IRAN-UNITED STATES CLAIMS TRIBUNAL

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- Date _____

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CHAMBER THREE
CASE NO. 368
AWARD NO. 551-368-3

UNIDYNE CORPORATION,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN
acting by and through
THE NAVY OF THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

CORRECTION TO THE ENGLISH VERSION OF THE AWARD

The Tribunal has come across a clerical error in the footnoting of the English version of the Award in this Case filed on 10 November 1993. Consequently, in accordance with Article 36, paragraph 1, of the Tribunal Rules, the Tribunal makes the following corrections to its Award No. 551-368-3. Copies of the corrected pages of the Award are attached.

1. The footnote numbered 20 on page 21 should read footnote 3. All subsequent footnotes should be renumbered accordingly.

2. The reference to footnote 34 in footnote 22 (renumbered as footnote 5, according to 1, supra) on page 24 should be a reference to footnote 17.

3. The reference to footnote 34 on page 45, paragraph 94, should be a reference to footnote 17.

4. The reference to footnote 32 in footnote 37 (renumbered as footnote 20, according to 1., supra) on page 48 should be a reference to footnote 15.

5. The following minor points are also to be corrected. The quotation on page 45 ending with the words "...enterprise carried on in Iran" should have a quotation mark inserted after the word "Iran". On page 57 the words "as costs of arbitration" should be added to paragraph 121, subsection a(iii), after "(U.S.$15,000.00)".

Dated, The Hague
8 December 1993

Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God

Richard C. Allison

Mohsen Aghahosseini
See my Dissenting
Opinion filed on
12 November 1993

2. The Tribunal's findings

42. The record contains a number of invoices that were sent to the Navy by Unidyne for work performed.[3] The sum total of these invoices amounts to U.S.$2,314,286.31 before deduction of the down payment percentage. In addition thereto, the Respondent referred to another invoice, no. 79-0626 in the amount of U.S.$95,000.00, which is not in the record but of which it acknowledges to owe U.S.$44,133.12. Furthermore, the Respondent accepts that it owes Unidyne an extra U.S.$22,520.00 for work performed but for which no invoice was presented. The total amount of the invoices in evidence before the Tribunal increased by the sums of U.S.$44,133.12 and U.S.$22,520.00 adds up to U.S.$2,380,939.43.

43. There is a dispute among the Parties about the sum due for work performed by the Claimant on the Bandar Abbas Shipyard. According to the Contract, the Claimant was to "develop and implement a 3M System in the shipyard at Bandar Abbas." After the Claimant had commenced performance on this aspect of the Agreement, the Respondent by letter dated 19 June 1979 requested Unidyne to stop further work at the Shipyard. The Parties subsequently exchanged communications and held conferences with a view to determining how much the Claimant should receive for the work done up to that point. Only part of the documents reflecting those negotiations have been submitted to the Tribunal. The two most important documents in our possession are the Navy's letter of 14 November 1979 and Unidyne's reply thereto of the same day. The Navy's letter indicates that the Claimant valued the work done on PMS Development at Bandar Abbas at U.S.$328,808.00, whereas the Respondent only agreed to pay U.S.$102,043.98 for this work. Unidyne responded on the same day by claiming that "the [Technical Directorate's] settlement offer

[3] All but two of the invoices carry the Navy's seal indicating approval. The Respondent, however, included the two invoices without the seal among the invoices that it uses as a basis to calculate in its pleadings the balance outstanding for work performed.

however, whether the Claimant should be awarded this amount because on 30 January 1980 it issued invoice no. 79-0632 in which it charged the Navy only the amount of U.S.$102,043.98 for the work performed, despite its letter of 14 November 1979.[4] The next issue to be addressed by the Tribunal therefore is whether the Claimant waived its right to the excess by issuing the invoice in the amount offered by the Respondent.

