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IRAN-UNITED STATES CLAIMS TRIBUNAL

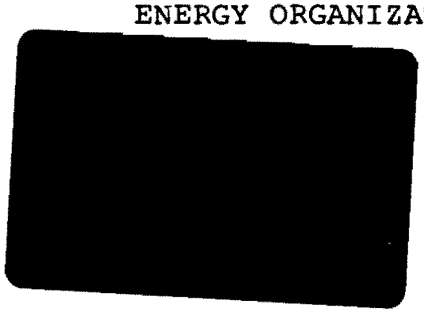
دیوان داوری دعاوی ایران - ایالات متحده

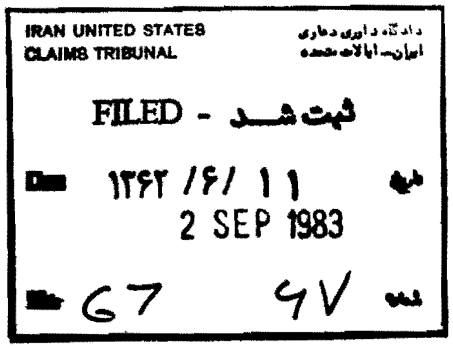
WOODWARD-CLYDE CONSULTANTS,
Claimant,

-and-

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and THE ATOMIC ENERGY ORGANIZATION OF IRAN,
Respondents.

CASE NO. 67
CHAMBER THREE
AWARD NO. 73-67-3



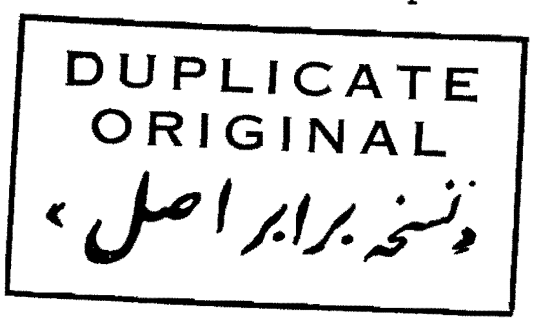


AWARD

APPEARANCES:

For Claimant:
Mr. Robert B. Wallace, Attorney
Mr. Hans Ewoldsen, Woodward-Clyde Consultants
Mr. James Petrila, Counsel to Woodward-Clyde Consultants

For Respondents:
Mr. M.K. Eshragh, Deputy Agent of the Islamic Republic of Iran
Mr. K. Tabasi, Adviser to the Agent
Mr. Ali Aminpur,
Mr. Mr. Akbar Attar Kashani, Assistants to the Agent
Mr. Mohamad Adib Nazari, Attorney for AEOI
Dr. Asalan Mohajer Ashjai, Technical Adviser to AEOI
Mr. Mohsen Ghotb, Financial Adviser to AEOI



Also present:
Mr. A. Rovine, Agent of the United States of America

I. THE PROCEEDINGS

Claimant WOODWARD-CLYDE CONSULTANTS ("Woodward-Clyde") filed its claim on 17 November 1981 against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN "for itself and on behalf of its agency and instrumentality, the Atomic Energy Organization of Iran" ("AEOI"). The claim is for payments allegedly due for services performed pursuant to a Consulting Services Agreement, interest thereon, plus costs incurred in efforts to collect such sums in Iran, and costs of the arbitration.

On 1 March 1982, AEOI submitted its Statement of Defence including counterclaims for alleged overpayments and interest thereon, certain consequential damages, unpaid taxes and costs. On 23 April 1982, Claimant filed a Reply to the Statement of Defence and the counterclaims.

A Hearing was held on 11 October 1982. At the Hearing, Respondent submitted a memorial presenting additional counterclaims. On 21 October 1982 the Tribunal set 13 December 1982 as the final date for the submission of evidence, and 14 February 1983 as the final date for the submission of rebuttal evidence and written statements.

Claimant filed evidence on 13 December 1982 and an addendum to such evidence on 27 December 1982. On 29 December 1982, Respondent filed its evidence and a memorial. On 15 February 1983, Claimant filed a memorial. The matter was then taken under consideration by the Tribunal.

required to review and either accept or reject the report submitted for each phase within 120 days of receipt. Upon written acceptance by AEOI of the entire work for a specific phase and within 6 months of such acceptance, the Consultant would be entitled to receive the 10 per cent withheld from prior invoices. The monthly invoices submitted by the Consultant were to be paid partly in US dollars and partly in rials, as further specified in the Agreement.

