IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL
«نسخه برابر اصل»

CASE NO. 941
CHAMBER THREE
AWARD NO. 528-941-3

IRAN-UNITED STATES CLAIMS TRIBUNAL
دیوان داوری دعاوی ایران - ایالات متحده

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DATE 6 MAR 1992
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W. JACK BUCKAMIER,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN, ISIRAN/ARMY, TEHRAN REDEVELOPMENT CORPORATION, BANK MELLAT, HEJRAT BRANCH (formerly Iran-Arab Bank),
Respondents.

AWARD

Appearances:

For the Claimant:	Mr. W. Jack Buckamier, Claimant; Mr. Burton V. McCullough, Attorney.
For the Respondents:	Mr. Mohammad K. Eshragh, Agent of the Government of the Islamic Republic of Iran; Mr. Ali H. Nobari, Deputy Agent of the Government of the Islamic Republic of Iran; Mr. Nozar Dabiran, Legal Advisor to the Agent of the Government of the Islamic Republic of Iran; Mr. Mohammad Asbaghi, Legal Assistant to the Agent of the Government of the Islamic Republic of Iran; Mr. Ali Reza Nazem Bokaie, Representative of Tehran Redevelopment Corporation; Mr. Sayyed Mohammad Jazaeri, Attorney for Tehran Redevelopment Corporation.
Also present:	Mr. Michael F. Raboin, Deputy Agent of the Government of the United States of America.

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I. INTRODUCTION

1. The Claimant, W. JACK BUCKAMIER, claims the sum of U.S.$18,477,370 plus interest and costs, both in his personal capacity and as a member of an Iranian firm allegedly majority-owned by him named Non-Commercial Firm of HNB Industrial and Educational Consultants ("HNB").

2. The named Respondents are THE ISLAMIC REPUBLIC OF IRAN ("Iran"), ISIRAN/ARMY ("Isiran"), TEHRAN REDEVELOPMENT CORPORATION ("TRC") and BANK MELLAT, HEJRAT BRANCH (formerly Iran-Arab Bank) (the "Bank"). Pleadings furthermore have been submitted by MILITARY INDUSTRIES ORGANIZATION ("MIO") and by THE CUSTOMS AGENCY OF IRAN (the "Customs Agency").

3. HNB was a contractor primarily engaged in the design and installation of trash and materials handling systems and devices. In 1977 HNB was awarded a contract by TRC for a trash-handling system at the Ekbatan Housing Project in Tehran involving the supply and installation of 282 trash compactors (the "TRC Contract" or the "Contract"). In 1978 HNB concluded a contract with Isiran for the manufacture and installation of storage racks and bins in fourteen military warehouses at various locations in Iran (the "Isiran Contract" or the "Contract"). In the same year HNB was awarded a contract by G.K.I.-Mobag, general contractor for a project of MIO, for the supply and installation of 120 trash compactors (the "Mobag Contract" or the "Contract") .

4. The Claimant contends that Iran, through its controlled entities, prevented HNB from completing performance under these contracts. Mr. Buckamier asserts that such interference constitutes an expropriation of his interests in HNB, valued at U.S.$3,917,940 in November 1979 when he left Iran. Mr. Buckamier also claims U.S.$8,915,912 for profits lost as a result of Iran's interference. Alternatively, he asserts a claim based on breach of the contracts.

5. The Claimant further brings claims for: monies lent by him to HNB and never recovered as a result of Iran's actions; damages caused by the alleged retention by the Customs Agency of equipment that Mr. Buckamier attempted to import; funds allegedly deposited by him for a transfer that the Bank failed to execute; and profits lost under prospective contracts for HNB that did not materialize due to the alleged interference by Iran.

6. The Respondents deny any expropriation or breach of contract. Based on the TRC Contract TRC presents a counterclaim for 987,139,491 rials, representing Mr. Buckamier's share of an advance payment made to HNB as well as the Claimant's share of penalty fees triggered by an alleged delay in performance by HNB.

II. PROCEDURE

(a) History

7. The Claimant submitted a Statement of Claim on 19 January 1982. On 13 September 1982 the Claimant filed a Request for Interim Measures of Protection relating to HNB and his former Iranian business partner pending resolution of this Case by the Tribunal. By Order of 18 January 1983 the Tribunal denied the Claimant's Request.

8. In December 1982 the named Respondents and the Customs Agency each filed a Statement of Defense.

9. On 24 December 1986 Mr. Buckamier filed a Request to File Amended Statement of Claim together with the Amended Statement of Claim (the "Amended Claim") itself. On 1 September TRC filed its objection thereto, as did Iran on 2 December 1987.

10. In 1987 the named Respondents, the Customs Agency and MIO each filed a Memorial in response to the Amended Claim.

11. By Order of 29 October 1987 the Tribunal scheduled a Hearing for 15 June 1988. On 6 June 1988 the Claimant filed a Second Supplemental Affidavit of Mr. Buckamier. The Respondents filed an objection thereto on 1 July 1988.

12. Following rescheduling, a Hearing took place on 8 July 1988.

13. On 7 February 1989 a Communication to the Parties was filed, informing the Parties that effective 1 January 1989 Judge Arangio-Ruiz, successor to the late Judge Virally as Chairman of Chamber Three, would preside over all matters relating to this Case. The Communication further stated that Chamber Three had determined pursuant to Article 14 of the Tribunal Rules to repeat the Hearing held. A new Hearing took place on 22 May 1989.

14. On 24 May 1989 TRC filed further evidence. On 26 May 1989 the Claimant filed an Objection to the Filing of Post-Hearing Brief and Exhibits by Iran. The Claimant also submitted an affidavit regarding costs of arbitration on 28 June 1989.

(b) Timeliness of Statement of Claim

15. In its Brief filed 2 December 1987 Iran petitions the Tribunal to dismiss Mr. Buckamier's claim on the grounds that the Statement of Claim was filed after 19 January 1982. Iran explains that "the Chairman of Chamber Three in his letter dated 30 July 1982 stated that this issue could be raised at the time of filing of the statements of defense." Iran failed to raise this issue in its Statement of Defense. Some six years passed between the filing of the Statement of Claim and Iran's presentation of its objection.

16. Article III, paragraph 4, of the Claims Settlement Declaration provides that "[n]o claim may be filed with the Tribunal more than one year after the entry into force of this Agreement or six months after the date the President is appointed, whichever is later." Based on this provision, the last date on which claims could be filed was 19 January 1982. Article 2, paragraph 1, of the Tribunal Rules is also relevant to this issue. It provides that "[a]ll documents must be filed with the Tribunal. Filing of a document with the Tribunal shall be deemed to have been made when it is physically received by the Registrar."

17. The events surrounding Mr. Buckamier's filing of the Statement of Claim are described in a letter to him by the Tribunal Registrar dated 4 February 1982. The letter states, in relevant part:

> In your Claim against the Government of Iran a notice from the Post Office of the Hague was received by me on January 19, 1982 at 5 p.m. stating that at January 16, 1982 a postal package had arrived for which a custom declaration form had to be filed [sic] out by me before delivery, at the Post Office, could be made. On January 22, 1982 I took delivery of the package at the Post Office, which appeared to contain Mr. W. Jack Buckamier's Claim against the Islamic Republic of Iran.
>
> I have decided that, a filed receipt dated January 19, 1982, will be issued with the remark "delivered by registered mail at the Post Office, the Hague, Netherlands, on January 16, 1982."

The Statement of Claim indeed bears a filing stamp dated 19 January 1982.

18. The Registrar's decision indicates that he regarded the Statement of Claim as having been received by him on 19 January 1982. The Tribunal agrees. The release of the document by the Post Office did not require any further action on the Claimant's part, nor was it subject to any delay attributable to the Claimant. Instead, its release

before 19 January 1982 merely awaited action to be performed on behalf of the Tribunal. Considering this, it would be unfair to hold against the Claimant the fact that the Tribunal undertook such action after 19 January 1982. Under these circumstances, the notice from the Post Office, received by the Registrar prior to the deadline, may for timing purposes be deemed to represent the Claimant's submission. The Tribunal therefore decides that the Statement of Claim was timely filed.

(c) The Amended Claim

19. The Request to File Amended Statement of Claim states, in relevant part:

> 1. The claimant himself prepared his original claim and filed it in January 1982. While the original claim refers to all the basic documents and events which in fact form the basis of this claim, the original claim makes errors in calculation of damages and does not clearly identify theories of recovery.
>
> 2. The amended claim more accurately identifies damages and theories of recovery.
>
> ...
>
> 5. The amended claim makes no changes in the operative facts or documents already before the Tribunal, but simply reorganizes, clarifies, and corrects inaccuracies.

