[redacted] CLAIMS TRIBUNAL 122 دیوان داوری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

Case No. 174 Date of filing: 22NOV85

** AWARD - Type of Award Final
- Date of Award 22NOV85
37 pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____
_____
- Date _____
_____ pages in English _____ pages in Farsi

R/12

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 174
CHAMBER ONE
AWARD NO. 201-174-1

HOUSING AND URBAN SERVICES INTERNATIONAL, INC.,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
TEHRAN REDEVELOPMENT CORPORATION,
Respondents.

AWARD

Appearances

For the Claimant: Mr. L. S. Sandler,
Attorney,
Mr. T. Liebman,
Mr. P. W. Wendt,
Representatives of Housing and Urban Services International, Inc.,

For the Respondents:
Mr. M. K. Eshragh,
Deputy Agent of the Islamic Republic of Iran,
Mr. P. Ansari,
Legal Adviser to the Agent of the Islamic Republic of Iran,

connection with the proposed project; the company that Golzar controlled and managed, Tehran Redevelopment Corporation ("TRC"), was to build the project; and Swoboda's employer, Meaplan A.G., was to be paid 15% by HAUS for finding the transaction and providing translation services and administrative assistance. As more fully described below, HAUS, Meaplan and TRC all signed a contract called the "Architect's Agreement."

HAUS' claims are based on the Architect's Agreement and seek the balance of fees allegedly earned but not paid. The claim against TRC is for alleged breach of that contract, and the claim against the Government of the Islamic Republic of Iran is that it interfered with TRC's carrying out the same contract. The amount sought is $749,545.71, plus interest and costs. There are also counterclaims in which TRC alleges that HAUS' performance was defective and delayed.

The precise legal nature of the relationship between HAUS and Meaplan rises to crucial importance in this case because the Respondents have contended throughout the proceedings that the two were partners under Iranian law, and that one partner cannot sue on a claim unless the other partner also joins in the action. The Respondents assert that the consequence of this is to bar HAUS' claim before this Tribunal. They argue that HAUS cannot make a claim without Meaplan, and that under the Claims Settlement Declaration[2] Meaplan has no standing before the Tribunal because it is not a national of the United States. The broad issue thus raised is decided by the Tribunal for the first time in this Award.

2. Procedural History

---

[2] Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran of 19 January 1981.

The procedural history of this case was affected in important respects by the partnership issues that were raised.

At the Hearing on 3 March 1983 the Tribunal learned for the first time that, in addition to jointly signing the Architect's Agreement, HAUS and Meaplan had also memorialized their relationship in a document known as the "Joint Venture Agreement". Because of the importance of clarifying that relationship, the Tribunal ordered the Claimant to submit a copy of the Joint Venture Agreement within three weeks, and invited the Respondents to submit their comments concerning that Agreement. The Claimant filed the Joint Venture Agreement on 10 March 1983. TRC filed comments on 20 July 1983 in a document entitled "Reply to the Tribunal's Order". That document, however, included not only comments on the Joint Venture Agreement but also what TRC described as submissions "made in order to demonstrate the baselessness of the claim and the numerous contradictions in the claim as well as in the statements made by the Claimant at the hearing." The Respondent also attached new documentary evidence.

The Claimant thereupon filed a letter requesting that "the entirety of [TRC's] Reply [be] not considered" because it went beyond commenting on the Joint Venture Agreement as permitted by the Tribunal's Order and made new factual assertions many of which were raised too late. The Claimant asked that if the Tribunal decided to consider TRC's Reply, that it also consider an attached "Response to TRC's Memorandum" and "especially the affidavit of Theodore Liebman" which was annexed to the "Response". The Tribunal's decision on this procedural issue is set forth below.

The Tribunal's study of the text of the Joint Venture Agreement raised even further questions. Accordingly, the Tribunal issued the following additional Order:

The Claimant is ordered to file with the Tribunal by 5 April 1984 a Memorial addressing the following questions:

1. What law determines the relationship between Haus International, Inc. ("Haus") and Meaplan A.G. ("Meaplan") created by (i) the "Architect's Agreement", dated 5 December 1977, signed by Haus and Meaplan, on the one hand, and Tehran Development Corporation on the other, and (ii) the "Joint Venture Agreement", dated 10 December 1977, between Haus and Meaplan, both of those agreements read together? Under that law, did those agreements create a partnership or other form of association?

2. If a partnership or other form of association was created under the applicable law, has Haus by itself the right under that law, or under international law, to assert a claim before the Tribunal for damages allegedly sustained by the partnership or association? If so, has Haus the right by itself to assert a claim (i) for 100% of the damages sustained by the partnership or association or (ii) for only Haus' pro rata share of such damages?

The Claimant's Memorial in Response to this Order was filed on 3 April 1984. By Order of 4 April 1984 the Respondents were invited to file a Response to the Claimant's Memorial.

In addition to receiving the Claimant's Memorial, the Tribunal also received a submission from the Agent of the United States entitled "Memorial of the United States on the Issue of Jurisdiction over Claims of U.S. Nationals Participating with Non-nationals in Partnerships or Associations". In making the submission, the Agent noted that the Tribunal's Order raised interpretive questions "of potentially broad application". He requested that the Tribunal accept the Memorial pursuant to Note 5 of Article 15 of the Tribunal Rules which provides that the Tribunal may permit submissions by a Government that are considered "likely to assist the Tribunal in carrying out its task". The Tribunal accepted the submission and invited the Respondents to comment on it. Both TRC and the Government of Iran then filed responses on this subject.

II. FACTS AND CONTENTIONS

At the center of this claim is the Architect's Agreement entered into in Tehran on 5 December 1977. The Claimant contends that TRC provided a copy of an agreement it had used in another transaction for use as a prototype in drawing up the Architect's Agreement. HAUS marked a number of proposed changes on the draft and gave it to Swoboda to be re-typed. The Claimant alleges that when Swoboda re-typed the document he desired to include Meaplan's name in order to provide some sort of foundation for Meaplan's participation, particularly for the 15% to be paid to it by HAUS. Therefore, it is alleged, he inserted the name of Meaplan in the preamble to the Architect's Agreement which, as so changed, states that it is made between "TEHRAN REDEVELOPMENT CORPORATION, hereinafter called the Owner, and HAUS INTERNATIONAL, INC. - MEAPLAN, Architects, hereinafter called the Architect." Swoboda, it is said, also added Meaplan as a party to receive notices and as a signatory at the bottom of the Architect's Agreement. No other mention is made of Meaplan in the Architect's Agreement. HAUS and TRC did not object to Swoboda's having thus added Meaplan's name. All three companies thereupon signed the Architect's Agreement.

