

448-101

۴۴۸-۱-۱

ORIGINAL DOCUMENTS IN SAFECase No. 448Date of filing: 19 Dec '86.

** AWARD - Type of Award Final
 - Date of Award 19 Dec '86.
21. 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

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داری دعاوی ایران - ایالات متحدہ



CASE NO. 448

CHAMBER ONE

AWARD NO. 283-448-1

TRAINING SYSTEMS CORPORATION,
Claimant

and

BANK TEJARAT,
NATIONAL IRANIAN OIL COMPANY,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه داری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED		
Date	19 DEC 1986	تاریخ
	۱۳۶۵ / ۹ / ۲۸	
No.	448	شماره

AWARD

Appearances:

For the Claimant:

Mr. James J. McGough,
Attorney,
Mr. Ronald A. van den
Bussche,
Representative,

For the Respondents:

Mr. Mohammad K. Eshragh,
Agent of the
Government of the
Islamic Republic
of Iran,

Mr. Ali Akbar Ryazi,
Legal Adviser to the
Agent,
Mr. Hossein Pyran,
Assistant to the
Agent,
Mrs. Zari S. Tabar,
Attorney for National
Iranian Oil Company,

Also present:

Mr. Daniel M. Price,
Deputy Agent of the
United States of
America.

This Award resolves the claims of the Claimant, Training Systems Corporation ("TSC"), against the Respondents, Bank Tejarat and National Iranian Oil Company ("NIOC"), for the alleged expropriation of its bank account with Bank Tejarat and for amounts allegedly owing under contracts entered into with Oil Service Company of Iran ("OSCO"). Under these contracts, TSC was to provide vocational and technical language training programs for OSCO employees.

I. PROCEDURAL HISTORY

1. On 18 January 1982, TSC filed its Statement of Claim with the Tribunal. TSC's claim was divided into two parts. From Bank Tejarat, TSC sought to recover U.S. \$136,187.48, as the dollar equivalent of its balance of Rials 9,580,789 held in a bank account and allegedly

expropriated by Bank Tejarat. From NIOC, TSC sought U.S. \$171,416.42, the dollar equivalent of amounts allegedly due under two contracts entered into with OSCO for termination costs and tax and social insurance withholdings. TSC also sought to recover interest on the total amount of its claim, U.S. \$307,603.90, and its costs of arbitration.

2. A Statement of Defence was filed by Bank Tejarat on 6 December 1983. On the same date NIOC filed a Statement of Defence with respect to the claim based on the contracts with OSCO, together with a counterclaim. As clarified in subsequent pleadings, the counterclaim sought (i) Rials 9,582,789 in reimbursement of an alleged overpayment by OSCO; (ii) Rials 24,036,832 in allegedly unpaid taxes, and (iii) Rials 21,483,666 in allegedly due social insurance premiums. In its Reply filed on 26 March 1984, TSC denied liability on the counterclaim.

3. After a further exchange of pleadings and evidence, a hearing was held on 13 March 1986.

II. FACTS AND CONTENTIONS

4. TSC claims to be a United States national within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration. NIOC disputes the adequacy of the evidence TSC has offered to establish its corporate nationality.

5. TSC further argues that both Bank Tejarat and NIOC are proper Respondents under Article VII, paragraph 3 of the Claims Settlement Declaration. In particular, TSC argues that NIOC is the de facto successor to the rights and obligations of OSCO, and as such is a proper Respondent. NIOC denies that it is the de facto successor to OSCO or that TSC's claim is attributable to it as such.

6. NIOC also disputes the right of TSC to aggregate two such distinct claims, each for less than U.S. \$250,000, in the same Case.

A. The bank account claim

7. In 1977, TSC opened a Rial account with the Bank of Iran and the Middle East, the predecessor of Bank Tejarat, in Ahwaz. OSCO, and later NIOC, made deposits into this account in payment for services rendered by TSC. TSC claims that it used this account to finance its day-to-day operations in Iran, and often converted a portion of the account into Dollars to repatriate to its parent company in the United States.