20. Iran has submitted an objection against the increase in the amount claimed by Mr. Buckamier from U.S.$7,170,614 in the Statement of Claim to U.S.$18,477,370 in the Amended Claim. Iran finds the extent of the increase unreasonable, especially in the light of the time that elapsed before the Amended Claim was filed. It concludes that "it is hard to give any credibility to the latest amount of relief sought by Claimant."

21. TRC argues that the Amended Claim actually seeks new relief and presents new arguments "of which there is not even a hint in the previous Statement of Claim." In particular, TRC points out that the amount of damages claimed from it has been raised from U.S.$18,154.72 to U.S.$211,968.87. TRC argues, therefore, that remedies are sought that were not "essentially" demanded originally. It concludes that, considering the long and unreasonable delay in changing the claim and increasing the amount sought, the Amended Claim must be rejected. TRC cites various awards in which the Tribunal considered an amended claim as having been filed untimely.

22. To determine the admissibility of the Amended Claim, the Tribunal must apply Article 20 of the Tribunal Rules. This Article states, in part, that "[d]uring the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances." As noted in International Schools Services, Inc. and The Islamic Republic of Iran, Interlocutory Award No. ITL 57-123-1, p. 10 (30 Jan. 1986), reprinted in 10 Iran-U.S. C.T.R. 6, 12, "[t]his provision affords wide latitude to a party who seeks to amend a claim, and the Tribunal's practice is in accord with this liberal approach. As Article 20 directs, the Tribunal will permit an amendment unless delay, prejudice or other concrete circumstances make it inappropriate to do so."

23. The Amended Claim was filed on 24 December 1986, almost two and one-half years before the final Hearing was held. The Tribunal notes that all the named Respondents as well as MIO and the Customs Agency have filed a substantive response to the Amended Claim. In addition, Isiran and the Bank have presented rebuttal memorials. The Tribunal is satisfied,

therefore, that the increase of the amount claimed, which increase constitutes an amendment or supplement within the scope of Article 20 of the Tribunal Rules, has not caused prejudice to the Respondents.

24. With respect to certain parts of the Amended Claim, however, the question arises whether they constitute a new claim rather than an amendment or supplement as foreseen by Article 20 of the Tribunal Rules. To the extent they represent a new claim, the Tribunal must reject these items. See Refusal to Accept the Claim of Raymond International (U.K.) Ltd., Decision No. DEC 18-Ref 21-FT, p. 3 (8 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 394, 395.

25. The claim items to be reviewed in this context all relate to the alleged breach of the TRC Contract. Based on the Amended Claim they may be summarized as follows. First, the Claimant contends that he assisted a business associate in the formation of an Iranian company named Chutco. In return, Mr. Buckamier allegedly was entitled to a 10% commission on all gross sales of Chutco products resulting from his efforts. The TRC Contract also entailed an order to Chutco, but TRC's alleged breach prevented the Claimant from collecting his commission.

26. It is incorrect to state that "there is not even a hint" of the Chutco claim in the Claimant's original pleadings. In addition to being mentioned in the testimony of Mr. Abdulazim Fakhami, the commission arrangement and Chutco's involvement in the TRC Contract are described in Part VI of the Statement of Claim. Thus, the original claim and the Amended Claim share the same factual basis. The Tribunal notes, however, that the original pleadings explicitly state that "Mr. Buckamier is not trying to collect the balance owed to him by Chutco." This statement compels the conclusion that the Amended Claim relating to Chutco is a

new claim. In view of its filing date, the Tribunal therefore must reject this part of the Amended Claim.

27. The second claim item at issue is Mr. Buckamier's share of the installation fee of U.S.$23,780.00 for twenty-nine of the garbage compactors which HNB was to install under the TRC Contract. The Tribunal notes that the Statement of Claim describes both the basis and the amount of this claim. The Claimant did not include this item in his summary of "'known' unpaid debts" of TRC, apparently because "Mr. Buckamier isn't sure whether this total amount of U.S.$23,780.00 has been paid and if any amount has been withheld." In the light of the wording of this statement and of the opportunity afforded to the Parties to collect and to present evidence in the course of the proceedings, it would be unreasonable to interpret this statement as an abandonment by the Claimant of this part of his claim. The Tribunal is satisfied, therefore, that the installation fee claim constitutes an amendment or a supplement permitted under Article 20 of the Tribunal Rules.

28. The third part of the Amended Claim to be addressed concerns Mr. Buckamier's share of profits in the amount of U.S.$60,013.18 that he claims HNB lost as a result of the breach by TRC of the TRC Contract. Specifically, Mr. Buckamier claims a sales commission for the twelve compactors, out of the agreed total of 282, that were not delivered due to force majeure. He also claims his share of the profits that would have resulted from modification and repair by HNB of the 241 delivered compactors. Mr. Buckamier further seeks his share of the profits that would have been made on the installation of the 253 compactors not installed.

29. Review of the original pleadings reveals that, while these lost profits are not included in the amount originally claimed, Part I of the Statement of Claim, as well as the

correspondence, the TRC Contract and the testimony submitted therewith, set forth the basis for the claim eventually raised in the Amended Claim. The Tribunal therefore finds that this part of the Amended Claim supplements the Statement of Claim in conformity with Article 20 of the Tribunal Rules.

(d) The Claimant's Second Supplemental Affidavit

30. The Tribunal must determine the admissibility of the Second Supplemental Affidavit filed by the Claimant on 6 June 1988. It is not disputed that this document, which contains new evidence, was filed after the final date set for the submission of pleadings in this Case. Under Tribunal precedent, in determining whether to accept such a late submission, the Tribunal considers "fundamental requirements of equality between, and fairness to, the Parties, and the possible prejudice to either Party." Harris International Telecommunications, Inc. and The Islamic Republic of Iran, et al., Partial Award No. 323-409-1, para. 61 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 31, 46-47, and cases cited therein.

31. The Respondents objected to this filing on the ground that they lacked the opportunity to prepare a proper response prior to the Hearing on 8 July 1988. However, on 9 February 1989 the Tribunal informed the Parties that a new Hearing would be held on 22 May 1989. This allowed the Respondents sufficient time to respond, if they so desired, to the Second Supplemental Affidavit. Considering this, the Tribunal finds that acceptance of the Claimant's submission causes no prejudice to the Respondents. The Tribunal therefore admits the Claimant's filing of 6 June 1988.

(e) TRC's Post-Hearing Submission

32. Two days following the final Hearing, TRC filed new

evidence allegedly showing that TRC paid HNB certain amounts that the Claimant contends were never paid. TRC has given no justifiable reason for the delay of its submission. In accordance with its practice, the Tribunal rejects this post-Hearing submission as untimely filed.

III. JURISDICTION

(a) The Respondents

33. The Tribunal has already held that Isiran, TRC, the Bank and MIO are controlled entities as defined in Article VII, paragraph 3, of the Claims Settlement Declaration. See Ultrasystems Incorporated and The Islamic Republic of Iran, et al., Partial Award No. 27-84-3, p. 9 (4 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 100, 105 (Isiran); DIC of Delaware, Inc., et al. and Tehran Redevelopment Corporation, et al., Award No. 176-255-3, p. 15 (26 Apr. 1985), reprinted in 8 Iran-U.S. C.T.R. 144, 155 (TRC); Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 32-24-1, p. 35 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 122, 143 ("Starrett")(the Bank); Electronic Systems International, Inc. and The Ministry of Defence of the Islamic Republic of Iran, Award No. 430-814-1, para. 52 (28 July 1989), reprinted in 22 Iran-U.S. C.T.R. 339, 352 (MIO). The Customs Agency does not dispute, and its pleadings bear out, that it, too, is a controlled entity as defined in Article VII, paragraph 3, of the Claims Settlement Declaration.

(b) Nationality of the Claimant

34. The Claimant has submitted a copy of his United States passport, which was issued on 26 February 1978 and expired on 25 February 1983. It evidences that Mr. Buckamier was

born in the State of Ohio on 1 June 1922. This date matches the date mentioned in the Certificate of Birth that the Claimant also has submitted. The Certificate was issued for a person named Walter Jacob Buckmeier. At the Hearing, Mr. Buckamier testified that that was how his name then was spelled. Based on the evidence submitted by the Claimant the Tribunal is satisfied that he fulfills the nationality requirement of Article VII, paragraph 1, of the Claims Settlement Declaration.

(c) Ownership of Claim

35. The Claimant states that he "is claiming herein for monies due him not only personally, but also as a result of his 70 percent ownership of two Iranian companies." In particular, Mr. Buckamier brings claims for breach of the TRC Contract, the Isiran Contract and the Mobag Contract in his capacity as a partner in HNB. A key issue before the Tribunal is whether this contract claim meets the definition of "claims of nationals" set forth in Article VII, paragraph 2, of the Claims Settlement Declaration. This Article defines such claims as

> claims owned continuously, from the date on which the claim arose to the date on which this Agreement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interests in juridical persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this Agreement.

