181-153

181-184

CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

153

ORIGINAL DOCUMENTS IN SAFE

Case No. 181 Date of filing: 4 March 1987

** AWARD - Type of Award Final

- Date of Award 4 March 87

31 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: _____

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- Date _____

_____ pages in English _____ pages in Farsi

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CASE NO. 181
CHAMBER ONE
AWARD NO. 294-181-1

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران ـ ایالات متحده
FILED - ثبت شد
Date 4 MAR 1987 تاریخ
۱۳۶۵ /۱۲/ ۱۳
No. 181 شماره

BECHTEL, INC.,
BECHTEL PETROLEUM, INC.,
BECHTEL INTERNATIONAL, INC.,
OVERSEAS BECHTEL, INC.,
AMERICAN BECHTEL, INC.,
BECHTEL POWER CORPORATION,
Claimants,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
INDUSTRIAL DEVELOPMENT AND RENOVATION ORGANIZATION,
IRAN ENGINEERING AND CONSTRUCTORS,
Respondents.

DUPLICATE ORIGINAL
«نسخه برابر اصل»

AWARD

Appearances :

For the Claimants :

Mr. Th. D. Devitt
Mr. Ph. R. Placer,
Attorneys
Mr. J. H. Battin
Mr. S. D. Butler,
Claimants' Representatives

For the Respondents :

Mr. M. K. Eshragh,
Agent of the Government of the Islamic Republic of Iran
Mr. S. K. Khalilian,
Legal Adviser to the Agent
Mr. A. Kousheshi,
Assistant to the Agent

Mr. E. Shahida,
Attorney of IDRO
Mr. K. Mokri,
Representative of IDRO
Mr. H. F. Hendi,
Financial Expert of IDRO

Also present : Mr. J. R. Crook,
Agent of the United States of America

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1. The claims in this Case arise out of contracts for engineering and management services in connection with four projects in Iran and out of the alleged expropriation of the shareholder interest of one of the Claimants in an Iranian company. The Claimant OVERSEAS BECHTEL, INC. ("OBI") seeks damages from the Respondents INDUSTRIAL DEVELOPMENT AND RENOVATION ORGANIZATION ("IDRO") and IRAN ENGINEERING AND CONSTRUCTORS ("IEC") for breach of various contracts. The Claimant AMERICAN BECHTEL, INC. ("ABI") seeks damages from the Respondent IEC for breach of contract, and from the Respondent GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Government of Iran") for the expropriation of its shareholder interest in IEC. OBI and ABI hold the Government of Iran jointly liable for their contract claims against IDRO and IEC. The Respondents IDRO and IEC have brought counterclaims for damages for breach of contract and for taxes and social security premiums.

I. FACTS AND CONTENTIONS

2. As to the Tribunal's jurisdiction, the Claimants assert that the two Bechtel companies which are bringing claims, OBI and ABI, are United States nationals, and further that OBI and ABI owned their respective claims at the relevant times. The Claimants contend that IDRO and IEC

are entities controlled by Iran. The Respondents[1] deny that IEC is a controlled entity, but rather assert that it is a private company. They also argue that, IEC being in a liquidation process, the Claimants' exclusive means of recourse against IEC are such liquidation proceedings in Iran. The Claimants argue that the Iranian liquidation proceedings do not deprive the Tribunal of jurisdiction over IEC.

1. Chah Bahar Project

3. As to the merits of the claims, the Parties make the following contentions. On 4 October 1977, OBI and IDRO entered into a Technical Services Agreement under which OBI was to provide project evaluation services in connection with a power and seawater desalination plant to be constructed at Chah Bahar. The Claimants assert that OBI performed its contractual obligations, that it submitted the required final report and that IDRO accepted the report and OBI's services. On 22 December 1978, OBI sent IDRO a final invoice together with the contractually stipulated certification of its auditors Coopers & Lybrand. As of that date, an aggregate amount of $407,285.45 for services rendered was due which the Claimants assert has not been paid. OBI seeks payment from IDRO of this amount, plus interest at the rate of 11.75 percent, as provided in the Agreement.

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[1] The Government of Iran submitted a Statement of Defence and a Rejoinder. IDRO and IEC submitted a joint Statement of Defence. Thereafter, IEC did not participate in the proceedings. While IDRO submitted its Rejoinder on its own behalf, it stated therein that it was "cognizant of . . . [i]ts interests in IEC". At the Hearing, IDRO's representative pointed out that he did not represent IEC which, although not dissolved, was "practically in abeyance". For ease of reference, the Tribunal speaks in this Award of "the Respondents' contentions" if no reference to a particular Respondent is warranted for any reason.

4. The Claimants assert that pursuant to the Chah Bahar Technical Services Agreement, and at the direction of IDRO, IEC contracted on 15 August 1978 with OBI for the performance of additional services. The Claimants contend that in performance of its contractual obligations OBI submitted required reports, and that its services were accepted since neither IEC nor IDRO complained of any deficiencies. On 5 April 1979, OBI sent IEC a final invoice, and on 26 April 1979 the contractually stipulated certification of its auditors Coopers & Lybrand. As of 5 April 1979, an amount of $1,293,022.18 remained unpaid, payment of which, plus interest at the rate of 11.75 percent, OBI seeks from IEC.