8. When TSC's personnel left Iran on 27 December 1978, TSC claims that it had expended all the funds in its account. On 23 July 1979, NIOC paid Rials 9,582,789 into TSC's account in payment of certain invoices. TSC claims that it was notified of this deposit in October 1979. Thereafter, TSC claims that it attempted, initially through its accountants in Iran, to withdraw these funds and to obtain the transfer of these funds in Dollars. According to TSC, however, Bank Tejarat refused to comply. TSC claims that Bank Tejarat has unreasonably interfered with its account, thereby expropriating the balance of its account, Rials 9,580,789, remaining in 1979.

9. Bank Tejarat denies that it has expropriated TSC's account. Bank Tejarat argues that the balance remains available for use in Rials by the authorized signatory of TSC; that it was in any event prevented from transferring these funds into another currency due to Iranian exchange controls; and that TSC's claim is not "outstanding" as required by Article II, paragraph 1, of the Claims Settlement Declaration because TSC's first written demand to transfer these funds occurred after 19 January 1981.

B. The contract claims

10. On 5 January 1977, TSC took an assignment from Language House International ("LHI"), a sister corporation wholly-owned, like TSC, by Telemedia, Inc., of two contracts, Nos. 3-75-150-349 and 3-75-154-349, entered into with OSCO for the provision of vocational and technical language training programmes for OSCO employees. The two contracts were extended, respectively, to 30 September 1978 and 14 October 1978, whereupon they expired. On 29 September 1978, TSC submitted to OSCO a proposal whereby services were to be provided on a continuing basis. An agreement was signed on 15 November 1978 by Mr. Seraji of OSCO, whereby TSC was to continue to provide services until 31 December 1978.

11. TSC states that it continued to provide services until the termination of the arrangement when it closed its language school and evacuated its personnel on 27 December 1978. TSC submitted various invoices to OSCO in February, March and July 1979. On 20 December 1979, it submitted a final account comprising three outstanding invoices previously submitted but unpaid. These were Invoice No. 4002 for termination costs totalling Rials 6,597,073; Invoice No. 4003 for reimbursement of tax withholdings of Rials 2,528,083; and Invoice No. 4004 for reimbursement of social insurance withholdings of Rials 2,933,989.

12. The claim for termination costs is based on the alleged de facto extension of the contracts and the continued application of Clauses 29-31, which provided for the payment of termination costs. TSC relies on the doctrine of apparent authority in contending that OSCO was bound by the extension agreed to by Mr. Seraji. In the alternative, TSC claims to be entitled to recover the amounts claimed on the theory of quantum meruit for services rendered to OSCO and accepted by it.

13. NIOC denies that the contracts were extended and disputes the authority of Mr. Seraji to bind OSCO to continue the arrangement. It contends that the termination provisions expired with the contract, and disputes TSC's right to rely on them. Further, NIOC denies that any services were rendered after the respective contracts expired, and it thus disputes that TSC has any claim based on quantum meruit.

14. NIOC further alleges that the amount presently claimed is duplicative insofar as it includes Rials 9,582,789 which was paid "erroneously" to TSC by cheque on 23 July 1979. TSC claims that this payment, which corresponds with the balance sought in TSC's bank account claim (less Rials 2,000 for the cost of a telex) was intended to be applied in settlement of ten invoices, totalling Rials 11,458,335, submitted on 7 February 1979, and that these invoices do not form part of the amount claimed.

15. As to the TSC's claim for reimbursement of withholdings by OSCO for taxes and social insurance premiums, NIOC claims that these sums were validly withheld pursuant to the contracts.

C. The counterclaim

16. NIOC's counterclaim consists of three parts. First, NIOC claims the amount of Rials 9,582,789 that it claims was "erroneously" paid into TSC's account. TSC denies NIOC's allegations, and asserts that the payment was made in settlement of previously submitted invoices.

17. As to the counterclaims with respect to taxes and social insurance premiums, NIOC contends that the amounts it now claims were payable under the contracts, and that NIOC itself became liable to pay them once TSC defaulted, as alleged. TSC argues, however, that such counterclaims fall

outside the Tribunal's jurisdiction, and that in any event it had paid all taxes and social insurance premiums due under the contracts.