Application of this provision to the claims based on contracts concluded by HNB leads the Tribunal to examine the legal structure of HNB.

36. On 16 September 1974 Mr. Buckamier, together with his Iranian associate Mr. Behruz Neirami and his American associate Mr. Gregory Lima, founded HNB. Its official name was "Non-Commercial Firm of HNB Industrial and Educational Consultants." Mr. Neirami was elected as Chairman of the Board of Directors and Mr. Buckamier was elected as Managing Director. The firm was registered with the Registration Office of Companies and Industrial Property on 30 October 1974, and an extract of its Articles of Association was published in Official Gazette No. 8689 of 5 November 1974.

37. HNB's Articles of Association state, in relevant part:

> Article 1 - Name of the Firm is: HNB INDUSTRIAL AND EDUCATIONAL CONSULTANTS, and its nationality is Iranian, and it has a legal status.
>
> Article 2 - Object of the Firm: To perform consulting services in the fields of educational programs and educational materials and industrial services and all operations directly or indirectly related thereto.
>
> ...
>
> Article 5 - The assets of the Firm, consisting of tools and equipment, have been evaluated at Rls. 200,000, and have been provided by the partners in the following ratio, and the partners undertake to provide other tools and equipment and funds required for the operations in proportion to their share:
>
> | | |
> |---|---|
> | Mr. Jack Buckamier | holder of 66% |
> | Mr. Behruz Neirami | holder of 28% |
> | Mr. Gregory Lima | holder of 6% |
>
> Article 6 - The partners of the Firm may, throughout the term of their association, accept other persons as partners in this Firm, with the written approval of all partners, and in such a case the conditions for the acceptance of new partners shall be established by the partners in writing.
>
> MANAGEMENT OF THE FIRM
>
> Article 7 - The Firm shall be managed by the Board of Directors composed of three persons to be elected by the general meeting.... [The] [g]eneral

meeting may at any time replace or dismiss directors and may change the manner of management of the Firm. The Board of Directors shall, from among themselves, appoint a Chairman and a Managing Director.

Article 8 - All decisions in the Board of Directors must be adopted by favourable votes of two directors.

Article 9 - The Board of Directors shall have all the required powers to manage the firm, including the following powers, which are not by way of limitation: ... The Managing Directors of the firm can generally act for the firm in all cases with due consideration of the restrictions provided hereinafter.

Article 10 - All documents commit[t]ing the firm such as checks, contracts, promissory notes and bills of exchange shall be signed by the Chairman and [the] Managing Director of the firm.

Article 11 - All decisions regarding the affairs of the firm in all general meetings shall be adopted by the majority of votes of partners.

Article 12 - The divisible profits or losses of the firm shall be divided between the partners in proportion to their assets unless they otherwise agree in writing.

38. On 28 September 1977 a number of changes were made, which were notified to the Registration Office of Companies and Industrial Property. Mr. Lima withdrew as a partner. Mr. Neirami's wife became a partner by contributing 6000 rials; Mr. Neirami increased his participation to 54,000 rials; and Mr. Buckamier increased his to 140,000 rials. The general meeting, by amendment of the Articles, authorized the Chairman of the Board of Directors and the Managing Director to sign individually all contracts, checks, promissory notes, drafts and any other documents binding on HNB.

39. The Tribunal notes that the non-commercial firm is not mentioned among the seven kinds of trading companies listed in Article 20 of the Commercial Code of Iran. Reference to this entity is made in Article 584, Part Fifteen of the

Commercial Code, dealing with Juridical Personality. This article provides that "[c]oncerns and establishments which have been or shall be created for non-commercial purposes acquire juridical personality from the day they are registered in a special register established by the Ministry of Justice." Article 585 further details this registration requirement. Pursuant to articles 584 and 585, the Amended By-laws on the Registration of Non-Commercial Concerns and Establishments have been enacted. These By-laws, which were published in Official Gazette No. 4016 of 26 November 1958, include the following provisions:

> Article 1 - By non-commercial concerns and establishments as mentioned in Article 584 of the Commercial Code is meant all concerns and establishments which are formed for non-commercial (e.g. scientific, literary or charitable) purposes, whether or not the founders and organizers intend to make a profit.
>
> ...
>
> Article 2 - The aforementioned concerns and establishments fall into two categories, for the purposes of their compliance with the regulations set forth in these by-laws:
>
> a) establishments which have not been formed for the purpose of making a profit and distributing it among their members;
>
> b) establishments such as technical and legal societies, etc., which may have been formed for the purpose of gaining material benefit and distributing it among their members and/or others.

40. Based on the Articles of Association of HNB and the regulations pertaining to this entity, the legal structure of HNB may be described as follows. As Respondent Isiran points out, HNB had assets instead of capital stock. Isiran further observes that HNB's founders were three individuals entitled to equal votes. The Articles of Association bear out that Mr. Buckamier's initial contribution of 70% of the assets and his subsequent proportionate investments did not,

as a matter of right, entitle him to control. After Mr. Lima had terminated his participation, both Mr. Buckamier and Mr. Neirami could individually sign for HNB. Ultimate management control was vested in the Board of Directors, which was composed of three persons elected by the partners and could decide matters by majority vote. The partners' formal equality also was preserved through the provision relating to the acceptance of new partners. Only with respect to the distribution of profits and losses did the Articles of Association differentiate between the positions of the partners: Mr. Buckamier's contribution entitled him to a 70% share of the divisible profits. This proportionate division applied equally to losses incurred by HNB.

41. It follows from the above description that the position of a partner in HNB differed from that of a stockholder in a corporation. The absence of capital stock, the equal voting rights, the obligation to provide additional proportionate funding and the liability for losses are characteristic of a partnership, more than of a corporation whose shareholders are liable only to pay up the shares to which they subscribe and enjoy voting rights generally in proportion to their contribution to the capital of the corporation. As the Tribunal has observed, with respect not only to partnerships that are not legal entities but also to partnerships having separate legal personality, "unlike shareholders of corporations ... a 'partner is not entirely detached from the Société in the form in which a shareholder is detached from a corporation'." See Housing and Urban Services International, Inc. and The Government of the Islamic Republic of Iran, et al., Award No. 201-174-1, p. 26 (22 Nov. 1985), reprinted in 9 Iran-U.S. C.T.R. 313, 331 ("Haus").

42. Taking into account the partnership characteristics of HNB, the Tribunal now must determine whether Mr. Buckamier has standing to present claims under contracts concluded by

this entity. The Haus Award provides guidance on this issue. Based on cases generally involving partnerships with separate legal personality, the Tribunal concluded that

> [w]hile international law seems to accept that as a rule a partner may not sue in his own name alone on a cause of action accruing to the partnership, where special reasons or circumstances required it, 'international tribunals have had little difficulty in disaggregating the interests of partners and in permitting' partners to recover their pro rata share of partnership claims. The most relevant 'special circumstance' in this sense exists when a partner's claim is for its own interest, which is independent and readily distinguishable from a claim of the partnership as such.

Id. at 24-25, reprinted in 9 Iran-U.S. C.T.R. at 330. The primary reason for allowing a partner to bring a claim individually is that he "would otherwise be prevented from claiming before an international forum because of a foreign partner's disability." Id. at 27, reprinted in 9 Iran-U.S. C.T.R. at 332.

43. Application of the nationality requirements set out in Article VII, paragraph 2, of the Claims Settlement Declaration to Mr. Buckamier's position in HNB compels the conclusion that the rationale described in Haus applies in the present Case. Mr. Buckamier's claim of 70% of the firm's contractual entitlement, which is based on Article 12 of the Articles of Association, is for his own interest, independent and readily distinguishable from any claim of HNB as such. Based on the foregoing, the Tribunal finds that Mr. Buckamier's claim complies with Article VII, paragraph 2, of the Claims Settlement Declaration.

(d) Continuity of Ownership

44. Iran and Isiran contend that at an Extraordinary General Meeting of HNB held on 9 November 1979 Mr. Buckamier assigned his interests in HNB to a person named Mr. Harand Sarafian. Iran and Isiran conclude that the Claimant thus

fails to meet the requirement of Article VII, paragraph 2, of the Claims Settlement Declaration, which sets out that claims must be "owned continuously, from the date on which the claim arose to the date on which this Agreement enters into force." Mr. Buckamier asserts that he merely granted a power of attorney to Mr. Sarafian to act on his behalf in case HNB could resume work under its contracts prior to a return by Mr. Buckamier to Iran.