5. The Respondents deny the existence of a contractual basis for OBI's claim against IEC for payment of additional services. The Respondents further deny that OBI submitted the final report required by the Technical Services Agreement or any other reports "which could be of any use", but rather assert that, by unilaterally withdrawing its personnel from Iran, OBI terminated the Agreement. The Respondents maintain that OBI's invoices sought to overcharge IDRO and IEC by charging multiple fees, by requesting payment twice for the same work and by not accounting for an advance. The Respondents request that an expert be appointed to determine the fair amount due OBI. The Claimants deny the Respondents' assertions and they object to the appointment of an expert.

2. Electro-Mechanical Industrial Complex

6. In October 1978, OBI and IEC entered into an Agreement for Engineering Services in connection with an Electro-Mechanical Industrial Complex in Tehran. The Claimants assert that on 13 November 1978, OBI submitted a report to IEC as required by the Agreement, that this report

was not objected to, and that as of 18 June 1979, when OBI sent IEC a final invoice, an amount of $40,651.51 was due for services rendered under this Agreement. OBI claims this $40,651.51, which was not paid, from IEC, plus interest at the rate of 12 percent.

7. The Respondents assert that this project was under the direction of a company other than IEC and therefore any claim should be made against that company. They contend that OBI's services were defective, and that the compensation provisions of the Agreement are unfair. The Claimants deny these contentions.

3. Kangas Project

8. The Claimants assert that on 25 September 1978, OBI entered into a Technical Services Agreement with IEC under which it was to review and supervise engineering work in connection with a gas gathering and processing plant at Kangan. The Claimants contend that OBI performed the required services through a British Bechtel company. Having been directed to discontinue work under the Agreement as of 1 March 1979, the Claimants assert, OBI sent IEC a final invoice on 19 April 1979. OBI seeks payment from IEC of $242,149.11, the unpaid amount of this invoice, plus interest at the rate of 12 percent.

9. The Respondents do not make any specific defence to the merits of this claim other than that a contractual link to the Respondents has not been proven.

4. Expatriate Staff Costs

10. On 10 July 1978, the National Iranian Oil Company ("NIOC"), IDRO and ABI entered into a Shareholders Agreement in which they agreed to form IEC as an Iranian company. Under the Shareholders Agreement and further contractual

arrangements, the three shareholders were required to make available personnel for seconding to IEC. ABI seconded management personnel to IEC. Between November 1978 and March 1979 it sent IEC three invoices in the aggregate amount of $365,887.87 for seconded personnel that remained unpaid. ABI seeks this $365,887.87, plus interest at the rate of 12 percent, from IEC.

11. The Respondents deny ABI's entitlement to this amount based on their interpretation of how much personnel ABI had to second to IEC "free of charge" under the relevant contract provisions.

5. Pre-incorporation Costs

12. The Claimants contend that the Government of Iran expropriated ABI's interest in IEC. One part of the value of ABI's interest consists of the costs it incurred in order to establish IEC, the Claimants assert. ABI seeks reimbursement of such pre-incorporation costs in an amount of $113,074.84 from the Government. Alternatively, the Claimants argue that ABI is entitled to recover the same amount as a debt owed by IEC. They assert that IEC approved these costs, that ABI invoiced IEC for them, but that they have not been paid. ABI therefore seeks the $113,074.84 also from IEC. ABI demands interest at the rate of 12 percent on this amount.

13. The Respondents deny that IEC was expropriated. They contend that some of these pre-corporation costs were not related to the formation of IEC.

6. Capital Contribution or Share of Net Worth

14. As another part of its allegedly expropriated interest in IEC, ABI seeks the amount that it made as

capital contribution pursuant to IEC's Articles of Association, $149,635.88, plus interest at the rate of 12 percent from the date of the taking. The Claimants contend that IEC was expropriated not later than 6 May 1980. Alternatively, ABI seeks $86,288, or one-third of ABI's calculation of IEC's net worth.

15. The Respondents deny that IEC was expropriated. They argue that ABI would only be entitled in proportion to its contribution to an eventual residue that would remain after first and second category creditors of IEC would be satisfied in the liquidation proceedings.

16. The Claimants argue that the Government of Iran should be held jointly liable for any amounts owed by IDRO and IEC by virtue of the Government's control of these two entities. Whereas the Claimants initially held the Government jointly and severally liable, they later "recognize[d] that the Government's liability in this respect is only secondary and not independent". If IDRO and IEC are not held liable, then the Government also should not be held liable, the Claimants assert, and in no event should the Claimants recover amounts claimed from IDRO and IEC more than once, even if IDRO, IEC and the Government are all liable.

17. The Government does not discuss in general the Claimants' argument to the effect that it is jointly liable for amounts owed by IDRO and IEC. However, the Government argues that the claim for pre-incorporation costs may rest only on expropriation or breach of contract.

18. The Respondents assert that the Claimants violated their obligations under the Chah Bahar, Electro-Mechanical Industrial Complex and Kangas Agreements by failing to transfer technology, provide management training, submit required reports and by pricing unfairly. The Respondents

seek compensation for damages due to these alleged breaches of contract in the aggregate amount of $707,661.42. The Claimants deny that they have breached the Agreements or are liable for damages. The Respondents have also counterclaimed for taxes and social security premiums in an unspecified amount. The Claimants deny that the Tribunal has jurisdiction over these counterclaims.