III. REASONS FOR AWARD

A. Procedural issues

18. On 12 March 1986, the day before the hearing in this Case, TSC filed a Pre-hearing Memorial consisting of a legal brief and sixteen numbered exhibits. The Respondents objected at the hearing to its acceptance. Since this submission contains almost exactly the same material as the Pre-hearing Memorial filed by TSC on 29 November 1985, the only difference being the identification of each documentary exhibit by a numbered tab, the Tribunal has not needed to take account of this document in reaching its decision, and has not relied on it in any way.

19. Likewise, untranslated documents distributed by TSC to the Tribunal and the Respondents at the hearing as evidence of its payment of taxes have had no bearing on the decision reached by the Tribunal. There is thus no need to decide whether they can be admitted as evidence.

20. As to the question of whether TSC is permitted to aggregate its two claims, the Tribunal notes that the claims against NIOC and Bank Tejarat are closely interrelated and could not reasonably have been separated. The balance in the bank account which forms the subject-matter of TSC's claim against Bank Tejarat was paid by NIOC in connection with the provision of certain services by TSC, and NIOC has itself raised a counterclaim for its reimbursement. It has long been the practice of the Tribunal to allow aggregation of claims thus permitting a claimant to file a single claim, provided that the relief sought totals more than U.S. \$250,000. The objection to aggregation does not in any

event go to the question of the Tribunal's jurisdiction, but only to the practice of considering the claims together. See, e.g., Ford Aerospace and Communications Corporation and The Air Force of the Islamic Republic of Iran, Award No. ITM 39-159-3, p. 10 (4 June 1984).

B. Jurisdiction

i) The Claimant's nationality

21. TSC claims to be eligible to bring a claim as a United States corporation within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration. TSC has adduced evidence sufficient to satisfy the Tribunal that it is a corporation incorporated under the laws of the State of Delaware, and that it is wholly-owned by another Delaware corporation, Telemedia, Inc. Of Telemedia's authorised share capital of 1,000 shares, only 365 have been issued, all of them to Mr. John Zenko, evidence of whose United States nationality is before the Tribunal. Since the remaining shares authorised have never been issued, they can have no bearing on the corporation's nationality. Thus, the Tribunal concludes that TSC may bring its claim as a United States corporation.

ii) The Respondents

22. NIOC disputes the attributability to it of TSC's contract claims on the grounds that it cannot be held liable for obligations arising out of contracts entered into by OSCO. The Tribunal has already found, in Oil Field of Texas, Inc. and The Government of the Islamic Republic of Iran, Award No. ITL 10-43-FT (9 December 1982), reprinted in 1 Iran-U.S. C.T.R. 347, 362, that NIOC is the de facto successor to OSCO's rights and obligations, and that the extent and amount of its liability must be decided in each individual case by the Chamber concerned. There is thus no

longer any question that the Tribunal has jurisdiction over NIOC as Respondent to the claim arising out of the contracts entered into with OSCO.

23. As to the bank account claim, it is not disputed that Bank Tejarat is within the Tribunal's jurisdiction, nor that it is the successor to the Bank of Iran and the Middle East.

iii) The bank account claim

24. TSC has chosen to express the claim in respect of its bank account as one of expropriation, and not simply as one based on breach of contract by Bank Tejarat. In either event, however, the first question for the Tribunal must be whether this claim was "outstanding" on 19 January 1981 so as to bring the claim within the Tribunal's jurisdiction pursuant to Article II, paragraph 1, of the Claims Settlement Declaration. The mere entitlement to, or ownership of, the balance in a bank account is not of itself enough.¹

25. In order to prevail on this claim, therefore, TSC must establish that the funds in its account had been expropriated by 19 January 1981. TSC produced as evidence a

¹The Tribunal's consistent practice in this respect begins with its Award in Harza Engineering Company and The Islamic Republic of Iran, Award No. 19-98-2 (30 December 1982), reprinted in 1 Iran-U.S. C.T.R. 499, in which the claim was based on the theory of expropriation, and where the Tribunal stated that:

