IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داور

DUPLICATE ORIGINAL

دونسخه برابر اصل

CASE NOS. 10853/10854/10855/10856
CHAMBER ONE
AWARD NO. 282-10853/10854/10855/10856-1

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران ـ ایالات متحده
FILED - ثبت شد
Date 17 DEC 1986 تاریخ
۱۳۶۵/۹/۲۶
No. شماره

IAN L. McHARG (Case No. 10853),
WILLIAM H. ROBERTS (Case No. 10854),
DAVID A. WALLACE (Case No. 10855),
THOMAS A. TODD (Case 10856),

claims of less than $250,000 presented
by THE UNITED STATES OF AMERICA,
Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances:

For the Claimants: Mr. J.R. Crook,
Agent of the United States of America
Mr. Mike Raboin,
Ms. Loretta Polk,
Assistants to the Agent
Mr. William H. Roberts,
Claimant in Case No. 10854

For the Respondent: Mr. M. K. Eshragh,
Agent of the Islamic Republic of Iran
Mr. Khalil Khalilian,
Legal Adviser to the Agent
Mr. M.M. Jahanbin,
Mrs. S. Abolghasemi,
Representatives of the EPO
Mr. M. Mansaurshahi,
Attorney of the EPO.

I. Procedural History

1. On 19 January 1982, the United States filed Statements of Claim which presented Claims of less than US$250,000 of Ian L. McHarg (Case No. 10853), William H. Roberts (Case No. 10854), David A. Wallace (Case No. 10855), and Thomas A. Todd (Case No. 10856), against the Islamic Republic of Iran ("Iran"), and in particular, the Department of the Environment ("EPO") and Bank Tejarat.

2. On 22 December 1982, the Claimants filed a joint Request for Interim Measures. Noting that the EPO had brought an action in the Tehran Public Court against the Claimants and that the legal and factual issues presented in that action were identical to those presented in the present Cases, the Claimants requested that Iran be directed to dismiss or suspend its action.

3. On 16 March 1983, the Respondent informed the Tribunal that on 2 October 1982, the Tehran Public Court had rendered a decision in the matter. On 16 May 1983, at the request of the Tribunal, Iran filed a copy of a default judgement rendered by the Tehran Public Court against the Claimants. The Tribunal then denied as moot the interim relief sought by the United States. McHarg, et al and Islamic Republic of Iran, Decision No. DEC 27-10853/10854/10855/10856-1 (14 June 1983).

4. Between 11 and 31 October 1984, Iran, EPO and Bank Tejarat filed separate Statements of Defence in each Case. The EPO Statement of Defence included a Counterclaim.

5. On 3 December 1985, having filed the English version of its Documentary evidence and legal brief ("Supplementary Statement of Claim and Reply to Iran's Statement of Defence") on the due date, 2 December 1985, the Claimants requested an extension of 10 days to file the arsi version.

No formal action was taken on this request. On 12 December 1985, the Claimants filed the Farsi version of this pleading.

6. On 9 January 1986, the Tribunal issued an Order advising the Parties that a decision on the admissibility of the filing would not be made until after the Hearing on 15 April 1986. By the same Order, the Tribunal extended the time limit for the Respondent to file its documentary evidence and legal brief for 10 days until 10 March 1986.

7. On 22 January 1986, the Respondent requested the Tribunal to cancel the date of the Hearing and hold a Prehearing Conference. By Order filed on 29 January 1986 the Tribunal denied the request and confirmed that the Hearing would be held as scheduled on 15 April 1986.

8. On 10 March 1986, Bank Tejarat and Iran filed separate responses to the Claimants' documentary evidence and legal brief. On the same date, Iran filed a Brief in the matter of tax claims submitted by the EPO, and a Memorial in support of the Tribunal's jurisdiction over the claims arising out of non-payment of social security premiums. On 13 March 1986, Iran filed a General Brief in support of claims based on unpaid taxes.

9. On 7 April 1986, the Claimants advised the Tribunal that they had deposited with the Registry a quantity of background material related to the Cases. The Claimants stated that the materials were not being introduced as evidence but "were being made available to the Arbitrators and the parties for viewing prior to and during the Hearing", after which, unless otherwise requested by the Tribunal, they would remove them. On the same date the Claimants submitted a tabbed version of their documentary evidence and a submission entitled "Notification of Costs".

10. On 11 April 1986, the Agent for the Islamic Republic of Iran objected to the Claimants' depositing of the "background materials" with the Registry.

11. A joint Hearing in the four Cases was held on 15 April 1986.

12. At the Hearing the Respondent sought to rely on four letters, three of which were addressed to WMRT/Iran by Iranian officials and one of which was addressed to EPO by WMRT/Iran. The Chairman stated that decision as to their admissibility would be taken after the Hearing.

II. Facts and Contentions of the Parties

A. Procedural and general objections by the Respondent

13. Both Iran and Bank Tejarat request that the Tribunal postpone any decision on the jurisdictional issues in these Cases until the Full Tribunal decides Case No. A22, in which Iran has requested an interpretation of the indirect claim requirements of Article VII (2) of the Claims Settlement Declaration.

14. Further, Iran requests that the Claimants' Documentary evidence and legal brief be stricken as untimely filed. In support of this request, Iran cites the Tribunal's decision not to accept a late-filed posthearing submission in Computer Sciences Corp. and Islamic Republic of Iran, Award No. 221-65-1, pp. 4-6 (16 April 1986). The Respondent also requests the Tribunal to exclude from the record in these Cases the "background materials" deposited with the Registry. Even assuming that they are not technically considered evidence, the Respondent contends, their mere filing will inevitably have some effect on the Tribunal's determination.

15. Finally, the Respondent requests the Tribunal to dismiss the request for costs, arguing that an award of costs in these Cases would be inappropriate as the Claims were presented by the United States.

B. Jurisdiction

16. The Claimants McHarg and Roberts assert that they are naturalized citizens of the United States and submit as evidence copies of their certificates of naturalisation. The Claimants Wallace and Todd assert that they are United States citizens by birth and submit as evidence copies of their United States passports.