The Architect's Agreement provided for the Architect to render all architectural design, site planning and engineering services for a housing complex of approximately 5,000 units to be built by TRC in Tehran. TRC agreed to pay the Architect a fee of $2,300,000 for its services. From this amount 5.5% was withheld for Iranian taxes. The Architect's fee was to be paid according to a schedule under which after the submission of the final set of the architectural and engineering contract documents a total of 80% of the fee was to have been paid. Thereafter, a further 10% would become due after 50% occupancy of the housing units, government buildings and commercial areas included in the project. A final 10% would become due eighteen months after the issuance of a certificate of completion of construction by TRC. The Architect's Agreement explicitly stated that all these

payments were to be made to HAUS. There was no provision relating to the 15% or any other amount to be paid to Meaplan. The Architect's Agreement provided that it was to be governed by the law of Iran.

A few days later, HAUS and Meaplan entered into a contract in Tehran to memorialize their relationship. Although the Agreement is dated 10 December 1977, it states that it is to "enter into force" retroactively as of 20 November 1977, that is, before the date of the Architect's Agreement. Liebman's colleague, Peter Wendt, a businessman who was chairman of the board of HAUS, described the circumstances in an affidavit and at the Hearing. He said that Swoboda drafted the document and typed it himself in Wendt's presence. The contract was headed "Joint Venture Agreement". The Tribunal notes that while those words might well signal an intent to form some sort of partnership relationship, the text which follows contains little of what is typically found in a partnership agreement; thus, for example, there is no provision for sharing of profits and losses. The Joint Venture Agreement states its purpose as being "close cooperation in the following fields of activities: a) Architectural planning and design; b) Engineering; c) Management service; d) Construction management". It was agreed that "[w]ith regard to the common commercial interests, [HAUS] is authorized to make use of the personnel, material and organizing background of [Meaplan]". Meaplan was to receive a commission from HAUS of 15% of the total value of any contract entered into by HAUS "resulting from the fields of activities specified in" the provision defining the purpose of the agreement. The Architect's Agreement was the type of contract on which payment of the 15% commission was due.

The Claimant submits that after the signing of the Architect's Agreement, TRC caused North Shahyad Development Company ("North Shahyad") to be formed to act as a "project company" or "operating agency", to supervise the development and operation

of the project. North Shahyad is alleged to have been owned and controlled by the same shareholders and officers as TRC.

The Claimant alleges that it commenced work on the project in August 1977 after Golzar, the chief executive officer of TRC, had assured HAUS that it would be retained for the design and architectural work on the project. The Architect's Agreement divided the work into three separate Stages. The Claimant asserts that it completed Stages I and II according to the schedule, that its work was approved by TRC and that the required payments were made to it through North Shahyad. Problems arose, however, as to payment for Stage III. The Claimant asserts that Stage III was also completed on time and accepted by TRC. Specifically, it states that on 7 October 1978 it submitted to TRC the final Stage III drawings. The Claimant further asserts that these drawings were approved by two authorized employees of TRC. HAUS was subsequently paid Rials 10,000,000 (or $119,854.29)[3] on account of Stage III. The balance of $340,145.71 allegedly still due under the Architect's Agreement was not paid.

The Claimant contends that the Government of Iran removed the officers and directors of TRC, appointed new directors, took control of TRC's management decisions and, specifically, prevented TRC from making payments to the Claimant. As a result, the Claimant argues, TRC is a controlled entity of the Government of Iran within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration. The same actions are alleged as to North Shahyad which, in the Claimant's view, was jointly responsible with TRC for paying HAUS. In any case, the Claimant alleges that the Government of Iran is responsible for damages because, in preventing TRC and North Shahyad from paying

---

[3] The Claimant wrote in a "Statement of Account" to TRC of 4 May 1979 that Rials 10,000,000 "converted to 119,854.29 US Dollars".

the Claimant, it has tortiously interfered with the Architect's Agreement.

The Claimant seeks $314,845.71 as the balance due upon completion of the drawings. This amount represents the $460,000 due for completion of the Stage III drawings, less $119,854.29 paid by TRC on account of this amount, less 5.5% for Iranian taxes. The Claimant further seeks $434,700.00 representing the last 20% of the fees less 5.5% for taxes. The total principal amount claimed is $749,545.71. The Claimant seeks interest on the amount of $314,845.71 from 7 October 1978; on $217,350.00 from 7 October 1980, at which date it asserts 50% occupancy was anticipated; and on $217,350.00 from 7 March 1982, at which date it asserts the remaining fee would have been paid. The Claimant asks for disbursements of approximately $16,700 and reasonable attorney's fees.

TRC has raised a number of objections to the Tribunal's jurisdiction over this claim. First, it contends that the Claimant and contract party was a Delaware corporation named "HAUS International, Inc.", not the New York corporation "Housing and Urban Services International, Inc.", and it states that since the Delaware corporation ceased to exist as of 1 March 1980, the claim has not been owned continuously by a United States national from the date it arose to 19 January 1981 as required by the Claims Settlement Declaration. Second, TRC states that in all events the responsible party under the Architect's Agreement is not TRC but North Shahyad, for which TRC acted only as a representative when it signed the Architect's Agreement. In this context, TRC points to a letter written to TRC by Liebman and Swoboda on the day the Architect's Agreement was signed, stating that "Tehran Redevelopment Corporation is acting as the representative for the North Shahyad Development Corporation in the contract dated 5 December 1977". Moreover, it asserts that the shareholders and officers of North Shahyad were different from those of TRC. Third, TRC argues that because the Agreement provides for disputes to be

referred to arbitration and the law governing the Agreement is Iranian law, the Tribunal has no jurisdiction. Fourth, TRC denies that it is an entity controlled by the Government of Iran.

Finally, the Respondents contend that Iranian law governs the relationship created by the Architect's Agreement and that upon signing that Agreement HAUS and Meaplan formed a partnership under the Iranian Civil Code. According to the Government of Iran, that partnership status was "further confirm[ed]" by the Joint Venture Agreement. The Respondents argue that HAUS cannot bring a claim without its partner and that Meaplan is not before the Tribunal. They assert that Article VII, paragraphs 1 and 2, of the Claims Settlement Declaration do not grant the Tribunal jurisdiction as to such a partnership claim and that the two Governments did not intend to do so in the Declaration. They deny that any customary international law rule allows such claims. Therefore, they argue, HAUS alone can neither bring a claim for 100% of the alleged damages, nor for its 85% share.

With regard to the merits of the claim, TRC asserts that the plans delivered by the Claimant were imperfect, defective and unusable, that certain plans were delivered after the date stipulated in the Architect's Agreement, and that others were not delivered at all. It further asserts that feasibility studies were carried out "without compliance with the Iranian life style or the Islamic Standards and criteria in construction". TRC contends that the plans and drawings submitted were not properly approved, and that approval had to be given in writing.

As a consequence, TRC is of the opinion that HAUS has been unjustly enriched. It therefore raises a counterclaim against HAUS seeking reimbursement of the amount of $1,372,045.63 already paid to HAUS under the Architect's Agreement. It further seeks compensation for damages in the amount of $750,000

for delays in the completion of the work under the Agreement, as well as costs.

The Government of Iran contends that TRC is an independent company, not controlled by it, and that the claim is not attributable to it. While it affirms that it expropriated shares in TRC of one shareholder, who was said to have owned 60% of the company's stock, it asserts that it did not expropriate TRC itself, nor did it control that company in any other way. The Government further contends that it took no action with regard to the shareholders of North Shahyad, which company still owned the land on which the project was planned to be built.

