in Tehran. The other uninvoiced claim amounts are denied.

2. Good Performance Guarantee

116. The Claimant's second claim seeks restitution of 66,946,753 rials in good performance retentions withheld by MORT pursuant to Article 14(1) of the Contract. The amount withheld is not in dispute. MORT objects to any reimbursement of good performance retentions, contending HNTB-Iran's performance was defective.

117. Having examined the evidence before it, the Tribunal finds that the Claimant satisfied its obligation of good performance, as defined by the Contract's performance standards. MORT's allegations to the contrary are not supported by evidence, as is more fully discussed in section B.2 below, concerning the Counterclaim for defective performance. Accordingly, the Claimant is entitled to a refund of amounts retained to secure its good performance. The Tribunal upholds this aspect of the claim in the amount of 66,946,753 rials.

3. Reimbursement of Facilities Expenditures

118. The Claimant's third claim under the Contract is for restitution of amounts spent to provide facilities for

its employees such as housing, which, under the Contract, the Respondents allegedly were obligated to provide. The amount sought is 24,547,295 rials.

119. The claim is based upon Article 8 of the Contract. Article 8 obligates MORT to take "all necessary measures for facilitating the work of the consulting engineer, including, in particular, requiring the 'Contractor for Construction or Procurement' to provide certain necessary facilities such as "headquarters offices, field camps, field offices and vehicles . . .". The Claimant alleges that MORT and its contractors failed to carry out this responsibility and that HNTB was required to secure such facilities on its own.

120. According to the Claimant, the problem arose mainly because the Consortium was to provide the "necessary facilities" under its procurement and mobilization contracts.[10] Because the effectiveness of these contracts was delayed until 2 March 1978, well after HNTB-Iran had commenced work, the Consortium could not provide the facilities.

121. MORT concedes that the Consortium was obligated to provide certain facilities to HNTB-Iran, but denies that it can be held liable for the Consortium's default. MORT argues that it did not authorize such expenditures and would be obligated to reimburse the Claimant's expenditures only if the Claimant had obtained prior written permission, relying upon Article 2(12) of the Consortium's contract. MORT also contends that HNTB-Iran received reimbursement of the amount now claimed from the Consortium. Finally, MORT requests an itemization of the expenses.

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[10] Article 2(12) of the Consortium's mobilization contract obligated the Consortium to "[p]rovide facilities and support for the Employer's consultant and employees as directed and required by the EMPLOYER."

122. The Tribunal rules that the claim relating to "necessary facilities" must be denied. Under the contractual arrangements developed with the Claimant's assertions and approval, the Consortium and not MORT was responsible for providing the necessary facilities and thus for reimbursing any amounts expended by the Claimant for such purpose. The practice of the Parties confirms this conclusion. The Claimant has introduced no evidence suggesting that it ever requested MORT to direct the Consortium to provide any necessary facilities, nor has it demonstrated that, at the time it incurred expenses for necessary facilities, it intended to hold MORT responsible. Indeed, it never invoiced MORT for its necessary facilities expenditures. On the contrary, the evidence indicates that HNTB-Iran looked to the Consortium. Mr. Jack Thompson, HNTB-Iran's then Manager of Administration, has stated that "[t]hese expenses were routinely invoiced through the Consortium to the MORT . . ." (Emphasis added.) Also, as the Claimant has not proved that MORT did not pay the Consortium on these invoices, recovery is not warranted on a subsidiary theory of unjust enrichment. See Shannon & Wilson, Inc. and Atomic Energy Organization of Iran, Awd. No. 207-217-2 (5 Dec. 1985), paras. 21-22.

4. Demobilization Expenses

123. Claimant's final claim is for reimbursement of demobilization expenses incurred in connection with the termination of the project. This aspect of the claim, totalling $446,789.76, is based upon Article 16(2)B of the Contract. Article 16(2)B provides that:

> If, for any reason, other than default of the Consulting Engineer, the Employer decides to terminate this Contract . . . the Consulting Engineer shall be entitled to receive the following payments:
>
> B. All the expenses including mobilization costs resulting from the agreement or obligations of the

> Consulting Engineer toward his staff or other institutions as well as traveling expenses of foreign employees and their families to their own country and the transport expenses of their personal effects to their country at the date of the termination of the Contract as well as expenses related to the clearing out of the headquarters, provided that such expenses should have been used for the execution of the Contract and confirmed by the Employer and that no payment would have been made to the Consulting Engineer in such regard . . . .

