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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 308
CHAMBER TWO
AWARD NO. 506-308-2

COMBUSTION ENGINEERING, INC.,
VETCO INC.,
NATCO UK LIMITED,
Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN, THE INDUSTRIAL DEVELOPMENT & RENOVATION ORGANISATION OF IRAN, OIL SERVICE CO. OF IRAN, NATIONAL IRANIAN OIL CO., NATIONAL IRANIAN STEEL INDUSTRIES CO., MACHINE SAZI PARS, BANK OF IRAN & MIDDLE EAST, FOREIGN TRADE BANK OF IRAN, BANK BAZARGANI, BANK MARKAZI, MACHINE SAZI ARAK,
Respondents.

PARTIAL AWARD

Appearances:

For the Claimants :

Mr. Arthur W. Rovine, Attorney for Claimant,
Mr. David Zaslowsky, Attorney for Claimant,
Mr. William E. Huth, Attorney for Claimant,
Mr. Leonard Johnson, Expert Witness,
Mr. B.J. Fenton, Expert Witness,
Mr. M. Skelton, Expert Winess,
Mr. W.L. Grupp, Consultant, Combustion Engineering Inc.

For the Respondents :

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

Mr. Jafar Niaki,
Legal Adviser to the Agent,
Mr. Abbasse Ejtehadi,
Legal Assistant to the Agent,
Mrs. Zari Sadri Tabar,
Representative, NIOC,
Mrs. Shahpar Bouzarjomehr,
Representative NIOC,
Mr. Syed Mohsen Shahrestani,
Representative, NIOC,
Dr. Jalil Famili,
Representative, NIOC,
Mr. Farhad Rahimi,
Representative, NIOC,
Mr. Javad Dehghani Tafti,
Representative, NIOC,
Mr. Ali Azizsoltani,
Representative, NIOC,
Mr. Khosro Solhkonan,
Representative, NIOC,
Mr. Mohammad Rangchian,
Representative, IDRO and MSP,
Mr. Hoshang Fariaby,
Representative, MSA,
Mr. Changiz Ahmari-pour,
Representative, MSA,
Mr. Mohammad-Ali Behabadi,
Representative, Bank Markazi, Bank Tejarat, and Bank Mellat,
Mr. Hossein Shokouhmand,
Representative MSA.

Also present :

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

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4. On 5 October 1983, pursuant to a Settlement Agreement between Combustion Engineering and Iran Power and Transmission Company ("Tavanir Company"), this Tribunal issued a Partial Award on Agreed Terms (Award No. 81-308-2, 5 Oct. 1983, reprinted in 3 Iran-U.S. C.T.R., 366) which settled that part of the Claim that had been identified as Claim 3.1. The settlement of this Claim resolved all disputes involving Tavanir Company. Thus, Tavanir Company is no longer a Party in this Case.

5. On 1 November 1989, the Parties were informed that, for procedural reasons, Claim 2.2 had been separated from the other Claims in this Case and will be addressed subsequently.

6. On 22 February 1990, pursuant to a Settlement Agreement between Combustion Engineering and its wholly owned subsidiary Crest Engineering on the one part, and the Foundation for the Oppressed and Crest Engineering Iran on the other part, this Tribunal issued a Partial Award on Agreed Terms (Award No. 472-308-2, 22 Feb. 1990) which settled Claims 4.1 and 4.2. The settlement of these Claims resolved all disputes between the Parties involved. Thus, Crest Engineering, The Foundation for the Oppressed and Crest Engineering Iran are no longer Parties in this Case.

7. Accordingly, Claims 2.1, 2.3, 2.4, 2.5, 2.6, 2.7, 3.2, 3.3, 5.1 are the subject of this Partial Award.

8. CE and Vetco Inc. seek US$1,249,937 on behalf of their subsidiary Vetco Iran from OSCO and NIOC under Claim 2.1 for unpaid invoices under two contracts, for damage suffered from termination of those contracts, and for the return of social insurance retentions. The Respondent counterclaims to recover US$9,619,959 for damages under two pipe inspection contracts, for refund under two performance guarantees, for catering services provided, for workers'

severance pay, for Social Security contributions, for unpaid taxes and for reimbursement of a payment made by Iranian Oil Services Ltd. to Vetco Iran.

9. Under Claim 2.3 CE claims on behalf of its subsidiary VIAG against NIOC and seeks payment for contractual services rendered, and release of retention money. The amount of the Claim is US$738,647. The Respondent has filed counterclaims in the amount of 804,229,790 Rials. First, they claim for unpaid Social Security contributions plus penalties. Secondly, for unpaid taxes. In the third Counterclaim the Respondent asserts having suffered damages due to the VIAG's bad performance under the Contract. The Respondent also claims to have suffered damage because VIAG failed to deliver various documents. The fifth Counterclaim is for reimbursement of a payment made to satisfy a judgement by the Public Court of Ahwaz, against "Vetco".

10. On behalf of their subsidiary Vetco Iran, CE and Vetco Inc. allege in Claim 2.4 that Vetco Iran performed services for MSP for a total invoice amount of US$104,149, and that the Respondent has not paid for these services. The Claimants seek recovery of this amount.

11. Claim 2.5 is a Claim for compensation at "net book value" of assets allegedly confiscated or expropriated by Iran. CE and Vetco Inc. hereunder claim a total amount of US$244,550, on behalf of their subsidiary Vetco Iran.

12. Claim 2.6 is a claim to recover US$1,717.25 in return of the aggregate credit balance in Rial bank accounts purportedly left behind by Vetco Iran and VIAG in various Iranian banks.

13. Under Claim 2.7 CE and Vetco Inc. seek to recover on behalf of their subsidiaries Vetco Iran, VIAG, Vetco N.V. and Vetco Limited US$395,382.14 in costs incurred in

evacuating the personnel of the companies from Iran in January 1979. They also claim US$47,341.30 for reimbursement of a payment made to a former employee of Vetco Inc., for loss of his personal belongings.

14. CE seeks US$286,567 under Claim 3.2 for outstanding unpaid invoices under two licence agreements it had concluded with MSA, and for reimbursement of medical expenses paid by CE on behalf of MSA's Managing Director.

15. Under Claim 3.3 CE seeks to recover US$7,500 from IDRO for a training program provided in the United States by CE to an IDRO employee.

16. Claim 5.1 arises from a dispute under a contract in which MSA was to fabricate various blowcases for Natco UK. The Claimant seeks £106,434.25 as compensation for MSA's breach of contract, covering actual costs incurred by Natco UK plus lost profits. The Respondent has raised six Counterclaims amounting to US$8,802,623.60.[1] The first is based on Natco UK's alleged breach of the blowcase agreement. The remaining five relate to contracts with CE Natco, an unincorporated division of CE.

17. A Pre-hearing Conference was held on 22 February 1984. A Hearing was held from 19 through 22 February 1990.

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[1] In its Statement of Defense, MSA included a counterclaim which alleged that "Combustion owes Rials 88,705 . . . and Vetco Iran owes Rials 17,134,811 . . . on account of their taxes and they also owe some amounts as social security contributions . . . ." MSA has not developed or substantiated this counterclaim. The Tribunal accordingly deems it to have been abandoned.

II. JURISDICTION

A. THE PARTIES

1. The Claimants' Nationality and Standing

18. Combustion Engineering, Vetco Inc. and Natco UK Limited have submitted evidence establishing on the whole to the Tribunal's satisfaction that they are nationals of the United States as defined in Article VII, paragraph 1, of the Claims Settlement Declaration and that their Claims satisfy the Tribunal's requirements on the matter of nationality of claims. To establish their U.S. nationality, the Claimants have submitted a certificate from the Secretary of State of the State of California attesting to Vetco Inc.'s incorporation in that State, and two certificates from the Secretary of State of the State of Delaware attesting to CE's and Natco UK's incorporation in Delaware; an affidavit by a corporate officer of CE; proxy statements issued around the time the events that are the subject of this Case occurred, and a certificate from an accounting firm.

19. Several Claims are asserted indirectly on behalf of the Claimants' non-U.S. subsidiaries Vetco International A.G., Vetco Iran Limited, Vetco Overseas, N.V., and Vetco Overseas, Limited. In accordance with Article VII, paragraph 2, of the Claims Settlement Declaration, indirect claims raised by U.S. nationals are within the Tribunal's jurisdiction provided "that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this Agreement."

20. The Claimants have submitted a certificate from a firm of certified public accountants which supports the Claimants' contentions that Vetco Limited is 100% owned by Vetco N.V., which in turn is wholly owned by Vetco Inc.

21. The certificate also indicates that 75% of Vetco Iran's shares are owned by VIAG, whose shares in turn are essentially wholly owned by Vetco Inc.[2] Accordingly, the Claimants have standing under the terms of the Claims Settlement Declaration to present indirectly the claims of VIAG, Vetco Iran, Vetco N.V., and Vetco Limited. In accordance with Tribunal precedents, the Claimants' recovery on the Claims brought on behalf of VIAG can be 100%. See Schlegel Corp. and NICIC, Award No. 295-834-2, para. 9 (27 Mar. 1987), reprinted in 14 Iran-U.S. C.T.R. 176. The Claimants argue that their standing to present indirect claims on behalf of Vetco Iran entitles them to recover 100% of any amount found due to Vetco Iran, despite owning only 75% of that company. However, the Claimants acknowledge that they have had no contact for ten years with the Iranian who owns the remaining 25% share of Vetco Iran. Thus, the Claimants do not, and could not, represent the minority shareholder, and there is no evidence that they are legally obliged to pay over any recovery that they receive on behalf of Vetco Iran to that person. The Tribunal therefore decides that the Claimants' recovery on the claims brought on behalf of Vetco Iran should be limited to 75% of the amount found due. See Harza, et al. and The Islamic Republic of Iran, et al., Award No. 232-97-2, para. 32 (2 May 1986), reprinted in 11 Iran-U.S. C.T.R. 76.

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[2] On 31 December 1980, of the 600 shares, all but three, which were owned by VIAG directors, were owned by Vetco Inc.

2. The Respondents

22. There is no dispute that the Government of Iran is a proper Respondent before this Tribunal, as defined by Article VII, paragraph 3, of the Claims Settlement Declaration. It is well established that NIOC was, at the date of the Algiers Accords, an instrumentality of the Government of Iran and that it is the successor to OSCO's rights and obligations. See Oil Field of Texas, Inc. and The Islamic Republic of Iran, et al., Interlocutory Award No. ITL 10-43-FT (9 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 347. The Tribunal has previously found, and the Parties do not dispute, that MSP and MSA, through IDRO, are entities controlled by the Government of Iran. See Harnischfeger Corporation and Ministry of Roads and Transportation, et al., Award No. 144-180-3 (13 July 1984), reprinted in 7 Iran-U.S. C.T.R. 90; Bechtel Inc., et al. and The Islamic Republic of Iran, et al., Award No. 294-181-1 (4 Mar. 1987), reprinted in 14 Iran-U.S. C.T.R. 149. There is also no dispute that Bank Tejarat, Bank Mellat and Bank Markazi come within the purview of Article VII, paragraph 3, of the Claims Settlement Declaration. See Training Systems Corporation and Bank Tejarat, et al., Award No. 283-448-1 (19 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 331; Otis Elevator Company and The Islamic Republic of Iran, et al., Award No. 304-284-2 (29 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 283.

23. The Tribunal thus holds that all Respondents are proper Respondents within the meaning of the Claims Settlement Declaration.

B. THE CLAIMS AND COUNTERCLAIMS

24. The Tribunal is satisfied that all of the Claims arise "out of debts, contracts ... expropriations and other measures affecting property rights" within the meaning of

Article II, paragraph 1, of the Claims Settlement Declaration.

25. The Tribunal finds that Claims 2.1, 2.3, 2.4, 2.5, 2.7, 3.2, 3.3 were outstanding on the date of the Algiers Accords and were owned continuously by the Claimants from the dates the Claims arose to the date of the Algiers Accords. The question whether Claims 2.6 and 5.1 were outstanding on the date of the Algiers Accords is dealt with infra, paras. 183-185 and 239-242.

26. Other jurisdictional questions regarding issues related to specific Claims and Counterclaims will be discussed infra, in the context of the relevant Claims and Counterclaims.

III. CLAIMS 2.1 AND 2.7

27. Because of the close relationship of the main part of Claim 2.7 with the contracts - and their termination - which are the subject of Claim 2.1, Claim 2.7 will be dealt with in the context of Claim 2.1.

A. FACTS AND CONTENTIONS

28. Claim 2.1 is a claim filed on behalf of Vetco Iran by CE and Vetco Inc. against OSCO and NIOC. The Claimants seek a total of US$1,249,937, plus interest, under three heads of relief: US$646,723 for unpaid invoices for services rendered under two contracts between Vetco Iran and OSCO; US$348,228 for damages suffered as a result of the termination of those contracts; and US$254,986 for the return of social insurance ("SIO") retentions. The Respondents filed seven counterclaims amounting to US$9,619,959 which are discussed infra, paras. 77-89.

29. This Claim arose from Vetco Iran's participation in the Feedstock Project of the Iran-Japan Petrochemical Company ("IJPC"). This project was part of a major undertaking in the 1970's to build a petrochemical complex in Bandar Khomeini (then known as Bandar-e-Shahpur). The feedstock for the complex was to be natural gas from the nearby oil fields of Ahwaz and Marun. This required the construction of two natural gas liquefaction plants in the oil fields, as well as gas gathering and pumping stations to serve those plants. OSCO employed an American corporation, Ralph M. Parsons ("Parsons"), as Managing Contractor for this construction work. Parsons did not carry out the work itself; it supervised the work of other contractors who contracted directly with OSCO.

30. Vetco Iran was one of those contractors. In 1977, it concluded two contracts with OSCO, both of which ran from 19 May 1977. Under contract IJPC/77/006 ("006"), Vetco Iran personnel carried out engineering surveys and checked the work of other IJPC contractors. Under contract IJPC/77/007 ("007"), Vetco Iran personnel tested and inspected soils, concrete and asphalt.

31. The two contracts were identical in their structure. Each included a tender, the form of the performance guarantee, schedules of rates and of personnel requirements, special conditions, and descriptions of the scope of services and of the materials to be used. Each also incorporated OSCO's General Conditions of Contract for Services.

32. Clause 23 of the General Conditions governed payment of the contract price. It provided that Vetco Iran was to submit monthly invoices to OSCO. These invoices were subject to certification by OSCO's representative -- in this case, Parsons. Following such approval, OSCO was obligated to pay Vetco Iran the amount of the invoices, minus certain

deductions, within thirty days of its receipt of the invoices.

33. Clause 23 also described the deductions that were to be made from payments to Vetco Iran. An amount, which the Parties agree was 5.5%, was to be deducted as a withholding tax "from all gross amounts payable under the Contract." In addition, OSCO would retain "a further 5% of all the gross amounts payable" to secure Vetco Iran's payment of its SIO obligations. The clause went on to specify the requirements for release of the SIO retentions: Vetco Iran must submit (a) an invoice for the total of the retentions, (b) "a certificate from the Social Insurance Organization to the effect that either [it] has paid all [its] S.I.O. premia or [it] is exempt from the payment thereof," and (c) proof that it has exported any equipment that it imported for the project.

34. The General Conditions contained a series of clauses governing contract termination and its consequences. They gave OSCO the right to terminate the contracts without cause upon giving sixty days notice. If OSCO terminated without cause, it was obliged to pay Vetco Iran for the services Vetco Iran had provided up to the date of the termination, plus an additional amount as Vetco Iran's "reasonable profit."

35. Finally, the General Conditions included a force majeure clause under which a delay in performance "necessarily arising from any event not reasonably foreseeable by and beyond the control" of a party was not a breach of contract. Iranian law governed the contracts, and disputes between the parties were to be referred to arbitration.

36. Vetco Iran billed OSCO by the day for the regular time worked by its personnel; overtime was billed at various hourly rates. There were also daily and hourly rates to

compensate Vetco Iran for the use of certain equipment. Employees maintained weekly time sheets. These were checked and signed by a Vetco Iran supervisor and by a representative of Parsons. Vetco Iran compiled weekly "force reports" from the time sheets. These reports recorded the time worked by groups of Vetco Iran personnel under one of the contracts, as well as the use of equipment. Vetco Iran submitted force reports first to Parsons' field manager and then to OSCO's field manager for approval and signature. Using the information on the force reports, Vetco Iran's project managers drew up monthly invoices for each contract. These invoices, together with their supporting time sheets and force reports, were submitted to Parsons for endorsement and then passed on to OSCO for payment.

37. The revolutionary turmoil that gripped Iran in late 1978 disrupted and finally halted work at the IJPC project. Parsons decided at the end of December to evacuate its expatriate staff. OSCO quickly followed suit.

38. After some hesitation, Vetco Iran's managers decided to join the exodus. Mr. Michael Skelton, Vetco Iran's project manager in Ahwaz, met Dr. Jalil Family, OSCO's IJPC project manager, on 31 December 1978. According to Mr. Skelton, he told Dr. Family that Vetco Iran was prepared to remain on the job. In the absence of Parsons, Mr. Skelton suggested that Vetco Iran report directly to OSCO or that Vetco Iran take over Parsons' general supervisory role. Dr. Family allegedly replied that these options were contractually impossible: Parsons' departure made Vetco Iran redundant because Vetco Iran lacked authority to give orders to the other contractors. According to Mr. Skelton, "Dr. Family made it very clear that there was no further work for Vetco Iran to do on the IJPC Project." Dr. Family allegedly reiterated his position at another meeting with Mr. Skelton the following day. In his own affidavit, Dr. Family described this account of his conversations with

Mr. Skelton as "incorrect." He did not elaborate upon this, however, except to assert that Vetco Iran's work on the project "had ended long ago." Dr. Family attached a Parsons progress report to his affidavit, together with some photographs, to demonstrate that Vetco Iran had no further work to do after September 1978. At the Hearing, he testified that, in his opinion, even the graphs submitted with Mr. Skelton's affidavit proved that Vetco Iran's work was completed by September 1978.