With respect to the issue of which corporation was the party to the Architect's Agreement and consequently the proper Claimant in this case, the Claimant replies that the Agreement was signed by the New York corporation "Housing and Urban Services International, Inc.", under which formal name HAUS had been incorporated on 28 November 1977 for the purpose of performing design and architectural services primarily for Iranian projects. The Claimant contends that HAUS was the acronym under which the New York corporation was doing business, and that this was known to TRC. "HAUS International, Inc.", a Delaware corporation established a few months later, was, according to the Claimant, only a "name-saving corporation" that issued no stock, never became operative and ceased to exist as of 1 March 1980. The Claimant therefore considers the New York corporation as the proper Claimant, and it contends that that corporation has properly brought this claim.

In response to TRC's assertion that it acted as North Shahyad's representative when it signed the Architect's Agreement, the Claimant maintains that TRC was and remained primarily responsible under the Agreement. Whereas checks were issued to HAUS by North Shahyad as TRC's operating affiliate, the Claimant contends that North Shahyad was made liable jointly with TRC by Liebman's letter of 5 December 1977, whose purpose was not to

release TRC from its obligation, but on the contrary to confirm that liability.

With regard to the relationship between HAUS and Meaplan and with regard to the right of HAUS to assert its claim, the Claimant submits that, according to Iranian law, Meaplan was merely a sales agent or independent contractor for HAUS and HAUS may bring the present claim in its own name. International law, the Claimant asserts, is to the same effect. HAUS' principal position is that it can claim for 100% of the amount regardless of whether the relationship was a sales agency or a partnerhip. It indicates, however, that if a partnership was formed the Claimant's recovery might then be limited to its proportionate interest of 85%.

Assuming "for purposes of argument that Haus may have been a member of a partnership under municipal law", the Government of the United States states in its Memorial that the Tribunal's jurisdiction in this case must be determined by reference to the Claims Settlement Declaration. It concludes that the Claims Settlement Declaration accords the Tribunal jurisdiction over the present claim, that this jurisdictional grant is not altered by the existence of a non-national party to the contract, and that this result is consistent with and supported by customary international law, which it says provides, in a case such as this, for recovery by a United States partner of its pro rata share in the partnership.

The Claimant asserts that it fully performed its contractual obligations, and particularly that all plans were submitted on time and complied with the requirements of the Agreement. It refutes each of TRC's allegations to the effect that the plans were defective and unusable. Since TRC approved the Claimant's plans, made payments pursuant to the Agreement and did not object to the Claimant's work at the time, it has in the Claimant's view waived its right now to complain about its payments. Should any of the work not have been completed, this

would, according to the Claimant, be due to TRC's "anticipatory breach of contract and IRAN's tortious interference with the contract" which had made it impossible for the Claimant to perform any further work. Consequently, the Claimant denies that there is a basis for the counterclaim and it requests its dismissal.

III. REASONS FOR AWARD

1. Procedural Issues

As noted above, the Tribunal must now decide whether to grant the Claimant's request not to consider TRC's "Reply to the Tribunal's Order" filed on 20 July 1983. It is clear that this Reply goes beyond simply commenting on the Joint Venture Agreement as invited by the Tribunal, but instead ventures into other aspects of the case, including presenting new documentary evidence. Orderly procedure requires that such unauthorized submissions be discouraged, particularly when made after the Hearing. In the circumstances of this case, it appears, however, that the Claimant is not prejudiced by the Tribunal's consideration of this Reply. The Claimant had sufficient time to prepare its Response to it, and in fact did so. Accordingly, TRC's Reply, filed on 20 July 1983, is admitted. In the interest of equality of treatment, the Claimant's Response filed on 8 August 1983 is also allowed.

2. Jurisdiction

a) Housing and Urban Services International, Inc. as Claimant

The record in this case is not clear as to which corporation -- Housing and Urban Services International, Inc., the New York corporation, or HAUS International, Inc., the Delaware corporation -- is the proper Claimant. The Statement of Claim as well as the subsequent briefs and the evidence filed by the

Claimant have only identified in an imprecise manner which company brings this claim. In the Statement of Claim, the Claimant is described as "Haus International, Inc.", which is stated to be a New York corporation. The Architect's Agreement, on whose alleged breach the claim rests, named "HAUS INTERNATIONAL, INC. - MEAPLAN, Architects", as the party called "the Architect" and this Agreement was signed, inter alia, by "Theodor Liebman, HAUS International Inc., New York, N.Y., U.S.A., Architect". The Joint Venture Agreement was concluded between Meaplan and "HAUS INTERNATIONAL, INC., Housing and Urban Services, architects and planners for human settlement". On the plans submitted pursuant to the Architect's Agreement both the names "Housing and Urban Services International, Inc." and "HAUS International, Inc." appear. Throughout the performance of the Architect's Agreement, correspondence with TRC and North Shahyad was sometimes signed in the name of "HAUS International, Inc.", but was written on the stationery of the New York corporation with its full name and New York address.

At the Hearing, the Claimant's attorney stated that the Claimant in this case is "Housing and Urban Services International, Inc.", the New York corporation, which, using the acronym "HAUS", was usually referred to as "HAUS International, Inc.". Another HAUS International, Inc., a Delaware corporation, he further explained, had been formed by Liebman as a means of preserving the name "HAUS" for his own use, but that merely "name-saving" corporation had been permitted to lapse on 1 March 1980.

Having evaluated the admittedly ambiguous evidence in this respect, the Tribunal is satisfied that the Architect's Agreement was entered into by, and the claim in this case was brought by, the New York corporation "Housing and Urban Services International, Inc." The parties to these Agreements frequently used the term "HAUS International, Inc." both in the Agreements and in their subsequent practice to refer to the New York corporation. The New York corporation was the only one

that ever issued stock or was otherwise active. TRC was clearly aware of with whom it was dealing. In these circumstances, and taking into account the explanations given during the Hearing, the Tribunal is not bound by the casual usage of the laymen involved here. The New York corporation was the party to the Architect's Agreement and is properly the Claimant in this case.

It is not disputed that the Claimant, the majority of whose shares are owned by one United States citizen, is a United States national under Article VII, paragraph 1, of the Claims Settlement Declaration.

b) The proper Respondents

aa) The claim against TRC

HAUS claims against TRC, which it asserts is a controlled entity, for breach of the Architect's Agreement. TRC denies that it was a party to that Agreement, but rather asserts that, when signing the Agreement, it acted as the representative of North Shahyad which company thereby became the party to the Agreement. In this context TRC relies on a letter by which HAUS allegedly confirmed this. The letter was written by Liebman, HAUS' president, and Swoboda, representing Meaplan, to TRC on the day the Architect's Agreement was signed. The letter says in pertinent part that it was written "to acknowledge that the Tehran Redevelopment Corporation is acting as the representative for the North Shahyad Development Corporation in the contract dated 5 December 1977" and that it would "constitute acknowledgement of the above by both parties".

