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IMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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** DECISION - Date of Decision _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

99

CASE NO. 484
CHAMBER ONE
AWARD NO. 338-484-1

ARTHUR YOUNG & COMPANY,

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
TELECOMMUNICATIONS COMPANY OF IRAN,
SOCIAL SECURITY ORGANIZATION OF IRAN,

Respondents.

AWARD

Appearances:

For the Claimant:

Ms. Nancy D. Israel,
Assistant General
Counsel-International,
Mr. Edward L. Bartholomew,
Director of
International
Management Consulting,
Mr. Carl D. Liggio,
General Counsel.

For the Respondents:

Mr. Mohammad K. Eshragh,
Agent of the Islamic
Republic of Iran,
Mr. Assadollah Noori,
Legal Adviser to the
Agent,
Mr. Sohrab Rabie,
Assistant to the Agent,
Mr. Sarrafi,
Assistant to the Agent,

Mr. Abbas Younesi,
Representative, Bank
Tejarat,
Mr. Hossein Shahriari,
Representative,
Telecommunications Company
of Iran,
Mr. Javad Bahar Shanjani,
Representative, Social
Security Organization,
Mr. Mohsen Askari,
Representative,
Telecommunications Company
of Iran,
Mr. Morteza Nasira,
Representative, Social
Security Organization.

Also present:

Mr. Michael F. Raboin,
Deputy Agent of the
United States of
America,
Mr. Timothy E. Ramish,
Assistant Legal
Adviser, Department
of State.

A. PROCEEDINGS

1. On 18 January 1982, the Claimant, Arthur Young & Company, filed a Statement of Claim against the Islamic Republic of Iran ("Iran"), the Social Security Organization of Iran ("SSO"), and the Telecommunications Company of Iran ("TCI"). On 26 September 1983, the Respondents SSO and TCI each filed a Statement of Defence and Counterclaim; the Respondent Iran filed its Statement of Defence and Counterclaim on 12 October 1984. On 10 January 1985, the Claimant filed a Reply. A Rejoinder was filed by the Respondents Iran and TCI on 5 February 1986, and by the Respondent SSO on 23 October 1985.

2. On 25 August 1986, Bank Tejarat filed a "Statement of Counterclaim Arising Out of Bank Guarantees" naming First National Bank of Boston ("FNBB") as a Counterrespondent. In a letter filed on 9 October 1986, the Claimant objected to the admission of Bank Tejarat and FNBB as parties in this Case. By Order filed on 21 October 1986, the Tribunal invited the Respondents and Bank Tejarat to file their comments to this letter, adding that "[t]his does not prejudice the issue of Bank Tejarat's status as a Party in this Case."

3. After further exchanges of written pleadings and evidence, a Hearing in this Case was held on 10 June 1987. The Tribunal announced that although Bank Tejarat would be allowed to participate in the Hearing in support of the Respondents' presentation, its status as a party would be resolved after the Hearing. FNBB did not participate in the proceedings.

4. Mr. Edward L. Bartholomew, a partner of Arthur Young & Company and the firm's Director of International Management Consulting, provided the Tribunal with information at the Hearing without making the declaration

required of a witness. The Respondents objected to certain statements made by Mr. Bartholomew at the Hearing as being new evidence that was not admissible at this late stage of the pleadings. The Claimant argued that the statements did not constitute inadmissible "new evidence."

5. Mr. Koorosh-Hossein Ameli, having been designated by Presidential Order No. 52 of 3 April 1987 to act as a member of Chamber One instead of Mr. Seyed Mohsen Mostafavi for the purpose of this Case, participated as an arbitrator.

B. FACTS AND CONTENTIONS

I. Claim Against the Islamic Republic of Iran

6. The Claimant, Arthur Young and Company, is a partnership of certified public accountants. Its principal place of business is New York. During the period from September 1972 to April 1979 the Claimant also maintained an office and practice in Tehran with a clientele of mostly United States and non-Iranian companies doing business in Iran.

7. The Claim against the Respondent Iran is mainly predicated upon the allegation that the Claimant, due to wrongful actions of the Government of Iran, was compelled to close its Tehran office and to evacuate non-Iranian personnel. The Claimant contends that, as early as 1976, United States citizens in Iran were subjected to anti-American activity which increased over the years. It is alleged that, on or about 5 November 1978, revolutionaries blew up the Claimant's bank in Tehran, as a consequence of which the Claimant allegedly was unable to make its payroll or otherwise conduct financial transactions. The Claimant asserts that, on or about 6 or 7

November 1978, the family of one of its United States partners in Iran, James Ervin, was forced to leave Iran because of the danger to their health and safety created "by actions of the revolutionary guards and other agents of the Iranian government." Mr. Ervin himself was allegedly unable to return to Iran from a business trip to the United States. The Claimant asserts that, on or about 23 March 1979, "armed revolutionary committee members and militants" broke into Mr. Ervin's house and spent two and one-half days ransacking his home. It is alleged that, in mid-November 1978, another United States employee was threatened with bodily injury while attempting to buy gas at a gas station, and that he was warned by Iranians of threats against American school children. Consequently, the employee felt forced to evacuate Iran together with his family. The Claimant contends that, by the end of December 1979, one of its Iranian employees had been taken from his house in the middle of the night and questioned by "revolutionary guards."