"[A] mere right to payment from a bank account is not a 'claim' within the meaning of the Claims Settlement Declaration, but a claim that the use of the account has been interfered with unreasonably or that the account has in some other manner been taken is such a claim".

report dated 31 December 1979 compiled by its Iranian accountants, Hami & Co. Mr. S. Noorbakhsh of that firm appended a separate, and very detailed, account of visits he had made to the Ahwaz branch of the Bank of Iran and the Middle East and to the local Revolutionary Public Prosecutor's Office in December 1979 to ascertain how the release of the balance in the account might be obtained. He was told that all foreign-owned accounts not currently being operated had been closed for the time being by the Ahwaz Revolutionary Court, and that it was possible to operate TSC's account subject to certain conditions, including the review by that Court of certain corporate documents. Mr. Noorbakhsh went on to list in his report the documents which he would require from TSC in order to be able to pursue such an application.

26. Detailed though it is, the information in the accountants' report is not sufficiently conclusive to serve as the basis for a finding that expropriation had by then taken place. It rather demonstrates that TSC could operate its account, though subject to certain restrictions. There is nothing to indicate, however, that TSC acted upon the recommendations the letter contained, or indeed that it took any further steps to obtain the release of its funds until it sent a telex on 6 October 1981 to Bank Tejarat in Tehran, referring to the signing of the Algiers Declarations and requesting assistance in obtaining a transfer.

27. Thus, there is insufficient evidence that a claim based on the expropriation of the bank account was "outstanding" on 19 January 1981. The Tribunal must therefore dismiss this part of TSC's claim for lack of jurisdiction.

C. The Merits

i) The contract claims

a) Invoice No. 4002

28. Invoice No. 4002, originally sent to Iran Oil Services Ltd. ("IROS") in London and dated 12 March 1979, was revised on 19 July 1979 and resubmitted by TSC under cover of a letter dated 20 December 1979. It lists a number of items under the heading 'Termination Costs' in respect of both contracts 3-75-150-349 and 3-75-154-349, totalling Rials 6,597,073.

29. TSC makes this claim in reliance on the provisions concerning termination costs contained in Clauses 29-31 of the two contracts, on the basis that, by virtue of Mr. Seraji's written agreement to the continued provision of services by TSC, the same specific contractual terms continued to govern the Parties' arrangement.

30. The evidence demonstrates that on 29 September 1978, the day before the first of the two contracts expired, TSC submitted a proposal in the form of a letter to OSCO which contemplated an extension by means of a single, merged contract, whereby TSC would continue to provide services for a further period ending on 30 September 1979. The letter suggested three alternative prices to take account of a possible increase in the number of classes during that period.

31. The proposal as such was not accepted by OSCO. Instead, the evidence shows that an ad hoc arrangement was reached pending further consideration of the proposal. On 15 November 1978, a document confirming this was signed by Mr. Seraji of OSCO and a representative of TSC. It stated:

"Under the present difficult situation, it is impossible to arrange for the extension of Contracts 3-75-150 and 3-75-154 between Training

Systems Corporation and the Oil Services Company of Iran.

Nevertheless, it is understood by both parties (TSC & OSCO) that Training Systems is to continue providing the services as specified under the abovementioned Contracts for a period through Day 10, 1357 (or Dec. 31, 1978).

It is further understood that TSC's proposal dated Sept. 29, 1978 shall remain valid and shall receive appropriate consideration when the situation permits. Until such time, TSC shall continue to bill at the usual bi-monthly rates."

32. NIOC's objection to Mr. Seraji's authority to bind OSCO to such an arrangement must be rejected in the light of the fact that OSCO continued to pay for TSC's services until the end of December 1978, presumably on the basis of the document signed by him.

33. Although TSC's claim depends on the construction of this document as an agreement to continue or to extend the contracts on substantially the same terms, the Tribunal does not find any basis for assuming that it had that effect. The letter of 15 November 1978 stated that the extension requested was "impossible". Instead, the arrangement which took its place was limited to the continued provision of services by TSC on an ad hoc basis, to be billed at the same rates as before. As such, it was a temporary solution, to be followed until such time as TSC's proposal could be considered. In the absence of evidence to the contrary, this letter cannot be assumed to have incorporated, by implication, the termination clauses contained in the original contracts, or indeed any other specific provisions apart from those limited ones actually referred to in the letter. The Tribunal therefore dismisses TSC's claim for termination costs.

