IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 431
CHAMBER TWO
AWARD NO. 526-431-2

COLLINS SYSTEMS INTERNATIONAL, INC.,
Claimant,

and

THE NAVY OF THE ISLAMIC REPUBLIC OF IRAN,

Respondent.

AWARD

Appearances

For the Claimant :

Mr. Arthur W. Rovine, Attorney,
Mr. James G. Barnes, Attorney,
Mr. Robert J. Greenway,
Mr. Jerry G. Borders,
Mr. Aldo A. Corsini,
Party Witnesses.

For the Respondent :

Mr. Ali H. Nobari, Agent of the Government of the Islamic Republic of Iran,
Mr. Seifollah Mohammadi, Legal Adviser to the Agent,
Mr. Abbas Ejtehadi, Legal Assistant to the Agent,

Mr. Mohammad Soltan,
Mr. Yahya Paviz,
Mr. Morteza Zahraei,
Mr. Asghar Zand,
Mr. Gholamreza Davarian,
Mr. Abbas Nasrollahi,
Mr. Masoud Zahedi,
Mr. Nabi Khani,
Representatives of the Respondent.

Also present :

Ms. Lucy F. Reed,
Agent of the Government of the United States of America,
Mr. Michael F. Raboin,
Deputy Agent of the Government of the United States of America.

I. INTRODUCTION

1. The claims in this Case arise out of a series of contracts entered into by the Claimant, COLLINS SYSTEMS INTERNATIONAL, INC. ("Collins") and the Respondent, THE NAVY OF THE ISLAMIC REPUBLIC OF IRAN ("Navy") between 1973 and 1978 for the establishment of a communications system in Iran, as well as out of a Memorandum of Understanding, signed by the Parties in September 1979. Work under the contracts was interrupted in January 1979 and again in November 1979, when a survey was being conducted for the resumption of work. On both occasions Collins withdrew its United States personnel from Iran. After the latter evacuation Collins did not return to Iran, and work under the contracts never resumed. Collins contends that the contracts terminated in early 1980. The Navy denies that the contracts ever were terminated.

2. As finally pleaded, Collins seeks U.S.$8,042,460 and 63,799,114 Rials, plus interest, pursuant to a variety of claims, specifically, for unpaid invoices ("invoice claims"), for extra costs allegedly incurred during the periods when work under the contracts was suspended ("suspension claims"), and for amounts allegedly due on contract termination ("termination claims"). Collins' claims also include damages resulting from the attachment of its bank account in Tehran, and various costs it incurred in defending against payment demands made by the Navy under bank guarantees established in connection with the contracts. Collins also requests a declaration from the Tribunal that all letters of credit and bank guarantees relating to the contracts are cancelled and null and void.

3. The Navy maintains that Collins failed to perform its contractual obligations and raises a counterclaim seeking resumption of work and completion of the project on Collins' part, as well as delivery of the equipment, materials, and technical data required for the operation of the communications system. Alternatively, the Navy raises a

counterclaim for breach of contract seeking, among other things, damages and the return of advance payments. The Navy also counterclaims for taxes and social security amounts allegedly due.

4. On 16 June 1987, two Statements of "Counterclaim Arising out of Bank Guarantee" were submitted to the Tribunal, naming as Counterclaimants (1) The Government of the Islamic Republic of Iran, (2) the Navy and (3) Bank Tejarat, and as Counterrespondents (1) Collins and (2) BankAmerica International of Houston, in one case, and (1) Collins and (2) CitiBank of New York, in the other. By Order of 28 September 1987, the Tribunal decided that the counterclaims against CitiBank of New York and BankAmerica could not be admitted and that neither Bank Tejarat nor the Government of the Islamic Republic of Iran had standing to assert counterclaims, because none of these four entities were parties in this Case. The Tribunal joined the issue of the admissibility of the Navy's counterclaims against Collins to the consideration of the merits of the Case.

5. Both Parties seek costs in connection with the arbitration.

6. A Hearing in this Case was held on 28 and 29 November 1990.

II. FACTS AND CONTENTIONS[1]

A. The Contracts

7. During the period between August 1973 and March 1978, the Parties entered into a series of contracts to establish an advanced communications system for the Navy in Iran. The project, known as the "Pearl Program," consisted of seven contracts ("Pearl contracts" or "contracts") pursuant to which Collins was to provide services and equipment to the Navy at fixed prices for a total value of approximately U.S.$73 million.

8. Specifically, under the original 1973 contract ("Phase I Contract" or "Basic Contract")[2] Collins was to provide the Navy with a communications network covering five different stations in Iran: Tehran, Bandar Abbas, Bandar Bushehr, Bandar Anzali and Khorramshahr. In 1975, the Parties concluded a second contract, pursuant to which Collins undertook to provide preliminary training in the operation of the system ("Preliminary Training Contract"). In 1976, the Phase I Contract was expanded to add automatic voice switching to the network and ship-to-shore capabilities at Bandar Abbas and Bandar Bushehr stations ("AVS-STS Contract"), as well as integrated logistic support -- manuals, test equipment, maintenance and operation personnel, and such ("ILS Contract"). In 1978, the Parties agreed to provide for advanced training to the Navy's personnel

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[1] More detailed consideration of certain facts is given, as appropriate, in connection with the jurisdiction and the merits of the claims, infra.

[2] The Phase I Contract originally was entered into by the Navy and Collins Radio France. By Agreement of 3 March 1975 between the Navy, Collins Radio France, and the (Footnote Continued)

("Advanced Training Contract"), to substitute a station at Sirjan for the Khorramshahr station ("Sirjan Contract"), and to add a separate low frequency station at Bandar Abbas ("LF Contract").

9. The Pearl contracts were as follows:

1)	Contract 1401-38-1 of 14 August 1973 Addendum No. 1 thereto of 3 March 1975 Amendment No. 1 thereto of 2 June 1976 Amendment No. 2 thereto of 5 June 1978	Phase I
2)	Contract 1006-01/1-24 of 7 January 1975	Preliminary Training
3)	Addendum 1401-27-1-42 of 2 June 1976 Amendment No. 1 thereto of 5 June 1978	AVS-STS
4)	Addendum 1401-27-1-43 of 2 June 1976	ILS
5)	Addendum 1006-01-2/21 of 14 March 1978	Advanced Training
6)	Addendum 1401-27-3-12 of 14 March 1978	Sirjan
7)	Addendum 1101-08-5-54 of 14 March 1978	LF

The Parties agree that the Phase I Contract served as model for the other Pearl contracts, and that therefore all of the relevant provisions -- aside from the description of the work -- essentially are the same among the contracts. Accordingly, all citations refer to the Phase I Contract unless otherwise stated. In several instances, however, the Tribunal finds material differences among the various contracts, which will be discussed when relevant.

10. The contracts provided that the price of the work to be executed by Collins outside Iran was to be paid by the Navy in U.S. dollars, whereas the price of the work performed in Iran was to be paid in Rials. Payments under the

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(Footnote Continued)
Claimant, the latter was substituted as contractor in the place of Collins Radio France.

U.S. dollar portion of the contracts were to be made by drawing on letters of credit, issued in Collins' favor, upon presentation of the contractually-specified documents. There is no dispute that these letters of credit were issued by Bank Markazi Iran ("Bank Markazi"). The Rial portion of the contracts was to be paid by the Navy by directly crediting Collins' bank account in Iran.

