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دیوان داوری دعاوی ایران - ایالات متحده

199

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

199

CASE NO. 370
CHAMBER ONE
AWARD NO. 429-370-1

WATKINS-JOHNSON COMPANY,
WATKINS-JOHNSON LIMITED,
Claimants,

and

ISLAMIC REPUBLIC OF IRAN,
BANK SADERAT IRAN,
Respondents.

AWARD

Appearances

For the Claimants:

Mr. Arthur W. Rovine,
Mr. Grant Hanessian,
Mr. Richard G. Bell,
Attorneys,
Mr. Bernard Rosen,
Mr. Robert Hiller,
Mr. Donald Torre,
Mr. Ronald Dallas,
Watkins-Johnson Company
Representatives.

For the Respondents:

Mr. Mohammad K. Eshragh,
Agent of the Government
of the Islamic Republic
of Iran,
Mr. Ali Heyrani Nobari,
Deputy Agent,
Mr. Ali A. Riyazi,
Legal Adviser to the
Agent,
Mr. Ali Ghassemi,
Legal Assistant to the
Agent,

Mr. Ali Payandeh,
Attorney, Ministry of Defense,
Mr. Ali A. Ostadifar,
Mr. Ahmad Kashiani,
Mr. Ehsanollah S. Mofakham,
Ministry of Defense Representatives,
Mr. Shahram Razavi,
Bank Saderat Iran Representative.

Also present:

Mr. Timothy E. Ramish,
Agent of the United States of America,
Mr. Michael F. Raboin,
Deputy Agent of the United States of America.

CONTENTS

A. INTRODUCTION

1. This Claim arises out of Contract No. 108 of the so-called "IBEX" project, a program that sought to modernize and expand Iran's military electronic intelligence gathering system. See E-Systems, Inc. and Islamic Republic of Iran, Award No. 94-388-1 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 197 (Award on Agreed Terms); Sylvania Technical Systems, Inc. and Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298; Questech, Inc. and Ministry of National Defence of the Islamic Republic of Iran, Award No. 191-59-1 (25 Sept. 1985), reprinted in 9 Iran-U.S. C. T.R. 107; Touche Ross & Company and Islamic Republic of Iran, Award No. 197-480-1 (30 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R 284; Ford Aerospace & Communications Corporation and Government of the Islamic Republic of Iran, et al., Partial Award No. 289-93-1 (29 Jan. 1987), reprinted in 14 Iran-U.S. C.T.R. 24; Harris International Telecommunications, Inc. and Islamic Republic of Iran, et al., Partial Award No. 323-409-1 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 31.[1] Under this Contract WATKINS-JOHNSON LIMITED, formerly known as Watkins-Johnson Service Company, was to provide electronic communications equipment and related services for the IBEX program. The Claimants, WATKINS-JOHNSON COMPANY ("Watkins-Johnson Co.") and WATKINS-JOHNSON LIMITED ("Watkins-Johnson Ltd."), argue that the Respondents, THE ISLAMIC REPUBLIC OF IRAN ("Iran") and BANK SADERAT IRAN ("Bank Saderat"), breached the Contract by failing to make payment pursuant to the Contract terms and by wrongfully calling bank guarantees which had been issued in connection with this Contract. The Respondents take the position that

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[1] These Cases will be referred to as "E-Systems," "Sylvania," "Questech," "Touche Ross," "Ford Aerospace," and "Harris."

the Claimants did not meet their contractual obligations, particularly by failing to deliver equipment. Further, the Respondents raise Counterclaims for breach of contract seeking, among other things, delivery of equipment, damages and payment under bank guarantees and standby letters of credit.

B. PROCEEDINGS

2. On 18 January 1982, the Claimants filed a Statement of Claim against Iran and Bank Saderat.

3. On 17 August 1982, Iran filed suit against Watkins-Johnson Co. in the Court of General Jurisdiction of Tehran seeking, inter alia, return of payments made and damages incurred under Contract No. 108.

4. On 20 August 1982, both Iran and Bank Saderat filed Statements of Defence and Statements of Counterclaim against Watkins-Johnson Co. in the proceedings before the Tribunal.

5. On 10 January 1983, Watkins-Johnson Ltd. and Watkins-Johnson Co. filed a petition with the Tribunal requesting an Order directing Iran to dismiss or stay the action instituted against Watkins-Johnson Co. in the Iranian Court.

6. By Interim Award No. ITM 19-370-2 (26 May 1983), reprinted in 2 Iran-U.S. C.T.R. 362, the Tribunal requested that Iran take all appropriate measures to ensure that the proceedings before the Court of General Jurisdiction of Tehran be stayed, pending termination of the proceedings in the present Case before the Tribunal.

7. The Tehran Court, on 29 June 1983, issued a judgment holding that Watkins-Johnson Co. is obligated to pay $12,316,061 to Iran.

8. On 15 September 1983, the President of the Tribunal reassigned Case No. 370 to Chamber One.

9. A "Joint Counterclaim Of Ministry Of Defense And Bank Saderat About Bank Guarantees" was filed on 19 September 1986 against Watkins-Johnson Co., Watkins-Johnson Ltd. and Wells Fargo Bank.

10. Following the submission of further written pleadings and evidence, a Hearing in this Case was held on 27 and 28 January 1988.

11. At the Hearing, the Claimants withdrew their Claim in the amount of $116,587 for work pursuant to contract change notices. The Claimants also stated at the Hearing that they have no claim of any kind concerning equipment that they manufactured and delivered to Ford Aerospace and Communications Corporation ("Ford Aerospace"). See Ford Aerospace, Partial Award No. 289-93-1 at paras. 101-105, reprinted in 14 Iran-U.S. C.T.R. at 51-52.

C. FACTS AND CONTENTIONS

I. The Contract

12. Iran and Watkins-Johnson Ltd.[2] entered into Contract No. 108 on 13 October 1976. Watkins-Johnson Co.

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[2] The Contract names "Watkins-Johnson Service Company" as the Seller party. Through amendment of its Articles of Incorporation in 1977, "Watkins-Johnson Service Company" changed its name to "Watkins-Johnson Ltd."

was allegedly Watkins-Johnson Ltd.'s sub-contractor in this project.[3] Under Contract No. 108, Watkins-Johnson was to manufacture, assemble, test and deliver electronic communications equipment, and provide related services, for the IBEX program. A detailed description of the work to be done is contained in Appendix 6 to the Contract, the "Statement of Work." The Contract was twice amended in 1977 by "Supplemental Agreement No. 1" and "Amendment No. 2."

13. The equipment was to be manufactured in the United States. A substantial part was to be delivered to E-Systems, Inc., the Air-borne Segment Contractor for the IBEX project, and to Ford Aerospace,[4] which was responsible for the ground-based segments of the program. Watkins-Johnson systems were called "common equipment" because they were common to both the air-borne and ground-based segments of the IBEX program.

14. The total Contract price for equipment and associated services, after the two amendments, was $18,193,101. The Contract also included authorization for "REPAIR and RETURN" in the amount of $4,000,000, "SEGMENT CONTRACT SUPPORT" totalling $2,000,000 and "OFF-SITE FIELD ENGINEERING" in the amount of $560,000. Payment was to be made by Iran through a letter of credit opened in Watkins-Johnson Ltd.'s favor. Watkins-Johnson Ltd., pursuant to the Contract, procured good performance bank guarantees for $1,875,310.60, which were issued by Bank Saderat and secured by standby letters of credit issued by Wells Fargo Bank.

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[3] The two entities will be referred to collectively as "Watkins-Johnson" except where the issue requires that they be distinguished.

[4] See Ford Aerospace, Partial Award No. 289-93-1 at paras. 101-105, reprinted in 14 Iran-U.S. C.T.R. at 51-52.

II. Performance under the Contract

15. Pursuant to Article 14.1 of the Contract, the Contract officially commenced 9 March 1977 following notification that Iran had procured confirmed letters of credit for the benefit of Watkins-Johnson. Watkins-Johnson was paid pursuant to the "Terms of Payment" contained in Appendix 2 to Contract No. 108. Article 1.3 of that Appendix provides:

> Invoices will be prepared each month on the basis of progress of works and will be submitted to the Buyer's Audit Agency for certification, then the invoices will be sent to the Buyer for approval. These invoices shall be approved if there is no reasonable objection within four (4) weeks and will be given to a person who will be designated by the company in Iran to be forwarded to the U.S. bank for payment.

At the start of the Contract, Watkins-Johnson submitted monthly invoices, which included costs incurred and, allegedly, 15 percent profit, to the Systems Engineering Contractor, Rockwell International Systems, Inc. ("Rockwell") and to the auditor Touche Ross and Company ("Touche Ross"). Rockwell reviewed the progress of works and costs, and Touche Ross audited the invoices and recommended them for payment. Watkins-Johnson received full payment on its invoices for February 1977 through November 1977.

16. In September 1977, Iran engaged Harris International Telecommunications, Inc. ("Harris") as Systems Integration Contractor for the purpose of monitoring the work of IBEX-contractors. Harris prepared a document dated 7 November 1977, containing new "Invoice Certification and Processing Procedures." These procedures provided, inter alia, that:

> The Systems Integration Contractor shall evaluate milestone accomplishments, deliverable status, and deficiencies of each Segment and at a monthly invoice certification meeting will provide a detailed status report to Touche Ross that technical and schedule progress is or is not consistent with the individual Segment Statement of Work and Buyer's schedules. Where there are deficiencies, the System Integration Contractor will estimate impact of such deficiency on segment and on total system and will also specify percentage of scheduled work which is accomplished.

These procedures were applied beginning with Watkins-Johnson's December 1977 invoice and resulted in a percentage reduction in the amount payable based on progress of works evaluations prepared by Harris.[5]

17. Watkins-Johnson asserts that these new invoicing procedures were applied without its consent, and that it "informally expressed disagreement," because it considered itself not bound by them under the terms of its Contract No. 108 with Iran. However, since it was paid 99 or 98 percent of the invoiced amounts from December 1977 to April 1978, it did not formally protest against the Harris evaluations.

