1— 124
1—١٢٤

IRAN-UN[illegible]AL

دیوان داوری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

Case No. 1 Date of filing: 19 MARCH 84

** AWARD - Type of Award FINAL
- Date of Award 17 MARCH 84
49 pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____

- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____

- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____

- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

_____

- Date _____
_____ pages in English _____ pages in Farsi

R/12

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی

1-126
1-١٢٦

DUPLICATE ORIGINAL
«نسخه برابر اصل»

CASE NO. 1
CHAMBER THREE
AWARD NO. 116-1-3

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران - ایالات متحده
FILED - ثبت شد
Date ۱۳۶۲ /۱۲/ ۲۹ تاریخ
19 MAR 1984
No. 1 شماره

WILLIAM L. PEREIRA ASSOCIATES, IRAN,
Claimant,

and

ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances:

For the Claimant:
Mr. Stanton P. Belland
Mr. Thomas P. McGuire
Attorneys
Mr. Neil W. Birnbrauer
Claimant Representative

For the Respondent:
Mr. Mohammad K. Eshragh
Deputy Agent of the
Islamic Republic of Iran
Mr. Mohammad Khawar
Legal Adviser
Mr. Yausef Moulaie
Attorney of Ministry of
Housing
Mr. Wigen Zargarian
Technical Assistant
Mr. Gholamali Zarif
Golzarzadeh
Ministry of Finance
Mr. Ali Rahnemoon
Financial Assistant

Also present:
Mr. Arthur W. Rovine
Agent of the United States
of America

I. THE PROCEEDINGS

Claimant, WILLIAM L. PEREIRA ASSOCIATES, IRAN ("Pereira" or "Claimant") filed its Statement of Claim against Respondent ISLAMIC REPUBLIC OF IRAN on 20 October 1981.

On 7 May 1982, Statements of Defence and Counterclaim were filed by the Plan and Budget Organization of Iran ("PBO") and, jointly, by the Iranian Medical Center ("IMC") and the Iranian Ministry of Housing and Urban Development ("MHUD"). On 31 May 1982 IMC, Ministry of Science and Higher Education and the Iranian Ministry of Economic and Financial Affairs jointly filed a further Statement of Defence and an amendment to counterclaim.

On 9 August 1982, Claimant filed a Response to Counterclaim and Statement of Defence. On 24 November 1982, the Iranian Ministry of Science and Higher Education filed a document seeking costs of the arbitration.

A Pre-Hearing Conference was held on 2 December 1982 on which date Claimant submitted a memorial and evidence in support of its standing to present the claim. At the Pre-Hearing Conference, the Parties stipulated that MHUD would thereafter be deemed the sole entity of the Government of the Islamic Republic of Iran to act in the case on behalf of that Respondent and shall along with the Islamic Republic of Iran be referred to as "Respondent".

On 20 December 1982, the Tribunal issued an Order which recorded the above-mentioned stipulation, required the Respondent to submit a corrected English translation of the Statement of Defence and Counterclaim originally filed by MHUD and IMC and translations of the documents attached

thereto. The Order also fixed a schedule for the submission of written evidence.

On 31 January 1983, MHUD filed a revised Statement of Defence and Counterclaim without any exhibits. Claimant submitted a brief on legal issues and documentary evidence on 28 February 1983 and a Pre-Hearing memorial on 1 March 1983. The Respondent's brief and documentary evidence were filed on 1 March 1983.

Claimant submitted comments on the Respondent's revised Statement of Defence and Counterclaim on 11 March 1983 and a rebuttal memorial and evidence on 29 April 1983. The Iranian Ministry of Economic Affairs and Finance submitted a further statement and evidence in support of the Respondent's counterclaim for alleged taxes owing on 12 May 1983, and on 23 May 1983 Claimant presented a motion to exclude this counterclaim.

The Hearing was held on 30 and 31 May 1983 at which proceeding both Parties appeared and presented evidence and oral argument. In the course of the Hearing, the Respondent sought to amend the counterclaim for alleged tax deficiencies.

Following the Hearing, the member of the Tribunal appointed by the Islamic Republic of Iran resigned. A new member was appointed. The Tribunal has hereby determined, in accordance with Article 14 of the Tribunal Rules, not to repeat the prior Hearing. In addition, pursuant to Tribunal Rules, the member of the Tribunal appointed by the United States who resigned from the Tribunal after the hearing on this case on the merits participated in this award.

Respondent and the Ministry of Economic Affairs and Finance subsequently filed unauthorized submissions,

including a discussion relating primarily to the tax and social insurance counterclaims and additional written evidence. Orderliness, fairness and possible prejudice to the Parties in the case require that these submissions be disregarded.

II. FACTUAL BACKGROUND

On 23 June 1976, Pereira and Partia Consulting Engineers, Architects and Town Planners ("Partia"), an Iranian engineering firm, entered into a Consulting Engineering Services Contract ("Contract") with IMC under which they were to provide architectural and engineering services in connection with the construction of a major medical center complex in Tehran, Iran. Pereira and Partia executed the contract "jointly and severally" and were together referred to as the "Consulting Engineer" (Preamble of Contract); however, the Contract defined the obligations of Pereira and Partia separately and provided that their compensation was to be paid separately.

The services under the Contract were to be performed in three phases. Phase I, which was to be completed by the submission of a report by 23 March 1977, consisted of the preparation by Pereira of preliminary studies and drawings along with an explanatory report and the preparation by Partia of a preliminary cost estimate. Phase II, to be completed eleven months after approval of the report for Phase I, entailed the submission of a report including completed design drawings and specifications for the project to be prepared by Pereira and a final cost estimate and tender documents to be prepared by Partia. Phase III was to include implementation of the tender procedure by Partia within two months of receiving instructions to proceed (Art. 2.1(c); App. I, Art. 4, App. II, p. 9) and architectural supervision and coordination of project construction by

Pereira, in cooperation with Partia, to be carried out over a period of eighty-four months after execution of the construction contract. (Art. 3.1; App. I, Art. 4)

Article 2.2 of the Contract permitted IMC "to change at any time the required services, omit part of them or add to them...", in which event "the Consulting Engineer's fees will be proportionately reduced or increased, taking into account the work, cost and obligations performed, all as agreed between the Parties". Article 3 of Appendix I of the Contract also stated that it was IMC's intention to accelerate construction of certain parts of the project simultaneously as other parts proceeded according to the established schedule and that "the works executed prior to the time specified in this Contract shall be paid proportionately".

Under Article 4.3 of the Contract, the Consulting Engineer was required to:

> prepare the various phases of the project, tender documents and all his reports and correspondence in Persian language, and in cases where international tenders are concerned, the Consulting Engineer must prepare the said documents, in addition to Persian language, in French or English, as determined by the Employer.

Article 5 of the Contract provided that, "[w]ithin one month from the date of receiving the report and complete documents for each phase, the Employer shall announce his comment thereon in writing". If IMC did not, within that month period, give an opinion as "to inconsistency of the work carried out by the Consulting Engineer with the obligations stipulated in this Contract, indicating the differences, the aforesaid report and related documents shall be considered as approved and shall become the basis for subsequent studies and operations". In case such an opinion was given during that month, the Consulting Engineer

was required to "amend and prepare the said report and documents on the basis of the Employer's opinion without receiving any additional charges" within one additional month or ten percent of the period of the phase, whichever was longer.

For its Phase I services, Pereira was to receive (Art. 11; App. I, Art. 5) .95% of the "approved cost estimate for the Phase I" payable in four installments: 25% calculated on the basis of the Contract's specified project cost estimate of Rials 11 billion (App. I, Art. 2), to be paid as an advance against a bank guarantee; two additional 25% payments also to be calculated on the same basis estimate; and a final payment of the .95% of the approved estimate, less previous payments (Art. 11(a); Art. 13.1; App. I, Art. 5).

For Phase II Pereira was to receive 2.375% of the "approved final cost estimate for the Phase II" payable in five installments: 20% calculated on the basis of the approved Phase I estimate, to be paid as an advance payment against a bank guarantee; three additional 20% payments calculated on the same basis; and a final payment of 2.375% of the approved final estimate less previous Phase II payments (Art. 11(b); Art. 13.1; App. I, Art. 5).