124. MORT denies liability for demobilization expenses, arguing that it never terminated the Contract, but that HNTB-Iran simply abandoned its work. MORT also challenges the expenditures as undocumented and questions why an Iranian company had to wind up its office.

125. The Tribunal determines that MORT terminated the Contract for its convenience and that HNTB-Iran is therefore entitled to demobilization expenses as provided in Article 16(2)B. MORT's order to HNTB-Iran to terminate all employees as of April 1980 constitutes de facto termination of the Contract.

126. As to the amount to be awarded for demobilization expenses, the Tribunal notes that the burden of proving demobilization expenses rests with the party claiming them, the Claimant, who must demonstrate not only that specific expenses were incurred but also that such expenses fall within the scope of Article 16(2)B, i.e., that the costs claimed resulted from agreements or obligations of HNTB-Iran to third parties not otherwise compensated or that they comprised travel, moving, or clearing-out expenses. In this connection, the Tribunal observes that the bulk of the Claimant's documentary evidence substantiating the claimed demobilization expenses was not submitted until the

Hearing.[11] Nevertheless, the Claimant had itemized its claim in its previous evidentiary submission of 1 June 1983, including sample invoices and other documentation. MORT never objected to any of the evidence submitted to substantiate the claim for demobilization expenses, or offered any rebuttal evidence. In these circumstances, and to avoid any prejudice to the Respondents, the Tribunal notes the additional documentary evidence only to the extent that it substantiates or fails to substantiate those expenses that are manifestly within the scope of Article 16(2)B. Compare Phelps Dodge International Corp. and Islamic Republic of Iran, Award No. 218-135-2, para. 42 (19 Mar. 1986) (where Respondents have opportunity to review invoices claimed upon but fail to offer reasoned objections, "liability must be found if it appears prima facie, that the invoice is valid and payable").

127. The Claimant has itemized its demobilization expenses claim into nine categories of expense, as follows:

1.	Termination and final settlement payments to employees	$163,952.14
2.	Moving and storage	101,146.70
3.	Travel	90,302.15
4.	Lost property and security charges	21,638.75
5.	Payroll taxes	22,074.71
6.	Workmen's Compensation	19,607.40
7.	Retirement plan	16,185.37
8.	Currency exchange	6,925.03
9.	Extraordinary rental payments	4,957.51
	TOTAL	$446,789.76

[11] See supra para. 10.

128. With respect to termination payments, the Claimant has included (1) "termination pay" paid to HNTB-Iran employees; (2) ordinary salaries paid to certain high supervision personnel; (3) salaries of HNTB administrative personnel in the U.S. who administered the "evacuation" from Iran; and (4) salary for Mr. Amini, HNTB-Iran's Office Manager, for the period April to July 1980. The Tribunal denies in full the claim for reimbursement of these expenses for failure of proof. The Claimant has asserted that the "termination payments" resulted from the premature termination of the Contract, but has failed to prove either that individual employment agreements required such payments or that it would not have been obligated to make such payments in any case. If termination payments would have been made even if the Contract had not been prematurely terminated, their cost must be considered as having been amortized in the salary multipliers and thus already paid, at least in part. As the extent of any non-amortized amounts, if any, cannot be determined from the record, the Tribunal must deny the claim. The costs of administrative personnel, including U.S. and high supervision staff, are likewise disallowed because the Claimant has not proved their connection to demobilization. The Claimant has offered no justification, for example, for claiming as a demobilization expense the salary of Mr. Wachter over a six-month period, from March through July 1979 -- a period during which he ostensibly was performing high supervision services. Similarly, the Claimant's linkage of the U.S. administrative salaries to the "evacuation" suggests that these costs resulted more from the force majeure situation in Iran than from the Contract's termination. As to Mr. Amini's salary, the Claimant has not adequately explained what Mr. Amini did in the four-month period through July 1980 for which his salary is claimed; therefore the Tribunal concludes that such expense is not manifestly covered by Article 16(2)B.