18. Watkins-Johnson does not deny that in 1978 certain technical problems arose that caused delays in scheduled deliveries. Problems with the color of the paint used on equipment resulted in some delays. More serious delays in delivery dates were caused by a computer software programming problem with the control unit. This software problem held up a "group test" of some 572 units of equipment, which was a prerequisite to their shipment. In addition, Iran issued a number of Contract Change Notices, which Watkins-

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[5] The progress of works ratings and corresponding invoice reductions operated as an incentive for timely performance. They do not relate to actual costs incurred by the contractor. See Sylvania, Award No. 180-64-1 at pp. 24-25, reprinted in 8 Iran-U.S. C.T.R. at 315-16.

Johnson alleges affected the technical specifications of almost all of the equipment to be delivered, and caused further delays. In February 1978, Watkins-Johnson informed Iran that the cumulative effect of these delays was beginning to affect the delivery schedule.

19. Effective May 1978, Harris revised the invoice certification and processing procedures ("Buyer-Approved Invoice Certification and Processing Procedure Revision A"). In calculating the progress of works percentage, which determined what portion of invoiced costs would be reimbursed, Revision A explained that:

> "Work contracted for" and "Work accomplished" are from the contract inception and thus the percentage expresses progress of works on a cumulative, rather than monthly basis.

Under these procedures Watkins-Johnson received progress of works ratings of 93 percent for May, 89 percent for June, and 85 percent for July 1978. As a result of these ratings, Watkins-Johnson alleges that it was unable to recover any of the costs - totalling $2,020,057 - incurred during those months because payments received prior to May 1978 exceeded the amount Watkins-Johnson was permitted to invoice under the new procedures.

20. By letter dated 18 July 1978, Watkins-Johnson informed Harris that it considered the new invoicing procedures inconsistent with its Contract with Iran and suggested alternative procedures to recover its costs.

21. On 10 July 1978, Harris issued a slightly revised version of the invoicing procedures ("Revision B"). Watkins-Johnson again protested the procedures in a letter dated 29 August 1978. It argued that internal milestones had been established as guidelines only and thus should not form the basis of progress of works evaluations.

Watkins-Johnson received progress of works ratings of 78 percent for both August and September 1978, preventing it from invoicing alleged costs then totalling $3,401,142.

22. Watkins-Johnson contends that, on 17 September 1978, the IBEX program director, General Asrejadid, assured Watkins-Johnson's representatives that the invoice procedure would be modified and that it would have to be acceptable to the contractor.

23. Eventually, Watkins-Johnson and Harris worked out modified procedures as described in the draft "Ground Rules for Application of Progress of Works Evaluation Ratings." By letter dated 25 September 1978, Harris transmitted this draft to Watkins-Johnson. By telex to Harris of 2 October 1978, Watkins-Johnson stated its concurrence with these procedures with certain "clarifications." Under the proposed procedures, Watkins-Johnson would have been entitled to invoice costs to the extent that they did not exceed a price line set on the basis of the financial plan, which would be reduced in accordance with the progress of works evaluation ratings. However, these proposed procedures were neither technically approved by Iran nor implemented.

24. Watkins-Johnson asserts that, although it received no further payments, it continued to work on Contract No. 108, and that it made three shipments in October 1978 with a total value of $2,475,205.

25. On 8 November 1978, Watkins-Johnson reminded Harris of its concern that the proposed invoicing procedures had still not been implemented. On the same day, one of Watkins-Johnson's officers had a telephone conversation with General Asrejadid concerning the matter, in which the General allegedly agreed to honor immediately an invoice for $2,400,000 - an amount based on the approximate value of

shipments made in October 1978. This invoice was to be sent directly to his attention, outside the invoicing procedures. Thereupon, Watkins-Johnson submitted Invoice No. 70229, dated 8 November 1978, in the amount of $2,400,000 to the General via the Harris address in Melbourne, Florida.

26. In early December 1978, a meeting between Watkins-Johnson's representatives, General Asrejadid and other IBEX-contractors was held in Iran. Watkins-Johnson alleges that it learned at the meeting that the General, on advice from Harris or the Adviser, had decided not to pay Invoice No. 70229 because it had not been processed pursuant to the invoicing procedures. Watkins-Johnson asserts, however, that its representatives were then instructed by Iran and Harris to divide this invoice into two substitute invoices totalling $2,400,000. It accordingly issued Invoice No. 70235 for $895,778 which was based upon a 82 percent progress of works evaluation rating for October 1978, and a second "special" Invoice No. 70236 in the amount of $1,504,222, bringing total payment to $2,400,000.

27. Watkins-Johnson contends that, on 10 December 1978, it received information through the United States Government Adviser to the IBEX project that Invoice No. 70236 would not be paid unless Watkins-Johnson posted a $2,000,000 bond.[6] Watkins-Johnson was not prepared to accept this proposal. On 15 December 1978, it issued a formal demand for payment of costs incurred and fees earned during the period from April through 1 December 1978 in the total amount of $4,049,572.

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[6] According to an internal memorandum by one of Watkins-Johnson's officials, dated 10 December 1978, General Tavakoli agreed to make a "down payment" of $2,000,000, if Watkins-Johnson posted a bond in the same amount.

28. In a letter, dated 22 December 1978, Watkins-Johnson notified Iran as follows:

> As of 20 December 1978, Watkins-Johnson has successfully completed group testing on a substantial amount of the hardware remaining to be shipped and such hardware is ready for your acceptance. . . . Watkins-Johnson is presently holding such equipment for your account and disposition subject to the performance of your obligations. . . .
>
> Watkins-Johnson has been placed in an extremely difficult situation as a result of failure to resolve payment problems under this contract. Due to this situation and to the continued default of the Iranian Government in payment, I must notify you that Watkins-Johnson intends to withhold delivery of such equipment and to suspend work on the contract effective immediately until payment to which Watkins-Johnson is contractually entitled is received. . . . However, if the default is not resolved, Watkins-Johnson has no alternative but to take steps to sell or transfer the hardware to other customers in an effort to minimize its losses on the program.

On 26 December 1978, Watkins-Johnson received payment of $895,778 on Invoice No. 70235, which had been approved and forwarded by Iran in conformity with the payment procedures on 19 December 1978. Watkins-Johnson acknowledged in a letter of 28 December 1978 that this was "a step toward resolving the payment problem" and, on the same day, it shipped certain training equipment, worth $16,333, as announced in a letter dated 21 December 1978.

29. Watkins-Johnson contends that, at the request of Iran and Harris, on 2 January 1979, it prepared Invoice No. 70239 for $1,529,412, to replace Invoice No. 70236. Invoice No. 70239 was based on a 90 percent progress of works evaluation rating for November 1978. Initially, the Harris report for November 1978 indicated a rating of 83 percent. Indisputably, this figure was subsequently changed to 90 percent for the purpose of issuing Invoice No. 70239. The

Parties are in dispute, however, whether the change was carried out with Iran's knowledge and consent.

30. On 12 January 1979, Watkins-Johnson's representatives met with Colonel Jalali, Iran's representative in Washington, in the presence of representatives of the United States Government Adviser, to work out the details of a step-by-step plan for the resumption of work under the Contract. A first draft "Agreement of Understanding," dated 12 January 1979 essentially provided that "upon" Watkins-Johnson's resuming work, Iran "will immediately approve for payment Invoice No. 70239 . . . ." That Agreement, however, was not authorized by Watkins-Johnson's directors. Then Watkins-Johnson's representatives developed another "Agreement of Understanding," dated 15 January 1979, which provided, among other things: as "Step I" that Watkins-Johnson would immediately ready certain equipment for shipment, while Iran would immediately pay Invoice No. 70239; as "Step II" that upon completion of "Step I" Watkins-Johnson would return to work on Category V equipment; as "Step III" that Iran upon completion of "Step II" would approve for payment another invoice, covering the cost of work to 1 December 1978, in the amount of $1,624,382. This plan was submitted to Harris, and Harris forwarded it to Iran as indicated in a telex of Harris to Watkins-Johnson dated 18 January 1979.

31. It is undisputed that Iran approved Invoice No. 70239 on 17 January 1979. Iran states that the invoice was then submitted to Mr. Stockton, who was apparently the "Field Support Staff/Tehran Contract Advisor" who customarily received approved invoices for the contractors. In addition, an internal Watkins-Johnson memorandum indicates that Watkins-Johnson was informed on 29 January 1979 that Invoice No. 70239 had been approved and "would be coming back tomorrow by SIC Courier (airline schedules permitting)."

32. Watkins-Johnson contends that it was informed through the United States Government Adviser that, upon resuming work, another invoice for $1,624,382, covering costs of work through 1 December 1978 would be paid, and that, on 26 January 1979, Harris confirmed that additional payment would be forthcoming. Accordingly, on 30 January 1979 Watkins-Johnson submitted Invoice No. 70241 for the amount of $1,624,382 to Touche Ross. In a letter to Watkins-Johnson, dated 16 February 1979, Touche Ross stated that "[t]his invoice went by courier to the Systems Integration Contractor on Friday, February 9, 1979, to be forwarded by them to Iran."

33. Watkins-Johnson, however, received no payment on either Invoice No. 70239 or 70241. While Iran requested Bank Markazi to extend the letter of credit in Watkins-Johnson's favor, which was due to expire on 10 January 1979, this request was apparently not processed for some time because many banks in Iran were not operating normally.

34. By letter dated 20 January 1979, Iran notified Watkins-Johnson that it would hold Watkins-Johnson fully responsible for any costs incurred by E-Systems and any other Segment Contractor resulting from the late delivery of common equipment.

35. In a letter to General Asrejadid, dated 30 January 1979, Watkins-Johnson stated that:

> To date, we have not received your reply to our letters of 22 and 23 December 1978, nor have any of the conditions set forth therein for resuming work been met. As previously indicated, we are most anxious to complete the remaining 10% of work on the contract and to support your program. However, if this matter continues to remain unresolved, it will soon become necessary for us to take action to sell the equipment to other customers. It is imperative that I receive your response and see positive steps being taken to comply with the conditions for resuming work, set forth in our letters of 22 and 28 December 1978, if this alternative action is to be avoided.

