IRAN-UNITED STATES CLAIMS TRIBUNAL

283-80
۲۸۳-۸۰

دیوان داوری دعاوی ایران - ایالات

ORIGINAL DOCUMENTS IN SAFE

Case No. 283 Date of filing: 16APR84

** AWARD - Type of Award Final
- Date of Award 13APR84
28 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

DUPLICATE ORIGINAL
نسخه برابر اصل

CASE NO. 283
CHAMBER THREE
AWARD NO.123-283-3

GENERAL DYNAMICS CORPORATION and GENERAL DYNAMICS INTERNATIONAL CORPORATION,
Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and THE NAVY OF THE ISLAMIC REPUBLIC OF IRAN,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران — ایالات متحده
FILED - ثبت شد
No. 283 شماره
Date
تاریخ ۱۳۶۳/۱/۲۷
16 APR 1984

AWARD

Appearances

For Claimant:
Mr. David E. McGiffert,
Ms. Lucinda A. Low,
Attorneys
Mr. Andrew D. Rose
Representative of the Claimants

For Respondent:
Mr. Mohammad K. Eshragh
Agent of the Islamic Republic of Iran
Dr. Mohammad Khavar,
Mrs. Eftekhar Ol-sadat Mirvahabi,
Legal Advisers to the Agent
Mr. Mohammad Ali Shamloo
Attorney of the Navy of the Islamic Republic of Iran
Mr. Mohammad Bahrami
Representative of Ministry of Defence
Mr. L. Oveysi
Mr. H. Darakhshan
Representative of the Navy of the Islamic Republic of Iran

Also Present:
Ms. Jamison M. Selby
Deputy Agent of the United States of America

I. THE PROCEEDINGS

The Claimants GENERAL DYNAMICS CORPORATION ("General Dynamics") and GENERAL DYNAMICS INTERNATIONAL CORPORATION ("General Dynamics International") filed their Statement of Claim on 15 January 1982. General Dynamics claimed for amounts allegedly due under contracts signed on 10 April 1974 (the "Artemiz Contract") and on 14 October 1976 (the "Ordnance Facilities Contract"). General Dynamics International claimed for reimbursement of expenses incurred in collecting the amounts allegedly owing to General Dynamics.

On 20 April 1982, the Respondent, NAVY OF THE ISLAMIC REPUBLIC OR IRAN (the "Navy") filed its Statement of Defence. On 8 November 1982, the Navy filed a Statement of Counterclaim arising out of a contract dated 4 February 1976, seeking damages and the return of certain equipment. Respondents ISLAMIC REPUBLIC OF IRAN and THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN have not filed Statements of Defence.

A Pre-Hearing Conference was held on 11 November 1982.

By an Order dated 20 December 1982, the Tribunal declared that there had been an insufficient showing that the delay in filing the counterclaim of 8 November 1982 was justified under the circumstances of the case and announced its decision to disallow the counterclaim.

The Claimants submitted further material on 1 March 1983. The Navy submitted a Supplemental Statement of Defence and evidence on 15 March 1983. Included in the Supplemental Statement was a counterclaim under which the Navy sought reimbursement of payments made under the Ordnance Facilities Contract.

A Hearing was held on 20 April 1983. As ordered by the Tribunal, the Navy submitted a Post-Hearing brief on 20 July 1983 and the Claimants did so on 25 August 1983. The Claimants filed a statement of costs on 15 September 1983.

II. JURISDICTION OVER THE CLAIMS

The Claimants have submitted evidence, including certificates of corporate standing, excerpts from corporate documents and the sworn affidavit of an official of General Dynamics, which together demonstrate that they are, and were during the relevant periods of time, corporations organized under the laws of the United States. The evidence also shows that all of the shares of General Dynamics International Corporation was owned by General Dynamics during the relevant periods and that more than 50% of the shares of the latter corporation are, and were during the relevant periods, owned by natural persons who are citizens of the United States. On the basis of this showing and in the absence of any evidence to the contrary, the Tribunal holds that the claims are all claims of nationals of the

United States within the meaning of Article VII, paragraph 2, of the Claims Settlement Declaration.

The Navy has contested the Tribunal's jurisdiction over the claims of General Dynamics on the grounds that both of the relevant contracts were concluded in Iran, that the Respondents are of Iranian nationality and that the two contracts include dispute settlement provisions which fall within the terms of the forum exclusion clause of Article II, paragraph 1, of the Claims Settlement Declaration.