34. Even if it were possible to construe the letter of 15 November 1978 as incorporating Clauses 29-31 of the original contracts, any extension would have been effective

only until 31 December 1978, at which point the contracts would have expired by the letter's own terms. OSCO, and later NIOC, continued to make payments for the services rendered and billed by TSC up to that date, a course of action inconsistent with a claim based on termination without cause. There is thus no basis for invoking provisions which would only be applicable in the event that OSCO had terminated the contract, without cause, prior to the date of its expiry.

35. In so dismissing this part of the claim, the Tribunal does not find it necessary to review the evidence concerning the date and circumstances of the closure of TSC's training facility in Ahwaz, or the payments it made which form the basis of its claim for termination costs.

b) Invoice No. 4003

36. Invoice No. 4003, like Invoice No. 4002, was dated 12 March 1979, and was resubmitted to IROS with TSC's letter of 20 December 1979 as it remained unpaid at that date. It sought the reimbursement of amounts withheld by OSCO pursuant to the two contracts in respect of social insurance premiums and corporate taxes. The invoice totalled Rials 2,528,083, and covered the period from 15 February 1978 to 7 October 1978.

37. OSCO had, throughout the period of the two contracts, withheld 10 percent of the gross amount when it paid each invoice billed by TSC. Of this withholding, 5 percent represented taxes withheld pursuant to Clause 4 of the contracts, which stated:

"From all gross amounts invoiced by the Contractor under the provision of Clause 3 hereof the Company shall deduct on account the applicable tax in accordance with Article 75 of the Direct Taxation Act of Esfand 1345 (March 1967) or any re-enactment or amendment thereof for the time

being in force. The amounts so ascertained shall be further reduced by any sums owing to the Company."

38. The amount withheld in respect of taxes, and now claimed by TSC under this invoice, totals Rials 1,496,764.

39. The practice of the parties with regard to tax payments was explained in evidence given at the hearing by Mr. Arun Narang, TSC's Project Manager during the relevant period, who had overall responsibility for the administration of the contracts. Mr. Narang stated that OSCO paid the 5 percent withholding to the tax authorities, for which it obtained receipts. These receipts were then passed to TSC which would submit them to the tax authorities together with its tax returns. TSC would then be credited with the amount represented by these receipts, and pay any balance due. If less tax was due than had been deducted by OSCO, TSC would seek a refund from OSCO of the amounts overpaid. Mr. Narang stated that the last receipts given by OSCO to TSC were in July or August 1978, and that the present claim was for reimbursement of the remaining payments made.

40. The Tribunal is not satisfied that the provisions of the contract relied upon by TSC can be construed as obligating OSCO to provide receipts, or alternatively a refund. Any claim in respect of overpayments on the part of TSC must lie against the Iranian Ministry of Finance, to whom the money was paid, and not against OSCO itself. In any event, such a claim would have to be based on evidence that TSC had paid more than the amount of its liability for the period in question. Here, there is no proof that TSC suffered any damage as a result of OSCO's failure to pass on the tax receipts; it is thus not necessary to establish whether OSCO had an obligation under the contract to provide them. The Tribunal therefore dismisses the claim in respect of taxes.

41. As to the social insurance premiums, a different system of withholding was in effect. OSCO made a 5 percent withholding from each invoice pursuant to a letter dated 30 September 1975 which, together with a set of proposals appended to it, was incorporated by reference into Clause 1.2 of each of the two contracts. The proposal included the following sentence:

"When evidence is presented to OSCO that LHI has satisfied its Social Insurance Organization obligations, all amounts withheld by OSCO to guarantee such payment will be immediately paid to LHI in full".