36. In a letter to General Asrejadid, dated 15 February 1979, Watkins-Johnson followed up:

> As of this date, we have not received a reply from you. Furthermore, the discussions we had with your representative, Colonel Jalali, produced no results.
>
> Therefore, please take notice that it is the intention of Watkins-Johnson Ltd. to sell, at private sale, all the equipment in its possession which was produced pursuant to Contract No. 108.
>
> It is our intention actively to pursue the sale of this equipment with the goal of consummating a final sale thirty (30) days after your receipt of this letter but in any event not later than 30 June 1979.

37. Watkins-Johnson also attempted to communicate with Iranian authorities through Iranian Government representatives in the United States. Thus, on 6 March 1979, it sent a copy of its letter of 15 February to the Iranian Consulate in San Francisco. On 7 March 1979, it sent copies of this letter and those of 22 December, 28 December and 30 January to the Iranian Charge D'Affairs at the Embassy in Washington, D.C. Finally, by letter dated 10 May 1979, it contacted the Iranian Armed Forces Attaché regarding the Field Service Engineering invoices.

38. Soon after it had stopped work on Contract No. 108 in December 1978, Watkins-Johnson made an estimate, for accounting purposes, of the net market value of the unshipped equipment. While it had actually shipped 417 units of equipment having a Contract price of $4,670,155, it had manufactured, but not shipped, 783 units having a total Contract price of $7,529,488, the "net market value" of which it then estimated at $2,408,642 if it had to be sold to other customers. According to a Watkins-Johnson official, much of the equipment was designed or modified to operate as a system according to specifications of the Iranian Air Force and could not readily be sold separately.

In "early 1979," Watkins-Johnson assembled a sales team for the purpose of selling the unshipped equipment. It contends that, by the end of 1983, it had sold equipment for a total of $1,861,468.[7] Allegedly, the remainder could not be sold and was used for training purposes or scrapped.

39. Meanwhile, on 9 August 1979, Watkins-Johnson received a letter from Iran, dated 16 July 1979, which was sent to all IBEX-contractors. See, e.g., Ford Aerospace, Partial Award No. 289-93-1 at paras. 21 & 51, reprinted in 14 Iran-U.S. C.T.R at 31, 37. This letter stated that from 10 February 1979 "the accomplishment of all the works and expenditures under the Contract No. 108 has been considered to be stopped" and invited Watkins-Johnson to "contractual negotiations" on 27 August 1979 in Tehran. A meeting, at which Watkins-Johnson was represented by an Iranian attorney, was actually held on 24 September 1979. At the meeting, Iran requested that Watkins-Johnson provide a performance status report indicating, among other things, the location and condition of equipment manufactured. Watkins-Johnson responded by letter dated 5 December 1979 stating, in essence, that part of the equipment was stored in the United States, and that the remainder had already been sold or was being sold.

40. After Watkins-Johnson had filed in January 1979 an action in the United States District Court for the Northern District of California against Wells Fargo Bank and Bank Saderat to enjoin payment under the bank guarantees and standby letters of credit, it obtained a preliminary injunction in August 1979 and a Writ of Attachment in December 1979.

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[7] It follows from Watkins-Johnson's Summary of Sales that a maximum of 186 units were sold.

41. In March 1980, Iran called the good performance bank guarantees issued by Bank Saderat for its benefit. In May 1980, Bank Saderat called the standby letters of credit issued by Wells Fargo Bank. Wells Fargo Bank informed Bank Saderat by letter dated 22 May 1980 that Watkins-Johnson had established a "blocked account" on its books pursuant to Section 535.568 of the Iranian Assets Control Regulations, 31 C.F.R. § 535.568.

III. The Claims

42. Watkins-Johnson argues that Iran "repudiated" Contract No. 108, or terminated the Contract for its convenience, by the letter of 16 July 1979, at the latest, and that Iran is therefore obligated pursuant to Article 7.4 of the Contract to pay for the equipment manufactured "including those equipments and materials for which the manufacturing has already started." It claims costs incurred under Contract No. 108 through 31 December 1978 and 15% fees in the amount of $3,422,956. This amount is equivalent to the amounts invoiced in Invoice No. 70239 ($1,529,412) and Invoice No. 70241 ($1,624,382) plus $269,162 uninvoiced costs for December 1978.

43. Watkins-Johnson maintains that it was entitled, and even obligated, to sell the unshipped equipment in mitigation of its damages. It is prepared to credit Iran the proceeds of these sales, less costs incurred in connection with the sales, in the total amount of $1,423,588. It thus seeks $1,999,368 for progress of works.

44. Watkins-Johnson further claims payment of $126,365.38 on invoices for field support services covering the period from July 1978 through December 1978.

45. Watkins-Johnson, moreover, seeks reimbursement for California State sales and use taxes in the total amount of $51,899.39 it allegedly owed because certain equipment was shipped within the State of California. It argues that Iran is obligated to pay such taxes pursuant to the terms of the Statement of Work ("SOW")-Task 7.

46. Watkins-Johnson also seeks termination costs in the total amount of $141,366.15 allegedly incurred as a consequence of Iran's termination of Contract No. 108.

47. Watkins-Johnson requests declaratory relief cancelling the bank guarantees and related standby letters of credit. It also seeks damages in the total amount of $102,222.81 for bank commissions it had to pay in order to maintain the bank undertakings, legal fees, and injunction bond premiums. It requests a declaration that the judgment rendered in the Tehran Court against Watkins-Johnson Co. is without legal effect.

48. Finally, Watkins-Johnson seeks interest on the amounts awarded and reimbursement for its costs of arbitration.

IV. The Respondents' Position

1. Jurisdiction

49. The Respondents deny the Tribunal's jurisdiction over the Claims on two grounds. First, the Claimants' United States nationality is disputed. Second, the Respondents argue that Article 9 of Contract No. 108 confers exclusive jurisdiction over the Claims on the Iranian courts.

2. Denial of the Claims

50. The Respondents also deny each of the Claims on the merits. Iran takes the position that Watkins-Johnson breached the Contract when it initially failed to deliver the equipment in a timely manner and eventually withheld equipment having a Contract price of about $8,000,000. Iran argues that the progress of the IBEX project was dependent upon Watkins-Johnson's timely performance, and that Iran incurred severe damages as a result of non-delivery of Airborne Segment Equipment due for delivery in May 1978.

51. Iran further argues that Appendix 2 to Contract No. 108, the "Terms of Payment," provided for payment "on the basis of progress of works" and it construes this provision to the effect that "progress" was to be measured on the basis of accomplishment of work and actual delivery of equipment.

52. In Iran's view, Watkins-Johnson was obligated to comply with the invoicing procedures as issued by Harris; absent such compliance, it suggests, there was no obligation to honor the invoices.

53. Iran denies that Watkins-Johnson informally expressed its disagreement with the new invoicing procedures when they were introduced by Harris. To the contrary, Iran argues that Watkins-Johnson's acquiescence, in particular its omission to send invoices for the period from May through September 1978, must be construed as an acceptance of the new procedures.

54. Iran submits that in order to prove its good faith and its intention to continue with Contract No. 108, it approved Invoice No. 70235 for $895,778 on 19 December 1978, i.e., prior to Watkins-Johnson's letter of 22 December 1978. See supra para. 28. Moreover, Iran considers the change of

the progress of works evaluation rate in the Harris report for November 1978 from 83 percent to 90 percent, as a "plain forgery" and accordingly denies any legally binding character of Invoice No. 70239. Iran further alleges that, although the invoice was approved, Watkins-Johnson refused to receive it and insisted on non-delivery and the sale of the equipment.

55. Iran asserts that at the September 1979 meeting, Watkins-Johnson was represented by an outside counsel with no knowledge of the situation, instead of a fully authorized and informed representative, as required by the letter of invitation dated 16 July 1979. At the meeting, Iran allegedly indicated that it was interested in continuing with Contract No. 108 and requested that Watkins-Johnson provide a performance status report as well as a report on the whereabouts of goods and equipment. Iran refers to the meeting report prepared by Watkins-Johnson (although Iran disputes the credibility of the report in part) which states that "[a]ll indications during the meeting were that the CEO [Iranian Communications & Electronic Organisation] is actively interested in continuing with the project of which Contract 108 forms a part. The nature and the scope of the project may be somewhat altered, however." Iran further states that in response to its request, Watkins-Johnson informed Iran by letter of 5 December 1979 that it had already commenced selling the equipment.

56. Iran further argues that, under applicable Iranian law, Watkins-Johnson was not entitled to sell equipment, which it contends was Iranian property, in mitigation of its damages, and that, in doing so, Watkins-Johnson breached Contract No. 108. According to Iran, Watkins-Johnson terminated the Contract wrongfully by its letter of 22 December 1978. Iran argues that in view of Watkins-Johnson's conduct it had no remedy but to call the bank guarantees in March 1980.

V. Counterclaims

1. Iran's Counterclaim

57. Based upon the arguments set forth above, Iran raises a Counterclaim against the Claimants for breach of contract. It seeks delivery of equipment or, alternatively, refund of all amounts paid to Watkins-Johnson, damages equivalent to the "real value" of the unshipped equipment which it requests an expert to determine, and approximately $31,000,000 paid by Iran to E-Systems, arguing that these payments were wasted because of Watkins-Johnson's breach of contractual obligations. Iran, moreover, seeks payment of social security premiums, taxes, interest, and costs of arbitration.

2. Bank Saderat's Counterclaim

58. Bank Saderat asserts that it had to make, and actually did make, payment to Iran under the good performance guarantees procured by Watkins-Johnson. Because Watkins-Johnson obtained court injunctions, as well as establishing a "blocked account" pursuant to United States Government regulations, Bank Saderat was prevented from recovering under the corresponding standby letters of credit issued by Wells Fargo Bank. It therefore seeks reimbursement for its payment to Iran in the amount of $1,875,310.60.

59. Bank Saderat also claims $31,740.66 for attorneys' fees it incurred in response to the legal action taken by Watkins-Johnson in the United States to prevent payment under the standby letters of credit, as well as "delayed payment penalties" at 12% per annum. It further seeks its costs of arbitration.