Article II, paragraph 1, of the Claims Settlement Declaration established the Tribunal for, inter alia, "the purpose of deciding claims ... arising out of debts [or] contracts ... excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts...."

Article 15 of the Artemiz Contract provides, in pertinent part, as follows:

> All disputes arising in connection with the present contract shall be finally settled by arbitration. The arbitration shall be held at London, England, and conducted in accordance with the rules of the International Chamber of Commerce.

Article 10 of the Ordnance Facilities Contract is virtually identical to this provision.

These provisions clearly do not provide that disputes under either contract are within sole jurisdiction of Iranian courts. Therefore, the claims arising under those contracts are not excluded from the Tribunal's jurisdiction by virtue of the forum exclusion clause of Article II, paragraph 1. See Stone and Webster Overseas Group, Inc. and National Petrochemical Company et al., Interlocutory Award No. 8-293-FT (Part III).

The Claims Settlement Declaration contains no provision which would bar claims on the basis of the place of execution or performance of a contract. It expressly does allow claims against entities controlled by the Government of Iran. Therefore, the Navy's remaining jurisdictional objections are without merit. See George W. Drucker and Foreign Transaction Company et al., Interlocutory Award No. 4-121-FT (Part IV).

It is not disputed that the Respondents fall within the definition of "Iran" in Article VII, paragraph 3, of the Claims Settlement Declaration. It is also clear that the Claimants' claims arise out of contracts or debts.

In conclusion, the Tribunal determines that it has jurisdiction over the claims.

III. THE CLAIMS UNDER THE ARTEMIZ CONTRACT

1. Factual Background

On 10 April 1974, Claimant General Dynamics and the Government of Iran, acting through the Imperial Iranian Navy, predecessor to Respondent Navy of the Islamic Republic of Iran, entered into the Artemiz Contract for the sale and installation of a missile weapons system on the Iranian warship ARTEMIZ. General Dynamics undertook to manufacture and deliver the necessary equipment and to provide technical assistance to the Navy in its installation. Actual installation was to be carried out by personnel of the Navy at its shipyard at Bushehr, Iran. The Contract fixed a total price for the Claimant's services and established a schedule according to which installments of the purchase price were to be paid.

The terms of the main text of the contract were amended by Annex D which was attached thereto and which was, by its terms, "incorporated in to this contract". Article 4.1 of the Contract, as amended by Annex D, provided as follows:

> Deliveries of equipment shall be FOB Port of Embarkation, Los Angeles, California, for designated overseas carrier and shall be, when delivered, packaged and marked for shipment in foreign commerce by Seller. Provided however. The seller shall procure for buyers account transportation and insurance coverage, acceptable to buyer, and arrange for shipment from Los Angeles, California to Bandar Abbas, Iran. In addition to the total price hereof, buyer shall reimburse seller for actual costs incurred for such transportation and insurance upon receipt of sellers invoice.

On 25 September 1974, the parties entered into Amendment I of the Artemiz Contract. Under Paragraph 3(c) of this amendment, the Claimant's responsibilities were expanded in relevant part as follows:

> 3. The following additive tasks are authorized by this modification:
>
> . . .
>
> c. The Seller will procure ship alteration RAW materials. Electrical supplies, marine hardware and industrial tools as required and not available at Bushehr.

Compensation for this and other additional duties listed in Paragraph 3 was to be provided in accordance with Paragraph 4 of the amendment, as follows:

> 4. As a result of the for going changes, the price of the contract is - Increased by $1,771,303. Included in this price is $700,000 for Material Required in paragraph 3(c) above. The Seller will invoice by total lot the material price which includes Sellers material cost, material handling, project support, packing, freight, Insurance, overhead and profit. The total contract price shall be adjusted by the difference between the total invoice or invoices prices for paragraph 3(c) and the $700,000 presently provided in this contract for such material.

The possibility of still further additions to the Claimant's duties was contemplated in Paragraph 6 of Amendment I, as follows:

> b. It is recognized that an unforeseen event could require shipyard material - and/or additional technical services and in such event the Seller will - notify IIN and it is Seller's intention to use his best efforts to assist IIN in securing the shipyard material and/or additional Technical services or such necessary services not specified as Sellers or Buyers requirements to be authorized by IIN as a change to the contract.