19. Both the Claimants and the Respondents seek their costs of arbitration.

II. PROCEDURAL ISSUES

20. At the Hearing, IDRO's attorney distributed to the Tribunal and the Claimants a document entitled "Hearing Statement", which he described as being "verbatim" with the oral statements that he intended to make at the Hearing. The Claimants objected to the admission of this document, stating that it contained new arguments in writing to which they could not respond at such a late stage of the proceedings. While the Tribunal allowed the distribution of the document, it did not accept it for filing and it reserved until after the Hearing its decision whether and to what extent it would make use of the document. Upon examination, the Tribunal finds that IDRO's "Hearing Statement" constitutes in fact IDRO's Hearing Memorial which had been due by 15 December 1985 and which IDRO had not submitted before the Hearing that was held on 13 and 14 February 1986. This "Hearing Statement" contains a detailed, partly new outline of IDRO's factual assertions and legal arguments, the acceptance of which for filing would prejudice the Claimants, who did not have sufficient opportunity to comment on the document as a whole. The Tribunal therefore does not admit the "Hearing Statement", but takes note of arguments contained therein to the extent they were contained in and

could be followed during the oral presentation of IDRO's attorney at the Hearing.

21. At the Hearing, the Claimants' attorney distributed copies of two letters to the acceptance of which the Respondents objected. The Claimants having put forward no reason for their submission only at the Hearing, the Tribunal does not admit these two letters.

22. The Respondents have requested the Tribunal to appoint an expert to audit OBI's books in connection with one of the claims brought by OBI. In view of its finding on this claim, see paras. 37-46, infra, the Tribunal does not find it necessary to appoint such an expert.

23. Finally, the Respondents have requested the Tribunal to defer its decision on the claims for interest until after the Full Tribunal's decision in Case No. A19. In conformity with its consistent practice on this issue, the Tribunal denies this request.

24. The Tribunal notes that, since the time the Respondents made a request to defer a decision on the Claimants' nationality until after the Full Tribunal's decision in Case No. A20, this decision has been rendered. See Decision No. DEC 45-A20-FT (10 July 1986). Thus, this request is now moot.

III. REASONS FOR AWARD

1. Jurisdiction

a) The Claimants

25. OBI and ABI are the only Claimants that seek a monetary award in their favor. The Claimants have requested that the other companies named as Claimants should be allowed to participate in these proceedings as respondents to possible counterclaims, and consequently they remain as Parties.

26. The Tribunal is satisfied from the evidence submitted by the Claimants that OBI and ABI, the Claimants which bring monetary claims, are Nevada corporations that are both wholly owned subsidiaries of Bechtel Petroleum, Inc. (before 2 December 1980 named Bechtel Incorporated). The same applies to Bechtel International Inc., another Claimant named in this Case. The Claimants assert that until 31 December 1980 more than 90% of the stock of Bechtel Petroleum, Inc., the owner of OBI and ABI, and of Bechtel Power Corporation, a further Claimant named in this Case, were beneficially owned by United States citizens. From 31 December 1980 to the present, the Claimants assert, Bechtel Petroleum, Inc. and Bechtel Power Corporation have been wholly owned subsidiaries of Bechtel Group, Inc., more than 90% of whose stock in turn has been beneficially owned by United States citizens.

27. The Claimants have presented an Affidavit of the individual who is Secretary of Bechtel Group Inc., Bechtel Petroleum, Inc. and Bechtel Power Corporation confirming these assertions. At the Hearing the Claimants stated that the stock of these three corporations is not publicly traded and that, for reasons which they consider important, it has been their practice not to disclose the names of their stockholders.

28. In an Order issued after the Hearing, the Tribunal requested the Claimants to make available for inspection by Peat Marwick Nederland, a firm of certified public accountants, such corporate books and records of these three corporations, or other evidence, sufficient to show that fifty percent or more of their stock during the relevant periods was beneficially owned by natural persons who are citizens of the United States. Subsequently, Peat Marwick Nederland reported to the Tribunal that it had carried out the inspections prescribed by the above Order. It expressed its opinion that more than fifty percent of the stock of Bechtel Group, Inc., Bechtel Petroleum, Inc. and Bechtel Power Corporation, respectively, was beneficially owned during the relevant periods by natural persons who are citizens of the United States.

29. Based on this report and the other evidence in the record, the Tribunal concludes that the Claimants are nationals of the United States within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration.

b) The Respondents

30. The Government of the Islamic Republic of Iran comes within the purview of Article VII, paragraph 3, of the Claims Settlement Declaration.

31. IDRO does not deny that it is a "governmental organization". Based on the record in this Case, the Tribunal finds that IDRO is an entity controlled by the Government of Iran within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration. Accord Economy Forms Corp. and Islamic Republic of Iran, Award No. 55-165-1, p. 10 (14 June 1983); Harnischfeger Corp. and Ministry of Roads and Transportation, Award No. 144-180-3, pp. 12-13 (13 July 1984).

32. The Claimants contend that IEC was controlled by NIOC and IDRO and regarded as a governmental entity from its

inception. They point out a number of events subsequent to IEC's formation which, in their view, show the Government's control over IEC at least from 6 May 1980.

33. The Respondents deny that IEC is controlled by the Government, but rather contend that it continues to be a private company. They further assert that after July 1979, IEC was in the process of voluntary dissolution, that any measures taken by governmental authorities were in preparation and performance of IEC's liquidation and that the Claimants' exclusive means of recourse against IEC are such liquidation proceedings in Iran. The Claimants reply that the pendency of liquidation proceedings does not deprive the Tribunal of jurisdiction over IEC.