42. According to the record, TSC would pay its social insurance premiums directly to the authorities in Ahwaz, obtain receipts in the form of clearance certificates and submit the latter to OSCO. OSCO would then refund amounts withheld corresponding to the periods covered by the certificates. A clearance certificate from the Ahwaz Social Insurance Office confirming payment of all amounts due up to June 1978 has been filed as part of TSC's evidence. Mr. Narang confirmed that OSCO had made reimbursements for the same period, the last one being received in July 1978. TSC now seeks the reimbursement of Rials 1,031,319 withheld under the two contracts during the period from 5 June 1978 to 7 October 1978.

43. Under the contracts, in order to obtain reimbursement from OSCO, TSC had to provide "evidence" that it had paid its social insurance premiums for the period from 5 June 1978 to 7 October 1978. In his testimony at the hearing, Mr. Narang stated that he had paid these premiums as usual, and submitted the certificates to OSCO. Reimbursement was expected, though he could not remember the details of any steps that had been taken to induce OSCO to make the payment. In a telex he sent on 12 October 1978 to Telemedia's Chicago office reporting on the financial situation for the month, however, Mr. Narang remarked:

"Not having problems collecting regular payments but having some difficulties getting tax receipts and SIO reimbursements."

Furthermore, in a report to Mr. Thebus and Mr. van den Bussche of TSC, compiled after TSC's personnel had left Ahwaz at the end of December 1978, Mr. Narang noted under the heading "Money Matters":

"The SIO reimbursements had been collected through May, 1978 (or near about this time). We had received a clearance certificate for the months of June, July, August & Sept. but OSCO has not reimbursed us for this as yet."

44. Taken together with Mr. Narang's testimony, these statements amount to a strong indication that the social insurance premiums for the period from 5 June 1978 to 7 October 1978 had been paid; that evidence of this, in the form of clearance certificates, had been supplied to OSCO; and that there was no reason in principle why the reimbursement should not have been forthcoming. On the basis of this evidence, the Tribunal awards TSC the amount sought in Invoice No. 4003 in respect of social insurance premiums, namely Rials 1,031,319.

c) Invoice No. 4004

45. Invoice No. 4004, originally dated 12 March 1979, was resubmitted to IROS on 20 December 1979. It requested the reimbursement of social insurance premium withholdings amounting to Rials 2,933,989. A list of undated invoices was attached. TSC admitted during the hearing that these invoices related to the period 1975-1976, though neither the Respondent nor the Tribunal had any prior means of ascertaining this fact. No evidence was adduced to establish that TSC had paid the premiums and taken the necessary steps to secure reimbursement; nor was the Respondent in a position to review its own records on this point in order to put forward a defence. This claim must therefore be dismissed for lack of sufficient evidence.

ii) The counterclaim

46. NIOC has counterclaimed for reimbursement of the payment of Rials 9,582,789 to TSC in July 1979. It is clear from the evidence that this payment was made for services rendered by TSC and in response to invoices submitted by TSC in February 1979. No question was raised by NIOC as to the performance by TSC of its obligations, and the payment was not made subject to any condition. This part of NIOC's counterclaim is therefore dismissed.

47. As to the counterclaims for taxes and social insurance premiums, the Tribunal is satisfied, on the basis of its examination of the contracts in the context of TSC's claims for reimbursement, that the withholding by OSCO of 10 percent of the gross invoiced amounts operated to discharge all of TSC's obligations under the contracts in this respect. Furthermore, to the extent that NIOC's counterclaims are based on the operation of Iranian tax and social insurance legislation, they fall outside the jurisdiction of the Tribunal. Thus, these counterclaims are also dismissed.

iii) Rate of conversion

48. TSC has expressed both parts of its claim in U.S. Dollars in its pleadings before the Tribunal, although the contracts provided for payment in Iranian Rials and TSC invoiced accordingly. TSC employed an exchange rate of Rials 70.35 to the Dollar, although it provided no justification for its choice. The question thus arises as to the correct date for the conversion into Dollars of the Rial amount found to be payable.

49. The test applied by this Chamber has been to select the date on which the obligation became due, and to apply the rate of exchange applicable on that date in making

the conversion, provided it is satisfied that the Claimant would, in the normal course of events, have repatriated the funds if they had been received on the due date.² In the present Case, the amount awarded represents social insurance withholdings for the months of June through September 1978. Since it appears from the record that TSC had furnished OSCO at least by October 1978 with evidence that it had paid the premiums due for this period, a refund should have been made by 31 December 1978 at the latest.