39. Mr. Barry J. Fenton, Vetco Iran's General Manager and Managing Director, described the situation in a 2 January 1979 telex. Referring to "OSCO/PARSONS," he reported: "JOB SUSPENDED BY US. PARSONS HV. QUIT IRAN. CLIENT WISHES TO CONTINUE BUT CONTRACTUAL MECHANICS REQUIRE AMENDING IN PARSONS ABSENCE." This is the only contemporaneous evidence in the record that relates to the end of Vetco Iran's work on the IJPC project.

40. Following Mr. Skelton's meetings with Dr. Family, Vetco Iran decided that its expatriate staff in Ahwaz should be evacuated, at least temporarily. Accordingly, most of Vetco Iran's personnel flew to Athens on January 1st and 2d on flights arranged by OSCO. Mr. Skelton submitted invoices for December to the Parsons office in early January and left Iran on 12 January. After the departure of Vetco Iran's expatriate staff, Mr. Skelton met Dr. Family once more and informed him that Vetco Iran's personnel were standing by in Athens and would return once Parsons and OSCO returned. Later in the month, Vetco Iran concluded that work on the IJPC project would not soon resume. The company therefore moved its staff to London; and on 1 February 1979, it terminated their employment. At that time, several of Vetco Iran's invoices remained unpaid.

41. Vetco Iran sought to collect payment for its unpaid invoices in the months following these events. According to Mr. Fenton, he took copies of six outstanding invoices, plus their supporting force reports and time

sheets, to Ahwaz in March 1979. He submitted them on 4 March 1979 to Mr. Syrus Firoozi, Dr. Family's successor. Mr. Fenton returned to Ahwaz in June. Mr. Firoozi allegedly told him then that OSCO would pay the invoice amounts that were supported by force reports bearing a signature by one of Parsons' representatives. Mr. Fenton described Mr. Firoozi's assurances in an internal memorandum dated 19 June 1979. Mr. Fenton also claimed to have received from Mr. Firoozi a letter, written in Persian, that authorized OSCO's Finance Department to make this payment. The Finance Department refused, however, to pay Vetco Iran.

1. Invoice Claim

42. The Claimants seek payment of six unpaid invoices for services rendered under contracts 006 and 007. Two of those invoices -- nos. 17 and 19, both under contract 007 -- are fully supported by force reports bearing signatures by representatives of both Parsons and OSCO. A third invoice -- no. 19, under contract 006 -- is reconstructed from its twenty supporting force reports, the original invoice having apparently been lost. All of those force reports are signed by a Parsons representative; all but three are also signed by OSCO's representative. There are two invoices -- no. 20 under contract 006 and no. 20 under contract 007 -- that are only partially supported by signed force reports. These two invoices are for the month of December 1978. All of the force reports for the period 1-22 December are signed by Parsons and OSCO representatives (although the signature area of one is blurred in the photocopies submitted to the Tribunal). On the other hand, none of the force reports for 23-31 December bears signatures by Parsons or OSCO representatives. Finally, invoice no. 975/78 is a bill for additional charges pursuant to an amendment to contract 006. The amendment was signed in March 1978, with retroactive effect from 19 May 1977. It changed the method of

calculating Vetco Iran's charges under contract 006. Invoice 975/78, dated 13 May 1978, billed OSCO for additional amounts due under the new rates upon invoices already paid by OSCO.

43. In opposition to the invoice claim, OSCO asserts that Vetco Iran had completed its work at the IJPC project by September 1978. Vetco Iran therefore could not -- or should not -- have performed any further inspection services in the final quarter of 1978. Should that objection not be accepted, the Respondents also argue that the Tribunal should deny at least part of the invoice claim because some of the force reports lack the signatures of Parsons and/or OSCO representatives.

2. Damages Claim

44. The claim for damages is based upon the argument that OSCO improperly terminated contracts 006 and 007 by failing to give the required sixty days' notice of termination. The Claimants seek lost profits on the basis of the contractual provision governing termination without cause. The claim for wasted expenditures includes several categories of payments made after 1 January 1979. These comprise termination payments to Vetco Iran's expatriate and Iranian employees, payments to landlords in Ahwaz to cancel leases and to settle damage claims for property that Vetco Iran had rented for use in connection with the two contracts, and miscellaneous expenses incurred as Vetco Iran wound down its affairs in Iran between January and April 1979.

45. The Respondents oppose the claim for damages with a variety of arguments. They claim that contracts 006 and 007 were "service contracts" that gave OSCO the unfettered right to vary the workforce as required -- even down to zero. The Respondents assert that, by September 1978, work

at the IJPC project had progressed to the point where Vetco Iran's services were no longer required. It follows, then, that OSCO cannot be liable in damages for terminating the contracts in January. Moreover, according to the Respondents, it was Vetco Iran that breached the contracts by leaving Iran in 1979 without fulfilling its local obligations. In their pleadings, the Respondents denied that there were force majeure conditions in Ahwaz during the Islamic Revolution that would have excused Vetco Iran from performance. However, at the Hearing, the Respondents acknowledged that force majeure could be an alternative defense to this claim for damages.

3. SIO Retentions Claim

46. Finally, the Claimants contend that they are entitled to the return of the money that was retained to secure the payment of Vetco Iran's SIO contributions. The Respondents oppose this claim on the grounds that Vetco Iran failed to submit clearance certificates, as required by the contracts. The Claimant has offered affidavits, including one from the accountant responsible for making SIO payments, and ledger sheets to prove that Vetco Iran made all of its required SIO payments; the Respondents argue that this evidence is inadequate.

4. Claim 2.7

47. Both Vetco Iran and VIAG were forced to close down their operations in Iran due to the revolutionary unrest at the beginning of 1979. On 1 January 1979 all but a few of the expatriate personnel working on contracts 006 and 007 were evacuated from Iran (see supra, para. 40). The employment contracts were terminated. Both the costs incurred in the evacuation of the expatriates and the

termination payments issued to them were borne by Vetco N.V. and Vetco Limited. The Claimants seek from Iran reimbursement of the costs incurred in the amount of US$395,382.14.

48. Under this Claim, the Claimants also seek US$47,341.30 for reimbursement of a payment made to Mr. F.T. Glascock, a former employee of Vetco Inc. This amount allegedly reflects the value of Mr. Glascock's household effects which could not be recovered when Mr. Glascock left Iran in late 1978. It had been arranged that Sea-Man-Pak Co. Ltd. would ship these goods back to the United States. In November 1978 the items were collected and delivered to Sea-Man-Pak's warehouse in Tehran. When the goods did not arrive in the United States, Mr. Glascock tried to obtain his belongings by his own endeavors. He then was allegedly told that the authorities would not release the goods.

49. Mr. Glascock claimed compensation from Vetco Inc. for the loss of the goods. Vetco Inc. agreed to pay Mr. Glascock the sum of US$47,341.30 in full and final settlement of his claim. The Claimants argue that under para. 22 of Vetco Inc.'s conditions for expatriates, it was obligated to reimburse Mr. Glascock for "unrelated personal property losses due to emergencies beyond the expatriate's control."

50. The Respondent denies any liability for the costs incurred by the Claimants when winding down business in Iran. With respect to Mr. Glascock's claim, Iran argues that the Government is not responsible for the actions of Sea-Man-Pak, a private corporation.

B. JURISDICTION OVER CLAIMS 2.1 and 2.7

51. The Respondents have raised a jurisdictional objection that applies specifically to claims 2.1 and 2.7. They argue that Article 38 of the General Conditions of

contracts 006 and 007 contained dispute clauses limiting jurisdiction to Iranian Courts so as to divest the Tribunal of jurisdiction under Article II, paragraph 1 of the Claims Settlement Declaration.

52. The clauses to which the Respondents refer simply provide for the settlement of disputes by arbitration. These do not bar the Tribunal's jurisdiction. See e.g., Dresser Industries, Inc. and Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 9-466-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 280.

C. THE MERITS OF CLAIMS 2.1 AND 2.7

1. Invoice Claim

53. The key issue for the five regular invoices here is whether Vetco Iran personnel actually did the work that is claimed on the invoices. The Respondents assert that the work was not done, and that Vetco Iran had completed its tasks at the IJPC project in September 1978, when the excavation and foundation work was completed. Indeed, Dr. Family testified that, even before September, Vetco Iran claimed payment for work not actually done and that, accordingly, he was dissatisfied with Vetco Iran's performance and wanted the company removed from the project. In support of his testimony, Dr. Family referred to a memo, dated 10 July 1978, from Vetco Iran's project manager, Mr. J. Hanlin, to his staff. Mr. Hanlin explained that OSCO had recently discovered that some Vetco Iran personnel had submitted time sheets showing hours of work when they were not even on the site. Mr. Hanlin warned that any employee who falsely claimed time spent on the site would be "subject to instant dismissal." In further support of their position, the Respondents point to the absence of signatures of Parsons or OSCO representatives from some of the force reports. The

Respondents do not, however, challenge the authenticity of the signatures on the other force reports.

54. The Claimants argue that the invoices, with their supporting force reports and, in some cases, time sheets, are sufficient evidence to prove that Vetco Iran's personnel did the work as claimed. In response to the Respondents' arguments, the Claimants cite provisions of the contracts that provided for work to continue through mid-1979. Mr. Skelton testified that Vetco Iran's work was not limited to the inspection of soil excavation and concrete foundations. As for the absence of signatures from some force reports, Mr. Skelton claimed that, although the work was done, it was impossible to obtain the necessary signatures in the tumultuous days at the very end of 1978 and early 1979, as Parsons and OSCO evacuated their expatriate personnel from Iran.

55. The Tribunal concludes that it is unnecessary to assess the status of the IJPC project in September 1978 or to determine which sorts of concrete work lay within the scope of Vetco Iran's inspection services. The evidence shows that, in most cases, Parsons and OSCO continued to approve Vetco Iran's force reports through late December 1978. It is not credible that they would have done so had Vetco Iran's personnel not actually been working. The memorandum from Mr. Hanlin does not undermine the claim, for it indicates that OSCO's representatives took their supervisory duties seriously and that Vetco Iran did attempt to correct irregularities that came to light. The Tribunal therefore decides that Vetco Iran's five regular invoices should have been paid, in whole or in part, to the extent that they were supported by force reports signed by representatives of Parsons and OSCO. In the case of the three force reports signed by a Parsons but not by an OSCO representative, the endorsement by Parsons is sufficient to prove that Vetco performed the work, because Parsons was OSCO's

representative on this project. The Claimants have offered a plausible explanation for the absence of signatures from the later force reports. However, this explanation is not sufficient to prove that Vetco Iran's personnel persevered in their work until the end of December, while most other work at the IJPC project ground to a halt.

56. Invoice 975/78 billed OSCO retroactively pursuant to an amendment of contract 006. The Respondents argue that the invoice should not be paid because the amendment was not approved by a "Transactions Committee." However, there is no evidence that the parties understood or intended that such approval was necessary. Nor is there evidence of any contemporaneous objection to invoice 975/78. In short, invoice 975/78 was based upon a valid amendment of contract 006 and should have been paid.

57. Invoices 975/78 and 19, under contract 006, and invoices 17 and 19, under contract 007, are thus payable in full. The full set of signed force reports supporting invoice 006/19 satisfactorily compensates for the absence of the original invoice. The Tribunal does not accept the Respondent's belated offer of evidence at the Hearing that it paid invoice no. 007/17; that invoice therefore remains payable. Invoices 006/20 and 007/20 must be reduced by the amounts charged for work in late December 1978 where the force reports lack signatures of both Parsons and OSCO representatives. (The amount subtracted from invoice 006/20 also includes 36,605 rials, the amount of an undocumented charge "owed from June.") The following table presents these calculations and the total amounts owed by OSCO:

Contract/Invoice	Invoice Amount	Delete Unsupported Charges	Adjusted Invoice Amount
006/975/78	2,832,749	--	2,832,749 rials
006/19	9,099,071	--	9,099,071
006/20	6,455,119	(1,310,590)	5,144,529
007/17	9,252,559	--	9,252,559
007/19	10,063,745	--	10,063,745
007/20	7,567,358	(1,215,938)	6,351,420
	TOTAL:		42,744,073 rials

58. The Parties agree that there would have been a 5.5% tax deduction from this invoice total, making the net amount payable to Vetco Iran 40,393,149 rials. The Claimants are entitled to 75% of this sum, see supra, para. 21, viz., 30,294,861 rials. Converted at the rate of 70.475 rls./US$1.00 (the applicable rate at that time), this is equivalent to US$429,867. See International Monetary Fund, International Financial Statistics, Supplement on Exchange Rates 64 (1985). Payment was due, at the latest, within thirty days of Mr. Fenton's submission of all outstanding invoices to Mr. Firoozi on 4 March 1979. Simple interest on US$429,867 will therefore run from 3 April 1979.

2. Damages Claim

59. The premise for the claim for damages is the argument that OSCO wrongfully terminated contracts 006 and 007 by failing to give the required sixty days' notice for termination without cause. The Respondents do not claim that OSCO gave the required sixty days' notice; rather, they assert that they were not obliged to do so because contracts 006 and 007 were "service contracts" that gave OSCO the right to reduce Vetco Iran's inspection teams without prior notice.

60. The evidence presented in this case shows that Parsons played a central role, generally, in the IJPC project and, specifically, with respect to these Vetco Iran-OSCO contracts. In late December 1978, Parsons withdrew its personnel from Iran. OSCO, too, evacuated its expatriate employees. Most, if not all, work at the IJPC project stopped. These developments effectively made it impossible for Vetco Iran to continue its job at the IJPC project. According to the Claimants, Vetco Iran offered to take Parsons' place as managing contractor of the project. Alternatively, the Claimants suggested that Vetco Iran could continue to work and simply report directly to OSCO. However, there is no evidence that OSCO was obliged to accept either of Vetco Iran's proposals, either of which would have entailed a modification of the contract.

61. These facts lead to the conclusion that Parsons' departure and the cessation of work at the IJPC project as a result of revolutionary developments in Iran created force majeure conditions, as defined by Vetco Iran's contracts with OSCO.[3] Accordingly, OSCO did not breach the contracts by informing Vetco Iran that the latter could no longer work on the project, and Vetco Iran did not breach by withdrawing its personnel from Iran. The force majeure conditions persisted at least during the first half of 1979, making it impossible for Vetco Iran to resume its work. As work remained suspended at the IJPC Complex, the purposes of contracts 006 and 007 were frustrated. Force majeure eventually terminated contracts 006 and 007.

62. Contracts 006 and 007 do not provide for the reimbursement of termination costs or the payment of lost

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[3] The force majeure clauses of the General Conditions of contracts 006 and 007 state: "Any delay in the performance by a party hereto of any obligation hereunder necessarily arising from any event not reasonably foreseeable by and beyond the control of the said party shall be deemed not to be a breach of contract."

profits in case of termination as a result of force majeure. In this situation, the Tribunal will adhere to the general rule that "the loss must lie where it falls." See Queens Office Tower Associates and Iran National Airlines Corp., Award No. 37-172-1, at 14 (15 Apr. 1983), reprinted in 2 Iran-U.S. C.T.R. 247, 254; Phelps Dodge International Corporation and The Islamic Republic of Iran, Award No. 218-135-2, para. 52 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 157. The claim for lost profits and wasted expenditures is therefore dismissed.

3. SIO Retentions Claim

63. The principal issue in this claim is whether OSCO should release the SIO retentions that it holds, despite Vetco Iran's failure to submit an SIO clearance certificate to OSCO. The Claimants' evidence shows that OSCO retained 17,849,000 rials from payments made under contracts 006 and 007 in order to secure Vetco Iran's payment of its SIO contributions. The Respondents claim that only 15,974,309 (or 14,733,000) rials were retained; however, they have submitted no documentary evidence to substantiate their lower figures.

64. The issue here is similar to those decided in Houston Contracting Co. and National Iranian Oil Co., et al., Award No. 378-173-3 (22 July 1988), reprinted in 20 Iran-U.S. C.T.R. 3, and TME International, Inc. and The Islamic Republic of Iran, et al., Award No. 473-357-1 (12 Mar. 1990). In both of those cases, the claimants sought the enforcement of contract provisions for the release of SIO retentions; in both cases, the claimants had failed to comply with contract provisions that conditioned release of the funds upon the submission of SIO clearance certificates. In Houston Contracting, the Tribunal described the clearance certificate provision as "a requirement relating to the procedure to effect final payment, [which did] not affect [the claimant's] entitlement to that sum." Award No.

378-173-3, para. 87. Finding that the claimant had paid its social security contributions but was prevented by circumstances beyond its control from obtaining a clearance certificate, the Tribunal awarded the claimant the money to which it was entitled. Id. In TME, however, the Tribunal decided that it was being asked to "pronounce upon [the claimant's] entitlement to [an SIO clearance] certificate"; this would require the Tribunal to "substitut[e] its own judgment for that of the official government body charged with administering the social insurance system, namely the SIO." To do that would lie outside the Tribunal's jurisdiction. Award No. 473-357-1, para. 105. Accordingly, TME's claim was dismissed. Id., para. 107.

65. In the present case, the Claimants do not seek a declaration that Vetco Iran is entitled to a clearance certificate from the SIO. Instead, the Claimants seek the enforcement of Vetco Iran's bargain with OSCO. The Claimants admit that Vetco Iran failed to submit a clearance certificate to OSCO but argue that Vetco Iran should be excused from this contractual requirement because it was prevented by force majeure from obtaining a certificate, despite having satisfied its SIO obligations.