11. Under the contracts, the Navy made advance payments to Collins of twenty-five percent of the price of each contract. Collins, in turn, procured bank guarantees in the Navy's favor as security for these advance payments. The bank guarantees were issued by Iranian banks and were backed up by standby letters of credit or counterguarantees issued by United States banks. Bank guarantees securing Collins' good performance were procured and backed up in the same fashion. Upon shipment of equipment, or, in the case of services, when Collins' work reached contractually specified milestones, the payment schedule of the contracts provided that Collins was to be paid sixty five or seventy percent of the gross invoice amount. Twenty five percent of the gross amount was applied by Collins against the advance payments it had received from the Navy, and the Navy was required to reduce the amount of the advance payment bank guarantee accordingly. Payment of the remaining five or ten percent balance was ordinarily deferred until Collins' performance reached a future contractual milestone.

12. The contracts required Collins to complete its work within specified time limits or face delay penalties. But under certain circumstances, in particular in the event of force majeure, Collins was entitled to an extension of the time for completion. The contracts contained several provisions relevant to which party was to bear the risk of loss from any delay, which are discussed in detail infra. The Navy had the right to cancel the contracts for cause and to terminate the contracts for its own convenience. In the

event of cancellation, the Navy was to notify Collins and could proceed to recover the bank guarantees. In the event of termination, the Navy was to draw up a statement of final account and, after settlement of that account, immediately release all bank guarantees.

B. Performance Under the Contracts

13. Work on the Pearl Program progressed, although not without some delays, which, according to Collins, were mainly attributable to the Navy's failure to hand over the work sites in the condition and within the time limits specified by the contracts. Collins asserts that beginning in the fall of 1978, revolutionary turmoil, including strikes, street demonstrations, closing of banks, disruption of mail service and air transportation, power outages, and fuel shortages began to have an increasingly adverse impact on its work in Iran. On 18 October 1978, Collins wrote to the Navy, notifying it that such occurrences constituted force majeure conditions entitling Collins to an extension of time for completion of the Phase I, AVS-STS and ILS Contracts. Collins alleges that by January 1979 virtually all of its work on the Pearl Program was suspended as a result of these occurrences. On or about 31 January 1979, Collins withdrew from Iran its remaining American personnel. Collins advised the Navy of this withdrawal by letter of 31 January 1979:

> Due to circumstances beyond [Collins'] control and in the interest of personnel safety, our remaining project personnel will leave Tehran immediately. We regret having to take this course of action but feel we have no further choice in the matter. [Collins'] personnel will return to Tehran at the earliest opportunity to continue the subject program.

14. By letter of 14 May 1979, Collins advised the Navy that events beginning 6 January 1979, which it described as

"insurrection and strikes and transport obstacles and respect to the lives and property of instructor personnel," constituted force majeure conditions that entitled Collins to an extension of time for completing the Preliminary Training and Advanced Training contracts. Collins also stated that it was gathering evidence in support of its force majeure position, as required by the contracts. In another letter, sent to the Navy on the same date, Collins stated that it believed that it was "entitled to extra costs and schedule adjustment in accordance with the applicable provisions of the Contract due to the events which have occurred." Collins informed the Navy that it was preparing a justification for such extra costs to submit to it. Collins, however, never submitted to the Navy any evidence of these costs.

15. By letter of 30 May 1979, the Navy made clear to Collins that it did not consider the conditions in Iran "sufficiently hazardous" to justify the withdrawal of all of Collins' personnel from the country. The Navy gave Collins ten days within which to inform it when Collins' personnel would return to Iran to resume work. By letter of 15 July 1979, the Navy again denied the existence of force majeure conditions in Iran and rejected Collins' claim for extra costs. The Navy argued that under the force majeure provisions of the contracts Collins only had the right to request an extension of time for completion of the work. By letter of 26 July 1979, Collins informed the Navy that it was available for a meeting in Tehran in early September 1979 to discuss the resumption of work.

16. Discussions among the Parties took place in August and September 1979, and led to a Memorandum of Understanding on 12 September 1979. In the general introductory paragraph of the Memorandum of Understanding the Parties acknowledged, in substance, that force majeure conditions had interrupted work on the Pearl Program. Collins agreed to send a survey

team to Iran to survey the work sites jointly with a team assembled by the Navy. Upon completion of the survey Collins undertook to restore the works so that systems tests could commence. On its part, the Navy agreed to accelerate the date of payment for various maintenance and operations services to be performed thereafter. The Navy also agreed to pay a number of previously submitted invoices, reduce certain advance payment bank guarantees, accept provisionally the communications station at Bandar Abbas when Collins had satisfied certain conditions, and accelerate some other payments upon the fulfilment of specified conditions. The Tribunal will give detailed consideration to the provisions of the Memorandum of Understanding relevant to this Case when addressing the merits of the claims.

17. On 9 October 1979, Collins wrote to the Navy informing it that personnel were "being provided to complete the site survey and the required system restoration in accordance with Article 2.1 and Article 2.2" of the Memorandum of Understanding. Collins maintains that in late October and early November 1979 its United States personnel travelled to Iran and began the site survey. Collins states that its survey team inspected the transmitter site north of Tehran and the receiver site south of Tehran, but then left the country following the occupation of the United States Embassy in Tehran on 4 November 1979.

18. By letter of 5 November 1979, Collins advised the Navy that recent events in Iran had "created an environment in which it is now impracticable to continue with the recently resumed effort toward the completion of Project Pearl," and that it considered "the situation in Iran to have deteriorated to the point at which the personal safety of personnel are [sic] in jeopardy and has directed that they return to the United States." In the same letter, Collins also stated that:

> Regular contact will be maintained with the National Iranian Navy by the Contractor's staff. As circumstances and conditions change, the Contractor will re-evaluate the working environment and review with the National Iranian Navy the disirability [sic] of completing the Project.

19. There ensued a series of letters sent by the Navy to Collins' Tehran office urging Collins to resume work on the Pearl Program. On 24 December 1979, the Navy wrote:

> The [Navy] is still awaiting the Contractor to return to Iran immediately and honour all points stated in the Memorandum of Understanding in which case the [Navy] shall also honour its obligations, one of which being the payment of invoices.

The Navy sent Collins additional letters on 30 December 1979 and 25 June 1980, likewise requesting Collins to resume work.

20. The only reply by Collins to these communications that has been submitted in evidence is a letter dated 22 July 1980, in which Collins expressed its hope that the situation in Iran would improve sufficiently to permit it "within a reasonable period of time" to continue with the performance of the Memorandum of Understanding. Collins informed the Navy that it had maintained its office and a small staff in Tehran "to facilitate communications and early resumption of work." Collins further stated:

> Completion of the survey in Iran and the delivery of any further goods or services under the Pearl contracts and the Memorandum of Understanding were prevented by Executive Order No. 12170 issued on November 14, 1979 and by U.S. law and regulations established in connection with that order which remain in effect to this date. [Collins] is prohibited under U.S. law from transferring any property (including money, goods and services) to any Iranian government entity. The U.S. Department of Commerce has not acted on [Collins'] applications to extend the now expired licenses to export goods and services under the Pearl contracts. Also, U.S. personnel are presently

> prohibited by U.S. law from traveling to Iran. In this regard, we refer to Article XX of the Pearl contracts entitled "Force Majeure" and, in particular, to the reference 1 (b) thereof to "government action in Iran and other countries (new laws, customs, formalities, export prohibitions or restrictions, etc.)" ...
>
> While [Collins] hopes that the [Navy] will continue to wait for further developments, we recognize that under the Pearl contracts the Employer has the right to terminate on simple written notice. In the event the Pearl contracts are hereafter terminated, [Collins] assumes that there will be observance of the contract provisions relating to written notice of termination, preparation of a final account, settlement of the final account, and release of bank guarantees. ... Because [Collins] has received no notice of termination, we have not undertaken to list the amounts which would be credited to us under a final account prepared in accordance with the Pearl contracts. ... In the event of termination, [Collins] would help assemble [the information and documentation needed for a final account]... .