Pereira's fee for Phase III was to equal 1.425% of the "actual cost of the works" to be paid gradually as progress in construction proceeded, with 10% of the fee paid on the basis of the approved final cost estimate of Phase II payable as an advance against a bank guarantee. (Art. 11(c); Art. 13.1; App. I, Art. 5)

Article 13.4 of the Contract provided that payments were to be made within thirty days after falling due and that payments made after this period would bear interest at the annual rate of 6%.

With regard to payments to be made in connection with all three phases, 10% of each such payment was to be retained by IMC as a good-performance guarantee under Article 15 of the Contract. For Phases I and II, this retention was to be paid upon approval of the reports for those phases. For Phase III, one-half of the retention was to be paid upon approval of the final report of the construction contractor and the other half upon final delivery of the completed project.

Article 14 allocated to the Consulting Engineer responsibility for the payment of taxes and social insurance obligations pertaining to it and its employees under Article 14, except if there were new taxes or charges after the contract, the fee would be adjusted accordingly. With regard to tax and social insurance obligations of the Consulting Engineer which were by law collectible by the employer, IMC was to deduct the appropriate amount from all payments and pay them to the relevant authorities.

The bank guarantees for the Phase I and Phase II advance payments were to be released upon approval of the reports relating to those phases. The bank guarantee for the Phase III advance payment was to be released gradually as the 10% advance payment was successively deducted from the periodic payments made for Phase III. (Article 13)

The Contract provided, in Article 13, that fees payable for any particular phase would be reduced "[i]f, without having any justifiable reason, the Consulting Engineer fails to observe the fixed periods stipulated for the Phases I and II and as a result works of the Consulting Engineer are wholly or partially delayed...." The reduction was to equal the proportion that the delay bore to the "fixed period for the execution of work" up to a maximum of 20% of the fee for the relevant phase. If the period of any of the phases

exceeded the time limits "for any reason other than default of the Consulting Engineer", adjustments were to be made with respect to payments.

Article 17(a) of the Contract provided that IMC could cancel the agreement upon fifteen days written notice if the Consulting Engineer failed to correct defects or shortcomings in its work within one and one half months after being notified by IMC to do so; in such a case, IMC was required to pay whatever compensation was necessary to total 90% of the fee for the particular phase involved after deducting any damages caused to it by the Consulting Engineer's breach. In the event of such a cancellation, the Consulting Engineer could make no claim for the 10% retention for good performance or for demobilization costs.

Under Article 17(b), IMC was also entitled to terminate the Contract on two months notice without cause, in which case it was obligated to pay all fees due for work performed until the date of termination plus all demobilization expenses incurred by the Consulting Engineer.

Furthermore, under Article 22, either party could declare the Contract terminated "[i]n cases of force majeure, where the execution of the present Contract becomes impossible for either of the Parties...."

Finally the Contract contained in Article 23 the following dispute resolution clause:

> All disputes arising between the Parties to this Contract from the execution of the Contract or interpretation of the provisions thereto, which cannot be settled amicably through negotiation or correspondence, shall first be referred to a committee consisting of the highest authority of the Executive Organization (or his deputy) and the Consulting Engineer for settlement. Should they fail to solve the dispute on the basis of the

> Contract and relevant rules and regulations, the matter shall be settled through competent courts according to the Iranian Law.

Claimant asserts that its services on the project commenced prior to the signing of the Contract. At IMC's request, work on two parts of the project -- site preparation and the construction of three basic sciences buildings -- proceeded on a much more accelerated schedule than that established in the Contract. Pereira's work on these two parts through Phase II was approved by IMC by a letter dated 13 March 1977. Pereira completed its Phase I services for the entire project and its Phase I report was approved by IMC by a letter dated 17 May 1977. The Phase I report was supposed to be completed by 23 March 1977. There is a reference to this report and the cost estimate having been sent to IMC on 16 April 1977. Pereira also performed services under Phase II of the project the completeness of which is disputed by the Parties. Pereira also contends that it performed some Phase III and extra work, also matters which are in dispute.

A contract was executed with a construction contractor for site preparation and for the basic sciences buildings, and Pereira performed Phase III services for those parts of the project. Site preparation was completed, and construction on the basic sciences buildings was proceeding when IMC announced on 30 December 1978 that construction of the basic sciences buildings was "stopped until further notice". Pereira's employees departed Iran in January 1979 and Pereira performed no further work on the project. Thereafter, IMC did not proceed with the project.

III. CONTENTIONS OF THE PARTIES WITH REGARD TO THE CLAIMS

Claimant alleges that, from the time its claims arose to the present, it has been organized under the laws of the United States and that it has been wholly owned by another United States corporation, William L. Pereira Associates, Planners, Architects, Engineers, a majority of the shares of which were legally or beneficially owned during the relevant period of time by citizens of the United States. Claimant further alleges that it was registered in Iran to do business in that country.

Claimant notes that on this major project, a medical center complex including 11 buildings, each of which was of a highly specialized function, it produced 32 bound volumes of specifications and 2350 pages of drawings, all of which were made available to the Tribunal.

Claimant maintains that IMC failed to make payments required under the Contract in five respects. First, Claimant alleges that, while its Phase I services were completed in full and were approved by IMC in all other respects, IMC breached the Contract's procedure for approving reports by unilaterally and arbitrarily adjusting the Phase I cost estimate prepared by Partia and basing Pereira's Phase I fee upon the adjusted figure of 9,053,995,344 rials. Claimant contends that the Partia estimate of 11,416,242,265 rials should be deemed approved under the terms of the Contract and should have been the basis for its Phase I fee. Based upon Partia's preliminary cost estimate, Claimant now claims US $295,629 which it maintains is the appropriate dollar equivalent of the 20,841,842 rials it alleges to be owing after deducting Iranian withholding taxes. Claimant also seeks interest on this amount from 1 November 1977, the date of IMC's last payment to Pereira, at the 6% annual rate stipulated in the Contract.

Second, Claimant contends that it fully and timely performed its Phase II obligations by periodically delivering drawings and specifications for all components of the project over a period before, and delivering a final report on 24 April 1978. Despite this performance, Claimant alleges that the first three payments made for Phase II were paid late and were wrongly based upon IMC's adjusted Phase I estimate, that the fourth payment was only a partial payment and that the final payment was never made. Claimant maintains that, in connection with all scheduled components of the project except for the medical center's basic sciences buildings and site preparation, the first four installments should have been based upon Partia's Phase I estimate and that the final payment should be based upon the final cost estimate "adopted" by IMC and equalling 15 billion rials. On this basis, Claimant seeks US $2,780,652 (which includes the retention amount) which it claims is the appropriate dollar equivalent of the 195,618,825 rials alleged to be owing after the deduction of withholding taxes. Claimant also seeks interest as provided in the Contract for the periods for which installments, or portions thereof, were late, or unpaid, from the respective dates upon which it alleges the payments were due and payable.

Third, Claimant maintains that it completed Phase II work on site preparation and the basic sciences buildings on an accelerated basis at the request of IMC and that, although IMC approved the work, it has not made any payment therefore. Thus, Claimant alleges that a separate Phase II final cost estimate was prepared for this accelerated work and that the costs of site preparation and the basic sciences buildings were not included in the Phase II estimates for the remaining portions of the project upon which Claimant bases its previous Phase II claim. Claimant claims that, under the terms of the Contract, it should have been paid US $262,284, which it contends is the appropriate

dollar equivalent of the 18,491,012 rials amount allegedly due for this work less withholding taxes. Claimant also seeks interest at the Contract rate on 80% of this amount from 2 January 1977, the date it submitted the Phase II documents for this portion of the project, and on the remaining 20% from 13 March 1977, the date on which IMC approved the work.

Fourth, Claimant alleges that it performed Phase III services with regard to site preparation and the basic sciences buildings until that part of the project was suspended indefinitely, that IMC has paid the fee due for part of this work, but that IMC failed to release the 10% retained from payments as a good-performance guarantee. Claimant also asserts that it performed Phase III services for which it was not compensated, but makes no claim for these services due to the absence of subsequent invoices from the construction contractor on which to base its calculation of the "actual cost" of the project. Claimant does, however, claim for US $7,121 which it maintains is the appropriate dollar equivalent of the 500,941 rials retained from previous payments as the 10% good performance guarantee and which it contends should have been released on 3 November 1978, the date thirty days after its final invoice. Claimant seeks interest on this amount at Contract rates from the alleged due date.