It is first to be noted that the Architect's Agreement names TRC as a contract party and is signed by the managing director of TRC. Absent any indications to the contrary it must thus be assumed that the rights and obligations under the Agreement accrued to TRC. This prima facie showing has not been rebutted. It is true that the letter of 5 December 1977 points

in another direction. The Claimant explained, however, and this was supported by affidavits of several persons familiar with the Architect's Agreement and its performance, that this letter had been written on HAUS' initiative in order to ensure that both North Shahyad and TRC would be liable under the Agreement, and not in order to release TRC from its liability. During the performance of the Agreement, HAUS wrote letters to TRC as well as to North Shahyad. TRC was a large corporation said to have employed approximately 10,000 people; it had been in existence since late 1974 and owned a number of subsidiaries. North Shahyad, on the other hand, had only been set up by TRC's owners as an operational company for the project for which the Architect's Agreement was concluded.

Wnile it was therefore quite possible, and indeed intended, that certain functions and works relating to this project were delegated to North Shahyad, this did not mean that North Shahyad was substituted for the original contract party TRC after the conclusion of the Architect's Agreement. That TRC regarded itself as responsible vis-à-vis the Claimant under the Agreement is borne out particularly by a telex of 17 May 1979 in which TRC responded as follows to a statement of account by HAUS, showing a balance due: "[Please] be informed that due to some organizational changes in the company's management we have to ask you to kindly allow us more time for the settlement of this account."

bb) TRC is a "controlled entity"

The Tribunal has found in an earlier case that TRC is an entity controlled by the Government of Iran within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration. See DIC of Delaware, Inc. et al. and Tehran Redevelopment Corporation et al., Award No. 176-255-3, p.15 (26 April 1985). The Claimant in this case has submitted evidence which confirms that on 13 November 1979 the Government, acting through the Ministry of Housing and Urban Development, appointed a managing

director for TRC. It also appointed others to the board of directors. The law under which these appointments were made provides that former directors or managers would thereby be "stripped of their competence." In 1981, TRC confirmed in a letter to the Ministry of Foreign Affairs of the Islamic Republic of Iran that it was "under the management of the Government and under the supervision of the Ministry of Housing and Urban Development." Finally, the Claimant has submitted a 1981 letter from the Ministry of Housing and Urban Development to TRC stating that the "Government-appointed Director or Directors are considered legal successors to the original Directors of the Companies, ... and, in running the ordinary current affairs of the Companies, such Directors do not need the special permission of the previous Directors or Owners." This evidence establishes that TRC is an entity controlled by the Government of Iran, and the Tribunal thus has jurisdiction over TRC.

cc) The claim against the Government of Iran

The Claimant primarily asserts that TRC is liable for failure to pay amounts due under the Architect's Agreement. In addition, the Claimant states that "[e]ven if it is determined that IRAN has not taken control of the management of TRC," the Claimant has a claim directly against the Government of Iran on grounds of tortious interference with contract. In the Tribunal's view, this claim must be read as an alternative to the primary claim against TRC. The Tribunal finds that the Government is properly named as a Respondent on the basis of this alternative theory of liability. However, the Tribunal having determined that TRC is a controlled entity, the claim against the Government of Iran is dismissed.

c) The Claimant's right to assert its claim

aa) The Claimant's status under both the Architect's Agreement and the Joint Venture Agreement

The main jurisdictional issue in this case is the question of locus standi, that is, whether HAUS is entitled to assert the claim before the Tribunal, and if so to what extent.

In that connection, the first question to be decided is the nature of the legal relationship created between HAUS and Meaplan by the Architect's Agreement and the Joint Venture Agreement. The Tribunal considers it appropriate that the Architect's Agreement and the Joint Venture Agreement be read together because one of the purposes of the Joint Venture Agreement was to define the respective percentage shares of HAUS and Meaplan in fees paid pursuant to the Architect's Agreement. This is no less true even though only HAUS and Meaplan were parties to the Joint Venture Agreement. For this reason, the Tribunal's above-quoted Order on this subject invited the Parties to comment on the two Agreements "read together". The Claimant in its submission stated that the two Agreements should be read together in determining the nature of the relationship between HAUS and Meaplan, and the Government of Iran stated that the Joint Venture Agreement "confirm[ed]" the relationship created by the Architect's Agreement. There is no evidence that the Joint Venture Agreement was not a genuine and valid contract, and the Tribunal accepts it as such. Iranian law, as described below, contemplates that a relationship between two parties may be created by one document and further defined in another. See, e.g., footnote 7 below.

The Parties agree, and the Tribunal deems this to be the correct starting point, that both Agreements are governed by Iranian law and that consequently Iranian law determines the relationship between HAUS and Meaplan. The Parties also agree that the relationship between HAUS and Meaplan is not a partnership under

the Iranian Commercial Code, which inter alia requires formal registration with the Government and use of a distinct company name, neither of which has occurred here. Partnerships formed under the Commercial Code are recognized to have a separate juridical personality.

In addition to the Commercial Code, however, Iranian law provides in its Civil Code for the possibility of creating partnerships. Such "civil partnerships", or "Civil Code partnerships" have a quite different character and do not have a separate juridical personality. The Parties disagree as to whether the relationship between HAUS and Meaplan constituted a partnership under the Iranian Civil Code.

The basic rules regarding "civil partnerships" or "Civil Code partnerships" are set out in Section 8, Articles 571 to 606, of the Civil Code. The general definition of a "civil partnership" is contained in Article 571, which reads as follows:

> "Partnership means the combination of the rights of a number of proprietors in a single object in a joint manner." (Emphasis omitted).4

---

[4] This translation was provided by the Government of Iran in its Comments filed pursuant to the Tribunal's Order of 17 January 1984. Other sources give the following different translations:

> "A partnership is defined as the combination of the rights of several proprietors in one single thing by way of undivided shares." (Translation by Musa Sabi, The Civil Code of Iran, 1973).

> "A partnership is defined as the collection of the rights of several owners in a single object in a joint manner." (Translation by G. H. Vafai, Commercial Laws of the Middle East, Iran, Civil Code, 1982).

The Tribunal does not regard the differences among these three translations as significant.

The Tribunal is informed that the view of Iranian jurisconsults is that debts that are due to several persons are considered to be joint property within the meaning of Article 571.[5] The Tribunal accepts this logical extension of the language of the statute.

The critical question in this case is thus whether in the Architect's Agreement and the Joint Venture Agreement HAUS and Meaplan intended to take joint, undivided ownership of contractual rights including the right to receive payment.[6] An examination of the two Agreements suggests that they did. First, the Architect's Agreement explicitly grants certain rights to HAUS and Meaplan jointly. That Agreement was concluded by TRC as one party and by "HAUS INTERNATIONAL, INC. - MEAPLAN, Architects", referred to as "the Architect", as the other party. Various rights under the contract -- such as the right to refer disputes to arbitration and appoint arbitrators, and the right to reimbursement of expenses -- are then granted to "the Architect," referring to HAUS and Meaplan jointly. It is true that under the signatures of the parties at the foot of the Agreement the designation "Architect" appears only under Liebman's signature on behalf of HAUS, but the Tribunal does not believe this can override the explicit definition of the term "the Architect" in the body of the Agreement. If Meaplan were not included in that term, it would have no rights or obligations under the Agreement, yet it signed the Contract.