66. The Tribunal agrees that this claim is within the Tribunal's jurisdiction. The claim does not seek or require a pronouncement upon Vetco Iran's entitlement to an SIO clearance certificate. Here, the issue is simply whether Vetco Iran is entitled to payment of the retentions from OSCO or whether OSCO is entitled to keep them. The claim here therefore resembles the claim in Houston Contracting, which turned solely upon the contractual relations between the parties to the case.

67. In paying SIO contributions, pursuant to activities under contracts providing for retentions to secure such payments, Vetco Iran relied upon OSCO's promise to release

the retention money. Vetco Iran's submission of a clearance certificate was a condition for OSCO's release of the retention money and, while conditions in Iran were normal, that was a reasonable condition. However, it was the payment of the SIO contributions by Vetco Iran that was the essence of the bargain between Vetco Iran and OSCO. It would be inequitable to require fulfillment of this condition and thereby cause Vetco Iran to forfeit its retention money where it was impossible for Vetco Iran to fulfill the condition and where the forfeiture would unjustly enrich OSCO. In short, if the Claimants can show that Vetco Iran paid its SIO contributions but was prevented by force majeure from obtaining a clearance certificate, they are entitled to the release of the retention money.

68. The Claimants have submitted an affidavit from Mr. Peter Jarrett, an accountant who worked on the IJPC project for Vetco Iran from 7 January to 24 December 1978. He stated that all required payments were made to the SIO through 21 November 1978 (i.e., through the end of Aban 1357 on the Iranian calendar). He further stated that all calculations for SIO payments for the month ending 21 December 1978 (i.e., 30 Azar 1357) had been completed when he left Iran on 24 December. He believed that his deputy made the payment for that final month, but he had no personal knowledge that this was done. The Claimants have also submitted a collection of ledger sheets that purport to show credits and debits during 1978 for two accounts at the Foreign Trade Bank of Iran and two accounts at the Bank of Iran and the Middle East. These ledgers show payments to SIO of nearly 34 million rials. (The ledger entries identify some of these payments -- totalling almost 5 million rials -- as payments for taxes and SIO.)

69. There is also evidence that Vetco Iran acted in the belief that it had satisfied its SIO obligations. In an internal memorandum dated 19 June 1979, Mr. Fenton reported that he had applied for the release of Vetco Iran's SIO retentions. And in a telex to Vetco Iran's office in the United States, dated 22 November 1979, Mr. Fenton wrote: "SIO . . . RETENTIONS ARE RECOVERABLE ON PROOF OF SOCIAL SECURITY PAYMENTS. WE HAVE SUBMITTED FULLY DETAILED AND BACKED-UP APPLICATION FOR RECOVERY OF SAME."

70. This evidence compares favorably with that which satisfied the Tribunal in Houston Contracting. See Houston Contracting, supra, at paras. 42, 87. The ledgers and the Jarrett affidavit establish a prima facie case and require a response from the Respondents. The Respondents have criticized the sufficiency of the Claimants' evidence, but they have not rebutted it with their own contemporaneous evidence. The Respondents have offered no explanation for how Vetco Iran could have worked for a year and a half on the IJPC project without fulfilling its obligations to the SIO. Weighing all of these factors, the Tribunal concludes that Vetco Iran has proven by a preponderance of the evidence that it paid its SIO contributions.

71. The Tribunal has previously found that, by December 1978, strikes, riots and other civil strife had created "classic force majeure conditions at least in Iran's major cities." Gould Marketing, Inc. and Ministry of National Defence of Iran, Interlocutory Award No. ITL 24-49-2, at 11 (27 July 1983) reprinted in 3 Iran-U.S. C.T.R. 147, 152-53. Under these circumstances, it is understandable that Vetco Iran would have found it difficult if not impossible to obtain a clearance certificate from the SIO in January 1979 regardless of its entitlement to one. cf Houston Contracting, supra, at para. 87. However, Vetco Iran sought the release of its SIO retentions during subsequent months. After several trips to Ahwaz and Tehran, Mr. Fenton reported in a telex to his superiors dated 3 October 1979 that "AT

PRESENT THERE IS LITTLE CLARITY RE EXECUTIVE RESPONSIBILITY AND GENERAL ATTITUDE AMONG GOVT. AND GOVT. INDUSTRY PERSONNEL IS TO DO NOTHING, APPROVE NOTHING, SIGN NOTHING TO AVOID SUSPICION/CRITICISM, ARREST, ETC." No clearance certificate was forthcoming.

72. The Tribunal concludes from this evidence that Vetco Iran was entitled to the release of its SIO retentions even though it was prevented from obtaining a clearance certificate.

73. Under contracts 006 and 007, a 5.5% tax was withheld from the gross amounts payable to Vetco Iran. This means that no further tax withholding was required when SIO retentions were released. The full amount of the retentions here, 17,849,000 rials, should be released. However, the Claimants are entitled to only 75% of that amount. See supra, para. 21. Converted at the rate of 70.475 rls./US$1.00, the amount to be awarded is US$189,950. Simple interest on US$189,950 will run from 30 June 1979, by which time the retentions should have been released.

4. Claim 2.7

74. In view of the Tribunal's finding supra, para. 61, that contracts 006 and 007 were terminated as a result of force majeure, and that there is no contractual liability for the reimbursement of termination costs in case of such termination, the Claim for costs incurred by the evacuation and the subsequent termination of the expatriate personnel is dismissed.

75. The Claim relating to Mr. Glascock's personal belongings can be brought against the Government of Iran only if the latter can be held responsible for the loss suffered by Mr. Glascock. See Otis Elevator Company and The Islamic Republic of Iran, et al., Award No. 304-284-2 (29 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 283.

76. To prove that the loss of Mr. Glascock's household goods was attributable to the Government of Iran, the Claimants allege that Mr. Glascock contacted the wife of the owner of Sea-Man-Pak; she allegedly told him that the Iranian authorities would not release his goods. The Tribunal finds this hearsay evidence inadequate and accordingly dismisses this part of the Claim for lack of proof.

D. THE COUNTERCLAIMS IN CLAIM 2.1

1. The NIGC Counterclaim

77. The Respondents present a claim by the National Iranian Gas Company ("NIGC") for 484,177,863 rials and US$22,608 in damages arising from two pipe inspection contracts between NIGC and Vetco Iran. NIGC is not a Respondent in this case and therefore has no standing to file a counterclaim here. In addition, the counterclaim does not arise from the same contract, transaction or occurrence as Vetco Iran's claim. While the Respondents assert that the aggregate of Vetco Iran's contracts in Iran should be considered a single commercial transaction, there is no evidence to support it. On the contrary, it appears that Vetco Iran engaged in separate contracts with various Iranian entities. Pursuant, then, to Article II, paragraph 1 of the Claims Settlement Declaration, this counterclaim must be dismissed.

2. Performance Guarantees Counterclaim

78. The Respondents claim a total of US$587,064 on two performance guarantees that were issued by the Swiss Bank Corporation to secure Vetco Iran's performance under contracts 006 and 007. These guarantees expired on 30 June 1979. No claim had been made upon the guarantees by the time they expired, and no claim could be brought after they expired. Therefore, even if it were accepted that this counterclaim could properly be brought against the Claimants here, rather than against the bank which was party to the guarantees, the counterclaim was not outstanding on 19 January 1981. The counterclaim is therefore outside the jurisdiction of the Tribunal, as defined by Article II, paragraph 1 of the Claims Settlement Declaration, and must be dismissed.

3. Catering Services Counterclaim

79. The Respondents seek reimbursement of US$4,673 for catering expenses that OSCO incurred on behalf of Vetco Iran. The Claimants argue that this counterclaim is outside the Tribunal's jurisdiction because it does not arise from the two IJPC contracts. However, the General Conditions of the contracts made Vetco Iran responsible for the "accommodation, messing [and] transport" of its staff in Iran. OSCO could therefore claim reimbursement for food provided to Vetco Iran employees working on the IJPC project. This brings the counterclaim within the jurisdiction of the Tribunal.

80. The Respondents have submitted what appears to be an invoice from NIOC to Vetco Iran in the amount of 328,748 rials. This invoice includes a reference number -- 11595/02/58 -- but gives no explanation of the basis for the charge; it is undated. There is also a document that lists

several companies and numbers; Vetco Iran and the amount of NIOC's invoice are included in the list. An explanatory note on the document mentions the "utilization by the contractors" of the Boatel Iran Company's facilities. The document is undated, but it refers to a letter "No. 58/ /11595," dated 28 Aban 1358 (i.e., 19 November 1979), sent by a NIOC official to the head of the IJPC Feedstock Project. That letter discusses NIOC's accounts with Boatel Iran; it, too, mentions the use of Boatel's facilities by other project contractors, including Vetco Iran, and implies that they owe money for that use. However, the letter provides no further clarification. Finally, the Respondents have submitted part of a contract between OSCO and Boatel Iran for the provision of catering services at the IJPC project. Its effective date is 25 May 1978; it is unsigned. Vetco Iran's General Manager, Mr. Fenton, denies that Vetco Iran employees ever used OSCO's facilities; he claims that Vetco Iran provided all meals for its employees.

81. The Tribunal finds that the documents submitted by the Respondents are obscure and lack adequate support. For example, they appear to relate to a time well after Vetco Iran's departure from Ahwaz, and there is no indication that they relate to Contracts 006 and 007, at issue in this Claim. The counterclaim is therefore dismissed for lack of proof.

4. Workers' Severance Pay Counterclaim

82. The Respondents seek reimbursement of US$117,887 paid by NIOC to Iranian workers who were former employees of Vetco Iran. NIOC apparently made these payments in 1980, pursuant to an order from the President of the Revolutionary Courts of Khuzestan Province. The Claimants argue that this counterclaim does not arise from the same contract, transaction or occurrence as its claim.

83. The Respondents have submitted vouchers showing payments made by NIOC to a group of about thirty workers. The vouchers identify the workers as Vetco Iran employees and refer to a contract numbered 3-78-043-339. The Respondents acknowledge that this counterclaim arises from contract 3-78-043-339, but argue that that contract was related to contracts 006 and 007.

84. Contract 3-78-043-339 ran from 1 July 1974 through 31 October 1976. It involved the inspection of contractors' drilling equipment, plant and materials at drilling rig sites, at OSCO's store yards and at Vetco Iran's service center in Ahwaz. Thus, the subject matter, the location and the time period of contract 3-78-043-339 differ from those of contracts 006 and 007. The Tribunal concludes that this counterclaim does not arise from the same contract, transaction or occurrence as the Claimants' claim and must therefore be dismissed.

5. Counterclaim for Social Security Contributions

85. The Respondents claim 71,869,630 rials in allegedly unpaid social security contributions for work performed under Contracts 006 and 007, plus additional amounts relating to other contracts. The Tribunal has consistently held that counterclaims for unpaid social security contributions are outside its jurisdiction: The "asserted obligation to pay social security premiums . . . is imposed not by the contract that is the subject matter of the claim, but by operation of the applicable Iranian Social Security law." Questech, Inc. and Ministry of National Defence of the Islamic Republic of Iran, Award No. 191-59-1, at 39 (25 Sept. 1985), reprinted in 9 Iran-U.S. C.T.R. 107, 135 and the Awards there cited.

86. The Respondents seek to distinguish this rule by arguing that this counterclaim is related to the claim for the release of SIO retentions and therefore arises from the same contract, transaction or occurrence as Claim 2.1. The Respondents also maintain that the Tribunal has jurisdiction over this counterclaim because it would be a set-off against Vetco Iran's recovery of its SIO retentions.

87. These arguments misconstrue the nature of Vetco Iran's claim. The claim for Vetco Iran's SIO retentions is a contract claim against OSCO; it is not a claim of any sort against the SIO, for it is OSCO that holds the retention money, not the SIO. In exercising its jurisdiction over the retention claim, supra, paras. 65-72, the Tribunal did not pronounce upon the legal relationship between Vetco Iran and the SIO, an issue that lies outside the Tribunal's jurisdiction. See TME, supra, at para. 105. The Respondents cannot circumvent this by characterizing the counterclaim as a set-off. There is no award against the SIO that can be the basis for a set-off. Moreover, counterclaims for the purpose of a set-off must satisfy the jurisdictional requirements of the Claims Settlement Declaration. Computer Sciences Corp. and The Islamic Republic of Iran, et al., Award No. 221-65-1, at 50-53 (16 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 269, 308-10. Accordingly, this counterclaim is dismissed because it does not arise from the same contract, transaction or occurrence as any claim in this case.

6. Counterclaim for Taxes

88. The Respondents also claim 17,134,811 rials for unpaid taxes. However, the rationale of the jurisdictional bar against counterclaims for unpaid social security contributions applies as well against counterclaims for unpaid taxes. See Questech, supra, at 38, 9 Iran-U.S. C.T.R. at

134; T.C.S.B., Inc. and The Islamic Republic of Iran, Award No. 114-140-2, at 24 (16 Mar. 1984), reprinted in 5 Iran-U.S. C.T.R. 160, 173. This counterclaim is therefore dismissed.

7. The IROS Counterclaim

89. Finally, the Respondents present a claim on behalf of Iranian Oil Services Ltd. ("IROS") for the reimbursement of US$14,575 paid by IROS to Vetco Iran on OSCO's account. This is another counterclaim, like the NIGC counterclaim, brought by a party that is not a Respondent in the case. The Tribunal therefore dismisses this counterclaim as well.

IV. CLAIM 2.3

A. FACTS AND CONTENTIONS

90. Claim 2.3 is a Claim filed on behalf of VIAG by Combustion Engineering against NIOC. The Claimant seeks a total of US$738,647, plus interest, under two heads of relief: US$190,528 for unpaid invoices for services rendered under a contract between VIAG and NIOC; and US$548,119 for the release of retention money. The Respondent filed five counterclaims amounting to 804,229,790 Rials.

91. In October 1975, VIAG and NIOC concluded a contract, designated DC-173, under which VIAG would provide inspection services in the construction of oil pipelines. VIAG worked under contract DC-173 on four projects: the Abadan-Ahwaz pipeline, the Tabriz-Rezaieh pipeline, the Rey-Sari pipeline, and the Esfahan Airport Pipeline. Independent contractors engaged by NIOC built the pipelines. It was VIAG's responsibility to inspect the contractors' engineering drawings and their construction work. VIAG

inspected the connection of pipe segments and the application of anti-corrosion materials, as well as the actual laying of the pipelines in the ground.

92. Clause 19 of the contract's Special Conditions specified the "Care and Diligence" to be exercised by VIAG. It stated:

> The Inspector [VIAG] shall exercise utmost skill, care and diligence in the performance of his duties. However should the Employer [NIOC] undergo any losses or damages during the Construction and Remedy of Defects Period, if such losses or damages are attributed to negligence on the part of the Inspector in fulfilling his Inspection and Supervision obligations, or making recommendations to the Employer, he would be held responsible for all compensation.

93. Several clauses relating to payments and retentions are relevant to the issues in this Claim. Clause 10 of the Special Conditions provided for the reimbursement to VIAG of certain costs, including the cost of automobile rentals. Clause 11.1 of the General Conditions provided for a 10% retention from the payment of fees: "Payment in respect of accepted performance of the work to be rendered by the Inspector in accordance with the Terms of this Agreement shall be based on per man per month bases as certified by the Engineer subject to a 10% (ten percent) guarantee retention." Clause 11.2 then provided for the release of the 10% retention as follows:

> 5% on the date of "Handing Over" of the Project by the Contractor to the Employer.
>
> 5% after satisfactory completion of the period of Remedy of Defects and after final acceptance of the works i.e. 12 months after completion of works by Contractor and handing over to Employer, or 12 months after termination of Inspectors [sic] duties whichever comes earlier.

The Special Conditions added a provision to clause 11 for a 5.5% tax withholding from all payments to VIAG (except for the reimbursement of costs).

94. Clause 21 of the Special Conditions stated that VIAG would make all applicable social security (SSO) contributions. In order for VIAG to receive the yearly and final contract payments, it was required to obtain an SSO clearance certificate "at the end of each Calendar year and again at the end of the agreement." Clause 22 of the General Conditions stated that "all documents prepared by the Inspector in connection with the Project are the property of the Employer." Finally, clause 16 of the General Conditions, as amended by the Addendum, gave NIOC the right to terminate the contract at any time upon giving thirty days' written notice to VIAG.

95. VIAG generally submitted three invoices per month for each of the four pipeline projects. There would be a payroll invoice for all normal hours worked, an overtime invoice and an invoice for reimbursable costs. On occasion, NIOC objected to items in VIAG's invoices; VIAG then corrected the invoices and resubmitted them. For example, Mr. M. Vandaie, NIOC's project engineer for the Abadan-Ahwaz pipeline, wrote to VIAG on 9 May 1979 with three objections to invoices nos. 181, 188 and 189, all of which related to the Abadan-Ahwaz project: (1) VIAG should charge NIOC for only 50% of Mr. Barry J. Fenton's time; (2) VIAG should not charge for the entire month of Bahman 1357 (21 January--19 February 1979), but rather for 1-15 Bahman; and (3) VIAG should not charge for Mr. Fenton's services during time when he was not in Iran. VIAG had agreed in March 1978 that payment for Mr. Fenton's services would be reduced from 100% to 50% because he was about to assume new responsibilities for VIAG and Vetco Iran. Accordingly, VIAG accepted Mr. Vandaie's first objection and revised the three invoices to charge only 50% for Mr. Fenton's services. This, in VIAG's

view, also met Mr. Vandaie's third objection. The revised invoice for Bahman also charged NIOC for only the first half of the month, as requested by Mr. Vandaie; this was apparently because the Abadan-Ahwaz pipeline was completed in January 1979.