The first series of events giving rise to a dispute between the parties regarded certain shipping costs. The weapons system equipment to be installed on the ARTEMIZ had been manufactured and was ready for delivery by March 1975. In a telex to the Navy dated 26 March 1975, the Claimant noted that the Contract "requires us to procure transportation and insurance coverage acceptable to you" and stated that delivery would be made by a chartered commercial aircraft on approximately 18 April 1975. The Claimant also stated that the "estimated cost of the transportation and insurance to Bushehr is 115,000 Dlrs" and concluded with the following:

> Please advise us by telex as soon as possible, preferably by 3 April, of whether or not the above is acceptable to you. If the above is not acceptable to you, please provide instructions in your telex. Upon receipt of your telex we can finalize the arrangements.

In a telex of 15 April 1975, the Navy acknowledged receipt of the Claimant's telex and requested a delay in arrangements "until you receive a final answer from us". On 16 April 1975, the Navy telexed the Claimant and, referring again to the telex of 26 March 1975, stated that arrangements had been made for Iranian military aircraft to transport the equipment to Bushehr.

In a letter dated 17 May 1975, the Claimant noted that the arrival of the military transport could still not be confirmed and that further delay in shipment would jeopardize the schedule of work on the installation. The Claimant requested either that the military transport be made

available "or that General Dynamics be authorized to secure commercial air transport as requested in our message 089 dated 3-26-75".

On 21 May 1975, the Navy authorized shipment by the Claimant requesting "commercial airlift of the equipments be arranged and bills be forwarded to this department for payment".

Accordingly, the equipment was shipped by the Claimant on commercial aircraft, and on 30 July 1975 the Claimant submitted an invoice for US $120,739.87 in expenses incurred in chartering the aircraft, loading the equipment, sending its contract administrator to accompany the shipment, obtaining insurance and retaining the services of a customs broker to secure necessary documentation.

In an undated letter sent in August or September 1975, the Navy approved and promised payment on all items in the invoice except for US $19,479.70 incurred to purchase insurance and US $6,315.43 incurred for services of the customs broker. The Navy maintained that the Claimant "was not required to purchase insurance on this shipment" and suggested that insurance was unnecessary since, according to Article 4.1 of the Artemiz Contract, the risk of loss passed to the Navy upon delivery to the transporter in Los Angeles. The Navy also maintained that the services of a customs broker were unnecessary, as the Claimant could itself have

provided all needed documentation services. The Navy has not paid these two invoiced items.

The second series of events giving rise to a dispute between the parties concerned certain advances made by the Claimant for expenses of workers on the project. On 11 June 1975, the Navy's project manager wrote to the Claimant, requesting as follows:

> In order to expedite the ARTEMIZ program, it is necessary to have funds available locally for the acquisition of miscellaneous material and support.
>
> Pursuant to paragraph 3c of amendment 1 to the ARTEMIZ Contract, and subject to paragraph 4 of such amendment 1, I request that you make available at the Bushehr facility the sum of $60,000 for this purpose.

The Claimant responded in a letter dated 22 June 1975 agreeing to make the advances requested according to a procedure by which the project manager would sign specified authorization forms for each advance, sign a receipt, and supply back-up data to verify his disbursement of each amount.

This procedure was used over the course of the following year for the purchase of materials, the reimbursement of employee expenses and to pay overtime wages of labourers on the project. In each case, the project manager supplied the necessary authorization form, receipt and evidence of disbursement. With regard to the overtime wages paid, the project manager supplied signed receipts from each labourer indicating the payment made.

Amounts advanced under this procedure for materials and for actual wages, together with direct purchases made by the Claimant pursuant to the Contract, totalled US $869,135, of which amount US $700,000 was covered by the contract price in accordance with Paragraph 4 of Amendment I. On 13 July 1976, the Claimant submitted an invoice, dated 7 July 1976, requesting that the balance of US $169,135 be paid in accordance with Paragraph 4.

The Navy responded by asserting that the portion of the balance due which reflected total advances of US $62,373 for the overtime wages fell more appropriately under Paragraph 6 of Amendment I. The Navy therefore requested that the balance due be billed in two separate invoices.

The Claimant complied with this request on 20 October 1976 by submitting an invoice for US $106,762 under Paragraph 4 of Amendment I and another for US $62,372 under Paragraph 6, covering the overtime advances. The Navy paid the first of these invoices, but has not paid the second.