129. With respect to moving and storage expenses, the Tribunal finds the Claimant's payments for travel and shipment of personal effects from Iran to be reimbursable as well as certain expenses incurred in shipping goods to Iran in late 1978, before MORT instructed HNTB-Iran to curtail further mobilization. The former expenses are expressly covered by Article 16(2)B while the latter expenses result from the Contract and were not otherwise reimbursed. The Claimant has also claimed expenses incurred in storing and removing from storage personal effects stored in the United States by employees upon their initial departure for Iran. These expenses, however, are not recoverable under Article 16(2)B, because they would have been amortized, in part, in the multiplier applied to the individual's salary. As the Tribunal is uninformed as to the actual and expected employment periods for HNTB-Iran's expatriate employees, it cannot determine the extent to which such costs were not amortized. The Tribunal therefore holds MORT liable for $73,464.94 of the $101,146.70 claimed.

130. With respect to travel expenses incurred by HNTB-Iran personnel in returning to the United States, the Tribunal finds they are clearly reimbursable. The Claimant's claim, however, includes hotel, meal, and other expenses incurred by Messrs. Wachter and Thompson during their residence in Greece and an unexplained charge from American Bell International. The former expenses resulted from the existence of force majeure conditions in Iran and are not reimbursable as demobilization expenses. The latter has not been tied clearly to the Contract's termination. The Tribunal therefore holds MORT liable for $59,195.99 of the $90,302.15 claimed for travel expenses.

131. The claim for lost property and security charges encompasses monies reimbursed by HNTB-Iran to five employees for security deposits and personal property lost in Iran or in transit from Iran following their evacuation. The

Claimant has asserted that these expenses were reimbursable to employees under their employment contracts, but it has not submitted copies of their contracts or otherwise demonstrated that they so provided. Accordingly, the claim is denied for lack of proof.

132. The next three items of demobilization expenses claimed cover various payroll taxes, insurance costs, and retirement plan contributions. These expenses include, for example, U.S. social security taxes, unemployment insurance premiums, and other withholding taxes for most of 1979, extending, in some cases, into the second quarter of 1980. The insurance charges include workmen's compensation premiums for Iranian employees for 1979 and other unexplained charges. The retirement plan charge appears mainly to comprise a February 1979 payment made as a contribution for calendar year 1978, although the payment order submitted to the Tribunal is not entirely legible. The Claimant has failed to demonstrate how any of these charges are related to the Contract's termination. Indeed, most of the payments would appear to have been covered by the salary multipliers charged over the relevant period. These claims therefore are denied.

133. Similarly, the claim for currency exchange losses, which comprise payments made to certain employees for exchange losses sustained when they converted rials into dollars in the United States after their departure from Iran, must also be denied. The Claimant has not demonstrated any contractual obligation to make these payments. In any case, the losses appear to have resulted not from the Contract's termination, but from the Iranian revolution, for which MORT is not responsible.

134. The final item claimed relates to payments made by HNTB-Iran with respect to leases for employee accommodations, which leases were prematurely terminated due to

demobilization. Such expenses are directly traceable to the Contract's early termination and were not otherwise reimbursed. Accordingly, the Tribunal allows the claim of $4,957.51.

135. In sum, the Tribunal holds MORT liable to HNTB-Iran for $137,618.44 on the claim for demobilization expenses.

5. Currency Conversion Date

136. With the exception of the claim for demobilization expenses, all of the claims are based on rial-denominated fees and/or invoices. It thus remains for the Tribunal to determine the appropriate exchange rate for converting these rial amounts into U.S. dollars for purposes of an award for payment from the Security Account.

137. The Claimant argues that the exchange rate should be based on the rate prevailing when the relevant fees were earned. The Claimant contends that its claims for services rendered under the contract all arose in late 1978 through early 1980 and that the rate of exchange then in effect was 70.475 rials/dollar. It requests that this rate be applied to all amounts owing with the exception of its claim for reimbursement of necessary facilities costs. As such amounts were accounted for internally at a slightly less favorable rate of 70.6 rials/dollar, the Claimant does not claim otherwise.

138. The Tribunal notes that, as provided in Enclosure No. 4 to the Contract, one-half of each invoice payment under the Contract was to be made in U.S. dollars. With respect to the claim for fees invoiced under the Contract but unpaid, the Tribunal further notes that the payments that MORT did make were disproportionately in rials, such that a high percentage of the unpaid amounts were payable in