Fifth, Claimant alleges that IMC requested "extra" services which did not fall within the scope of the work scheduled in the Contract, including designs for an off-site parking facility, a re-design of dormitory buildings due to a siting change and revisions to site grading and drainage plans for the project. Claimant contends that none of these tasks was caused by any previous deficiencies in its own work, that it fully performed the requested services, that it submitted invoices for all three tasks and that IMC has

failed to pay additional compensation as required by the Contract. Claimant now seeks US $72,541, which is the total dollar equivalent of these invoices, less withholding for taxes, plus interest at the Contract rate from dates thirty days following the dates of the respective invoices.

In addition to its claim under the Contract, Claimant alleges that certain of its property was expropriated without compensation by Iran. First, it alleges the contents of its rented offices and an automobile were confiscated by the Revolutionary Guards, for which act the Claimant contends Iran is responsible. Second, Claimant alleges that cash amounting to 2,022,281 rials, which it held in two accounts maintained in an Iranian bank, has been expropriated by virtue of the subsequent nationalization of that bank and by virtue of the fact that it has allegedly been unable to withdraw its funds. Claimant seeks a total of US $106,301 as compensation for the alleged expropriation of these assets, which amount it contends is the appropriate dollar equivalent of total of the value of its office property as measured by original acquisition costs and of the cash in rials held in its accounts. Claimant does not seek interest on this amount.

Finally, Claimant seeks US $198,167 as its costs of arbitration.

Respondent defends against both claims by challenging the standing of Claimant to present them on the ground that the Claimant, being registered under Iranian law, is not a United States national within the meaning of Article VII, paragraphs 1 and 2, of the Claims Settlement Declaration.

Respondent further argues that the claim under the Contract is excluded from the Tribunal's jurisdiction under the final exclusion clause of Article II, paragraph 1, of

the Claims Settlement Declaration by virtue of the Contract's dispute resolution provision.

On the merits of the claim under the Contract, Respondent denies any liability for further payments on the ground that Claimant has waived its right thereto by ceasing its performance and departing from Iran without declaring the Contract terminated on the ground of force majeure as provided for in Article 22 of the Contract. Respondent also asserts that the entire project was inappropriate and that Claimant bears responsibility for this fact, thus precluding any recovery under the the Contract claims.

In response to the specific elements of the Contract claims, Respondent denies that it has violated any of the provisions of the Contract. First, Respondent maintains that Pereira has received all that it was due for its Phase I work, the payments made having properly been based upon the project cost estimate of 9,053,995,344 rials, which amount Respondent contends was approved by IMC in accordance with the Contract.

Second, Respondent claims that no further Phase II payments are due because the Phase II report was not "submitted" by the Consulting Engineer within the meaning of the Contract, much less approved by IMC. Respondent contends that Pereira's failure to deliver a Farsi language translations of the Phase II documents and the alleged failure of Partia to submit an adequate final cost estimate render their Phase II submissions incomplete. In the alternative, Respondent maintains that the Phase II report cannot be deemed "submitted" until the last cost estimate was submitted on 25 February 1979 or, at the earliest, on 23 July 1978, when Pereira delivered a full set of Phase II documents with drawings and specification only in English. On this basis, Respondent maintains that Pereira failed to

comply with the eleven month time limit established in the Contract.

Third, Respondent contends that no Phase II compensation for work done on site preparation and the basic sciences buildings is payable separately from the Phase II fee for the entire project, and thus no amount is due in connection with such work. Respondent further contends that the costs of this work were not estimated separately and were included in the Phase I and Phase II estimates for the remainder of the project.

Fourth, Respondent argues that it paid the full amount due to Pereira for its Phase III work on site preparation and the basic sciences buildings.

Fifth, Respondent denies that Pereira performed "extra" work not scheduled in the Contract. It alleges that the design of the off-site parking facility and the grading and drainage work were included in Pereira's scheduled site preparation duties and that the changed site of the dormitory buildings did not require any re-design work. Respondent maintains, therefore, that it is not obligated under the Contract to pay compensation for these services over and above the scheduled architect's fee.

With regard to the claim of expropriation, Respondent denies that Claimant has either proven that its properties were confiscated or established a legal basis for its claim.

IV. CONTENTIONS OF THE PARTIES WITH REGARD TO THE COUNTERCLAIMS

Respondent presents two counterclaims based upon alleged breaches of the Contract by Pereira. First, Respondent claims that Claimant is liable for damages for its

alleged delay in submitting a report and complete documents for Phase II. Respondent contends, inter alia, that because the Phase II documents were not translated into the Farsi language they have not been "submitted" within the meaning of the Contract. For this alleged delay, Respondent claims that it is entitled, as a penalty for delay under Article 13 of the Contract, to 20% of the payments received by Pereira for Phase II, or 29,513,080 rials. In addition, Respondent contends that, as it could have terminated the Contract under Article 17(a) on the basis of the Claimant's alleged failure to perform, it is now entitled to a 10% deduction of the Phase II payments made to Pereira (i.e. the retention money), which amounts to 14,756,540 rials, and to consequential damages totalling 1,000,000,000 rials.

Second, Respondent contends that Pereira has failed to maintain the bank guarantee issued as security for the Phase II advance payment in breach of its contract obligations. Respondent claims that it is entitled to the full amount of the bank guarantee of 43,006,477 rials.

Respondent also alleges that Pereira is liable for outstanding tax and social insurance obligations. In its original Statement of Defence and Counterclaim, the Respondent sought 11,159,342 rials allegedly due in unpaid taxes. In a 31 May 1982 filing and again in a 12 May 1983 statement, the Iranian Ministry of Economic Affairs and Finance sought to amend the amount to 16,232,570 rials, plus unspecified delayed payment penalties. Respondent seeks 99,759 rials for the allegedly unpaid social insurance obligations.

Respondent also seeks its costs of arbitration, as do PBO and the Ministry of Science and Higher Education.

Claimant defends against the counterclaim for delayed performance by contending that it completed its Phase II obligations. It denies that its Phase II report was incomplete due to the absence of Farsi translations of drawings and specifications. Moreover, it denies responsibility for any delayed performance on the part of Partia. Claimant also maintains that, in any event, the delay penalties of Article 17 are not applicable to the alleged breach.

With regard to the counterclaim based upon the Phase II advance payment bank guarantee, Claimant alleges that it fully performed the services secured by the bank guarantee, which, it contends, properly expired by its own terms.

Claimant challenges the Tribunal's jurisdiction over the counterclaims for alleged outstanding tax and social insurance obligations. It also alleges that it properly complied with all of its tax and social insurance obligations.

V. JURISDICTION OVER THE CLAIMS

Claimant has submitted evidence that it was, during the relevant period, and is a United States corporation which has been and is a wholly-owned subsidiary of William L. Pereira Associates, Planners, Architects, Engineers, another United States corporation, a majority of whose shares have been and are owned by citizens of the United States. Included in its evidence were certificates issued by the Secretary of State for the State of California showing that Claimant and its parent were organized in that state on 11 June 1976 and 6 January 1959, respectively, and that they remain in good standing. Also included were affidavits of an independent accounting firm, which show that all of Claimant's shares are owned by its parent corporation and that a majority of the shares of the latter company are

owned legally by holders of United States passports or, beneficially, by holders of United States passports through an employee trust. Thus the claim is the claim of a United States national, as that term is defined in Article VII of the Claims Settlement Declaration. That Claimant was registered as a foreign corporation doing business in Iran has no bearing on its nationality under the Claims Settlement Declaration. There is no question that Respondent is an agency or instrumentality of the Government of Iran and is therefore subject to the Tribunal's jurisdiction.

As the Full Tribunal decided in Interlocutory Award ITL 1-6-FT (Gibbs & Hill, Inc.), the provision in the Contract requiring that disputes between the parties are be "settled through competent courts according to the Iranian law" does not specifically provide that any disputes under the Contract shall be within the sole jurisdiction of Iranian courts, and, thus, does not divest the Tribunal of jurisdiction over the claim under the Contract. Moreover, the claim of expropriation clearly comes within the terms of Article II, paragraph 1, of the Claims Settlement Declaration.

Accordingly, the Tribunal has jurisdiction over the claims.