2. Contentions of the Parties

Claimant General Dynamics claims that the Navy breached the Artemiz Contract by failing to pay Claimant's invoices for expenses incurred for insurance premiums and customs broker's fees. Claimant also maintains, in the alternative, that the Navy is liable for these amounts on principles of

unjust enrichment. Claimant seeks damages in the amount of US $25,795.22.

Claimant also contends that the Navy breached the Contract by failing to reimburse it for the advances made for overtime wages under either Paragraph 4 or Paragraph 6 of Amendment I. Claimant also maintains, in the alternative, that the Navy is liable for the expenses on the principle of promissory estoppel. Claimant seeks damages in the amount of US $62,373.

Claimant seeks interest on the above principal amounts at the average prime rate of interest in the United States for the relevant periods and seeks its costs of arbitration.

The Navy denies that it is obligated under the terms of the Artemiz Contract to reimburse Claimant for expenses for transportation insurance or customs brokers fee and contends that such expenses were to be borne by the Claimant. Furthermore, the Navy contends that it did not confirm the arrangements made by the Claimant and that, therefore, the arrangements were not determined to be "acceptable to buyer" as required by Article 4.1 of the Contract, as amended.

The Navy also denies liability for the advance made for overtime wages on the ground that they "contradict" the Contract. The Navy argues that Claimant was not authorized

to make, and the Navy's project manager was not authorized to receive, the payments.

3. The Reasons for the Award

Article 4.1 of the Artemiz Contract, as amended, required the Claimant to procure for the Navy's account "transportation and insurance coverage, acceptable to buyer, and arrange for shipment" of the weapons system equipment. The Claimant's purchase of transport insurance was clearly pursuant to this contract obligation. The issue then arises whether or not the arrangements for insurance made by the Claimant were "acceptable to buyer" as required under the Contract. The Claimant, in its telex of 26 March 1975, announced its intention to procure the insurance. To this communication the Navy raised no objection. The Navy's eventual authorization to proceed with shipment must be deemed to be an acceptance of the Claimant's proposal. In the light of this conclusion, the Navy is liable for its failure to pay the insurance charges.

The Contract required that the Navy pay these expenses "upon receipt of seller's invoice". There is no evidence as to the exact date of receipt. Therefore, the Tribunal holds that because the Navy first acknowledged receipt in its letter of August or September 1975, payment was due on 1 October 1975.

With regard to the claim for customs brokers fee, the Tribunal notes that, as far as the record shows, there was no mention by General Dynamics of such costs being charged to the Navy until the 30 July 1975 invoice was transmitted to the Navy. The Tribunal is not satisfied that under the circumstances of the transaction the Navy would be liable for such costs pursuant to trade usage or general principles of commercial law. In light of this conclusion, this portion of the claim cannot be granted.

Accordingly, the Tribunal holds that the Navy is liable under these claims in the principal amount of US $19,479.70.

With regard to the claim for reimbursement of advances made by the Claimant, the evidence shows that the parties established a course of conduct under which General Dynamics financed the Navy's local purchases of materials and services in order to maintain progress on the project according to schedule.

This was accomplished by expenditures made by the Claimant of three types: the direct purchase by the Claimant of goods and services; advances made by the Claimant for the purchase of goods by the Navy's project manager; and advances made by the Claimant for the payment of overtime wages by the Navy's project manager.

Expenditures of all three types were authorized on a form which was signed by the Navy's project manager. The form stated that the object of the expenditure was "[i]n addition to the services and material required by paragraph 3c of Amendment 1" and that amount expended would be "added to the amount determined under paragraph 4 and an invoice for final adjustment presented". All of the forms authorizing the advances for overtime wages, and some of those authorizing the direct purchase of services by the Claimant, referred to the 11 June 1975 letter of the Navy's project manager.

Even though the terms of the form would suggest that all of the expenditures authorized by the form were outside of Paragraphs 3(c) and 4 of Amendment I, the Claimant included all of them in the original invoice it rendered pursuant to these provisions. Moreover, after receiving the original invoice combining the expenses of the overtime wages with other expenditures, the Navy raised no objection to the validity of General Dynamics' claim for reimbursement for the overtime wages, but merely requested that they be invoiced separately under Paragraph 6 of Amendment I.