There is no evidence on record of any further correspondence between the Parties until 13 January 1982, when Collins advised the Navy by telex of its availability for a meeting in London, and of its intention to file a claim before the Tribunal to preserve its rights.

21. In January 1982, the Navy demanded payment under all advance payment and performance bank guarantees established under the Pearl contracts. Immediately thereafter, the Iranian banks called upon the United States bank issuers of corresponding counterguarantees and standby letters of credit. Collins filed suit in Paris, New York, and Houston against the United States banks and obtained temporary injunctive relief enjoining these banks from making payment under the counterguarantees and the standby letters of credit. These injunctions are still in effect.

III. JURISDICTION

A. Parties

22. The Navy does not dispute that it is a proper party before the Tribunal, nor does it dispute the United States nationality of Collins, which is a wholly-owned subsidiary of Rockwell-Collins International, in turn a wholly-owned subsidiary of Rockwell International Corporation. Collins has submitted certificates of incorporation for all three corporations, proxy statements for Rockwell International Corporation, and a certification by Rockwell International Corporation's corporate secretary regarding ownership of voting stock. Consequently, the Tribunal is satisfied that Collins is a national of the United States. See Rockwell International Systems, Inc. and Islamic Republic of Iran, Award No. 438-430-1, para. 81 (5 Sept. 1989), reprinted in 23 Iran-U.S. C.T.R. 150, 168 (finding a different subsidiary of Rockwell International Corporation to be a United States national).

B. Forum Selection Clause

23. The Navy argues that the Pearl contracts contain a forum selection clause that excludes the Tribunal's jurisdiction over the claims. Article XXXIV, paragraph 1, of the Basic Contract, invoked by the Navy, reads as follows:

> All disputes which could arise between the Contractor and the Employer be it from the execution of the Contract works or be it from the interpretation of the clauses and conditions of this contract or other documents attached to it shall, if an amicable understanding cannot be obtained by means of direct discussions within two months of the date when the said dispute has arisen, be settled according to the Iranian arbitration laws in force.

The Navy also relies on Article XXXIV, paragraph 1, of the LF Contract. This provision contains a slight variation from the language of the Basic Contract: it provides that disputes shall "be settled according to the Iranian arbitration laws in force through an Arbitration Board or Court of Law" (emphasis added). Similar provisions appear in the remaining Pearl contracts: their language is basically identical either to the Basic or to the LF Contract.

24. The Tribunal has already found that such provisions do not clearly and unambiguously restrict the parties to Iranian courts, and that therefore they do not fall within the scope of the forum clause exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration. See Gibbs & Hill, Inc. and Iran Power Generation and Transmission Co. (TAVANIR), et al., Award No. ITL 1-6-FT, at 6 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 236, 240; T.C.S.B., Inc. and Iran, Award No. ITL 5-140-FT, at 2 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R 261, 262. Accordingly, the provision invoked by the Navy does not exclude the Tribunal's jurisdiction over the claims.

C. Claims

25. The only jurisdictional issue with respect to Collins' claims is whether certain of those claims (the termination, blocked bank account, injunction fees, and bank guarantee claims) were outstanding on 19 January 1981, as required by the Claims Settlement Declaration. Jurisdictional issues with respect to the Navy's counterclaims will be discussed infra together with the merits of the counterclaims.

1. Termination Claims

26. As finally pleaded, Collins seeks U.S.$3,174,672 and Rials 62,695,600 as amounts to which it asserts it was entitled on termination of the contracts. As termination claims Collins includes claims for partially completed work, final payments to be made on completed work, and test equipment allegedly remaining in Iran. In addition, to the extent Collins' invoice claims may be dismissed, Collins reasserts them in the alternative as termination claims for partially completed work. Collins concedes that the contracts must have terminated prior to 19 January 1981 for its termination claims to be outstanding.

27. Collins argues that the Pearl contracts "should be considered terminated from and after 15 March 1980." It relies on a note to the stoppage of works clause, see infra, para. 74, which it asserts makes the provisions of that clause applicable in cases of force majeure. Under the stoppage of works clause, the Navy must obtain Collins' consent to a stoppage of more than three months. "If the Contractor does not give his consent, the Contract shall be considered as terminated ... ." Because it never consented to the prolonged stoppage of work after November 1979, Collins contends, the Pearl contracts terminated automatically.

28. The Navy denies that the contracts have terminated. To the contrary, the Navy contends, it has consistently urged Collins to resume work under the contracts. In particular, the Navy relies on the letter sent to it by Collins on 22 July 1980, in which Collins requests it not to terminate the contracts, as proof that the contracts had not terminated on 15 March 1980. The Navy argues that because the contracts were still in force on 19 January 1981, Collins' termination claims were not outstanding on that date and must therefore be dismissed for lack of jurisdiction.

29. The Tribunal deems it unnecessary to examine Collins' argument based on the language of the contracts. Even if Collins' interpretation of the contracts were accepted, the practice of the Parties both after and before November 1979 convinces the Tribunal that the contracts did not terminate prior to 19 January 1981.

30. Despite the force majeure suspension in November 1979, both Collins and the Navy treated the contracts as still in force at all times until well after 19 January 1981. The Navy's position has always been that the contracts were not terminated and that it had demanded that Collins complete its performance under them. It wrote Collins on 30 May 1979, 15 July 1979, 24 and 30 December 1979, and 25 June 1980, requesting that Collins resume work on the contracts, and at no point in those letters suggested that it might consider the contracts terminated. The Navy has maintained that position in its pleadings before the Tribunal.

31. Collins also treated the contracts as still in force, evidently up until the time it filed this claim with the Tribunal. In the 22 July 1980 letter relied on by the Navy, supra, para. 20, Collins expressed its hope that circumstances in Iran would improve sufficiently to allow it to resume work on the Pearl contracts. Collins recognized the Navy's right to terminate the contracts, and stated that "[i]n the event the Pearl contracts are hereafter terminated," it assumed that the provisions of the termination articles of the contracts would be followed. In the same letter, Collins informed the Navy that it had "maintained [its] office and a small staff in Tehran to facilitate communications and early resumption of work." Collins continued to maintain its office there until 1984. While Collins made an entry in its books in October 1980 purporting to set off the unapplied advance payments it had received from the Navy to the extent permitted by the relevant United States Treasury regulations, such an entry was obviously reversible if and when circumstances permitted

work to resume. Furthermore, the fact that Collins chose to proceed to such a set-off in its own books does not constitute a waiver on its part of its right to recover its claim. An internal write-off or set-off does not give rise to an extinction of its claim.

32. Not until its telex to the Navy dated 13 January 1982, in which Collins informed the Navy that it was filing a claim at the Tribunal "reflect[ing] the view" that the contract had terminated due to the long-term force majeure work stoppage, did Collins communicate to the Navy any belief that the contracts were terminated. But the telex was not sent until well after the date on which the Algiers Declarations were signed, nor did it explain the contractual basis for Collins' belief that the contracts had terminated.

33. Moreover, the behavior of the Parties following the first withdrawal of Collins' personnel in January 1979 was similar to their behavior following the November 1979 suspension. Collins notified the Navy on 31 January 1979 that its remaining project personnel were leaving immediately. Three and a half months later Collins submitted a force majeure notice, and informed the Navy that it believed that it was entitled to suspension costs. The Navy disputed that force majeure conditions existed and demanded that Collins resume work. Not until September 1979 in the Memorandum of Understanding did the Navy approve extensions for Collins to complete work. Neither party suggested at any point that the contracts had automatically terminated after being suspended for three months.