96. Two pipelines were completed while VIAG worked on contract DC-173. The Rey-Sari pipeline was handed over to NIOC on 11 October 1978.[4] In a letter dated 3 March 1979, VIAG requested the release of one-half of the retention money for that project, pursuant to clause 11.2 of the contract. According to VIAG, the Abadan-Ahwaz pipeline was completed in late 1978 and "fully commissioned" by January 1979. VIAG requested the release of one-half of the retention money for that project in a letter dated 3 February 1979.

97. In a letter dated 7 January 1979, NIOC terminated VIAG's services on the Esfahan Airport project effective 6 February 1979. This was apparently before that pipeline was completed. VIAG requested the release of all retentions for this project in a letter dated 26 September 1979. Finally, NIOC terminated contract DC-173 itself -- and thus VIAG's work on the Tabriz-Rezaieh project -- in a letter dated 3 June 1979, purporting to be effective 22 May 1979. The Tabriz-Rezaieh pipeline was apparently not yet complete. There is no evidence in the record of a specific request by VIAG for the release of the retentions for that project.

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[4] Further details concerning the completion of the Rey-Sari pipeline will be provided in the discussion of NIOC's third counterclaim, infra, para. 146.

1. Invoice Claim

98. This Claim concerns amounts sought by VIAG for unpaid invoices for services under contract DC-173. In their initial pleadings, the Claimant sought 17,596,023 Rials for fifty-two invoices, while NIOC objected to twenty-two of the invoices but acknowledged that it owed VIAG 9,203,180 Rials. Both Parties have modified their positions while this Case has been pending. The Claim now involves forty-six invoices totalling 13,336,957 Rials. The forty-six invoices may be divided, according to NIOC's position, into three groups:

99. (1) NIOC accepts that twenty-seven invoices,[5] totalling 9,589,781 Rials, are payable in full.

100. (2) NIOC accepts that five invoices, totalling 1,649,000 Rials, are payable in part; the amount accepted is 1,124,000 Rials. The issue concerning these invoices is whether VIAG was entitled to an additional month's pay in lieu of thirty days' written notice under the contract's termination provision. VIAG claimed the extra month in three invoices following NIOC's termination of contract DC-173. On two other invoices, VIAG claimed one month's additional pay for an individual employee, Mr. D.N. Evans, after NIOC terminated Mr. Evans' services. NIOC denies that clause 16 of the contract obliges it to make these additional payments.

101. (3) NIOC rejects fourteen invoices, totalling 2,098,176 Rials. All of them relate to the Abadan-Ahwaz project. Nine of these invoices are for the reimbursement

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[5] Invoices nos. 80, 81, 98, 99, 114, 115, 121, 122, 174, 175, 196, 199, 200, 204, 206, 207, 208, 213, 214, 215, 216, 220, 221, 222, 223, 224, 225.

of auto rental costs. NIOC argues principally that VIAG failed to obtain prior approval for these rentals, as required by clause 10 of the contract. Two of the invoices are for overtime worked by an employee named H. Lynn. NIOC claims that it was justified in rejecting the invoices because Mr. Lynn did not actually do the work as claimed. The final three invoices are those which Mr. Vandaie initially rejected, as described supra, para. 95. NIOC maintains its objections to those invoices, arguing in particular that they are not payable because Mr. Fenton was in London during the time covered by the invoices.

2. Retention Money Claim

102. NIOC retained 10% of all amounts due to VIAG, pursuant to clause 11.1 of the General Conditions of contract DC-173. The Claimant now seeks the release of the money that NIOC retained, arguing that the conditions for its release specified in clause 11.2 have been satisfied. NIOC acknowledges that it has not released any of the money that it retained, and it does not deny that the conditions for release of the money stated in clause 11.2 have been satisfied. NIOC argues, however, that VIAG is required by clause 21 of the Special Conditions to submit an SSO clearance certificate before it can obtain the release of the retention money.

103. The Parties also disagree over the amount of money retained by NIOC under clause 11.1 of the contract. The Claimant originally contended that NIOC had retained 36,469,777 Rials (or US$520,996.80, when converted at the rate of 70 rls./US$1). The Claimant later pointed to what it asserted was an admission in NIOC's pleadings and increased its claim to US$548,119. NIOC acknowledges having retained 36,469,777 Rials and denies that it admitted holding a higher amount.

B. MERITS OF CLAIM 2.3

1. Invoice Claim

104. As noted supra, para. 99, NIOC agrees that it owes VIAG payment in full for a group of twenty-seven invoices totalling 9,589,781 Rials. Eighteen of these invoices, totalling 9,388,674 Rials, were for payroll costs and are therefore subject to a 5.5% tax withholding. The net amount owed to VIAG for the twenty-seven invoices is thus 9,073,404 Rials.

105. The second group of invoices are those in which VIAG included an extra month's charge in lieu of thirty days' written notice. See supra, para. 100. NIOC agrees that it owes VIAG 1,124,000 Rials for these five invoices; but it objects to paying the extra charges, which amount to 525,000 Rials. Two of the invoices charged NIOC a total of one month's salary for Mr. Evans because NIOC had terminated his services on 18 February 1979, without giving one month's notice. One half of the extra charge for Mr. Evans was billed to the Rey-Sari project (invoice no. 211), and the other half was billed to the Tabriz-Rezaieh project (invoice no. 212). Invoices nos. 217, 218 and 219 included thirty-day notice charges for several VIAG employees as a result of NIOC's termination of contract DC-173. The charge for one of those employees, Mr. E. Fooroohi, was similarly divided between the Rey-Sari project (invoice no. 217) and the Tabriz-Rezaieh project (invoice no. 218).

106. NIOC did not initially object to invoices nos. 212 and 218 (with half of the extra charges for Evans and Fooroohi, respectively). The Claimant, in its Rebuttal Memorial, pointed to NIOC's apparent acceptance of the thirty-day notice charges in those invoices to support its claim for payment of invoices nos. 211 and 217 (with the other half of the charges for Evans and Fooroohi). In its

own Rebuttal Memorial, NIOC extended its objection to the extra charges in invoices nos. 212 and 218. Finally, at the Hearing, the Claimant asserted that NIOC's initial acceptance of invoices nos. 212 and 218 remained persuasive evidence in support of its claim here.

107. To resolve the issues relating to these invoices, the Tribunal turns first to the contract. Clause 16 of the General Conditions gave NIOC the right to terminate the contract, "or any part thereof," upon giving VIAG thirty days' written notice. NIOC's termination of VIAG's services on the Esfahan Airport project appears to have conformed to this provision: NIOC wrote to VIAG on 7 January 1979, terminating its services effective 6 February 1979. VIAG's invoices nos. 207 and 208, dated 12 Esfand 1357 (3 March 1979), billed NIOC for work done through 17 Dey 1357 (7 January 1979) and added one month's notice charges for the seven employees working on that project. NIOC accepts that these invoices are payable in full.

108. NIOC's subsequent termination of the entire contract was not so straightforward, but the provisions of clause 16 can still be applied. There is evidence in the record indicating that VIAG learned informally in early May that NIOC wished to terminate the contract that month. However, written notice arrived only in a letter dated 3 June 1979, stating that NIOC was terminating the contract effective 22 May 1979. This retroactive termination entitled VIAG to add at least one month's notice charges from 22 May 1979 for all of its employees still working under contract DC-173. Accordingly, the Tribunal decides that invoices nos. 217, 218 and 219, totalling 993,000 Rials, are payable in full. These are payroll invoices, subject to a 5.5% tax withholding, so the net amount owed to VIAG is 938,385 Rials.

109. The one-month notice charges in invoices nos. 211 and 212 are different. They relate to the termination of an individual's services, not the termination of a project or of the entire contract. The Claimant argues that the provisions of clause 16 extend to the termination of any individual employee because that clause refers to the termination of "any part" of the contract. The Tribunal disagrees. NIOC, it is true, could not circumvent the strictures of clause 16 by terminating every VIAG employee individually, but that is not what NIOC did in this case. The Tribunal finds that NIOC's termination of Mr. Evans' services did not fall within the terms of clause 16 and that VIAG therefore should not have included the one-month's notice charge in invoices 211 and 212. The total amount of these two invoices is 656,000 Rials. Subtracting 250,000 Rials, the one-month's notice charge for Mr. Evans, yields 406,000 Rials. These are payroll invoices, subject to the 5.5% withholding tax of 22,330 Rials. NIOC therefore owes VIAG 383,670 Rials.

110. The third group of invoices consists of those that NIOC rejects entirely. See supra, para. 101. Nine of the invoices claim reimbursement for auto rental costs.[6] The Claimant alleges that VIAG provided a vehicle for the personal use of NIOC's project manager for the Abadan-Ahwaz project. The invoices cover the period from June 1978 through 19 February 1979. In its earlier pleadings, NIOC opposed payment of these invoices on the grounds that they had not been approved in advance by the Engineer, as required by clause 10 of the Special Conditions of contract DC-173. Later, in its Rebuttal Memorial, NIOC presented an affidavit by the Abadan-Ahwaz project manager in which it

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[6] Invoices nos. 100, 124, 129, 136, 149, 163, 180, 190, 191.

was alleged that VIAG had not, in fact, provided any automobile to the project manager or his personnel.

111. The argument that these invoices required advance approval of the Engineer misconstrues the contract. The Schedule of Rates provides for the reimbursement of car rental costs and specifies the rate. Clause 10 of the Special Conditions requires the "Employer" to reimburse VIAG for these costs "provided always that prior approval of the Employer has been acquired by the Engineer." Other provisions of the contract define the "Employer" as NIOC and the "Engineer" as the heads of certain projects within NIOC's Engineering & Construction Group. Thus, the prior approval provision of clause 10 appears to require certain internal procedures within NIOC; it does not impose a duty upon VIAG. VIAG was entitled to rely on a request by the project manager.

112. With respect to NIOC's claim that no auto was actually provided, the Tribunal notes that there is no evidence of any contemporaneous complaint by NIOC about these invoices. On the other hand, the Claimant has submitted a memorandum, dated 28 May 1979, in which one of VIAG's accountants described the status of all outstanding receivables under contract DC-173, following discussions with the project managers. All nine of the auto rental invoices appear in this memorandum: Five are described as having been approved for payment; one was in the process of approval; and three had been misplaced by NIOC and had therefore been resubmitted. Thus, the Claimant's contemporaneous evidence tends to contradict the general denial in the project manager's affidavit. In light of this evidence, the Tribunal is persuaded that VIAG did provide NIOC the automobile rentals represented by these nine invoices; the Tribunal concludes that the invoices are payable. Since these invoices cover reimbursable costs, there is no deduction for

taxes. NIOC thus owes VIAG 655,000 Rials for these auto rental invoices.

113. The issue with respect to three invoices, nos. 181, 188 and 189, concerns the charges for Mr. Fenton's services from 22 November 1978 through 4 February 1979 (1 Azar through 15 Bahman 1357). See supra, para. 95. According to NIOC, the invoices are not payable because they were not approved for payment, and they were not approved because VIAG did not perform the work as claimed. Since NIOC would not be entitled to withhold approval if the work had been performed, the issue here is simply whether that work was, in fact, performed.

114. The Tribunal notes that, on 13 March 1978, the Parties agreed that VIAG would henceforth charge NIOC only 50% of the cost of Mr. Fenton's services in invoices for the Abadan-Ahwaz project. Invoices nos. 181, 188 and 189 are corrected versions of three invoices, dated 11 Azar 1357 (2 December 1978) and 12 Esfand 1357 (3 March 1979), in which VIAG at first neglected to reduce the charge for Mr. Fenton to 50%. When Mr. Vandaie pointed out the problem and rejected the invoices, VIAG recognized its error and corrected it. (VIAG also corrected an erroneous charge in invoice no. 189 for the entire month of Bahman.) It appears to the Tribunal that the problem of Mr. Fenton's absence from Iran was also resolved by reducing the charge to 50%. The 13 March 1978 agreement did not preclude Mr. Fenton from leaving Iran if his other responsibilities for VIAG and Vetco Iran made such travel necessary; on the contrary, the agreement obviously anticipated that he would be unavailable some of the time for work on the Abadan-Ahwaz project. Thus, the allegation that Mr. Fenton spent some part of this period in London does not, alone, justify NIOC's refusal to pay these invoices. In conclusion, this evidence of submission of the invoices, rejection, and resubmission of the invoices with corrections and the absence of evidence of any

subsequent complaint from NIOC prior to the present proceeding, persuades the Tribunal that these invoices billed NIOC for work actually performed and accordingly are payable. The invoices total 1,190,000 Rials and are subject to the 5.5% withholding tax. NIOC thus owes VIAG 1,124,550 Rials for invoices nos. 181, 188 and 189.

115. The last two invoices at issue are nos. 82 and 123. These are overtime invoices for work performed by Mr. H. Lynn, one of VIAG's inspectors on the Abadan-Ahwaz project. Invoice no. 82 billed NIOC for forty-nine hours of overtime for May 1978; it is dated 20 May 1978. There is no evidence that NIOC objected to this invoice prior to these proceedings. NIOC now argues that an invoice for the entire month of May, dated 20 May, must be inherently suspect. Invoice no. 123 billed NIOC for eighty-eight hours of overtime for a three-week period ending 28 July 1978. VIAG had originally submitted an overtime invoice for Mr. Lynn covering July and August 1978. NIOC objected, and so VIAG submitted separate invoices -- no. 123 for July and no. 144 for August. NIOC paid invoice no. 144 in which VIAG claimed forty hours of overtime for a four-week period; but it has refused to pay invoice no. 123, claiming that Mr. Lynn did not work the overtime claimed. The Claimant argues that NIOC's payment of invoice no. 144 supports its claim for payment of invoice no. 123, the other half of what was originally a single invoice. NIOC, in turn, claims that its payment of invoice no. 144 demonstrates its willingness to pay bona fide invoices and should therefore lend credence to its refusal to pay those it rejects.

116. In the opinion of the Tribunal, the 20 May 1978 date on the invoice for May 1978 overtime does not, standing alone, raise sufficient doubts about invoice no. 82 to justify NIOC's present refusal to pay this invoice. The Tribunal notes that the cover letter accompanying invoice no. 82 sent by VIAG to NIOC, was dated 31 May 1978. In the

absence of any evidence of a contemporaneous complaint from NIOC, the Tribunal concludes that invoice no. 82, totalling 90,552 Rials, is payable. The amount due to VIAG after deduction of the 5.5% withholding tax is 85,572 Rials.

117. NIOC did initially object to invoice no. 123; according to the Claimant, this was because the invoice included overtime for two months. However, there is no contemporaneous evidence in the record (comparable, for example, to the Vandaie letter) which confirms the grounds for NIOC's objection. In assessing this invoice, the Tribunal notes that, according to contract DC-173, overtime was paid for hours worked beyond ten hours per day, six days per week. In invoice no. 123, VIAG thus claimed that Mr. Lynn worked totals of eighty-six hours one week, ninety-four hours the following week and eighty-eight hours the week after that. Such Stakhanovite exertions in the middle of the summer in Khuzestan must inevitably raise doubts. It is not impossible that Mr. Lynn did work eighty-eight hours of overtime on top of 180 hours of regular time in three weeks during July 1978; but, in the opinion of the Tribunal, such a large overtime claim requires greater documentation, especially since NIOC did initially object to invoice no. 123. Absent any further supporting evidence, the Tribunal dismisses the claim for payment of invoice no. 123.

118. The following list summarizes the Tribunal's conclusions with respect to the claim for unpaid invoices:

Invoices	Amount Payable
27 invoices accepted by NIOC as payable[7]	9,073,404 rls.
Invoices nos. 217, 218 and 219	938,385
Invoices nos. 211 and 212	383,670
Invoices nos. 100, 124, 129, 136, 149, 163, 180, 190 and 191	655,000
Invoices nos. 181, 188 and 189	1,124,550
Invoice no. 82	85,572
Invoice no. 123	0
TOTAL	12,260,581 rls.

NIOC thus owes VIAG a total of 12,260,581 Rials for unpaid invoices for services performed under contract DC-173. Converted at the rate of 70.475 rls./US$1, this sum is equivalent to US$173,971. The Tribunal awards the Claimant $173,971; interest on this amount will run from 21 June 1979, which is thirty days after the termination of contract DC-173.

119. VIAG presented these invoices to NIOC at various times during 1978 and 1979. Printed on the invoices was the statement: "Payment: 30 days net. Finance charge of 1½% per month (18% per year) will be charged on past due invoices." However, these terms were not incorporated into contract DC-173, and there is no other evidence that the Parties actually agreed to them. Moreover, it appears that, while the contract remained in effect, VIAG acquiesced in

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[7] See supra, n. 5.

late payments by NIOC without claiming a finance charge. In view of these facts, the Tribunal will make its own determination concerning the appropriate rate of interest on the award for unpaid invoices. See infra, para. 244; cf. Reading & Bates Drilling Co. and The Islamic Republic of Iran, et al., Award No. 355-10633-2, paras. 24-25 (16 Mar. 1988), reprinted in 18 Iran-U.S. C.T.R. 164.

2. Retention Money Claim

120. The decision whether the retention money should be released requires interpretation of contract DC-173. Clause 21 required VIAG to obtain SSO clearance certificates at the end of each calendar year and at the end of the agreement. It then stated that the "final yearly payment and the final agreement payment" would be "released only after" VIAG submitted an SSO clearance certificate to NIOC. The dispositive question is whether the terms "final yearly payment" and/or "final agreement payment" in clause 21 include the release of clause 11's retention money. If so, the questions of social security contributions and an SSO clearance certificate are relevant; if not, VIAG would be entitled to the release of the retention money despite having failed to submit a clearance certificate and without regard to its payment of social security contributions.