17. Iran argues that none of the Claimants has made a sufficient showing of U.S. nationality. Moreover, it asserts that Messrs. McHarg and Roberts, who previously held British nationality, have not proved that they have renounced their original nationality, nor shown that if they have dual nationality, "their dominant nationality in terms of all the relevant factors, including usual domicile, center of interests, family ties, participation in public life and other evidences of affiliation, was their U.S. nationality from the date the claim arose until 19 January 1981".

18. The Claimants proffer alternative bases of jurisdiction, corresponding to alternative theories of liability. First, they assert that the Claims are a direct claim against the Government of Iran for expropriation of their respective shares in Wallace, McHarg, Roberts and Todd Iran, Inc. ("WMRT/Iran"), an Iranian corporation. Alternatively, they assert that the Claims are an indirect claim for the contractual rights of WMRT/Iran. The Claimants contend that each of them held 25% of the shares of the corporation, and that therefore "the ownership interests of [United States] nationals, collectively, were sufficient at the time the claim arose to control the corporation", as required by

Article VII (2) of the Claims Settlement Declaration. Moreover, they argue that the separate filing of each shareholder's Claim in no way affects the issue of collective ownership.

19. Further, the Claimants assert that the Claims were outstanding on 19 January 1981 and were owned continuously by the respective Claimants from the date they arose until 19 January 1981.

20. Iran contends that the Claimants do not control WMRT/Iran as provided for in Article VII (2) of the Claims Settlement Agreement, and therefore have no capacity to assert the claim. Iran also submits that the partners in WMRT/Iran were not limited to the four persons named in the Statement of Claim. It argues that, as evidenced by the notice of incorporation and a power of attorney, Narendra Juneja, an Indian national, held shares equal in number to those of the other four partners.

21. Iran also contends that the Claimants cannot substitute an Iranian company and file Claims related to that Company before this Tribunal.

22. Iran submits furthermore that Articles 23 and 29 of the Contract require that any dispute between the parties be settled by the competent Iranian courts. According to Iran, therefore, these Claims are subject to the exclusionary clause of Article II (1) of the Claims Settlement Declaration and fall outside the jurisdiction of the Tribunal.

23. The EPO submits that the Claimants are not competent to file Claims independently and separately from the Company. Further, the EPO contends that Articles 23 and 29 of the contract entitle it to resort to the competent Iranian courts for compensation if it incurred losses under the contract; that it applied this right and sought recourse to

the Tehran Public Court, which had rendered a judgement in the matter; and that consequently the Tribunal lacked jurisdiction to decide the Claimants' Claims.

24. Bank Tejarat objects to the jurisdiction of the Tribunal in particular over the Claims relating to a balance remaining in WMRT/Iran's bank account. It argues that the Claimants had not demanded the funds prior to 19 January 1981, and that therefore the Claims were not outstanding on that date as required by Article II (1) of the Claims Settlement Declaration.

C. The Claim

Expropriation and Contract

25. The Claimants proceed under alternative theories of liability. First, they contend that the Government of Iran has expropriated their shares in WMRT/Iran. According to the Claimants, WMRT/Iran was created on 17 November 1977 at the request of the Government of Iran to perform a single contract for the study, design and supervision of the construction of an environmental park. Because WMRT/Iran's rights under that contract were the corporation's only asset, the Claimants contend that the Department's breach of the contract deprived WMRT/Iran of its only source of income and rendered shares of WMRT/Ian stock valueless. Accordingly, they reason that the breach constituted a taking of the shares of stock. The Claimants value the shares solely by virtue of sums owed under the contract. Alternatively, under a contract theory, the Claimants seek the compensation due WMRT/Iran for the alleged breach of the contract. Thus, the Claimants rest both theories on the same factual contentions, and they contend that the relief sought under either theory is identical.

26. On 12 November 1977, having earlier prepared a feasibility study and, in a joint venture with an Iranian architectual firm, a master plan, Wallace, McHarg, Roberts and Todd ("WMRT"), a Pennsylvania partnership of architects, landscape architects, and city and regional planners, entered into a contract (the "Contract") with the Department of the Environment of the Government of Iran (the "Department") to provide landscape architectural services in connection with an environmental park in the Tehran suburbs. The park, to be known as "Pardisan", was to combine facilities for conservation, education, and research of the natural environment, including a zoo, museums of natural history and natural science, a planetarium, and replications of major environmental zones, from desert to rain forest. The Contract was signed by Mr. Faily on behalf of the Department and on behalf of WMRT/Iran, the Iranian corporation formed by WMRT for purposes of the project, by its Managing Director Narenda Juneja.

27. The contract provided that WMRT/Iran would be paid a total of 94,020,202 Rials for Program Development and Landscaping Services. Twenty percent of the contract price was paid as advance payment upon signing of the contract against a bank guarantee for the same amount. The balance was payable in five instalments upon submission of material consistent with the work schedule as set out in appendix 8 of the contract and upon confirmation and approval of research and other completed work assignments. Two principal sub-consultants -- Jones and Jones of Seattle, Washington, who served as zoological consultants, and Dr. Karim Djavanshir of Tehran, who served as a botanical consultant -- were retained as authorised under the contract.

28. The Claimants acknowledge that the 10 percent progress payment due after the fourth contract month was paid upon submission of the corresponding work. The Claimants contend that in early July 1978 WMRT/Iran completed and presented to

the Department materials required to be completed by the eighth contract month, and requested the 20 percent progress payment called for by the Contract. The Claimants contend that the Department did not make this payment, nor payment on invoices submitted for the work performed by the consultants, Jones and Jones and Dr. Karim Djavanshir. Despite this, the Claimants contend, WMRT/Iran commenced work on the next phase of the project.