3. "Joint Counterclaim About Bank Guarantees" by Iran and Bank Saderat

60. On 19 September 1986, Iran and Bank Saderat also filed a "Joint Counterclaim About Bank Guarantees" against Watkins-Johnson Co., Watkins-Johnson Ltd. and Wells Fargo Bank, seeking payment under the standby letters of credit.

D. REASONS FOR AWARD

I. Procedural Issues

1. Late-filed Documents and Admissibility of Rebuttal

61. At the Hearing, the Tribunal reserved its decision on the admissibility of certain late-filed documents.

62. On 27 November 1987, the Claimants submitted a "Supplemental Memorial and Summary of Evidence" (Doc. No. 182) and requested permission to file this document pursuant to the Tribunal's Order of 4 March 1987. The Respondents objected to this request. By Order of 3 December 1987, the Tribunal denied the admissibility of Doc. No. 182. Thereafter, in a submission on 24 December 1987, the Claimants contended that their Supplemental Memorial was filed in response to improper rebuttal material contained in Iran's Rebuttal Memorial filed 15 September 1987. Watkins-Johnson argued that Iran raised several specific points, particularly an allegation that the revised progress of works evaluation for November 1978 was a forgery, for the first time in its Rebuttal Memorial. The Claimants argued further that the Supplemental Memorial contained largely evidence in response to these new points. By Order of 14 January 1988, the Tribunal informed the Parties that it would decide after the Hearing (1) whether and to what extent the Respondents' 15 September 1987 submissions (Doc. Nos. 178-180) contain inadmissible rebuttal material, and (2) whether and to what extent the Claimants' Supplemental Memorial is admissible.

63. At the Hearing, the Claimants submitted:

1. An invoice by Watkins-Johnson International, dated 30 May 1979, issued to a German buyer.

2. A document described as "customer contact report," dated 1-2-1979.

3. Interdepartmental correspondence of Watkins-Johnson Co., dated 4 January 1979.

The Respondents objected to the admissibility of these submissions.

64. The Tribunal finds that both the evidence presented with Document 182 and the documents submitted by the Claimants at the Hearing are irrelevant to the decision in this Case. Accordingly, the Tribunal need not reach the question of their admissibility. In addition, in view of its decision on the merits, see infra para. 83, the Tribunal need not decide whether the forgery allegation contained in the Respondents' Rebuttal Memorial constituted improper rebuttal.

65. The Respondents filed late Doc. No. 187 containing the English translation of certain exhibits to Respondents' Doc. Nos. 179-180. The Respondents explained that the English translation was inadvertently left out of the binding of the original versions of these exhibits, which were filed on time. At the Hearing, the Claimants indicated that they do not object to the introduction of Doc. No. 187. The Tribunal, therefore, finds it appropriate to accept this document.

2. Amendments

66. During the course of the proceedings the Claimants revised the monetary relief sought in various respects; some amounts were increased, some reduced. Due to the ongoing

effort to sell equipment, the proceeds from these sales, and accordingly the credit to Iran, increased. As a result, the overall amount of the monetary relief sought under this Claim was actually reduced. In the Tribunal's view these changes are admissible amendments within the meaning of Article 20 of the Tribunal Rules.

67. The Claimants have also sought to add a Claim for uninvoiced progress of works costs of $269,162, allegedly incurred in December 1978. The Claimants raised this Claim for the first time in their Hearing Memorial filed on 19 December 1986. In view, however, of its holding on the merits that Iran is not obligated to pay these costs, the Tribunal need not decide the issue of the admissibility of this amendment. See infra para. 90.

3. Late Counterclaim

68. The "Joint Counterclaim of the Ministry of Defense and Bank Saderat about Bank Guarantees," seeking payment under the bank guarantees and standby letters of credit, against Watkins-Johnson Co., Watkins-Johnson Ltd., and Wells Fargo Bank, was filed on 19 September 1986. Bank Saderat raised this Claim initially in Tribunal Case No. 872 against Wells Fargo Bank and the United States. After Case No. 872 (Bank Saderat and The Government of the United States of America, Wells Fargo Bank N.A.) was terminated by Order of 2 July 1985, the Agent of the Islamic Republic of Iran requested further guidance on how to proceed with those Claims, which now form the basis of this Counterclaim. In a communication to the Agents filed on 16 August 1985, the Tribunal stated that requests for submission of a counterclaim based on letters of credit in the Case where the underlying claim is pending "must be timely filed, not later than six months from the date of this communication." Thus, the deadline for raising the letter of credit Counterclaim

in this Case was 16 February 1986. This Counterclaim was not filed until 19 September 1986 and the Counterclaimants offered no explanation as to why they were unable to raise it within the time limit stipulated in the Order of 16 August 1985. The Tribunal decides in accordance with its previous practice in similar cases, to dismiss this late Counterclaim. See Agrostruct International, Inc. and Iran State Cereals Organization, Award No. 358-195-1, para. 29 (15 Apr. 1988), reprinted in ___ Iran-U.S. C.T.R. ____, ____.

4. Appointment of an Expert

69. The Respondents initially estimated the value of the unshipped equipment they request at $40,000,000. In a later filing, however, they requested that an expert be appointed to assess the value of the equipment at issue and the amount of damages. In view of its conclusions on the merits of the Claim, the Tribunal does not consider it necessary or appropriate to appoint an expert in this Case. The request for the appointment of an expert is therefore denied.

II. Jurisdiction

1. The Claimants' United States Nationality

70. Based on the evidence presented, the Tribunal is persuaded that Watkins-Johnson Ltd. is a wholly-owned subsidiary of Watkins-Johnson Co., and that 50% or more of Watkins-Johnson Co.'s capital stock was held at all relevant times by United States nationals. The evidence presented fulfills the requirements for proof of corporate nationality established by the Order of 20 December 1982 in Case No. 36, Flexi-Van Leasing, Inc. and Islamic Republic of Iran,

reprinted in 1 Iran-U.S. C.T.R. 455, and in the Order of 18 January 1983 in Case No. 94, General Motors Corporation and Government of the Islamic Republic of Iran, reprinted in 3 Iran-U.S. C.T.R. 1. The Tribunal finds, therefore, that both Watkins-Johnson Ltd. and Watkins-Johnson Co. are United States nationals within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration.

2. Forum Selection Clause

71. The Respondents argue that Article 9 of Contract No. 108 confers exclusive jurisdiction on the Iranian Courts, thus precluding the Tribunal's jurisdiction over the present dispute. Article 9 reads as follows:

> All disputes and differences between the two parties arising out of interpretation of the Contract items or the execution of the Works Which can not be settled in a friendly way, shall be settled in accordance with the rules provided by the Iranian Laws, via referring to the competent Iranian Courts.

This dispute settlement clause is almost identical with dispute settlement clauses in other IBEX contracts before the Tribunal. See Sylvania, Award No. 180-64-1 at pp. 11-13, reprinted in 8 Iran-U.S. C.T.R. at 306-07; Questech, Award No. 191-51-1 at pp. 11-13, reprinted in 9 Iran-U.S. C.T.R. at 115-16; Touche Ross, Award No. 197-480-1 at pp. 8, 12, reprinted in 9 Iran-U.S. C.T.R. at 289, 293; Ford Aerospace, Partial Award No. 289-93-1 at paras. 36-38, reprinted in 14 Iran-U.S. C.T.R. at 33-34; Harris, Partial Award No. 323-409-1 at paras. 109-111, reprinted in 17 Iran-U.S. C.T.R. at 63-64. Minor variations in the English text of the contract provision in the present case are immaterial. In line with its uniform holdings in other IBEX cases, the Tribunal decides that Article 9 of Contract No. 108 does not preclude the Tribunal's jurisdiction. It is

satisfied, therefore, that it has jurisdiction over the present Claims and Counterclaims.

III. Merits

1. Termination of Contract No. 108

72. The Tribunal first must determine how Contract No. 108 came to an end. Watkins-Johnson argues that Iran "repudiated" the Contract by refusing to make payment, and that, in any event, the Contract came to an end, at the latest, through Iran's letter of 16 July 1979. See supra para. 39. The Respondents take the position that Watkins-Johnson, by refusing to deliver the equipment and, particularly, by sending the letter of 22 December 1978, see supra para. 28, breached and terminated the Contract.

73. The Tribunal finds no support in the record for Iran's proposition that Contract No. 108 was terminated, or "repudiated," by Watkins-Johnson in December 1978. At that time, the Parties were still negotiating the dispute over payments. Despite the withholding of equipment, there is no indication that either Party then regarded or treated the Contract as terminated. Neither is the Tribunal persuaded that Iran must be deemed to have "repudiated" Contract No. 108 merely because it did not make payments in early 1979. Rather, considering the overall status of the IBEX project at that time, the Tribunal concludes that Contract No. 108 was essentially kept in a state of suspension until Iran sent its letter of 16 July 1979.

74. While it is true that, in the meantime, Watkins-Johnson had begun to sell equipment, nothing suggests that sales prior to July 1979 would have rendered Watkins-Johnson unable to resume performance under Contract No. 108, had Iran requested it to do so. According to Watkins-Johnson,

early sales were of standard equipment that could have been replaced easily. The Tribunal finds that Watkins-Johnson had a right to sell equipment in the specific circumstances, see infra paras. 92 et seq. Therefore, sales prior to Iran's letter of 16 July 1979 did not constitute a breach, repudiation or termination of Contract No. 108.

75. The Tribunal concludes, consistent with its findings in other IBEX cases, that Iran's letter of 16 July 1979 must be regarded as the manifestation of a deliberate policy decision not to continue with United States contractors in the IBEX project. See Sylvania, Award No. 180-64-1 at p. 21, reprinted in 8 Iran-U.S. C.T.R. at 312-13; Questech, Award No. 191-51-1 at p. 18, reprinted in 9 Iran-U.S. C.T.R. at 120; Ford Aerospace, Partial Award No. 289-93-1 at paras. 48-53, reprinted in 14 Iran-U.S. C.T.R. at 36-38. Consequently, the Tribunal regards this letter as a notice of termination of Contract No. 108 by Iran.