47. At the Hearing, Unidyne denied that this was the case. In considering this question, one should bear in mind that just two months prior to the issuance of the invoice, the Claimant had set out in extenso in its letter of 14 November 1979 its fundamental disagreement with the Respondent's valuation of the work done. It would be rather odd if the Claimant, having written that letter, suddenly would have collapsed and given up its entitlement to the extra amount. Account also should be taken of the situation prevailing in Iran at the time the invoice was issued. As explained in paragraph 94, infra, after 4 November 1979 those American companies that had remained in Iran were forced to leave their projects and to evacuate their personnel. The invoice was issued on 30 January 1980 after Mr. Mendes, Unidyne's last American representative in Iran, had left the country on 3 December 1979.[5] Considering what is stated in paragraph 45, supra, it seems likely that the Claimant presented the invoice only in the amount that had been accepted by the Respondent because it thought it would be futile to attempt to obtain more at a time when its rapport with the Navy was jeopardized by the deteriorating relationship between the United States and Iran. This is consistent with Mr. Connor's testimony at the Hearing according to which "Unidyne attempted to get what it could" by issuing the invoice in the lower amount. The fact that the Claimant did not include any language on the invoice

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[4] The invoice in question actually is in the amount of U.S.$152,503.98. The difference between that amount and U.S.$102,043.98 is explained by the fact that it covers more than the work done on the PMS Development for Bandar Abbas.

[5] See footnote 17, infra.

indicating that the submission thereof was without prejudice to its claim for the higher amount does not establish that it thereby intended to waive its right to the excess. Unidyne might well have decided not to do so because it feared that the Navy otherwise would refuse to pay even the undisputed amount.

48. In view of the above considerations, it is reasonable to conclude that the Claimant was entitled to an additional amount of U.S.$176,304.02 for the work it performed on the PMS Development for the Bandar Abbas Shipyard and that its submission of the invoice in the amount of U.S.$152,503.98 is insufficient to hold that it waived its right to the balance.

49. The sum of U.S.$176,304.02 therefore should be added to the amount of U.S.$2,380,939.43 referred to in paragraph 42, supra, in order to calculate the sum that still may be outstanding to either of the Parties. On the basis of the Respondent's declarations and the payment slips submitted by that Party, the Tribunal determines that the Navy has made payments to Unidyne in a total amount of U.S.$2,366,611.71 including the sum of U.S.$721,876.00 it had paid as down payment.

50. Whether the Claimant is entitled to an award for the balance in the amount of U.S.$190,631.74 and whether the Respondent should be reimbursed for the value of the guarantee period depends on the circumstances under which the Contract came to an end, namely whether it was fully performed, or whether it terminated due to the breach of any of the Parties or by reason of force majeure. The Tribunal therefore will defer its decision on these questions until it has analyzed how the Contract terminated.[6]

51. As regards the Claimant's charge that the Navy failed to pay the invoices in a timely fashion, it seems likely that much of the alleged delay resulted from the need to modify the delivered material following the Navy's comments, as discussed

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[6] See paragraph 83 et seq., infra.

> Unidyne personnel were available to initiate the PMS installation phase in September 1978, but the required material has been held by Iranian Customs since that time.[7] Two men were on site in Iran and two additional men were on a standby status at the Unidyne facility in Norfolk, Virginia.
>
> The Unidyne 3M Librarian assigned to the 3M Library in Tehran was not fully productive on 3M efforts due to non-delivery of 3M material held by Iranian Customs since September 1978. The Unidyne Librarian for assignment to Bandar Abbas was held in a standby status at the Unidyne facility in Norfolk, Virginia, pending release of material from Iranian Customs.(Doc. 10, Exh. 2-5)

56. The materials that had been held up at the Iranian customs since September 1978 were finally cleared after a delay of fourteen months, on 14 November 1979.[8] Unidyne further states that "had the Iranian Navy secured the release of that material from customs in a timely manner, it could have had the Program operating aboard 63% of their ships as early as February of 1979."

57. Unidyne maintains that the Navy's failure to obtain the clearance of the materials through the Iranian customs caused it to incur additional costs for which it claims compensation. For this Claim to be successful, it should first be established that

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[7] In its brief filed 16 May 1983 Unidyne explains more precisely that

> the completed and delivered installation packages for 63% of the vessels addressed by the contract, as well as the majority of all forms and common materials to support all PMS installations and the 3M Program, arrived in Iran in September of 1978, but the Iranian Navy was unable to release the material from customs until November of 1979.