The Agreement also provided, in Section 7, that the Consultant was to be responsible for "all taxes, charges, income and social insurance charges which accrue as a result of the Consultant's activities under this Agreement". AEOI was to make deductions from each payment for services performed, "in accordance with the Direct Taxation Act ratified in Esfand 1345 and as subsequently amended", which requires that the amounts so deducted are to be paid to the appropriate tax authorities. Section 7 further made provision for changes in any Iranian tax or charge.

Under Section 10 of the Agreement, the Consultant would be responsible for social insurance charges and pay them to the appropriate Iranian authorities. AEOI was to withhold from all payments made under the Consultant Services Agreement the necessary retention in respect of social insurance charges, to be released to the Consultant upon presentation of clearances from the appropriate authorities.

Section 14 of the Agreement contained a warranty in respect of Consultant's performance of its obligations. Section 16 provided that Consultant should fulfil its obligations under the Agreement using the best professional methods and in accordance with the best technical standards acceptable to AEOI and should perform all its duties using utmost care and diligence.

Section 24 set forth Consultant's liability to AEOI in respect of any damages or losses suffered by AEOI in its implementation of the Agreement "attributable in any way to the negligence, faulty workmanship, incorrect, incomplete, or inaccurate advice, or other failure of Consultant to provide services in accordance with its warranty under Section 14".

In Section 28, the Consultant agreed "to perform work in accordance with prevailing internationally acceptable professional practice, and provide oral and written reports ... or other work products normal to consulting engineering of the type Consultant has been contracted for". This section also provided that "[u]pon completion of services specified under this Agreement and acceptance of the same by AEOI, Consultant shall be entitled to receive all fees and charges from AEOI". The section provided finally that in the event of defective work, the Consultant would be "responsible for all additional work required to produce an acceptable work product, at no additional expense to AEOI".

Appendix II to the Agreement set forth the provisions for compensation. In the relevant part, Appendix II provided that for personnel other than certain identified principal professionals, the Consultant was to receive a multiple of 2.9 times the "hourly personnel cost", which was defined as the "base hourly salary cost" plus all fringe benefits calculated on an hourly basis. This formula was altered by the 1976 Amendment to provide for payment a multiple of 3.50 times the "base hourly salary cost".

Under Section 5.5, Consultant agreed "to make available at their office in Tehran to AEOI ..., upon request, such records necessary for audit of fees related to work performed" under the Agreement.

Claimant alleges that Woodward-Clyde is a corporation organized and existing under the laws of the State of Nevada of the United States and that all of its capital stock is owned by its employees, over 90 per cent of whom are United States citizens. Claimant further alleges that WCCID, which was one of the signatories to the Agreement, is a division of Woodward-Clyde; that WCCID-Iran is a branch of WCCID; and that neither has a separate legal personality. Finally, Claimant alleges that Woodward-Noorany is a company which was formed in Iran in 1974, 51 per cent of its shares being owned by a Dr. Noorany, an employee of Woodward-Clyde, and 49 per cent by Woodward-Clyde. On the basis of the foregoing, Claimant alleges that it had a direct contractual relationship with AEOI during the entire course of the Agreement, because its division, WCCID, was an original party to the Agreement and, also because of the 1978 Amendment by which WCCID, Woodward-Noorany and AEOI agreed that all rights and duties of the Consultant were transferred to WCCID-Iran.

Claimant asserts that it performed all tasks required of it under the Agreement and that all those tasks performed were properly authorized by AEOI under the Agreement. Claimant also alleges that all task reports were accepted by AEOI either in writing or orally.

Claimant alleges that it is owed US $366,550.06 for overdue payments for work performed, including amounts for periodic payments not made and amounts retained from paid invoices as guarantees for the Consultant's performance and for payment by the Consultant of social insurance obligations. Claimant further asserts that it is entitled to US $83,849 in compensation for efforts to collect sums owing to it. Claimant also seeks interest up to 17 February 1982 based on interest rates charged to it in the amount of US $274,708.87 plus subsequently accrued interest. Finally Claimant seeks US $83,231 as its costs of arbitration.

Respondent AEOI contends that the Tribunal does not have jurisdiction over the claim on the grounds a) that Claimant has not submitted sufficient evidence of its nationality; b) that Claimant has not proven its entitlement to assert rights accruing to Woodward-Noorany, WCCID and WCCID-Iran; c) that the contract parties are Iranian entities, which fact, according to AEOI, divests the Tribunal of jurisdiction in favour of the courts of Iran; and d) that the Agreement contains, in Section 25, a clause referring disputes to arbitration which, AEOI maintains, divests the Tribunal of jurisdiction over the claim by virtue of the final exclusion clause of Article II, paragraph 1, of the Claims Settlement Declaration.