dollars. Under the Contract, therefore, the bulk of the unpaid invoice amounts claimed here were to have been converted into dollars at the rate of exchange prevailing at the time of the invoices. As to the unpaid rial portion, the Tribunal considers it likely that, had the payments been timely made, the Claimant would have converted the bulk of its receipts into U.S. dollars by March 1980, the time at which it regarded the Contract as terminated. In these circumstances, the Tribunal rules that the appropriate exchange rate for the invoice claims is that prevailing at the time payments were due in 1978 to April 1980, or 70.475 rials/dollar. International Monetary Fund, International Financial Statistics, Supplement on Exchange Rates (1985). See also Morrison-Knudsen Pacific Limited and Ministry of Roads and Transportation, Award No. 143-127-3 (13 July 1984), pp. 35-36 (converting rial amounts owed to a member of the Consortium for the same project at 70.475 rials/dollar). The Tribunal likewise decides to apply this conversion rate for the good performance retentions. As the Tribunal denies the claim for reimbursement of necessary facilities costs, it is not necessary to consider the Claimant's proposal of a different conversion rate.

139. With respect to amounts awarded for uninvoiced high supervision fees, the Tribunal likewise rules that the appropriate conversion rate is that in effect when payment was due. However, payment was not due until 30 days after HNTB-Iran notified MORT of the debt, which it did not do prior to filing its claim here. The Tribunal therefore determines that the appropriate rate is 79.296 rials/dollar, which was the average rate in December 1981, the month after the Claimant filed its Statement of Claim. International Monetary Fund, International Financial Statistics, supra.

6. Summary

140. In summary, the Tribunal has held MORT liable to HNTB-Iran for the following amounts, as converted into U.S. dollars:

	Rials	Dollars
Invoiced amounts	177,948,381	$2,524,985.89
Uninvoiced amounts	7,779,400	98,105.83
Good performance retention	66,946,753	949,936.19
Totals	252,674,534	$3,573,027.91

To this converted amount must be added $137,618.44 awarded for demobilization expenses, yielding a total of $3,710,646.35.

141. As held above, the Claimant is entitled to recover 60 percent of this total. Accordingly, the Tribunal awards the Claimant the sum of U.S. $2,226,387.81.

B. The Counterclaims

1. Counterclaims Relating to Bank Guarantees

142. MORT's first counterclaim relates to two letters of guarantee issued by the International Bank to secure advance payments and repayment of good performance retentions and allowed to expire in accordance with their terms.

143. The Tribunal finds the counterclaim to be without merit. Even assuming that HNTB-Iran is somehow liable for Bank Tejarat's failure to extend or to pay on the

guarantees, MORT has suffered no damage as a result. The unliquidated balance of MORT's advance payment to HNTB-Iran is reflected above as an offset to the gross amounts MORT owes to HNTB-Iran under the invoice claims. Thus, HNTB-Iran's obligation to repay the advance payment is fulfilled and any guarantees issued with respect to advance payments can have no further purpose.

144. With respect to the bank guarantee substituted for good performance retentions, the Tribunal has found that HNTB-Iran met its contractual standard of good performance. The Respondent would not, therefore, have been entitled to draw under the said guarantee. Accordingly, this counterclaim is dismissed on the merits.

2. Counterclaims for Defects in Management of Contractors

145. A second set of counterclaims filed with Respondent's Statement of Defense alleged that HNTB-Iran is liable for malfeasance and defective performance on the part of the contractors under their separate contracts with MORT. In this connection, MORT seeks $31,169,121 as reimbursement for monies allegedly paid to contractors for purchasing machinery and other equipment which MORT never received. Additionally, MORT seeks $4,310,188, "the commission for purchasing machineries that the contractors have withdrawn from the credits made available to them . . . ." Finally, MORT seeks reimbursement in the sum of $9,740,093, 40,997,793 French francs, and 2,150,843,591 rials as recovery of improper site and mobilization expenditures "upon the direct order of the Respondent."

146. MORT has provided no evidence in support of its allegations. Rather, MORT relies upon several "Technical Reports" it itself prepared attributing defects in the Consortium's performance to HNTB-Iran. As Consulting

Engineer, HNTB-Iran was not a guarantor for the Consortium. Rather, as noted above, its obligation was to carry out its tasks "using the best procedures and current technical principles and using prevailing professional standards and expertise." MORT has failed to prove that HNTB-Iran did not perform up to this standard. Accordingly, the Counterclaim is dismissed for failure of proof.

V. INTEREST

147. The Claimant has claimed interest on all invoiced amounts owing under the Contract at the Contract rate of 6 percent through 30 April 1980, the date on which it contends the Contract terminated. The Claimant seeks 12 percent interest thereafter, and 12 percent interest on the other claimed amounts, arguing that the interest provision in the Contract is inapplicable to interest due after the Contract was completed and to interest due on non-invoice related amounts.