45. The minutes of HNB's Extraordinary General Meeting (which mention a meeting date of 19 instead of 9 November) state that Mr. Buckamier's functions and authority pursuant to the Articles of Association were delegated to Mr. Sarafian, "so that in his absence the affairs of the company should not be interrupted." The minutes clarify that by virtue of this delegation Mr. Sarafian "should conduct the affairs of the company and act on behalf of, and as attorney for Mr. Jack Buckanier [sic]." It is clear, therefore, that the delegation of powers by Mr. Buckamier did not represent any transfer of his interests in HNB. Iran's and Isiran's contention that Mr. Buckamier did not enjoy continuous ownership of the claim is thus without merit.

(e) Claim Outstanding on 19 January 1981

46. Iran contends that the evidence submitted demonstrates that HNB continued its ordinary business until late 1983 and that Mr. Buckamier's claim of expropriation was thus not outstanding on the date the Claims Settlement Declaration came into effect, 19 January 1981. Iran therefore argues that the Claimant's expropriation claim fails to meet the jurisdictional requirement of Article II, paragraph 1, of the Claims Settlement Declaration. In view of its findings regarding expropriation of Mr. Buckamier's interest in HNB, the Tribunal holds that this argument has no relevance for its determination of the outcome of the Case. See paragraph 60, infra. Based on the evidence before it, the Tribunal is

satisfied that all of the other claims presented by Mr. Buckamier were outstanding on 19 January 1981.

(f) Forum Selection Clause

47. Isiran argues that article 12 of the Isiran Contract, containing a forum selection clause, precludes the Tribunal's jurisdiction over Mr. Buckamier's claim on the basis of this Contract. As translated by Isiran, this clause provides that "[i]n case of any disagreement in regards to work performance and interpretation of Articles of this Contract or attached technical specifications and documents, if the parties are unable to settle the matter under dispute by a mutual agreement, the matter will be settled through the competent Courts of Justice." Isiran argues that since the Contract has been prepared and concluded in Iran between two Iranian legal entities and in the Persian language, the clause confers absolute jurisdiction on Iranian courts.

48. It is by now well settled that in order to constitute an exclusion from the Tribunal's jurisdiction by virtue of Article II, paragraph 1, of the Claims Settlement Declaration, a forum selection clause must, by its terms, unambiguously restrict jurisdiction over any disputes arising out of the contract to the courts of Iran. Article 12 of the Isiran Contract, both in its limitation to disputes regarding the performance of the work as well as the interpretation of the Contract and in its reference to "the competent Courts of Justice," fails to meet this test. Cf. Ford Aerospace & Communications Corporation, et al. and The Air Force of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 6-159-FT, p. 4 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 268, 270; Howard Needles Tammen and Bergendoff and the Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 3-68-FT, pp. 3, 4 (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 248, 250.

The Tribunal therefore holds that the Contract's forum selection clause does not bar the Tribunal's jurisdiction over the claim against Isiran.

IV. THE MERITS

(a) Settlement Agreements

49. TRC has submitted an agreement that it concluded on 7 August 1982 with Mr. Buckamier's business associate Mr. Neirami. TRC contends that by signing this document Mr. Neirami agreed to the termination of the TRC Contract. TRC further states that, pursuant to this document, "after the elimination of existing differences relating to thirty per cent of funds received by [HNB] from the Tehran Redevelopment Corporation, reimbursement was effected." For this reason, TRC concludes, "Claimant cannot, in the manner in which the claim has been propounded, set forth certain demands."

50. TRC appears to suggest that its agreement with Mr. Neirami settled the dispute between TRC and HNB and therefore precludes Mr. Buckamier from successfully claiming before the Tribunal under the TRC Contract. The settlement agreement states, inter alia, that the TRC Contract was terminated and that the following conditions were accepted by Mr. Neirami.

> 1. Since the down payment paid to HNB at the time of concluding the contract is also contrary to the provisions of the contract, and was paid to the executing party prior to the delivery of the compactor system, wherefore in relation to the thirty per cent equity interest, the reimbursement of the down payment was accepted.
>
> 2. In this regard, the amount of twelve per cent covering bank charges and guaranteed profit which were paid, and are being paid, to the bank by TRC, is accepted to be paid by Mr. Neirami in relation

to his thirty per cent equity interest by the date of the termination of the contract.

3. As regards non-performance of the contract and delays in the implementation of its provisions, which caused TRC to incur damages, Mr. Neirami, the Chairman of the Board of Directors and the owner of 30 per cent of the shares of HNB Consultants, in relation to his own shares and by accepting responsibility for HNB, accepts the aforesaid damages in accordance with the provisions of the contract in relation to his own share interest.

Furthermore, it was decided that in relation to the receipt of the amount of the down payment and damages, mentioned in paragraphs 1-2, and 3, relate to another shareholder, who is an American, legal action should be taken to TRC.

51. The above language indicates that, even though Mr. Neirami appears to have signed both as a partner in HNB and as Chairman of its Board of Directors, the commitment entered into by him only regarded the 30% interest in HNB held by him and his wife. The Tribunal finds the terms of this agreement insufficient to warrant a conclusion that Mr. Neirami purported to act also on behalf of Mr. Buckamier. Consequently, it does not reach the question whether the settlement agreement, if it had purported to bind Mr. Buckamier also, would have affected the claim presented by him on the basis of the TRC Contract.

52. Isiran contends that Mr. Buckamier's claim before the Tribunal under the Isiran Contract must fail on the basis of a settlement agreement also. Isiran and Mr. Neirami, allegedly acting on behalf of HNB, concluded such an agreement on 8 September 1983. Defining Isiran as the "company" and HNB as the "institution," the settlement provided, in relevant part:

C. Subsequent to signing of the contract and receiving the advance payment, institution dispatched certain amounts of requirement to the site of the main and general base of Abyek for carrying out the contract objection [sic].

D. In view of the institution's failure in carrying out its obligation, the company on 27 Jan. 1981 through Letter No. 469/308-40M/1000 moved to cancel Contract No. 002 and subsequently bank guarantee for advance payment referenced 37/499 was cashed in favour of the company.

...

Clause One: The company agreed that the equipment sent by the Insitution [sic] to the main base at Abyek, - as for approvel [sic] given by the Logistic Organization of the Ground Forces of the Islamic Republic of Iran through Letter No. 01/40/38/65/131 dated 1 Sept. 1983 be handed over to Mr. Behruz Neirami the fully authorized representative of the Institution. The said representative is responsible for removal of the equipment from the Base.

...

Clause Five: The Institution accepted and acknowledged that barring stipulations under Clauses One and Four of this Settlement Agreement, it has no other rights and with the implementation of Clauses One & Four the Insitution [sic] divest itself of the right and consequences of filing any claim against the Company, the Government of the Islamic Republic of Iran and its subsidiary companies and organizations and instrumentalities, in connection with the subject-matter of Contract No. 002.

Isiran has further submitted a "handing over proces verbal" bearing out that Mr. Neirami has taken delivery of HNB's equipment.

53. Isiran argues that because Mr. Neirami had individual signing power, the settlement agreement is binding on HNB. Isiran further points out that the settlement also was authorized by Mr. Sarafian, to whom Mr. Buckamier had given a power of attorney. Finally, Isiran notes that the settlement was based on article 12 of the Isiran Contract, which refers to settlement through mutual agreement by the parties.

54. Mr. Buckamier claims that "no settlement communication was made to [him] and [he] was completely unaware that the

purported agreement was proposed or entered into." According to him, "[t]his agreement is not binding on Claimant because he did not enter into it, and because it was signed, if at all, under stress." The Claimant argues that once he had filed his claim, Isiran was placed on notice that the Claimant sought the Tribunal's assistance and was bound to communicate any offers to settle the matter with him. As to the alleged duress, Mr. Buckamier asserts that HNB was placed in extreme financial hardship when Isiran withdrew its advance payment and the Bank demanded repayment of a substantial loan, leaving HNB without sufficient cash to make payments. Isiran and the Bank allegedly then exerted financial pressure on Mr. Neirami personally.

55. The Tribunal notes the wording of the settlement agreement, which required HNB to "divest itself of the right and consequences of filing any claim" against Isiran. If the parties to the settlement had intended their agreement also to encompass the claim against Isiran that, as they may be deemed to have been aware of, Mr. Buckamier had by then filed with the Tribunal, it would have been logical for them to have made the settlement conditional upon the withdrawal of that claim, or at the very least to have made specific reference to it. The Tribunal notes that they did not do so. Even if it is assumed, however, that the parties nevertheless purported to commit Mr. Buckamier also, the Tribunal, considering all circumstances of the present Case -- including the time elapsed between the filing of the Claimant's claim and the settlement, the pivotal role Mr. Buckamier played in HNB, HNB's partnership structure, and the lack of evidence of any attempt by Isiran directly to involve Mr. Buckamier in the conclusion of the settlement agreement (the fact that, as the Tribunal notes, correspondence between Mr. Neirami and Mr. Buckamier in the file indicates that the Claimant must have been aware that his partner was discussing ways to solve HNB's dispute with Isiran, does not make this consideration less relevant) --

finds that this agreement does not extinguish the Claimant's entitlement under the Isiran Contract. Isiran's argument therefore must fail. See also paragraph 156, infra.