2. The Claims

a) Payment for Progress of Works

aa) Invoice Nos. 70239 and 70241

76. Watkins-Johnson claims a total of $3,153,794 for costs and fees on progress of works due under Invoice No. 70239, dated 2 January 1979 ($1,529,412), and Invoice No. 70241, dated 30 January 1979 ($1,624,382). The history of these two invoices is described above. See paras. 29 et seq.

77. Iran denies any obligation to honor Invoice Nos. 70239 and 70241 arguing that they were not processed pursuant to the contractual invoicing procedures. Iran maintains that Watkins-Johnson was to be paid based on accomplishment

of work and actual deliveries of equipment as scheduled in the Contract. It points out that the "Terms of Payment," set forth in Appendix 2 to Contract No. 108, provide that "Invoices will be prepared each month on the basis of progress of works" and argues that actual delivery of equipment must be considered a constituent element of such "progress." Watkins-Johnson, on the other hand, emphasizes the fact that invoices were to be prepared on a monthly basis, and that it received payment for its invoiced costs during the first ten months of its performance under the Contract regardless of whether equipment was actually delivered.

78. The Tribunal recognizes that, in a Contract under which the Seller is to manufacture items at the request of the Buyer and to provide, in addition, certain services, one may have different views as to how "progress of works" should be determined. Iran's position that, as the Contract progressed, delivery of equipment was a more decisive element in the assessment of the progress of works, is not unreasonable. Nor is Watkins-Johnson unreasonable in relying on previous contract practice. Indeed, the "Terms of Payment" hardly provide unequivocal guidance in this respect. It appears that the contracting Parties themselves were aware of this ambiguity when they tried to negotiate a compromise solution for invoicing procedures in fall 1978.

79. Based on the evidence before it, the Tribunal is satisfied that, although never confirmed in writing, the Parties, in fact, reached an agreement regarding payment which rendered the underlying interpretive dispute moot and defined their mutual obligations in a binding way. According to this agreement, Iran was to pay Watkins-Johnson an amount equivalent to the Contract value of equipment shipped in October 1978, i.e., $2,400,000, immediately. Upon payment of this amount, an extension of the letter of credit in Watkins-Johnson's favor and satisfactory assurances that further payment would be made, Watkins-Johnson agreed to

resume work and ship additional equipment. This finding is supported not only by Watkins-Johnson's detailed meeting reports and other documentary evidence, but particularly by the Parties' efforts to implement the agreement.

80. Accordingly, Watkins-Johnson prepared Invoice No. 70235 ($895,778) and Invoice No. 70239 ($1,529,412), the latter replacing Invoice No. 70236 ($1,504,222). Invoice No. 70235 was paid by Iran and is not at issue in this Case.

81. Invoice No. 70239, the first invoice on which this Claim is based, was submitted to the auditor Touche Ross under cover letter dated 9 January 1979 in accordance with instructions contained in the telex from Harris to Watkins-Johnson of the same day. In a letter to General Asrejadid, dated 10 January 1979, Touche Ross recommended that this invoice be approved for payment. In a letter to the Ministry, General Asrejadid stated his approval "for issuance of payment authorization."

82. Iran argues that this invoice and General Asrejadid's approval has no binding effect because it was based on a "forgery" of the Harris Report for November 1978. The Harris Report for November 1978 initially contained a progress of works evaluation rate of 83% for Contract No. 108. Indisputably, this rating was subsequently changed, for the purpose of issuing Invoice No. 70239, to a 90% progress of works evaluation rate for November 1978. Watkins-Johnson asserts that this alteration was carried out with Iran's consent. Iran denies that.

83. Based on the evidence before it, the Tribunal is persuaded that Iran approved the change. Iran must have had knowledge of it. A "Trip Report," dated 19 January 1979, prepared by one of Watkins-Johnson's officers states:

> the Program Director feels he had made some "good faith gestures" in doing the following:
> . . .
>
> (c) Exercising his prerogative to increase the progress-of-works evaluation for November from 83% recommended by the SIC to 90% in order to get us a substantial payment.

The telex of 9 January 1979 from Harris to Watkins-Johnson, see supra para. 81, states in relevant parts:

> CONFIRMING THE REFERENCE TELECON WJ WAS NOTIFIED THE NOVEMBER P.O.W.E PERCENTAGE APPROVED BY THE PROGRAM DIRECTOR IS 90 PERCENT. YOU ARE INSTRUCTED TO PREPARE AND SUBMIT YOUR INVOICE FOR NOVEMBER 1978 USING THIS PERCENTAGE.[8]

Touche Ross, having been informed about the change, forwarded the invoice to General Asrejadid with a cover letter dated 10 January 1979 recommending that the invoice be approved for payment. The letter stated, inter alia:

> We determined that the invoice had been reduced to reflect the performance evaluation percentage for the month of November 1978.

There is no evidence showing any contemporaneous objection by Iran. The Tribunal is satisfied, therefore, that Iran gave its consent to the change. Consequently, there is no basis to doubt the validity of Iran's approval of Invoice No. 70239, and the validity of its agreement to honor it.

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[8] While Invoice No. 70239 is dated 2 January 1979, thus predating the telex of 9 January 1979, Watkins-Johnson explained at the Hearing that this invoice was not forwarded until authorization was received on 9 January 1979 as indicated by Watkins-Johnson's cover letter sent with the invoice to Touche Ross.

84. Second, Watkins-Johnson claims payment of $1,624,382 under Invoice No. 70241. Payment of this invoice was also part of the step-by-step plan discussed between the Parties in January 1979. See supra para. 30. Watkins-Johnson issued Invoice No. 70241 on 30 January 1979 and submitted it to Touche Ross by cover letter of the same day. The cover letter states that this invoice was

> submitted in accordance with the step-by-step plan recently discussed in Washington, D.C., with representatives of FSSH [Field Support Staff, Headquarters], as referred to in their message dated 18 January 1979 (SIC 206), a copy of which is attached for your information.

85. In a transmittal letter to General Asrejadid, dated 8 February 1979, Touche Ross stated:

> At your direction the contractor has prepared and we have verified the clerical accuracy of the enclosed documents which reflect a performance evaluation of 100%.
>
> Based upon your approval of the aforementioned performance evaluation and, at your direction, we recommend this invoice be approved for payment.

Iran denies receipt of Invoice No. 70241. However, the Tribunal is satisfied that the Invoice was submitted to Touche Ross, and that Touche Ross made, at least, an attempt to forward it to General Asrejadid. Touche Ross was acting as Iran's agent in the progress of works evaluation process, and deficiencies in communication between Touche Ross and Iran can generally not be construed against the IBEX contractors. This is particularly true since Iran neither informed Watkins-Johnson of any communication difficulties, nor requested resubmission of any documentation previously submitted to Touche Ross. Delivery of Invoice No. 70241 to Touche Ross is, therefore, deemed to constitute receipt by Iran.

86. While Iran now categorically denies its obligation to honor Watkins-Johnson's invoices because of non-delivery of equipment, it does not raise, nor did it raise in 1979 any objection to the costs invoiced in Invoice No. 70241. Indeed, the costs that form the basis for Invoice No. 70241 are identical to those that formed the basis for Invoice No. 70239, which was approved by Iran.[9]

87. In conclusion, the Tribunal finds, therefore, that Watkins-Johnson has established, at least, a prima facie case with regard to its Claims under Invoices No. 70239 and 70241. The Tribunal is satisfied that Iran agreed to honor Invoice No. 70239 without prior shipment of additional equipment by Watkins-Johnson; otherwise it cannot be explained why Iran did, in fact, approve this Invoice for payment in the absence of such shipment. The Tribunal is further persuaded that Iran agreed to honor Invoice No. 70241 upon shipment of additional equipment. It was the underlying objective of the compromise agreement - as understood by the contracting parties - to secure payment on both invoices. However, Iran's conduct in this matter and circumstances prevailing in Iran at the time gave rise to justifiable doubts that this objective would be met. First, the status of the letter of credit in Watkins-Johnson's favor, which was due to expire on 10 January 1979, was still unclear at least at the end of January 1979.[10] The

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[9] Costs were recorded cumulatively throughout the life of Contract No. 108. Invoice No. 70239 was based on $16,243,824 in costs through 1 December 1978. The Invoice applied a 90% progress of works evaluation and a credit for $13,090,030 that had already been paid on the Contract. Invoice No. 70241 was also based on $16,243,824 in costs through 1 December 1978. This invoice, however, was calculated using a 100% progress of works evaluation, and thus represents the 10% of cumulative costs not invoiced in Invoice No. 70239.

[10] Although Iran offered evidence showing that it (Footnote Continued)

extension of the letter of credit, however, was a precondition of further payments to Watkins-Johnson. Second, even if Watkins-Johnson could have obtained payment on Invoice No. 70239 at some stage after January/February 1979, Iran must still be held responsible for the failure to give satisfactory assurances that payment on Invoice No. 70241 would indeed be forthcoming upon delivery of equipment. Under the circumstances then prevailing in Iran, the Tribunal finds that Watkins-Johnson was not unreasonable in insisting on such assurances before fulfilling its part of the agreement. Iran's subsequent dealing with the IBEX project strongly supports the assumption that Iran would not have honored Invoice No. 70241 even if Watkins-Johnson had delivered the equipment. Iran's letter of termination of 16 July 1979 expressly states that from 10 February 1979 expenditures under Contract No. 108 have been considered to be stopped, and subsequently Iran has not offered to pay Invoices No. 70239 or 70241 against delivery of equipment.

88. Accordingly, Watkins-Johnson was entitled to withhold delivery in the absence of satisfactory assurances that payment on both Invoice No. 70239 and 70241 would be made. The Tribunal holds Iran liable, therefore, to pay the total amount of $3,153,794 claimed under Invoices Nos. 70239 and 70241 to Watkins-Johnson Ltd.[11]

(Footnote Continued)
requested an extension of the letter of credit and that the letter of credit expired on 15 January 1980, this evidence does not show on which date - following the reopening of Iranian banks - the extension was issued and when the letter of credit became thus available for drawings. Iran did not produce any notification from Bank Markazi that the letter of credit had been extended, even though it had expressly asked for such notification from Bank Markazi in its extension request.

[11] Watkins-Johnson Ltd., as the contracting Party to Contract No. 108, is the proper Claimant with respect to this Claim.