29. The Claimants allege that around this time conditions in Iran began to change as the momentum of the Islamic Revolution increased, and the survival of the project came under considerable doubt. As a result, Project Director Sedaghatfar advised Juneja that WMRT/Iran should complete work underway, but not commence new work until the situation clarified. Meanwhile, according to the Claimants, WMRT/Iran continued efforts to obtain payment of the eighth-month invoice. In early October 1978, Sedaghatfar submitted a report to the PBO recommending payment of the entire invoice as well as payment for work done after the period covered by the invoice, but payment still did not come. WMRT/Iran had also still not received payment on the second invoice submitted by Jones & Jones, because although approval had apparently been given, no funds were available. During this period, WMRT/Iran continued to submit work because the Contract remained in effect, but, aware that the Department was reconsidering whether to continue with the project, the Claimants repeatedly sought instructions on whether to continue working.

30. The Claimants allege that on 31 October 1978, a few days after a progress report and invoice had been submitted to the Department itemizing the work done by WMRT/Iran since July 1978, Juneja met with Faily and Sedaghatfar. According

to the Claimants, neither official indicated that the project would be cancelled, but contrary to previous assurances Sedaghatfar stated that the Department would recommend that only 80 percent of WMRT/Iran's eighth-month invoice be paid because WMRT/Iran had failed to enlarge from 1:2000 to 1:500 the scale of plans submitted for the schematic design. The officials indicated that even that payment was dependent upon its release from the PBO and the ultimate determination of the project's future.

31. The Claimants allege that increased violence in Tehran associated with rioting and demonstrations made it virtually impossible for them to work. They allege that around this time Sedaghatfar informed Juneja that the Department had unofficially been told by the PBO that the Pardisan project would not continue. On 5 November 1978, Sedaghatfar advised Juneja that WMRT/Iran should stop work. At that point, according to the Claimants, WMRT/Iran had performed 60 percent of the services for which the Contract called. On a personal and unofficial basis, Sedaghatfar also recommended that Juneja leave Iran. The Claimants allege that the inability safely to perform work or utilize the company's funds deposited in an Iranian bank, combined with the grave risk to his personal safety, caused Juneja to leave Tehran on 11 November 1978.

32. The Claimants allege that notwithstanding the assistance of Pardisan Director Sedaghatfar and Department Director Faily, WMRT/Iran's efforts to obtain payment on the eight-month invoice continued to prove futile. WMRT/Iran was also unsuccessful in its attempt to obtain from the Department an official determination as to the status of the project and of the Contract. Finally, on 10 April 1979, uncertain as to the prospects for payment and the status of the project, WMRT/Iran's attorneys delivered on behalf of WMRT/Iran a letter which requested the Department to officially terminate the contract pursuant to its Article 17 (b), which governed termination by the Department, since neither

the Government of Iran nor the Department was capable of fulfilling its contractual obligations, and because conditions in Iran prevented WMRT/Iran from fulfilling all of the contract requirements.

33. The Department responded to that letter by stating that the Department had not breached the contract, that the contract remained in effect, and that WMRT/Iran should correct "deficiencies" in its performance within 45 days, failing which the Department would invoke Article 17(a)(1) of the contract, which governed cancellation of the contract due to the landscape architect's default. Initially, the Claimants contend, WMRT/Iran sought an extension of this deadline in order to respond to the Department's assertions. Subsequently, the new officials in the Department responsible for the Pardisan project met with WMRT/Iran's Iranian attorneys and, while reiterating the demand that the "deficiencies" in performance be remedied, confirmed that WMRT/Iran would not receive payment until after March 1980.

34. The Claimants allege that the United States Embassy incident in Tehran and detention of American nationals there made correction of any deficiencies in WMRT/Iran's submissions impossible. In late December 1979, the Department formally terminated the contract and WMRT/Iran's attorneys submitted a formal termination invoice pursuant to Article 22 of the contract, which listed the amounts they claimed were owed to WMRT/Iran under the contract. As Article 22 of the contract required the Department to consider and pay the bill within 30 days of receipt, the Claimants argue that the Department's failure to pay rendered it in default as of 26 January 1980.

35. The EPO submits that WMRT/Iran failed to fulfil its contractual obligations and cites two specific instances. First, the EPO submits that WMRT/Iran was obligated under Article 4(3) "to prepare the various phases of the project, tender documents, all reports and correspondence in

Persian," but presented all reports in English. Second, the EPO contends that the Company was obligated to enlarge the general site plans from a scale of 1:2000 to 1:500 and that it failed to fulfill its obligations in that respect. The EPO submits that WMRT/Iran informed the Organization through a letter that force majeure conditions prevented it from fulfilling its contractual obligations. It states also that WRMT/Iran acknowledged through its attorney's letter dated 29 August 1979 that it had not fulfilled certain obligations under the contract and had requested a three-month grace period to remedy the defects, which the Department granted. It contends that, nevertheless, WMRT/Iran took no corrective action and left the Department no option but to cancel the contract pursuant to Article 17(a). The EPO contends that the uncorrected deficiencies rendered valueless the work previously performed and caused the complete failure of the project.

36. The Claimants contend that throughout the performance of the project, WMRT/Iran submitted all reports, maps, drawings, documents and correspondence to the Department in English only. This practice arose at the request of officials at the Department who concluded that the highly technical nature of the materials being supplied made it more practical to use English. Moreover, the Department officials with whom WMRT/Iran routinely dealt were all fluent in English, having received their formal education and training in the West. Whenever Pardisan Director Sedaghatfar requested that a particular submission be translated, WMRT/Iran readily complied. The Claimants contend that the only exception to the exclusive use of English during the Pardisan project was in the text of the Themes and Storylines submission. They contend that as of August 1978, only this report needed to be translated into Persian and at the time of Juneja's departure in November 1978, 194 of the 454 pages of the Themes and Storylines report had been translated and submitted to the Department. At the Hearing, WMRT/Iran's representative estimated the value of this incomplete work at $5,000. Further, the

Claimants contend that the delay in finishing the Persian translation and typing of the Themes and Storyline report was in part caused by Department Director Faily and Pardisan Director Sedaghatfar, who initially selected the translators for the project but then found their work unsatisfactory. The Claimants contend that WMRT/Iran attempted to assist the Department in finding replacements, but it was difficult to locate suitable translators in Tehran due to the highly technical nature of the Themes and Storylines text.