Second, the Tribunal finds that the important right to payment was intended to be owned jointly by HAUS and Meaplan. It cannot

---

[5] See 2 S. H. Emami, Hoquq-e Madani (Civil Law) 129 (1955); N. Katuzian, Hoquq-e Madani: Mosharekatha, Solh, Ataya (Civil Law: Partnerships, Settlements, Gifts) 11 (1984).

[6] The Memorials of the Parties emphasize the importance of intent. Thus, for example, the Government of Iran states in its Memorial of 4 January 1985 that "it is necessary to try and find the will of the parties" in interpreting contracts.

be contested that the Architect's Agreement explicitly provides that all payments for services were to be made to HAUS, rather than to "the Architect." This did not, however, signify that HAUS alone had rights to those payments. The Agreement elsewhere speaks of TRC's duty to "compensate the Architect," and the payments are clearly intended to be compensation for services provided by "the Architect" -- HAUS and Meaplan jointly. The Claimant itself described a number of functions and duties under the Architect's Agreement that Meaplan was to and did perform. It is fair to assume, therefore, that in signing the Agreement Meaplan acquired a joint right to the payments and that the clause providing for payment to HAUS was intended simply to be a convenient payment mechanism.

The Joint Venture Agreement, which HAUS and Meaplan signed on 10 December 1977, but which was made effective retroactively to 20 November 1977 and therefore covered the Architect's Agreement, confirms this result. The title of the Joint Venture Agreement alone points in this direction. In addition, that Agreement mentions "the common commercial interests" of the Parties and notes that they had "agreed upon close cooperation" in, inter alia, architectural planning and design and construction management. Moreover, it makes clear that payments received under contracts such as the Architect's Agreement accrue to both parties jointly, for it allocates each partner's interest in such payments. The fact that HAUS and Meaplan are assigned different duties in the Joint Venture Agreement does not mean there can be no partnership, for Iranian civil partnerships are not limited solely to combinations of persons in like trades.[7]

---

[7] Professor Emami comments quite extensively on the different circumstances in which civil partnerships may come into being pursuant to Articles 571-588 of the Civil Code of Iran. Using an example from simpler times, he observes that one such circumstance is when "two or more persons agree among themselves that they will all share in whatever each of their number gains by virtue of his own labors, whether their work be

(Footnote Continued)

In conclusion, then, the Tribunal finds that HAUS and Meaplan formed a partnership under the Iranian Civil Code.[8] It remains to determine the consequences of that finding for the Tribunal's jurisdiction over the claim.

bb) The Claimant's locus standi

The Iranian Civil Code does not deal specifically with the question of whether a partner may sue for the collection of "joint dues" in the absence of the other partners. Iranian jurisconsults are somewhat divided on the question, but it appears that there is substantial authority for the proposition that where there is a civil partnership a claim must be pursued in the names of all of the partners as its joint owners.[9] Such a claim apparently may not be litigated by one partner alone, unless he has been authorized to do so by the other partners.[10]

(Footnote Continued)
all of one kind (such as they be all tailors), or of different kinds (such as if one is a carpenter and another a bricklayer)." Although it may be that the members of such a partnership do "not perform equal amounts of work," the partnership is "valid" provided the "tailor, bricklayer, and/or carpenter, settle upon some portion of the product of their respective labors, which they will all exchange with one another over a specified period of time." 2 S. H. Emami, Hoquq-e Madani (Civil Law) 138-39 (1955) (translation by the Tribunal). See also Civil Code of Iran, Articles 571-574.

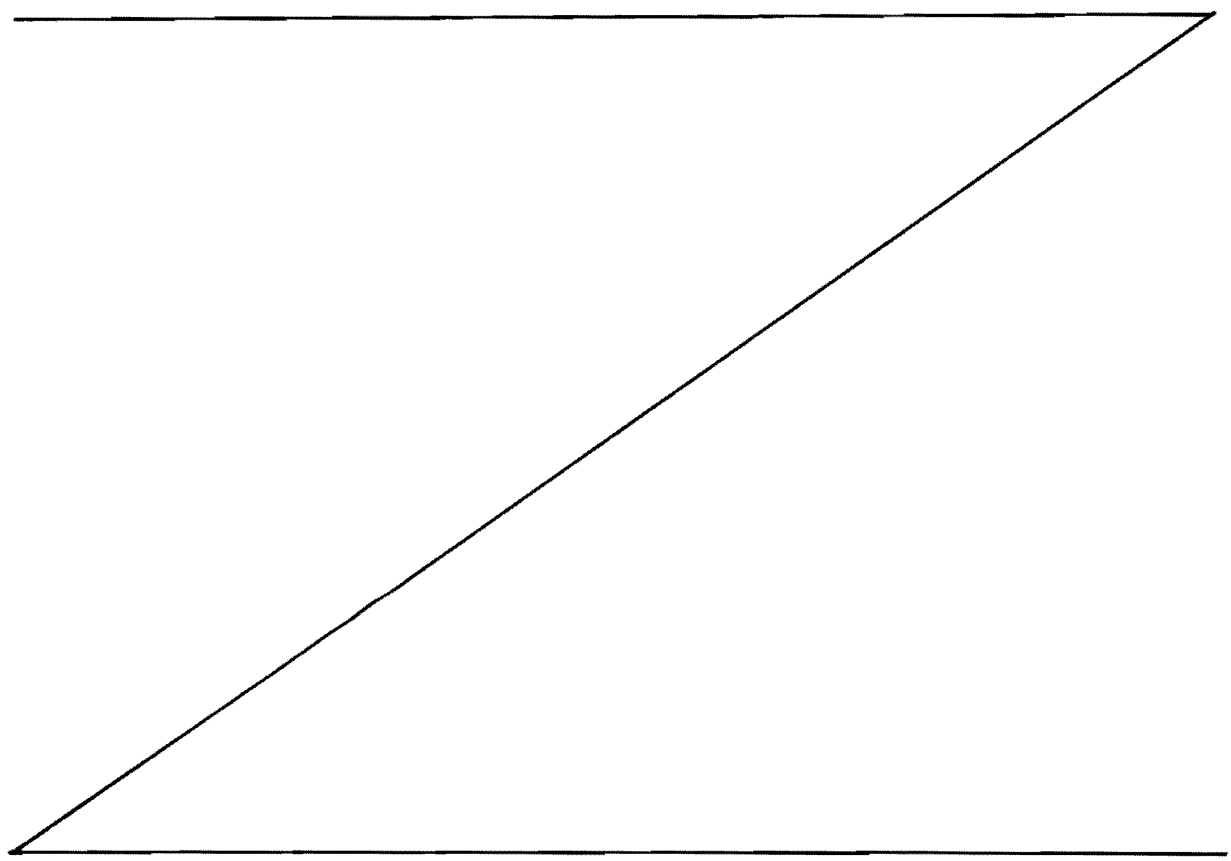
[8] Since, as noted, a civil partnership is not a separate legal entity under Iranian law, the present claim is not, as suggested by the Claimant, governed by Article VII, paragraph 2, of the Claims Settlement Declaration, which provides for indirect claims by owners of "juridical persons".