8. The Claimant further asserts that by 30 January 1979 it had lost most of its American clients "due to actions of the new Government of Iran." These clients allegedly withdrew from Iran in view of the growing anti-Americanism and because the Iranian Government had terminated or cancelled contracts with them. Therefore, the Claimant asserts, it was unable to complete work for such clients. Facing a rapid deterioration of business, Claimant allegedly was forced to close its Tehran office and, during the period from 26 February 1979 to 1 April 1979, undertook a program of winding down its operation in Iran.

9. The Claimant argues that the above-mentioned acts and events are attributable to the Government of Iran and that, as a consequence, it had to close its Iranian practice and leave the country. It now seeks compensation for the following losses and damages allegedly incurred as a result thereof:

a)	Loss of tangible assets (office furniture, vehicles, cash, etc.)	$ 107,299
b)	Reimbursement of expatriate employees for personal property lost or losses suffered from a forced move	$ 42,146
c)	Severance pay to three Iranian employees	$ 45,000
d)	Payment to an Iranian employee who remained in the office and supervised the closing	$ 47,509
e)	Liability under the office lease agreement (even though the office could no longer be used)	$ 17,700
f)	Payment of relocation and housing costs to non-Iranian employees	$ 120,000
g)	Storage costs to date for files which remain in Iran	$ 5,100
h)	Equity losses, based on "going concern" value	$1,319,189
i)	Lost receivables	$ 189,386
	Total:	$1,893,329

10. With respect to the last item, the Claimant contends that it was unable to collect receivables, billed for professional services and expenses, due to the forced closing of its office. The item, however, also includes receivables which were not billed, allegedly because the Claimant could not complete its work.

11. The Claimant asserts, moreover, that many of these receivables reflect liabilities of business enterprises now controlled by Iran, and argues that, to the extent Iran has expropriated or otherwise taken control of the enterprises owing money to it, Iran is responsible for payment of the receivables.

12. The Respondent Iran denies the Tribunal's jurisdiction over this Claim. First, it disputes the Claimant's United States nationality. Second, it argues that a claim based on expulsion is in the nature of a tort, and does not, therefore, fall within any of the jurisdictional categories enumerated in Article II, paragraph 1, of the Claims Settlement Declaration. Third, it contends that the Claim is essentially predicated upon events and occurrences arising out of popular movements in the course of the Islamic Revolution, which, it suggests, are excluded from the Tribunal's jurisdiction under Paragraph 11 (D) of the General Declaration.

13. The Respondents have also advanced the argument that the Claimant "waived" its Claim because it did not respond in an appropriate manner to their Statements of Defence.

14. As to the merits, the Respondent Iran primarily denies the attributability to Iran of acts or omissions which allegedly forced the Claimant to leave Iran. Iran asserts that it neither terminated contracts with the Claimant's clients, nor did it order the closing of Claimant's business or Claimant's expulsion. Rather, Iran suggests, the Claimant left Iran on its own in view of the revolutionary situation. The deterioration of business conditions in the country, Iran argues, was the Claimant's risk, for which Iran cannot be held liable. It takes the position that, in any event, the concept of de facto expulsion is not applicable to a partnership.

15. As far as the alleged loss of tangible assets is concerned, Iran contends that the Claimant sold its property in Iran, and that no one prevented it from shipping property abroad. Thus, Iran argues, either the Claimant suffered no loss, or its losses are not attributable to Iran.

16. With respect to allegedly lost receivables, the Respondent Iran points out that only a few of the Claimant's employees in Iran were United States citizens, and that, consequently, its Iranian employees could have continued attempts to collect outstanding claims. Iran also argues that the Claimant failed to specify the debtor companies now allegedly under Iran's control and what amounts they owed. It therefore requests that this Claim be dismissed.

17. The Respondent Iran has raised a Counterclaim or a request for set-off, alternatively. It contends that the Claimant owes outstanding taxes for the fiscal years 1976 through 1979 plus penalty for delayed payment, in the total amount of 77,966,330 Rials. The Claimant denies that it owes outstanding taxes.

II. Claims Against TCI and SSO

18. Claims against the Respondents TCI and SSO arise in connection with a contract entered into by the Claimant and TCI on 8 May 1976 ("TCI contract"), under which the Claimant was to provide certain program consultancy services to Iran's "Telephone Development Program."

19. It is not disputed that the Claimant was obligated to bear social security charges for its staff working on the project, in accordance with Iranian social security regulations, and that TCI, initially, was entitled to withhold 5% of the contract price until the Claimant submitted a "clearance certificate," issued by SSO, showing proper payment of all charges due.