On the merits of the claim, AEOI sets forth a number of defences. AEOI maintains that Claimant is not entitled to any payments under the Agreement on the ground that compensation was payble only to Woodward-Noorany. AEOI denies that it authorized a number of the tasks performed by the Claimant and asserts that these tasks were unnecessary in any event. AEOI also maintains that Claimant breached its duties by failing to submit a report on certain repair services it performed and that other reports were not approved by AEOI as required by the Agreement.

AEOI asserts that it made payments under the Agreement totalling substantially more than the amount claimed by Claimant and that many of the invoices yet outstanding were not sufficiently supported by documentation to be considered valid. AEOI denies that it is liable for the portion of the claim relating to the payments retained as a performance guarantee, citing as grounds both the failure of Consultant to submit the report on repair services referred to above and defects in performance which allegedly caused the need for the repairs. It also denies liability for amounts

retained to guarantee payment of the Consultant's social insurance obligations on the ground that Claimant has failed to make payments due and has failed to submit a clearance certificate from the Iranian Social Insurance Organization as required by the Agreement.

Finally, AEOI asserts that, as there is no valid debt outstanding, Claimant is entitled to neither reimbursements for its collection expenses nor to interest on the principal amounts of its claim.

AEOI also presents a number of counterclaims. First, it seeks a refund of US $506,300.50 paid under the compensation formula of the Agreement and under the revised formula of the 1976 Amendment, on the grounds that compensation is legally limited by a formula approved by the Iranian Plan and Budget Organization and that the 1976 Amendment was not validly executed. AEOI also seeks interest on this amount of US $293,797.36. Second, AEOI claims for reimbursement of expenses totalling US $35,960 allegedly incurred in conducting an audit of Claimant's records in the United States after Claimant refused to make the original records available in Iran, which AEOI alleges to have been a breach of Section 5.5 of the Agreement. Third, AEOI claims an amount of US $8,077.21 which it maintains is the difference between company taxes paid by Claimant allegedly under rates applicable to Iranian entities and the amount Claimant allegedly should have paid as a foreign entity. Fourthly, AEOI seeks US $50,000 as its costs of arbitration.

On the day of the Hearing, AEOI submitted a Memorial in which it restated its original defences and counterclaims and set forth three additional counterclaims seeking a) payment of US $324,395.64 allegedly due as unpaid taxes and

tax penalties from Woodward-Noorany and Claimant; b) payment of US $346,943.83 alleged due from both companies for obligations to the Iranian Social Insurance Organization and penalties; and c) refund of US $238,910.56 in payments made by AEOI to the Claimant for tasks which AEOI alleges were performed defectively and were unnecessary.

Claimant denies that it is liable under any of the counterclaims. First, it maintains that it is not liable to refund any compensation paid under either the Agreement's original formula or under the 1976 Amendment, arguing that the guidelines of the Plan and Budget Organization are irrelevant and that the 1978 Amendment actually reduced the total compensation from that payable under the Agreement's original formula. Second, Claimant denies that it breached the Agreement's auditing provisions in any way or that its acts caused AEOI to incur the expenses of conducting an audit in the United States. Third, Claimant alleges that it and WCCID and WCCID-Iran were always taxed as foreign entities, that Woodward-Noorany was always taxed as an Iranian company and that, therefore, no additional taxes are due from any of these companies on the basis stated by AEOI.

With regard to the remaining counterclaims, Claimant denies liability on a number of grounds and argues that these counterclaims were not timely filed in conformity with the Tribunal Rules and that they, therefore, may not be heard by the Tribunal.

III. THE CLAIM

1. Jurisdiction

Claimant has submitted evidence, including lists of shareholders and affidavits, which establishes that, for all relevant points in time, it was organized under the laws of the State of Nevada of the United States and that natural

persons who are United States citizens have held an interest in the Claimant equivalent to over 50 per cent of its capital stock. Thus, Claimant is a United States national within the meaning of the Claims Settlement Declaration, Article VII, paragraph 1.

Claimant has also submitted corporate records indicating that WCCID was established as an internal operating division of Woodward-Clyde Consultants and that WCCID-Iran was registered in Iran as a branch of that division. Respondents have submitted no evidence to the contrary. Therefore, it is clear that these entities are merely parts of the same legal person and that any rights accruing to WCCID, as a party to the Agreement, and to WCCID-Iran, as successor in interest to Woodward-Noorany and WCCID under the 1978 Amendment, are rights owned by Claimant.

AEOI has argued that the 1978 Amendment is invalid because the signatory to the amendment on behalf of AEOI lacked authority to sign; because it was executed one month after work under the Agreement had "terminated";and because, allegedly at the request of WCCID and Woodward-Noorany, subsequent payments were made to the same account which the former contract parties had jointly established.