89. The Tribunal considers that, in view of the ongoing settlement negotiations at the time, and taking into account the four weeks approval period pursuant to Article 1.3 of the Terms of Payment, both invoices should have been paid, according to the Contract, at the latest by 28 February 1979. However, the Tribunal further takes into consideration that for some time around 10 February 1979, Iran was excused by force majeure from performing certain obligations under the Contract. Cf. Sylvania, Award No. 180-64-1 at pp. 14-17, reprinted in 8 Iran-U.S. C.T.R. at 308-310; Questech, Award No. 191-51-1 at pp. 17-18, reprinted in 9 Iran-U.S. C.T.R. at 119-120. Since Iran did not carry its burden to prove, specifically, for how long force majeure conditions in Iran prevented it from fulfilling its contractual obligations, the Tribunal deems it appropriate to set 30 April 1979 as the date on which payment on both Invoices should have been made and, accordingly, awards interest from 1 May 1979.

bb) Uninvoiced Costs for December 1978

90. Watkins-Johnson also seeks costs of $269,162 that it allegedly incurred in December 1978. These costs were not invoiced and were never reviewed by Touche Ross. Nor did Watkins-Johnson prepare a work report for the month. The Claimants submit a summary of costs but they do not specify the work done. At the Hearing, Watkins-Johnson explained that it had no employees available to prepare a December work report and that it had not been in a position to invoice the costs at the time. It has not, however, sufficiently substantiated these costs. The Tribunal has not always required that the costs incurred be reviewed and recommended for payment by Touche Ross, see, e.g., Harris, Partial Award No. 323-409-1 at para. 129, reprinted in 17 Iran-U.S. C.T.R. at 69, but in this Case, where there was no invoice, no work report, no outside auditors' report, and no

other supporting evidence, the Tribunal concludes that Watkins-Johnson has not carried its burden of proof.

cc) Credit for Equipment Sold

91. Watkins-Johnson sold equipment manufactured under Contract No. 108 in order to off-set the proceeds against its outstanding claim for performance costs. Aside from Iran's position that Watkins-Johnson did not manufacture equipment allegedly sold, Iran disputes Watkins-Johnson's right to dispose of the equipment, whereas Watkins-Johnson maintains that it had not only the right but also a duty to do so in mitigation of its damages.

92. In Ford Aerospace, the Respondent raised a similar argument, maintaining that the Claimant in that case breached the contracts when it sold materials and equipment. The Tribunal found:

> that the Claimant, having notified the Respondent several times of the planned sale without receiving any objection, was entitled to sell the equipment to mitigate damages.[12]

The same conclusion applies here. Watkins-Johnson had not received a substantial part of the price of the work it had performed. Nor had Iran given satisfactory assurances that payment would be forthcoming. The Tribunal is satisfied that Watkins-Johnson made a reasonable effort to notify Iran of its intention to sell the equipment by its letters dated 30 January 1979 and 15 February 1979, see supra paras. 35 and 36, respectively, which were sent to General Asrejadid via the Harris address in Florida.

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[12] Ford Aerospace, Partial Award No. 289-93-1 at para. 72, reprinted in 14 Iran-U.S. C.T.R. at 43.

93. The Tribunal notes Iran's position that Iranian law, which it argues is the applicable law pursuant to Article 11 of Contract 108, does not recognize a doctrine of mitigation of damages, which provides for the right to dispose of another party's property. As a preliminary matter, the Tribunal observes that Article 11 does not exclusively refer to Iranian law. It states:

> 11. Law Governing Contract
>
> The Governing law of this contract is the Iranian Law. This contract is subject to the Laws of the Imperial Government of Iran and United States in every respect if any difference between these two laws the Iranian law will govern.

94. In the circumstances of this Case, the Tribunal is unable to discern a conflict between Iranian and United States law on the issue of mitigation. Under United States law, the Claimant was justified in selling the equipment in mitigation of its damages. See Uniform Commercial Code §§ 2-703, 2-706. The Tribunal is not convinced that Iranian law is inconsistent with the principle of mitigation or requires a different result in this Case. Iran cites Article 247 of the Civil Code of Iran[13] to argue that Watkins-Johnson had no right to sell Iranian property. But title to the equipment had not passed to Iran. The Statement of Work (p. 30) to Contract No. 108 provides: "Delivered equipment and spares become IIAF [Imperial Iranian Air Force] property at time of delivery (F.O.B. destination)." Such delivery did not take place with respect to the equipment at issue here.

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[13] Article 247. Contracts regarding the property of others, except those entered into by natural guardians, executors or legal representatives, are not binding even though the owner of the property inwardly agrees thereto; if, however, after the contract has been made the owner of the property signifies his consent, the contract becomes

(Footnote Continued)

95. Moreover, Watkins-Johnson's right to sell undelivered equipment in mitigation of its damages is consistent with recognized international law of commercial contracts. The conditions of Article 88 of the United Nations Convention on Contracts for the International Sale of Goods (1980) ("UN Convention")[14] are all satisfied in this Case: there was unreasonable delay by the buyer in paying the price and the seller gave reasonable notice of its intention to sell. See supra paras. 35-36,92.

96. Based on the evidence before it, the Tribunal is further convinced that Watkins-Johnson made a reasonable effort in selling the equipment. The invoices presented by Watkins-Johnson demonstrate sufficiently the effort to find buyers for the equipment all over the world. A substantial part of the equipment was sold, even though for less than the Contract price agreed with Iran. Watkins-Johnson explained to the Tribunal's satisfaction that much of the equipment was modified or designed according to the specifications of the Iranian Air Force and, therefore, difficult

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(Footnote Continued)
binding. (Footnote omitted) [Translation by Musa Sabi].

[14] Article 88 states:

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

. . .

(3) A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

to sell to other customers. This is also confirmed by Harris' Progress Report dated 29 September 1979.

97. Moreover, the Tribunal finds it credible that a part of the equipment could not be sold at all and was used for "training" purposes or "scrapped." Watkins-Johnson presented, in this regard, an affidavit by Donald E. Torre together with detailed accounting material, and offered further explanation at the Hearing. There is also no reason to doubt that it was in Watkins-Johnson's own interest to sell as much equipment as possible at the best prices possible. Under these circumstances, the evidence presented by Watkins-Johnson is sufficient to establish prima facie that it made its best effort to sell all the equipment. Nothing in the record gives rise to serious doubts in that regard.

98. While one could argue that Watkins-Johnson had a duty to give specific notice of its intention to "scrap" equipment, the Tribunal finds that Iran cannot rely on the absence of such a specific notice in the circumstances of this Case. Iran never responded to Watkins-Johnson's notices of its intention to sell equipment. Neither did it attempt to pursue delivery in accordance with the previous agreements. Moreover, in view of the termination of the IBEX program, Iran's continued interest in such delivery must be doubted. Therefore, Iran cannot now rely on the argument that it should have been formally notified of Watkins-Johnson's intention to scrap equipment which could not be sold.

99. The Tribunal is persuaded, on the basis of the documentation submitted, that Watkins-Johnson sold equipment for a total of $1,861,468. Objections by Iran to the documentation of sales and costs were not only received rather late in the proceedings, but also were not substantiated. They raise no serious doubts as to the conclusiveness

of the evidence presented. Watkins-Johnson is entitled to deduct from the proceeds reasonable expenses incurred in carrying out the sales.[15] It showed that it incurred $251,733 for the completion and modification of equipment, and an additional $186,147 in selling costs. The sale of equipment, thus, yielded net proceeds in the total amount of $1,423,588 which are credited to Iran.

b) Invoices for Field Support Services

100. Watkins-Johnson claims payment of its invoices for field support services, covering the period from June 1978 through December 1978, as listed below:

Invoice No.	Invoice Date	Invoice Amount
70222	8/04/78	$ 24,187.81
70224	8/31/78	$ 29,865.40
70225	9/29/78	$ 23,575.00
70227	11/ 1/78	$ 13,530.90
70230	11/30/78	$ 12,589.42
70238	12/26/78	$ 17,639.93
70240	1/30/79	$ 4,976.92
		$126,365.38

Indisputably, all these invoices, except for Invoice No. 70240, were recommended for payment by Touche Ross and approved by Iran. Invoices Nos. 70222, 70224, 70225 and 70227 were sent by Touche Ross to General Asrejadid under cover letter dated 18 December 1978, and approved by

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15 See, e.g., U.C.C. §2-706; Article 88 (3) of the UN Convention.

Iran on 13 January 1979. Invoices Nos. 70230 and 70238 were sent by Touche Ross under cover letter of 10 January 1979. They were approved on 28 January 1979. Iran claims that it had no control over payment of these invoices after they had been approved, because payment was to be made through drawings on a letter of credit in Watkins-Johnson's favor. Watkins-Johnson has offered evidence, however, showing that it did not physically receive the approved invoices. Rather, a letter by Watkins-Johnson to Iran, dated 10 May 1979, suggests that the invoices were in the possession of Colonel Jalali who was not prepared to give them to Watkins-Johnson without permission by the Iranian government. Iran did not explain why that permission was not given, nor did it offer any other ground for a denial of this Claim. Consequently, the Tribunal holds Iran liable for payment of Invoices Nos. 70222, 70224, 70225, 70227, 70230 and 70238 in the total amount of $121,388.46.

101. The final invoice for field support services, No. 70240, was never approved for payment by Iran, and Iran denies that it received this invoice. Touche Ross forwarded this invoice to Iran without any recommendation regarding payment because there was no progress of works evaluation for December 1978. Touche Ross did not, however, object to the underlying costs on which the invoice was based. Like the other field support services invoices, Invoice No. 70240 is supported by a breakdown of the hourly wages and meal costs for each employee. The Tribunal is satisfied that Watkins-Johnson incurred the costs reflected in the invoice. Iran never objected to the invoice it must be deemed to have received, see supra para. 85, and there is no reason to doubt its obligation for this payment.