20. The Claimant contends that it fully complied with its obligations under Iranian social security regulations. It claims that it also paid $35,791 as an increase in social security charges which allegedly took effect due to a change

of Iranian social security regulations subsequent to the conclusion of the TCI-contract in 1976. Nevertheless, the Claimant asserts, it was unable to obtain the requisite clearance certificate from SSO because SSO "inexplicably" failed to issue the document. Allegedly, one of the Claimant's employees indicated that the certificate would be issued if a "facilitating" payment were made, which, however, the Claimant refused to make. The Claimant repeatedly requested that SSO issue the clearance certificate or communicate what further steps the Claimant had to take in order to obtain the document. SSO did not respond to these requests.

21. Since the Claimant could not provide the clearance certificate, TCI, following completion of the TCI project in January 1978, retained two advance payment bank guarantees, which were issued by Bank Tejarat in TCI's favor and backed up by two letters of credit issued by FNBB instead of withholding 5% of the contract price. The Parties agreed that the advance payment guarantees should, thus, become "SSO retention guarantees."

22. SSO later made repeated demands upon the Claimant for additional social security payments allegedly due. In January 1980, TCI called the bank guarantees and Bank Tejarat made an attempt to call on the letters of credit issued by FNBB. The Claimant, however, was able to bar payment under the letters of credit by establishing a "blocked account" in accordance with U.S. Government regulations. Eventually, SSO sent Claimant a letter through the Algerian Embassy in Washington, in which it claimed payment of social security charges in the amount of 47,174,391 Rials plus 30,230,922 Rials delay penalties.

23. The Claimant now requests a ruling from the Tribunal "that it has fulfilled its Social Security obligations in all respects."

24. Even if any such payments were due, however, Claimant alternatively argues that TCI is obligated to make them pursuant to Article 11.7. of the TCI-contract. It, therefore, also seeks a ruling that TCI should pay additional charges, and that "SSO should collect them from TCI and not from Arthur Young."

25. Finally, arguing that according to Article 11.7. of the TCI contract TCI was obligated to reimburse the Claimant for any increase in social security charges, the Claimant seeks payment of $35,791. It asserts that it had to pay this additional amount after a change of Iranian social security regulations in 1976.

26. The Claimant also requests interest on the amount due and costs in the amount of $130,000.

27. The Respondents deny the Claims and raise Counterclaims. The Respondent SSO asserts that the Claimant owes outstanding social security premiums for staff working on the TCI project covering the period from May 1976 through January 1978 and brings a Counterclaim for payment of 82,633,809 Rials, (47,174,391 Rials in principal and 35,459,418 Rials in delay penalties as of 14 April 1982), plus delay penalties accruing after 14 April 1982 to the date of payment at a daily rate of 1/2400 of the principal.

28. The Respondent TCI also contends that former TCI officials had erroneously reimbursed the Claimant for social security premiums paid on behalf of employees as TCI was not contractually obliged to do so. TCI, therefore, raises a Counterclaim for such allegedly erroneous payments in the amount of 3,551,700 Rials.

29. The Respondent TCI further asserts that the Claimant still owes service charges for a telegraph and telex line it had used in Iran during the periods from July to September 1977 and from July 1980 to July 1981. It now raises a Counterclaim for payment of these charges in the amount of 228,322 Rials.

30. Moreover, TCI has joined in the Counterclaims brought by the Respondents Iran and SSO.

31. All Respondents request costs of arbitration in an amount to be determined by the Tribunal.

III. Counterclaims of Bank Tejarat Against First National Bank of Boston

32. By submission filed on 25 August 1986, Bank Tejarat has raised a Counterclaim against FNBB for payment under two letters of credit (Nos. S-14432 and S-14433 dated 24 March 1977) opened by FNBB in Bank Tejarat's (formerly "Iranians' Bank") favor. See supra para. 21. Bank Tejarat takes the view that it was entitled to call on the letters of credit, since the Claimant failed to pay outstanding social security premiums in connection with the TCI contract.

33. The Claimant objects to the admission of Bank Tejarat and FNBB as parties to the present proceedings. It also objects to the Counterclaims on the ground that they were filed after the deadline established by the Tribunal's Termination Order in Case No. 895 for the filing of such Counterclaims. Further, the Claimant denies the Tribunal's jurisdiction over this Counterclaim. As to the merits, the Claimant contends that it had paid all applicable social security charges, and that Bank Tejarat, therefore, was not

entitled to call on the letters of credit. The Claimant requests that the Tribunal declare the letters of credit "null and void."

C. REASONS FOR AWARD

I. Procedural Issues

1. Status of Bank Tejarat and First National Bank of Boston in the Proceedings

34. Bank Tejarat moved to join the proceedings as a Counterclaimant, naming FNBB as an additional Counter-respondent. In doing so, it relies on the Tribunal's holding in The United States of America and The Islamic Republic of Iran, Award No. 108-A16/582/591-FT (25 Jan. 1984), reprinted in 5 Iran-U.S. C.T.R. 57, and an Order by Chamber Two filed on 18 July 1985 in Bank Tejarat, Bank Markazi Iran and The Government of the United States of America, First National Bank of Boston, Case No. 895.