In light of this course of conduct, the Navy cannot now object to making full reimbursement for the overtime advances. The Tribunal need not determine whether the overtime advances came more properly within the terms of Paragraph 4 or Paragraph 6 or whether the Contract specifically

authorized these expenditures and their receipt by the project manager at all. By paying invoices for some of the expenditures, the Navy in effect acquiesced in the procedures under which all of the expenses were incurred. Thus it acknowledged or ratified both the authority of its project manager to order the expenditures and the authority of the Claimant to make them. Whether this course of conduct is deemed to have varied the terms of the Contract or to amount to a new agreement, the Navy was obligated to reimburse the Claimant for all of the expenses it incurred. This payment was due upon submission of the 20 October 1976 invoice.

Therefore, the Tribunal determines that the Claimant is now entitled to damages on this claim in the principal amount of US $62,373.

The Tribunal also determines that the Claimant is entitled to interest at the fair rate of 10 % per annum on the two principal amounts awarded above from the date each became due.

IV. THE CLAIM UNDER THE ORDNANCE FACILITIES CONTRACT

1. Factual Background

The Ordnance Facilities Contract was executed by the Claimant General Dynamics and the Government of Iran, acting through the Deputy Minister of War for Armament, on 14 October 1976. The purpose of the Contract was to provide

engineering services to assist the Navy "in support of their expansion and improvement of Ordnance Facilities". Attached to the Contract were an Annex A, which set forth the statement of work to be performed, and an Annex B, which set forth definitions of the terms used in Annex A.

Under the Contract, the Claimant agreed to provide a report, including an ordnance development facilities plan, within twelve months of the starting date of the Contract. In turn, the Navy agreed to pay a fixed amount for each man-month expended by the Claimant in preparing the report up to a stated limit on the number of man-months, for a total estimated contract price of US $1,989,140. Each month the Claimant was to submit an invoice for the man-months expended in the previous month. The Navy was to make payments each month against the approved invoices.

Article 3.7 of the Contract set forth the procedure for approval of the report, as follows:

> The [Navy] shall approve or disapprove the report within 60 days of receipt thereof. Any changes and/or additions to the document are subject to further payment for the additional effort <u>if no man-months remain within the current stage of this contract</u>.

In a letter dated 19 November 1977, the Navy stated that a preliminary report submitted by General Dynamics was unsatisfactory to the Navy. The Navy noted that a series of meetings between the Navy and project personnel from General Dynamics had resulted in an agreement to redirect the project staff's efforts in preparation of the final report

and that a synopsis of the agreed upon contents was to be submitted by General Dynamics within thirty days.

In response, the Claimant sent a letter to the Navy on 19 December 1977 reviewing the respective parties' positions and including an attachment designated as "enclosure (1)" and entitled "Synopsis of meetings in Tehran". The synopsis consisted of a description of the contents of each of the volumes to be included in the final report and set forth the specific items to be provided in each volume.

On 8 February 1978, the parties executed an amendment to the Contract increasing the limit on the man-months of effort covered by the Contract and extending the deadline for submission to June 1978. The amendment also provided, in Paragraph J, as follows:

> Seller shall prepare the Final Ordnance Facilities Development Plan in accordance with enclosure (1) to Seller's letter number 11-8058 dated 19 December 1977, entitled "Synopsis of meetings in Iran" [sic].

Throughout the course of the work, the Claimant submitted, and the Navy paid, monthly invoices totalling US $1,765,484.40, including an advance payment of 15% of the original estimated contract price, or US $298,371.

The Claimant asserts that on 30 June 1978 it submitted the final report, including the facilities plan, in fourteen volumes. The Claimant submitted a final invoice dated 28

July 1978, covering the work done in the months of May and June 1978 and totalling US $180,596.91.

In a letter dated 8 September 1978, and hand-delivered to General Dynamics' Tehran office on 9 September 1978, the Navy stated that it could not "accept the final report of the General Dynamics Ordnance Facility Development Plan for the IIN at this time" due to the "non-receipt" of certain items and to certain "discrepancies". The items alleged to be missing included certain standard operating procedures, standard operating procedures requirements, training aids, lesson plans for ordnance training and instructor guides. All of the alleged discrepancies involved the report's safety plan and included the alleged failure to make reference in the text of the report to certain publications listed in the accompanying bibliography, the failure to submit a film entitled "Eskimo II", the failure to modify a certain Navy instruction regarding transporting equipment and the failure to "further define" certain handling equipment. The letter concluded by stating that the Navy would "comment on the final report" when the above-mentioned items were corrected.