121. Contract DC-173 contains no provision for retentions to secure VIAG's payment of its SSO contributions. Clause 11 made release of its retentions contingent upon VIAG's satisfactory performance of its inspection duties, in conjunction with the construction contractor's completion of its work: One half of VIAG's retentions for a given project would be released when the project was handed over to NIOC. The other half would be released after "satisfactory completion of the period of Remedy of Defects and after final

acceptance of the works." These provisions show that clause 11 did not create a general guarantee, covering the panoply of VIAG's various contractual or legal obligations, but rather a performance guarantee, securing VIAG's performance of its inspection duties on specific projects. Hence, retentions were to be released according to the progress made on individual projects, not according to VIAG's payment of its SSO contributions. In short, the Tribunal can find no textual support in clause 11 for linking the release of the retentions to the submission of an SSO clearance certificate. The terms of clause 21 do not alter this conclusion. Broadly understood, the term "payment" might include the release of retention money. However, the use of that term in clause 21 gives it a narrower meaning. The expression "final yearly payment" appears to mean the final payment of a given year. This must refer to the payment of an invoice, not the release of retention money, because several years could pass before a project was handed over and the Remedy of Defects period ran its course. The "final agreement payment" would then be the payment of the last invoices submitted when the contract was terminated (which might occur up to a year before the release of the balance of the retention money). Clause 21, then, secured VIAG's payment of its SSO obligations, not by retaining any money from payments to VIAG, but by making the payment of certain invoices contingent upon VIAG's fulfillment of those obligations. The Tribunal concludes that clauses 11 and 21 are separate provisions; the submission of an SSO clearance certificate is not a condition for the release of VIAG's retention money.

122. The Claimant originally stated that NIOC had retained 36,469,777 Rials. In support of this figure, the Claimant submitted a compilation of accounts receivable from NIOC drawn up by a VIAG accountant and dated 6 May 1979. This document listed invoices and retentions for each of the four projects under contract DC-173; the retentions amounted

to 36,469,777 Rials. NIOC has acknowledged that it retained this amount. The Claimant later asserted that NIOC had retained more than this amount; it pointed to a statement by NIOC that the total amount paid to VIAG under contract DC-173 was 376,396,368 Rials and US$104,103.63. According to the Claimant, "[s]ince NIOC automatically retained 10 percent of the amount of each invoice, this statement means that NIOC has retained 37,639,639 Rials and US$10,410.36 or, a total of US$548,119.44." The Tribunal does not agree that this statement necessarily has the meaning that the Claimant assigns to it. The 6 May 1979 compilation is better evidence of the amount actually retained. The Tribunal therefore concludes that the amount of money retained by NIOC was 36,469,777 Rials.

123. The Parties disagree over whether the retention money, if and when released, is subject to the 5.5% withholding tax. Clause 11.5 of the Special Conditions provides for the tax deduction from "all payments made to [VIAG] except net reimbursable." The practice of the Parties does not resolve this issue, because no retentions were ever released. However, evidence in the record does show that, when NIOC paid VIAG's invoices, it deducted 5.5% from the net amount due to VIAG, after retaining 10% of the gross amount for the performance guarantee. One may infer from this that the tax on the retained 10% would be deducted later, when the money was released. The Claimant has submitted no evidence that would rebut this inference. The Tribunal therefore decides that there should be a 5.5% deduction from the retention money that is released.

124. Accordingly, NIOC owes VIAG 34,463,940 Rials for retention money that should have been released. Different portions of this money should have been released at different times, according to the provisions of clause 11.2 and the progress of individual projects. Half of the money was to be released when a project was handed over to NIOC; the other half was due, at the latest, twelve months later.

These provisions apply to the Rey-Sari and Abadan-Ahwaz projects: The former was handed over on 11 October 1978, and the latter was apparently completed in January 1979 (though evidence of an official hand-over of the Abadan-Ahwaz pipeline is absent). VIAG accordingly requested the release of one-half of its retentions for those projects in letters dated 3 March 1979 (for Rey-Sari) and 3 February 1979 (for Abadan-Ahwaz). The contract did not specify how the money was to be released in case VIAG's services on a project or the contract itself were terminated before the hand-over of a project. This issue arises in connection with the Esfahan Airport project, where VIAG's services were terminated on 6 February 1979, and the Tabriz-Rezaieh project, which remained unfinished when contract DC-173 was terminated on 22 May 1979. VIAG requested the release of all retentions for the Esfahan Airport project in a letter dated 26 September 1979. There is no evidence in the record of a request for the release of retentions from the Tabriz-Rezaieh project. The Claimant now argues that termination of VIAG's services on an unfinished project should have triggered the release of all retention money for that project. The Tribunal disagrees. The termination of VIAG's services did not necessarily extinguish all of the Parties' rights and duties for the remedy of defects; the retentions would then still serve as a performance guarantee. The Tribunal shall therefore treat the termination of the contract, or a part thereof, as the equivalent of handing over the unfinished projects to NIOC. The first half of the retention money would then be due on the termination date, and the balance would be due twelve months later.

125. The 6 May 1979 compilation of accounts receivable provides the amounts of the retentions for each project. This permits the Tribunal to determine the dates on which different amounts of the retention money were due, as follows:

	Rey-Sari Project	Tabriz-Rezaieh Project	Abadan-Ahwaz Project	Esfahan Airport Project
Total Amount Retained (in rials)	15,256,851	11,516,814	8,052,985	1,643,127
Net amount (after 5.5% deduction)	14,417,724	10,883,390	7,610,071	1,552,755
First release:				
Amount	7,208,862	5,441,695	3,805,036	776,378
Date due	11 Oct.'78	22 May '79	31 Jan.'79	6 Feb.'79
Second Release:				
Amount	7,208,862	5,441,695	3,805,035	776,377
Date due	10 Oct.'79	21 May '80	30 Jan.'80	5 Feb.'80

126. The exchange rate remained 70.475 rls./US$1 throughout 1978 and 1979 and during the first four months of 1980. In May 1980, however, the average rate was 70.398 rls/US$1. See International Financial Statistics, supra, para. 58. The Tribunal will convert 5,441,695 Rials, the amount due on 21 May 1980, at the rate of 70.398 rls./US$1, and convert 29,022,245 Rials, the balance of the retention money, at the rate of 70.475 rls./US$1. The Tribunal therefore awards the Claimant US$489,108 on its retention money claim.

127. Interest on each portion of the retention money will run from the date on which release of that portion was due and a request for its release had been made. Where there was no request (or only a premature request), the Tribunal selects 15 January 1982, the date of the Statement of Claim. The following table summarizes these findings:

Amount in in rials	Amount in dollars	Date from which interest runs
7,208,862	102,290	3 March 1979
7,208,862	102,289	15 January 1982
5,441,695	77,215	15 January 1982
5,441,695	77,299	15 January 1982
3,805,036	53,991	2 February 1979
3,805,035	53,991	15 January 1982
776,378	11,017	26 September 1979
776,377	11,016	15 January 1982

C. COUNTERCLAIMS IN CLAIM 2.3

1. Counterclaims for Social Security Contributions and for Taxes

128. NIOC claims 101,355,224 Rials for unpaid social security contributions and penalties related to VIAG's work under contract DC-173. NIOC also claims 28,550,880 Rials for taxes due for the year 1978 and 1,060,718 Rials for taxes due for the year 1979. The Claimant objects that these counterclaims lie outside the Tribunal's jurisdiction; it contends, as well, that both counterclaims fail on the merits.

2. Rey-Sari Pipeline Counterclaim

129. NIOC alleges that the Rey-Sari pipeline suffered extensive damage from corrosion as a result of VIAG's negligence in performing its inspection duties. NIOC seeks 570,382,000 Rials in compensation. The Claimant accepts that the Tribunal has jurisdiction over this counterclaim.

However, the Claimant asserts that the counterclaim is time-barred because it was not presented during the 12-month Remedy of Defects period prescribed by clause 11.2 of the contract. Both Parties have presented evidence on the merits of this counterclaim.

3. Project Documents Counterclaim

130. Referring to clause 22 of the contract, NIOC claims that VIAG failed to deliver to NIOC various documents relating to the Esfahan Airport project. NIOC alleges to have suffered damages amounting to 5,000,000 Rials. The Claimant does not object to the Tribunal's jurisdiction over this counterclaim, but it denies that the counterclaim has any merit and maintains that NIOC has failed to prove any failure to deliver documents or any damage.

4. Soleimani Rental Property Counterclaim

131. NIOC alleges that it paid 2,850,000 Rials to satisfy a judgment won by Mr. Benjamin Soleimani against "Vetco" in the Public Court of Ahwaz. It now seeks reimbursement of this amount from VIAG. NIOC argues that the counterclaim relates to Claim 2.3 because NIOC used funds credited to VIAG's account under contract DC-173 to satisfy the judgment.

132. The Claimant contends that the Tribunal has no jurisdiction over this counterclaim because VIAG did not rent any property from Mr. Soleimani. However, the Claimant acknowledges that Vetco Iran did rent two houses from Mr. Soleimani in connection with its work on the IJPC project, the subject of Claim 2.1, supra. NIOC accepts that this counterclaim could be considered part of Claim 2.1.

133. The Claimant also notes that the judgment of the Ahwaz court was handed down on 16 June 1981 and accordingly argues that this counterclaim was not outstanding on the date of the Algiers Accords. NIOC responds that the dispute arose in 1978 and the court proceedings began with the issuance of a Writ of Attachment on 29 December 1979.

D. JURISDICTION OVER COUNTERCLAIMS IN CLAIM 2.3

134. The Parties agree and the Tribunal concurs that it has jurisdiction over the Rey-Sari pipeline counterclaim and the project documents counterclaim. However, the three other counterclaims raise jurisdictional issues that must be addressed here.

1. Counterclaim for Social Security Contributions and Taxes

135. As already decided by the Tribunal, counterclaims for social security contributions and taxes do not arise from the same contract, transaction or occurrence as VIAG's Claims as required by Article II of the Claims Settlement Declaration. See supra, paras. 87, 88. The Tribunal therefore dismisses the social security and tax counterclaims for lack of jurisdiction.

2. Soleimani Rental Property Counterclaim

136. The Claimant has raised several jurisdictional objections to NIOC's counterclaim for reimbursement of 2,850,000 Rials paid to satisfy Mr. Soleimani's judgment against "Vetco." It points out that it was Vetco Iran, a separate legal entity, and not VIAG that rented two houses from Mr. Soleimani. The Claimant questions whether NIOC has

sufficiently proven that it was obliged to satisfy the judgment, or, indeed, that it actually made the payment. Referring to the date of the Ahwaz court judgment, the Claimant asserts that the counterclaim was not outstanding on the date of the Algiers Accords, as required by the Claims Settlement Agreement.

137. The Tribunal agrees that this counterclaim does not arise from the same contract, transaction or occurrence as Claim 2.3; the fact that NIOC may have paid Mr. Soleimani with money earmarked for contract DC-173 is not dispositive of the Tribunal's jurisdiction. However, there is no reason why this counterclaim might not be considered for jurisdictional purposes as part of Claim 2.1, the claim on behalf of Vetco Iran. The organization of the Case simply derives from the Claimants' own original presentation of their claims. As for NIOC's right to bring a claim that originally belonged to Mr. Soleimani, NIOC has submitted what purport to be court papers that obliged it to pay 2,850,000 rials in response to a Writ of Attachment against "Vetco". These documents, plus NIOC's citation of relevant Iranian statutory provisions, suffice for the purposes of pleading the jurisdiction of the Tribunal. Finally, with respect to the date of the Ahwaz court judgment, it should be noted that the Tribunal has jurisdiction over claims and counterclaims that were outstanding on the date of the Algiers Accords, "whether or not filed with any court." Claims Settlement Declaration, Article II, paragraph 1; see also Phillips Petroleum Company, Iran and The Islamic Republic of Iran, Interlocutory Award No. ITL 11-39-2, at 9-10 (30 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 487, 491-92. Mr. Soleimani's claim against Vetco Iran arose in 1978 or 1979 when Vetco Iran allegedly rented property from him; and, indeed, he obtained a Writ of Attachment against "Vetco" on 29 December 1979. NIOC, it appears, responded to the Writ, using funds it says were credited to VIAG, on 19

May 1980. It is clear that this counterclaim, as a claim by either Mr. Soleimani or NIOC, was outstanding on 19 January 1981. It is not jurisdictionally significant when NIOC's obligation arose.

138. The question remains, however, whether this counterclaim does arise from the same contract, transaction or occurrence as Claim 2.1. Clause 8(1)(d) of the General Conditions of IJPC contracts 006 and 007 made Vetco Iran responsible for the "provision of accommodation" to its staff working on the IJPC project. Clause 9(2) then stated: "The Contractor [Vetco Iran] shall ensure that any accommodation he provides for his Contract Staff or Contract Labour is used only by such of his personnel as are engaged on the Contract and for the period of the Contract only." Finally, the Claimant readily acknowledges that Vetco Iran rented two houses from Mr. Soleimani in connection with its work on the IJPC project: The claim for wasted expenditures in Claim 2.1 includes money paid to Mr. Soleimani to terminate the leases for those two houses. The Claimant has accordingly submitted copies of two leases with Mr. Soleimani into evidence.

139. These facts show that a claim in the Ahwaz court by Mr. Soleimani against Vetco Iran might have arisen in the context of Vetco Iran's work on the IJPC project. However, there is other evidence that undermines this possibility. Vetco Iran's leases with Mr. Soleimani give the addresses as nos. 940 and 941, "18th Street, off Eqbal Ave., Ahwaz." The Writ of Attachment identifies the property at issue as "house No. 903/741 located in Section 7, Ahwaz." NIOC has not clarified this discrepancy, though it must have access to the information necessary to do so. Moreover, the Tribunal notes evidence in this Case that Vetco Iran and VIAG were involved in other contracts and transactions besides those at issue here. Vetco Iran or VIAG might well have rented other property from Mr. Soleimani. Taking these facts into consideration, the Tribunal cannot overlook the discrepancy in addresses or assume that the two addresses

are actually describing the same property. Hence, NIOC has not shown that the rental agreement upon which Mr. Soleimani's lawsuit was based was related to contracts 006 or 007. This leads to the conclusion that NIOC has failed to prove that this counterclaim arises from the same contract, transaction or occurrence as the Claims in this Case. The Tribunal accordingly must dismiss the Soleimani rental property counterclaim for lack of jurisdiction.

E. MERITS OF COUNTERCLAIMS IN CLAIM 2.3

1. Rey-Sari Pipeline Counterclaim

140. The Rey-Sari project involved the construction of a pipeline to carry oil products 287 kilometers from Rey, near Tehran, to Sari, near the Caspian Sea. NIOC hired M.K.-Neda J.V., a joint venture of Morrison Knudsen and Neda Construction Co., to build the pipeline. NIOC's construction contract with M.K. Neda specified in great detail how, in order to protect the pipeline against corrosion, it was to be cleaned, coated with primer and wrapped with tape during its construction. Under contract DC-173, VIAG supervised and inspected this "coat and wrap" work to ensure that it conformed to the specifications of the construction contract.

141. NIOC's contract with M.K.-Neda also required the installation of a cathodic protection system. While VIAG's duties did not include inspecting that system, cathodic protection was an important part of the pipeline's defenses against corrosion. Cathodic protection is based upon the fact that corrosion of a metal pipeline is caused by a natural electrical current that flows from the pipe to the surrounding soil, the soil acting as an electrolyte. By causing a low-voltage electrical current to flow in the opposite direction, from the soil to the pipe, a cathodic protection

system overcomes the natural current and thereby prevents corrosion. The current passing through a cathodic protection system can be monitored at various points along the pipeline; this permits the early detection of corrosion, should any occur.

142. In this counterclaim, NIOC alleges that the Rey-Sari pipeline has become badly corroded as a result of VIAG's negligence in performing its inspection duties. This corrosion occurred, according to NIOC, because the pipeline was not property cleaned, coated and wrapped during its construction. The corrosion was found by chance when workers excavating at one point along the pipeline discovered that the protective tape was not sticking to the pipe and that the pipe underneath had rusted. NIOC then took samples from other points along the pipeline and allegedly discovered extensive corrosion. NIOC has not specified when it made this discovery. The corrosion has allegedly shortened the life of the pipeline by one-quarter; NIOC accordingly seeks 570,382,000 Rials, "plus other indirect damages," in compensation.

143. As noted above, see supra para. 134, this counterclaim is within the Tribunal's jurisdiction. However, the Claimant does contend that the counterclaim is time-barred because it was not raised during the one-year Remedy of Defects period established by contract DC-173. According to the Claimant, the Remedy of Defects period ended, at the latest, on 10 October 1979, one year after the official hand-over of the Rey-Sari pipeline. On the merits, the Claimant contends that NIOC has failed to prove the necessary elements of its counterclaim -- in particular, the actual extent of the alleged damage to the pipeline and VIAG's responsibility for any corrosion that may now exist.

144. Both Parties have submitted evidence in the form of affidavits. However, only the Claimant's affiants claim

to have personal knowledge of the construction and remedy of defects periods of the Rey-Sari pipeline. These affiants include inspectors who worked for VIAG, as well as employees of the companies that built the pipeline, manufactured the "coat and wrap" materials and installed the cathodic protection system. Their affidavits describe in detail the "coat and wrap" work itself, as well as VIAG's procedures for supervising and inspecting that work. The Claimant has also submitted documentary evidence relating to the final inspection and handing over of the Rey-Sari pipeline. In contrast, the Respondents' affiants describe the results of inspections and tests carried out several years after the completion of the pipeline.

145. The first issue for the Tribunal to decide is whether this counterclaim is time-barred. The Tribunal gave effect to a contractual provision limiting the time within which a claim could be made in American Bell International Inc. and The Islamic Republic of Iran, et al., Interlocutory Award No. ITL 41-48-3, at 26-27 (11 June 1984), reprinted in 6 Iran-U.S. C.T.R. 74, 88-89. The provision at issue in American Bell specified that it applied to defaults that were "observed within two years after each individual project was placed in service." Id. at 24, 6 Iran-U.S. C.T.R. at 87. The provisions of contract DC-173 concerning the Remedy of Defects period are not quite so explicit. See supra para. 93. Moreover, the Tribunal is reluctant to hold that VIAG could not be liable for latent defects in its inspection work that were discovered more than one year after the hand-over of the project. Therefore, the Tribunal will turn to the merits of this counterclaim. In so doing, however, it is important to stress that it is VIAG's inspection work that is at issue, not the quality of the construction contractor's work -- though, of course, the latter may be relevant evidence in assessing the former.