34. While the Tribunal has not considered itself bound by the parties' view as to whether a contract terminated, see Alan Craig and Ministry of Energy of Iran, et al., Award No. 71-346-3, at 19 (2 Sept. 1983), reprinted in 3 Iran-U.S C.T.R. 280, 289, it has generally taken into account contemporaneous behavior in deciding that question, see Itel International Corporation and Social Security Organization of Iran, et al., Award No. 479-476-2, para. 38 (23 May

1990); Kimberly-Clark Corporation and Bank Markazi Iran, et al., Award No. 46-57-2, at 15 (25 May 1983), reprinted in 2 Iran-U.S. C.T.R. 334, 341. In this Case, it is not necessary for the Tribunal to decide whether the practice of the Parties constitutes a waiver, consent to an extension under the stoppage of works clause, or both. However the Parties' contemporaneous behavior is viewed, it has convinced the Tribunal that the contracts did not terminate as Collins claims.

35. Collins alternatively asserts that the contracts were terminated by the Navy's breach of contract in not paying Collins' invoices. This argument similarly fails because of the Parties' contemporaneous treatment of the contracts as still in force.

36. For these reasons, the Tribunal holds that the contracts did not terminate prior to 19 January 1981. Accordingly, Collins' termination claims were not outstanding prior to 19 January 1981, and are dismissed for lack of jurisdiction.

2. Blocked Bank Account

37. Collins seeks Rials 17,010,451 as the balance of its savings account at Bank of Tehran (now Bank Mellat), which Collins alleges was attached by the Iranian Ministry of Finance to satisfy tax claims against it. Collins maintains that, as a consequence, Bank Mellat has refused to allow it to transfer Rials from its savings to its checking account. Collins bases this claim on the Navy's alleged breach of paragraph 2.10 of the Memorandum of Understanding, in which the Navy agreed to provide Collins with "updated contractual protection regarding the payment of income tax and social insurance by non-Iranian employees."

38. In a letter sent by the Prosecutor's Office of Tehran to Bank Mellat on 1 July 1987, the Prosecutor's Office stated that the Ministry of Finance's order to freeze

Collins' account was issued on 4 December 1985. Collins tendered no proof that the claim might have arisen earlier. Therefore, this claim was not outstanding on 19 January 1981 and must be dismissed for lack of jurisdiction. In view of this finding, the Tribunal need not decide whether the Navy is a proper Respondent to this claim or whether the claim, which was raised for the first time in Collins' Hearing Memorial, was timely filed.

3. Injunction Fees and Costs

39. With this claim, Collins seeks U.S.$650,954 in counsel fees and costs incurred in defending against the payment demands made in January 1982 by Bank Mellat and Bank Tejarat under the counterguarantees and standby letters of credit issued by United States banks in connection with the Pearl contracts. Because those calls were made after 19 January 1981, this claim was clearly not outstanding on that date and must be denied as outside the Tribunal's jurisdiction. See Itel International Corporation, supra, para. 33; Avco Corporation and Iran Aircraft Industries, et al., Award No. 377-261-3, para. 53 (18 July 1988), reprinted in 19 Iran-U.S. C.T.R. 200, 211-212.

4. Bank Guarantees

40. Collins seeks U.S.$266,808 as the bank fees which it asserts it paid to maintain all bank guarantees and standby letters of credit relating to the Pearl contracts beyond the date on which it contends the contracts terminated. Further, as non-monetary relief, Collins seeks a declaration from the Tribunal that those bank undertakings have no further purpose, are cancelled, and are null and void. The Tribunal has determined that the Pearl contracts were still in force on 19 January 1981. The claim for bank fees, to the extent the fees sought were incurred prior to 19 January 1981, is dismissed on the merits. The claim for bank fees, to the extent the fees sought were incurred after

19 January 1981, as well as the claim for declaratory relief, were not outstanding on 19 January 1981 and the Tribunal denies both claims for lack of jurisdiction. See Itel International Corporation, supra, paras. 37-39.

IV. MERITS

A. Invoice Claims

41. As finally pleaded, Collins seeks payment of various invoices, totalling U.S.$5,055,354 and Rials 93,060,654, for amounts allegedly due under the Pearl contracts. Although the Navy objects that certain of the invoices are not payable, its principal defense to payment is that Collins failed to perform its obligations under the contracts after November 1979. Collins responds that its nonperformance was excused by force majeure, which the Navy disputes. The Tribunal will first address the question whether Collins' nonperformance was excused by force majeure, and then turn to the analysis of the various groups of invoices for which payment is claimed.

1. Force Majeure

42. Collins asserts that its nonperformance of the Pearl contracts after November 1979 was excused by the force majeure conditions existing at the time: the unrest in Iran that made it unsafe for its personnel to remain there, and the Executive Orders issued by the President of the United States that prevented Collins from furnishing any goods or services to Iran. The Navy, meanwhile, has always taken the position that the conditions in Iran did not justify the departure of Collins' personnel, and, in its filings before the Tribunal, also alleges that Collins failed to observe the provisions of the contract requiring notice and proof of force majeure.

43. It is clear that the events in Iran in November 1979, and the Executive Orders issued by the United States, constituted force majeure within the meaning of the Pearl contracts, thereby entitling Collins to an extension of time to complete its work. The Basic Contract defines force majeure as "interferences during the execution of the Contract which are due to circumstances beyond the control of the Contractor," and lists as examples "[i]nsurrection, rebellion, war," and "[g]overnment action in Iran or in other countries" such as export prohibitions or restrictions. Clearly both the events in Iran after 4 November 1979 and the restrictions imposed by the United States government on dealings with Iran satisfy the definition of force majeure in the contracts. See also International Technical Products Corp., et al. and Islamic Republic of Iran, et al., Award No. 186-302-3, at 22-23 (19 Aug. 1985), reprinted in 9 Iran-U.S. C.T.R. 10, 24.

44. The Navy questions whether Collins satisfied the contractual requirements for obtaining an extension of time for force majeure. Item 2 of the force majeure clause requires Collins to give notice to the Navy within 15 days of the occurrence of force majeure events, provide documents establishing the day of occurrence and duration of the events (certified by an Iranian consulate if the events occur outside of Iran), and prove that the force majeure events actually caused a delay and that the delay is not the fault of the contractor. The Navy argues that Collins' notices of force majeure were untimely and not supported by the necessary documentation.

45. The Navy identified these asserted flaws in Collins' force majeure notices, however, for the first time in its filings before the Tribunal. It did not raise them contemporaneously, stating at the time only that Collins should resume its work. Moreover, Collins submitted essentially the same notices with respect to the earlier force

majeure period, and the Navy did not object but in fact granted an extension of time in the Memorandum of Understanding. The Tribunal declines to apply the notice requirements in a way the Navy itself did not apply them.

46. In light of the foregoing, the Tribunal rejects the Navy's justification for its refusal to pay Collins' invoices.

2. Specific Invoices

47. Collins seeks payment of six groups of invoices. They will be addressed below.

(a) Invoices Listed in 1 September 1979 Letter

48. On 1 September 1979, Collins submitted to the Navy a list of fifty invoices it considered due and requested their approval and/or payment. In the Memorandum of Understanding, the Navy agreed to "pay immediately" the invoices listed in the 1 September 1979 letter. Collins asserts that the Navy paid only four of the invoices, and now seeks payment of the remaining forty-six, amounting to U.S.$888,020 and Rials 15,642,764. The Navy responds that certain of the invoices are unpayable, conditionally payable, or already paid, and that anyhow it has subtracted the value of the payable invoices from the value of its counterclaim and Collins may not recover that amount twice.