50. Invoice No. 4003, on which the present award is based, was first submitted to NIOC in March 1979, and resubmitted in letters to IROS from Telemedia, Inc. on 19 July 1979 and 20 December 1979. Neither letter mentioned a dollar equivalent of the Rial amount sought; in fact, the second letter specifically requested that the funds be "deposited to our account No. 59015, Bank of Iran and Middle East Ahwaz". There is no specific indication that the amount in question would have been repatriated forthwith to the United States if OSCO had made prompt reimbursement. However, if the money had been paid as late as December 1978 there would have been no reason for TSC to keep it in its Ahwaz bank account, as the arrangement for continued services was due to expire on 31 December 1978 and no formal extension had been agreed. Indeed, TSC stated that it had expended all the funds in its bank account by the time its personnel were evacuated on 27 December 1978.

51. In the circumstances of this Case, the Tribunal determines that the proper exchange rate to apply is the market rate applicable on 31 December 1978. According to the International Monetary Fund publication International

² See, e.g., Blount Brothers Corporation and The Government of the Islamic Republic of Iran, Iran Housing Company, Award No. 215-52-1, pp. 31-32, (6 March 1986).

Financial Statistics (Supplement on Exchange Rates 1981), the official rate on that date was Rials 70.475 to the Dollar. The amount awarded to TSC is thus \$14,633.83.

D. Interest

52. TSC is entitled to interest on the amount awarded from 1 January 1979. With respect to the appropriate rate of interest to be applied, this Chamber expressed its intention to develop and apply a consistent approach to the awarding of interest in cases before it in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985). In the absence of a contractually stipulated rate of interest, the Tribunal derives a rate of interest based approximately on the amount that the successful Claimant would have earned had it had the funds available to invest in a form of commercial investment in common use in its own country. Six-month certificates of deposit in the United States are such a form of investment for which average interest rates are available from an authoritative official source.

53. In the present Case, the relevant period for the successful claim begins on 1 January 1979. The average rate of interest paid on six-month certificates of deposit from that date through the date of this Award was approximately 11.00 percent, and it is that rate which the Tribunal applies.

E. Costs

54. TSC has requested an award of \$18,998.42 for its costs of arbitration, which includes its attorneys' fees, travel costs and translation fees. Having regard to criteria of the kind outlined in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985), and taking into account

the outcome of this Case, the Tribunal determines that the Parties shall bear their own costs of arbitration.

IV. AWARD

For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

i) The Respondent NATIONAL IRANIAN OIL COMPANY is obligated to pay the Claimant TRAINING SYSTEMS CORPORATION the sum of Fourteen thousand six hundred thirty three United States dollars eighty three cents (U.S. \$14,633.83) plus simple interest thereon at the rate of 11.00 percent per annum (365-day basis) from 1 January 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account.

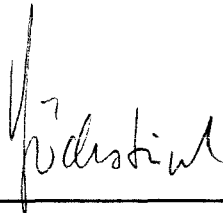
ii) The remaining claims of TRAINING SYSTEMS CORPORATION and the counterclaims of NATIONAL IRANIAN OIL COMPANY are dismissed.

iii) Each Party shall bear its own costs of the arbitration.

The above obligation 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 dated 19 January 1981.

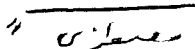
This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
19 December 1986



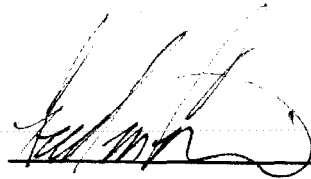
Karl-Heinz Böckstiegel

In the Name of God



Mohsen Mostafavi

Apart from the dismissal of the tax and social security claims, and from the interest and rate of conversion applied (which matters I have previously addressed in a separate opinion), I concur in the present Award.



Howard M. Holtzmann

Dissenting with Respect to Bank Account Claim; joining in all other parts of the Award. See Separate Opinion.