[8] In an effort to mitigate the delays caused by the Iranian customs, Unidyne proposed to the Navy to transport the material still to be delivered under the Contract by air. By letter of 25 August 1979 the Navy replied that "[Unidyne's] suggestion of transporting remaining forms and hardware, called for in 3M contract, to Iran by air shipment is approved."

responsible for expediting the clearance, lend further support to the proposition that Article 3.4.6 of the Contract embraces this procedure. The Tribunal thus concludes that the Contract allocated the responsibility for obtaining customs clearance to the Respondent.

60. It follows from the record that as a result of the fourteen month delay referred to in paragraph 56, supra, the Claimant incurred extra costs beyond those that it normally would have had to bear under the Contract. At the Hearing, Unidyne quantified this loss at U.S.$594,689.00. The question, however, is to what extent the file supports this figure.

61. Unidyne's letter to the Navy dated 6 June 1979 indicates that these expenses concerned in particular the areas of labor and transportation. Because they were not in possession of the necessary material to proceed with their work, several Unidyne personnel members in Iran were forced to remain idle "pending the release of material from Iranian Customs." In the same letter, Unidyne informed the Navy that "[l]arge amounts of 3M material were sent to Iran as excess baggage with Unidyne personnel entering Iran. This was necessitated by the lack of movement of material through normal commercial channels involving Iranian Customs. Unidyne therefore incurred the high costs associated with excess baggage charges."

62. Unidyne concluded its letter of 6 June 1979 by noting that "[t]he additional financial burden upon Unidyne is in excess of $400,000.00." However, since the letter also refers to difficulties other than those related to customs clearance, this sum cannot be attributed entirely to that problem alone.[9] On the other hand, account must be taken of the fact that the sum of U.S.$400,000.00 reflected additional expenses incurred by Unidyne up to 6 June 1979, whereas the material in question was held up much longer, until 14 November 1979. Having regard to these

[9] Those other problems will be discussed in paragraph 88 et seq., infra.

conflicting considerations, the Tribunal believes that U.S.$250,000.00 is a fair estimation of the increased costs incurred by the Claimant as a result of the fourteen month delay in obtaining necessary customs clearances. In view of its determination that the Respondent should bear the consequences thereof, the Tribunal concludes that the Claimant is entitled to compensation in the same amount, plus interest at the rate of ten percent per annum running from 14 November 1979.

D. The Navy's alleged failure to schedule properly training sessions and to construct timely and equip adequately ships for inspection

63. The Claimant alleges that the Respondent's breaches include the failure to make proper arrangements for training sessions provided for under the Contract. This breach purportedly caused the Claimant to incur "additional expense for the inefficient use of its instructors' time." The Claimant also contends that the Respondent failed to construct timely and equip adequately ships for inspections scheduled by the Respondent in England, India and France. According to the Claimant, this forced Unidyne repeatedly to visit all three countries and thus "to incur additional costs ... since only one visit to each site was priced in the contract."

64. The Tribunal notes that the Contract envisaged, at least with regard to training schedules, that Unidyne would remain flexible in response to the Navy's needs.[10] Furthermore, it is not clear, in the Tribunal's view, whether or not the Contract provided for only one visit to each of the countries in which the Navy's vessels were located. In addition, the Tribunal has not been able to find in the record any trace of contemporaneous

[10] See, e.g., pp. 1-19 of the Contract: "In the event that crews are not available for 3M training at either the ship, or the pre-commissioning school, then it shall be the follow-on responsibility of Unidyne to provide such training in a compatible time frame, not to exceed the completion date of the contract."

far as the work area in Bandar Abbas was concerned, the Navy maintained that the delays resulted from its not being supplied timely with the information necessary to obtain the required security clearances for Unidyne personnel.

71. The initial stage of performance is not the only period of delay complained of by the Respondent. In addition, the Navy generally asserts that Unidyne "considerably delayed in each stage and element of the Contract:"

> Unidyne's delay may easily be detected in the schedule of the Contract, in that the Contract time was totally 2 years, whereas when Unidyne Corporation abandoned the performance of the Contract for ever and left Iran without authorisation from the Navy ... years had elapsed since the coming into effect of the Contract, whereas the Contract was yet half completed, and is left as yet incomplete.