49. In the Memorandum of Understanding, the Navy agreed to pay immediately the invoices listed in the 1 September 1979 letter, and the Navy does not dispute, except for one invoice, that it has paid only the four identified by Collins. The one exception is Invoice No. ILS-024-R, for Rials 594,697, which the Navy contends it paid on 21 May

1978. But the Navy submits no proof of payment, and did not object to the inclusion of this invoice in the 1 September 1979 list of unpaid invoices. As a result, the Tribunal is not convinced by the Navy's assertion that it paid this invoice. The Navy's claim that certain of these invoices are only conditionally payable or are unpayable is barred by its agreement to the contrary in the Memorandum of Understanding. Finally, the Navy's contention that the amounts claimed should be offset against its counterclaims is in itself no reason to reject Collins' claims. The Tribunal will consider the counterclaims infra. Therefore, for these invoices the Tribunal awards Collins U.S.$888,020 and Rials 15,642,764, which latter amount it converts to U.S.$221,883.18 at the rate of 70.5 Rials/U.S.$1 used by the Parties in their filings.

(b) Bandar Abbas Provisional Acceptance

50. Collins claims U.S.$1,815,200.54 and Rials 28,492,576 as the amounts payable by the Navy upon its provisional acceptance of the communications station at Bandar Abbas. Pursuant to the Basic and AVS-STS Contracts, specified portions of the contract prices for system engineering, installation and acceptance work were due when the Navy provisionally accepted a communications station. The Navy provisionally accepted the station in Tehran in April 1978, and the stations in Bandar Bushehr and Bandar Anzali in October 1978. In its letters of acceptance, however, the Navy noted various deficiencies at the stations that needed to be corrected. On 8 and 12 August 1978, Collins informed the Navy in writing of the results of the investigations and of the tests it performed at the various sites with respect to these deficiencies; it also described the equipment modifications necessary to correct the deficiencies.

51. On 25 September 1978, Collins wrote to the Navy advising it that the acceptance tests for the Bandar Abbas communications station had been completed in July 1978, and requesting it provisionally to accept that station. The Navy refused to do so, taking the position that Collins had to correct certain deficiencies still existing at Bandar Abbas prior to any provisional acceptance. Collins asserts that the deficiencies cited by the Navy were basically the same as those found at the other stations already provisionally accepted in April and October 1978. There followed an exchange of written communications between the Parties, with Collins renewing its request for provisional acceptance, and the Navy refusing to do so for the reason stated above.

52. Subsequently, in paragraph 2.8 of the Memorandum of Understanding the Parties agreed that:

> The [Navy] will provide its written provisional acceptance of the Bandar Abbas station immediately upon commencement by [Collins] of the required equipment modifications described in [Collins'] letters ... dated August 8, 1978 and ... dated August 12, 1978. The modifications will be performed at all four stations, but when the effort has started at the first station, commencement is considered to have begun. ... (emphasis added)

53. Collins bases this claim essentially on three arguments. First, it argues that the Navy was contractually required provisionally to accept Bandar Abbas station in 1978, when Collins requested it to do so, despite the existence of certain deficiencies. Second, it argues that by virtue of its activity in Iran prior to its suspension of work in December 1978, it already had commenced the equipment modifications described in its August 1978 letters, as required by the Memorandum of Understanding. Third, Collins argues that, at any rate, it met the conditions of the Memorandum of Understanding by commencing the survey at the Tehran station in November 1979.

54. Pursuant to the original Phase I and AVS-STS Contracts, it could be argued that the Navy would have been obligated to accept provisionally Bandar Abbas station, despite the deficiencies. In fact, by exchange of letters the Parties had reached the understanding that "station provisional acceptance can be accomplished with discrepancies present provided those discrepancies will not preclude the performance of systems tests." With respect to Bandar Abbas, however, this stipulation was superseded by paragraph 2.8 of the Memorandum of Understanding which required Collins to commence specified equipment modifications prior to any provisional acceptance of the station by the Navy. The Tribunal therefore rejects Collins' first argument which is based on the Parties' understanding before the Memorandum of Understanding. With respect to Collins' second argument, the Tribunal finds that it is implausible to reason, as Collins does, that it had commenced in late 1978 the equipment modifications it agreed to commence in the Memorandum of Understanding of September 1979. Such reasoning would render paragraph 2.8 of the Memorandum of Understanding a nullity. Finally, Collins has not submitted any proof that it ever commenced the equipment modifications described in its August 1978 letters to the Navy. Collins itself concedes that the survey team it sent to Iran in November 1979 succeeded only in inspecting the Tehran station before it was withdrawn from the country.

55. In view of the foregoing, Collins' claim for payment of amounts due upon provisional acceptance of Bandar Abbas communications station is dismissed.

(c) Five Percent Final Payment for Communications Equipment

56. Collins seeks U.S.$671,985.45 as the final five percent payments on various items of equipment shipped under

the Phase I and AVS-STS Contracts prior to the Revolution. It concedes that ordinarily such final amounts were payable only on completion of the contract or after a warranty period, but it contends that the Memorandum of Understanding accelerated the payment date of these amounts. The Navy argues that under the Pearl contracts the five percent withholdings were to be paid only on final acceptance of the system.

57. Paragraph 2.13 of the Memorandum of Understanding provides as follows:

> As regards Contract 1401-38-1 Addendum No. 1, amendment No. 2 and Addendum No. 1401-27-1-42, amendment No. 1, the [Navy] agrees to pay the final 5% payment applicable to Item 2 of Article VI upon acceptance at the [Navy] warehouse. If required, applicable letter of credit and pro forma invoice changes will also be implemented by the [Navy].

Collins submitted the invoices for these amounts to the Navy under letters dated 26 October 1979, stating that in both cases all items had been delivered to the Navy warehouse and accepted by the Navy except for items purchased under subsequent amendments, which would be invoiced later. There is no indication in the record that the Navy objected to the invoices at the time. The Tribunal has repeatedly held, in cases such as the present, that in the absence of contemporaneous objections or disputes, invoices or payment documents presented during the course of the contract are presumed to be correct. See, e.g., Houston Contracting Co. and National Iranian Oil Co., et al., Award No. 378-173-3, para. 73 (22 July 1988), reprinted in 20 Iran-U.S C.T.R. 3, 24-25 and cases cited therein. Further, the Navy's argument that the contracts did not authorize payment of the withheld amounts is contrary to the clear language of the Memorandum of Understanding. Accordingly, the Tribunal awards Collins U.S.$671,985.45 as the amounts of these invoices.

(d) ILS Invoice Amounts

58. Collins claims U.S.$399,715.10 and Rials 1,760,106 as amounts due for 15 invoices submitted to the Navy under the ILS contract and not yet paid, and U.S.$694,157.10 and Rials 5,300,029 as amounts due for 18 invoices under the ILS contract never submitted to the Navy. At the Hearing, Collins withdrew its claim for one of the submitted ILS invoices, No. 0978-US-44 in the amount of U.S.$45,861.20. The Navy asserts that several other of the invoices have been paid and that many of those remaining were unpayable or only conditionally payable. The Navy contends that had these invoices been payable, Collins could have collected the amounts at any time from the letters of credit maintained by the Navy, and that its failure to do so demonstrates that the invoices were not in fact payable. The Navy also argues that Collins' failure to include these invoices in the 1 September 1979 letter constitutes a waiver of any claim for payment of those invoices.

