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CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

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Case No. 198

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- Date _____

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CASE NO. 198
CHAMBER ONE
AWARD NO.248 -198-1

AMMANN & WHITNEY,
Claimant,

and

MINISTRY OF HOUSING AND URBAN DEVELOPMENT (KHUZESTAN DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT),
Respondent.

AWARD

Appearances:

For the Claimant:
Mr. Jonathan I. Blackman
Mr. Lawrence Friedman
Mr. Lyman M. Tondel, Jr.,
Attorneys,
Mr. Anthony Russo,
Representative of Ammann & Whitney

For the Respondent:
Mr. Mohammad K. Eshragh,
Agent of the Government of the Islamic Republic of Iran,
Mr. Assadollah Nouri,
Legal Adviser to the Agent,
Mr. Hasan Gholami,
Assistant to the Agent,
Mr. Zabihollah Alavi Harati,

Attorney for Ministry of Housing,
Mr. Iraj Amiri,
Technical Representative of
Ministry of Housing,
Mr. Mehdi Gerami Shakib,
Financial Representative of
Ministry of Housing

Also present: Mr. Daniel M. Price,
Deputy Agent of the Government of
the United States of America.

I. INTRODUCTION

1. The Proceedings

On 8 January 1982, the Claimant Ammann & Whitney filed a claim with the Tribunal against the Khuzestan Urban Development Organization ("KUDO") and the Islamic Republic of Iran, seeking damages for breach of a contract entered into between Ammann & Whitney and KUDO in approximately July 1978 for the provision of consulting engineering services in respect of the construction of a New Town near Jarrahi, in the province of Khuzestan. The amount claimed is $731,813 together with interest and costs. Ammann & Whitney also seeks the cancellation of a letter of credit established to secure a bank guarantee.

The Islamic Republic of Iran filed a Statement of Defence on 26 November 1982, and the Ministry of Housing and Urban Development filed a Statement of Defence and Counterclaim on 24 January 1983, in which it alleged that Ammann & Whitney was itself in breach of the contract and claimed reimbursement of an alleged overpayment of 36,194,546 Rials; repayment of the

sum of $431,718 (otherwise expressed as 30,392,000 Rials) in respect of monies retained by Ammann and Whitney as agent for KUDO during the course of their contractual relationship, and now offset against the principal claim; social insurance premiums of 823,780 Rials (which it later sought to increase by amendment to 17,862,134 Rials); and the payment of 19,436,427 Rials in respect of a bank guarantee in its favour.

The Respondents contested the United States nationality of Ammann & Whitney and its standing to sue as a partnership, and claimed that the forum selection clause in the contract divested the Tribunal of jurisdiction. These allegations and arguments were denied by Ammann & Whitney.

A pre-hearing conference was held on 23 January 1984, pursuant to which the Tribunal ordered that the only proper Respondent to the claim was the Ministry of Housing and Urban Development ("the Ministry") by virtue of its having succeeded to the rights and obligations of KUDO on that body's dissolution on 21 March 1981. The Government was accordingly stricken as a Respondent. In the same Order, filed on 30 January 1984, the Tribunal joined all issues of jurisdiction to the merits of the Case, and in particular, deferred its decision on the Respondent's request that the Case be consolidated with Case No. 940, a claim, pending before Chamber Two, brought by one of KUDO's subcontractors in relation to the same project.

After an exchange of further pleadings and evidence, an oral hearing took place on 25 February 1986. Mr. Richard M. Mosk participated in the hearing and in the Award in this Case pursuant to Article 13, paragraph 2 (as amended) of the Tribunal Rules and pursuant to an agreement between the Governments of the Islamic Republic of Iran and the United States of America.

2. Facts and contentions of the Parties

On 15 May 1978 Ammann & Whitney and KUDO executed a letter of intent whereby the former was to provide consulting engineering services in connection with the construction of a new town consisting of 1,000 houses and ancillary buildings near the Jarrahi River in Khuzestan. In about June 1978 a formal contract was signed, which incorporated the letter of intent, pursuant to which the services in question were to commence on 15 May 1978 and continue for fifteen months until completion of the project. The agreed contract price, 194,364,275 Rials, was to be paid in fixed monthly instalments during the contract period. In sum, Ammann & Whitney was to review plans and drawings prepared by subcontractors, to control the quality of the materials used, and to provide certain management services; and these duties were broken down into specific tasks numbered Tasks I - IV.