34. Based on the evidence before it, the Tribunal finds that on 19 January 1981 IEC was an entity controlled by the Government of Iran within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration. The Tribunal does not need to decide whether IEC was controlled by the Government from its formation, when ABI, NIOC and IDRO each were issued one-third of the stock, NIOC and IDRO appointed four of the six directors, including the managing director, and IEC's formation was authorized at a cabinet meeting. In any event, by 19 January 1981, ABI's influence in IEC had in fact been reduced to such an extent that NIOC and IDRO controlled IEC.

35. The Government's control over IEC through NIOC and IDRO has been established prima facie by the following events, which have not been rebutted. In April 1979, a new managing director was appointed for IEC by the Revolutionary Committee of Tehran. In July 1979, the Ministry of Energy directed IEC that invoices from OBI and IDRO not be paid. During the first week of May 1980, the Central Committee of Tehran took physical control over IEC's facilities and records. Thereafter, management of IEC seemed to have been assigned to IDRO, which submitted a Statement of Defence on

behalf of IEC in this Case. Taken together, these events reduced ABI's control in IEC so much that NIOC and especially IDRO in fact controlled IEC on 19 January 1981. Both NIOC and IDRO have been held by the Tribunal to be controlled entities and consequently IEC, the company they control, is also covered by the jurisdictional grant of Article VII, paragraph 3, of the Claims Settlement Declaration.

36. The Tribunal's jurisdiction over IEC is not excluded because of the pendency of Iranian liquidation proceedings. The minutes of a shareholders' meeting held on 23 June 1979 record that the shareholders of IEC agreed "to take the appropriate actions to implement the dissolution" of the company. Although ABI's representative voted to the contrary on the ground, the Claimants assert, that the Bechtel companies had not yet been paid the amounts owed by IEC, the Respondents assert that IEC is in the liquidation process. However, the liquidation proceedings do not deprive the Tribunal of jurisdiction over IEC. As the Tribunal held in Rexnord Inc. and Islamic Republic of Iran, Award No. 21-132-3, p. 9 (10 January 1983), "[t]he mere availability of a local remedy, whether judicial or otherwise, cannot preclude the Tribunal from jurisdiction".

2. Merits of the Claims

a) Chah Bahar Project

37. On 4 October 1977, OBI and IDRO entered into a Technical Services Agreement under which OBI was to provide project evaluation services in connection with a power and seawater desalination plant to be constructed at Chah Bahar. According to the Agreement, OBI was, upon completion of its services, to submit to IDRO a "Final Report of the results

of [its] Services". In April 1978, OBI submitted a report to IDRO, which it asserts constitutes the final report, and which consisted of an Executive Summary, a Main Volume and an Appendix. IDRO denies that this was the final report required by the Agreement, and consequently denies OBI's entitlement to the amount claimed. IDRO asserts that OBI's invoices under the Agreement were unfair in that they charged multiple fees, charged twice for the same work and did not account for an advance of $50,000. IDRO requests the Tribunal to appoint an expert who should determine what compensation may reasonably be due for services rendered.

38. The contract provision requiring OBI to submit a final report does not specify the contents of that report other than that it should contain "the result of [OBI's] Services". What services exactly were to be rendered under the Agreement is defined in a provision dealing with the scope of OBI's performance, which also lists a number of schedules, schemes and data that the final report should contain. While the Tribunal is not in a position to determine whether the three documents submitted by OBI as final report exhaustively describe the results of OBI's services, it appears that they comply with the relevant requirement of the Agreement. In addition, the Tribunal notes that IDRO did not object to OBI's report until the present proceedings, nor has it raised any contemporaneous objections to OBI's final invoice related to the services described in this report. The Agreement provided that the final report was to be deemed accepted should IDRO not object within thirty days from its receipt, and acceptance of the final report should be deemed completion and acceptance of the services. Thus, the Tribunal concludes that OBI performed the services as required by the Agreement.

39. On 22 December 1978, a final invoice and a summary of all amounts billed was sent to IDRO. The aggregate amount still owing was $407,285.45. As required by the

Agreement, the final invoice was accompanied by a statement of Coopers & Lybrand, OBI's auditors, certifying that the invoice was accurate and in conformance with the Agreement. No objection was made to this invoice until the present proceedings. According to the Agreement, the amounts became due within thirty days after receipt of the final invoice by IDRO. The Tribunal finds that, as sought by the Claimants, OBI is entitled to payment of $407,285.45 from IDRO as of 1 February 1979. In view of this finding, the Tribunal sees no need for an audit of OBI's books or for appointment of an expert to determine the value of the services rendered by OBI under the Technical Services Agreement.

40. The Agreement provided that IDRO could request OBI to perform additional services and that OBI's acceptance of such requests would constitute notices to proceed. In accordance with this provision, IDRO made three requests for additional services which OBI accepted. On 15 August 1978, IEC contracted with OBI for the performance of additional services, providing that OBI would perform subject to the terms of the Technical Services Agreement with IDRO and that IEC's rights and obligations would be the same as IDRO's under that Agreement. The services to be performed by OBI for IEC were completion of the additional services contained in IDRO's three requests and specified other services.