59. The Tribunal denies Collins' claim. With respect to the submitted ILS invoices, the Tribunal finds that Collins waived its claim to those invoices. In paragraph 2.5 of the Memorandum of Understanding, the Navy agreed to pay immediately all invoices listed in the 1 September 1979 letter as well as "all subsequent invoices which are properly submitted" (emphasis added). The submitted ILS invoices had been presented prior to that letter and were not resubmitted subsequent to the signing of the Memorandum of Understanding, and Collins offers no persuasive explanation either for its failure to resubmit them or for its failure to include those invoices in the 1 September 1979 letter. To the contrary, Collins' contention at the Hearing that it merely overlooked those invoices in its hasty compilation of the list is contradicted by its own statement in the 1 September 1979 letter that in compiling the list it had "carefully reviewed invoice submissions to

the [Navy] based on contractual efforts completed to date." Nor was the list modified to include such invoices during the negotiations leading to the Memorandum of Understanding.

60. As for the unsubmitted ILS invoices, they were never submitted to the Navy at any point -- indeed, they are marked "for internal distribution only" -- and Collins does not submit any supporting documentation. Therefore, the Tribunal rejects Collins' claim for the amount of the unsubmitted invoices for lack of proof.

(e) Sirjan/LF Design

61. By this claim, Collins seeks U.S.$411,142.05 and Rials 38,280,221 as fifteen percent of the price for system engineering allocable to system design work under the Sirjan and LF Contracts. Collins never invoiced the Navy for these amounts. Collins maintains that it submitted to the Navy several design documents pursuant to the two contracts. According to Collins, a number of these designs were initially approved by the Navy, and the rest were revised by Collins in response to the Navy's objections. Collins asserts that although it satisfactorily completed the system design for the Sirjan and LF Contracts, the Navy never finally approved all of the design documents because in March 1979 it advised Collins orally that it intended to terminate the LF Contracts, and, further, because the Navy was considering terminating or reducing the scope of the Sirjan Contract. Collins contends that it then expected an "orderly termination" of both contracts, but that its claims were repudiated by the Navy when it refused to pay any amounts to Collins after the Revolution and, again, after the 4 November 1979 events in Tehran.

62. In its Hearing Memorial, Collins appears to present this claim in essence as a claim for amounts due on

termination of these contracts. Such a claim, however, is beyond the Tribunal's jurisdiction because neither contract terminated before 19 January 1981. The Tribunal has already held that the Pearl contracts did not terminate by reason of force majeure prior to 19 January 1981, and there is no proof that the Navy itself terminated either the Sirjan or the LF Contracts prior to that date. Collins claims only that the Navy was "actively considering" termination of the Sirjan Contract, not that it had terminated the contract. There is no evidence of a written notice of termination of the LF Contract as required by its terms, only what the Parties agree is a stop work order. As a result, this claim is dismissed.

63. At the Hearing, however, Collins presented this claim as an invoice claim, arguing that it had completed sufficient work to qualify for payment. But the record contains no documentary evidence that the design documents were sufficiently completed to satisfy the contractual milestones. Therefore, this claim is also denied.

(f) Miscellaneous Invoice Amounts

Fall 1979 Shipments

64. Collins seeks U.S.$15,975.40 and U.S.$142,226.70 for privacy devices and installation tools allegedly shipped to Iran in fall 1979. Invoices for these amounts were never submitted to the Navy, however, and the certificates of origin provided in evidence by Collins are insufficient as proof that the items were shipped. This claim, therefore, is denied.

65. On 26 October 1979, at the same time it submitted the invoices for the five percent final payment under the Phase I and AVS-STS Contracts, supra, para. 57, Collins also

submitted a letter to the Navy notifying it that Collins had erred in preparing "Invoice No. 146." This invoice is listed in Collins' invoice No. 1079-US-68 of 26 October 1979 for the five percent final payment under the Phase I Contract. In that letter, Collins advised the Navy that although thirteen lots of "Miscellaneous Inside-Plant Material" had been shipped to it, invoice No. 146 erroneously covered only twelve lots, leaving an uninvoiced amount of U.S.$1,168.15. Collins advised the Navy that it would prepare an invoice for seventy percent of that amount, that is, U.S.$817.71. The Tribunal understands that seventy percent was the portion of the price due upon delivery of the goods, pursuant to the payment schedule of the Phase I Contract. There is no evidence of any response by the Navy to Collins' letter. In light of the Navy's failure to object to Collins' 26 October 1979 letter, the Tribunal presumes its contents to be correct. The Tribunal therefore awards Collins U.S.$817.71.

Technical Assistance

66. Collins seeks U.S.$45,327 and Rials 1,049,072 for technical assistance allegedly provided to the Navy from 1 October 1978 through 31 December 1978 under the Phase I Contract. Collins concedes that no invoices were ever submitted to the Navy for these amounts, and it presented no evidence to the effect that it performed the asserted services. Accordingly, the Tribunal dismisses this claim for lack of proof.

Five Percent Final Payment Under the Preliminary Training Contract

67. Pursuant to this claim, Collins seeks U.S.$16,648 and Rials 2,535,886 as the five percent final payment

allegedly due from the Navy under the Preliminary Training Contract. Collins maintains that this contract was completed and terminated in mid-1977. Collins, however, never submitted any invoice to the Navy for the claimed amounts. Indeed, Collins presented no evidence showing that at any time before these proceedings it had ever made any payment demands to the Navy, or pursued this claim in any way. Given these circumstances, the Tribunal finds that Collins has not proven that the amounts claimed are due and payable. Accordingly, this claim is dismissed for lack of proof.

B. Suspension Claims

68. Collins seeks U.S.$3,796,293 and Rials 43,910,724 as extra costs it incurred during periods when performance under the contracts was suspended. Collins divides these suspension claims into three groups of costs: pre-revolution suspension costs, post-revolution suspension costs, and suspension interest. Pre-revolution costs, as defined by Collins, are the extra costs it allegedly incurred during periods when work was delayed or suspended prior to 1 January 1979. Post-revolution suspension costs are similar costs allegedly incurred after 1 January 1979. Suspension interest is defined by Collins as interest on the amounts of partially completed work, sought for alleged delay in payment of those amounts.

69. The Tribunal will address Collins' suspension claims on the basis of the relevant contractual provisions.

1. Article XIX(6) -- Failure to Hand Over Sites

70. A substantial portion of Collins' alleged pre-revolution suspension costs, which it estimates to total

U.S.$2,900,000, consists of additional costs allegedly incurred because the Navy failed to have sites available for work on time. Article XIX(6) of the Basic Contract provides that the Navy undertakes to hand over all sites to Collins within the time limits specified in the contracts. "Should the Employer fail to hand-over the sites or any site in time, this will be considered as a stoppage of works according to Article XXXII for the part of works corresponding to the non handed-over sites," for which the "the Contractor shall receive monthly payments based upon all extra costs incurred." The Navy responds that the Pearl contracts were fixed price contracts, and therefore any claims for suspension costs are meritless.

71. The Tribunal rejects Collins' claim. Although the correspondence between the Parties clearly describes the difficulties Collins had in obtaining access to the sites on time, the correspondence does not contain any contemporaneous demand by Collins for any extra costs due to delays in handing over sites. Collins several times mentioned the possibility that additional costs might be incurred because of the Navy's delay in handing over sites, but at no time did it claim these additional costs from the Navy. To the contrary, the record shows that Collins was willing to proceed with the work despite the delays at no extra cost to the Navy. In the absence of a contemporaneous demand, the Tribunal has been reluctant to award such costs. See Cosmos Engineering, Inc. and Ministry of Roads and Transportation, Award No. 271-334-2, para. 21 (24 Nov. 1986), reprinted in 13 Iran-U.S. C.T.R. 179, 185. Therefore, the claim must be dismissed.