72. The critical path diagram attached to the Contract indicates that the Parties expected the work to take 24 months.[11] According to this schedule, the Contract should have been completed by November 1979,[12] or at the latest by January 1980.[13] It is not disputed, however, that the Contract was not completed by either of those dates.

73. While it is quite clear that the performance of the Contract lagged behind schedule, it is much less clear whether such delay was entirely the fault of Unidyne, as the Respondent contends. With regard to the problems that arose in the initial stages of the Agreement, the letters submitted by the Parties suggest that, although Unidyne may have been late in establishing

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[11] Not including the two-year feedback period.

[12] Article 3.4.4 of the Contract states that "[t]he effective date of this contract for determining start for calculating deliverables and payment schedule is [1 November 1977]."

[13] Assuming the effective date of the Contract would have been 21 January 1978, as requested by Unidyne. See paragraph 69, supra.

the bank guarantee covering the down payment, at least part of the complications resulted from the delay in securing adequate work area in Bandar Abbas.[14]

74. As regards the Navy's allegation that Unidyne caused delay beyond the initial stages of the Contract, the Tribunal observes that this complaint generally is less well documented than that concerning the delay incurred in the months immediately following the conclusion of the Agreement. Furthermore, it appears that the factors that contributed most significantly to the delay in the performance of the Contract were largely beyond the control of Unidyne. The difficulties experienced by Unidyne in obtaining customs clearance of the materials that it had sent to Iran, resulting in the goods being held up for fourteen months, were an important factor at the root of the Contract backlog. The numerous comments by the Navy on the materials submitted by the Claimant and the latter's review thereof undoubtedly compounded the problem. Finally, as shall be discussed in more detail in paragraph 83 et seq., infra, the upheaval in Iran during 1978 and 1979 seriously interfered with the work to be accomplished by Unidyne in Iran.

75. In view of the above considerations, the Tribunal does not believe that the Claimant should be held to have breached the Contract by delaying its performance as alleged by the Respondent.

B. The non-completion of the Contract

1. The Parties' contentions

76. As mentioned in paragraph 65, supra, the Parties' positions on the causes for the non-completion of the Contract are diametrically opposed. Whereas the Respondent contends that

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[14] At the Hearing, Mr. Gurley, Unidyne's initial project manager in Iran, stated that "The Navy ... did not provide living quarters in Bandar Abbas."

> from local nationals against Unidyne's American employees.
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> 2. As a result of the situation, it has been necessary to remove all of our employees from Bandar Abbas and to return them to the United States, until such time as the conditions improve in Bandar Abbas, allowing their return. The removal action was accomplished because of our concern for the personal safety of these people and as a result of insufficient resources to reasonably guarantee their continuing safety. Therefore, as a result of extreme civil disorder conditions in Bandar Abbas which totally prevent Unidyne Corporation personnel from execution of their assigned 3MP2 duties, Unidyne regretfully states that a Force Majeure event has occurred and so notifies the IIN of the Force Majeure event in accordance with paragraph 3.4.1, page 3-4 of the Contract for 3M Phase II.[15]

84. The above description of the conditions prevailing in Iran is in line with the Tribunal's earlier observations regarding the situation in the country at the time. In Jack Rankin and Islamic Republic of Iran, Award No. 326-10913-2, para.

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[15] The force majeure clause of the Contract provides that

> Unidyne Corporation or its sub-contractors shall not be responsible or liable for delay in delivery or failure to perform due to "force majeure" which shall include only delays other than those willfully and intentionally caused by the Unidyne Corporation (without limiting the generality of the term ("force majeure") as follows [sic]: Acts of God; fire; floods; storms; riots; strikes; lockouts; and other labor disputes resulting in work stoppage; wars; act of the United States Government; acts or omissions of the Imperial Iranian Government; delay in delivery of materials or components ordered in a reasonably timely manner caused by an event which would constitute force majeure hereunder; delays of sub-contractors or suppliers caused by an event which would constitute force majeure hereunder.
>
> Unidyne Corporation shall notify the [Navy] within a reasonable time after it learns of a force majeure event and provide such information as [the Navy] reasonably requests with respect to such occurrence. In the event of any such delay; the date of delivery shall be extended for a period equal to the time lost by reason thereof, without any penalty applied as a result thereof.