41. OBI submitted five monthly progress reports through December 1978 concerning the additional work. In October 1979, it submitted a summary of all work performed in connection with the Chah Bahar project, listing also the additional services.

42. The Respondents contend that OBI is seeking double payment for additional services which, they state, can only have been rendered either for IDRO or for IEC. They further contend that OBI's personnel left Iran before finishing the required work.

43. The Claimants have submitted evidence showing that IDRO and IEC were informed in February 1979 by the Ministry of Energy that the Chah Bahar project had been cancelled and further showing that OBI was subsequently directed by IEC to submit a final invoice. The record shows that additional services were rendered by OBI, until August 1978 for IDRO, and from August to December 1978 for IEC. These two sets of services were different from each other and the invoices billing them did not charge twice for the same work. On 5 April 1979, OBI sent a final invoice together with a summary of all amounts billed for additional services rendered for IEC, which totalled $2,493,022.18. On 26 April 1979 it sent the confirming statement from Coopers & Lybrand. Neither OBI's reports nor the summary of invoices were objected to at the time. Thus, pursuant to the applicable provisions of the Technical Services Agreement, performance and acceptance must be deemed and any unpaid amount became due not later than 1 June 1979.

44. Since IEC paid OBI $1,200,000 on 13 September 1978 for additional services, OBI is entitled to payment from IEC of the remaining $1,293,002.18 for such services as of 1 June 1979.

45. OBI claims interest at the rate of 11.75 percent on both the $407,285.45 owed by IDRO under the Technical Services Agreement and the $1,293,022.18 owed by IEC for additional services. It bases its claim for interest on the provision in the Agreement according to which amounts past due were to "accrue interest at the prevailing prime rate of interest as quoted by Citibank International at New York on the date of accrual until such amounts owed and interest accrued are paid in full".

46. In accordance with its previous practice, the Tribunal applies the interest rate that the parties have stipulated in their contracts for amounts past due. Since

the Technical Services Agreement determined also IEC's obligations with regard to the additional services, OBI is entitled to interest at the rate defined in the quoted provision on both amounts awarded under this heading. The Claimants have submitted unrebutted evidence showing that the prime rate of interest as quoted by Citibank International at New York was 11.75 percent on the date of accrual of both these amounts, and they claim interest at that rate. The Tribunal determines that OBI is entitled to simple interest at the rate of 11.75 percent per annum on $407,285.45 from 1 February 1979, and on $1,293,022.18 from 1 June 1979.

b) Electro-Mechanical Industrial Complex

47. In October 1978, OBI and IEC entered into an Agreement for engineering services. Under the Agreement, OBI was to send three engineers to Tehran who were to submit a report in connection with an Electro-Mechanical Industrial Complex to be constructed there. On 13 November 1978, OBI submitted that report to IEC.

48. The Respondents have alleged for the first time in the proceedings before the Tribunal that "on the basis of reports submitted by IDRO's Technical Specialist, the services rendered by Bechtel for this Project were defective". The Respondents have not specified this allegation, nor have they submitted the referenced reports. IEC did not object to OBI's November 1978 report until the present proceedings. Indeed, the letter by which IEC transmitted the report to IDRO indicates that IEC regarded the report as complete. On the basis of this, and in view of the provision in the Agreement according to which performance and acceptance of the services are deemed complete absent any objection within thirty days of delivery, the Tribunal

concludes that OBI rendered the contractually required services.

49. The Respondents contend that the services were not for IEC, but rather for another company, and any claim under the Agreement would thus have to be made against that company. However, while the Claimants acknowledge the exercise by another company of ultimate direction of the project, it is clear from the Agreement that the party with which OBI contracted for the services in question was IEC.

50. OBI submitted its final invoice together with a summary of the total amount due of $40,650.51 to IEC on 20 June 1979. This amount has not been paid. The Claimants have demonstrated to the Tribunal's satisfaction that the payment provisions of the Agreement were not, as the Respondents argue, unfair. Absent any other objection to the amount claimed, the Tribunal determines that OBI is entitled to $40,650.51 under this heading.

51. OBI claims interest on the above amount at the rate of 12 percent, based on the following provision of the Agreement: "Amounts owed . . . shall accrue interest . . . at the lesser of (1) rate equal to two percent (2%) above the prime lending rate quoted . . . on ninety-day loans by the Bank of America N.T. & S.A., San Francisco, California . . . or (2) the maximum rate permitted by applicable law". The Claimants state that since the prime rate for the relevant period is higher, the second alternative, that Iranian law governs, applies, and they state that the maximum rate permitted by Article 719 of the Iranian Civil Code is 12 percent.

52. The Respondents generally deny the Claimants' entitlement to interest, but as they stated at the Hearing, have not specifically contested any aspects of the Claimants' interest calculations. Because the Claimants'

interpretation of the relevant contract provision is reasonable and uncontested, the Tribunal finds that OBI is entitled to interest at the rate of 12 percent per annum on $40,650.51 from 1 August 1979.

c) Kangas Project

53. The Claimants assert that on 25 September 1978 OBI and IEC entered into a Technical Services Agreement under which OBI was to review and supervise engineering work in connection with a gas gathering and processing plant at Kangan. The Claimants have not submitted the original or copies of the alleged Agreement which, they assert, must be in the possession of the Respondents, and which they requested the Respondents to produce. The Respondents deny that this Agreement exists. The Tribunal concludes that such an Agreement was actually concluded between OBI and IEC.