37. As to enlargement of the General Site Map, the Claimants contend that although the Periphery and Parking area Plans were done at a scale of 1:500, the remainder of the plans were not enlarged from 1:2000 to 1:500 because the Department, in spite of requests by WMRT/Iran, delayed providing an adequately detailed topographic survey on which such a map could be based, as they were obligated to do. According to the Claimants, enlarging the schematic plans to 1:500 without the necessary topographic information would have resulted in a product of little use, and would have wasted the Department's money. Further, Sedaghatfar had initially stated that he would not require the enlargement of the site schematics from 1:2000 to 1:500 scale until the topographic survey had been completed. Only during the meeting on 31 October 1978 with Faily and Juneja did Sedaghatfar determine that WMRT/Iran should provide the enlargements.

Bank Account

38. The Claimants also seek $1,120.28 each, representing equal shares of the balance of WMRT/Iran's bank account at Bank Tejarat to which they contend that individually and collectively they have been denied access. The Claimants assume that the "current regulations" under whose purported authority Bank Tejarat has denied them access to the account are Bank Markazi's 1978-79 exchange regulations. According to the Claimants, these regulations violate the Treaty of Amity between Iran and the United States, the Articles of

Agreement of the International Monetary Fund, and customary international law.

39. As to the Claims in regard to the balance of WMRT/Iran's bank account, Bank Tejarat states that the balance in Current Account No. 2-49139 in the name of Wallace-McHarg-Roberts and Todd Iran Inc., is Rials 317,041; that the account has remained inactive since 1979; that it is a Rial account; that signatories of the account may draw any amount in Rials at any time; and that the account has always been and remains available to the account holder. The Bank contends that the customer's bank balances remain available to the customer in Rials, and that conversion into dollars is neither the Bank's obligation nor its function.

D. Counterclaim

40. The EPO has filed a Counterclaim. It asserts that WMRT/Iran's negligence and failure to perform its contractual obligations caused the termination of the Contract, which in turn caused substantial damages to the Department. Since each of the Claimants assert that he holds 25% of the shares in WMRT/Iran, each is claimed liable for 25% of such damages, which are detailed as follows:

1. Total amount claimed: Rials 7,524,787.75.
2. Delayed payment charges as determined by the Tribunal.
3. Social Security principal insurance premia: Rials 1,219,015.00.
4. S.S.O. delayed payment charges: Rials 569,025.25.
5. Penalty for failure to transmit S.S.O. premium statements: Rials 36,412.25.
6. The amounts indicated in S.S.O. letter No. 48990/5-4 dated 21.10.1361 (11 January 1983) in insurance premia and damages: Rials 484,125.50.
7. Tax dues for 1356: Rials 484,125.50.
8. Delayed payment charges with respect to 1356 tax: Rials 22,572.

9. Tax dues for 1357: Rials 1,506,575.50.
10. Delayed payment charges with respect to 1357 tax: Rials 657,552.

The EPO contends that 25% of the dues indicated in the Office of Corporate Taxation letter No. 22882 dated 28.10.1361 (18 January 1983) in taxes and delayed payment charges through Dey 1361 (20 January 1983) amounts to Rials 2,670,825.

41. The EPO requests of the Tribunal "an Award in its favour in the amount of Rials 7,524,787,75, the principal claim, plus interest and damages, an amount of Rials 1,824,453, the social insurance premium and interest thereon; as well as an amount of Rials 2,670,825, the tax due and interest thereon, and any additional award that the Tribunal may find appropriate". Further the Department "requests ... an award in its favour by reason of the Claimants' failure and negligence in performing its obligations under the contract, including costs of legal representation and assistance, fees and salaries of additional personnel, experts, and translators and any other expenses imposed on the Department and the Government of Iran".

42. The EPO reiterates that the Claimants failed to provide progress reports in Persian and to enlarge the general site plans from a scale of 1:2000 to 1:500. It contends that WMRT's failure to effect correction caused the complete failure of the Pardisan project and rendered the work performed by WMRT "worthless and unusable". It contends that the correction of the deficiencies will at present be of no value whatsoever to the Department.

43. The Claimants contend that the total value of the two minor nonconformities constitutes only a tiny fraction of the overall work produced by WMRT/Iran on the Pardisan project. Therefore, the Department's conclusion, without analysis or evidentiary support, that WMRT/Iran was in default under Article 17 (a) of the contract and that the

Department was justified in its termination of the contract is without merit.

44. The EPO argues that tax and social security claims arise out of the contract, "as they would not exist if not for the contract". Further, the EPO explains and provides the text of the legal provisions regulating the social security payment system in Iran, adding that this explanation is by way of background only and should not be seen as detracting from the Respondent's argument that the counterclaim for social security premiums does arise out of the contractual obligations between the parties and its breach of contract. Further the EPO submits a detailed statement of debt arising from wages paid to employees from 12 November 1977 to 22 December 1979, as well as details as to how the late payment and penalty charges, e.g. for failure to submit list of premiums, were calculated.

45. The Claimants contend that the EPO has not provided any evidence to substantiate its claim that tax and social security premiums are owing. In any event, the Claimants argue, Tribunal practice makes it clear that counterclaims for income taxes and social security premia which derive, not directly from the contract, but out of the operation of Iranian law, as do those alleged here, fall outside the Tribunal's jurisdiction.