[9] See, e.g., 2 S. H. Emami, Hoquq-e Madani (Civil Law) 140 (1955); 1 Mirza Qomi (died 1855/6), Jame' al-Shetat (Compendium of Diversities) 249; 2 Allama Helli (died 1277/8), Tadhkerat al-Foqaha (Memoirs of Jurisconsults) 228, 277. For further sources see N. Katuzian, Hoquq-e Madani: Mosharekatha, Solh, Ataya (Civil Law: Partnerships, Settlements, Gifts) 49 note 1 (1984).

[10] See, e.g., 2 Mohaqeq, Sharay' al-Islam (Laws of Islam) 130 (1968). In its comments on this issue, the Government of
(Footnote Continued)

In the present case such a permission for one partner to sue could be seen in a letter dated 11 November 1981 by which Meaplan authorized HAUS to negotiate and settle all claims of Meaplan against the Respondents arising out of the Architect's Agreement. But having been given for settlement negotiations before the filing of HAUS' claim with the Tribunal, the authorization in this letter alone might not suffice to establish the Claimant's standing before the Tribunal.

Nevertheless, the Tribunal is an international forum, established by a treaty that bars parties who are not nationals of either the United States or Iran from appearing before it. Thus, while the Tribunal may take municipal law as its "point of



(Footnote Continued)
Iran stated that under Iranian law a claim of the partnership could be brought "by one of the two partners with the permission of the other to act as the representative of the entire partnership".

departure,"[11] it must look as well to international law on this question.[12]

While international law seems to accept that as a rule a partner may not sue in his own name alone on a cause of action accruing to the partnership, where special reasons or circumstances required it, "international tribunals have had little difficulty in disaggregating the interests of partners and in permitting" partners to recover their pro rata share of partnership

---

[11] See Barcelona Traction, Light & Power Co., Ltd. (Judgment), [1970] I.C.J. Reports 3, 37. The Court in that case also noted with respect to the somewhat analogous question of diplomatic protection of shareholders allegedly injured by a failure to pay debts owed to a corporation:

> "In this field international law is called upon to recognize institutions of municipal law that have an important and extensive role in the international field. This does not necessarily imply drawing any analogy between its own institutions and those of municipal law, nor does it amount to making rules of international law dependent upon categories of municipal law. All it means is that international law has had to recognize the corporate entity as an institution created by States in a domain essentially within their domestic jurisdiction. This in turn requires that, whenever legal issues arise concerning the rights of States with regard to the treatment of companies and shareholders, as to which rights international law has not established its own rules, it has to refer to the relevant rules of municipal law.
>
> ...
>
> ... If the Court were to decide the case in disregard of the relevant institutions of municipal law it would, without justification, invite serious legal difficulties." (Id. at 33-34, 37).

[12] In this connection, Article V of the Claims Settlement Declaration provides:

> "The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances."

claims.[13] The most relevant "special circumstance" in this sense exists when a partner's claim is for its own interest, which is independent and readily distinguishable from a claim of the partnership as such.

In the Ruden Case, for instance, the United States-Peru Claims Commission held that in a partnership which it found to be non-American and in which one partner was American and the other not

> "only Ruden's individual interest in the firm was properly before the commission."14

On the same basis the British-Mexican Claims Commission entertained claims on behalf of the partners individually in the Spillane Case.[15]

In the Ziat, Ben Kiran Case (Great Britain/Spain, Spanish Moroccan Claims), Max Huber expressed the opinion that

> "despite the fact that many legal systems admit of the independent existence of partnerships, the weight of

---

[13] D.C. Ohly, A Functional Analysis of Claimant Eligibility, in International Law of State Responsibility for Injuries to Aliens 291 (R. B. Lillich ed. 1983).

[14] Decision of 20 February 1870, as described in II J. B. Moore, International Arbitrations 1654 (1898). The Commission was charged with deciding claims "according to justice and equity".

[15] Case No. 108, reported in 5 G. Hackworth, Digest of International Law 828 (1943).

The arbitrator in the Shufeldt Case arrived at the same result, taking the view that international law should be bound by nothing but "natural justice". Decision of 24 July 1930, 2 RIAA 1083, 1097-98 (1930).

The same result was reached by King George V of England as amiable compositeur in the Alsop Claim. 2 RIAA 355, 360 (1911).

> arbitral tribunal precedents overwhelmingly acknowledges the possibility, for the purposes of international litigation, of distinguishing between the share contributed by each partner, on the one hand, and the partnership itself, on the other hand. International law, which, in this field, is in the main based on principles of equity, has laid down no formal criterion for granting or refusing diplomatic protection to national interests bound up with interests belonging to persons of different nationalities. In these circumstances, . . . it [is] necessary to examine the merits of each specific case in order to determine whether the damage in question directly affected the person in whose favor the claim was submitted, or whether that person was merely the creditor of another person who had been directly affected." 16

These cases generally involved partnerships that had separate legal personality under the relevant municipal law. The rationale for allowing such partners to bring individual claims is in part that unlike shareholders of corporations -- who generally may not pursue the claims of the corporation -- a "partner is not entirely detached from the Société in the form in which a shareholder is detached from a corporation".[17] Since this is true for partnerships having separate legal personality, a fortiori it applies to partnerships such as the present one that are not juridical entities.

In addition, the legal systems of a variety of states have developed a similar flexibility of approach and emphasis on the equitable discretion of the courts in the area of compulsory plurality or joinder. After surveying a number of municipal law provisions on the question, Professor Ernst J. Cohn concludes:

> "It is doubtful whether any formula that could be devised [for compulsory plurality] would in reality be much more than an invitation to the courts to exercise their discretion in a manner which would do justice

---

[16] Claim No. 25, 2 RIAA 729, 729-30 (1924) (translation from 8 M. Whiteman, Digest of International Law 1283 (1967)).

[17] E. Jiménez de Aréchaga, Diplomatic Protection of Shareholders in International Law, 4 Philippine International Law Journal 71, 87 (1965).