An important feature of the contract was that the houses were to be prefabricated, and brought to the site to be assembled and erected. KUDO engaged two main contractors, MEMCO, A.G., a Swiss corporation, and Hover-Naft, an English company, to construct 500 houses each for the town. Instead of undertaking the work themselves, each contractor in turn engaged three subcontractors. MEMCO A.G. engaged Atlantic International, Inc. ("Atlantic"), a United States corporation, to supply the houses; Schalcher & Partners of Switzerland to perform civil engineering work; and Masouri Bros., a local Iranian company, to undertake site preparation work. Hover-Naft engaged National Homes Corporation, of the United States, to provide its 500 houses; John Haiste & Co. of England to perform civil engineering; and another local company, Cupola Ltd., for site preparation. Ammann & Whitney played no part in the selection of KUDO's contractors and subcontractors.

Under Task I, Ammann & Whitney was to review designs, drawings and plans prepared by the subcontractors, for which it was to receive 14,952,600 Rials in five monthly payments commencing with the first month. Task II consisted of supervisory work, and Ammann & Whitney was to be paid in 15 monthly payments, the first of 21,761,500 Rials and the remaining fourteen of 4,721,500 Rials each, for a total of 87,862,500 Rials. For Task III, which consisted of project management services, 87,473,775 Rials was to be paid to Ammann & Whitney in fifteen equal instalments of 5,831,585. The remaining part of Ammann & Whitney's duties, Task IV, involved inspection of the prefabricated buildings during their manufacture by the subcontractors. For this it was to be paid 4,075,400 Rials in seven instalments of 582,200 Rials each. Broadly speaking, Tasks II and III involved considerable on-site work by Ammann & Whitney, whereas Tasks I and IV were largely performed elsewhere.

Ammann & Whitney invoiced KUDO for a total of 162,671,880 Rials, of which it claims to have received 67,466,060 Rials. KUDO claims to have paid 72,312,157 Rials, having allocated 758,230 Rials more than Ammann & Whitney to taxes, training fund contributions and social insurance premiums. KUDO also includes in the amount it claims to have paid 4,087,810 Rials representing a 10% good performance guarantee, which Ammann & Whitney argues was not provided for in the contract.

Ammann & Whitney contends that it performed its contractual obligations satisfactorily until about December 1978, when its Project Manager had to be withdrawn from Iran because of the prevailing conditions of unrest and it could no longer continue with site supervision and management. Ammann & Whitney further asserts that it kept its staff available and made efforts to continue its work. It claims, however, that KUDO breached the contract on several occasions starting in August 1978. After paying the first four invoices in part, KUDO failed to make further payments, despite Ammann &

Whitney's insistence that payments under the contract were to be triggered by the passage of time, and not in any way contingent on the percentage of completion achieved or the performance of the subcontractors. The Ministry's response is that payments were to be correlated to the progress of the site work; that Ammann & Whitney failed to alert KUDO to deficiencies on the part of the subcontractors; and that Ammann & Whitney kept insufficient personnel at the site, which was closed from October through December 1978. As to the supervision of off-site construction of the prefabricated units in particular, the Ministry argues that as only 325 of the projected total of 1000 houses were shipped, only that proportion of the consulting engineer's fee became payable. On this basis, it is claimed that the amount of 36,194,546 Rials was overpaid to Ammann & Whitney.

The second category of breach alleged by Ammann & Whitney consists in KUDO's failure to "facilitate" its work as consulting engineer pursuant to Article 8 of the contract. KUDO is said to have failed to prepare proper specifications; to have hired unsatisfactory contractors and then held up the progress of work by delaying the opening of letters of credit needed to provide them with essential funds; to have delayed in resolving essential questions of policy and in approving Ammann & Whitney's submissions; to have failed to secure work and residence permits for essential personnel; and to have failed to provide the necessary infrastructure for the new town project.

In November 1978 Ammann & Whitney suspended work on the project, and negotiations subsequently took place in an effort to secure the return of its workforce. It states that it attempted to reduce its billings to KUDO by the amount of unincurred costs, but denies that there was any agreement to reduce the contract price. It alleges instead that two letters relied upon by the Ministry in this connection reflect

an attempt to negotiate a settlement which never took effect, as KUDO never approved the proposal.