35. Initially, Bank Tejarat had filed a Claim with the Tribunal in Case No. 895 for payment under the same letters of credit that are at issue here. Subsequent to the abovementioned Full Tribunal's decision in Case A16, where it was held that the Tribunal has no jurisdiction over direct claims filed by Iranian banks against United States banks arising out of standby letters of credit issued by United States banks, Chamber Two terminated Case No. 895 by Order filed on 18 July 1985. In the Order it was stated that a request for submission of a Counterclaim related to standby letters of credit "must (1) be made by a party to the Case in which the underlying related claim is pending, and (2) filed in that Case while such Case is still pending . . . . The Tribunal notes, however, that such requests must be timely filed, not later than six months from the date of

this Order." Bank Tejarat filed its "Statement of Counterclaim Arising Out of Bank Guarantees" on 25 August 1986, clearly after the time limit set in the Termination Order. Thus, Bank Tejarat's Counterclaim was raised late and is not admissible.

2. Admissibility of Amendments to Claims and Counterclaims

36. The Claimant has amended its Claim in several respects. First, it has raised a Claim for payment of $35,791 against the Respondent TCI for reimbursement of increased social security premiums for the first time in the Hearing Memorial. In that Memorial the Claimant also increased the amounts sought for lost receivables, lost tangible assets, severance pay and other closing costs. Similarly, the Claimant increased the amount sought for the loss of equity from $800,000 to $1,319,189 for the first time in its Rebuttal Memorial. Likewise, the Respondent TCI raised its Counterclaim for the allegedly erroneous reimbursement by former TCI officials of 3,551,700 Rials for the first time in its Hearing Memorial. In view of the holding on the merits, the Tribunal finds it unnecessary to decide the issue of the admissibility of these requests.

37. The question arises, however, whether Claimant's request for a declaration from the Tribunal that certain letters of credit are null and void, first mentioned in its Hearing Memorial, was an admissible amendment to the Claim. Article 20 of the Tribunal Rules provides that:

> "[d]uring the course of the arbitral proceedings either party may amend or supplement his claim ... unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances."

Under this provision, the Tribunal is to consider delay in making the amendment as a criterion independent from "prejudice to the other party" or "any other circumstances." Article 20, read together with Articles 18, 19 and 28 of the Tribunal Rules, makes it clear that the arbitrating parties are obliged to present their claim or defence, in principle, as early as possible and appropriate under the circumstances in each case. Compliance with this obligation is indispensable, in the Tribunal's view, to ensure an orderly conduct of the arbitral proceedings and equal treatment of the parties. It is true that the Tribunal has generally taken a liberal approach in permitting amendments, provided that they neither significantly alter the relief sought, nor raise new factual or legal issues to which the other party could not adequately respond, and that an explanation for the delay has been offered. Harris International Telecommunications, Inc., and The Islamic Republic of Iran, et al., Award No. 323-409-1, paras. 84-87 (2 Nov. 1987). The Claimant in this Case, however, seeks an amendment adding a different kind of relief, which raises new factual and legal issues. The Tribunal notes that the Claimant, in its Statement of Claim, did not make reference to the existence of outstanding letters of credit securing advance payments or payment of social security premiums. Rather, it merely stated that "all performance guarantees were thus released by TCI." It was, indeed, the Respondent TCI, in its Statement of Defence and Counterclaim filed on 26 September 1983, which first mentioned these letters of credit. Nonetheless, however, the Claimant did not take up the issue in its "Reply" filed on 10 January 1985. It did so, as stated above, only in the Hearing Memorial which was filed on 25 August 1986. Considering that the Claimant offered no explanation why it raised this request only at such a late stage of the proceedings, the Tribunal finds it inappropriate to allow the amendment sought.

II. Claims Against the Islamic Republic of Iran

1. Jurisdiction

38. The Respondents dispute the Claimant's United States nationality. The Claimant, however, has established to the Tribunal's satisfaction that it is a national of the United States within the meaning of Article II, paragraph 1, and Article VII, paragraph 1, of the Claims Settlement Declaration.

39. Arthur Young & Company is a partnership organized under the laws of the United States. Its principal place of business is New York. The Tehran office was a branch of Arthur Young in New York. According to the Iranian Official Gazette No. 8116, dated 29 November 1972, Notice No. 6/29002, "Arthur Young and Company Iran" was registered in Iran with the "Foreign Companies Registration Bureau." The Gazette, under Point No. 4, states: "Nationality of Company: American."