VI. THE MERITS OF THE CLAIMS

1. The Right To Unpaid Fees

Respondent has denied that it is under any obligation to make further payments under the Contract because Pereira ceased performance and departed from Iran without declaring a termination of the Contract to IMC as provided for in Article 22 of the Contract in cases of force majeure. By so acting, Respondent contends, Pereira waived any claim to further payment.

This contention cannot be upheld. Even if Pereira had unilaterally ceased performance of its obligations in the belief that force majeure conditions prevailed in Iran, its failure to declare termination under Article 22 would not have constituted a waiver of its right to claim compensation for work it had performed in compliance with the Contract. However, Claimant does not rely upon an assertion of force majeure in this case.

Moreover, Respondent's position ignores the fact that IMC explicitly announced on 30 December 1978 that the project with regard to the basic sciences buildings was suspended until further notice. In light of this announcement, Pereira was under no obligation to perform further until instructed to do so by IMC. The evidence demonstrates that, throughout 1978 and into 1979, Pereira requested such instructions and stood ready to resume its work. It is clear that Pereira did not consider the Contract terminated. Pereira's actions conformed with IMC's announcement. Nothing occurred which would in any respect affect Pereira's right to compensation for work that it may have performed in compliance with the Contract.

Respondent also contends that it is not liable for further payments to Pereira because the project was inappropriate in light of the social and economic conditions prevailing in Iran. Even if the project was inappropriate, an allegation upon which the Tribunal expresses no view, this would not affect Respondent's liability under the Contract. Respondent chose to proceed with the project and to enter into the Contract. The responsibility for these decisions cannot be shifted to Claimant. The Tribunal therefore rejects this contention.

It should be noted that the documents submitted to the Tribunal leave some gaps with respect to the issues.

Nevertheless, certain facts and assumptions can be reconstructed from the evidence presented.

2. The Claim Relating to Phase I

Article 5 of the Contract required IMC to give its "opinion as to inconsistency of the work carried out by the Consulting Engineer with the obligations stipulated in this Contract indicating the differences" within one month of receiving the report and complete documents for each phase, thereby affording the Consulting Engineer an opportunity to "amend and prepare" the report and related documents on the basis of IMC's opinion.

It is further noted that under Article 2.2 of the Contract IMC had "the right to change at any time the required services, omit part of them or add to them to an appropriate and reasonable extent". In such case the Consulting Engineer's fees would be "proportionately reduced or increased, taking into account the work, cost and obligations performed, all as agreed between the Parties".

By its 17 May 1977 letter IMC, in formally approving the Phase I services, reduced the cost estimate from 11,416,242,265 rials to 9,053,995,344 rials. The question arises whether IMC was barred by Article 5 from making such adjustment without specifically giving its opinion as to the inconsistencies of the submitted cost estimate with the obligations under the Contract.

The Tribunal finds that, in the absence of an agreement between the Parties as contemplated in Article 2.2, it is empowered to determine if and to what extent the adjusted figures form a proper basis for calculating the Phase I fees due to Pereira.

The Tribunal notes that in its 17 May 1977 letter IMC referred to "previously announced technical views". This indicates that the lowered amounts given by IMC in that letter reflected previous discussions between IMC and the Consulting Engineer with regard to the economic limits for the further performance of parts of the project. It can be assumed that Pereira was aware of IMC's opinion concerning such items. Therefore the Tribunal accepts that the cost estimate submitted should be decreased in accordance with IMC's adjustments in the total amount of 779,656,596 rials.

In its comments on the Phase I cost estimate, IMC also deleted one whole item, namely "Equipment" in the amount of 1,582,590,305 rials. The letter states that "the equipment, groups 2 and 3, and the unestimated; additional installation and equipment costs" were excluded from the cost estimate submitted by Partia, which meant a further reduction in the amount just mentioned. A progress report describing a meeting of the parties on 23 May 1977 and the minutes of that meeting both indicate that Pereira protested IMC's deletions and maintained that, while IMC could under the Contract change the scope of the Consulting Engineer's duties prospectively, it could not avoid paying compensation under the Contract's formula for work already performed according to the original schedule of duties.

The position taken by Pereira at this meeting is supported by the language of the Contract. According to its title, the Contract was "[f]or Studies and Supervision of Architectural Works, Installation and Equipment of Imperial Medical Center of Iran" (emphasis added). Article 12 of the Contract defines the "actual cost of the works" to include the cost of work performed by all contractors, which would obviously include equipment suppliers and installers, and even the cost of "materials and manufactured goods and machinery and any other materials" supplied directly by IMC.

Significantly, equipment and installation costs are not among the items specifically excluded by Article 12 from the definition of "actual cost". The estimates were to refer to the work specified in the Contract. Moreover, under Appendix I of the Contract, Partia and Pereira were made responsible for the equipment plan and services performed previously by another contractor who provided a preliminary analysis of all equipment needs. Finally, the parties specifically agreed in Appendix II of the Contract that the Phase II final cost estimate, which was to be a refinement of the Phase I estimate, "... must be equal to the total cost of materials and/or equipment, customs duties, relevant charges and taxes, cost of installation and other expenses and contractor's reasonable profit on each item" (emphasis added).

Thus, the Contract contemplated that the Consulting Engineer's duties with respect to the project included specifications for the Medical Center's equipment and its installation. The fact that, almost two years after the Contract was executed and a year after the submission of the Phase I documents including the preliminary cost estimate, IMC entered into another contract with a medical planning company to produce specifications for some of the types of equipment to be installed does not, as Respondent contends, alter the nature of the Consulting Engineer's original duties or the validity of the preliminary cost estimate submitted by Partia.

Respondent has also contended that, whether or not it acted in conformity with the Contract in unilaterally deleting portions of the cost estimate, Pereira subsequently agreed with IMC's figure and thus waived any objection it may have had with regard to the deletions. The evidence, however, shows that Pereira never accepted IMC's position. In its final invoice for Phase I, Pereira calculated

payments due on the basis of both Partia's estimate and IMC's figure, indicating that it preserved its position for later settlement. The explanation for this course of action may be found in the minutes of the 23 May 1977 meeting which records that officers of IMC, including its project manager, represented to Pereira's managers that the IMC's deletions from Partia's estimate were made because IMC wanted "to defer payment until engineering services are performed" and that there would be "payment adjustments in Phase II for work performed in Phase I". On the basis of this promise of full payment, Pereira's final Phase I invoice referred to payments based upon IMC's figure as "partial payments" and requested payment on the basis of Partia's estimate "as soon as possible".

As already indicated, there is no showing that Pereira agreed to deleting the "equipment" item, in relation to which item Pereira had already performed work.

The Tribunal concludes that Respondent was not entitled to delete the amount under "Equipment". Accordingly, the Phase I fees should be calculated on the basis of a total amount of 10,636,585,649 rials. Thus Claimant was, by the end of Phase II, entitled to the sum of 14,272,952 rials, being the difference between .95% of the 10,636,585,649 rials and the payments made for Phase I, less the 5.5% which was to have been withheld under the Contract for taxes. Respondent's failure to pay this amount not only deprived Pereira of the funds, but also deprived it of the opportunity to convert them into foreign exchange. In light of the fact that Claimant was a non- Iranian company and in the absence of any indication that the funds were to be used in Iran or were not to be exchanged for United States currency, the Tribunal determines that the amount due should be converted into United States dollars payable out of the Security Account at the official rate of exchange in effect at or around when it became payable. Therefore, Claimant is

entitled under this portion of the claim to receive US $196,347 as the principal amount due for Phase I and payable at the end of Phase II.[1]

3. The Claims Relating to Phase II

It appears that, at the direction of IMC, the Consulting Engineer accelerated the work on the Medical Center's basic sciences buildings. On 2 January 1977, the Consulting Engineer submitted to IMC the Phase II report, drawings, specifications and cost estimate for the basic sciences buildings, thus completing Phase II work on this portion of the project prior to the conclusion of Phase I work on the remaining portions. This submission was formally approved by IMC in a letter dated 13 March 1977. On 13 April 1977, Pereira submitted an invoice for this work based upon the approved final cost estimate of 823,882,442 rials. At a meeting of the parties held on 20 June 1977, IMC indicated that it could not pay this invoice until its budget had been approved by the Iranian Plan and Budget Organization ("PBO"). The invoice remains unpaid.