2. Article XXXII -- Force Majeure as Stoppage of the Works

72. Almost all of Collins' remaining pre-revolution suspension costs, virtually all of its post-revolution suspension costs, as well as its suspension interest, are costs Collins alleges it incurred as a result of the suspension of the contracts due to force majeure. In response to this claim, the Navy reasserts its contention that force majeure conditions did not exist and contends that, even if they did, Collins was entitled only to an extension of time to complete its work. The Navy also contends that the Pearl Program could have been continued by Collins Radio France.

73. The Tribunal concludes that the language of the contracts does not support Collins' claim for force majeure suspension costs. The force majeure article itself does not provide for the recovery of suspension costs. Section 1 of the article provides that the contractor is entitled to an extension of time to complete its work in the event of force majeure conditions, and provides examples of what constitutes force majeure. Section 2 describes what the contractor must do to claim force majeure. Section 3 provides that "damages or losses" arising from force majeure which are covered by insurance shall be dealt with under the article of the contract requiring insurance coverage, while for damages or losses not covered by insurance the "indemnification of the losses shall be the responsibility of the Employer." A note to that clause goes on, however, to explain that by "indemnification of the losses" is meant only the "reinstatement of the works to the position they had before" the force majeure events.

74. Collins instead relies on a note to the stoppage of works clause, which provides as follows:

> Also stoppages in IRAN from events listed in item 1 of Article XX (Force Majeure) and provided that it does not fall under provision of Article XX item 3, partly or totally, shall be dealt with according to provision of this Article [i.e., the stoppage of works article].

Collins asserts that this note makes the entire stoppage of works clause, Article XXXII, applicable in cases of force majeure, allowing it to recover "all extra costs incurred" during the suspension period.

75. The Navy argues that the issue is governed by two other clauses in the contracts, which it contends make clear that the Navy is not liable for extra costs incurred during periods of force majeure. Article VIII deals with time limits for completion, and provides in subsection C note 2 that "[i]n case of force majeure (subject of Article XX of this Contract) upon request of the Contractor, the employer may grant an extension of the above time limits." The note goes on, however, to state that "[t]he granting of any such an extension does not constitute any right for the Contractor to launch any pecuniary claim." Similarly, Article IX deals with changes in the time for completion of the contract, and in paragraph (d) provides for an extension in the "case of force majeure." But the Article concludes that "[n]o extra payments will be effected to the Contractor, based only on any extension in the Contract time according to the causes in paragraphs (a) to (f) above." In its pleadings, Collins completely ignores these clauses.

76. The Tribunal concludes that Collins is not entitled to force majeure suspension costs under the contracts. Article VIII and Article IX of the Basic Contract clearly provide that Collins is not entitled to "launch any pecuniary claim" and that "[n]o extra payments will be effected" as a result of an extension of time due to force majeure events. In the Tribunal's view, it is of particular significance that in two of the contracts, the Preliminary Training Contract and the Advanced Training Contract, Article IX is different from the other contracts and provides that extra payments may be effected. The Tribunal finds it difficult not to draw a negative inference for the other contracts. Because Collins provides no evidence that

any of its suspension costs related to the two training contracts, even the favorable language in those contracts is of no assistance to it.

77. For these reasons, the Tribunal denies Collins' claim for force majeure pre-revolution and post-revolution suspension costs and suspension interest.

3. Other Suspension Claims

78. Collins seeks to recover two other items included in its pre-revolution and post-revolution suspension costs.

79. First, Collins seeks U.S.$100,000 in repair costs for damage done on 16 December 1977 to several coaxial cables by a local contractor not in its employ. Collins notified the Navy of the damage on 27 December 1977, stating that it considered the damage a case of force majeure for which it was entitled to compensation under the contracts. Initially, Collins informed the Navy that it would cost U.S.$48,060 to repair the damage but thereafter increased its estimate of the cost of repairs to U.S.$109,371. The Navy refused to pay the higher amount, ascribing the increase to Collins' improper testing and failure to take actions to prevent further damage. The Navy agreed, however, to pay the original U.S.$48,060 claimed.

80. The Tribunal awards Collins U.S.$48,060 for damage to the cable. The Navy agreed to pay that amount and does not deny that it has never done so. The Tribunal denies the claim to the extent Collins seeks more than U.S.$48,060. Collins provides no evidence in support of its claim for a higher amount and no evidence to rebut the Navy's contemporaneous contention that the increase was due to Collins' own negligence.

81. Second, Collins claims as a suspension cost the U.S. personnel charges "attributable to the fall 1979 survey in Iran." Collins asserts that these costs amount to over U.S.$100,000 of the personnel costs claimed as post-revolution suspension costs. Paragraph 2.3 of the Memorandum of Understanding specifically provides for accelerating various maintenance and operations payments as compensation for restoration of the works. But Collins does not attempt to prove which of the claimed costs are recoverable under the Memorandum of Understanding; indeed, at the Hearing Collins conceded that its claim did not even include the salaries of its personnel in Iran conducting the survey. Therefore, the Tribunal rejects this claim.

C. Reduction of Bank Guarantees

82. Article VII of the Basic Contract provides that the face value of the bank guarantees for the advance payments shall be reduced pro rata upon each successive payment made by the Navy to Collins. In paragraph 2.6 of the Memorandum of Understanding, the Navy undertook to authorize such reductions "promptly at the time of each subsequent payment." The Tribunal has awarded to Collins payment of various invoices which were due prior to 19 January 1981. By the terms of the contracts and the Memorandum of Understanding, Collins is also entitled to a pro rata reduction in the amount of the bank guarantees. See Itel International Corporation, supra. Based on the amount of advance payments applied against the invoices found payable, the Tribunal has determined that the bank guarantees under the respective Pearl contracts should have been reduced by a total of U.S.$171,512.50 and Rials 5,410,250.

D. Counterclaims

83. The Navy directed several of its counterclaims against both Collins and Rockwell International Corporation ("Rockwell"), basing its counterclaim against Rockwell on performance guarantees dated 14 February 1975 and 9 June 1976. Rockwell is not a party in this Case. Accordingly, the counterclaims directed against it cannot be admitted. The counterclaims against Collins are as follows.

1. Breach of Contract

84. With this counterclaim, the Navy seeks various U.S. dollar amounts for damages allegedly caused by Collins' breach of contract in wrongfully abandoning the contracts, and in failing to complete the Pearl Program. By finding that Collins' nonperformance under the contracts was excused by force majeure, the Tribunal has necessarily rejected this counterclaim.

2. Return of Navy Equipment

85. This counterclaim is for various items of Navy equipment which Collins shipped out of Iran for repair and allegedly never returned. The Navy relies on a letter sent to it by Collins on 30 December 1978, listing "unserviceable items [that] have been shipped to the United States for repair and return to the Pearl Project in Iran." The Navy provides no evidence, however, to dispute Collins' contention, supported by invoices and air waybills, that this equipment was returned to Iran in the fall of 1979. Therefore, this counterclaim is dismissed.