The Claimant responded in a letter dated 21 September 1978 stating that the Contract expressly did not require General Dynamics to guarantee the report because there were no "firm specifications" against which to measure its content or completeness. The Claimant argued that it had

agreed to "supply man-months of support effort" in a cooperative project and that, if changes to the report were necessary, the Contract contemplated further payment for the extra work required. Finally, General Dynamics stated in the letter that it had supplied a number of the items which the Navy had alleged to be missing.

Thereafter, no further work was done on the project and the final invoice remains unpaid.

2. Contentions of the Parties

The Claimant contends that the Contract was a "level-of-effort" contract under which it was entitled to be paid for all man-months of effort expended on preparation of its report regardless of whether the resulting plan was approved by or acceptable to the Navy. The Claimant argues that any additional effort required to make changes in the plan was to be compensated at contract man-month rates. The Claimant also contends that, in any event, the plan submitted was a complete and high-quality product. It maintains that the Navy is liable for the amount of the final invoice, less an amount to be deducted because the advance payment received exceeded 15% of the total amount invoiced under the Contract. Therefore, the Claimant seeks damages in the amount of US $141,128.28 plus interest.

The Navy denies that the Contract was a "level-of-effort" contract and denies it is liable for its non-payment

of the final invoice on the ground that the Claimant breached the Contract by failing to prepare the plan in accordance with contract requirements. The Navy cites alleged deficiencies in the volumes of the report relating to training, facilities, logistics, budget, safety, seismology and geology. The Navy also denies liability for interest on the invoiced amounts on the ground that Article 5.6 of the Contract expressly excepts the final invoice payment from the delay penalty set forth therein.

3. Reasons for Award

On the basis of the provisions and negotiating history of the Contract the Tribunal concludes that payment for General Dynamics' services was not contingent on the Navy expressly approving the report. Even so, the fact remains that General Dynamics was obligated, under general principles of law, to perform its duties under the Contract satisfactorily and with due diligence. Negligence in this respect could amount to a breach of contract and lead to a reduction of the compensation due.

The issue thus is whether and to what extent the performance by General Dynamics has been proved by the Navy to have been defective.

The items listed in the Navy's letter of 8 September 1978 do not in the Tribunal's view support the Navy's

contention that the report failed to comply with requirements of the Contract.

The Claimant concedes that the report does not cross-reference the text of Book 9 with the appended bibliography and that the Navy's ordnance instruction was not modified to specifically cover transportation equipment, but argues that these aspects were unnecessary and insignificant.

Most importantly, however, the Navy has failed to cite any contractual basis for the objections stated in the 8 September 1978 letter. Not until it filed its Supplemental Statement of Defence on 15 March 1983 did the Navy allege that the report diverged from specific provisions of the Contract, and, in so alleging, cited numerous instances not mentioned in its 8 September 1978 letter.

The Navy's position is based upon a misapprehension of the Contract's requirements. In each of the alleged discrepancies cited, the Navy makes reference to provisions set forth in Annexes A and B to the Contract. But, according to Amendment I to the Contract, those provisions were superseded and the ordnance facilities development plan was instead to be prepared "in accordance with enclosure (1)" of the Claimant's letter of 19 December 1977.

Enclosure (1) does not require any of the items cited by the Navy in its 8 September 1979 letter, or in its Supplemental Statement of Defence. Moreover, the evidence demonstrates that the Claimant actually did supply most of the items indicated.

Finally, the Claimant has presented affidavits of two logistics and armaments experts who served as advisers to the Navy during the period of the Contract. The evidence suggests that neither of these experts has ever been connected with the Claimant. Both experts stated that the report prepared by General Dynamics was of high quality and detail.

In conclusion, the Tribunal finds that the record of this case does not contain sufficient evidence that the Claimant's performance was deficient. The Claimant is therefore entitled to be compensated for the net amount owing on the final invoice under the Ordnance Facilities Contract, US $141,128,28.

The Navy has contested the Claimant's request for interest on the principal amount due on the ground that the Contract expressly excludes the payment of interest in the event of late payment of the final invoice. Article 5.6 of the Contract provides as follows:

> The Buyer shall, in the event of late payment of any progress payments excepting final payment, pay a penalty of 1 1/2 % per U.S. calendar month of any unpaid billings. Late payment shall be defined

> as any payment delayed beyond 30 calendar days after date of receipt by IIN. Payment for such penalty shall be calculated to the nearest 1/10 of a month.