(b) Expropriation

(i) HNB

56. The Claimant contends that from the summer of 1978 through November 1979, when he left Iran, the government of Iran or entities controlled by it committed certain acts that deprived him of the use, control and benefit of the property he owned in Iran. According to Mr. Buckamier, these acts of interference resulted in the total breakdown of his ability to transact business in Iran and ultimately forced him to leave the country permanently on 24 November 1979, thus causing the loss of his interests in HNB. Summing up the acts of interference, the Claimant contends that HNB had been barred from the TRC-Ekbatan site and the Army bases where the Isiran Contract was to be performed. Mr. Buckamier further asserts that neither the government nor any of its entities had paid invoices or responded to HNB's questions and pleas to be enabled to return to work. Based on these events, the Claimant seeks reimbursement of his share of the lost profits and sale value of HNB, of monies loaned by him to HNB, and of amounts HNB owed him as back salary.

57. In Starrett, Interlocutory Award No. ITL 32-34-1 at p. 51, reprinted in 4 Iran-U.S. C.T.R. at 154, the Tribunal stated that "[m]easures taken by a State can interfere with property rights to such an extent that these rights are rendered so useless that they must be deemed to have been expropriated, even though the State does not purport to have expropriated them and the legal title to the property formally remains with the original owner." Expropriation occurs, for example, when the owner is deprived of the

"effective use, control and benefits of [his] property rights." Id. at p. 52, reprinted in 4 Iran-U.S. C.T.R. at 154. Here it should be noted that "[t]he intent of the government is less important than the effects of the measures on the owner, and the form of the measures of control or interference is less important than the reality of their impact." See, e.g., Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2, p. 11 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225-26. This does not, however, relieve a claimant asserting expropriation from the obligation to demonstrate the requisite degree of government interference.

58. In judging whether Mr. Buckamier has satisfied this burden of proof, the Tribunal notes the Claimant's acknowledgement that no specific date for the alleged expropriation is easily identified. Mr. Buckamier initially suggested that the taking occurred as early as the spring of 1979, when HNB was rendered totally inactive by government action, and certainly by 24 November 1979, when government actions deprived him of all access to his property by forcing him to leave Iran. The Claimant's pleadings also state, however, that "[w]hile Claimant bravely attempted to manage his business from the United States, Iranian interference continued and eventually his ability to control the affairs of HNB was terminated," and that "after being forced to flee the country his ability to control HNB eventually dissolved." Furthermore, Mr. Buckamier testifies that certain letters written by Mr. Neirami to Mr. Buckamier following the latter's departure from Iran "verify my vital role in HNB after I left Iran" and that "[o]nce I left Iran ... my ability to control HNB slowly slipped away."

59. Mr. Buckamier's statements establish a connection between his gradual loss of control over his property and his departure from Iran. As to this departure, the Claimant

asserts that he was forced to leave, but he fails to specify any action of the Iranian government to that effect. Rather, as the Claimant's pleadings state, "[e]ventually, the conditions in Iran worsened to a point where it was impossible for Claimant to remain in the country and oversee his business." The Tribunal is mindful of the fact that these conditions -- those mentioned by the Claimant include strikes, power shortages, and personal harassment -- must have damaged the interests of the Claimant in Iran.[1] However, as the Tribunal has stated in Starrett:

> [I]nvestors in Iran, like investors in all other countries, have to assume a risk that the country might experience strikes, lock-outs, disturbances, changes of the economic and political system and even revolution. That any of these risks materialized does not necessarily mean that property rights affected by such events can be deemed to have been taken. A revolution as such does not entitle investors to compensation under international law.

60. Considering the record, the Tribunal finds, without prejudice to Mr. Buckamier's claims based on breach of contract, that government action amounting to a taking of the Claimant's interests has not been demonstrated. Consequently the Tribunal must dismiss his claim to the extent that it is based on expropriation.

(ii) Equipment in Customs

61. Mr. Buckamier contends that in February 1978 HNB ordered garbage compacting equipment from the South African firm of Mangolds Engineering, to be demonstrated at the Imperial Country Club to interested officials of the City of

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[1] See, e.g., paragraphs 95, 103, and 131 through 136, infra.

Tehran. According to the Claimant, HNB paid U.S.$23,364.78 plus U.S.$2,900 shipping charges for the goods, which arrived in the port of Khorramshahr on or about 1 July 1978. Having received permission to import the goods from the Ministry of Industry and Mines, HNB on 31 October 1978 wrote to Mr. Adle, the director of the Imperial Country Club to whom the shipping documents were addressed, requesting his assistance in the importation of the equipment on a temporary basis without paying duty.

62. However, as the Claimant states in his affidavit,

> Mr. Adle's cooperation in getting the goods through Customs was not forthcoming. On December 5, 1978, to compound our problems with Iranian Customs, Customs workers went on strike, further delaying my efforts to clear the equipment.
>
> In February 1979, two additional events occurred which further hampered HNB's efforts to clear the equipment. First, the Islamic Republic of Iran broke diplomatic relations with the Republic of South Africa and, second, the anti-United States feeling in Iran gained new force as it became the attitude of the new government, as well. After February 9, 1979, my negotiations with any branch of the Iranian government became immediately more difficult, if not impossible.

The Claimant alleges that "[a]lthough HNB paid all applicable duties and fees, and presented all necessary documents, Respondent Islamic Republic of Iran refused, and still refuses, to release the goods to HNB. HNB thus was deprived of all use, control, and benefit of the goods." On this basis, Mr. Buckamier presents a claim for U.S.$16,355.33, representing his 70% share of the alleged value of the equipment.

63. The Customs Agency contends that the mere shipment of the goods does not necessarily imply that Customs ever received them. It also argues that the Claimant has not evidenced confiscation of the goods. Pointing out that the Claimant has not produced any customs declaration,

confirmation of payment of import duty or bank guarantee, the Customs Agency further asserts that HNB has not demonstrated that it has observed the Iranian import regulations.

64. Mr. Buckamier's letter of 31 October 1978, which states, inter alia, that the equipment "has been in Iran since the end of June '78" and that "an Iranian Customs tariff number (84/59B2) has been assigned," establishes to the Tribunal's satisfaction that the equipment was actually delivered to Customs in Khorramshahr. The Tribunal observes that the Claimant's affidavit attributes the importation problems that subsequently arose mainly to lack of cooperation by the intended recipient of the goods and to the revolutionary circumstances then prevailing in Iran. Similar causes were cited in a letter of 5 December 1978 from HNB to Mangolds Engineering, which states, inter alia, that "[m]any events have occured [sic] that affect the Gorger program .... Customs went on strike so we can't clear either the Gorgers or the conveyor sample." Recalling the principles set out in Starrett and noting the absence of specific evidence of measures of interference, the Tribunal holds that the record offers no basis for a finding of expropriation attributable to the government of Iran. See paragraph 57, supra. Consequently, the Tribunal dismisses Mr. Buckamier's claim.

(iii) Bank Deposit

65. The Tribunal now turns to Mr. Buckamier's claim of U.S.$4,500 against the Bank. The Claimant contends that on 4 November 1979 he deposited the rials equivalent of this amount at the Hejrat branch of the Bank for a transfer of U.S.$3,000 and U.S.$1,500 to two accounts held by relatives at the Bank of America in Orange, California. The Bank allegedly promised him to transfer the funds deposited as soon as the ban on such transfers to the United States then

coming into effect was removed. The Claimant asserts that the transfer was never effected, however, and submits an affidavit by a Bank of America employee, Charlee Pearson, broadly supporting this assertion. Mr. Buckamier also submits a letter to Mr. Neirami of 7 July 1980 in which he describes his contacts with a person whom he contends to be the bank employee in question and requests Mr. Neirami to follow the matter up. On 16 September 1980 Mr. Neirami responded that the employee assured him he made the transfer but that no records thereof could be found at the Bank.

66. The Bank, which does not dispute that the transfer was never made, argues that the Claimant has not produced evidence of the deposit. It points out that the Claimant has not been able to present a receipt and that its foreign exchange register does not show any such deposit. In response, the Claimant asserts that the deposit records were among documents that he alleges were seized from him at the airport when he fled Iran.