146. Turning to the substance of this Counterclaim, the Tribunal finds that the events surrounding the completion and hand-over of the pipeline are well documented in the Claimant's evidence. In August 1978, representatives of NIOC, VIAG and M.K.-Neda conducted a "walk-through" along the 287 km. length of the pipeline. This inspection included random excavations to check the wrapping of the pipe. Readings from the cathodic protection system were taken. Following the "walk-through," the parties met to agree upon a report with a list of defects remaining to be remedied. The report mentioned no defects in the coating and wrapping of the pipeline; it noted: "Coating inspected and proved satisfactory, where checked in random excavations." The report, which was signed by representatives of the three parties, stated that the pipeline "has been installed and satisfactorily tested, with all the necessary works, including effective Cathodic Protection and . . . is now ready to receive Hydrocarbons." A second "walk-through" occurred in October 1978, apparently at the request of an NIOC official who had not participated in the first one. This inspection yielded another defects list; none of the defects on that list concerned the "coat and wrap" of the pipeline. According to the Claimant, the Head of NIOC's Pipeline Group verbally accepted the pipeline following the second "walk-through." A "process verbal" dated 5 November 1978 confirmed NIOC's acceptance. And in a letter to M.K.-Neda, NIOC confirmed that the Remedy of Defects period began on 11 October 1978.

147. This evidence corroborates other evidence in the record which shows that "coat and wrap" procedures were carefully followed during the construction of the pipeline and that VIAG performed its inspection duties properly. NIOC's evidence is not sufficient to change this conclusion. NIOC has presented evidence showing that the pipeline has become corroded; it has not shown that allegedly negligent inspection during the construction of the pipeline had any

role in causing this alleged damage. Thus, NIOC has failed to prove that VIAG is responsible for the current condition of the pipeline. The Tribunal therefore dismisses the Rey-Sari pipeline counterclaim.

2. Project Documents Counterclaims

148. According to contract DC-173, all "documents prepared by [VIAG] in connection with the Project are the property of [NIOC]." Based upon this provision, NIOC counterclaims for 5,000,000 Rials in damages suffered as a result of VIAG's failure to deliver to NIOC certain files relating to the Esfahan Airport project. NIOC describes the files as follows:

1. File relating to the pipes received and utilized.
2. File on items ordered from abroad.
3. File on the purchase of items from abroad.
4. File on technical specifications and standards.
5. File on communications with various manufacturers.

149. The Claimant contends here, too, that the counterclaim is time-barred by contract DC-173's Remedy of Defects period. On the merits, it argues that NIOC has failed adequately to identify the documents in question and has not proven its damages.

150. The Tribunal agrees that NIOC has failed to describe the documents with sufficient particularity and has failed to prove its alleged damages. The Tribunal therefore dismisses this counterclaim for lack of proof.

V. CLAIM 2.4

A. FACTS AND CONTENTIONS

151. Claim 2.4. is a Claim filed by Vetco Inc. and Combustion Engineering on behalf of their subsidiary Vetco Iran. The Claim is against Machine Sazi Pars. The Claimants seek payment in the amount of US$104,149, for unpaid invoices, plus interest and costs.

152. In late January 1978, National Iranian Steel Industries Company ("NISIC") was on the point of entering into a contract with MSP to have MSP assemble and erect various steel structures at the Pahlavi Steel Complex near Ahwaz. With respect to the work to be performed by MSP under that contract, MSP was obliged to obtain third party inspection services. These services, however, had to be carried out by a NISIC-approved inspector.

153. Informed by NISIC that Vetco Iran was a NISIC-approved inspection authority, MSP representatives contacted Vetco Iran, and several meetings were held. Having agreed that Vetco Iran should be the inspection authority for MSP, Mr. Crockford of Vetco Iran prepared a document containing Vetco Iran's proposed contract terms. On 5 February 1978, the two parties met again and the terms on which Vetco Iran would be engaged were discussed. This resulted in some handwritten changes on the document prepared by Mr. Crockford; the document was then initialled on each page by both Mr. Crockford of Vetco Iran and Mr. Moezi of MSP.

154. On 6 February 1978, Vetco Iran re-typed the letter incorporating the handwritten changes, and sent it for signature to MSP. However, no signed copy was ever returned to Vetco Iran.

155. The Claimants assert that, nevertheless, Vetco Iran provided services under the agreement until December 1978 and that in fact, at MSP's request, it had started work even before 5 February 1978.

156. According to the Claimants, Vetco Iran employees on this project filled out weekly time sheets. Vetco Iran's Welding Engineer or Project Supervisor submitted these time sheets to Mr. Moezi for MSP's approval and signature. Mr. Moezi retained one copy and the other signed copies were sent to Vetco Iran's offices in Tehran, where they were used as the basis for Vetco Iran's subsequent invoices to MSP. Vetco Iran submitted a total of twenty-two invoices to MSP; none was ever paid.

157. The Claimants assert that Mr. Moezi also received copies of progress reports, which were prepared regularly by the senior employee of Vetco Iran on the project.

158. The situation at the Pahlavi Steel Complex began to deteriorate in September 1978, but Vetco Iran inspectors allegedly continued to work through November. They left the Complex in late December 1978 - early January 1979 because there was no more work in progress on the project and out of considerations of safety. By the time the project was abandoned, Vetco Iran had already written to MSP requesting payment of outstanding invoices. After leaving, Vetco Iran sent additional letters requesting payment.

159. The Claimants claim US$104,149 for the unpaid invoices. They assert that the 5 February 1978 letter, with the changes added to it, expressed the agreement between Vetco Iran and MSP and thus bound the two parties. Moreover, they argue, MSP accepted unconditionally the work performed by Vetco Iran, and can therefore not now claim that it did not consent to the agreement.

160. MSP disagrees with respect to the legal significance of the letter-agreement. It asserts that, as the initialling of a document is not sufficient to make the underlying agreement binding between parties, and as the 6 February 1978 letter was never signed at all, no binding and enforceable agreement came into existence between Vetco Iran and MSP. MSP furthermore denies that Vetco Iran provided any services and, in particular, argues that it is impossible that Vetco Iran started to perform services as early as February 1978, because MSP and NISIC did not sign their related contract until 19 March 1978. MSP also points to Article 6 of that contract, which gave NISIC the authority to supervise MSP's work.

B. MERITS OF CLAIM 2.4

1. The validity and enforceability of the letter-agreement

161. MSP contends that it did not enter into a contract for inspection services with Vetco Iran; that the initialled 5 February 1978 letter submitted by the Claimants was of no effect; and that no work was performed by Vetco Iran.

162. Under Article V of the Claims Settlement Declaration the Tribunal must look to "principles of commercial and international law" for guidance. The Tribunal has previously noted that it is widely accepted by municipal systems of law that one can prove the existence of an enforceable contract through evidence demonstrating part performance. Such a principle must be taken to constitute a general principle of law. See DIC of Delaware Inc., et al. and Tehran Redevelopment Corporation, et al., Award No. 176-255-3, at 23 (26 Apr. 1985), reprinted in 8 Iran-U.S. C.T.R. 144, 161.

163. The Claimants have submitted extensive evidence establishing that Vetco Iran rendered services for MSP on the NISIC project, and that MSP accepted the same. Accordingly, the Tribunal finds that an enforceable contract existed between the parties and that the Claimants are entitled to compensation for the value of the work Vetco Iran performed.

2. Performance by Vetco Iran

164. The Claimants allege that Vetco Iran's employees worked under the contract from early February through November 1978. They claim that Vetco Iran submitted 22 invoices covering this period to MSP and that none has been paid. In support of their Claim, the Claimants have submitted a list of these invoices, dated 10 October 1978, plus a letter from Vetco Iran to MSP, dated 11 October 1978, requesting payment. The Respondent has submitted an affidavit denying receipt of this letter. Only one invoice claimed by the Claimants has been submitted by the Claimants - invoice no. 1080, covering November 1978. To prove Vetco Iran's performance, the Claimants have presented copies of inspection reports prepared by Vetco Iran's supervisors during the course of the contract. Initially, the reports appeared weekly, under MSP letterhead. Beginning in June, the reports cover full months and appear under Vetco Iran letterhead. The first report in the record is marked "Report No. 6" and covers the week ending 17 March 1978. The last report in the record, No. 21, covers the month of September 1978.

165. The Tribunal finds that the progress reports are adequate evidence of the work preformed by Vetco Iran for MSP. The corresponding invoices, as shown on the 10 October 1978 list, should accordingly be paid whether or not the letter was received. However, the first two invoices, which cover February and March together, are only partially substantiated by progress reports. The Tribunal decides

that payment of those two invoices should be limited to a pro rata share of those invoices, covering the last three weeks of March.

166. There are progress reports documenting Vetco Iran's work from April through September. Therefore, the invoices for this period are payable in full.

167. Work performed during the months of October and November 1978 again is not evidenced by progress reports. Also, there is evidence that, beginning in September 1978, activities at the Complex were frequently disrupted. These disruptions eventually led to the complete and permanent shut-down of the Complex towards the end of November 1978. Mr. Fenton of Vetco Iran furthermore has stated that from October until December 1978 he was advised by Mr. Moezi of MSP on several occasions that the whole project was at a standstill and that no staff were permitted to enter the site. According to Mr. Fenton, Vetco Iran nevertheless kept its personnel available to work on the Complex if the situation changed. Weighing all the evidence submitted, the Tribunal concludes that there is insufficient proof that invoices 1064, 1065 and 1080, covering the months October and November 1978 were issued for work actually performed by Vetco Iran employees.

168. The Tribunal accordingly concludes that the Claimants are entitled to payment for services rendered by Vetco Iran from 10 March through September 1978. The best evidence of the value of the services performed during this period is the 5 February 1978 letter containing the quotation for the different services to be provided, together with the list dated 10 October 1978, recording outstanding invoices. This amounts to 4,986,955 Rials. The Claimants are entitled to 75% of this sum, see supra, para. 21, viz. 3,740,216 Rials. Converted at the rate of 70.475 Rls./US$1.00, this is equivalent to US$53,072. Payment was due, at the latest, within thirty days of Mr. Fenton's

submission of all outstanding invoices to Mr. Torkzadeh of MSP on 11 October 1978. Interest on US$53,072 will therefore run from 10 November 1978.

VI. CLAIM 2.5

A. FACTS AND CONTENTIONS

169. Claim 2.5 is a Claim filed by CE and Vetco Inc. on behalf of their subsidiary Vetco Iran. The Claim is against the Government of the Islamic Republic of Iran. The Claimants seek compensation for the alleged confiscation and/or expropriation by Iran of assets with a total "net book value" of US$244,550. The Claimants also seek interest and costs.

170. Until the end of 1978 Vetco Iran had been providing engineering, inspection and quality control services, mainly related to the oil/gas development industries. Because of the revolutionary turmoil, on 1 January 1979 Vetco Iran evacuated its expatriate personnel from Ahwaz to Athens, and later to London.

171. Vetco Iran asserts that when evacuating its expatriate personnel, certain assets, consisting of survey and laboratory equipment and two company vehicles, had to be left behind in Ahwaz. Office equipment and staff houses furniture were also left behind in Ahwaz. Furthermore all the furniture in Vetco Iran's head office in Tehran had to be abandoned. Finally, the Claimant contends that oil field equipment, stored in Abadan, could not be removed.

172. The Claimants contend that Iran expropriated and/or confiscated the assets amounting to a value of US$244,550, because the authorities prevented Vetco Iran from either selling or removing the assets from Iran prior

to the final winding down of their business operations in that country in late 1979. The Respondent denies having expropriated the assets and/or encouraged their alleged confiscation and argues that the claim is thus not attributable to Iran.

B. MERITS OF CLAIM 2.5

173. The Tribunal has previously held that for an expropriation claim to be successful the claimant must prove

> firstly, that its property rights had been interfered with to such an extent that its use of those rights or the enjoyment of their benefits was substantially affected and that it suffered a loss as a result, and secondly, that the interference was attributable to the Government of Iran.

Otis Elevator Company, supra, at para. 28.

174. The Tribunal must therefore examine the acts of interference the Claimants complain of and determine whether they are attributable to the Government of Iran and whether they constitute a sufficient degree of interference to warrant a finding that an expropriation or confiscation of property has occurred.

175. The Claimants have submitted in evidence a report, dated March 1979, prepared by Mr. Fenton. This report, inter alia, gives a detailed account of the status and location of the assets at issue in this claim. The report states that the majority of the equipment in Ahwaz, representing approximately 90% in value, had been moved to Tehran and was stored in secure areas. Also, the laboratory equipment, which was still in Ahwaz, was stored under 24-hour guard. The Tribunal further has in evidence a memorandum dated 19 June 1979, prepared by Mr. Fenton, in which he reports the "possibility that committees may be

interested in purchasing [the laboratory equipment]." These "committees" were not further identified.

176. The 19 June 1979 memorandum also mentions that the furniture and fittings in the Ahwaz guest house were "confiscated by the committees". With respect to the equipment located in Vetco Iran's head office in Tehran, the Claimants submit that Mr. Fenton tried to sell the equipment to the landlord. The landlord, however, was not willing to purchase any of the items.

177. Absent further details regarding the alleged government interference and without any further indication as to how and under what circumstances the alleged expropriation occurred, the Tribunal cannot find that the Claimants have succeeded in proving that the loss of Vetco Iran's properties resulted from acts or omissions attributable to the Government of Iran. This Claim is therefore dismissed for lack of proof.

VII. CLAIM 2.6

A. FACTS AND CONTENTIONS

178. This Claim is brought by Vetco Inc. and Combustion Engineering on behalf of their subsidiaries Vetco Iran and VIAG. This Claim is against Bank Tejarat and Bank Mellat.

179. Vetco Iran had a total of five Rial accounts with the Bank of Iran and the Middle East, Bank Bazargani (now both Bank Tejarat) and the Foreign Trade Bank of Iran (now Bank Mellat). VIAG had two accounts with the Bank of Iran and the Middle East.

180. The Claimants assert that Vetco Iran's and VIAG's attempts to exercise the ordinary rights of an account-

holder were either ignored or refused. In this respect, the Claimants have submitted several copies of correspondence with the banks. First, a copy of a letter dated 16 June 1979, signed for Vetco Iran. This letter requests the exchange and transfer to the United Kingdom of certain amounts relating to externally paid payroll costs under two contracts. The request allegedly was not honored. Then, on 15 January 1980, the respective banks were informed in writing by both Vetco Iran and VIAG of a change of the signatures on the different accounts. Finally, on 23 October 1981, several telexes were sent to the Banks in Iran. These telexes all state that the account holder "hereby wishes to close and terminate its bank account . . . and immediately withdraw all funds of monies in this account".

181. The Claimants first sought the return of a total amount of 6,481,487 Rials, allegedly held in these rial accounts as of 29 February 1980. The Claimants later reduced the amount of the claim to 120,208 Rials.

182. The Respondents agree that on three accounts a credit balance is available, totalling 132,445 Rials. They argue that Vetco Iran and VIAG have always had free access to these accounts and, the 16 June 1979 letter not constituting a request to close the accounts, the claim is outside the Tribunal's jurisdiction.

B. JURISDICTION OVER CLAIM 2.6

183. The jurisdictional issue for the Tribunal to decide here is whether the claim for the credit amount on bank accounts was outstanding within the meaning of the Claims Settlement Declaration, on 19 January 1981. In this respect the Tribunal has previously held that:

> A mere right to payment from a bank account is not a "claim" within the meaning of the Claims

> Settlement Declaration, but a claim that the use of the account has been interfered with unreasonably or that the account has in some other manner been taken is such a claim.

Harza Engineering Company and The Islamic Republic of Iran, Award No. 19-98-2 at 8-9 (30 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 499, 504. See also Training Systems Corp. and Bank Tejarat, et al., Award No. 283-448-1 (19 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 331.

184. The Tribunal notes that the 16 June 1979 letter only requested the exchange and transfer of certain funds and did not request the closure of any account. Furthermore, the letter does not refer to any of the account numbers, the credit balance of which is the subject of this claim, and the Tribunal therefore cannot find it relevant to the present Claim. On the other hand, the Tribunal finds that the letters dated 15 January 1980 clearly prove that neither Vetco Iran nor VIAG intended at that time to close their accounts.

185. The Tribunal finds that a request to close the bank accounts and transfer the available funds, was made only when Vetco Iran and VIAG sent telexes to that effect on 23 October 1981. This date being some 9 months after the date of the Claims Settlement Declaration, the Tribunal concludes that the claim was not outstanding on 19 January 1981. The claim for the aggregate credit balance of the bank accounts is dismissed for lack of jurisdiction.

VIII. CLAIM 3.2

A. FACTS AND CONTENTIONS

186. Claim 3.2 is a Claim filed by Combustion Engineering against Machine Sazi Arak. The Claimant seeks a total

of US$286,567, plus interest, under three heads of relief: US$266,000 for unpaid invoices under two License Agreements; US$20,400 for an unpaid invoice concerning a Plant Layout Study prepared by CE; and US$167 for medical expenses paid by CE for MSA's Managing Director while he was visiting Combustion Engineering's headquarters in the United States. Initially, CE also claimed US$2,670 for air travel expenses of MSA employees paid by CE. This Claim was subsequently withdrawn. The Respondent filed a Counterclaim in the amount of US$663,762 for breach of the two License Agreements by CE.