In its 17 May 1977 letter approving the Phase I work for the entire project, IMC requested the Consulting Engineer "to proceed with establishing a work and Engineering Services schedule for Phase II". Thus, the Phase II schedule could not have commenced immediately after Phase I. Indeed, minutes reflect the conclusion that Pereira did not "accept the eleven (11) month period for Phase II to start at the time of the Phase I submittal". On 29 October 1977, according to Respondent, or on 7 November 1977, according to Claimant, IMC made an advance payment for Phase II of 43,006,477 rials. Beginning on 5 November 1977 and through

[1] There is no contention that there was any unjustified delay with respect to Phase I.

March 1978, Pereira periodically submitted the Phase II drawings and specifications for the various remaining portions of the project, as they were completed.

On 7 December 1977 and 5 March 1978, according to Respondent, or on 8 January and 15 March 1978, according to Claimant, IMC made second and third Phase II payments, each equalling 36,340,474 rials. In a letter dated 19 March 1978, Pereira announced to IMC that it had completed all of the Phase II documents "[i]n accordance with the Progress Work Schedule submitted to you on September 17, 1977, and one month prior to the finish date stipulated in our Contract ...". The letter also requested IMC to make "a partial pre-payment on fourth payment for Phase II, against a bank guarantee in the amount of 30,000,000 Rials". Pereira submitted the last of the Phase II drawings and specifications on 28 March 1978.

At about this time, it appears that, at IMC's request, Pereira transmitted the Phase II drawings and specifications to a number of selected international contractors requesting them to submit proposals for the construction of the project. Also, during March and April 1978, Pereira and IMC had numerous discussions on changes in the drawings which would be necessary.

On 3 April 1978, Pereira arranged the issuance of the bank guarantee mentioned in its 19 March letter, and IMC made a partial fourth payment of 25,350,000 rials on either 19 March 1978, according to Respondent, or on 18 April 1978, according to Claimant.

Pereira submitted the Phase II report on 24 April 1978. Additional revisions were made to the drawings, and, on 13 May 1978, Pereira stated in a letter to IMC that it had completed the checking of drawings and that IMC's comments

had been complied with, resulting in changes to the drawings. According to Pereira, this stage could not have been reached unless the Phase II documents were in a satisfactory conditions.

On 18 June 1978, the parties met to open the proposals received from the international contractors. The Consulting Engineer was requested to assist IMC's attorney in drafting a proposed construction contract, to review the proposals received and to return with recommendations within one month. IMC indicated that it would enter into negotiations with the most acceptable contractor with the goal of commencing construction in September 1978. According to Pereira, this stage could not have been reached unless the Phase II documents were in an advanced and satisfactory condition.

At the 18 June 1978 meeting Partia presented its final cost estimate for the project, which estimate totalled 14,512,013,268 rials. This estimate excluded the basic sciences buildings and site preparation.[2] While not indicated in any document submitted to the Tribunal, it appears that, shortly after it was submitted, IMC required Partia to revise the final cost estimate in accordance with 1978 PBO guidelines.

On 1 July 1978, IMC stated in a letter to the Consulting Engineer that it would express its views on the Phase II services "only when complete documents along with implementation plans related to the Phase II of the Project are

---

[2] Curiously, the costs of site preparation do not appear to have been included in either the Phase II estimate for the basic sciences buildings or in the Phase II estimate for the remainder of the project, even though the Phase II site preparation drawings were apparently prepared and approved on an accelerated basis. No explanation has been offered for this anomaly.

received". On 10 July 1978, the parties met to review the Phase II work. The minutes of that meeting record that the parties agreed that "[a]ll books have been submitted" but that IMC did not consider that an "official" submittal had yet been made. Following the meeting, IMC sent another letter, dated 16 July 1978, repeating its earlier position and stating that "the Consulting Engineers have not submitted, to the present time, the final implementation plans and the complete cost estimate booklet related to the Medical Centre of Iran".

Another meeting of the parties was held on 17 July 1978, during which they differed on the question of whether an "official" submittal of the Phase II documents was necessary. The minutes of the meeting state, "It was resolved that Pereira will issue final set of drawings immediately and one copy of Phase II Report".

On 16 July 1978, Pereira submitted its recommendations on the most suitable international contractor for the project based upon the proposals opened on 18 June. Pereira also sent what was described as "a complete set ... of Phase II Drawings" to IMC on 23 July 1978. On 19 August 1978, IMC wrote to Pereira authorizing cancellation of the 3 April bank guarantee "[s]ince William L. Pereira, Iran has fulfilled all its commitments regarding IMC project".

On 3 September 1978, Pereira submitted Partia's revised final cost estimate together with the supporting bill of quantities and book of costs, all which had been recomputed according to the 1978 PBO guidelines. The revised estimate amounted to 17,242,305,722 rials, indicated as being "the total price of the entire project". In its cover letter, Pereira[3] stated that "the services are 100 percent

[3] The Farsi version of the letter was signed by Partia.

complete" and requested IMC's "approval of Phase II according to our contract".

In response, IMC wrote on 9 September 1978 requesting the Consulting Engineer to submit an English language translation of the "Price and Quantity List" and a Farsi translation of the "Technical Plans and Specifications". On 25 September 1978, IMC also wrote to request submission of "the Tender Documents in English and Persian". On 17 October 1978, IMC wrote two letters to the Consulting Engineer, one repeating the request made in its 9 September letter, and another specifying in response to the Partia budget that the maximum budget for the project was 15,000,000,000 rials.

In response to IMC's request for Farsi language versions of the Phase II documents, Pereira argued in a letter dated 13 November 1978 that the language requirements of Article 3.3 of the Contract had been altered by IMC in a directive given at a meeting held on 30 June 1976 and that the Phase II documents submitted complied with this alteration, as had all prior submissions. Two days later, in a letter dated 15 November 1978, Pereira again denied that it was obligated to provide Farsi translations of the Phase II documents, but agreed nonetheless to provide them, with the existing good-performance guarantees as security, if IMC would immediately pay both the unpaid portion of the fourth Phase II payment and the final Phase II payment. Pereira noted, "It has now been seven months since our work was submitted to your office and your first comment on this matter of translations was received by me on August 25, 1978". In a letter dated 17 December 1978, Pereira indicated to IMC that translation of the Phase II documents was underway and would "be completed within the time schedule previously discussed". The letter also requested that

payment of the balance of the fourth Phase II payment be expedited.

On 25 December 1978, IMC stated in a letter that it could accept a project within the limit of the amount budgeted and left it to the Consulting Engineer to "prepare the best project" within this budget.

Finally, on 25 February 1979, Partia submitted a further revised final cost estimate, which, with corrections submitted on 6 March 1979, totalled 14,988,902,183 rials.

The first question with regard to this series of events is whether Claimant is entitled to a separate Phase II payment for its work on the basic sciences buildings.

There is no dispute that Pereira performed the Phase II work for the basic sciences buildings on an expedited basis at IMC's request or that it correctly invoiced for this amount on the basis of the 823,882,442 rials final cost estimate approved by IMC on 13 March 1977.

Article 3 of Appendix I of the Contract provided that, if, as IMC stated it intended, work on some parts of the project was accelerated, "the reasonable fees for...the works executed prior to the time specified in this Contract shall be paid proportionately". Therefore, under the terms of the Contract, Claimant is entitled to receive for its Phase II work on the basic sciences buildings a separate payment of US $262,284, being the appropriate dollar equivalent of the 2.375% of the 823,882,442 rials, less withholding taxes, which was due and payable on 12 April 1977, the date thirty days after approval of the work.

With regard to the remaining Phase II claims, Respondent contends that, in making the first four Phase II

payments as described above, it has actually paid more than Claimant alleges to have received. Claimant originally alleged that the equivalent of only US $2,090,561 had been paid for Phase II, but amended this amount in its later submissions to 141,037,425 rials. Respondent has submitted an accounting for Phase II disbursements which it claims to show that the sum of 159,019,431 rials, or US $2,255,594,77 has actually been paid. This amount, however, appears in the accounting as the total of gross payments made for Phase II before the deduction of 5.5% for taxes withheld and 10% for the good-performance retention. The accounting actually shows that the net payments of 141,037,425 rials were made. Respondent's evidence thus confirms Claimant's amended allegation.