67. The virtual absence of documentary support for Mr. Buckamier's claim raises the issue what the probative value is of the Claimant's affidavit. The importance of this question makes it appropriate to elaborate on the considerations the Tribunal must take into account in weighing this kind of evidence. In a memorandum dated 17 February 1988 the Tribunal's distinguished former member and Chairman of this Chamber, the late Professor Virally, expressed these considerations as follows.

> The Tribunal has often been presented with notarized affidavits or oral testimony of claimants or their employees. [Rare] are the cases where such an issue does not arise. The probative value of such written or oral declarations is usually hotly debated between the parties, each of them relying on the pecul[i]arities of its own judicial system. The U.S. parties insist that such evidence must be recognized with full probative value, as would be the case before U.S. courts. The Iranian parties contend that such declarations

are not admissible as evidence under Iranian law, as in many other systems of law, because they emanate from persons whose interests are at stake in the proceedings, or who are, or were, dependent upon the claimants.

The Tribunal has, in the past, adopted a pragmatic and moderate approach towards this problem by deciding, on a case by case basis, whether the burden of proof has been properly sustained by each contending party, taking into consideration those declarations together with all other evidence submitted in the case, the particulars of the case and the attitude of both parties in the proceedings. This pragmatic approach does not always seem to have been well understood, since the same debate continues to arise, often in the same terms, in case after case ....

As an international Tribunal established by agreement between two sovereign States, the Tribunal cannot, in the field of evidence as in any other field, make the domestic rules or judicial practices of one party prevail over the rules and practices of the other, in so far as such rules or practices do not coincide with those generally accepted by international Tribunals. In this context, it can be observed that declarations by the parties, or employees of the parties, in the form of notarized affidavits or oral testimony, are often submitted as evidence before such Tribunals. They are usually accepted, but, apparently, their probative value is evaluated cautiously, in a manner generally comparable to the attitude of this Tribunal as just described.

It is clear that the value attributed to this kind of evidence is directly related not only to the legal and moral traditions of each country, but also to a system of sanctions in case of perjury, which can easily and promptly be put into action and is rigorous enough to deter witnesses from making false statements. Such a system does not exist within international Tribunals and recourse to the domestic courts of the witness or affiant by the other party would be difficult, lengthy, costly and uncertain. In the absence of any practical sanction (other than the rejection by the international Tribunal of the discredited evidence), oral or written evidence of this kind cannot be accorded the value given to them in some domestic systems. Also it cannot be discounted that the ethical barriers which prevent the making of statements not in conformity with the truth before national courts will not have the same strength in international proceedings, notably

when the other party is a foreign government, the conduct of which was severely condemned by public opinion in the country of the other party.

On the other hand, it must be recognized that in many claims filed with the Tribunal, claimants face specific difficulties in the matter of evidence, for which they are not responsible. Such is particularly the case when U.S. claimants were forced by revolutionary events and the chaotic situation prevailing in Iran at the time, to rush out of Iran without having the opportunity or the time to take with them their files, including documents which normally should be submitted as evidence in support of their claims. In many instances, the situation in Iran between the establishment of the Revolutionary Islamic Government on 11 February 1979 and the taking of the American Embassy on 4 November 1979 was not sufficiently settled to permit a return in Iran or, in case of return, ... to recover the files left behind. After 4 November 1979, and up to the critical dates of 19 January 1981 and 19 January 1982, collection of documents in Iran by U.S. nationals was almost impossible. Obviously, these facts made it very difficult for the claimants who did not keep copies of their files outside Iran to sustain their burden of proof in the ways which would be expected in normal circumstances. In view of these facts, the Tribunal could not apply a rigorous standard of evidence to the claimants without injustice. In adopting a flexible approach to this issue, however, it must not lose sight of its duty to protect the respondents against claims not properly evidenced. At any rate, it must be satisfied that the facts on which its awards rely are well established and fully comply with the provisions of ... its Rules of procedure.

In order to keep an equitable and reasonable balance between those contradictory requisites, the Tribunal must take into consideration the specific circumstances of each case, as well as all the elements which can confirm or contradict the declarations submitted by the Claimants. The list of such elements is practically unlimited and varies from case to case. The absence or existence of internal contradictions within these declarations, or between them and events or facts which are known by other means, is obviously one of them. Explicit or implied admission by the other party is another, as well as the lack of contest or the failure to adduce contrary evidence, when such evidence is apparently available or easily accessible. In relation to this last

> element, however, the Tribunal must not disregard the fact that destruction due to revolutionary events or to the war, the departure from Iran of persons responsible for the conduct of the business at the time of the facts referred to in the claim, changes in the direction or the management of the undertakings concerned, can also impair the Respondents' ability to produce evidence. It is often a delicate task to determine if and to what extent respondents would be responsible for such a difficulty.

68. Bearing in mind these considerations, the Tribunal notes that the Claimant's pleadings appear to contain inconsistent statements with respect to the deposit records. While in his initial reply to the Bank's Statement of Defense Mr. Buckamier stated that "[e]vidence of these document's [sic] existance [sic] will be presented to the Tribunal during the 'oral arbitration'," later in his affidavit he suggested that these records had been seized from him when he left Iran. Considering this apparent contradiction, the Tribunal is not convinced that the Bank actually received the deposit. Consequently, while the Claimant's correspondence with Mr. Neirami indicates that Mr. Buckamier had handed funds to an Iranian individual assisting him with the transfer, the record affords insufficient basis to hold the Bank liable for the non-completion of the transaction. The Tribunal therefore dismisses Mr. Buckamier's claim against Bank Mellat.

(c) Contractual Claims

(i) The Mobag Contract

69. The Claimant asserts that HNB entered into a contract with MIO to furnish and install 120 trash handling systems in a housing project located at three sites in Iran. As evidence of this Contract, the Claimant has submitted a copy of a purchase order in the name of G.K.I.-Mobag, a Swiss company acting as general contractor on the project. HNB was to procure the trash compactors from an American company

named Multi-Pak. The total price was the equivalent in rials of U.S.$666,120, of which 20% was to be paid in advance upon the signing of the Contract. U.S.$266,448, representing a further 40%, was payable upon the arrival of the compactors at the designated Iranian port, and the remaining amount was due upon completion of the installation of all compactors.

70. The Claimant asserts that after HNB had commenced its performance under the Contract and supplied fifty-one compactors, "HNB was not allowed to ship additional products into Iran or to install any of the delivered compactors," as a result of which "that particular project was halted." Mr. Buckamier acknowledges that by that time HNB had received an advance payment of the equivalent in rials of U.S.$133,000, plus an additional U.S.$113,240, constituting 40% of the price for the fifty-one compactors. Asserting that HNB paid Multi-Pak the full amount owed for the delivered compactors[2], Mr. Buckamier claims U.S.$66,601.85 as his 70% share of the sales and installation profit that HNB lost as a result of MIO's alleged refusal to allow HNB to complete its performance.

71. Mr. Buckamier's claim under the Contract presumes that the purchase order created a direct relationship between HNB

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[2]According to the Claimant, without figuring any profit on the transaction, HNB therefore received a total of U.S.$24,854.50 more than it spent under the Contract. The Tribunal notes that Mr. Buckamier's ledger shows only a part of HNB's alleged payment to Multi-Pak. According to the Claimant, this is due to "the incomplete nature of the ledger." In support of his contention that HNB paid Multi-Pak in full for the 51 compactors, Mr. Buckamier furthermore has submitted an affidavit to that effect by James O'Rourke, president of Multi-Pak. His affidavit is not accompanied by documentary evidence, such as payment records or bank statements.

and MIO. As the Claimant has stated, "[e]ven though G.K.I.-Mobag placed the purchase order with HNB, it was always my understanding that G.K.I.-Mobag was acting as MIO's agent in the project, and that the government of Iran was the sponsor, owner, beneficiary, and ultimate controller of the project." In support of this position, Mr. Buckamier has submitted four sample shipping forms from the project documentation that identify MIO as the consignee of the goods without mentioning G.K.I.-Mobag. In conclusion, the Claimant states that HNB entered into the Contract "with MIO." Similarly, Mr. Buckamier describes his summary ledger as containing payments received "from G.K.I.-Mobag/MIO."

72. Respondent MIO denies the existence of any contractual relationship with HNB, stating that G.K.I.-Mobag placed its order "directly, without information and any kind of Respondent's interference." Accordingly, in MIO's view, Mr. Buckamier should claim against G.K.I.-Mobag.