86. It follows from the above that Unidyne believed in January 1979 that the events occurring during that month would not lead to the termination of the entire Contract but merely to a temporary suspension of the performance of some of its components and to more delay, in addition to that already caused by the customs problem.[16] As evidenced, inter alia, by the proposed "Emergency 3MP2 Management Plan" referred to in and annexed to Unidyne's letter, the Contract components that were expected to be affected mostly were those that necessitated the presence of Unidyne personnel in Iran. This Plan states that the "program areas that have been affected by Force Majeure are basically those performance items that require Unidyne personnel in Iran. These are: (1) Installation Tasks, (2) Training, and (3) completion of the shipyard development package."

87. That the contractual relationship between the Navy and Unidyne did not break down completely in January 1979 is further demonstrated by the correspondence between the Parties concerning various aspects of the Agreement following the Claimant's letter of 2 January 1979. On 31 January 1979 Unidyne sent the Navy materials that had been corrected to conform to the Navy's comments. Several invoices for work performed by Unidyne were sent to, approved and paid by the Navy in the period subsequent to the announcement of the force majeure event. In a letter dated 19 June 1979 the Navy notified the Claimant of certain modifications to the Contract that it deemed necessary. Several communications regarding changes to the Contract and the continued shipments of materials by Unidyne to Iran were exchanged during the period of August 1979 through November 1979. It appeared at the Hearing that some of the Claimant's American personnel saw fit to go back to Iran in the course of 1979. Mr. Mendes, Unidyne's project manager in Iran who had left the country in December 1978 for the Christmas holidays, testified

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[16] See paragraphs 54 et seq., supra.

at the Hearing that he returned in March 1979 and remained in the country until December 1979.[17]

88. Although work under the Contract continued to be performed after January 1979, it is clear that the situation in Iran as of September 1978 rendered Unidyne's task considerably more onerous. This is illustrated by Unidyne's letter to the Navy dated 6 June 1979:

> In the spirit of good faith and mutual cooperation, Unidyne has endevored [sic] to continue contract performance ... Unidyne has also burdened itself by maintaining full contract personnel capability.
>
> During the several months starting in September 1978 and preceding the Force Majeure event, and those months following the Force Majeure event, Unidyne has, and is continuing to incur added burdens and expenditures above and beyond those it would have incurred if the Force Majeure event had not occurred.

89. The remainder of the letter is devoted to enumerating the areas in which Unidyne claims to have experienced an increase in its burdens. Apart from the passages relating to the customs problem, which have been quoted previously in paragraphs 55 and 56, supra, this list reads as follows:

> (c) Productivity of all Unidyne personnel in Iran was significantly reduced from September 1978

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[17] Apart from Mr. Mendes, it is unclear how many of Unidyne's American employees, if any, were stationed in Iran after January 1979. The record indicates that, in November 1979, Unidyne contemplated sending additional American personnel to Iran depending "on the prevailing in-country situation, delivery of required material, and establishment of a suitable staging area in Bandar Abbas for PMS installation operations." On 24 November 1979 Mr. Mendes wrote a letter to the Navy stating: "Unidyne wishes to further advise the Technical Directorate that [Mr. L. Murray and Mr. J. MacDonald] will arrive in Tehran on 6 December 1979." It is unknown to the Tribunal whether these people actually ever arrived in Iran. Relevant in this regard is that Mr. Mendes testified at the Hearing that he himself "departed from Iran on 3 December 1979, one month after the seizure of the Embassy" as he felt that it was "useless for him to stay" and because of concern for his personal safety.

notwithstanding any contracts entered into or licenses granted before [7 April 1980,][inter alia,]

> The sale, supply or other transfer, by any person subject to the jurisdiction of the United States, of any items, commodities or products, except food, medicine and supplies intended strictly for medical purposes, and ~~donations of clothing intended to be used to relieve~~ human suffering, from the United States, or from any foreign country, whether or not originating in the United States, either to or destined for Iran, an Iranian governmental entity in Iran, any other person or body in Iran or any other person or body for the purposes of any enterprise carried on in Iran."