With regard to the first contention, it is noted that the 1978 Amendment was signed on behalf of the President of AEOI by a person acknowledged by AEOI to have been its project manager. This signature constitutes a representation by AEOI's own project manager that he had proper authorization to act in this regard on behalf of AEOI's President. No evidence to the contrary has been submitted by the Respondents. Therefore, the Tribunal holds that the amendment cannot be regarded as invalid for lack of authorization.

The Tribunal does not consider it relevant that the amendment was executed after the Consultant's work on the project ended. AEOI in fact continued its own performance under the Agreement by making at least one additional payment after the date the 1978 Amendment was signed. Nor is it relevant that that payment was made into the same bank account as were previous payments to the original Consultant. If such payment had been made at the direction of the original contract parties subsequent to the execution of the amendment, this might, as AEOI contends, indicate that those companies continued to consider themselves as parties. However, neither the documents cited by AEOI nor any other evidence in the record indicates that such a direction was given.

For the above reasons, the Tribunal holds that the 1978 Amendment is valid. In light of this holding, the Tribunal need not determine whether Claimant would be entitled to assert all of the rights accruing to both WCCID and Woodward-Noorany under the Agreement in the absence of the 1978 Amendment.

The Tribunal must also reject the contention that exclusive jurisdiction over the claim lies with the courts of Iran by virtue of the Iranian identity of the original contracting parties. As noted above, WCCID is merely an operating division of Claimant, a United States corporation, and is therefore not an Iranian national.

The remaining jurisdictional issue to be resolved is whether the dispute lies exclusively under the jurisdiction of Iranian Courts. Section 25 of the Agreement provides for settlement of disputes through arbitration. The Tribunal has held that such a clause is not one "specifically providing that any disputes [under the contract] shall be within the sole jurisdiction of the competent Iranian courts...", so as to divest the Tribunal of jurisdiction over the claim under Article II, paragraph 1, of the Claims Settlement Declaration. See Gibbs & Hill Inc. and TAVENIR, et al. Case No. 6, Interlocutory Award No. ITL 1-6-FT.

In view of the foregoing, the Tribunal determines that it has jurisdiction over the claim.

2. Liability under the claim

The evidence establishes that Claimant performed services under the Agreement relating to twelve tasks and that invoices for these services remain unpaid. AEOI has put forth numerous defences to liability for further payments under the Agreement. As a threshold matter, AEOI's assertion that only Woodward-Noorany is entitled to payments under the Agreement must be rejected. Under the 1978 Amendment Claimant succeeded to all rights of Woodward-Noorany, and whatever liability for payment remains under the Agreement is, therefore, a liability to Claimant.

The Parties differ on whether all of the tasks carried out by the Consultant were properly authorized by AEOI. Claimant maintains that authorization was, in every instance, either made in writing by AEOI or made orally and confirmed in writing by the Consultant. AEOI admits approving the Consultant's proposals for what AEOI terms were "peripheral studies", but asserts nonetheless that its own authorizations were invalid on the ground that the Agreement does not provide for oral authorization. AEOI also maintains that the tasks were unnecessary in any event.

It appears that nine of the twelve tasks performed by the Consultant were specifically authorized in an appendix to the Agreement. Section 1 of the Agreement requires written authorization for "supplemental work", which would appear to apply to the remaining three tasks. However, the evidence discloses that AEOI made some payments in relation to all twelve of the tasks, which confirms that AEOI, in any event, conveyed to the Consultant its consent in fact that each of the tasks should be performed. Since the Consultant performed the tasks in reliance upon AEOI's explicit consent, AEOI may not now avoid liability merely because neither party observed contract formalities.

Two of the tasks relate to the establishment of a seismographic monitoring network in Bushehr, Iran. After the network was installed in late 1977 malfunctions were discovered and the Consultant made repairs as an additional task. Claimant argues that AEOI formally approved the completed installation of the network, that AEOI accepted responsibility for its subsequent maintenance and operation, that the malfunctions resulted from vandalism due to inadequate security arrangements and that the repairs were successfully completed. A part of its claim relates to invoices for the performance of those two tasks. AEOI denies approving the completed installation of the network and argues that in any event such approval would not release the Consultant from defects in the work. It further alleges that the malfunctions were in fact caused by the Consultant's defective work. Finally, it maintains that the Consultant breached its duties by failing to submit a report on its repair work. On the basis of these arguments, AEOI denies that it is obligated either to make further payments on the work or to release any of the amounts it retains under the 10% performance guarantee.

Claimant submitted a letter from the Consultant to AEOI in which the installation of the network is reported and formally turned over to AEOI. The letter is countersigned by an official of AEOI indicating acceptance of the work and must be deemed conclusive on this point.