187. On 16 October 1973, CE and MSA signed two License Agreements: the Steam Generation Contract ("SGC") and the Pressure Vessel Contract ("PVC"). Under the licenses, CE authorized MSA to manufacture and sell various steam generating boilers and related pressure vessels of CE design. CE granted MSA an exclusive license to manufacture licensed equipment in Iran and a non-exclusive license to use and sell such equipment both in and outside Iran. Under the licenses CE furthermore undertook to supply MSA technical information, assistance and know-how regarding the licensed equipment, to provide the latest information on licensed equipment and to supplement such information periodically to keep it up to date.

188. In return for the rights and licenses granted by CE to MSA, the latter agreed to make specified annual payments to CE:

- annual lump sum payments for a period of five years, totalling US$120,000, of which US$60,000 was to be paid at the beginning of the first year, and US$15,000 at the end of the following years;

- payments of minimum license fees from the end of the third year of the licenses onwards: in the third year

> US$10,000 under the SGC and US$15,000 under the PVC; in the fourth year US$15,000 under the SGC and US$25,000 under the PVC; as of the fifth year US$22,000 under the SGC and US$32,000 under the PVC.

189. The agreements also stipulated that at MSA's request CE would provide Special Services relating to licensed equipment. The relevant article in each agreement reads in part,

> COMBUSTION undertakes to provide ARAK [MSA] with Special Services with respect to Licensed Equipment at the request of ARAK and provide special or additional information to ARAK resulting therefrom. . . .

The Agreements then provide that "[f]or [Special Services] ARAK shall pay COMBUSTION the direct and indirect costs thereof plus fifteen percent (15%)."

190. Both licenses required that payment of sums due be made in US dollars in the United States within 60 days after receipt of the respective invoice.

191. On 9 May 1974, MSA notified CE that the approval by the Iranian Ministry of Economy had been obtained. Thereupon immediate steps were taken by CE to collect the basic data and technical information to be sent to MSA. In mid-July 1974 the information was sent to MSA's General Manager, who acknowledged receipt of the information. CE asserts that during the following years, until late 1979, it continued to supply all revisions and updates of the documents on a regular basis to MSA. According to CE all the information delivered to MSA was complete, comprehensive and adequate, and was in all respects appropriate to the scope of the two licenses. In late 1979, when packages allegedly were returned unopened from Iran, CE discontinued the mailing of the updated materials.

1. Licensing Payments Claim

192. Shortly after CE dispatched its first set of documents in July 1974, invoices No. FLO-1-939 and FLO-2-939, each for US$60,000 and representing the first year minimum lump sum fees, were sent to MSA and subsequently paid by it. CE continued to invoice MSA every year in accordance with the license provisions but claims that invoices No. FLO-3-939 through FLO-18-939 remain unpaid. The total amount of these invoices is US$293,000. CE originally claimed this full amount, but at the Hearing it reduced its Claim for invoices No. FLO-17-939 and FLO-18-939 to US$11,000 and US$16,000 respectively. These two invoices cover the minimum annual license fees for the year May 1979 - May 1980 for the SGC and PVC respectively. This amendment derives from Claimant's acknowledgement that as of the beginning of November 1979 the licenses were frustrated and there was thus no further performance. CE now claims US$266,000, plus interest, for the unpaid invoices.

193. MSA has raised the defence that the License Agreements were invalid as they had not been approved by the High Council of the Industrial Development and Renovation Organization ("IDRO"), of which MSA is a fully-owned subsidiary (see supra, para. 22). According to the Respondent, this approval was a necessary condition for the license agreements to be valid. On the other hand, MSA argues that CE breached both License Agreements, because information was either not issued, incomplete, inaccurate or dispatched untimely. Because of CE's alleged deficient performance under the licenses, MSA did not pay the invoices. At the Hearing MSA brought a third defence against CE's claim for the unpaid invoices; MSA argued that it was under no obligation to pay the minimum license fees as long as it was not able to manufacture or sell the licensed equipment.

2. Plant Layout Study Claim

194. In order to achieve a situation in which MSA would be capable of manufacturing all of the licensed equipment under the License Agreements, both Parties agreed that the MSA plant needed considerable improvement and development. Only then would MSA be in a position fully to exploit the information provided to them. Partly for that reason, CE sent an evaluation team to MSA's plant. The report on this visit, containing CE's recommendations regarding the expansion of the plant, was sent to MSA on 20 September 1974. A few weeks later MSA acknowledged receipt of this report and requested CE to prepare a Plant Layout Study as recommended by CE in the report. The final detailed Plant Layout Study, which followed a preliminary layout plan and recommendation, was submitted to MSA in January 1976. On 9 February 1976, CE issued invoice No. FLO 1-2180 in the amount of US$20,400 for CE's work on the Plant Layout Study.

195. It is CE's position that the Plant Layout Study fell within the Special Services provisions of the License Agreements and that it did inform MSA accordingly. CE alleges that the invoice for the Plant Layout Study remains unpaid and claims the full amount of US$20,400 plus interest. MSA denies that it requested CE to prepare the Plant Layout Study and asserts that it complained when the respective invoice was submitted.

3. Medical Expenses Claim

196. In January 1977, Mr. Homayouni, the Managing Director of MSA, visited CE's headquarters in the United States on a business trip. Upon his request, CE made an appointment for him at the Lahey Clinic Foundation in Boston, Massachusetts, for orthopedic treatment. CE subsequently received a bill from the Lahey Clinic Foundation for

US$167, which it paid on 11 March 1977. With invoice No. FLO 1-2234 of 2 July 1977, CE charged MSA for this amount but allegedly was never paid for it.

197. CE alleges that the costs incurred for Mr. Homayouni fell within the scope of Article 13 of the SGC and Article 12 of the PVC, the relevant parts of which read in identical wording as follows:

> The technical experts, representatives and other personnel at any time made available or furnished by either party hereto to the other . . . shall not be the employees or representatives of the party to whom furnished or made available. Each party shall be responsible for, and shall pay (subject to reimbursement by the other party hereunder to the extent specifically so provided herein), all such salaries, living allowances, traveling expenses and other remuneration and expenses to which its said employees or representatives may be entitled, and shall assume full responsibility for any and all claims which may be asserted by any of its said employees or representatives to have arisen during the course of their activities in the plants or offices of the other party or otherwise under this Agreement.

CE therefore claims the full amount of US$167, plus interest.

198. The Respondent asserts that Mr. Homayouni, as Managing Director of MSA on a business visit at CE's headquarters, was not an employee "made available" to CE under the above referred Articles. It therefore is MSA's position that under the License Agreements MSA is not liable to reimburse the medical expenses of Mr. Homayouni, for which he himself is responsible.

B. MERITS OF CLAIM 3.2

1. Validity of the License Agreements

199. It has been contested by the Respondent that the License Agreements were properly concluded. The Tribunal thus first has to determine whether the Agreements did indeed become effective between the Parties. In this respect, the Tribunal notes that both Agreements describe the "Effective Date" as "the date ARAK [MSA] makes notification to COMBUSTION by telex that all pertinent approvals have been obtained." The Tribunal notes in this respect that the Agreements do not specify whose approval was required.

200. By telex of 9 May 1974, MSA informed CE that they had "received approval of the Ministry of Economy for our license agreements." Neither in this telex, nor thereafter, did the Respondent mention that any further approval was required. Moreover, MSA has provided no evidence that the 9 May 1974 communication was qualified and that further approval was necessary. It was only during the present proceedings that MSA raised the argument that the approval of the High Council of IDRO had not been obtained.

201. The Tribunal furthermore notes that after the 9 May 1974 telex, MSA's behavior was consistent with CE's understanding that the Agreements had become effective as of that date. This is especially evidenced by MSA's acceptance of the documents CE sent and its payment of certain invoices. During the course of its business relationship with CE, MSA never argued that the implementation of the licenses was premature. Accordingly, the Tribunal decides that both License Agreements were properly concluded and became effective on 9 May 1974. In any event, in view of its behavior, MSA cannot now be heard to argue the contrary.

2. Licensing Payments Claim

202. Regarding the invoices submitted under the License Agreements, the Tribunal notes that there is a great amount of evidence in the file of CE's performance between 1974 and late 1979. This evidence is in the form of copies of transmittal letters which accompanied the materials forwarded, reports made by CE's license evaluation team pursuant to their visits to MSA in Iran and internal memoranda regarding the Parties' performance under the License Agreements.

203. The Respondent states that the documents to be provided were either not sent or were incomplete, inaccurate or dispatched untimely. Although MSA was requested to acknowledge receipt of the packages forwarded, the Tribunal does not find, given the frequent communications between the Parties, that the absence of evidence of such acknowledgement receipts is proof of MSA's assertation.

204. There are two occasions recorded in the file where MSA complained about the delivery of certain documents. In June 1976, CE received a letter from MSA in which it was claimed that the package of information which was sent to MSA in April 1976, had not been received by MSA until 14 June. In September of the same year, MSA complained when some items of the Drafting Design Standards were missing. CE subsequently sent a letter enclosing the items in question. According to the Claimant there were no further complaints. Other than these two complaints, no contemporaneous evidence has been submitted by MSA suggesting dissatisfaction with CE's performance. The Tribunal concludes that MSA's defence has no merit.

205. MSA has also argued that they were under no obligation to pay the minimum license fees as long as they were not in the position to manufacture and sell any of the licensed equipment. The License Agreements, however,

contain no such condition. The Tribunal also notes that MSA never complained about the invoices submitted. On the contrary, the record clearly shows that MSA repeatedly acknowledged its intention to pay the invoices.

206. Taking all the evidence into consideration, the Tribunal is satisfied that CE performed its work properly and that until November 1979 there was no such defective performance by CE as to justify MSA's refusal to pay the invoices. Accordingly, the Tribunal concludes that CE is entitled to payment of the unpaid invoices which cover the periods of performance by CE.

207. The Tribunal is not convinced that invoices No. FLO-17-939 and FLO-18-939 come within that scope. The Claimant has admitted that by November 1979 it suspended any further performance under the licenses because the Agreements were frustrated due to the revolutionary conditions prevailing in Iran. The amounts claimed on these two invoices cover minimum fees which became due at the end of the sixth license year, i.e. May 1980. Therefore, they were not yet due when the agreements were frustrated. The Claim for invoices No. FLO-17-939 and FLO-18-939 is accordingly dismissed.

208. MSA has asserted that invoices No. FLO-3-939 and FLO-4-939, each issued on 15 September 1976 in the amount of US$15,000, were duly paid to CE, although it has not provided proof of payment. CE bases its claim for these two invoices on the absence of any evidence of payment in its files. The Tribunal notes, however, that on March 7, 1978, CE sent a telex to MSA's Finance Director requesting payment of the then outstanding invoices. The list includes invoices issued in 1976 and 1977 but does not mention invoices No. FLO-3-939 and FLO-4-939. The Tribunal accordingly dismisses the Claim for these two invoices.

209. The Tribunal therefore concludes that CE is entitled to payment of invoices No. FLO-5-939 through FLO-16-939, amounting to US$209,000. Interest will run from 9 January 1980, which is thirty days after invoice No. FLO-16-939 was submitted.

3. The Plant Layout Study Claim

210. The Claimant has submitted an overwhelming number of documents regarding the expansion of the MSA plant which indicate a close working relationship between the Parties extending over several years. The evidence further shows that even after CE submitted the final report in January 1976 and the related invoice in February 1976, the Parties continued to meet and discuss the expansion of MSA's plant.

211. MSA denies that it ever commissioned CE to prepare this Plant Layout Study and alleges that when the invoice was submitted it complained about the same. No evidence in support of that denial has been submitted. On 20 September 1974 CE sent a letter to MSA enclosing a report prepared by CE's evaluation team after their visit to MSA. CE therein proposes to furnish MSA with a plant layout study. On 14 October 1974, Mr. Moasser of MSA wrote a letter to CE which stated "[w]e would welcome a recommended shop layout for each of the licensed products as per Section II of your recommendation." On 14 March 1975, CE sent MSA their initial recommendations on the Plant Layout Study. MSA made no objection to this recommendation. With telexes dated 19 June 1975 and 13 November 1975, CE informed MSA that these special services were rendered to MSA by CE in accordance with the license and technical assistance agreement whereby CE was allowed to reimbursement for such special work. The exchange of telexes and letters went on until CE submitted the final report in January 1976. MSA never questioned the basis on which CE was preparing this Study. When CE

submitted invoice No. FLO-1-2180, MSA did not deny any liability for this invoice, but, as with the invoices regarding licensing payments (see supra, para. 205), MSA expressed its intention to pay this invoice. In a telex sent on 22 May 1978, Mr. Farahani of MSA informed CE that its unpaid invoices "will be paid as soon as we have the necessary information on our budget allocation."

212. Accordingly, the Tribunal holds that MSA requested CE to prepare a Plant Layout Study and accepted the same without ever raising any objections. CE therefore is entitled to payment of the amount invoiced to MSA. MSA has not denied that the invoice remains unpaid. The Tribunal therefore awards US$20,400. Interest will run from 5 August 1978, which is thirty days after CE issued duplicate invoice No. FLO-1-2180 to MSA.

4. The Medical Expenses Claim

213. CE requests reimbursement for the medical expenses it paid on behalf of MSA's President. The Claimant submits that the expenses were incurred by Mr. Homayouni during a business trip directly concerned with the licenses and as such were for MSA's account pursuant to Articles 12 and 13 of the PVC and SGC respectively.

214. While the Tribunal may agree that Mr. Homayouni's business trip directly related to the License Agreements, no evidence has been presented by the Claimant showing that the business trip of MSA's President to CE was made in accordance with these articles, i.e., that Mr. Homayouni's presence at CE's headquarters could be characterized as that of a "representative [or] other personnel at any time made available or furnished [to CE]." The Claim for payment of invoice No. FLO-1-2234 is therefore dismissed on the merits.

C. MSA'S COUNTERCLAIMS

1. Facts and Contentions

215. MSA asserts that CE breached the License Agreements by submitting faulty, incomplete and inaccurate documentation. In this respect it refers to the complaints made at the time, concerning CE's performance under the License Agreements (supra, para. 204). MSA also argues that CE knew in advance that MSA did not have the technical expertise adequately to implement the License Agreements. MSA counterclaims for US$663,762. This amount is made up of US$150,000 covering invoices No. FL-1-939 through FLO-4-939, allegedly paid by MSA, plus "inflationary losses."

216. CE's defence to this Counterclaim is that it did fulfil its obligations under the License Agreements and that all documents and updatings were sent on a regular basis. CE also asserts that whenever MSA so requested, it provided extra copies of documents. It is moreover CE's position that, while MSA could not manufacture the licensed equipment until plans for expansion of the MSA plant, based on the Plant Layout Study (supra, para. 194), had been put into effect or at least until substantial alterations had been made to their existing facilities, MSA, not CE, was responsible for that situation and that MSA's failure to manufacture licensed equipment was not attributable to CE and its performance under the License Agreements.

D. JURISDICTION OVER MSA'S COUNTERCLAIM

217. MSA's Counterclaim is based on the License Agreements which are the subject of this claim, and is thus within the scope of Article II, paragraph 1, of the Claims Settlement Declaration. The Tribunal therefore holds that it has jurisdiction over the Counterclaim.

E. MERITS OF MSA'S COUNTERCLAIM

218. The alleged breaches of the License Agreements on which this Counterclaim is based, have already been considered under the Licensing Payments Claim (supra, paras. 202-206). After considering the evidence and the arguments of the Parties, the Tribunal found that the Claimant's performance under the licenses was not a material breach of the obligations undertaken. In view of this finding the Counterclaim is dismissed on the merits.

IX. CLAIM 3.3

A. FACTS AND CONTENTIONS

219. This Claim is brought by Combustion Engineering against the Industrial Development and Renovation Organization. The Claim is for US$7,500 for an unpaid invoice concerning a training program given by CE to an IDRO employee.

220. At the request of IDRO, the parent company of MSA, CE provided a Management Orientation Program for Mr. Saremaslani, a senior official of IDRO. After this training Mr. Saremaslani was to be assigned to MSA as a consultant with respect to the License Agreements which have been discussed in Claim 3.2, supra.

221. In a letter dated 20 August 1978, Mr. Khorzad, Vice-President of IDRO approved the program as proposed by CE and agreed to pay CE a nominal fee of US$7,500 for the services to be provided by CE. Mr. Saremaslani attended the Program between 5 September and 15 December 1978. On 16 October 1978, CE issued invoice No. FLO-1-2295 in the sum of US$7,500 for Mr. Saremaslani's course.

222. The Claimant asserts that the invoice remains unpaid, and claims US$7,500, plus interest. The Respondent alleges that there is no evidence that the course was ever requested by IDRO or duly provided by CE.

B. MERITS OF CLAIM 3.3

223. The evidence in the record clearly shows that CE and IDRO exchanged some communications regarding details of the Program to be arranged for Mr. Saremaslani. That an agreement was reached by the parties is especially confirmed by the letter of IDRO's Vice-President dated 20 August 1978. Moreover, the Tribunal notes that when CE issued invoice No. FLO-1-2295 IDRO did not raise any objections to this invoice. The Respondent's defence must therefore be rejected.

224. The Tribunal concludes that CE is entitled to payment of invoice No. FLO-1-2295 and awards CE US$7,500. Interest will run from 15 November 1978, which is thirty days after the invoice was issued.

X. CLAIM 5.1

A. FACTS AND CONTENTIONS

225. Claim 5.1 is a claim filed by Combustion Engineering and Natco UK Ltd. against Machine Sazi Arak. The Claimants seek £66,847.61 in damages and £39,586.64 for lost profits arising from an alleged breach of contract. Alternatively, they claim £66,847.61 for unjust enrichment. MSA has filed six counterclaims, all for breach of contract, amounting to US$8,802,623.60.