73. The Tribunal has previously addressed the issue of agency on various occasions. In Futura Trading Incorporated and Khuzestan Water and Power Authority, Award No. 187-325-3, p. 16 (19 Aug. 1985), reprinted in 9 Iran-U.S. C.T.R. 46, 57, the Tribunal, noting that the legal relationship at issue could not be clearly determined from the record before it, observed that

> [t]he legal distinction between an agent and an independent contractor can not be discerned solely from the practice of the entity involved. An agent may act in a highly independent fashion while an independent contractor, given sufficiently complex contractual arrangements, may appear indistinguishable from the entity it is serving. In this sense the legal distinction between an agent and an independent contractor can only be ascertained by reference to the contract establishing the relationship.

The Tribunal faced similar evidentiary problems in Futura Trading Incorporated and The National Iranian Oil Company,

Award No. 263-324-3, para. 48 (30 Oct. 1986), reprinted in 13 Iran-U.S. C.T.R. 99, 112. In that case, the Tribunal found that "the record submitted to the Tribunal sufficiently supports the Claimant's contention that [the respondent] was the principal on the other side of the contract so as to place on [the respondent] the burden of adducing contrary evidence." Id.

74. In the present Case, however, the Tribunal finds that the evidence presented by the Claimant is insufficient for the burden of proof to shift. Cf. American Farm Products International, Inc. and Cyrus Consulting Engineers, et al., Award No. 356-190-2, para. 8 (5 Apr. 1988), reprinted in 18 Iran-U.S. C.T.R. 175, 178-79 ("American Farm Products"). In fact, most of the evidence submitted argues against Mr. Buckamier's contention that G.K.I.-Mobag contracted on behalf of MIO. The purchase order was placed by G.K.I.-Mobag; this three-page document does not contain any reference, whether explicit or implicit, to MIO. G.K.I.-Mobag's general conditions apparently were attached to the order, which further provided for acceptance of the installation by G.K.I.-Mobag. The Tribunal also notes Mr. O'Rourke's statement in his affidavit that the compactors were "to be shipped directly to GKI-Mobag." In case of unremedied defects, G.K.I.-Mobag was entitled to deduct the costs of repair from the payment to HNB. Mr. Buckamier's ledger describes the first payment received under the Contract as "Advance Paymt (Mobag)" and refers simply to "Mobag" to identify HNB's receipt of the next forty percent installment of the Contract price. The ledger fails to mention MIO in connection with any amount received.[3]

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[3]Even if it had been established that MIO had made direct payment to HNB, that would not necessarily suggest that a direct contractual relationship existed between these entities. Cf. Chas T. Main International, Inc. and Mahab
(Footnote Continued)

75. The record thus supports the conclusion that the purchase order created a contractual relationship between HNB as subcontractor and G.K.I.-Mobag as contractor. The fact that, in concluding the Contract, G.K.I.-Mobag acted in the interest of MIO is not inconsistent with its role of independent contractor. Indeed, as the Tribunal observed in Oil Field of Texas, Inc. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 10-43-FT, p. 15 (9 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 347, 357, it is in the very nature of contractors to perform services at another's behest and to obtain a benefit for another.

76. It is an established principle that generally a subcontractor has no direct rights against the party with whom the contractor has a contract. See Chas T. Main, Award No. 70-185-3 at p. 9, reprinted in 3 Iran-U.S. C.T.R. at 274. The circumstances of the present Case have not been shown to be such as to justify an exception to this principle. HNB agreed that the contracting party would be G.K.I.-Mobag and could expect that it would have to look to this entity for payment. Mr. Buckamier's contractual claim against MIO has no basis in the record.

77. Mr. Buckamier has presented an alternative claim on the basis of the theory of quantum meruit, which bears similarity to the concept of unjust enrichment. Contending that "[d]uring 1978 and 1979, HNB rendered services and sold and delivered to Respondent Islamic Republic of Iran certain services and goods at Respondent's special request, the reasonable value of which Respondent agreed to pay to Claimant," Mr. Buckamier claims U.S.$12,589.85 under this

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(Footnote Continued)
Consulting Engineers, Inc., et al., Award No. 70-185-3, pp. 7, 9 (2 Sept. 1983), reprinted in 3 Iran-U.S. C.T.R. 270, 273-4 ("Chas T. Main").

heading. He arrives at this amount as follows. Under a sales representation agreement with Multi-Pak, HNB stood to make a sales profit of U.S.$840 per compactor. Over the fifty-one compactors delivered under the Contract, this would add up to U.S.$42,840. As HNB received only U.S.$24,854.50 over HNB's actual costs excluding profit, MIO allegedly still owes HNB the sum of U.S.$17,985.50. Mr. Buckamier's claim represents 70% of this amount.

78. It was G.K.I.-Mobag, and not MIO, that had undertaken the contractual obligation to pay HNB for the compactors. The evidence described in paragraph 74, supra, appears to indicate that the payments HNB did receive under the Contract had indeed been made by G.K.I.-Mobag. It is reasonable to assume that this general contractor in its turn was to be paid by MIO. Consequently, for his claim on the basis of quantum meruit to succeed, Mr. Buckamier must demonstrate to the satisfaction of the Tribunal not only that HNB had not been paid in full for the compactors, but also that MIO has not made corresponding payment to G.K.I.-Mobag. In the absence of such evidence, Mr. Buckamier's claim on this basis must fail also. Cf. American Farm Products, Award No. 356-190-2 at para. 10, reprinted in 18 Iran-U.S. C.T.R. at 179.

(ii) The TRC Contract

79. On 25 May 1977 HNB entered into a contract with TRC. TRC was the developer and general contractor for the Ekbatan project, a large Tehran housing development. According to the Claimant, the TRC Contract was one of three interlocking contracts concluded by TRC that together provided for the installation of trash compactor systems in each of the 282 residential towers at Ekbatan. The other two contracts were with Multi-Pak, the United States manufacturer of the compactors, and with Chutco, the Iranian company that was to

manufacture and install trash chutes to be connected to the compactors.

80. Mr. Buckamier contends that, pursuant to an exclusive sales representation agreement between HNB and Multi-Pak, HNB arranged for TRC to purchase 282 compactors from Multi-Pak. According to the Claimant, to lower the purchase price so that import duties would be less, the parties agreed to deduct HNB's sales commission on the sale from the price paid by TRC to Multi-Pak. Mr. Buckamier contends that, where the TRC Contract provided for an "advance payment" of U.S.$792.70 to be paid to HNB upon delivery of each compactor, this actually referred to the sales commission TRC thus agreed to pay to HNB. By amendment dated 15 March 1978, this amount was subsequently increased to U.S.$836.30.

81. HNB's task was to install the compactors and coordinate all three elements of the trash handling project. The Claimant contends that under the terms of the Contract, TRC would pay HNB an installation fee of U.S.$820.00 per installed compactor. The Contract further provided for the deduction of 5% from each payment thereunder as a guarantee fund. According to Mr. Buckamier, if HNB did not breach the Contract, these funds would be released to HNB six months after delivery of the compactors.

82. On 14 June 1977 a letter of credit in the amount of U.S.$1,237,698 was opened by Bank of Tehran in favor of Multi-Pak for the sale of the compactors. The Claimant has submitted a copy of this letter of credit as well as the pro forma invoice to which it refers. Notes on the letter's reverse side indicate that from 17 November 1977 until 8 September 1978 there were ten drawings under the letter in the total amount of U.S.$1,184,985. As confirmed by the affidavit by Multi-Pak's president O'Rourke, this implies that Multi-Pak shipped and was paid for 270 compactors.

83. Mr. Buckamier states that following the delivery of these compactors to TRC, "HNB Consultants did significant work and was entitled to specific amounts under its agreements with TRC." HNB did receive its sales commission in respect of the 270 compactors from TRC, the last such payment having been made in September 1979. Mr. Buckamier asserts that "[p]erformance under the three above-described contracts was proceeding normally until disrupted by the Iranian revolution and TRC's breach" and that "the political upheaval prevented further shipment of the last twelve compactors." According to the Claimant, even after TRC had come under the control of the Iranian government, he continued to deal with TRC's Mr. Fakhami, but the circumstances eventually forced Mr. Buckamier to depart from Iran in late November 1979.

84. Based on the work HNB allegedly had performed by then, as well as on TRC's alleged breach of the Contract, Mr. Buckamier presents a series of specific claims against TRC. First, he claims for the 5% allegedly withheld by TRC from the U.S.$836.30 that it paid to HNB for each of the 270 compactors. The Claimant asserts that under the Contract "this amount should have been returned to HNB six months after delivery." Mr. Buckamier's 70% share thereof is U.S.$7,903.04.