The Tribunal need not determine whether, as contended by the Claimant, this provision provides a penalty for late payment apart from the right to receive damages for delay or whether it is a stipulated estimate of such damages for delay. The provision merely excludes the final payment from the agreed upon rate of penalty and does not waive the payment of interest altogether.

In view of this, and taking due account of the definition of "late payment" as agreed upon in Article 5.6, the Tribunal finds that the Claimant is entitled to interest on the principal amount owing at the rate of 10% per annum from 30 days after the date of the final invoice.

V. THE CLAIM FOR OFFICE EXPENSES

The Claimant General Dynamics International Corporation alleges that from November 1979 through mid-April 1980 it maintained an office in Tehran staffed by Iranian employees. Among the functions performed by the office during this period was that of attempting to obtain the payment of invoices outstanding under the Artemiz Contract and the Ordnance Facilities Contract. The Claimant alleges that approximately 20% of the expenses of maintaining the office is attributable to this collection function and claims for reimbursement of the resulting cost of US $45,784.

The Navy denies any liability for this expense.

While there is obviously a relationship between the Navy's failure to pay invoices rendered by General Dynamics and the collection efforts of General Dynamics International, that relationship does not give rise to liability. In another case before it, the Tribunal held that such expenses are not compensable as consequential damages. Woodward-Clyde Consultants and the Government of the Islamic Republic of Iran, Award No. 73-67-3. In that case, the claimant seeking reimbursement of collection expenses was a party to the contract breached. Here, while the Claimants are obviously related, General Dynamics International was not a party to either of the contracts breached. The relationship between the loss and the breach is even more tenuous in such circumstances. Therefore, the Tribunal holds that the Respondents are not liable for the Claimant's office expenses and the claim is denied.

VI. THE COUNTERCLAIMS

In its 8 November 1982 Statement of Counterclaim, the Navy sought the return of certain property entrusted to General Dynamics pursuant to a contract dated 4 February 1976 and damages for alleged breach of that contract. In its 20 December 1982 Order, the Tribunal held that the Navy had made an insufficient showing that the delay in filing

the counterclaim was justified under the circumstances of the case.

In its 13 March 1983 Supplementary Statement of Defence, the Navy stated for the first time a counterclaim seeking reimbursement of all sums which it had paid to General Dynamics pursuant to the Ordnance Facilities Contract for a total amount of US $1,765,484. There having been no showing of circumstances which would justify the delay in presenting this counterclaim, it also must be disallowed under Article 19, paragraph 3, of the Tribunal Rules. The Tribunal notes that in any event, as the counterclaim is based upon the same allegations which the Navy asserted as defences to the claim under the Ordnance Facilities Contract, it necessarily follows from the Tribunal's findings with regard to those defences that the counterclaim lacks merit.

VII. COSTS OF ARBITRATION

In light of the above conclusions, the Tribunal determines pursuant to Articles 38 and 40 of the Tribunal Rules that the Claimant shall be awarded US $20,000 as its costs of arbitrating the claims.

VIII. AWARD

THE TRIBUNAL AWARDS AS FOLLOWS:

The Claim of GENERAL DYNAMICS INTERNATIONAL CORPORATION is hereby dismissed.

The Counterclaims of the NAVY OF THE ISLAMIC REPUBLIC OF IRAN are hereby disallowed.

The Respondents NAVY OF THE ISLAMIC REPUBLIC OF IRAN and the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN are obligated to pay and shall pay to the Claimant GENERAL DYNAMICS CORPORATION the sum of Two Hundred and Forty Two Thousand Nine Hundred and Eighty United States Dollars and ninety-eight cents (US $242,980.98), which includes the principal amounts due under the claims and costs of arbitration. Said Respondents are further obligated to pay and shall pay simple interest on the following principal amounts at the rate of ten percent (10%) per annum from and including the dates indicated below up to and including the date upon which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account:

a) interest on US $19,479.70 from and including 1 October 1975;

b) interest on US $62,373 from and including 20 October 1976;

c) interest on US $141,128.28 from and including 28 August 1978.

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

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

Dated, The Hague
13 April 1984

Nils Mangård
Chairman
Chamber Three

In the Name of God

Richard M. Mosk

Parviz Ansari Moin
Dissenting Opinion