The contract was finally terminated for force majeure by Ammann & Whitney on 5 May 1981.

During the course of the contract's life, MEMCO's subcontractor, Atlantic, was able to ship only 325 of its allocation of 500 houses, although KUDO had transmitted the full payment for all 500. The balance of the amount paid to Atlantic, attributable to the houses not shipped, was transferred by Atlantic to Ammann & Whitney to hold as agent on behalf of KUDO pending the resolution of certain difficulties between KUDO and Atlantic. When in October 1979 Ammann & Whitney had not received payment from KUDO of the amounts invoiced, it applied the amount it was holding, 30,392,000 Rials(or $431,718), as a set-off in reduction of KUDO's debt to it.

The Ministry has raised counterclaims against Ammann & Whitney for the reimbursement of the alleged overpayment of 36,194,546 Rials and the reimbursement of the amount of 30,392,000 Rials, the offset of which was, it claims, made without consent and unlawfully. It also counterclaims for social insurance premiums of 17,862,134 Rials; and for the payment of 19,436,427 Rials which represented an advance payment made by KUDO to Ammann & Whitney and which was subject to a performance guarantee and standby letter of credit. Ammann & Whitney obtained a licence from the United States Treasury Department to establish a blocked account which it claimed to be entitled to do pursuant to United States regulations.

Ammann & Whitney denies liability in respect of all the counterclaims. It alleges that the claim for social insurance premiums is outside the Tribunal's jurisdiction. As to the amount of the guarantee, Ammann & Whitney claims that it was entitled to the advance payment and that the guarantee and the letter of credit established in respect of it should be cancelled.

II. Reasons for Award

1. Matters of procedure

The first issue the Tribunal has to consider is the request, made initially by the Ministry at the pre-hearing conference, that the present Case be consolidated with Case No. 940, Hover Naft International Construction Company et al. and The Ministry of Housing and Urban Development et al., currently pending before Chamber Two. The Claimant in that Case seeks damages based on its own construction contract with KUDO for the Jarrahi New Town project, and issues of expropriation are also raised. One of Hover Naft's allegations is to the effect that KUDO had failed to pay Ammann & Whitney, as a result of which Ammann & Whitney refused to authorise KUDO to make payments to Hover Naft. No similar request for consolidation has been made in Case No. 940. At no stage of the proceedings in Case No. 198 did sufficient reasons emerge which would have justified the Tribunal in granting the request for consolidation. Accordingly, it remains only to record the Tribunal's decision that Case 940 should proceed independently before Chamber Two, and that the present Case can be disposed of by a separate Award.

On 20 February 1986, the day after the hearing, a document was filed by the Respondent entitled "counterclaim arising out of letter of guarantee". It was submitted on behalf of the Ministry and Bank Melli, and purported to raise a fresh claim against Ammann & Whitney and Citibank of New York, concerning the failure to make payment under the letter of guarantee securing the advance payment to Ammann & Whitney under the contract. Neither Bank Melli nor Citibank is a party to Case No. 198. Aside from any questions as to the Tribunal's jurisdiction over a counterclaim thus formulated and the parties named in it, the Tribunal is bound to reject a pleading filed not only considerably later than the Statement

of Defence (see Articles 19 and 20 of the Tribunal Rules), but, indeed, after the hearing itself - the more so since no explanation has been advanced as to why such a delay might be justified.

2. Jurisdiction

Ammann & Whitney has established to the satisfaction of the Tribunal that it is a partnership organised in 1953 under the laws of New York, each of whose partners between 1 July 1977 and the present date has been a United States citizen, and that, as such, it is a United States national entitled to bring a claim pursuant to Article VII, paragraph 1(b) of the Claims Settlement Declaration.[1] It is also clear that the partnership owned the claim from the date it arose until 19 January 1981, and that, by virtue of the partnership agreement and New York law, this continuous ownership was not interrupted by the death of one partner in December 1980.

The Ministry has also argued that the present claim is excluded from the Tribunal's jurisdiction as it is based on a contract "specifically providing that any dispute thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position", as provided by Article II, paragraph 1 of the Claims Settlement Declaration.

The forum selection clause in question is Article 23 of the contract between Ammann & Whitney and KUDO, which provides that, in the event of a dispute arising, it

> ".... should be settled according to the Iranian laws by referring to the competent courts".