40. The Claimant, moreover, submitted an affidavit by its General Counsel, Carl D. Liggio, in which it is testified that during the period from 1977 to 19 January 1981 all partners of Arthur Young & Company were United States citizens together with a list of partners and their addresses as of 18 October 1978 and as of 23 October 1981. On the basis of this evidence, the Tribunal is persuaded that during the relevant period at least 50% of the interest in the Claimant partnership was held by United States nationals.[1] Therefore, the Claimant meets the nationality

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[1]The "interest" in a non-stock entity which is equivalent to the holding of stock in a stock corporation, is to be defined by reference to the character of the entity
(Footnote Continued)

requirement pursuant to Article II, paragraph 1, of the Claims Settlement Declaration.

41. The Islamic Republic of Iran is a proper Respondent under the Claims Settlement Declaration.

42. It is not contested that the Claimant owned the Claim continuously from the date on which it arose to the date on which the Claims Settlement Declaration entered into force.

43. Iran further argues that a claim based on wrongful expulsion is in the nature of a tort, and does not fall within any of the categories over which the Tribunal has jurisdiction pursuant to Article II, paragraph 1, of the Claims Settlement Declaration. While the Tribunal's jurisdiction is limited to claims which "arise out of debts, contracts . . . , expropriations or other measures affecting property rights," it nonetheless extends to all acts which give rise to such claims, irrespective of their nature. Therefore, whether an act may be characterized as tortious is of no effect upon the Tribunal's jurisdiction. See Alfred L.W. Short and The Islamic Republic of Iran, Award No. 312-11135-3, para. 11 (14 July 1987).

44. The Respondents also argue that paragraph 11 (D) of the General Declaration limits the Tribunal's jurisdiction over this Claim. In that paragraph, the United States agreed to "bar and preclude the prosecution against Iran of any pending or future claim . . . arising out of events

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(Footnote Continued)
in each case. See International Schools Services, Inc. and National Iranian Copper Industries Company, Interlocutory Award No. ITL 37-111-FT, p. 14 (6 Apr. 1984). In a partnership nationality of the partners is the decisive criterion. See Touche Ross & Company and The Islamic Republic of Iran, Award No. 197-480-1, p. 11 (30 Oct. 1985).

occurring before the date of this Declaration related to ... (D) injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran." The Respondent argues that the exclusion applies to any United States national, and not only the 52 United States nationals seized on 4 November 1979, claiming injury to himself or his property resulting from popular movements during the course of the Revolution.

45. Yet, even if this interpretation were correct, the exclusion would only apply to acts "which were not an act of the Government of Iran." The Claimant relies on acts which it contends are attributable to the Government of Iran. Therefore, paragraph 11 (D) of the General Declaration does not effectively restrict the Tribunal's jurisdiction over this Claim.

2. Merits

46. The Claim against the Respondent Iran is mainly predicated upon the allegation that the Claimant, due to wrongful actions of the Government of Iran, was compelled to close its practice and evacuate its non-Iranian personnel from Iran. The Claimant makes two arguments to support this allegation. First, it asserts that anti-American acts attributable to Iran made it unsafe for its American personnel to stay in Iran. Second, it contends that most of its clients withdrew from Iran due to the revolutionary circumstances and cancellation of contracts by the Government of Iran. Because of the departure of its clients, the Claimant could not complete its work and, facing a rapid deterioration of business, eventually had to close its Iranian practice.

47. The decisive issue here is whether the acts complained of are attributable to Iran. Attributability of such acts to the State is a constituent element of State responsibility and the Claimant carries the burden of proof in this respect. In the Tribunal's opinion, the Claimant has not carried that burden.

48. A general reference to "actions of agents of the Iranian government" is insufficient without evidentiary support. The Claimant relies on acts beginning in the Fall of 1978 and in the Hearing even mentioned an incident which took place as early as the end of 1976. The Claimant has failed, however, to explain who these "agents" were and how they were associated with the Government of Iran. In the Tribunal's view, attribution of acts to the State is justified only when the identity of acting persons and their association with the State is established with reasonable certainty.

49. Even with respect to the few concrete events it alleges, the Claimant has failed to comply with the requisite standard of substantiation and proof. It imputes to "revolutionaries" the blowing up of the Tehran bank with which it did business, on or about 5 November 1978. There is no indication, however, why this vaguely defined incident, relating to someone else's premises, forced the Claimant to leave Iran.

50. Mr. James Ervin in his affidavit asserts that, on or about 6 or 7 November 1979, his wife and his daughter were "forced to evacuate Iran because of the danger to their health and safety created by actions of the revolutionary guards and other agents of the Iranian government," while he himself was abroad and unable to return to Iran. Yet, there is no indication as to when and where those actions occurred, and as to the basis for imputing them to "agents" of the Iranian Government.

51. Further, Mr. Ervin testifies that, after he had left Iran, he was informed that in March 1979 his house in Tehran was broken into by "revolutionary guards or other agents of the Iranian government," "revolutionary committee members and mullahs." First, however, the source of this information is not revealed, and second, the information is so vague that it is insufficient to warrant a finding that such acts indeed occurred or that they are attributable to Iran.