Claimant contends that Phase II commenced when it began its Phase II work, which it alleges occurred on 30 May 1977; that the first three Phase II payments were due and payable under the Contract on 30 June 1977, 30 October 1977, and 14 February 1978, respectively; and that IMC therefore made each of the payments late. On the basis of these contentions, Claimant seeks interest from each of these dates. Respondent denies that it made payments later than required under the Contract.

The evidence before the Tribunal is insufficient to establish that any of the first three Phase II payments were late. The Contract provided that "the second phase shall be performed after the first phase" (App. 2, p. 1), and that it was to be completed eleven months "from the approval date of the report on Phase I" (Art. 31). It also provided that, "after completion of any of the phases", IMC was not "obligated to employ the Consulting Engineer for subsequent phases" (Art. 2.3). The record does not, however, establish precisely when Phase II was to or did commence. While IMC's 17 May 1977 letter approved Phase I, it also indicates that

Phase I work was not completed since it authorized the Consulting Engineer to prepare a work schedule for Phase II, a duty which fell within the scope of Phase I. (Art. 2.1(a)) The letter did not expressly authorize the Consulting Engineer to begin work on Phase II. Indeed, as noted above, there were apparently some disputes as to when the eleven month period was to begin.

Moreover, the Contract required IMC to make the Phase II advance payment against a bank guarantee at the beginning of Phase II, and to make the second and third payments upon the expiration of one-third and two-thirds, respectively, of the duration of Phase II. (Art. 13) The advance payment was not paid, however, until 29 October or 7 November 1977. The reason for this delay has not been explained.

Finally, Claimant's suggestion that Phase II work commenced on 30 May 1977 is not supported by any of the documents in evidence. Indeed Claimant expressly rejected an early date, and extensions of the periods by reason of necessity were contemplated by the contract (Art. 3.2). In light of the above gaps and contradictions in the evidence, it is not possible to determine when the "duration" of Phase II began and when the first three payments were due. The Tribunal therefore concludes that the claim for interest on the first three Phase II payments fails for lack of proof.

Claimant has also requested interest damages on the ground that the first three payments were improperly based upon the Phase I cost figure adopted by IMC rather than on Partia's Phase I preliminary cost estimate. While the Phase II invoices have not been submitted as evidence, it must be assumed that the agreement to defer remaining portion due for the final Phase I payment applied equally to the Phase II payments. Therefore, the Tribunal concludes that IMC complied with its obligations in calculating the first three

Phase II payments and thus that Claimant's request for interest on this ground must also be rejected.

Claimant contends that it completed its primary Phase II duties with the submission of the Phase II report on 24 April 1978 and that it was therefore entitled under the Contract to be paid the balance of the fourth payment within thirty days thereafter. Claimant also alleges that its Phase II work was automatically approved, under Article 5 of the Contract, on 24 May 1978 and that it was therefore entitled to receive the fifth and final Phase II payment on 24 June 1978. On the basis of these contentions, Claimant claims for both the principal amounts alleged to be due for these payments and interest thereon.

Article 13 of the Contract provides that the fourth Phase II payment "shall be paid after submission of the report and complete documents of that Phase". Respondent contends that it is not liable for this payment because the complete documents were never submitted. Respondent bases this contention on the fact that Pereira delivered the Phase II report only in English and that Partia delivered the final cost estimate only in Farsi, both thus breaching the requirements of Article 3.3 of the Contract.

It is clear that the parties modified the requirements of Article 3.3. At a meeting held on 30 June 1976, a week after the Contract was signed, a representative of IMC explicitly advised the Consulting Engineers that:

> All correspondence and reports are to be in Farsi and English. All drawings, specifications and calculations will be in English only.

It is further noted that Pereira submitted all Phase I drawings and specifications and the Phase II drawings for

the basic sciences buildings only in English and that IMC expressly approved of these submissions. The fact that Pereira did not submit Farsi translations of the Phase II documents for the rest of the project cannot, in light of this course of performance and in the absence of any evidence that the lack of Farsi translations impeded the continuation of the project, justify the conclusion that Pereira had not completed its Phase II work. The Tribunal however finds that as the formal two language requirement in the Contract was not in fact met with, any compensation due to Claimant for Phase II should be reduced by an amount equivalent to the cost for translation of the documents for that Phase. The Tribunal determines such amount to be US $50,000.

It is also clear that the completeness of Pereira's submission must be judged separately from that of Partia's work. It is true that Pereira and Partia were jointly and separately liable under the Contract and each must, therefore, answer for damages caused by defects in the work of the other. The terms of the Contract and the parties' subsequent conduct establish, however, that both the duties of each of them to perform according to schedule and the right of each of them to payment were separate and independent from those of the other. Appendix I of the Contract specified that their respective "obligations are separately defined". (App. I, p. 2) Appendix I also fixed separate schedules for the compensation to be paid to each of them and provided that "payments of fees payable to each Company be made to them separately" on the basis of these separate schedules. (App. I, p. 9) Moreover, the partial fourth payment by IMC was made separately, to Pereira alone, against a bank guarantee arranged by Pereira and was made well in advance of the submission by Partia of the final cost estimate. In view of this, it is clear that the parties contemplated both separate performance and separate

rights to payment. Thus, Partia's alleged failure to submit an English translation of the Phase II net estimate, even if such failure constituted a breach of the Contract by Partia, does not reflect upon Pereira's performance or affect Pereira's right to payment.

Respondent cites IMC's letters of 1 July and 16 July 1978 as support for its allegations that the Phase II documents were not complete. The minutes of the meetings of 10 July and 17 July 1978, however, clearly indicate that IMC was not concerned at that time with the lack of translations but rather with what it considered to be the necessity of an "official" submission of a composite set of all Phase II documents. Pereira agreed to supply a single set of the documents and did so on 23 July 1978. It should be noted that IMC did not claim at the time and Respondent does not now claim that any of the Phase II documents had not been previously submitted in at least one language. The clearest indication that IMC considered the submissions to be complete is its letter of 19 August 1978 releasing the bank guarantee arranged by Pereira to secure its separate and partial fourth payment, in which letter IMC stated that Pereira had "fulfilled all of its commitments regarding IMCI project".

Thus, having previously delivered the last Phase II drawings on 28 March 1978, Pereira's Phase II submission was complete upon delivery of the Phase II report on 24 April 1978, apart from the lack of translation discussed above. Under the Contract's separate payment provisions, Pereira thereupon became entitled to the fourth Phase II payment. It appears, however, although the details have not been presented to the Tribunal, that the arrangement leading to the early, partial fourth payment included an agreement by Pereira to continue its bank guarantee in effect and defer payment of the balance of its fourth payment until

Partia submitted the final cost estimate. Pereira did not submit its invoice for the balance of the fourth payment until 26 June 1978, after Partia's 18 June submission. Therefore, Pereira was entitled, under Article 13 of the Contract, to receive the balance of the fourth payment on 18 July 1978, 30 days after it was due under the arrangement apparently arrived at, upon submission of the 18 June 1978 final cost estimate. Based upon the above finding, that the first three payments were properly based upon the Phase I preliminary cost figure adopted by IMC, Pereira was entitled to receive one-fifth of 2.375% of 9,053,995,344 rials less the amount received earlier as a partial payment and less the amounts which would have been deducted for taxes and for the good-performance retention, which renders a total amount due of 10,990,474 rials, or, US $156,226.

Article 13 of the Contract provides that "the balance of the fees for Phase II shall be paid after approval of the report of that Phase". It has not been contended here that IMC formally approved the Phase II work. However, Claimant maintains that its work was approved automatically by operation of the provisions of Article 5 of the Contract, and that Claimant was therefore entitled to receive the final Phase II payment thirty days thereafter.

Respondent denies that the Phase II work was approved under Article 5 on the ground that the work was deficient. Respondent relies, first, upon the allegation that the Phase II documents were not translated as required by the Contract. The Tribunal has already made a finding with regard to this lack of translation.