III. Reasons for Award

A. Admissibility of the late filings

46. Iran objects to the admission of the Claimants' Documentary evidence and brief because the Farsi version was filed ten days late. The Tribunal is of the view that this delay did not occasion any prejudice as Iran was allowed an equivalent extension to file its own Documentary evidence and brief. Moreover, the Tribunal's action in declining to accept a late-filed posthearing submission in Computer

Sciences Corp. and Islamic Republic of Iran, Award No. 221-65-1, pp. 4-6 (16 April 1986), is not inconsistent. In Computer Sciences, by a posthearing Order, the Tribunal granted the Respondent's request to file posthearing submissions. The Order emphasized, however, that the Tribunal granted the request only because of "the exceptional circumstances of this case". The Tribunal also expressly stated in the Order that it would not grant any extensions of the time to file the posthearing submissions. In short, having taken the unusual step o permittin posthearing submissions, the Tribunal advised that it would require unusually strict adherence to filing deadlines. Thus, when the posthearing submissions were filed late, the Tribunal, noting that no reasons were given for the delay and that no unforeseen circumstances had occured, declined to accept the late-filed submissions. Clearly, then, Computer Sciences is inapposite here. The Tribunal accepts the Claimants' pleading.

47. While the Claimants insisted that the materials deposited with the Registry on 7 April 1986 did not constitute evidence, but merely provided "background materials" related to the Cases, the Tribunal can identify no relevant distinction in this context. Because the materials were substantial in quantity and were filed only shortly before the Hearing, the Tribunal does not admit them.

48. While the Tribunal does not require the Parties to submit tabbed volumes of their exhibits, it strongly encourages them to do so. Because the later submission was identical to the earlier one save for the tabs, the Tribunal admits it.

49. By its nature, a notification of costs cannot be complete until the Parties have completed their preparations for the Hearing. As a general matter, therefore, this particular category of filing cannot be expected until shortly before the Hearing. Accordingly, the Claimants' notification of costs is admitted.

50. The document filed by the Respondent on 11 April 1986 and referred to at the Hearing was not objected to by the Claimants. The document did not include new factual evidence and is therefore accepted.

51. As to the letters referred to by the Respondent at the Hearing, the Respondent did not provide sufficient explanation of its failure until the Hearing itself to produce the letters it sought to rely on at that time. In any event, the Tribunal considers that the Parties' pleadings and other evidence on record deals adequately with the points the Respondent attempts to bring to the notice of the Tribunal through the production of these letters. In all the circumstances, the Tribunal determines that these letters should not be accepted.

B. Jurisdiction

52. Iran requests that the Tribunal defer decision in these Cases until the Full Tribunal has decided Case A-22. As this Chamber recently noted in rejecting a similar request, "'suspension of jurisdictional determinations would for an indeterminate time bring the work of the Tribunal to a halt', given the frequency with which such issues occur." Blount Bros. Corp. and Islamic Republic of Iran, Award No. 215-52-1, p. 8 (6 March 1986) (quoting Futura Trading Inc. and Khuzestan Water and Power Authority, Award No. 187-325-3, p. 7 (19 August 1985) (rejecting request to defer determination of corporate nationality pending Full Tribunal decision in Case A-20)). See R. J. Reynolds and Islamic Republic of Iran, Award No. 145-35-3, p. 21 (6 August 1984) (rejecting request to defer grant of interest pending Full Tribunal decision in Case A-19). Similarly here, the jurisdictional issues are sufficiently clear to warrant decision at the present time.

53. The Tribunal is satisfied upon the evidence produced that each of the Claimants is a United States citizen. The certificates of naturalisation of Claimants McHarg and

Roberts indicate that they have been naturalized citizens of the United States since 31 August 1960 and 27 December 1967 respectively. On the basis of the evidence and explanations submitted at the Hearing, the Tribunal is satisfied that if they have dual citizenship, as to which there is no evidence, their dominant nationality would be American. See generally Case No. A/18, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S C.T.R. 251.

54. The Claimants assert that the four shareholders' Claims are direct claims by nationals of the United States against the Government of Iran and are within the Tribunal's jurisdiction under Article II (1) of the Claims Settlement Declaration; in the alternative, they argue that the Claims qualify as indirect claims brought on behalf of WMRT/Iran. The Tribunal decides that because each Claimant is a United States national, the Tribunal has jurisdiction over the Claims arising out of the alleged expropriation of their shares in WMRT/Iran as direct claims within the meaning of Article II(1) of the Claims Settlement Declaration. The claims also qualify as indirect claims by nationals of the United States within the meaning of Article VII(2). Under Article VII(2) of the Claims Settlement Declaration, indirect claims fall within the Tribunal's jurisdiction if they are

> "owned indirectly by nationals of Iran or the United States through ownership of capital stock or other proprietary interests, in judicial persons, 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".

This provision imposes two requirements on an indirect claim: "There must be 'ownership interests' which were sufficient 'to control the corporation or other entity' at the time the claim arose; and the entity in question must not itself be entitled to bring a claim". Blount Bros., supra, p. 9. Here it is clear that American nationals held sufficient ownership interests to control the corporation at

the time the Claims arose. Even assuming that Juneja, an Indian national, held shares equal in amount to those held by each Claimant, the four Claimants would still jointly hold 80% of WMRT/Iran's stock. It is of no import that control here arises from the individual holdings of four nationals, as Article VII (2) expressly envisions such "collectiv[e]" control. It is also clear that, as an Iranian corporation, WMRT/Iran could not itself bring a Claim. Thus, the requirements of Article VII (2) have been satisfied, and the Tribunal has jurisdiction over the Claimants' indirect claim on behalf of WMRT/Iran.

55. Articles 23 and 29 of the Contract deal with resolution of disputes. Article 23 states in part:

> "All disputes arising between the Parties to this Contract in the execution of the Contract or interpretation of the provisions thereto, which cannot be settled amicably through negotiation or correspondence, shall first be referred to a three-man committee consisting of representatives of the plan organization, the Employer and the Consultant Engineer for settlement. Should they fail to reach an agreement or should any of the Parties resist the majority vote, the matter shall be settled through competent courts according to the Iranian Law".

Article 29 states in part:

> "This contract is, in all respects subject to the laws and regulations of the Imperial Government of Iran..."