102. Pursuant to Article 1.3 of Appendix 2 to Contract No. 108, the payment on invoices was due upon their approval. Invoices Nos. 70222, 70224, 70225 and 70227 were thus due, in the total amount of $91,159.11, on 13 January 1979,

the date of approval. Invoices Nos. 70230 and 70238, in the total amount of $30,229.35, were due on 28 January 1979. In the case of Invoice No. 70240 for the amount of $4,976.92, Touche Ross forwarded the invoice to Iran with a cover letter dated 21 March 1979. In view of the ongoing settlement negotiations between the Parties and force majeure conditions affecting bank transactions in Iran, as specifically demonstrated by the evidence in this Case, the Tribunal deems it appropriate to set 30 April 1979 as the date on which all these invoices should have been paid at the latest. See supra para. 89.

103. The award is to Watkins-Johnson Ltd., which is the proper Claimant for this portion of the Claim. See supra para. 88 fn.11.

c) California Sales and Use Taxes

104. Watkins-Johnson seeks reimbursement of California State sales and use taxes in the amount of $51,899.39, which it allegedly owed because certain equipment was shipped to another IBEX contractor, Sylvania, within the State of California. It argues that Iran is obligated to reimburse such taxes pursuant to the terms of Task 7 of the Statement of Work, and because Iran has not objected to invoices for these amounts. Task 7 is headed "Repair and Return" and covers equipment that "may experience malfunctions not covered by the Warranty." In the last paragraph of the Task description it says:

> In the event Contractor is taxed by either the U.S., state or local government for sales or use tax the IIAF [Imperial Iranian Air Force] shall reimburse Contractor for said taxes . . . .

105. Iran relies on Article 2.1.14 of Contract No. 108 in contesting this Claim. Article 2.1 contains a list of

the "Obligations and duties of the Seller," and states under Article 2.1.14:

> The Payment of all taxes, charges, fees and Government charges subject to this contract and Seller's personnel and it's contractors outside Iran.

106. There is no indication that the "Repair and Return" provisions are applicable with respect to the items shipped to Sylvania. The Tribunal considers Task 7 to cover the special situation of returns for the purpose of repair and regards the general provision, Article 2.1.14 of Contract No. 108, to be pertinent here. According to Article 2.1.14, Watkins-Johnson, as the Seller, was obligated, in general, to bear any taxes imposed on it outside Iran. The Claim is therefore denied.

d) Termination Costs

107. Watkins-Johnson claims termination costs of $141,366.15, allegedly incurred as a consequence of the relocation and termination of three employees posted in Iran. Watkins-Johnson claims these expenses as "damages" incurred as a "consequence of the Respondent's termination of the Contract" (quoting Questech, Award No. 191-59-1 at p. 23, reprinted in 9 Iran-U.S. C.T.R. at 123). Iran denies a contractual basis for this Claim and contends that Watkins-Johnson claims expenses incurred for its Middle East branch office in Iran, which was not exclusively operated as part of Contract No. 108.

108. The Tribunal finds that Watkins-Johnson has not established a sufficient basis for this Claim. First,

unlike some of the other IBEX contracts,[16] Contract No. 108 does not provide for payment of termination costs. Here, the Buyer is permitted to terminate the contract for convenience and in that event Article 7.4 requires payment only of the "price of all equipment and materials shipped to the Buyer and works performed . . . ." The Tribunal construed a similar contract clause in Ford Aerospace and concluded that in the absence of an express provision for termination costs, the Claimant was generally not entitled to "costs arising from the Respondent's termination of the Contracts." Partial Award No. 289-93-1 at para. 67, reprinted in 14 Iran-U.S. C.T.R. at 42. The same conclusion applies here.

109. Watkins-Johnson has not established that it was entitled to charge its costs for employee relocation, not as termination costs, but as part of the normal costs billable under the Contract. Cf. Ford Aerospace, supra at paras. 67-77, reprinted in 14 Iran-U.S. C.T.R. at 42-44. In contrast to Contract No. 108's explicit authorization for field support services, there is no requirement in the Contract for an office of employees in Tehran. Moreover, according to the affidavit of Bruce G. Bleecker, the personnel in question were employees of Watkins-Johnson Associates, a wholly owned subsidiary of Watkins-Johnson Co. The Tribunal has insufficient information on the involvement of this entity in Watkins-Johnson's operations in Iran and inadequate documentation on the role of its personnel in connection with Contract No. 108. The Claim for termination costs is therefore denied.

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[16] See, e.g., Sylvania, Award No. 180-64-1 at pp. 21 et seq., reprinted in 8 Iran-U.S. C.T.R. at 313 et seq.

e) Bank Guarantees and Standby Letters of Credit

110. In accordance with Contract No. 108 Watkins-Johnson Ltd. procured two good performance bank guarantees, nos. 35-2137-399 and 36-2137-161, which were issued by Bank Saderat for Iran's benefit with a total face value of $1,875,310.60. The bank guarantees were secured by standby letters of credit issued by Wells Fargo Bank under nos. 55580 and 58040. Watkins-Johnson Co. was an account party with respect to the standby letters of credit.

111. In January 1979, both Watkins-Johnson Ltd. and Watkins-Johnson Co. filed an action in the United States District Court for the Northern District of California against Wells Fargo Bank and Bank Saderat to prevent them from honoring any calls that might be made by Iran on the bank guarantees and standby letters of credit. On 3 August 1979, the court issued a preliminary injunction enjoining Bank Saderat from making payment on its bank guarantees and from making demands on the letters of credit on less then 10 days notice. In December 1979, Watkins-Johnson Ltd. and Watkins-Johnson Co. brought a separate action in the United States District Court for the Northern District of California against Iran seeking to attach the standby letters of credit established by Wells Fargo Bank. A writ of attachment was issued on 28 December 1979.

112. By letter dated 1 May 1980, Bank Saderat made calls on Wells Fargo Bank for payment under the standby letters of credit. Watkins-Johnson, thereupon, obtained a licence pursuant to §535.568 of the United States Iranian Assets Control Regulations, 31 C.F.R. § 535.568, authorizing Watkins-Johnson to establish a blocked account on its books in the name of Bank Saderat in lieu of payment by Wells Fargo Bank under the standby letters of credit.

113. Watkins-Johnson argues that Iran's call on the bank guarantees and standby letters of credit violated Article 7.1 of Contract No. 108 which provides as follows:

> On occasions when the Seller does not accomplish any of his duties and obligations appertaining to this Contract correctly, the Buyer will inform the Seller, in writing, about such violations and will stipulate a date for correction of such objections . . . . If the Seller fails to rectify the stated objections within the given period, the Buyer can, in his own judgement, collect and confiscate partly or wholly the good performance guarantees . . . .

Watkins-Johnson further invokes Article 8.4 of Contract No. 108 which provides:

> In the event the Contract is cancelled due to force Majeure or the Buyer cancels the Contract for any reasons not attributable to The Seller's negligence, all Bank guarantees of good performance of work will be immediately released.

Watkins-Johnson seeks damages and declaratory relief with respect to these bank undertakings.

aa) Damages

(a) Bank Commissions

114. Watkins-Johnson claims reimbursement of bank commissions totalling $26,555.89 it was obligated to pay for maintaining the bank guarantees and standby letters of credit as a consequence of Iran's failure to release them. The Tribunal finds that because Iran had no right to call the good performance guarantees pursuant to Article 7.1 of Contract No. 108, it was obligated, pursuant to Article 8.4 of the Contract, to release the bank guarantees "immediately" after termination of the Contract by the letter of 16 July 1979. The Tribunal also takes into consideration, however, that the bank guarantees were to secure good performance, and that, under the circumstances in which the IBEX program came to an end, Iran was entitled to a reasonable period of time for clearing the status of Contract No.

108. Cf. Harris, Partial Award No. 323-409-1 at para. 155, reprinted in 17 Iran-U.S. C.T.R. at 77. In the Tribunal's view, under the circumstances of this Case that period elapsed on 31 October 1979 and on that date, at the latest, Iran should have released the bank guarantees. The failure to do so constitutes a breach of contract and Iran bears liability for the consequences.

115. Watkins-Johnson offered evidence that it paid a total of $26,555.89 in bank fees during a period from 9 February 1978 to 9 June 1980. It may only recover fees, however, from the date on which Iran's obligation to release the bank guarantees arose, i.e. from 31 October 1979. On the basis of the invoices presented, the Tribunal identifies amounts paid after this date as follows:

-	fees paid for the period from 1 November 1979 to 12 December 1979	$ 1,591.89
-	fees paid on 8 November 1979:	$ 7,110.55
-	fees paid on 5 December 1979:	$ 5,713.05
	Total:	$14,415.49

Consequently, Iran is liable for this amount.

116. For the purpose of awarding interest, the Tribunal determines that liability for commissions paid for 1 November 1979 to 12 December 1979 arose on 1 November 1979. Liability for other Claims for reimbursement of bank commissions arose on the date on which the commissions were paid.

117. The award on this Claim is to Watkins-Johnson Ltd., which actually paid the commissions.

(b) Legal Fees

118. Watkins-Johnson seeks reimbursement of legal fees amounting to $70,562.92, which it allegedly incurred in connection with the court action it initiated in the United States against payments on the letters of credit and bank guarantees. The Tribunal finds that Watkins-Johnson failed to establish this element of its Claim. Watkins-Johnson has not demonstrated that it is entitled to compensation for legal fees incurred prior to Iran's wrongful calls on the bank guarantees and standby letters of credit in March and May 1980. It did not show any wrongful act by Iran that compelled it to institute legal action in the United States to prevent payment of these bank undertakings. Neither Iran's failure to honor Watkins-Johnson's invoices nor its failure to release the bank undertakings in August 1979, alone, created such a necessity. Accordingly, Iran cannot be held liable for legal costs incurred prior to Iran's actual calls on the bank guarantees and standby letters of credit in March and May 1980.

119. Watkins-Johnson also claims legal fees incurred after Iran's calls on the bank guarantees, but it has not produced sufficient evidence to carry its burden of proof on this portion of the Claim. Watkins-Johnson submits invoices it paid for legal costs, but those invoices do not describe the legal work and do not specify what portion of the costs resulted from the wrongful calls on the bank guarantees. Billings relating to Contract No. 108 are merely identified as "Rose Program legal services rendered." This description is insufficient to allow the Tribunal to distinguish costs specifically attributable to the letter of credit litigation from legal costs relating to Contract No. 108 in general. While other costs may be recoverable as costs of arbitration, see infra para. 134, the Claim for letter of credit litigation costs is dismissed for lack of substantiation.