148. The Tribunal cannot agree with this interpretation. Article 12 of the Contract, governing payment of HNTB-Iran's monthly fee, provides as follows:

> (2) The Consulting Engineer's monthly fee will be paid by the Employer each month within a maximum of thirty (30) days of the receipt by Employer of the Consulting Engineer's invoices.
>
> (3) In case any delay occurs in making any of the payments, the Consulting Engineer will be entitled to receive an amount equal to six percent (6%) per annum as compensation for his loss for the payable amount during the delayed period.

By its terms, Article 12(3) is not limited to the effective period of the Contract, and the Tribunal declines to imply any such limitation. Accordingly, the Claimant is entitled to 6 percent simple interest per annum on its invoice

claims, commencing 30 days after each invoice was received by MORT.

149. The Claimant has computed the amount of interest accrued starting 40 days from the date of each invoice -- allowing 10 days for each invoice to be received by MORT -- through to 30 April 1980 at 6 percent, and MORT has not challenged this computation. The Tribunal therefore awards interest of $108,706.77, representing 60 percent of the Claimant's calculated amount as adjusted by the Tribunal to reflect the proper amount of interest on the net amount awarded on the Map Invoice, as a fixed sum through 30 April 1980, to be added to the $1,514,991.53 awarded on the Claimant's invoice claims. The resulting base amount of $1,623,698.30, including interest up to 30 April 1980, is to be used to calculate the additional interest owing up to the date of the Award. With respect to the claim for the uninvoiced high supervision fees for which the Tribunal has found MORT to be liable, the Tribunal awards the contractually-mandated 6 percent simple interest as of 16 December 1981, 30 days after the date on which the Claimant filed its claim here. As to interest on the good performance retention, the Tribunal notes that reimbursement of the good performance retention was provided for in a separate contractual provision not linked to Article 12 and its interest provisions. Nevertheless, the Tribunal determines that the Contract rate of interest should be applied to the good performance retention as well. The Tribunal therefore awards simple interest of 6 percent per annum as of 18 March 1980, the date on which the Tribunal finds the retention should have been refunded to the Claimant. Likewise, 6 percent interest on the allowable demobilization costs is also awarded, but from 20 October 1980, 30 days after the Claimant states it completed all demobilization activities.

VI. COSTS

Each Party shall bear its own costs of arbitration.

VII. AWARD

150. For the foregoing reasons,

THE TRIBUNAL HEREBY AWARDS AS FOLLOWS:

(a) The Respondent, THE MINISTRY OF ROADS AND TRANSPORTATION OF THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the Claimant, HOWARD NEEDLES TAMMEN & BERGENDOFF,

(1) the sum of One Million Six Hundred Twenty-Three Thousand Six Hundred Ninety-Eight United States Dollars and Thirty Cents (U.S. $1,623,698.30), plus simple interest at the rate of six (6) percent per annum (365-day basis) from 1 May 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account, for its invoice claims;

(2) the sum of Fifty-Eight Thousand Eight Hundred Sixty-Three United States Dollars and Eleven Cents (U.S. $58,863.11), plus simple interest at the rate of six (6) percent per annum (365-day basis) from 16 December 1981 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account, for its uninvoiced claims;

(3) the sum of Five Hundred Sixty-Nine Thousand Nine Hundred Sixty-One United States Dollars and Seventy-One Cents (U.S. $569,961.71), plus simple interest at the rate of six (6) percent per annum (365-day basis) from 18 March 1980 up to and including the date on which the

Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account, for its good performance guarantee claim;

(4) the sum of Eighty-Two Thousand Five Hundred Seventy-One United States Dollars and Six Cents (U.S. $82,571.06), plus simple interest at the rate of six (6) percent per annum (365-day basis) from 20 October 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account, for its demobilization claims.

(b) 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.

(c) The Counterclaim of BANK TEJARAT is dismissed for lack of jurisdiction.

(d) The Counterclaims for the seven Consortium-related letters of guarantee and for taxes and social insurance premiums of the MINISTRY OF ROADS AND TRANSPORTATION are dismissed for lack of jurisdiction.

(e) The remaining claims and counterclaims are dismissed on the merits.

(f) This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
8 August 1986

Robert Briner
Chairman
Chamber Two

In the name of God,

Hamid Bahrami-Ahmadi
Concurring in part
Dissenting in part

George H. Aldrich