In regard to its assertion of defective performance, AEOI denies that the malfunctions were caused by vandals and, instead, alleges that certain of the Consultant's employees responsible for the installation were unqualified and negligently failed to consider certain interfering conditions in the region of the network. However, AEOI has submitted no evidence to support this allegation except for a conclusory opinion expressed in an affidavit of one of its own officials. As such, the affidavit adds little to AEOI's original assertion. Moreover, in light of Section 28 of the Agreement, which requires that remedial work necessary to correct defects in Consultant's work be performed by the Consultant at no additional cost, AEOI's payment of some of the invoices for the repair services indicate that, at least at the time, it did not consider the malfunctions to be the fault of the Consultant. The Tribunal is thus unable to conclude that the Consultant was negligent in performing this task.

Regarding the absence of a report on the repair work, it must be noted that AEOI does not deny that the repairs themselves were completed. Moreover, the Agreement requires only "oral and written reports ... normal to consulting engineering of the type Consultant has been contracted for". No evidence has been presented which would suggest that AEOI stated such a requirement in authorizing this task. Nor has it been argued that a report for a task involving a specific action, as opposed to a study, for example, is normal to consulting engineering of this type. It is therefore evident that the Consultant fully performed these tasks and that Claimant is therefore entitled to whatever payments remain unpaid thereon.

Also in dispute are two tasks[1] which AEOI admits were performed by the Consultant and for which final reports were submitted. AEOI contends that it has not accepted the reports because the work was unnecessary and defective. As the Tribunal has ruled above, authorization was given for these tasks and the Tribunal need not, therefore, determine whether these were necessary tasks. Moreover, while AEOI suggests that, in recommending these tasks, the Consultant may have been motivated more by its own academic interests than by AEOI's needs, there is no evidence to support such a conclusion.

There has been no evidence submitted which would indicate that the work performed on these two tasks was defective; indeed, AEOI does not specify the alleged defects. Furthermore, the Agreement, as amended, required AEOI to review and either accept or reject reports within 120 days of receiving them. It is clear that no such action occurred within the required period. In view of these circumstances, AEOI's refusal now to accept the reports cannot relieve AEOI of its payment obligations under the Agreement. Therefore, this defence too must be rejected.

To support its claim for amounts retained as security for the payment of social insurance obligations, Claimant originally referred to a telex from its Iranian accountant stating that a clearance certificate had previously been issued by the Iranian Social Insurance Organization on 17 October 1979. Subsequent to the Hearing, Claimant obtained and submitted a copy of that clearance. In support of its allegation that the Claimant continues to have outstanding social insurance payment obligations, AEOI has submitted letters from the Social Insurance Organization

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[1] Offshore geophysical study and study of Bandar Abbas earthquake.

announcing that Claimant and Woodward-Noorany owe substantial amounts as specified in the letters. No mention is made of the clearance having been granted, no reference is made to any payments having been made in the years in question and the method used to calculate the amount alleged to be due is not explained.

While there is no doubt about the authenticity of either the clearance certificate presented by Claimant or the letters submitted by AEOI, they represent totally contradictory conclusions by the Social Insurance Organization which are impossible to reconcile. Given the fact that one conclusion was stated close in time to the events in issue and that the other was stated in the course of this litigation, and considering the general rule of evidence that contradictory statements of an interested party should be construed against that party, the Tribunal finds that the Claimant has obtained the clearance required by the Agreement and is entitled to payment of the amount retained under the social insurance guarantee.

In connection with AEOI's claim that invoices were not supported by adequate documentation, both parties have submitted evidence relating to two 1977 audits of invoices previously submitted. The evidence indicates that the parties reached an agreement based upon items questioned in those audits under which US $68,070.34 was to be credited to AEOI for incorrect billings and US $33,678.01 was to be credited to WCCID for unidentified costs which had not been billed. These credits were apparently not reflected in subsequent invoices and, therefore, AEOI continues to be entitled to a net credit of US $34,392.33. AEOI has not offered evidence contradicting the invoices submitted after the audits and has failed to specify in what respect the documentation of these invoices was inadequate. In light of this, the Tribunal is unable to uphold AEOI's defence in connection with invoices which were not subject to the 1977 audits.

For the above reasons, the Tribunal holds that AEOI is liable for any unpaid amounts proven to have been invoiced, or to be otherwise due, for which the Claimant claims, less an amount reflecting the net credit to AEOI resulting from the 1977 audits. The issue of the amounts due is discussed below in Section III 3.