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[1] See, e.g., Touche Ross & Co. and The Islamic Republic of Iran, Award No. 197-480-1 (30 October 1985).

The Tribunal has already held, when faced with very similar wording in Gibbs and Hill, Inc. and TAVANIR et al., Award No. ITL 1-6-FT (5 November 1982), that,

> "a plain reading of this article shows that it only provides that disputes .... shall be settled through court proceedings and that the disputes shall be subject to Iranian law, whatever the court that deals with them".

No other conclusion is warranted in the present Case. The Tribunal therefore finds that the claim of Ammann & Whitney is not excluded from its jurisdiction.

3. The merits

a) the contract documents

In order for the Tribunal to be in a position to apply the terms of the contract to the facts of the present dispute, it must first establish which of the documents submitted form part of the contract, and whether any subsequent amendments were effected, as the Ministry contends. The Parties differ on each of these questions.

The contract itself, a document entitled and referred to as "Typical Contract No. 3", is a standard form contract in both Farsi and English, signed, but not dated, at Ahwaz by representatives of KUDO and Ammann & Whitney and bearing the official seal of the former. Article 27, entitled "Annexes to the Contract", reads in English as follows:

> "The Annexes to this Contract, of which they make integral part consist of:
>
> 1. Enclosure No. 1
> (subject of the Contract)
>
> 2. Enclosure No. 2
> (scope of the services and the description of the duties)

3. Enclosure No. 3
(Cartographical Services)

4. Enclosure No. 4
(Remuneration Table)

5. LETTER OF INTENT"

The words "5. LETTER OF INTENT" are added in manuscript. The letter of intent is, likewise, signed by both Ammann & Whitney and KUDO, and bears the latter's seal.

Ammann & Whitney has contended that the contract included an additional document, consisting of three pages in Farsi and English entitled "Addendum to Typical Contract No. 3", which is said to import textual amendments to the basic contractual provisions. The Ministry denies that it was an operative part of the contract. This document bears no seal or signature, and is not listed in Article 27 of the contract as being one of the contract documents. It appears that KUDO, at least, acted as though the Addendum was not applicable, although its action in making a retention in respect of the performance guarantee, which the contract per se allowed but the Addendum specifically excluded, was protested by Ammann & Whitney. Due weight should be given to Article 27 of the contract, which makes no mention of the Addendum. In view of this provision, there is insufficient evidence that this document was regarded by both Parties as one of the contract documents.

Turning to the question of whether or not the contract thus constituted was made the subject of subsequent amendments, the Ministry apparently seeks to impute such an effect to two letters written to KUDO by Ammann & Whitney, on 28 June 1979 and 15 September 1979 respectively. The Ministry argues that these letters operated as an agreement to reduce the contract price; Ammann & Whitney contends that they instead reflect attempts to reach a negotiated settlement which eventually was not approved by KUDO and which thus never took effect.

The first letter, from Mr. Brazinskas, Ammann & Whitney's Director of Operations, to Mrs. Shahabpour, the Director of Architectural and Urbanization Affairs at KUDO, begins with the statement,

> "We would like to confirm our understanding of the matters discussed during our meeting in Ahwaz on 27 June."

The letter goes on to refer to an agreement to delete on-site supervision, Task III of the contract, and to limit the scope of work to be performed by Ammann & Whitney under Task II. It states that "[w]e agreed to accept modifications to payments due for ... work to date under Task II", but makes this concession subject to the payment of 17,040,000 Rials representing reimbursement for mobilisation expenditures on the project. This particular condition is reiterated later in the text of the letter, presumably to reflect the fact that Ammann & Whitney had evidently been told at the meeting that this payment was still "to be further discussed within KUDO".

The second letter, from Mr. Eldar, the partner of Ammann & Whitney in charge of the project, again to Mrs. Shahabpour, begins with the words,

> "More than ten weeks have passed since our meeting at your offices in Ahwaz, and we are still awaiting your specific response, concerning some of the items discussed, as outlined in our letter to you, AW/K/1242, dated 28 June 1979."

It goes on to recapitulate the agreement on which KUDO's approval was sought, and contains an invitation to Mrs. Shahabpour to visit Ammann & Whitney's New York office to verify the mobilisation costs. The letter continues with an outline of amounts invoiced and outstanding under the respective Tasks, and a request for payment.