> both to the requirements of the individual case under consideration and the experience gained by the courts in earlier cases.
>
> . . .
>
> [T]here is occasionally a clear need to grant exemption from the requirement of joining all those who, according to a strict rule of law, ought to be joined. It may therefore be expected that in this field a growing sphere will have to be left to judicial discretion guided either by pragmatic rules or by more or less flexible precedents."[18]

Applying these tests to this case, the Tribunal notes that HAUS' right to the payments it alleges are due from TRC is readily identifiable, and separable from that of its partner. HAUS' right is thus individual to it. There is no danger of double recovery or of injuring the rights of Meaplan, the absent partner, since it is free to sue elsewhere for its 15% interest in the allegedly unpaid amounts. The Tribunal further notes that the reason most often cited for the severability of a partner's personal claims -- that he would otherwise be prevented from claiming before an international forum because of a foreign partner's disability[19] -- applies in the context of the nationality requirements of the Claims Settlement Declaration. Thus, the Tribunal finds that international law, in the particular circumstances of this case, permits HAUS to bring a claim for its interest in the outstanding payments.

---

[18] E. J. Cohn, Parties, in XVI International Encyclopedia of Comparative Law (Civil Procedure) 45 (M. Cappelletti ed. 1976).

[19] As Ralston has stated, "questions of partnership have repeatedly arisen, and often claims have been allowed to be presented by a partner for his undivided interest in the subject-matter of his claim when his associates in the partnership were so situated, because of citizenship or otherwise, as not to have a standing before the commission." J. Ralston, The Law and Procedure of International Tribunals 139 (1926).

due. The Claimant itself has argued that if a partnership was found to have been formed, "HAUS' recovery might then be limited to its proportionate interest, which was 85%." Moreover, the sources already cited -- all of which permitted the claimant partner to claim only his pro rata share -- indicate that there is widespread agreement that, where claims of individual partners for their personal interest are allowed, those claims are limited to the extent of such interest.

The Tribunal thus has jurisdiction over that part of HAUS' claim that represents 85% of the amounts due under the Architect's Agreement.

d) The "choice of forum" clause

TRC asserts that the clause in the Architect's Agreement which provides that disputes be referred to arbitration and the clause providing that the Agreement is governed by Iranian law exclude this claim from the Tribunal's jurisdiction. These two clauses do not, however, specifically provide that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts. Therefore, under the Claims Settlement Declaration, the Tribunal is not prevented by these clauses from asserting jurisdiction over the claims arising from the Architect's Agreement.

e) Claims that are not "outstanding"

With regard to one part of the claim the question arises as to whether it was "outstanding" on 19 January 1981 within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration. Although the Parties have not addressed this question, the Tribunal must always be satisfied that it has jurisdiction, and therefore examines the issue now.

It will be recalled that the Architect's Agreement provided that the final payment, consisting of 10% of the fee, was not due

until 18 months after the issuance of a certificate of completion of construction by TRC. While such a certificate was never issued, the Claimant nevertheless claims this amount on the basis that construction had been anticipated to be completed within three years from submission of the final drawings, i.e., in October 1981, and that the final 10% "would have been paid in March of 1982".[20]

Article II of the Claims Settlement Declaration limits the Tribunal's jurisdiction to claims which were outstanding on 19 January 1981. Although the Claimant contended in a cursory manner that there was an anticipatory breach by TRC of the Architect's Agreement prior to 19 January 1981, that contention was made only in the context of an alternative defense to one of the counterclaims; it was not pleaded, explained or proven in connection with the claim for the final 10% payment. On the contrary, the Claimant's submissions as to the final 10% payment are quite inconsistent with a claim based on anticipatory breach prior to 19 January 1981. Most compelling in this regard is the Claimant's last submission on the merits, filed on 8 August 1983, which includes a detailed schedule summarizing the amounts of its claim. The schedule shows the dates on which the Claimant alleges that each of the payments was owed. Thus, the schedule shows the "remainder owed Stage III" as being "[o]wed as of October 7, 1978" and it shows the amount payable "at 50% occupancy" as being "[o]wed as of October 1980." As to the final 10% payment, the schedule plainly states that the amount due "18 months after occupancy" was "[o]wed as of March 1982" -- long after the 19 January 1981 deadline established by the Claims Settlement Declaration.

---

[20] Accepting the anticipated completion time of October 1981 asserted by the Claimant, this 10% would in fact not have been owed until March 1983.

Accordingly, the Tribunal concludes that the claim for the final 10% payment was not "outstanding" on 19 January 1981 within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration, and is therefore outside the Tribunal's jurisdiction.

2. The Merits

As discussed above, the Tribunal has jurisdiction over the Claimant's claim for 85% of all payments owing under the Architect's Agreement and outstanding on 19 January 1981. In order to determine whether this claim is justified, first the Claimant's performance under that Agreement will be examined, and then the various items of the claim will be dealt with.

a) The Claimant's performance under the Architect's Agreement

It is undisputed between the Parties that the Claimant fulfilled its obligations under the Architect's Agreement through Stage II, and that it was paid accordingly. The Parties disagree as to the Claimant's performance with regard to Stage III. The Claimant contends that it submitted all the required plans and drawings, and that TRC approved this part of the work. TRC contends that part of the plans were not delivered at all, that part of them were delivered too late, that they were defective and not in accordance with requirements, and most notably, that they were not approved.

The Tribunal is satisfied that the Claimant submitted the Stage III plans to TRC substantially in time and that TRC approved them. The Claimant has submitted an affidavit by John Barie, its then "architect-in-charge" in Iran, stating that he personally delivered the plans to TRC on 7 October 1978. In addition, HAUS wrote to North Shahyad on 4 December 1978 stating that the plans had been approved by the end of October.

The Tribunal notes that the Architect's Agreement does not require that there be approval in writing of plans submitted by HAUS. There is, however, clear evidence confirming that TRC both received and approved the Stage III plans. This evidence is in the form of a partial payment by TRC for the plans and in an exchange of telexes between HAUS and TRC, which additionally indicates TRC's approval.

As to partial payment, the evidence shows that in December 1978 North Shahyad made a payment of Rials 10,000,000 to the Claimant, which the Claimant confirmed by a letter dated 4 December 1978 as partial payment on account of the $460,000 that was owed after submission of the Stage III plans. This partial payment, which apparently was all that TRC could effect at that time, and the absence of any objections to the plans submitted, can therefore be regarded as amounting to an approval of the plans, particularly when considered together with a revealing exchange of telexes between HAUS and TRC.

The exchange of telexes began on 4 May 1979 when HAUS sent TRC a telex containing a "statement of account". The telex states that the final contract documents (Stage III plans) had been submitted to and accepted by TRC, it lists the amount of $460,000 owed for submission of these plans and the partial payment of Rials 10,000,000 (converted to $119,854.29), and it asks for payment of the remaining amount due. Referring to this telex, TRC, on 17 May 1979, sent a telex to HAUS informing it that "due to some organizational changes in the company's management we have to ask you to kindly allow us more time for the settlement of this account." TRC's telex does not raise any objection to the plans, nor to HAUS' assertion in its preceding telex that TRC had accepted the plans. Moreover, until these proceedings before the Tribunal, TRC never contended that it had not received and approved these plans. In view of this evidence and absent any other objections by TRC, the Tribunal finds that the Claimant submitted the Stage III plans in early October

1978, and that these plans were approved by TRC by the end of that month.