3. Advance Payments

86. The Navy has asserted a counterclaim for approximately U.S.$7.4 million, which it alleges to be the amount of unapplied advance payments under the contracts still held by Collins. Collins denies that after adjudication of all claims related to the contracts it will owe money to the Navy, and, on the contrary, it asserts that the Navy will owe it money. Because the Pearl contracts were still in force on 19 January 1981, the Navy's counterclaim for reimbursement of unliquidated advance payments was not outstanding on that date. Hence the Tribunal dismisses this counterclaim for lack of jurisdiction. See Bendix Corporation, et al. and Islamic Republic of Iran, et al., Award No. 369-208-2, paras. 78-79 (15 June 1988), reprinted in 18 Iran-U.S. C.T.R. 352, 371-372. As the Tribunal has previously held, see Computer Sciences Corporation and Islamic Republic of Iran, et al., Award No. 221-65-1, at 52 (16 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 269, 309; Howard Needles Tammen & Bergendoff and Islamic Republic of Iran, et al., Award No. 244-68-2, para. 61 (8 Aug. 1986), reprinted in 11 Iran-U.S. C.T.R. 302, 318, set-offs are permissible only when they meet the jurisdictional requirements for counterclaims. Consequently, the unapplied advance payments cannot be used to reduce the amount the Tribunal holds payable in this Case, as the final adjudication of the remaining claims and counterclaims is not within the jurisdiction of the Tribunal.

4. Letters of Credit and Bank Guarantees

87. The Navy claims U.S.$9,759,217 and Rials 256,340,219 as the total amount of bank guarantees provided by Collins, plus damages arising from Citibank's and BankAmerica's alleged wrongful refusal to honor Bank Tejarat's calls upon letters of credit they issued to back up the bank guarantees. The calls by the Navy and Bank Tejarat on the bank guarantees and standby letters of credit occurred in January 1982. Therefore, the counterclaim was

not outstanding on 19 January 1981 and must be denied for lack of jurisdiction. See Itel International Corporation, supra, para. 34.

5. Taxes and Social Security Contributions

88. The Navy seeks Rials 68,116,310 in allegedly unpaid income tax and late payment charges for the period 30 September 1975 up to 30 September 1979, and Rials 229,798,164 in social security contributions and late payment charges allegedly due. The Navy asserts that the Pearl contracts entitled it to seek performance of these obligations from Collins.

89. With respect to income taxes, Article XIX of both the Preliminary Training and the Advanced Training Contracts, in pertinent part, provides that "income taxes and dues are applicable only to the operations done in Iran ... and may be deducted from the Contractor's monthly commercial invoices." (emphasis added). In addition, Article XXII of both the AVS-STS and LF Contracts, in relevant part, states that "[i]t is expressly stipulated that all stamps, duties, etc., in Iran and all taxes related to earning of profit and transactions in Iran ... which may be deducted from the Contractor's invoices will be determined in accordance with Iranian laws ..." (emphasis added).

90. With respect to social security contributions, Article XXII of the Phase I Contract, in pertinent part, provides as follows:

> The Contractor shall only be liable for deducting any taxes assessed by the Iranian Government and the local municipality from the salaries and wages of his staff and workmen in Iran. Such deducted amount and the Contractor's own corresponding contributions shall be remitted to the respective competent institutions.

91. No evidence has been tendered to the effect that deductions either for income tax, or for social security contributions, ever were made by the Navy from Collins' invoices. At the Hearing, a representative of the Navy conceded that, indeed, the Navy never made any such withholdings.

92. The Tribunal finds that the contracts gave the Navy the option to deduct amounts for taxes and social security from its payments to Collins. The practice established by the Parties in the course of their dealings, however, was not to make these deductions. The Tribunal concludes that the Navy's counterclaims do not arise out of the same contract, transaction or occurrence as Collins' claims, as required by Article II of the Claims Settlement Declaration, but out of the application of Iranian tax and social security laws. See Questech, Inc. and Ministry of National Defence of the Islamic Republic of Iran, Award No. 191-59-1, at 38-39 (20 Sept. 1985), reprinted in 9 Iran-U.S. C.T.R. 107, 134-136. Accordingly, the Navy's counterclaims for unpaid taxes and social security contributions are dismissed as outside the Tribunal's jurisdiction.

V. INTEREST

93. Collins seeks interest on the invoices listed in the 1 September 1979 letter from their "average due date," which Collins calculates as 31 December 1978. But the Memorandum of Understanding, while requiring the Navy to pay those invoices immediately, did not make any provision for the payment of interest for the delay in payment prior to its signing. Therefore, in view of this waiver of interest, the Tribunal awards simple interest at the rate of 9.5 percent per annum on U.S.$1,109,903.18, the amount of the listed and unpaid invoices, from 12 October 1979, one month after the date of the signing of the Memorandum of Understanding.

94. Collins seeks interest on the final five percent payments for various communications equipment as from 1 November 1979. Collins' invoices for these amounts are dated 26 October 1979, after which the Navy was entitled to a reasonable amount of time for payment. Therefore, the Tribunal awards simple interest at the rate of 9.5 percent per annum on U.S.$671,985.45, the amount of the final payments, from 26 November 1979, one month after the invoice date.

95. Collins seeks interest on the amounts claimed for the fall 1979 shipments from 1 November 1979. Although in the letter it sent to the Navy on 26 October 1979 it stated that it would submit to it an invoice for U.S.$817.71, there is no evidence that Collins ever did so. Therefore, the Tribunal awards simple interest at the rate of 9.5 percent per annum on U.S.$817.71, the amount it found payable for the fall 1979 shipments, from 18 January 1982, the date on which Collins filed its Statement of Claim.

96. Collins seeks interest on the amounts owed it by the Navy for damage done to coaxial cables from 30 May 1979, the date given for all of its pre-revolution suspension costs. But there is no evidence that Collins reasserted this claim after the Navy conceded liability at any time prior to the present proceedings. Therefore, the Tribunal awards simple interest at the rate of 9.5 percent per annum on U.S.$48,060.00, the amount conceded by the Navy to be owing, from 18 January 1982, the date on which Collins filed its Statement of Claim.

VI. COSTS

97. Each party shall bear its own costs of arbitration.

VII. AWARD

98. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a. The Respondent, the NAVY OF THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the Claimant, COLLINS SYSTEMS INTERNATIONAL, INC., the amount of One Million Eight Hundred Thirty Thousand Seven Hundred Sixty Six United States Dollars and Thirty Four Cents (U.S.$1,830,766.34), plus simple interest at the rate of 9.5 percent per annum (365-day basis), calculated as follows:

on U.S.$1,109,903.18 from 12 October 1979;

on U.S.$671,985.45 from 26 November 1979;

on U.S.$48,877.71 from 18 January 1982,

up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment from the Security Account.

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

b. The bank guarantees for the advance payments established by COLLINS SYSTEMS INTERNATIONAL, INC. under the Pearl contracts shall be reduced by a total of U.S.$171,512.50 and Rials 5,410,250. The Parties shall recognize this reduction and take no action inconsistent with it.

c. COLLINS SYSTEMS INTERNATIONAL, INC.'s remaining invoice claims, suspension claims, and the claim for bank fees, to the extent it relates to fees incurred prior to 19 January 1981, are dismissed on the merits, and its termination claims, bank account claim, injunction fees claim, the claim for bank fees, to the extent it relates to fees incurred after 19 January 1981, and the claim for declaratory relief are dismissed for lack of jurisdiction.

d. The counterclaims of the NAVY OF THE ISLAMIC REPUBLIC OF IRAN for breach of contract, to the extent relating to the period prior to 19 January 1981, and for failure to return equipment are dismissed on the merits and its remaining counterclaims are dismissed for lack of jurisdiction.

e. Each Party shall bear its own costs of arbitration.

Dated, The Hague
20 January 1992

Robert Briner
Chairman
Chamber Two

In the Name of God

George H. Aldrich

Koorosh H. Ameli
Dissenting Opinion