54. On 25 September 1978, NIOC issued a Notice to Proceed to IEC, which requested IEC to review and monitor engineering work to be done for the Kangas project, and an appendix to the Notice to Proceed which makes clear that the parties intended Bechtel companies to perform the work. An internal memorandum of 2 October 1978 from Bechtel Great Britain, the company that according to the Claimants performed the services in question, states that an Agreement had been signed on 25 September 1978 between OBI and IEC for technical assistance services to NIOC's Kangas project. Internal progress reports from Bechtel Great Britain describe services rendered in connection with the Kangas project. In late February 1979, OBI and IEC were advised by NIOC to withdraw their personnel, their services being no longer essential due to the slowdown in engineering work on the project "as a result of the present situation". From all this it must be inferred that an Agreement existed

pursuant to which OBI, through Bechtel Great Britain, performed technical assistance services.

55. No objection was raised with regard to the services performed under the Agreement. Indeed, in its February 1979 letter NIOC expressed its thanks for the valuable assistance rendered by the Claimants' personnel on the Kangas project.

56. On 19 April 1979, OBI sent a final invoice to IEC in the amount of $242,149.11. This invoice, to which no objection was ever made, has not been paid. IEC submitted an invoice in the same amount to NIOC, stating in its transmittal letter that the amount of Rials 17,107,834 of that invoice represented costs incurred by the Claimants' personnel. In addition, the Claimants contend that at a meeting in October 1979 the board of IEC approved payment of Rials 7,000,000 to OBI for invoices related to the Kangas project. The Tribunal finds that OBI is entitled to payment of its services under this heading in the amount of $242,149.11.

57. The Claimants contend that the Agreement contained a clause regarding interest on amounts past due similar to the one in the Electro-Mechanical Industrial Complex Agreement. As in that claim, OBI therefore seeks interest at the rate of 12 percent. Absent the actual text of the Agreement, thereby leaving the Tribunal with no contractual rate of interest to apply, the Tribunal considers it reasonable to apply the principles of Sylvania Technical Systems, Inc. and Government of the Islamic Republic of Iran, Award No. 180-64-1, pp. 30-34 (27 June 1985). OBI's final invoice having been submitted on 19 April 1979, the Tribunal considers that it would have been reasonable to allow two months before IEC might have been expected to make payment. Interest is therefore awarded from 1 July 1979, as requested by OBI. The currently applicable Sylvania rate of

interest for the period relevant to this portion of the claim is 11.00 percent per annum. OBI is therefore entitled to simple interest at the rate of 11.00 percent per annum on the $242,149.11 awarded under this heading.

d) Expatriate Staff Costs

58. On 10 July 1978, NIOC, IDRO and ABI entered into a Shareholders Agreement by which they formed IEC as an Iranian private joint stock company. That Agreement provided for the three shareholders to make personnel available for seconding to IEC. Reimbursement of costs for such seconded personnel was to be made in accordance with the criteria laid down in an Attachment to a Memorandum of Agreement which, NIOC, IDRO and ABI had agreed, was to be adopted by IEC. That Attachment became binding on IEC on 28 October 1978. The Attachment provided that "only payroll and other direct employee-related expenses" be reimbursed.

59. At the request of IEC, ABI seconded management personnel to IEC. Twice in November 1978 and once in March 1979 IEC was invoiced for costs for seconded personnel in a total amount of $365,887.87. The invoices were sent by Bechtel International, Inc., the Bechtel company registered to do business in Iran to which ABI had assigned personnel seconded to IEC. This procedure was foreseen in an Exhibit to the Shareholders Agreement.

60. The Respondents assert that the amounts billed are exorbitant and unacceptable. They argue that according to the contractual arrangements governing the secondment of personnel, ABI itself was required to pay for at least ten Bechtel specialists, and the number of employees it was allowed to charge to IEC was in a proportion of one Bechtel employee to fifteen IEC employees.

61. The agreements submitted in evidence indicate, however, the following contractual situation with regard to reimbursement for seconded personnel. IEC was to reimburse the respective Bechtel company only the direct costs, excluding a fee, that it incurred for "10 management or technical personnel to be provided . . . during the early operation of" IEC. For further seconded personnel, the Bechtel company was also entitled to a fee. The above-mentioned Attachment clarified that "only payroll and other direct employee-related expenses" were to be reimbursed. Reimbursement was not limited in the relation of one Bechtel employee to fifteen IEC employees. Rather, the agreements reflected an "understanding of the parties that each . . . secunded personnel shall supervise an average of 15 fee generating personnel of the IEC".

62. In an affidavit, Joseph Battin, now Vice President of Bechtel Power Corporation, but at the time seconded to IEC by ABI to serve as IEC's Deputy Managing Director, states that IEC was not charged fees for any seconded personnel by ABI, but that the invoices on which ABI seeks payment reflect only direct costs. Although the Tribunal cannot, absent further clarification from the Parties, determine for each of the invoice entries whether it is in full conformity with the relevant agreements, the Respondents cannot now assert that ABI is not entitled to reimbursement. First, the Respondents' general denial of this claim does not deal with any of the particular amounts denied. Second, neither a specific nor a general objection had been raised against any of the invoices until the present proceedings. Third, the aggregate amount of the first two invoices has been carried in the books of IEC for the relevant period under "Transactions with associated companies . . . in which the directors of [IEC] had an interest" with the description "Services provided under contract". Accordingly, the Tribunal determines that ABI is entitled to reimbursement of $365,887.87 from IEC.