Claimant also makes a claim for expenses which it allegedly incurred in collecting amounts due for its services under the Agreement. While there is obviously a relationship between AEOI's failure to make payments as required by the Agreement and Claimant's collection efforts, Claimant has not put forth the legal principle on which it bases this claim. The Tribunal has not in the past awarded reimbursement for collection expenses. Moreover, it is doubtful that such expenses are generally compensable in municipal legal systems. Finally, it appears that other international claims tribunals have explicitly declined to award damages in this regard. See, e.g., China Navigation Co., Ltd. (G.B. v. U.S.) 6 R. Int'l Arb. Awards 64, 68 (legal expenses previously incurred "are damages indirectly consequent to the collision; but it is a well known principle of the law of damages that causa proxima non remota inspicitur"). Therefore, the Tribunal holds that AEOI is not liable for expenses which Claimant may have incurred in the course of efforts to collect amounts due under the Agreement.

The Tribunal finds no grounds for holding Respondent Government of Iran liable under the claim. The claim is therefore to be dismissed insofar as it is directed against the Government.

3. The amount of damages

Based upon an extrapolation of tasks performed, Claimant originally alleged that it had submitted invoices under the Agreement totalling US $2,033,606.74 and that AEOI had

made payments totalling US $1,632,664.25. In response, AEOI maintained that it had actually made payments of US $1,885,302.19. As a result of evidence made available by AEOI in support of its position and after discovering original documentation in its files, Claimant recalculated the amounts at issue and now admits AEOI's position on the total amount paid. Claimant further asserts, however, that its recalculation reveals that it had actually submitted invoices totalling US $2,313,721.48.

Claimant's total for invoices submitted is evidenced by a list which it submitted to the Tribunal indicating invoice numbers and the total of dollars or rials either debited or credited in each invoice. To support the entries on this list, Claimant also submitted copies of what it purports to be "all invoices submitted by WCC to AEOI". On inspection, however, a number of invoices referred to on the list are not to be found among Claimant's exhibits and a tabulation of the invoices which both appear on the list and are included in the exhibits yields a total net debit to AEOI of US $2,198,815.71.[1] Copies of payment vouchers submitted by AEOI demonstrate that payments were made on a number of invoices, listed by Claimant but not submitted into evidence, totalling an additional US $117,738.35. Also, among the Claimant's exhibits are invoices which do not appear on the Claimant's list and which total a net amount of US $52,397.18. Finally, the Claimant's list includes amounts from certain credit memoranda issued to AEOI which do not appear in any exhibits and which total US $49,286.15; this amount must be taken as admitted by the Claimant to be creditable against other invoices.

The evidence supports a finding, therefore, that a net amount of at least US $2,319,665.04 was invoiced by the

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[1] Currency conversions herein are made on the basis of 69.15 rials per dollar, the average rate of exchange from 1975 to 1978 as calculated by AEOI.

Consultant, which, when the US $1,885,302.19 stipulated to have been paid by AEOI is subtracted, yields a gross amount of US $434,362.90 owing on the invoices, including amounts retained under the invoices for the performance and social insurance guarantees.

In light of the Tribunal's finding that AEOI is entitled to a net credit on invoices of US $34,392.33, the net amount due to Claimant from AEOI is US $399,970.57. The Tribunal is, however, constrained by the relief requested by Claimant and, therefore, awards US $366,550.06 on the principal amount of the claim.[1]

Claimant also seeks interest at commercial rates on the above amount from the date of the last payment made by AEOI in June 1978. The Tribunal finds, however, that 10% per annum is a reasonable rate and, therefore, awards interest at this rate from 1 July 1978 to the date on which the Escrow Agent instructs the Depositary Bank to pay the Award.

IV. THE COUNTERCLAIMS

AEOI's first counterclaim is based upon its contentions that the Agreement's compensation formula violated applicable administrative standards and that the amended formula of the 1976 Amendment is inapplicable because the amendment itself is invalid. Under either contention, the counterclaim clearly arises out of the contract at issue which constitutes the subject matter of the claim, and is directed against Claimant, and thus comes within the jurisdiction of the Tribunal under Article II, paragraph 1, of the Claims Settlement Declaration.

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[1] The Tribunal notes that the Parties submitted voluminous documents without sufficient explanation, thus requiring the Tribunal to expend a considerable amount of time reconciling figures. This is not a desirable way of proceeding from the standpoint of either the Parties or the Tribunal.

In support of its first contention, AEOI argues that, under both Iranian law and Article 25 of the Agreement, the Iranian Plan and Budget Organization ("PBO") "exercises direct supervision and control" over the Agreement. AEOI submitted a letter from PBO to AEOI dated 26 January 1981 which states that the "multiplier for over head charges" of the Consultant "could have varied between a minimum 1.70 to maximum of 2.50". On the basis of the above, AEOI maintains that both the multiplier of 2.9 found in the Agreement and the amended multiplier of 3.5 found in the 1976 Amendment were excessive and that it is therefore entitled to a refund of US $506,300.50 in excess payments made on the basis of these multipliers.