Respondent also relies upon the allegation that Partia's Phase II final cost estimate exceeded the budgetary limit for the project authorized by the Government of Iran, allegedly in violation of the Contract. However, even if

Partia's performance was relevant to Pereira's claim and was deficient for the reason stated, IMC was obligated to comment upon this fact within one month of receiving the final cost estimate. It appears that IMC did comment that Partia did not use the most recent PBO guidelines in calculating the estimate and, therefore, corrections were made and the corrected estimate was submitted on 3 September 1978. There is no evidence, however, that IMC commented upon the estimate's alleged non-conformity with the project's budget limit until 17 October 1978, almost four months after it was submitted. Therefore, even if the one month comment period with regard to Pereira's work began on the date on which Partia submitted its work, the automatic approval provision of Article 5 could not have been prevented from operating on the ground now relied upon by Respondent.

The Tribunal further concludes, however, that the allegation is neither relevant to the question of Pereira's performance nor supported by the evidence. As discussed above, the Contract contemplated that Pereira's and Partia's respective duties under the Contract, as well as their respective rights to payment, are to be treated separately. Certainly joint and several liability has no bearing on deductions to be made from "the relevant fees" to be paid one of the contractors because of its own delay. (See, Art. 13.2 of the Contract) The Article 5 approval mechanism operates independently with regard to the performance of each of the contractors. Moreover, the evidence demonstrates that revisions in the Phase II plans were made which did in fact bring the final cost estimate within the 15 billion rials budget limit announced by IMC in its letter of 17 October 1978. Therefore, whether or not the budget limit may be validly invoked in light of Claimant's contention that IMC waived its right to do so by failing to object to any of the design specifications as corrected in May 1978,

there could have been no breach of the Contract in this regard.

IMC was required to point out any defects in Pereira's work within one month of submission of the Phase II report, or by 24 May 1978. The evidence shows that, in fact, IMC did offer comments and that Pereira made all required changes by 13 May 1978. The record contains no indication that IMC pointed out any alleged defects within the one month period with which Pereira did not comply. Thus, the Tribunal fails to see any ground upon which Pereira's Phase II work cannot be deemed approved under Article 5.

With regard to the amount due, the Tribunal calculates the payment on the basis of the 15,000,000,000 rials declared by IMC to be the limit of the costs, the figure on which Claimant has based its claims.

An issue to be resolved here is whether the final cost estimate for Phase II also included the costs of the basic sciences buildings discussed earlier. It is not entirely clear from the evidence what the parties intended in this respect. The Tribunal notes, however, that, under its own terms, the final estimate submitted on 3 September 1978 indicates the total cost "for the entire project" and that the revised estimate of 25 February 1979 renders an amount "for all buildings, architecture, electric and mechanical installations". The 15 billion rials budgetary limit for the project apparently pertained to the whole project, including these buildings. In view of this and in the absence of sufficiently strong indications to the contrary,

the Tribunal holds that Claimant has not proved that it is entitled to fees calculated on a total final estimate in excess of that budgetary limit. Accordingly, the payment due to Claimant for Phase II on the basis of the final cost estimate should be reduced by the amount of US $262,284 for the basic sciences buildings, to which we have earlier found Claimant entitled.

As the final cost estimate was to serve as the basis for calculating the final Phase II payment, that payment could not be considered due until the corrected estimate was submitted on 3 September 1978 and, therefore, was payable thirty days thereafter, or on 3 October 1978. That the amount was later revised to 15,000,000,000 rials does not affect the time obligation for payment.

In addition, it appears that the arrangement agreed to by the parties with regard to the supply of Farsi translations of Phase II documents contemplated that IMC would hold the ten percent good-performance retentions for Phase II until the translations were supplied. Having found earlier that the Phase II fees due to Claimant should be subject to reduction for translation costs, the Tribunal holds that Claimant is entitled to the good-performance retentions as from 30 December 1978, the date IMC chose to suspend the project indefinitely.

In conclusion, Claimant is entitled to receive for the final Phase II payment as of 3 October 1978 the sum of US $1,805,745. This sum represents 2.375% of 15,000,000,000 rials converted at the rate of exchange then in effect, less previous Phase II payments (including the basic sciencies buildings), withholding, taxes and the good-perfomance

retention and less the amount of US $50,000 related to translation of the Phase II documents. Claimant is also entitled to receive as of 30 December 1978 the sum of US $506,397, being the dollar equivalent of the 35,625,000 rials retained as a good-performance guarantee.

Moreover, Claimant is entitled to 6 percent interest as provided in the Contract on all of the principal amounts owing for Phase II as described above from the dates upon which each became due and payable.

4. The Claim relating to Phase III

The acceleration of work on the basic sciences buildings included Phase III services by Pereira for which IMC made payment. Claimant now seeks payment of the 10% retained from payments made by IMC as a good-performance guarantee, which Claimant contends was due on 3 November 1978. Respondent denies liability generally.

There is no dispute that a total of 500,941 rials was retained by IMC from payments made to Pereira for its Phase II work or that this amount remains unpaid. Article 15.3 of the Contract provides:

> In case the execution of any phase is delayed and this delay exceeds one year, the Employer undertakes to release the performance guarantee given by the Consulting Engineer for the previous phase or phases and return the same to him.

Supervision of construction on the basic sciences buildings ceased when IMC indefinitely suspended the project on 30 December 1978. Therefore, after one year's delay, the amounts previously retained became due, under Article 15.3, on 30 December 1979, and became payable, under Article 13.4, thirty days thereafter, or on 30 January 1980. No defence

having been raised to justify IMC's failure to return the amounts retained, Claimant is entitled to receive the appropriate dollar equivalent of the Phase II retentions, or US $7,106. Claimant is further entitled under the Contract to receive interest on this amount from 30 January 1980 at the rate of 6 percent per annum.

5. The Claims for Payment for Additional Services

The evidence shows that Pereira was requested by IMC to design a parking facility on a site outside of the boundaries of the project specified in the Contract; that after the project's dormitory building was designed, IMC requested that it be redesigned to conform to a change in the boundaries of project; and that IMC requested a revised site grading and drainage plan. The evidence also shows that Pereira provided the requested services, that IMC approved the work and that Pereira submitted invoices for the work.

Respondent has submitted no evidence to contradict these conclusions. The only issue to be resolved is whether these services were included in the scheduled work to be performed and, whether, therefore, the scheduled fee provisions of the Contract covered these services.

With regard to the parking facility, the minutes of a meeting of the parties held on 4 August 1976 disclose that, when the matter was first discussed, Pereira pointed out to representatives of IMC that IMC could not afford to build outside the project boundaries. Nevertheless, Pereira agreed to design two alternative plans for off-site parking on an accelerated basis. After submitting the plans, IMC informed Pereira that the off-site location was not available for the project. On 16 April 1977, Pereira invoiced for reimbursement of its actual expenses in

providing the plans on the ground that the services were outside of the agreed-upon scope of services.

The language of the Contract supports Pereira's position. Article 1 of the Contract, entitled "Subject of Contract", provides that "[t]his Contract is concluded for engineering services in respect of the Project...as described in Appendix I". Article 1 of Appendix I of the Contract describes the project as "located on a site of 100,000 square meters in Tehran bounded by Ayoubi Highway on the north and Vanak Parkway on the east and consisting of approximately 160,000 square meters of facilities".

With regard to the dormitory building, the evidence indicates that Pereira informed IMC on 28 September 1977 that a change which had taken place in the project's boundaries necessitated revisions in the Phase I drawings for the building which had previously been completed and submitted on 1 February 1977, and that Pereira considered this to be an extra service. In response, IMC authorized the work and, on 2 November 1977, approved the redesign. Pereira submitted an invoice for the work on 20 February 1978.

With regard to the site grading and drainage plan, the evidence indicates that, long after the original plan was completed on an accelerated basis, IMC instructed Pereira to prepare a revised plan. The revised plan was prepared and, on 8 March 1978, Pereira invoiced for these services.

Based upon the above facts, it is clear that the parking designs were outside of the scope of the work specifically described in the Contract and that the dormitory re-design and revised site grading and drainage plans were expressly authorized and prepared subsequent to approval of the original work on these parts of the project.

As such, each must be considered to be an additional service. Article 2.2 of the Contract provided as follows:

> The Employer shall have the right to change at any time the required services, omit part of them or add to them to an appropriate and reasonable extent. In such case the term of the Contract and the Consulting Engineer's fees will be proportionately reduced or increased, taking into account the work, cost and obligations performed, all as agreed between the Parties.

Thus the contract obligated IMC to pay for such additional services. Respondent has not contended that the fees sought by Pereira are excessive or unreasonable. While the Contract does not provide a mechanism for compensation for such additional services, by implication of Article 13, they should have been paid thirty days after the respective invoices were submitted.