While there are indications, in the text of the first letter especially, that agreement had been reached to amend the terms

of the contract as to payment, the Tribunal's characterisation of these letters must depend on the interpretation placed on them by the parties to the contract as evidenced by their conduct. Ammann & Whitney appears to have treated the letters throughout as recording mere proposals, not binding until ratified. KUDO did not formally approve the proposals, nor did it act upon them - the 17,040,000 Rials in particular was never paid.

The Tribunal therefore concludes that as neither party to the contract treated the letters as constituting binding amendments to the contract between them, the Tribunal cannot do so either.

b) force majeure and the basis of the claim

Although Ammann & Whitney's claim in the present proceedings has been pleaded and argued throughout as one for damages for breach of contract, it should be noted that the contract was terminated for force majeure.

The force majeure clause, Article 22 of the contract, provides as follows:

> "In cases of Force Majeure which make impossible the execution of this Contract for one of the parties the concerned party can announce the termination of the Contract to the other party. In such case the Consulting Engineer shall, within one month after the declaring of the Contract's termination, submit to the Employer an invoice comprising the amounts which should be paid to him by the Employer, and the latter shall verify the said invoice within 30 calendar days after the receipt of the invoice and pay to the Consulting Engineer all the amounts which shall be found belonging to the latter."

Ammann & Whitney's letter of 5 May 1981 gave notice of termination of the contract for force majeure, invoking this provision. It contains a detailed statement of the amounts then owed by KUDO according to invoices previously rendered. The letter states, in particular,

> "Enclosed is a summary of our billings in the amount of 162,671,80 [sic] Rials to April 14, 1980 which was sent to you at that time. As you know, a force majeure situation exists in connection with the contract which we hereby declare terminated under Article 22. As shown on the second attachment, our records show credits against this amount of 78,422,587 Rials. Thus, the net owing us as of this date is 84,249,293 Rials."

It concludes,

> "To summarise, we are prepared to settle this account on the following basis:
>
> > Payment in full to our account at Citibank, New York in the U.S. Dollar Equivalent of 84,249,293 Rials less Letter of Credit guarantee payment of 19,436,420 Rials or at 70.4 Rials to the Dollar $920,637.40 (Dollars)."

The deduction of the amount representing the letter of credit was stated to be conditional upon KUDO's instructing Bank Melli and Citibank to cancel the letter of credit and the underlying guarantee.

The claim, which had arisen earlier but was now quantified, was set out in a Statement of Account attached to the letter, which was headed "Proposed Settlement". While the amount of Ammann & Whitney's present claim before the Tribunal is different, it seems clear that the amount set out in that letter was the total amount then sought in settlement of the parties' contractual obligations pursuant to the termination for force majeure and that it was intended as the "invoice" described in Article 22. KUDO raised no objection to the contents of the letter and did not protest the original invoices on which it was based. Thus KUDO must be taken to have acquiesced in the termination on the terms specified in the notice and invoice.

The Tribunal considers that the amount specified in the invoice, to which there should be deemed to have been agreement, is an appropriate amount due to Ammann & Whitney under the contract in question. Because of these circumstances, this figure, in which the parties in effect

acquiesced, is preferable to the computation currently advanced by Ammann & Whitney, which is based upon the entire contract price less payments made, estimated unincurred costs and the set-off described above. Such a computation might be appropriate where the contract had been terminated for breach. Here, however, force majeure was validly invoked by one party and acquiesced in by the other.

Such an approach, in the Tribunal's view, is a fair one which reflects the history of the parties' contractual relations as revealed by the evidence presented. The Tribunal observes that, according to Article 10 of the letter of intent, which is stated to take precedence over the standard contract form, the basis of remunerations for Ammann & Whitney's services was that of fifteen monthly instalments, which were payable irrespective of the progress of the project achieved by the contractors and subcontractors. There is no evidence of any contemporaneous objection being raised by KUDO to the quality of Ammann & Whitney's performance such as might have relieved KUDO of its obligation to pay. In fact, KUDO made no allegation of breach, nor did it invoke force majeure.

There is, on the other hand, a considerable body of evidence, both in the form of status reports and affidavits from the personnel involved, that Ammann & Whitney performed its off-site obligations satisfactorily under Tasks I and IV, and did as much as possible of the work involved in Tasks II and III which required its presence at the site.