226. This Claim originates in a four-sided transaction for the manufacture and sale of blowcases. A blowcase is a

device used to transfer liquids (in this case, hydrocarbons) from one point to another without the use of a pump, where there is a pressure differential from low to high. In a series of purchase orders between 16 May and 18 July 1978, Ralph M. Parsons Co. ("Parsons") ordered thirty-two blowcases from Natco UK. Parsons required the blowcases for OSCO's IJPC Project, where it was the Managing Contractor. See supra, para. 29. Parsons' orders specified that the blowcases should be manufactured in Iran by MSA. C-E Natco, an unincorporated division of Combustion Engineering, represented Combustion Engineering in Iran. Thus, while Natco UK played a central role in this transaction, C-E Natco was MSA's principal interlocutor. Discussions between C-E Natco and MSA led to an agreement that MSA would obtain fabrication materials at its own cost. MSA would then make the blowcases using design drawings and accessories provided without charge by Natco UK. The accessories consisted of specialized equipment, such as "magnetrol level switches" and Klinger level gauges. Natco UK would recover the cost of these items in the price that it charged Parsons. MSA would receive payment from Natco UK for making the blowcases, thus acting as a fabrication shop for Natco UK. In July 1978, MSA ordered most of the fabrication materials that it needed from P. Van Leeuwen ("Van Leeuwen") in The Netherlands. Also in July 1978, Natco UK sent its first shipment of accessories to MSA.

227. Certain terms of the blowcase agreement were specified in a letter dated 29 August 1978 from C-E Natco to MSA, which constituted C-E Natco's formal purchase order for the blowcases. The terms of payment were: "40% which is 1,233,728 Rials within 10 days after place [sic] of this order and 60% of the remainder which is 1,850598 [sic] Rials after final inspection." The letter required an invoice addressed to Natco UK for the 40% payment. MSA acknowledged C-E Natco's order in an undated letter that it sent to Mr. Enayat Kazemi, a C-E Natco employee. The letter stated that

MSA would invoice Natco UK for 1,223,728 Rials and requested that payment be made "at the earliest." It appears from this recital of the principal terms of the blowcase agreement that both Natco entities (collectively, "Natco") were parties to the contract with MSA.

228. The evidence indicates that Natco UK shipped the design drawings to MSA on 15 September 1978 and most of the remaining accessories in two batches, on 28 September and 4 October 1978. Some accessories, however, were bought by Natco UK but never shipped to Iran. MSA invoiced Natco UK for the 40% downpayment on 30 September 1978, three weeks after the invoice was due. The Parties agree that Natco UK never made that payment, though they disagree over the legal significance of that omission.

229. The blowcase deal was immediately beset by delays. In a telex to Parsons dated 26 September 1978, Mr. Russell R. Hicks, C-E Natco's manager of operations in Iran, apologized for the delays and offered hope for the future. Three weeks later Mr. Hicks reported to Natco UK that, because of strikes, "not much has moved on this job." The strikes evidently delayed the clearance of the accessories through customs and halted work on the shopfloor at MSA. Mr. Hicks predicted that, if the strikes ended that week, the first ten blowcases could be completed by mid-December. However, the turmoil in Iran intensified, and this schedule was not met. Mr. Hicks left Iran in December, and communication with MSA became difficult. According to Mr. Hicks, he learned from Mr. Kazemi in March 1979 that the fabrication materials ordered from Van Leeuwen were in customs at Arak and that Natco UK's first shipment of accessories had reached Khoramshar. Around this time, also, Van Leeuwen confirmed that MSA had paid for the fabrication materials.

230. These continuing delays undermined Natco UK's deal with Parsons. Mr. Hicks states in an affidavit that he

negotiated with representatives from Parsons in July 1979 "in an attempt to revitalize Natco UK's contract with Parsons." However, on 4 September 1979, Parsons cancelled its order for the blowcases. Natco UK then attempted to arrange for the direct sale of the blowcases to NIOC, but was not successful.

231. There is no evidence that either Natco UK or C-E Natco ever informed MSA about Parsons' cancellation of the order. There was, however, some contact between MSA and the two Natco entities during the autumn of 1979. Mr. Kazemi represented C-E Natco at a meeting with MSA officials on 4 September 1979. According to the minutes of that meeting, Mr. Kazemi informed MSA that C-E Natco's position concerning the blowcase order would be "clarified within one month," and the downpayment would be made within two months. And if the order was not confirmed within one month, then C-E Natco would state its position in writing. There is no evidence in the record that C-E Natco ever provided the promised clarification. Later in the month, in an internal memorandum, Mr. Hicks passed on a report from Mr. Kazemi (who had visited MSA) that MSA had received the first shipment of accessories and expected the remaining accessories to clear customs imminently. Mr. Hicks then discussed what C-E Natco's requirements should be for proceeding with the project. In a telex dated 24 October 1979 and sent to Natco UK and to C-E Natco's home office, Mr. Kazemi provided a list of the accessories that MSA had received; the list covered all, or virtually all, of the accessories that Natco UK had sent to MSA. Meanwhile, Mr. David J. Peek, a project engineer for Natco UK, noted in a memorandum that "[b]y chance," he had met an MSA official, Mr. Parviz Ahmadi, in London on 19 September 1979. They discussed the points raised in Mr. Hicks' memorandum. Mr. Peek reported the following news from the encounter: Mr. Ahmadi described recent changes in MSA's top management; he agreed to confirm whether MSA had indeed received the accessories sent by

Natco UK; he stated that the original price for the blowcases should be maintained; and finally, he suggested that compensating MSA for its material costs would be acceptable to MSA as a "Progress Payment." Mr. Peek states in an affidavit that "Mr. Ahmadi did not follow through in these efforts and I had no further communications from MSA."

232. There is no evidence of any subsequent communication between the Parties concerning the blowcases, although MSA has, in support of one of its counterclaims, submitted an invoice that Natco UK sent to MSA. It covers project supervision and other services for eighteen "scrubbers" and is dated 6 February 1980. However, in 1979 and subsequently, negotiations continued for the direct sale of the blowcases to NIOC. Representatives of Natco UK discussed the matter with NIOC and its purchasing agent in London, Iranian Oil Services Co. ("IROS"), and later with Kala Ltd., IROS's successor in London. The Parties have submitted no evidence that shows the content of those discussions in 1979-1981; the Claimants say simply that the discussions "proved to be unfruitful." In 1982, however, there was an exchange of telexes that does appear in the record: Natco UK received a telex from Kala Ltd., dated 30 August 1982. Referring to the blowcase deal and to a communication from Natco UK dated 16 June 1981, Kala inquired whether "this file is now closed as far as Natco UK are concerned." The telex went on to quote a message from NIOC for Natco UK to consider if it did not consider the file closed. The message from NIOC began:

> We have contacted Machine Sazi Arak, and were advised that the 32 blow cases are ready for delivery at their manufactured cost. Since the original order was placed by Parsons to Natco UK and Natco UK arranged the manufacturing to be done by MSA we see no easy way out for collecting these (due to complexity of claims and counter claims between Parsons and NIOC on one hand and Natco UK and MSA on the other hand).

The message concluded with three options for resolving the matter that NIOC proposed for Natco UK's consideration.

233. Natco UK responded by telex on 9 September 1979. It began by confirming that "the file is not closed as far as Natco UK is concerned." The telex expressed its preference among NIOC's proposals and made a counter-proposal; it concluded by requesting a meeting with Kala to discuss the matter further. According to the Claimants, Natco UK received no answer to this telex. There is no evidence before the Tribunal that indicates what MSA did with the blowcases, if they were, indeed, completed.

234. The Claimants allege that MSA breached its contract with C-E Natco by failing to manufacture the blowcases and to deliver them on time to C-E Natco. According to the Claimants, MSA's failure to communicate with C-E Natco in late 1978 and early 1979 and its failure to give adequate assurance of its continued performance are further evidence of MSA's intention to breach the agreement. The Claimants argue that MSA's breach of contract entitles them to damages covering the full cost of the accessories and services provided to MSA, plus the profit that Natco UK would have earned from selling the blowcases to Parsons. The Claimants have submitted evidence to show that their costs were £66,847.61 and that their anticipated profit was £39,586.64. The Claimants thus claim £106,434.25. Alternatively, the Claimants assert that MSA has been unjustly enriched in the amount of £66,847.61. This amount represents the total costs incurred by Natco UK for the fabrication of the blowcases -- i.e., the cost of engineering services, plus the cost of accessories "to be provided to MSA." Included under the latter rubric is £6,360.88 for accessories purchased by Natco UK but not shipped to MSA.

235. In opposition to this claim, MSA alleges that it was Natco UK, not MSA that breached the contract. This

occurred when Natco UK failed to make the 40% downpayment required by the contract. MSA also contends that Natco UK failed to ship all the required accessories to it. MSA maintains that this breach of contract gave it the right to a lien upon the accessories that did reach MSA. The Claimants respond that the downpayment was not a condition precedent to performance of the contract; or, if it was, that MSA waived its rights by beginning to perform before the payment was due and by continuing to perform after Natco UK failed to make the payment.

236. MSA has also filed six counterclaims under Claim 5.1: The first counterclaim alleges breach of contract by Natco UK in the blowcase agreement; it is thus the mirror image of Claim 5.1 itself. Three counterclaims involve purchase orders from 1978 that were similar to C-E Natco's order for the thirty-two blowcases. MSA seeks damages arising from C-E Natco's alleged failure to supply accessories and to make downpayments. These three counterclaims concern orders for: (1) three indirect heaters, (2) two indirect heaters, and (3) one desalter. The two remaining counterclaims involve agreements under which C-E Natco would provide engineering services and parts for projects undertaken by MSA for NIOC. These projects were: (1) the manufacture of the Kangan Gas Refinery Tanks, and (2) the manufacture of eighteen scrubbers. MSA alleges that C-E Natco failed to perform under these agreements and seeks compensation for the resulting damages that it suffered. The total amount sought by MSA in these six counterclaims is US$8,802,623.60.

237. In support of the Tribunal's jurisdiction over these counterclaims, MSA initially argued that they all arose from a Manufacturing Agreement concluded between C-E Natco and MSA on 15 July 1977. MSA later added the argument that the counterclaims also arose from the licensing agreements -- the Pressure Vessel Contract and the Steam

Generation Contract -- that figure in Claim 3.2 of this Case. See supra, para. 187. The Manufacturing Agreement, according to MSA, supplemented the earlier licensing agreements: Together, the three contracts were an umbrella under which the different purchase orders between C-E Natco and MSA formed a single transaction.

238. The Claimants view the various purchase orders as discrete transactions that did not arise from the Manufacturing Agreement or from the two licensing agreements. Thus, while they agree that the Tribunal has jurisdiction over the blowcase counterclaim, they contest its jurisdiction over the other counterclaims. They also argue that MSA has failed to submit sufficient evidence to prove the merits of the counterclaims.

B. JURISDICTION OVER CLAIMS AND COUNTERCLAIMS IN CLAIM 5.1

239. The Tribunal must first examine its jurisdiction over the subject matter of this claim. The evidence submitted by the Parties poses the question whether Claim 5.1 was outstanding on 19 January 1981, as required by the Claims Settlement Declaration, Article II, paragraph 1. MSA suggests that the claim was not outstanding on that date; the Claimants contend that the claim arose when MSA failed to manufacture the blowcases and deliver them to C-E Natco and was therefore outstanding on 19 January 1981.

240. The evidence for resolving this issue consists mostly of communications within and between C-E Natco and Natco UK, plus affidavits for the Claimants from two leading participants. This evidence shows that the blowcase agreement began to founder almost immediately after it was concluded. This was evidently the result of the turbulence caused by the Iranian Revolution. Strikes hindered the

delivery of necessary materials to MSA and halted work on its shopfloor. As the delays lengthened, Parsons (which, it will be recalled, withdrew its personnel from Iran in December 1978; see supra, para. 37) decided to cancel its order for the thirty-two blowcases. This occurred on 4 September 1979; it might have been the occasion for C-E Natco to cancel its own order with MSA -- and to claim compensation. Apparently, however, C-E Natco did not even inform MSA of Parsons' action. Instead, C-E Natco strove to keep the deal alive, on the one hand, by attempting to sell the blowcases directly to NIOC, and, on the other hand, by negotiating with MSA. The contacts between the Parties in September 1979 focused upon the accessories that Natco UK had shipped and upon the steps that could be taken to complete the deal. It is evident that, as of that time, C-E Natco accepted the delays that had occurred and sought to move ahead. Similarly, MSA appeared willing to continue despite Natco's failure to make the required downpayment. It cannot be said that Claim 5.1 had arisen by this point: Just as MSA had, according to the Claimants, waived its right to the downpayment, C-E Natco now waived whatever claims it might have had against MSA for non-performance.

241. As far as the record shows, this situation did not change between the autumn of 1979 and 19 January 1981. The only information available is that Natco UK engaged in fruitless negotiations with other parties -- NIOC and its agents. This shows that, for C-E Natco and Natco UK, the blowcase agreement remained in force; they still expected MSA to manufacture the blowcases. Natco's response in 1982 to Kala's telex confirms this impression: The file remained open.

242. On the basis of this evidence, the Tribunal finds that, at least as late as 19 January 1981, C-E Natco and Natco UK waived their objections to MSA's alleged failure to perform under the blowcase agreement. This leads to the

conclusion that Claim 5.1 was not outstanding on the date of the Algiers Accords and must accordingly be dismissed. Cf. Harnischfeger Corp. and Ministry of Roads and Transportation, et al., Award No. 144-180-3, at 29-30 (13 July 1984), reprinted in 7 Iran-U.S. C.T.R. 90, 107 (a claim based upon alleged anticipatory breach of contract was not outstanding where the claimant's failure to exercise its right to terminate indicated that it considered the contract "as continuing in force and not irrevocably breached").

243. The Tribunal's jurisdiction over a counterclaim is dependent upon its jurisdiction over the claim to which it relates. International Technical Products Corp. and Government of the Islamic Republic of Iran, et al., Award No. 186-302-3, at 42-43 (19 Aug. 1985), reprinted in 9 Iran-U.S. C.T.R. 10, 38-39. Hence, the dismissal of Claim 5.1 requires the dismissal of MSA's six counterclaims as well.

XI. INTEREST

244. In order to compensate the Claimants for the damages they have suffered as a result of delayed payments, the Tribunal considers it fair to award simple interest at the rate of 9.75% on the various amounts found due. See supra, paras. 58, 73, 119, 127, 168, 209, 212, 224.

XII. COSTS

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

XIII. AWARD

246. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a) The Respondents NATIONAL IRANIAN OIL CO. and OIL SERVICE CO. OF IRAN are obligated in Claim 2.1 to pay the Claimants COMBUSTION ENGINEERING, INC. and VETCO INC. the sums of

1) Four Hundred Twenty Nine Thousand Eight Hundred Sixty Seven United States Dollars (US$429,867), plus simple interest at the rate of 9.75% per annum (365-day basis) from 3 April 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment from the Security Account;

2) One Hundred Eighty Nine Thousand Nine Hundred Fifty United States Dollars (US$189,950), plus simple interest at the rate of 9.75% per annum (365-day basis) from 30 June 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment from the Security Account.

b) The Respondent NATIONAL IRANIAN OIL COMPANY is obligated in Claim 2.3 to pay the Claimant COMBUSTION ENGINEERING, INC. the sums of

1) One Hundred Seventy Three Thousand Nine Hundred Seventy One United States Dollars (US$173,971), plus simple interest at the rate of 9.75% per annum (365-day basis) from 21 June 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment from the Security Account;

2) Four Hundred Eighty Nine Thousand One Hundred Eight United States Dollars (US$489,108), plus

simple interest at the rate of 9.75% per annum (365-day basis) calculated as follows:

- on US$53,991 from 2 February 1979;

- on US$102,290 from 3 March 1979;

- on US$11,017 from 26 September 1979;

- on US$321,810 from 15 January 1982,

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

c) The Respondent MACHINE SAZI PARS is obligated in Claim 2.4 to pay the Claimants COMBUSTION ENGINEERING, INC. and VETCO INC. the sum of Fifty Three Thousand Seventy Two United States Dollars (US$53,072), plus simple interest at the rate of 9.75% per annum (365-day basis) from 10 November 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment from the Security Account.

d) The Respondent MACHINE SAZI ARAK is obligated in Claim 3.2 to pay the Claimant COMBUSTION ENGINEERING, INC. the sums of

1) Two Hundred Nine Thousand United States Dollars (US$209,000), plus simple interest at the rate of 9.75% per annum (365-day basis) from 9 February 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment from the Security Account;

2) Twenty Thousand Four Hundred United States Dollars (US$20,400), plus simple interest at the rate of

9.75% per annum (365-day basis) from 5 August 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment from the Security Account.

e) The Respondent INDUSTRIAL DEVELOPMENT & RENOVATION ORGANIZATION OF IRAN is obligated in Claim 3.3 to pay the Claimant COMBUSTION ENGINEERING, INC. the sum of Seven Thousand Five Hundred United States Dollars (US$7500), plus simple interest at the rate of 9.75% per annum (365-day basis) from 15 November 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment from the Security Account.

f) 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 of 19 January 1981.

g) All other Claims of the Claimants COMBUSTION ENGINEERING, INC., VETCO INC. and NATCO UK LIMITED are dismissed.

h) All of the Counterclaims submitted by the Respondents NATIONAL IRANIAN OIL CO., OIL SERVICE CO. OF IRAN, MACHINE SAZI ARAK and THE ISLAMIC REPUBLIC OF IRAN are dismissed.

i) Each Party shall bear its own costs of arbitration.

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

Dated, The Hague
18 February 1991

Robert Briner
Chairman
Chamber Two

In the Name of God

George H. Aldrich

Seyed K. Khalilian
Concurring and Dissenting Opinion