AEOI cites no legal authority for the proposition that the terms of the Agreement were subject to retroactive review by PBO, nor does either AEIO or the PBO letter refer to the regulations upon which the letter's conclusion is based.

Moreover, Article 25 of the Agreement accords to PBO only the power to appoint a third arbitrator in the event either of the parties invokes the Agreement's arbitration clause, which neither Claimant nor AEOI has alleged to have occurred. In addition, the letter by its terms refers to the multiplier for "over head charges" whereas the multipliers at issue relate to variable personnel costs. Finally, it should be noted that the PBO letter was prepared in the course of this litigation by an agency of the Respondent Government of Iran. The Tribunal is unable to see any basis upon which the BPO letter is relevant to the rights asserted by the Claimant or how, even if relevant, it could serve to prove AEOI's contention, which must thus be rejected.

AEOI's second contention appears to be be based upon a misapprehension of the effect of the 1976 Amendment. While it is true, as AEOI points out, that the amendment increased the applicable multiplier from 2.9 to 3.5, it is equally true that the amendment also altered the base figure to which the multiplier was to be applied; the Consultant was thereafter to be compensated according to a multiple of "the hourly base salary cost" rather than the much larger "hourly personnel cost" as defined in the Agreement. The evidence indicates that, were AEOI to prevail on the point, the effect would only be to increase Claimant's entitlement under the Agreement. Because the contention could thus not support the counterclaim in any event, the Tribunal need not determine whether the 1976 Amendment was validly entered into. Based on the above, the Tribunal dismisses the first counterclaim for a refund of payments and interest thereon.

AEOI's second counterclaim seeks consequential damages for expenses which it allegedly incurred in conducting an audit of Claimant's records in the United States after Claimant refused to make them available in Iran, allegedly in violation of Article 5.5 of the Agreement. The counterclaim clearly arises out of the contract which constitues the subject matter of the claim, is directed against Claimant and thus comes within the Tribunal's jurisdiction. However, AEOI has not described the records which it sought to audit so as to allow the Tribunal to determine whether they were records "necessary for audit of fees related to work performed" as required by Section 5.5 of the Agreement. Nor has AEOI submitted any evidence of the expenses it incurred in conducting the audit. The Tribunal must therefore dismiss the second counterclaim for lack of proof.

AEOI bases its third counterclaim upon the contention that the taxes paid by the Claimant on its activities under the Agreement were improperly calculated at rates applicable to Iranian companies rather than to foreign companies. The Tribunal has not yet determined whether its jurisdiction under Article II, paragraph 1, of the Claims Settlement Declaration extends to counterclaims under which affirmative relief is sought for unpaid tax obligations. Nor need we determine this issue here. AEOI has presented no evidence to support the allegations upon which the counterclaim is based and which Claimant denies. Such evidence should have been readily available to agencies of the Respondent Government of Iran. In the absence of such evidence, the counterclaim must be dismissed for lack of proof.

The three counterclaims submitted on the day of the Hearing all raise claims not previously presented by AEOI. The counterclaim for taxes allegedly owed is distinct from the tax counterclaim filed with AEOI's Statement of Defence since it is based upon an alleged failure to make payments due either as an Iranian or as a foreign company. Moreover, while AEOI defended against Claimant's claim for amounts retained for the social insurance guarantee on the basis that payments were due and that no clearance has been issued, AEOI did not previously bring a counterclaim to recover the amounts allegedly due. Finally, the counterclaim for refund of payments made on the two tasks the reports for which have not been formally approved by AEOI had not been presented prior to the Hearing.

Article 19, paragraph 3, of the Tribunal Rules provides that a respondent may make a counterclaim in its Statement of Defence "or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances". No circumstances have been brought to the Tribunal's attention which would justify the filing of these three counterclaims as late as on the day of the Hearing. These three counterclaims are therefore dismissed.

V. COSTS OF ARBITRATION

In the circumstances of this case, and applying Articles 38 and 40 of the Tribunal Rules, the Tribunal holds that Claimant is entitled to US $25,000 as its costs of arbitration.

VI. AWARD

THE TRIBUNAL AWARDS AS FOLLOWS:

The Claim is dismissed insofar as it is directed against Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN.

The Claim by Claimant for expenses in collecting amounts due is dismissed.

The Counterclaims of Respondent ATOMIC ENERGY ORGANIZATION OF IRAN are dismissed.