52. The affidavit of "John Doe" is similarly vague. A general reference to unidentified "Iranians" making hostile comments about selling gas to United States nationals, or unspecified allegations of threats of bodily harm by undescribed "revolutionaries and other agents of the government of Iran" is not sufficient to attribute such acts to Iran.

53. Mr. Bartholomew, in his affidavit, states that he was informed by a former Iranian employee of Arthur Young that, in or about December 1979, armed men wearing patches on their pockets identifying them as members of the revolutionary guards, took him from his home in the middle of the night and questioned him. While in this incident attributability to the new government is based on more specific contentions, even if taken as true, the Tribunal cannot find any possible impact on the closing of Claimant's practice in Iran eight months earlier. Moreover, the incident involved an Iranian individual, and therefore does not necessarily support Claimant's allegation that it was expelled from Iran as a consequence of anti-American actions there.

54. The Claimant also asserts that, by 30 January 1979, it had lost many of its major clients "due to actions of the new Government of Iran." It alleges that the new Government of Iran repudiated and cancelled contracts with

companies which were Arthur Young's clients in Iran, and further argues that it had to face a rapid deterioration of its business, as these clients were forced to withdraw from Iran. This argument fails for several reasons. First, the Claimant has failed to identify which clients were involved, which contracts were cancelled or repudiated, and whether any such actions were wrongful. Second, even assuming that the Claimant's clients' contracts were wrongfully breached, the Claimant has failed to explain why it is entitled to damages from Iran. If the clients sustained damages, they may pursue their remedies here or elsewhere on their own behalf. The Claimant, however, cannot predicate its Claim against Iran on the fact that its clients decided to leave Iran.

55. Consequently, the evidence presented is insufficient to show that the Claimant was, indeed, "de facto" or otherwise expelled from Iran due to measures attributable to the Government of Iran. The Tribunal need not reach the issue, therefore, whether the concept of "de facto expulsion" could apply to legal entitities, such as partnerships, as opposed to individuals.

56. As far as "lost receivables" are concerned, the Claimant, alternatively, relies on a different theory. It argues that many of the lost receivables reflect liabilities of business enterprises now allegedly controlled by Iran, and for which Iran is liable under the Tribunal's holding in Oil Field of Texas, Inc. and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 10-43-FT (9 Dec. 1982).

57. However, the Claimant did not provide the Tribunal with sufficient evidence showing when and how Iran took control over the debtor companies. True, it referred to Awards, rendered by this Tribunal, in support of the allegations that Iran was obligated to pay compensation to some of them. All these Awards, however, are Awards on Agreed Terms and reveal little, if any, information as to why

compensation was paid. In any event, they cannot be regarded as conclusive proof that Iran was a de facto or legal successor to the claimant companies.

58. Moreover, even if the Tribunal were to conclude that Iran is liable for these debts, the Claimant failed to specify the amounts owed by the various companies. Finally, the Claimant did not explain why it did not collect these bills before its office was closed in April 1979. The bills, with only one exception, are dated no later than August 1978.

59. In view of the foregoing reasons, the Claims against the Respondent Iran for the loss of tangible assets, lost receivables, reimbursements to employees for lost property and lost equity are dismissed.

3. Counterclaim

60. The Respondent Iran's Counterclaim for taxes allegedly owed by the Claimant is dismissed for lack of jurisdiction. The Tribunal has held in previous cases that taxes are imposed by law. They do not arise, therefore, out of "the same contract, transaction or occurrence" that constitutes the subject matter of this Claim as required by Article II, paragraph 1, of the Claims Settlement Declaration. See, e.g., T.C.S.B., Inc. and Iran, Award No. 114-140-2, p. 24 (16 Mar. 1984), reprinted in 5 Iran-U.S. C.T.R. 160; General Dynamics Telephone Systems Center, Inc. and The Islamic Republic of Iran, Award No. 192-285-2, p. 25 (4 Oct. 1985).

III. Claims Against TCI

1. Reimbursement for Increased Social Security Charges

a) Jurisdiction

61. The Claims against the Respondent TCI are based on the contract entered into between the Claimant and TCI on 8 May 1976. Article 14.1. of the agreement contains a dispute settlement clause which in relevant parts reads as follows:

> "14.1.2. If the dispute is not settled by the committee . . ., the dispute may be referred to the competent courts of Iran."