The wording of these clauses is substantially similar to the wording of the clause at issue in Gibbs and Hall, Inc. and Iranian Power and Transmission Company, Award No. ITL-1-6-FT (5 November 1982). There the Full Tribunal decided that because the clause did not unambiguously restrict jurisdiction to the courts of Iran, the exclusion clause of Article II (1), of the Claims Settlement Declaration did not apply. Likewise here, the Tribunal decides that Articles 23 and 29 of the contract do not oust the jurisdiction of the Tribunal.

56. It is not disputed that all claims, except those relating to the bank balance at Bank Tejarat, arise under a

contract within the meaning of the Claims Settlement Declaration and were outstanding as at 19 January 1981. As to the portion of the Claims relating to the bank account, the Tribunal concludes that the Claimants have not shown that they made a valid demand for the account balance at any time prior to 19 January 1981. Therefore, that portion of their Claims was not outstanding as at 19 January 1981 so as to fall within the jurisdiction of the Tribunal.

57. It is not disputed that the EPO and the Bank Tejarat are controlled entities of the Government of Iran, as defined in Article VII (3) of the Claims Settlement Declaration.

C. Merits

58. Each of the Claimants claims 25% ownership in WMRT/Iran. The Tribunal notes that WMRT/Iran was formed on 17 November 1977 and originally had five equal shareholders, the four Claimants and Narendra Juneja, an Indian national. The Claimants assert that Juneja resigned on 20 December 1979 and relinquished his shares, and that consequently each Claimant now holds 25% shares in WMRT/Iran. In support of that assertion, the Claimants rely on a letter written by Juneja on 20 December 1979. The letter states, in part:

> "I hereby tender my resignation as a board member and relinquish, without prejudice, my share of the company's capital to the board of directors for assignment, or otherwise transfer, as it deems to be appropriate."

Bearing in mind that WMRT/Iran was incorporated in Iran and therefore that any transfer of its shares is governed by the laws of Iran, the Tribunal decides that Juneja's letter is insufficient to show that he validly transferred his shares to the corporation or to the remaining four shareholders. Accordingly, the Tribunal decides that each Claimant may claim on the basis only of his original 20% holding in WMRT/Iran.

59. The Claimants seek recovery first on a theory of expropriation of their shares. However, they do not identify any circumstances which would turn this breach of contract into an expropriation of those shares in WMRT/Iran. The Tribunal decides that there is no evidence as to taking of the shares and holds that the Claimants have not proved an expropriation.

60. The Claimants claim the following amounts under the contract:

ITEM	NET AMOUNT DUE	DOLLAR EQUIVALENT
i) Unpaid invoices (8th month payment)	Rls 19,024,711	$ 268,900.50
ii) Fees for Work Completed (July 1978 - 5 Nov. 1978)	Rls 22,291.088	$ 315,068.38
iii) Termination Expenses	Rls 1,991,819	$ 28,152.92
iv) Retainage Recovery	Rls 3,009,917	$ 43,543.00
Total	Rls 46,317,535	$ 654,664.80

On the basis of their contention that they are equal 25 percent owners of WMRT/Iran, the Claimants each seek US$ 163,666.20.

i) Unpaid Invoices

61. The Claimants seek Rls. 19,024,711, or $268,900.50, for the eighth-month payment. In support, they produce the Termination Invoice which they prepared in March 1979 and submitted to the Department in December 1979, which incorporates prior invoices, details the work performed, and itemizes payments due. Appendix A to the Termination Invoice comprises three previously submitted invoices -

eighth-month payment invoices for work by WMRT/Iran, for the Second Report of the subconsultant Jones and Jones, and for the Second Report of subconsultant Dr. Karim Djavanshir, respectively. Except as to the alleged deficiencies in translating material and enlarging site plans, the Respondent does not actually dispute the performance of this work by WMRT/Iran and its subconsultants, and the evidence adequately establishes their performance. The Claimants assert that WMRT/Iran originally postponed the enlargement of the site plan after consultation with the Department, and later, when the Department requested that the enlargement be effected, force majeure circumstances prevented performance. Similarly, force majeure circumstances prevented completion of the translation. The Tribunal is satisfied that but for the conditions existing at that time the Claimants would have remedied these defects. These deficiencies, therefore, do not constitute a breach so as to entitle the Respondent to invoke Paragraph 17 (a) of the Contract. Rather, the Tribunal is of the view that the termination of the Contract under Paragraph 17 (b) of the Contract would have been appropriate. Accordingly, the Tribunal determines that these deficiencies do not constitute breach, and the eighth-month payment invoice is payable. The invoices of the subconsultants, whose performance the Respondent does not appear to dispute, are also payable.

62. Normally, the deficiencies identified by the Respondent and not substantially disputed by WMRT/Iran would entitle the Respondent to a credit in an amount equal to the value of the incomplete work. In these cases, however, the evidence establishes that the Claimants performed additional services at the request of the Department for which they never billed. The value of this work exceeds the value of the work WMRT/Iran left incomplete. Taking these extra services into account, therefore, the Tribunal awards the full amount sought by the invoices in Appendix A of the Termination Invoice, subject to deductions for taxes.

63. The WMRT/Iran eighth-month invoice seeks a net payment of Rls. 17,769,818 -- that is, the gross amount of Rls. 18,804,040 minus the 5.5% tax in the amount of Rls. 1,034,222. Conversion of the rial amounts into dollars at the rate of 70.75 rials to the dollar, the rate assumed by all Parties in these Cases, yields $251,163.50. The invoices seeking payment for the services of subconsultants Jones and Jones and Karim Djavanshir, however, stated net dollar amounts payable after deduction of applicable taxes, in accord with the practice of the Parties. Accordingly, the full amount stated in dollars for Jones and Jones and Karim Djavanshir -- $13,966.57 and $3,600, respectively -- are payable. The Tribunal awards each Claimant 20% of the total of these amounts -- that is, $53,746.01 to each Claimant.

ii) Fees for work completed

64. The Claimants also seek fees for work completed between July 1978 and 5 November 1978 in the amount of Rls. 22,291,088, or $315,068.38, as detailed in Appendix B to the Termination Invoice. Article 17(b)(1) of the Contract entitles WMRT to payment for services rendered prior to termination when the employer terminates for reasons other than the Landscape Architect's fault. The evidence does not support the Respondent's contention that the Department properly terminated the Contract under Article 17(a) due to the Landscape Architect's fault. As noted, the Claimants adequately explained the alleged deficiencies. While prevailing circumstances called for suspension of performance for a time, the Respondent has not established that performance could not have eventually resumed. Accordingly, the Department terminated the Contract for its own reasons, and Article 17(b) applies. The Respondent does not actually contest performance of the work reflected in Appendix B, and the Tribunal finds that amounts sought for work performed by both WMRT/Iran and Jones and Jones are payable.