Therefore, the Tribunal holds that Claimant is entitled to receive the following amounts, after deducting 5.5% for withholding taxes and converting to United States dollars as appropriate: US $37,826 for the designs of the off-site parking facility; US $33,612 for the redesign of the dormitory buildings; and US $1,093 for the revised site grading and drainage plan. Claimant is also entitled to receive interest on those amounts at the Contract's specified rate of six percent per annum from the date on which each should have been paid, as described above.

6. The Expropriation Claims

Claimant has not submitted evidence that it has been prevented from withdrawing funds from the accounts it maintained in branches of an Iranian bank. Moreover, Claimant has failed to show that the nationalization of Iranian banks also amounted to a taking of the funds it held

in the accounts. Therefore, the Tribunal denies the claim of expropriation of Pereira's bank accounts.

With regard to the contents of Pereira's Tehran offices, and Pereira's company car, Claimant has submitted a copy of a notice of confiscation issued by the "Islamic Revolutionary Guards" on 5 October 1980. The authenticity of this document has not been challenged. Under public international law The Government of the Islamic Republic of Iran must be deemed responsible for the actions of the Revolutionary Guards. Accordingly, Claimant is now entitled to receive as damages the value of property as of 5 October 1980.

The only evidence of value presented with regard to the confiscated property is an inventory of property items noting with the original purchase price of each item, which when totalled, equals 5,455,990 rials. Taking account of the likely depreciation of major items and the nominal re-sale value of small items, the Tribunal concludes that value of the confiscated property on 5 October 1980 equaled 1,000,000 rials, or, when appropriately converted, US $14,192. Claimant is entitled to this amount as damages for the failure to compensate it for the taking. Because Claimant has not sought interest on those damages, the Tribunal will not award interest on this claim.

VII. The Counterclaims

1. The Counterclaims Based Upon Breach of Contract

Respondent has presented two counterclaims based upon alleged breaches of the Contract. Because they arise out of the same contract which is the subject matter of claims presented in the case, are directed against Claimant and were outstanding on 19 January 1981, the Tribunal has

jurisdiction over these counterclaims under Article II, paragraph 1, of the Claims Settlement Declaration.

The issue presented by the first of these counterclaims is whether Pereira breached its duties by failing to submit the Phase II documents within the time provided in the Contract.

Respondent argues that the Phase II documents were due on 17 April 1978, but have not, as yet, been "submitted" because Farsi translations have not been delivered. In the alternative, Respondent argues that Pereira's Phase II work can be deemed submitted at the earliest on 17 December 1978, the date on which Pereira notified IMC that it had contracted for preparation of the translations.

On the basis of its earlier findings, the Tribunal held that Pereira's Phase II performance was completed upon the submission of the Phase II report on 24 April 1978. Whether this submission was late depends upon whether it was due, as contended by Respondent, on 17 April 1978. Article 3.1 of the Contract provided that Phase II was to end "11 months from the approval date of the report on Phase I". As discussed above, however, it appears that the parties varied the terms of the Contract either explicitly by mutual agreement, or implicitly by course of conduct.

While Appendix II of the Contract anticipated that Phase II would follow Phase I, and although the parties considered the Phase I services to be sufficiently complete, Phase I work actually continued after the 17 May 1977

approval letter and was not finally completed until the Phase II work schedule was submitted on 17 September 1977. It is not known when IMC indicated to the Consulting Engineer, under Article 2.3, that it would be entitled to commence performance of Phase II or when IMC directed Phase II work to begin. Given these deviations from the course contemplated in the Contract, it is likely that the parties intended Article 3.1 to mean that the duration of Phase II would be eleven months after it commenced. Indeed, as noted above, the Contract contemplated necessary variations in the schedule. Since it is not possible to determine precisely when Phase II began, it is not possible to determine when the Phase II documents were required to be submitted.

The Tribunal, referring to its earlier findings with regard to the lack of translations of Phase II documents, finds that the evidence is insufficient to conclude that Pereira delayed its performance in breach of its duties under the Contract. Therefore the counterclaims cannot be granted.

Respondent also contends that Pereira breached its obligation to maintain the bank guarantee serving as security for the Phase II advance payment. Article 13 provided that the bank guarantee was to be released by IMC upon approval of the Phase II report. In light of the holding above that the Phase II report was approved by operation of Article 5 of the Contract, whatever obligation Pereira was under to maintain the bank guarantee expired at the date of such approval. The Tribunal, therefore, must dismiss this counterclaim.

2. The Counterclaims for Taxes and Social Insurance Premiums

In both the original Statement of Defence filed on 7 May 1982 by IMC and MHUD and in the corrected Statement filed on 31 January 1983, Respondent counterclaimed for taxes and social insurance premiums and penalties without setting forth a sufficient factual or legal basis for these counterclaims. Neither Statement included any evidence in support of these counterclaims. In the 31 May 1982 supplemental submission of IMC, MHUD and the Iranian Ministry of Economic Affairs and Finance, copies of certain tax notices and determinations were submitted without any explanation. On 12 May 1983 and 2 March 1984 the Ministry of Economic Affairs and Finance filed unauthorized submissions which included additional tax notices and determinations. No further evidence regarding taxes owed was submitted prior to the Hearing and no evidence has been submitted in support of the counterclaim for alleged social insurance premiums.

The Tribunal has not yet determined whether it has jurisdiction over counterclaims of this nature; nor need we do so here. The record in the present case is insufficient to conclude what, if any, taxes or social insurance payments are due. Indeed, the Counterclaimant did not even supply the actual tax returns filed. Pereira submitted expert evidence showing that it had prominent accountants in Iran handling its taxes, that there was withholding, that the company operated at a loss and that the counterclaim did not take into account some withheld amounts and taxes already paid on advances. Even if the Tribunal has jurisdiction over these counterclaims, they must be dismissed for lack of sufficient evidence.

VIII. SUMMARY OF DAMAGES

The damages awardable to Claimant are summarized below:

	Principal Amounts (US $)		Interest (through 30 May 1983)		
Phase I Claim		196,347		(from 3-10-78)	$ 54,837
Phase II Claims					
Basic Sciences Buildings	262,284		96,213	(from 12-4-77)	
Balance of fourth payment	156,226		45,501	(from 18-7-78)	
Fifth payment less retention	1,805,745		504,322	(from 3-10-78)	
Phase II retentions	506,397		133,960	(from 30-12-78)	
		2,730,652			779,996
Phase III Claim		7,106		(from 30-1-80)	1,419
Claims for Additional Work					
Parking facility	37,826		14,074	(from 16-5-77)	
Dormitory redesign	33,612		10,468	(from 22-3-78)	
Revised site grading	1,093		337	(from 7-4-78)	
		72,531			24,879
Expropriation Claims		14,192			
TOTAL PRINCIPAL		3,020,828	TOTAL INTEREST THROUGH 30-5-83		861,131

TOTAL PRINCIPAL PLUS TOTAL INTEREST THROUGH 30 May 1983 = US $3,881,959

Claimant is also entitled to six percent interest on the amount of US $3,006,636, *i.e.* the above total principal less the amount of US $14,192 awarded under the expropriation claims, to be calculated from 31 May 1983 until payment is ordered from the Security account.

IX. COSTS

The Tribunal determines that Claimant shall be awarded US $25,000 as costs of arbitration.

X. AWARD

THE TRIBUNAL HEREBY AWARDS AS FOLLOWS:

The Counterclaims are dismissed.

Respondent ISLAMIC REPUBLIC OF IRAN is obligated to pay and shall pay to Claimant WILLIAM L. PEREIRA ASSOCIATES, IRAN, for all of its claims herein including principal amounts due, interest thereon up to and including 30 May 1983 and costs of arbitration, the sum of Three Million Nine Hundred and Six Thousand Nine Hundred and Fiftynine United States Dollars (US $3,906,959) plus simple interest on the principal amount of US $3,006,636 at the rate of six (6) percent per annum from and including 31 May 1983 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

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

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

Dated, The Hague
17 March 1984

Nils Mangård
Chairman
Chamber Three

In the Name of God

Richard M. Mosk
Concurring Opinion

Parviz Ansari Moin
Dissenting Opinion