(Emphasis added)

94. It is plain that the events occurring in November 1979 profoundly disturbed the performance of the Contract. As the Tribunal has found previously, at least after 4 November 1979 those American companies that had remained in Iran were forced to leave their projects and evacuate their personnel. See e.g. Eastman Kodak Company et al. and Government of Iran et al., Partial Award No. 329-227/12384-3 para. 39 (11 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 153, para. 39; International Technical Products et al. and Government of the Islamic Republic of Iran et al., Partial Award No. 186-302-3, pp. 22-23 (19 Aug. 1985), reprinted in 9 Iran-U.S. C.T.R. 10, 24; Starrett Housing Corp. et al. and Government of the Islamic Republic of Iran et al., Interlocutory Award No. ITL 32-24-1, p. 53 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 122, 155. Mr. Mendes' Hearing statements appearing in footnote 17, supra are consistent with these findings.

95. Furthermore, the Executive Orders and their implementing regulations (the "Freeze Orders") had the effect of barring further shipments of materials under the Contract to the Navy. This has been acknowledged by the Respondent itself. In its Statement of Defence that Party stated that "a further cause of the failure to fulfil contractual obligations was Unidyne's government, which prevented the shipment of consignments to Iran." Furthermore, in reply to Unidyne's complaint that it

"incurred storage costs for 3M Phase 2 contract materials stored at Norfolk, Virginia," the Respondent argued that these costs "were incurred as a result of the orders of Unidyne's sovereign government (United States) preventing the delivery of the materials to Iran."

96. Although it appears that the Navy did receive a limited amount of additional material after 14 November 1979,[18] it is quite clear that subsequent to the taking of the United States Embassy and to the promulgation of the Freeze Orders, the Contract ultimately ground to a halt. This is evidenced by the Navy's complaints. In a telex addressed to Unidyne dated 15 January 1980 the Navy remarked that "Unidyne Corp. has not initiated actions to implement the remaining elements of the contract since mid-October 1979. Should Unidyne fail to accomplish thier [sic] contractual obligation within 30 days upon receiving this telex, [the Navy] will have to take proper action according to the Contract." In a subsequent message[19] addressed to Unidyne the Navy noted that despite its requests that

> the status of the Contract and its completion be clarified for the Navy, however, the issue has still remained unclear. Therefore, it is necessary that Unidyne submit its final views to the Navy in writing at most until 20.1.59 (9.4.80) indicating a definite starting date for the PMS installation on the sea-going units and a definite date for the delivery of contract

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[18] On 30 November 1979, just a few days before he left Iran finally, Mr. Mendes sent a letter to the Navy stating that "[a]n assortment of 3M Contract material is being delivered to the 3M Office of the Technical Directorate." In a communication dated 9 April 1980 Unidyne informed the Navy that "it recently delivered the P.M.S. documentation for the Khark to the Navy in two copies; one to the Khark in England and the other to the Technical Directorate in Tehran." It is unclear whether this statement concerns the same materials as those referred to in Mr. Mendes' letter of 30 November 1979. In its letter of 9 April 1980 Unidyne acknowledged that "[the delivery] was taken in contravention of the U.S. Government's ban on delivery of any items to Iran."

[19] The letter in question does not bear a date. It can be inferred from other elements in the file, however, that it probably was sent on 7 April 1980.

sending such materials under the circumstances described in paragraphs 91 et seq., supra.

(b) The consequences of the termination of the Contract by reason of force majeure

98. Having determined that the Contract terminated by reason of force majeure, the Tribunal will consider what effect such termination had on the rights and obligations of the Parties and will decide upon a number of the Claims and Counterclaims that have not been ruled upon previously in this Award. The Claims in question are based on (1) the Respondent's actions commencing in September 1978 as a result of which the Claimant allegedly incurred various losses, (2) the Respondent's alleged failure to make timely arrangements to allow the completion of the Contract, (3) the purported expropriation by the Respondent of the Claimant's equipment and furniture and (4) the contention that a balance is still outstanding for work performed. In addition, the Tribunal will pronounce its judgment on the Counterclaim based on the Claimant's alleged unlawful failure to complete the work under the Contract.