65. As with the amounts sought in payment of the eighth-month invoice, the amount sought for work completed prior to suspension included deduction of 5.5% for taxes -- that is, a deduction of Rls. 1,221,213 from the gross invoice amount of Rls. 22,203,879, leaving a payable amount of Rls. 20,982,666. Conversion of this amount to dollars at the rate of 70.75 rials to the dollar yields $296,574.78. The Jones and Jones invoice states a net dollar amount payable after deduction of applicable taxes, and the $18,261.33 stated is payable in full. The Tribunal awards each Claimant 20% of the total of these sums -- that is, $62,967.22 to each Claimant.

iii) Termination expenses

66. The Claimants claim under this item as follows:

(a) Termination of employment contract of Technical assistant	Rls	262,500
(b) Expenses for return of foreign employees	Rls	257,160
(c) Cost of removing local supervision unit	Rls	1,472,159
Total	Rls.	1,991,819
	or US$	28,152.92

Article 17 (b) 2 entitles the Landscape Architect to

> "All expenses arising from the agreements or undertakings . . . with respect to his employees or other institutions as well as the expenses relating to the return of foreign employees and their family to their countries and the cost of freight of their luggage to their countries at the time of termination of this Contract and also the cost of removing the local supervision unit, provided that such expenses are incurred for the execution of this Contract and are approved by the Employer".

The Tribunal accepts that such wording often is to be interpreted to the effect that such consent cannot unreasonably be withheld. However, where as in this case a payment

obligation is made subject to such approval and concerns payment not otherwise due under the contract, the Tribunal concludes, in the context of this contract and the circumstances of these Cases that the Respondent did not have to give its approval to these expenses. Furthermore, there is in this instance no evidence that the Claimants sought the approval of the employer nor any evidence or explanation as to why they did not do so. To that extent the Claimants did not comply with the requirements of Article 17(b)2 of the Contract. Thus, without determining to what extent the expenses would otherwise fall under the scope of this provision, the claim for termination expenses is disallowed.

iv) Retainage Recovery

67. The Claimants seek Rls. 3,009,917 or $43,543 for recovery of retainage withheld from previous invoices as a good performance guarantee pursuant to the terms of the Contract. In light of the Tribunal's holding that the Claimants adequately performed their contractual obligations until the Department's termination, the Claimants are entitled to reimbursement in full of the retained amounts, which total Rls. 3,009,917. Because retainage was calculated as a percentage of the principal invoice amount from which WMRT/Iran made all applicable deductions for taxes, no additional deductions need be made. The Tribunal, therefore, awards each Claimant 20% of that amount, or Rls. 601,983. Conversion to dollars at the rate of 70.75 Rials to the dollar yields an award to each Claimant of $8,508.60.

D. Relief from Tehran Proceedings

68. At the Hearing, the Claimants requested a declaration in accord with E-Systems, Inc. and Islamic Republic of Iran, Interim Award No. ITM 13-388-FT (4 February 1983). The Tribunal affirms that as of the date of filing here, the Claims and Counterclaims over which the Tribunal asserts jurisdiction in these Cases are excluded from the

jurisdiction of any other court or tribunal pursuant to Article VII (2) of the Claims Settlement Declaration.

E. Counterclaim

69. The Respondent has filed a Counterclaim. The Counterclaim is based on three premises:

i) WMRT/Iran's failure to provide the reports in Persian;

ii) WMRT/Iran's failure to provide an enlargement of the general site plans from a scale of 1:2000 to 1:500;

iii) WMRT/Iran's obligation to pay the appropriate taxes and social security premiums.

70. The evidence does not establish that the deficiencies identified by the Respondents as to translation and site-plan enlargement prevented completion of the Pardisan project or impaired the value of other work performed by WMRT/Iran. Having already taken account of the value of this incomplete work, the Tribunal, for the reasons set out in paragraph 63 supra, makes no award on the Counterclaim for the alleged deficiencies.

71. In order to fall within the Tribunal's jurisdiction, a counterclaim must "aris[e] out of the same contract, transaction or occurrence that constitutes the subject matter of [the] claim." Article II, para. 1, Claims Settlement Declaration. To give effect to this provision, "a distinction must be made .... between legal relationships arising out of the application of the law to a situation in which either party individually finds itself and a contractual relationship between the Parties inter se." T.C.S.B. Inc. and Islamic Republic of Iran, Award No. 114-140-2, p. 24 (16 March 1984). Specifically, a counterclaim for allegedly unpaid taxes and social security premia must be based on an obligation which appears in the contract itself or in the practice of the Parties arising from the contract. See id.; Sylvania Technical Systems, Inc. and Islamic Republic of Iran, Award No. 180-64-1, pp. 40-41 (27 June 1985). As

detailed above, the Tribunal has awarded amounts on the eighth-month and sub-consultants' invoices which reflect deductions for taxes made on those invoices. The other tax and social security counterclaims pressed by the Respondent, however, do not arise from the contract itself and are, therefore, jurisdictionally barred.