62. The question arises whether this clause provides for the sole jurisdiction of Iranian courts over disputes under the contract, thus precluding the Tribunal's jurisdiction in accordance with Article II, paragraph 1, of the Claims Settlement Declaration. The Tribunal has held that Article II, paragraph 1, of the Claims Settlement Declaration requires a provision which specifically and unambiguously confers the sole jurisdiction on the Iranian courts. See T.C.S.B, Inc. and Iran, Interlocutory Award No. ITL 5-140-FT, p. 3 (5 Nov. 1982). The forum clause in the TCI contract says that the dispute "may" be referred to the competent courts of Iran. The use of the word "may" generally connotes an option between various alternatives. Further, Article 16.15.5. of the TCI-contract expressly states that "[t]he foregoing shall not limit the right of TCI to bring any legal action . . . in any appropriate jurisdiction . . . ." In the Tribunal's view, therefore, Art. 14.1.2. of the TCI-contract does not specifically and unambiguously confer the "sole" jurisdiction on Iranian courts and does not preclude the Tribunal's jurisdiction over this Claim.

b) Merits

63. The Claimant asserts that in 1976, subsequent to the conclusion of the TCI-contract, Iran changed its social security regulations and increased social security charges. As a consequence of the increase, the Claimant allegedly paid additional social security charges for employees in the amount of $35,791. It argues that TCI is obligated to reimburse this amount under Article 11.7. of the TCI contract, which reads as follows:

> "11.7. Changes in Iranian Tax Laws
>
> Any change in the Iranian Tax Laws in force at the Effective Date, or in the interpretation thereof, which has the effect of increasing consultant's Iranian tax liability under this Agreement shall result in an adjustment of the prices set forth in Annex E to the extent of such increased tax liability . . . ."

64. In the Claimant's view, social security charges are "taxes" within the meaning of Article 11.7. and an increase in such charges must result in an adjustment without further formal requirements.

65. The Respondent TCI denies that Iranian social security regulations were changed in 1976 or during the term of the TCI contract. Rather, it suggests that the 1975 Social Security Act itself (Article 28, Note 1) provided for higher rates after the first year of enactment. It also disputes Claimant's interpretation of Article 11.7. of the TCI contract. It suggests that any modifications to the contract as a consequence of changes in Iranian social security regulations had to be incorporated by way of a "Change Order" in accordance with Article 9.6. of the contract, which reads:

> "9.6. Changes in Iranian Laws, Rules and Regulations
>
> 9.6.1. If any change should occur in the applicable Iranian Laws, rules and regulations after the Effective Date of this Agreement, in such a manner as to materially affect either

> parties' rights or obligations hereunder, except as provided in Article XV of this Agreement, the modifications to this Agreement required by such change shall be agreed upon in accordance with the procedure set forth in Paragraph 9.2. and shall be incorporated in a Change Order."

66. In the Tribunal's understanding, the term "Iranian Tax Laws," as used in Article 11.7. of the TCI contract,[2] does not include social security charges. The wording of pertinent sections in the TCI contract demonstrates that the contracting parties intended to distinguish between taxes and social security charges. Article XI is entitled "Taxes and Other Charges." Articles 11.2., 11.3., 11.5. and 11.7. expressly and exclusively deal with "taxes", whereas Article 11.4. deals with "Office Staff Protection Schemes or Social Insurance Organization Charges." Had it been the contracting parties' intent to construe the term "Iranian Tax Laws" in a broad sense, as suggested by the Claimant, there would have been no need for the distinction consistently made between the two categories.

67. Therefore, the Tribunal finds that social security charges do not fall within the scope of Article 11.7. of the TCI contract, and that, hence, a change in Iranian social security regulations did not trigger automatic adjustment of the agreement. Rather, the Claimant could have obtained an adjustment only by way of a "Change Order" pursuant to Article 9.6.1. This was apparently also the Claimant's understanding, as is documented by a letter of Mr. Bartholomew, received by TCI on 5 February 1978, in which

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[2] Article 1.1.9. of the TCI-contract contains the following definition:

> "1.1.9. Iranian Tax Laws: All statutes, laws, rules and regulations imposing any fees, charges and imposts for doing business in Iran that are levied by the Government of Iran or by political subdivisions thereof."

Mr. Bartholomew refers to "our claims for reimbursement of costs related to these Social Security payments under Section 9.6.1. of the agreement." And again, at the end of this letter, he writes: "We trust that these certifications will . . . permit prompt payment under Article 9.6.1. . . . for the additional costs incurred as a result of the change in the Social Security Law."

68. According to Article 9.2.1. a Change Order can only be obtained with the approval of TCI in the form and manner required by Article 9.5.1. There is no dispute between the parties that TCI did not grant such approval in the form and manner required by Article 9.5.1. of the agreement.

69. Therefore, the Claimant is not entitled to reimbursement of increased social security charges under Article 11.7. of the TCI-contract, or on the basis of a "Change Order." Consequently, the Claim is dismissed.

2. Request for a Declaratory Award

70. The Claimant has sought a declaration, in the event the Tribunal finds that the Claimant owes outstanding social security charges, that TCI is obligated to pay these charges to SSO. As explained below, para. 80, the Tribunal will not make such a finding, and therefore considers this request moot.

3. Counterclaims

a) Service Charges

71. The Respondent TCI asserts that the Claimant has failed to pay service charges as a subscriber to a TCI telegraph and telex line. TCI presents two invoices, one

covering the period from July to September 1977 and another covering the period from July 1980 to July 1981. It counterclaims for service charges in the total amount of 228,322 Rials.