TRC's contention that the plans did not conform with the requirements is disposed of by the Tribunal's finding that TRC approved these plans. Moreover, the Claimant has provided detailed and convincing answers to each of TRC's allegations in this regard.

b) The amount owed for the Stage III plans

According to Article IV, paragraph 5, of the Architect's Agreement, 20% of the agreed total fee of $2,300,000 was to be paid after approval by TRC of the Stage III documents. The Agreement further provides that 4.5% of the total fee was based on HAUS rendering "Electrical Services." After the Agreement was signed, TRC informed HAUS that it desired to design the electrical work on the project itself, and HAUS agreed. Accordingly, each of TRC's payments under the Agreement was reduced by 4.5%. The Claimant has not, however, reduced by that percentage the amount it claims for Stage III, apparently on the ground that it ultimately did some -- but not all -- of the electrical work after TRC allegedly failed to do so. Prior to this litigation, however, the Claimant acknowledged that the outstanding amounts should be reduced by a deduction for electrical work. In a letter dated 4 December 1978 -- after the Claimant had completed and submitted its work -- it stated that upon approval of the drawings "20% of the total fee, minus the proportional deduction for electrical services ..., was due." Having foregone at the time payment of the 4.5% allocated to electrical work, the Claimant may not now raise a claim for that amount. Therefore, the 20% of the total fee that was due after approval of the Stage III drawings must be reduced by 4.5%, leaving $439,300.

In addition, as the Claimant itself acknowledges, Iranian taxes of 5.5% were deducted from every payment under the Agreement and

must be deducted from amounts now due. Thus, the amount due after approval of the Stage III drawings was $415,138.50.

TRC has paid Rials 10,000,000 of the amount owed. The Agreement provided for payment in US Dollars. The Claimant has used a conversion rate of 84 Rials to the Dollar for the Rials 10,000,000 paid, arriving thereby at $119,854.29. It used that same rate when it sent TRC the statement of account under the Agreement in its telex dated 4 May 1979. No objection has been raised by TRC to the rate applied by the Claimant. The Tribunal therefore accepts the Claimant's calculation to the effect that TRC made a payment equivalent to $119,854.29 on the amount due after submission of the Stage III plans. That leaves a balance of $295,284.21 outstanding. In view of the Tribunal's finding that the Claimant is only entitled to 85% of any amounts still owing under the Architect's Agreement, the Tribunal determines that the Claimant is entitled to $250,991.57 as the remaining fee payable after submission of the Stage III plans.

c) The amount owed after 50% occupancy

According to Article IV, paragraph 5, of the Architect's Agreement, 10% of the agreed total fee of $2,300,000 was to be paid after 50% occupancy of the housing units, government buildings and commercial areas for which the plans were delivered under the Agreement. The Claimant has submitted that 50% occupancy was anticipated approximately two years after construction began. Construction was to have begun upon submission of the Stage III plans, which occurred by the end of October 1978. The two years would therefore have elapsed in October 1980. TRC has not disputed this time projection.

As regards plans and drawings, the Claimant had performed all its contractual obligations with the submission of the Stage III plans in October 1978. Therefore, it had earned a further 10% of the total fee, although under the Architect's Agreement payment of this latter amount was not due until October 1980.

Hence, as of that date the Claimant was owed $230,000, less the three deductions discussed below.

The first deduction is for electrical work, as discussed above, and amounts to 4.5% of $230,000, thereby reducing the amount due to $219,650. A further deduction must be made on account of Article I, paragraph 2, of the Architect's Agreement which stipulated that the architect-in-charge should remain available to TRC for consultation in Tehran or elsewhere throughout the life of the Agreement. Because TRC could, and likely would, have requested this service had the project continued as anticipated, a deduction must be made for such services which the Claimant did not have to provide. The Tribunal regards $50,000 as a reasonable adjustment to the contract price for the value of such services, thus leaving $169,650 as the amount owed. After the third deduction of 5.5% for taxes the amount owing under this heading is $160,319.25.

In view of the Tribunal's finding that the Claimant is only entitled to 85% of any amounts still owing under the Architect's Agreement, the Tribunal determines that the Claimant is entitled to $136,271.36 as fees remaining to be paid after October 1980.

As determined above at III.1.e), the claim for the last 10% of the Claimant's fee under the Architect's Agreement was not outstanding on 19 January 1981 and is therefore excluded from the Tribunal's jurisdiction.

d) Total principal amount of the Award

In accordance with the foregoing analyses and calculations, the Tribunal determines that the Claimant is entitled to be paid by TRC the total principal amount of $387,262.93 representing the Claimant's right to 85% of payments due under the Architect's Agreement. The Tribunal notes that this amount does not include any amount which might be due to Meaplan under the Architect's Agreement or the Joint Venture Agreement.

e) The counterclaims

As described above, TRC raises two counterclaims. Based on the premise that the plans submitted by the Claimant were defective, TRC argues that the Claimant has been unjustly enriched by the payments made under the Architect's Agreement. As a consequence, TRC seeks reimbursement of $1,372,045.63, the amount previously paid by it to the Claimant under the Agreement. TRC also claims compensation for damages in the amount of $750,000 for delays in the completion of the work under the Agreement.

These issues are answered by the Tribunal's findings above at III.2.a) that the Claimant has fully and timely performed under the Agreement. Therefore the counterclaims are dismissed on the merits.

f) Interest

The Tribunal considers it reasonable to award the Claimant interest at the rate of 10% per annum on the principal sums awarded. In view of the findings with regard to the dates as of which these sums were owed, interest should be paid on the amount of $250,991.57 as of 1 November 1978, and on the amount of $136,271.36 as of 1 November 1980.

g) Costs

The Tribunal considers that TRC should be obligated to pay the Claimant reasonable costs in the amount of $17,500.

IV. AWARD

For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

1. The Respondent TEHRAN REDEVELOPMENT CORPORATION is obligated to pay the Claimant HOUSING AND URBAN SERVICES INTERNATIONAL, INC. for services rendered by the Claimant the sum of Three Hundred and Eighty Seven Thousand Two Hundred and Sixty Two United States Dollars and Ninety Three Cents (U.S. $387,262.93); plus simple interest on U.S. $250,991.57 at the rate of 10 percent per annum (365-day basis) from 1 November 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account and simple interest on U.S. $136,271.36 at the rate of 10 percent per annum (365-day basis) from 1 November 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account; plus costs of arbitration in the amount of U.S. $17,500.

   This obligation 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.

2. The remaining claims and the counterclaims are dismissed.

This Award is hereby submitted to the President of the Tribunal

for notification to the Escrow Agent.

Dated, The Hague
22 November 1985

Gunnar Lagergren
Chairman
Chamber One

In the name of God

Koorosh-Hossein Ameli
Dissenting Opinion

Howard M. Holtzmann
Joining fully in the Award, except joining solely in order to form a majority as to (1) the award of only 10% interest, see my Separate Opinion in International Schools Services, Inc. and National Iranian Copper Industries Company, Award No. 194-111-1, pp. 3-4 (10 October 1985), and (2) the award of only $17,500 in costs, see my Separate Opinion in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985).