The Respondent ATOMIC ENERGY ORGANIZATION OF IRAN is obligated to pay and shall pay to Claimant WOODWARD-CLYDE CONSULTANTS,

1. the amount of Three Hundred Sixty Six Thousand Five Hundred and Fifty United States Dollars and Six Cents (US $366,550.06) plus interest at the annual rate of ten (10) percent calculated from 1 July 1978 to the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account; and

2. the amount of Twenty Five Thousand United States Dollars (US $25,000) as costs of arbitration.

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

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

Dated, The Hague,
2 September 1983

Nils Mangård
Chairman
Chamber Three

In the Name of God,

Richard M. Mosk

M. Jahangir Sani

EXPLANATION FOR FAILURE OF
JUDGE SANI TO SIGN AWARDS

The deliberations in this case were held, with members Mangård, Jahangir Sani and Mosk present, after the Hearing which was held on 11 October 1982 and before the Tribunal's summer recess, which began on 11 June 1983. During the Chamber's final meeting prior to the recess, it was determined that the Chamber would reconvene in early August 1983. In conformity with this determination, the Chairman issued a memorandum on 13 June 1983, requesting the arbitrators to reserve 8, 10 and 12 August 1983 for deliberations. Presidential Order No. 10, dated 15 June 1983, provided that, in cases involving requests for interim relief or other urgent matters, Chamber Two was authorized to act in lieu of Chamber Three until 31 July 1983. Furthermore, the Tribunal's official schedule of proceedings, dated 6 June 1983, indicated that a meeting of the Full Tribunal was scheduled for 15-17 August 1983, that Hearings before Chamber Three were scheduled for 18, 19, 25 and 30 August, and that a Pre-Hearing Conference before Chamber Three was scheduled on 1 September 1983.

On 6 August 1983, the Chairman of Chamber Three issued a schedule of meetings under which the finalization of awards was to take place in Case Nos. 84, 124, 185 and 346 on 11 and 12 August 1983, and further deliberations were to be held in Case Nos. 35, 62, 67 and 127 on 13 August 1983.

By a letter dated 10 August 1983, the Agent of the Islamic Republic of Iran stated to the Tribunal,

> that Judge Mostafa Jahangir Sani the Iranian Arbitrator of Chamber Three of the Tribunal has submitted his resignation to the Government of the Islamic Republic of Iran. His resignation has been accepted by the Government and will be effective as of 10 August 1983. His successor will be introduced to the Tribunal in due course.

No reasons were cited for the purported resignation.

The President of the Tribunal ordered that certain Hearings before the Full Tribunal, which were scheduled to take place during its 15-17 August 1983 meetings, be postponed. In addition, the Chairman of Chamber Three cancelled the meetings set for the finalization of awards and further deliberations during the week of 8 August 1983.

Judge Jahangir Sani did not appear at the Full Tribunal meeting held on 15 August 1983. At the 17 August 1983 Full Tribunal meeting, the President stated that the Tribunal had as yet received no valid reasons for Judge Jahangir Sani's absence and had not authorized that absence. The President also declared that it would be for Chamber Three and the Full Tribunal to determine the legal consequences of that

absence in the individual cases pending before them. Thereafter, the Chairman of Chamber Three ordered that the Hearings scheduled for 18, 19 and 25 August and the Pre-Hearing Conference scheduled for 1 September be postponed.

By a letter dated 18 August 1983 and conveyed by post and telex, the Chairman of Chamber Three informed Judge Jahangir Sani of the President's declarations and notified him that a new schedule had been set under which, inter alia, the finalization and signing of the award in this case would take place on 2 September 1983.

In a telex dated 24 August 1983 to the Chairman of Chamber Three, Judge Jahangir Sani acknowledged receipt of the letter of 18 August 1983 and informed the Chairman that he considered his resignation to the Islamic Republic of Iran to be effective upon the Tribunal and that he was no longer legally authorized or empowered to participate in the taking of decisions or the issuance of awards except for "the preparing and drafting, or drawing up and elaborating, of a judicial opinion or award which has previously been communicated or announced".

Neither in this telex nor in a telex received on the following day, addressed to the Full Tribunal, did Judge Jahangir Sani state that it would be physically impossible for him to take part in the meeting of 2 September.

Judge Jahangir Sani was not present for the signing of the Award in this case at the 2 September Chamber meeting.

Under the above circumstances, the Tribunal has determined that it may proceed with the signing of the Award in the absence of Judge Jahangir Sani pursuant to Article 32, paragraph 4, of the Tribunal Rules.

Dated, The Hague
2 September 1983

Nils Mangård
Chairman
Chamber Three

Richard M. Mosk