The Tribunal is thus satisfied that the proper course is to implement the procedure and, in effect, adopt the figure agreed to by the parties themselves in bringing the contract to an end. They chose to do so on the grounds of force majeure, in accordance with Article 22. The Parties in effect utilized the contractual method for confirming an amount that had been owing. The Tribunal therefore considers the letter of 5 May 1981 must be applied as the definitive formulation of

the parties' respective liabilities under the contract, by which they should now be bound.

Taking the calculations in the letter of 5 May 1981 as representing the appropriate amount owing under the contract, the Tribunal concludes that the calculation takes account of Ammann & Whitney's alleged training fund obligations and liabilities for tax and social security premiums, insofar as they existed as contractual obligations between the parties. That letter also credits KUDO with payment in respect of the bank guarantee, on the assumption that this was to be released. The credit of 78,422,587 Rials accepted in that letter in favour of KUDO included the set-off of $431,718. Although the Ministry has contested the legality of Ammann & Whitney's appropriation of this money, the Tribunal finds that a set-off is, in principle, allowable between the same two parties with reciprocal obligations. As in the present instance the debt owed by KUDO to Ammann & Whitney exceeded the amount sought to be offset, the Tribunal holds that this was a legitimate application of the funds in question. On the other hand, rather than adopting the claim for $920,637.40 made in the letter of 5 May 1981, Ammann & Whitney has advanced a different theory in the present proceedings as to the termination of the contract and its consequences, and has claimed only $731,813. The Tribunal concludes that Ammann & Whitney is only entitled to the amount it claims. Thus, it is only the latter amount that is now awarded.

4. The rate of conversion

There seems no reason to depart from the rate of conversion from Rials to Dollars applied by Ammann & Whitney in the letter of 5 May 1981. To do otherwise would be inconsistent with the Tribunal's view of the amount in that letter as being the best measure of the contractual obligations as between the parties.

5. Interest

As to interest, the Tribunal considers that as the amount due should, pursuant to Article 22 of the contract, have been settled within 30 days, interest should accrue from 5 June 1981 on the amount of the award. The rate of interest in the event of delayed payment is governed by the contract itself, Article 13(4) of which prescribes a rate of 6%. It is this contractually stipulated rate which must be applied to the amount of the award.

6. The counterclaim

As to the counterclaims raised by the Ministry, each of them must be taken to have been included in the statement of the account agreed to or acquiesced in by the Parties themselves, and now implemented by the Tribunal. This renders it unnecessary to examine the question of whether the claim in respect of social insurance premiums is within the Tribunal's jurisdiction as a contractual obligation. Insofar as this counterclaim is based on the relevant provisions of the laws of Iran, it falls outside the Tribunal's jurisdiction (See T.C.S.B., Inc. and Iran, Award No. 114-140-2, p. 24 (16 March 1984); and Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1, p. 41 (27 June 1985).)

7. The bank guarantee and letter of credit

As the Ministry receives credit under this arrangement for the amount of the guarantee, the Tribunal finds that the bank guarantee and letter of credit are of no further effect and should be cancelled.

8. Costs

The Tribunal considers it reasonable in the circumstances of

this Case, on the basis of the considerations outlined in previous Awards,[2] to award Ammann & Whitney costs of the arbitration in the amount of U.S. $15,000.

III. AWARD

For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

1. The Respondent THE MINISTRY OF HOUSING AND URBAN DEVELOPMENT (KHUZESTAN DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT) is obligated to pay the Claimant AMMANN & WHITNEY the sum of Seven Hundred Thirty One Thousand Eight Hundred Thirteen United States Dollars (U.S. $731,813.00) plus simple interest thereon at the rate of six percent per annum (365-day basis) from 5 June 1981 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 of Fifteen Thousand United States Dollars (U.S. $15,000).

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

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[2] See, e.g., Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1, pp. 35-38 (27 June 1985).

2. The bank guarantee No. 31514/D issued by Bank Melli in the amount of 19,436,427 Rials and the letter of credit No. CCD-50299-305778 issued by Citibank, New York, are of no further effect and are deemed cancelled.

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

Dated, The Hague
22 August 1986

Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God

Mohsen Mostafavi
Dissenting Opinion

Richard M. Mosk
Concurring Opinion