72. TCI has failed, however, to show that this Counterclaim arises out of the same contract, transaction or occurrence that constitutes the subject matter of the Claim, as required by Article II, paragraph 1, of the Claims Settlement Declaration. Rather, it appears that it is based on an entirely separate subscription agreement allegedly entered into between TCI and the Claimant. Accordingly, this Counterclaim is beyond the Tribunal's jurisdiction and is therefore dismissed.

b) "Erroneous" Reimbursement of Social Security Premiums

73. It is not disputed that TCI, initially, reimbursed the Claimant for social security premiums paid for employees working on the TCI contract. TCI argues that former TCI officials made these reimbursements erroneously. It now raises a Counterclaim for repayment of those reimbursements made in the amount of 3,551,700 Rials.

74. As stated in Article 24, paragraph 1, of the Tribunal Rules, TCI has the burden of proving the facts relied on to support its Counterclaim. TCI must prove, therefore, that the Claimant was, in fact, not entitled to the reimbursements.

75. TCI, in principle, is bound by acts of its former officials, and the very fact that they made payments strongly suggests that the payments were made pursuant to an agreement between the Parties. The Respondent TCI, in any

event, did not offer any evidence to support the allegation that its former officials acted erroneously. Consequently, the Counterclaim is dismissed for lack of evidence.

c) Taxes and Social Security Premiums

76. TCI has also raised Counterclaims for taxes and social security premiums allegedly outstanding. These Counterclaims are dismissed, first because the Tribunal lacks jurisdiction over such Counterclaims, see paras. 60, 80, and second because TCI does not have standing to raise them.

IV. Claim against SSO

1. Jurisdiction over the Claim

77. The Claimant seeks a ruling from the Tribunal "that it has fulfilled its Social Security obligations in all respects," or, alternatively, that SSO shall collect any outstanding social security charges from TCI. The Tribunal finds that such a ruling falls outside its jurisdiction.

78. In order to rule on this request, the Tribunal would have to pass upon Iranian social security regulations. It is a universally accepted rule, however, that revenue laws cannot be extraterritorially enforced, and the Tribunal, in previous cases, has refused to construe, for example, local tax statutes in light of this principle. See, e.g., Computer Sciences Corp. and The Islamic Republic of Iran, Award No. 221-65-1, pp. 55-56 (16 Apr. 1986); Aeronutronic Overseas Services, Inc. and The Government of The Islamic Republic of Iran, Award No. 238-158-1, para. 72 (20 June 1986). Indeed, Computer Sciences is quite similar to the present Case. There the claimant sought a clearance

certificate for tax payments. The Tribunal, however, held that "[t]ax laws are manifestations of jus imperii which may be exercised only within the borders of a state. In addition, revenue laws are typically enormously complex, so much so that their enforcement is frequently assigned to specialized courts or administrative agencies . . . . States may of course vary the rule by treaty, but in view of the firmly established practice and the deeply rooted and universally accepted conviction of the international unenforceability of claims jure imperii, any qualification of the customary rule will presuppose the clearest possible expression . . . . No such explicit expression appears in the Claims Settlement Declaration . . . ." Id.

79. That reasoning is also applicable to the Case at hand. Social security laws are manifestations of jus imperii. They are equally complex and are similarly subject to specialized administrative regulation. Accordingly, social security laws, under the customary international rule, cannot be enforced extraterritorially. Although a state may alter the traditional rule by treaty, such a change must be clear and explicit. Because there is no such provision in the Claims Settlement Declaration, this Claim is beyond the Tribunal's jurisdiction and is therefore dismissed.

2. Counterclaims

80. SSO has raised a Counterclaim for allegedly outstanding social security premiums in the amount of $47,174,391 Rials plus penalties. The Tribunal has established in previous cases that it has no jurisdiction over a counterclaim, when it lacks jurisdiction over the claim, unless the counterclaim is based on an independent jurisdictional basis. See, e.g., Computer Sciences Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 221-65-1, at pp. 55 et seq. (16 Apr. 1986). The Tribunal lacks jurisdiction over the Claim against SSO.

Since the Respondent SSO has not established another jurisdictional basis with respect to its Counterclaim for social security premiums, SSO's Counterclaim is likewise dismissed for lack of jurisdiction.

V. Costs

81. In view of the fact that not only the Claims but also all Counterclaims are dismissed, the Tribunal determines that each Party shall bear its own costs of arbitration.

D. Award

82. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

1. The Claims of Arthur Young & Company against The Islamic Republic of Iran, Telecommunications Company of Iran and Social Security Organization of Iran are dismissed.

2. The Counterclaims of The Islamic Republic of Iran, Telecommunications Company of Iran and Social Security Organization of Iran against Arthur Young & Company are dismissed.

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

Dated, The Hague
30 November 1987

Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God

Koorosh-Hossein Ameli
Concurring Opinion

Howard M. Holtzmann