(c) Injunction Bond Premiums

120. Watkins-Johnson seeks $5,104 that it paid for injunction bonds necessary to maintain its preliminary injunctions preventing payment under the bank undertakings. These injunctions were justified by Iran's wrongful calls on the bank guarantees and standby letters of credit in March and May 1980, and thus Iran is liable for bond premiums incurred after May 1980. As discussed above, however, Iran's failure to release the guarantees at the termination of the Contract did not in itself give rise to liability for the cost of the injunction obtained by Watkins-Johnson. Iran is thus not liable for injunction bond premiums incurred prior to May 1980. Watkins-Johnson Ltd. presented satisfactory evidence, however, that it paid $638 per year or a total of $4,466 for injunction bond premiums during a period from 1980 to 1987. It is entitled to reimbursement of this amount.

121. For the purpose of awarding interest, the Tribunal considers that liability arose on the dates on which the respective amounts were paid. The Tribunal is satisfied that injunction bond premiums thus became due, in the amount of $638 per year, at the latest, on 31 August 1980, 31 August 1981, 31 August 1982, 31 August 1983, 31 August 1984, 31 July 1985, and 30 September 1986, and accordingly, awards interest on these amounts from the day following the respective due dates.

bb) Declaratory Relief

122. Contract No. 108 came to an end. Watkins-Johnson does not owe Iran payment in connection with this Contract. The performance guarantees and corresponding standby letters of credit have no further purpose. The Tribunal decides, therefore, that Iran is obliged to withdraw demands for payment of these guarantees and to refrain from making any further demands thereon. Iran is further obliged to take all action necessary to ensure that Bank Saderat cancels the

guarantees, that Wells Fargo Bank releases the corresponding standby letters of credit, and that Bank Saderat withdraws all demands for payment made in respect of the letters of credit and refrains from making any further demands thereon. See, e.g., Harris, Partial Award No. 323-409-1 at para. 162, reprinted in 17 Iran-U.S. C.T.R. at 79-80.

f) Court Proceedings in Iran

123. Watkins-Johnson also seeks a declaration that the judgment rendered against it in the Court of General Jurisdiction of Tehran, in absentia, is without legal effect. As set forth in Interim Award No. ITM 19-370-2, reprinted in 2 Iran-U.S. C.T.R. 362, the Tribunal finds that it has jurisdiction over the present Claims and Counterclaims in so far as they arise out of Contract No. 108. Consequently, the jurisdiction of the Court of General Jurisdiction of Tehran over this Case was precluded pursuant to Article II, paragraph 1, of the Claims Settlement Declaration. The Tribunal here confirms the reasoning in its Interim Award and determines that the judgment rendered by the Tehran Court on 29 June 1983 is without legal effect. See, also Touche Ross, Award No. 197-480-1 at p. 12, reprinted in 9 Iran-U.S. C.T.R. at 293-94.

g) Summary of Monetary Relief Awarded and Interest

124. In sum, Watkins-Johnson Ltd. is awarded monetary relief as follows:

- for progress of works invoices	:	$ 3,153,794.00
- credit for equipment sold	:	($ 1,423,588.00)
- progress of works subtotal	:	$ 1,730,206.00
- for field support service invoices	:	$ 126,365.38
- for bank commissions	:	$ 14,415.49
- for injunction bond premiums	:	$ 4,466.00
Total	:	$1,875,452.87

125. Taking into account the due date of the invoices for progress of works, see supra para. 89, Watkins-Johnson is entitled to interest on the difference between the total amount awarded and total credits to Iran, in the amount of $1,730,206.00, from 1 May 1979.

126. Watkins-Johnson Ltd. is further entitled to interest on $126,365.38 from 1 May 1979 for field support service invoice. See supra para. 102.

127. As for the award on bank commissions, the Tribunal awards interest on:

- $1,591.89 from 2 November 1979
- $7,110.55 from 9 November 1979
- $5,713.05 from 6 December 1979

128. Finally, Watkins-Johnson is entitled to interest on injunction bond premiums, viz. on $638 from 1 September 1980, 1 September 1981, 1 September 1982, 1 September 1983, 1 September 1984, 1 August 1985 and 1 September 1986.

129. The interest rates, as indicated in the Dispositif, are determined in accordance with the established practice of this Chamber on the basis of the average interest rates Watkins-Johnson would have been able to earn on six-month certificates of deposit in the United States. See Sylvania, Award No. 180-64-1 at pp. 31-32, reprinted in 8 Iran-U.S. C.T.R. at 320.

3. Counterclaims

a) Iran's Counterclaims

130. Iran raised a Counterclaim seeking delivery of equipment under Contract No. 108 or, alternatively, damages for breach of contract. It argues that Watkins-Johnson breached the Contract by illegally "appropriating" and

"seizing" Iran's property. For the reasons set forth above, however, the Tribunal finds that Watkins-Johnson was entitled to dispose of the equipment and did not breach the Contract in doing so. Accordingly, this Counterclaim is dismissed.

131. In accordance with established Tribunal practice, Iran's Counterclaim for social security premiums and taxes is dismissed for lack of jurisdiction. See Sylvania, supra at pp. 40-41, reprinted in 8 Iran-U.S. C.T.R. at 326-27; Questech, Award No. 191-59-1 at pp. 37-40, reprinted in 9 Iran-U.S. C.T.R. at 134-36; Ford Aerospace, Partial Award No. 289-93-1 at paras. 98-100, reprinted in 14 Iran-U.S. C.T.R. at 50-51; Harris, Partial Award No. 323-409-1 at paras. 175-76, reprinted in 17 Iran-U.S. C.T.R. at 83.

b) Bank Saderat's Counterclaim

132. Bank Saderat has raised a Counterclaim for payment under the standby letters of credit and reimbursement of legal fees incurred in connection with the litigation instituted by Watkins-Johnson in the United States. It is questionable whether Watkins-Johnson is a proper Respondent for the Claim, which arises out of the standby letter of credit agreement between Bank Saderat and Wells Fargo Bank rather than out of Contract No. 108. In any event, Iran's calls on the bank guarantees were improper. Watkins-Johnson did not act wrongfully when preventing payment under the bank undertakings. Accordingly, Watkins-Johnson cannot be held liable for any costs incurred in this regard by either Bank Saderat or Iran.

4. Costs

133. Watkins-Johnson seeks reimbursement of $82,701.54 as legal costs incurred in connection with this arbitration.

Likewise, Iran and Bank Saderat seek their costs of arbitration.

134. Based on the evidence before it, the Tribunal is satisfied that Watkins-Johnson paid legal fees in the amount claimed. In making its decision on costs the Tribunal has regard to criteria of the kind outlined in Sylvania, Award No. 180-64-1 at pp. 35-38, reprinted in 8 Iran-U.S. C.T.R. at 323-24. Taking into account that (1) the present Case involves neither factual nor legal issues of specific complexity, (2) Watkins-Johnson Ltd. was awarded approximately 85% of the amount claimed, (3) Watkins-Johnson Co.'s Claims were dismissed, except for the declaratory relief sought, (4) all Counterclaims were dismissed, the Tribunal determines that $30,000 is a reasonable amount to be paid by Iran to Watkins-Johnson Ltd.

E. AWARD

135. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

1. The Respondent THE ISLAMIC REPUBLIC OF IRAN is obligated to pay the Claimant WATKINS-JOHNSON LIMITED

a) the sum of One Million Eight Hundred Seventy Five Thousand Four Hundred Fifty Two United States Dollars and Eighty Seven Cents (U.S. $1,875,452.87) plus simple interest thereon at a rate of per annum (365 day basis)

10.25 percent on $1,856,571.38 from 1 May 1979,
10.25 percent on $1,591.89 from 2 November 1979,
10.25 percent on $7,110.55 from 9 November 1979,
10.00 percent on $5,713.05 from 6 December 1979,
10.00 percent on $638 from 1 September 1980,
9.25 percent on $638 from 1 September 1981,
8.50 percent on $638 from 1 September 1982,

8.25 percent on $638 from 1 September 1983,
7.75 percent on $638 from 1 September 1984,
7.50 percent on $638 from 1 August 1985,
7.50 percent on $638 from 1 September 1986,

up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;

b) costs of arbitration in the amount of $30,000.

These obligations shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

2. The bank guarantees Nos. 35-2137-399 and 36-2137-161 issued by Bank Saderat in connection with Contract No. 108, and Wells Fargo Bank's corresponding standby letters of credit nos. 55580 and 58040 have no further purpose. The Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN shall take all action necessary to ensure that Bank Saderat cancels the guarantees, that Wells Fargo Bank releases the corresponding standby letters of credit, and that Bank Saderat withdraws all demands for payment made in respect of the letters of credit and refrains from making any further demands thereon.

3. With regard to the proceedings instituted by Iran in the Court of General Jurisdiction of Tehran, the Tribunal determines that the Claims over which this Tribunal has found in this Award that it has jurisdiction were, as of the date such claims were filed in the form of Counterclaims in this Tribunal, and continue to be, excluded from the jurisdiction of that Court or any other Court by the terms of the Claims Settlement Declaration, the judgment issued against Watkins-Johnson Company in the Court of General Jurisdiction of Tehran, signed on 29 June 1983, is without legal effect.

Any further proceedings in pursuance of the claim on which that judgment was based will likewise be without legal effect.

4. The remaining Claims and Counterclaims are dismissed.

Dated, The Hague,
27 July 1989

Karl-Heinz Böckstiegel
Chairman
Chamber One

In the Name of God

Assadollah Noori
Dissenting Opinion

Howard M. Holtzmann
Paragraphs 122-132 reflect the fact that the Claimants were awarded 85% of the amount claimed, the Claimants secured the declaratory relief they sought, and all counterclaims were dismissed. The Claimants' factual and legal submissions, which achieved these results, were substantial. In such circumstances the award of legal fees in the paltry amount of U.S.$30,000 is derisory. See my Separate Opinion in Sylvania Technical Systems, Inc. and Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 329.