72. While the Respondent does not expressly raise the issue, the Tribunal must consider certain evidence in the record which suggests a contractual practice to deduct social security contributions as well. The Tribunal concludes, however, that the record as a whole indicates that there was no such practice. As an initial matter, the contract standing alone is not sufficient to establish a contractual obligation to make such deductions. Article 14.1 makes WMRT/Iran "responsible for payment of all taxes, customs duties and charges, income tax, Social Insurance Contributions, and other government charges pertaining to [WMRT/Iran and its] employees," and Article 14.3 permits the Department to make corresponding deductions. Because these provisions specify neither which taxes are applicable nor exactly how much is to be deducted in satisfaction of them, they do not suffice to give the Tribunal jurisdiction. See, e.g., International Technical Products Corp. and Islamic Republic of Iran, Award No. 196-302-3, pp. 28-29 (28 October 1985); Howard Needles Tammen & Bergendoff and Islamic Republic of Iran et al., Award No. 244-68-2, para. 62 (8 August 1986). Thus, the Tribunal must determine whether there exists a "settled contractual practice of the Parties." Blount Bros. Corp. and Islamic Republic of Iran, Award No.215-52-1, p. 30 (6 March 1986). There is no such settled practice here. A chart attached to the 23 August 1978 letter from Claimant McHarg on behalf o WMRT/Iran to Project Director Sedaghatfar indicates that a 5% "social withholding" was made at the time of the first progress payment. In the text of the letter, however, McHarg states that this money "has been erroneously withheld," and he treats the withholding instead as additional, refundable security. In other words, the evidence reveals a single

instance of social security withholding, to which WMRT/Iran objected. On the other hand, the Termination Invoice, on which the Claimants based their claim both at the time the dispute arose and throughout this proceeding, does not reflect any deduction for social security, though it does reflect a deduction of the 5.5% tax. The summary of payments made under the principal Contract, which was attached to the Termination Invoice, indicates that the net payment received at the time of the submission of the first progress invoice included the amount that the chart attached to the earlier McHarg letter stated had been deducted for social security. Thus, at the time it submitted the Termination Invoice, WMRT/Iran indicated that the payments it had received did not include deductions for social security, and it has not sought here to recover the withholding to which the McHarg letter objected. The Tribunal concludes that the preponderance of the evidence indicates that there was no contractual practice or authorization for the deduction of social security contributions.

F. Interest

73. Absent "special circumstances," this Chamber applies contractually stipulated rates of interest. Sylvania, supra, p. 31. The Contract here provides for a rate of 6% interest on amounts left unpaid 30 days after the due date. The Tribunal therefore applies that rate to the amounts awarded. The Termination Invoice requests interest on the eighth-month invoices as of 1 November 1978. However, the Tribunal has determined that there were legitimate disputes about certain work left unfinished by WMRT/Iran. In the circumstances of these Cases, it is reasonable to award interest on the amounts awarded from the eighth-month invoices as of the date the Tribunal has determined that, but for the circumstances prevailing in Iran, WMRT/Iran would have completed all work, or the Parties should have settled all disputes. Thus, the Tribunal awards interest on the eighth-month invoice amounts from 1 September 1979.

Because WMRT/Iran submitted the Termination Invoice, which covered amounts awarded for work completed prior to suspension and for reimbursement of retainage, to the Department in December 1979, it should accrue interest from 1 January 1980.

G. Costs

74. The Claimants' "Notification of Costs" includes a request for legal costs incurred by the Claimants in retaining private attorneys. As the Tribunal has previously stated in Trustees of Columbia University and Iran, Award No. 222-10517-1 (15 April 1986), there is no objection in principle to an award of costs in a claim of less than $250,000. This rule also applies in the event a claimant chooses to consult or retain the services of a private attorney to assist in the presentation of his claim. However, only costs due to the proceedings before this Tribunal are compensable. Some only of the costs claimed by the Claimants fulfil this requirement. Further, the costs claimed include a number of items which are items of damages rather than costs. These are not in any event claimable as Article 17 (b) 2 of the Contract specifically states that

> "the landscape architect shall not be entitled to any other amounts as compensation for damages".

Additionally the United States requests 1½% of the amount of the award as costs. These amount to US$7,659.35 per claim. In light of the voluminous pleadings and documents tendered in support of these claims, the Tribunal determines that it would be reasonable to award a total of US$5,000 as costs incurred in the preparation and presentation of these claims and, therefore, awards US$ 1,250 as costs to each Claimant.

IV AWARD

75. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

1. (a) In Case No. 10853, the Respondent ISLAMIC REPUBLIC OF IRAN is obligated to pay the Claimant IAN L. McHARG the sum of One Hundred Twenty-five Thousand Two Hundred Twenty-one United States Dollars and Eighty-three Cents (U.S.125,221.83), plus simple interest at the rate of 6% per annum (365-day basis) on Fifty-three Thousand Seven Hundred Forty-six United States Dollars and One Cent (U.S.$53,746.01) from 1 September 1979 and on Seventy-one Thousand Four Hundred Seventy-five United States Dollars and Eighty-two Cents ($71,475.82) from 1 January 1980 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account.

   (b) The Respondent ISLAMIC REPUBLIC OF IRAN shall pay the Claimant IAN L. McHARG the sum of One Thousand Two Hundred Fifty United States Dollars (U.S. $1250) as costs of arbitration.

2. In Case No. 10854, the Respondent ISLAMIC REPUBLIC OF IRAN shall pay the Claimant WILLIAM H. ROBERTS amounts identical to those awarded in Paragraph 1(a) and (b) above.

3. In Case No. 10855, the Respondent ISLAMIC REPUBLIC OF IRAN shall pay the Claimant DAVID A. WALLACE amounts identical to those awarded in Paragraph 1(a) and (b) above.

4. In Case No. 10856, the Respondent ISLAMIC REPUBLIC OF IRAN shall pay the Claimant THOMAS A. TODD amounts identical to those awarded in Paragraph 1(a) and (b) above.

5. The remainder of the Claims and the Counterclaims are dismissed.

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

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

Dated, The Hague
17 December 1986

Karl-Heinz Böckstiegel
Chairman
Chamber One

In the Name of God

Mohsen Mostafavi
Concurring in part,
dissenting in part.
See Separate Opinion.

Howard M. Holtzmann
Joining in part, concurring in part, and dissenting in part.
See Separate Opinion.