63. As in the Electro-Mechanical Industrial Complex and the Kangas claims, the Claimants seek interest on that amount at the rate of 12.00 percent. Absent any contractually stipulated rate, the Tribunal applies a rate in accord with Sylvania. Because the Claimants seek interest from the date of commencement of the present proceedings, interest is awarded from 20 November 1981. The applicable rate for the period relevant to this portion of the claim is 9.50 percent per annum. ABI is thus entitled to simple interest at the rate of 9.50 percent per annum on the $365,887.87 awarded under this heading.

e) Pre-incorporation Costs

64. By letter dated 28 June 1978, IEC's managing director informed IEC's shareholders that they should submit to IEC a list of their pre-incorporation expenses for which they intended to bill IEC. ABI submitted such a list totalling over $200,000. On 28 March 1979, IEC approved $113,076 of the costs submitted by ABI. On 8 June 1979, ABI invoiced IEC for the $113,076. This invoice has not been paid and ABI seeks payment of this amount from IEC. ABI demands reimbursement of the $113,076 also from the Government as part of the value of its allegedly expropriated interest in IEC.

65. ABI is entitled to $113,076 as a debt owed by IEC. IEC personnel approved this amount. No showing has been made that this approval had not been given on the basis of decisions of competent officials of IEC. Nor have the Respondents raised any specific objection as to the connection of such costs with the formation of IEC.

66. ABI seeks interest at the rate of 12.00 percent from 20 November 1981, the commencement date of the present proceedings. Absent a contractual rate of interest, the Tribunal applies the rate currently mandated by Sylvania.

The rate for the period relevant to this portion of the claim is 9.50 percent per annum. ABI is thus entitled to simple interest at the rate of 9.50 percent per annum on the $113,076 awarded under this heading.

f) Capital Contribution or Share of Net Worth

67. ABI paid Rials 10,500,000 as its share of capital contributions to IEC. The Claimants contend that IEC was expropriated not later than 6 May 1980 by virtue of the seizure around that time by the Revolutionary Committee in Tehran of IEC's assets, records, and facilities and by the exercise since then by the Government of Iran of complete control over IEC's affairs. ABI claims $149,635.88, an amount equivalent to capital contribution and relevant transfer charges, from the Government as the value of its alleged expropriated interest in IEC. Alternatively, it seeks its share of IEC's net worth on the date of expropriation.

68. The Respondents deny that IEC was expropriated. They argue that ABI agreed to the liquidation of IEC, that ABI cannot be paid anything outside the pending liquidation proceedings and that ABI would only be entitled in proportion to its contribution to an eventual residue that would remain after first and second category creditors of IEC were satisfied in these proceedings.

69. The Tribunal need not decide whether an expropriation occurred or on what terms ABI agreed to liquidate IEC. Instead, it denies this element of the claim on the ground that even if an expropriation were found to have occurred, the Claimants have not proven that they would be entitled to damages. First, they have not explained why the Tribunal should establish IEC's value on the basis of an

original capital contribution. Second, they have not sufficiently demonstrated that at the time the expropriation allegedly occurred IEC had a positive net worth.

70. The Claimants have submitted a pro forma net worth statement for IEC showing a "net due each shareholder" of $86,288 as of 6 May 1980, and suggest that IEC's current assets might have been in excess of those indicated. The Claimants contend that IEC should have billed NIOC and IDRO for its costs with respect to the three projects on which claims are made here, and that IEC may have earned interest on bank and cash balances. The Claimants have not stated how these possibilities would affect the figures of the pro forma statement. More importantly, a number of other conclusions can be drawn from the record before the Tribunal that would reduce the "net due each shareholder" or even make it negative.

71. The pro forma statement fails to consider administrative expenses for the period between 21 March 1979, the date as of which the Claimants have submitted a balance sheet for IEC, and 24 July 1979, the date on which a budget for dissolving the company was adopted. No account is taken of the increase in liabilities which accumulating interest on outstanding invoices would have caused. The report of IEC's auditors accompanying the balance sheet as of 21 March 1979 indicates that IEC might have been liable for taxes. No such contingent liability is included in the pro forma statement. The cash and bank balances as of 21 March 1979 were required to defray the expenses of liquidating the company. The extent to which this reduced IEC's assets by 6 May 1980 is not reflected in the pro forma statement.

72. On the basis of the record as a whole, the Tribunal finds that the Claimants have not sufficiently established whether a "net due" ABI existed as of the date of the alleged taking of IEC or how much might have been

due. ABI's claim for reimbursement of its capital contribution must consequently be dismissed.

g) The Government's Joint Liability

73. The Claimants allege that the Government should be held liable for payment of claims arising out of contractual obligations jointly with other Respondents because the Government controls such Respondents within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration. The Tribunal cannot find that the Claimants have sufficiently explained or substantiated this allegation.

3. The Counterclaims

a) Breach of Contract

74. The Respondents assert that the Claimants breached obligations under the Chah Bahar, Electro-Mechanical Industrial Complex and Kangas Agreements. Alleged breaches involve unfair pricing and failure to submit required reports, to transfer technology and to provide management training. The Respondents seek compensation for damages due to these alleged breaches in the aggregate amount of $707,661.42, which they state is equivalent to the total payments made to the Claimants. No amount has been specified for "other direct and incidental damages" that are alleged. The Claimants deny any breach of the three Agreements.