99. Before entering into the specifics of these Claims and Counterclaims, the Tribunal notes that, although the Contract contains a clause dealing with force majeure,[20] it does not explicitly allocate between the Parties the effects of a termination of the agreement for that reason. That being the case, the Tribunal will seek guidance on this issue among its precedents. In International Schools Services, Inc. and National Iranian Copper Industries Company, Award No. 194-111-1, pp. 14-15 (10 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 187, 197, the Tribunal found that

> [t]he governing rule as to the rights and liabilities of the Parties in these circumstances is that "the loss must lie where it falls." As the Tribunal has pointed out in connection with this rule, "[t]he apportionment

[20] See footnote 15, supra.

entitled to the balance in question, plus interest at the rate of ten percent per annum from 18 April 1980, being a month after the date of the last invoice.

104. In reply to Unidyne's Claim for the balance of the outstanding invoices, the Respondent argues that it should be reimbursed for the value of the two-year guarantee period. While the Contract does not provide for separate payments by the Navy for the assistance that Unidyne might have had to perform during that period, it appears reasonable to assume, as is done by the Respondent, that a fraction of the invoices that the Navy had paid reflected the value of such possible services, as a commercial enterprise would not normally commit itself to provide such assistance free of charge.

105. When the Contract terminated due to force majeure it became clear that the Navy, having settled most of the invoices received from Unidyne, had, by doing so, paid also for guarantee services that never would be performed.[21] The Tribunal believes it would be inconsistent with the principles espoused in paragraphs 99, supra, not to reimburse the Respondent for such payments.

106. The Respondent values the guarantee in question at U.S.$ 166,665.76. However, it has presented insufficient justification for that figure. A better indication of the Parties' expectations of the value of the two-year guarantee can be found in Article 3.4.11 of the Agreement. That provision states that "[u]pon completion of the contract the Bank Guarantee [covering the down payment] shall be reduced to ... dollar 72,187.00 and so remain until satisfactory completion of the two year feedback processing period." Although this amount does not necessarily reflect the exact value of the guarantee period, the Tribunal, considering also the lack of any other element in the file shedding light on its value, finds it reasonable to award to the

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[21] At the time the Contract terminated, the Respondent had paid 66 percent of the full Contract price.

by persons subject to the jurisdiction of the United States, after the effective date."[22] The Respondent itself refers in its memorial filed 5 December 1986 to a statement by Bank Markazi that "owing to the freeze of the Iranian accounts by the Government of the United States ... , the United States banks refused to extend guarantees."

118. In view of the foregoing, the Tribunal does not believe that the Claimant can be held liable under the Contract for failing to obtain the extension of the guarantees established in favor of the Respondent, despite its statement contained in its letter of 9 April 1980.

E. The Claimant's alleged failure to pay social security premiums.

119. Unidyne's final breach alleged by the Respondent is the failure to pay social security premiums in the amount of Rials 11,555,000.00. As the alleged obligation to pay these contributions arose not out of the Contract but by the application of the law of Iran, this Counterclaim is outside the Tribunal's jurisdiction. International Technical Products Corp. et al. and Government of the Islamic Republic of Iran et al., Award No. 196-302-3, p. 29 (24 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 206, 226; Howard Needles Tammen & Bergendoff and Government of the Islamic Republic of Iran, Award No. 244-68-2, para. 58 (8 Aug. 1986), reprinted in 11 Iran-U.S. C.T.R. 302, para. 58.

VIII. COSTS

120. Considering the outcome of the Award, the Tribunal, applying the criteria outlined in Sylvania, Award No. 180-64-1 at pp. 35-38, reprinted in 8 Iran-U.S. C.T.R. at 323-324, decides

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[22] For the text of the relevant passage of paragraph 535.201, see paragraph 92, supra.

to award the Claimant U.S.$15,000.00 as compensation for the legal costs it incurred.

IX. AWARD

121. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a. THE ISLAMIC REPUBLIC OF IRAN is obligated to pay UNIDYNE CORPORATION

the sum of:

(i) Two hundred fifty thousand United States Dollars (U.S.$250,000.00), plus simple interest at the rate of ten percent (10%) per annum (365-day basis) from 14 November 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account,

and

(ii) One hundred ninety thousand six hundred thirty-one United States Dollars and Seventy-four Cents (U.S.$190,631.74), plus simple interest at the rate of ten percent (10%) per annum (365-day basis) from 18 April 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account,

and

(iii) Fifteen thousand United States Dollars (U.S.$15,000.00) as costs of arbitration,