75. The Tribunal has held that the Claimants performed their obligations under the Agreements. Thus, it cannot find any basis for this counterclaim, which must be dismissed.

b) Taxes and Social Security Premiums

76. The Respondents have brought a counterclaim for taxes and social security premiums. They have not given any other legal basis but a general reference to "the laws of Iran" for this counterclaim. Nor have they specified the amount claimed, except for $107,408, which, they submitted at the Hearing, should be set off against any amount awarded the Claimants pursuant to the Agreements with IEC, because IEC allegedly was under an obligation to withhold this amount from payments to the Claimants.

77. The Agreements at issue in this Case do not provide for any obligation of the Claimants to pay taxes or social security premiums. Any such obligation can therefore only stem from an application of Iranian law, which is also the legal basis which the Respondents themselves adduce. As previous decisions of the Tribunal have made clear, the Tribunal has no jurisdiction over counterclaims for taxes and social security premiums that are based on municipal laws rather than on the contracts which form the basis of the claims. See, e.g., Sylvania, supra, pp. 40-41. Therefore, the Respondents' counterclaims for taxes and social security premiums must be dismissed.

4. Costs

78. The Claimants have requested $251,755 as costs of the arbitration. In the light of the principle of reasonableness adopted by this Chamber in Sylvania, supra, pp. 35-38, and applied in subsequent cases, the Tribunal considers it appropriate to award costs of $25,000.

IV. AWARD

79. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent INDUSTRIAL DEVELOPMENT AND RENOVATION ORGANIZATION is obligated to pay the Claimant OVERSEAS BECHTEL, INC. the sum of Four Hundred Seven Thousand Two Hundred Eighty Five United States Dollars and Forty Five Cents (U.S.$407,285.45), plus simple interest at the rate of 11.75 percent per annum (365-day basis) from 1 February 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Democratic and Popular Republic of Algeria of 19 January 1981.

(b) The Respondent IRAN ENGINEERING AND CONSTRUCTORS is obligated to pay the Claimant OVERSEAS BECHTEL, INC. the sum of One Million Two Hundred Ninety Three Thousand Twenty Two United States Dollars and Eighteen Cents (U.S.$1,293,022.18), plus simple interest at the rate of 11.75 percent per annum (365-day basis) from 1 June 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Democratic and Popular Republic of Algeria of 19 January 1981.

(c) The Respondent IRAN ENGINEERING AND CONSTRUCTORS is obligated to pay the Claimant OVERSEAS BECHTEL, INC. the sum of Forty Thousand Six Hundred Fifty United States Dollars and Fifty One Cents (U.S.$40,650.51), plus simple interest at the rate of 12.00 percent per annum (365-day basis) from 1 August 1979 up to and

including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Democratic and Popular Republic of Algeria of 19 January 1981.

(d) The Respondent IRAN ENGINEERING AND CONSTRUCTORS is obligated to pay the Claimant OVERSEAS BECHTEL, INC. the sum of Two Hundred Forty Two Thousand One Hundred Forty Nine United States Dollars and Eleven Cents (U.S.$242,149.11), plus simple interest at the rate of 11.00 percent per annum (365-day basis) from 1 July 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Democratic and Popular Republic of Algeria of 19 January 1981.

(e) The Respondent IRAN ENGINEERING AND CONSTRUCTORS is obligated to pay the Claimant AMERICAN BECHTEL, INC. the sum of Three Hundred Sixty Five Thousand Eight Hundred Eighty Seven United States Dollars and Eighty Seven Cents (U.S.$365,887.87), plus simple interest at the rate of 9.50 percent per annum (365-day basis) from 20 November 1981 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Democratic and Popular Republic of Algeria of 19 January 1981.

(f) The Respondent IRAN ENGINEERING AND CONSTRUCTORS is obligated to pay the Claimant AMERICAN BECHTEL, INC. the sum of One Hundred Thirteen Thousand Seventy Four United States Dollars and Eighty Four Cents (U.S.$113,074.84), plus simple interest at the rate of 9.50 percent per annum (365-day basis) from 20 November 1981 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment

out of the Security Account established pursuant to paragraph 7 of the Declaration of the Democratic and Popular Republic of Algeria of 19 January 1981.

(g) The Respondents INDUSTRIAL DEVELOPMENT AND RENOVATION ORGANIZATION and IRAN ENGINEERING AND CONSTRUCTORS are obligated to pay the Claimants OVERSEAS BECHTEL, INC. and AMERICAN BECHTEL, INC. the sum of Twenty Five Thousand United States Dollars (U.S.$25,000) as costs of arbitration.

(h) The remaining claims and the counterclaims are dismissed.

The above obligations shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Democratic and Popular Republic of Algeria of 19 January 1981.

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

Dated, The Hague
4 March 1987

Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God

Mohshen M. Mostafavi

Concurring in part,
dissenting in part.

Howard M. Holtzmann

Joining fully in the Award, except concurring only in order to form a majority in the inadequate award to the Claimants of

less than 10% of their documented costs in a case in which they have prevailed on over 95% of the claims and 100% of the counterclaims. See my Separate Opinion in Sylvania Technical Systems, Inc. and Islamic Republic of Iran, Award No. 180-64-1 (27 June 85).