85. The second claim relates to wiring modifications allegedly made by HNB. According to Mr. Buckamier, when HNB attempted to install the compactors, he discovered that, due to a technical specification error made by TRC engineers, the compactors were wired for 220 volts and thus not suitable for the 380 volts system operating in Iran. Mr. Buckamier states that, following an oral request by Mr. Fakhami, he made the required modifications to the first twenty-nine systems. The Claimant seeks U.S.$2,537.50 as his 70% share of the amount outstanding for this work performed. He also seeks U.S.$3,795.75 as his share of the

profits that HNB would have earned if it had been allowed to perform the rewiring of the remaining 241 delivered compactors.

86. Mr. Buckamier further asserts that "[b]ecause of the chaotic state of TRC management during the revolution and under the revolutionary government, TRC had not been careful to store the compactors in a covered, secure area after delivery and prior to installation. Consequently, they had sustained considerable damage from the elements, vandals, and thieves." According to the Claimant, TRC's negligence caused HNB to expend over 241 man hours on repairing and replacing parts of the first twenty-nine systems. Submitting copies of the repair invoices sent to TRC for this work, Mr. Buckamier claims U.S.$2,153.16 as his share of the amount due to HNB under this heading. He further seeks U.S.$3,218.80 as his part of the profits HNB would have made from repairing the remaining 241 units "if TRC had not breached and had allowed HNB to completely perform under the contract."

87. The Claimant contends that, despite serious problems at the Ekbatan site, HNB managed to complete the installation of the first twenty-nine trash systems. As Mr. Fakhami confirms in a notarized statement, by the end of April 1979 these systems were fully operational. Mr. Buckamier's fourth claim is for U.S.$16,646, representing his share of the contractual installation fee due to HNB. The Claimant further contends that, had HNB been able to install the remaining 253 compactors, it would have earned additional installation fees under the Contract of U.S.$207,460. Based on a net profit to HNB of U.S.$160 per compactor, Mr. Buckamier seeks U.S.$28,336 as his share of the net lost profits.

88. Mr. Buckamier also claims U.S.$6,658.68 as the sales commission he would have earned had Multi-Pak been able to

deliver the final twelve compactors. The Claimant further seeks to be reimbursed for unpaid salary and loans allegedly made to HNB, which HNB would have repaid "out of the profits HNB would have earned under its contracts ... had the Iranian revolution not resulted in breach of those contracts by other parties."[4]

89. Denying that it ever prevented the delivery and installation of the compactors, TRC argues that Mr. Buckamier's allegations in this regard are incompatible with his claim that he repaired and modified a number of systems. According to the Respondent, no evidence has been produced to support the allegation that the Claimant's operations in Iran were forestalled. Asserting that Mr. Buckamier abandoned his work without being expelled, TRC argues that he is not entitled to any lost profits. It also notes that if the Claimant, as he himself contends, did receive the sales commission from TRC, there is no reason to believe that he was not also paid for any further work he may have done.

90. TRC points out that the amount withheld as performance guarantee was only refundable if HNB had satisfactorily completed its performance. The Respondent argues that the Claimant's allegation that the government of Iran prevented him from doing so is therefore incompatible with his claim for a refund of the guarantee funds. As to the modifications performed by HNB, TRC states that "no contract has been produced, nor any written instruction indicating the

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[4]The Claimant also contends that, because he procured the TRC order for Chutco, he had an agreement with Chutco's owner, Mr. Serafian, entitling him to 10% of Chutco's gross receipts. Based on the contract between TRC and Chutco, Mr. Buckamier calculates this share to be U.S.$140,719.94. Asserting that he was deprived of this interest through the revolution, he presents a claim for this amount against the Iranian government. As stated in paragraph 26, supra, however, the Tribunal rejects this part of Mr. Buckamier's claim for the procedural reasons set out in that paragraph.

consent or wish of T.R.C. has been presented. [T]herefore, the calculations made by Claimant at his will and the amounts he has sought in this regard are not to be given effect and are doomed to be rejected." The Respondent furthermore asserts that Mr. Fakhami, as he himself acknowledged in his testimony, as vice president of TRC's commercial department lacked the authority "to issue technical instructions for carrying out changes and modifications." Because allegedly Mr. Fakhami was dismissed by TRC following the revolution, TRC questions the reliability of his testimony.

91. Regarding the repairs, too, TRC contends that Mr. Buckamier did not operate pursuant to any contract. TRC states that, assuming that HNB undertook to install the compactors, the compactors were at the Claimant's disposal. Consequently, if they suffered damages, it was HNB's responsibility to repair the systems at its own cost.

92. As to Mr. Buckamier's claim for installation fees in respect of twenty-nine compactors, TRC contends that "no such units were ever delivered to Claimant for installation to entitle Claimant to receive any payments in this respect." Submitting a copy of a contract between TRC and Chutco, TRC argues that it was this company, and not HNB, that had undertaken to install the compactors. At the same time, TRC presents a counterclaim in the amount of 969,622,500 rials against Mr. Buckamier for his share in the contractual delay penalties allegedly incurred by reason of HNB's failure to install 253 compactors.

93. TRC disputes the Claimant's contention that the parties to the TRC Contract intended the first installment thereunder to cover the sales commission payable to HNB. According to the Respondent, U.S.$792.70 was to be paid to HNB "as advance payment after delivery of each compactor, the balance being paid after installation of each set and

after approval by the employer of the correct operation." Contending that it paid 16,657,560 rials to HNB, TRC presents a second counterclaim for Mr. Buckamier's 70% share thereof in the amount of 11,660,292 rials. As TRC states, "[t]his he must refund, as he performed nothing to entitle him to be the recipient of the payment."

94. In explanation of its third counterclaim against Mr. Buckamier, the Respondent states that

> the amount of 5,856,699 rials is the payment made to the Bank in respect of the amount referred to in [the] preceding paragraph above, as the guaranteed profit and fees payable by T.R.C. from the total amount of Rials 8,366,713, as 70 per cent share of Mr. Buckamier. This amount Mr. Buckamier is required to return.

Finally, TRC seeks interest on the amount of its counterclaims and requests reimbursement of the legal costs it has incurred in the present Case.

95. The Tribunal first addresses Mr. Buckamier's claims for lost profits. The basis for these claims is his contention that TRC breached the Contract and thus prevented him from earning these amounts. The Tribunal notes that the record contains little direct evidence of any fundamental breach, however.[5] Where Mr. Buckamier speaks of political upheaval, disruption, difficulties, delays and mismanagement, his pleadings convey the impression that what he actually describes is the adverse influence of the Iranian revolution on the parties' performance of the TRC Contract. The Claimant has not evidenced any specific instance in which

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[5]The most specific allegation made by the Claimant is that he and HNB "were barred from the job in the Spring of 1979 and not allowed to return." Mr. Buckamier insufficiently documents TRC's role in this regard, however. The Tribunal notes his statement that TRC paid him amounts due under the Contract as late as September 1979.

that influence does not qualify as force majeure within the parties' contractual relationship.[6] Consequently, the Tribunal dismisses Mr. Buckamier's claims for lost profits under the TRC Contract. For the same reason, the Tribunal rejects his claims for unpaid salary and outstanding loans and for commission over the twelve compactors that remained undelivered. As the Claimant himself states, it was "political upheaval [that] prevented further shipment."

96. Mr. Buckamier's claim for modification fees for twenty-nine compactors raises the question which party bore responsibility for the incorrect specification of the systems. Although the Contract states that HNB was to install the compactors according to the descriptive plan and technical specifications suggested by HNB, the Claimant maintains that the specification error was made by TRC engineers. In response to a question by the Tribunal, Mr. Buckamier explained that he gave a copy of the compactor data to TRC's engineers, who then sent their own specifications directly to Multi-Pak in the United States. At the Hearing the Respondent acknowledged Mr. Buckamier's account of the event, which appears further confirmed by a letter from HNB to TRC dated 17 March 1979 stating that "[t]he TRC/Ekbatan specification 11B-2 was sent to Multi-Pak Corporation." The Tribunal is satisfied, therefore, that the specification error is attributable to TRC.

97. The second issue is whether the modification work was undertaken as a result of an agreement to that effect between HNB and TRC. Mr. Fakhami has testified that "[i]t was impossible to get the TRC Management approvals to issue a new Contract to HNB to do the Modification Work, so I

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[6] When asked at the Hearing which specific actions on the part of TRC prevented HNB from installing the compactors, Mr. Buckamier replied that TRC was hit by strikes and did not provide any further work to HNB.

asked HNB if they would do the Work and that TRC would pay HNB later when Management approval could be obtained." Although Mr. Fakhami's explanation suggests that management approval was a mere formality and later testimony provided by him suggests that he was in a position to authorize payment, this statement compels the conclusion that the modification request made by Mr. Fakhami did not create a contract between TRC and HNB.

98. In view of the foregoing, the question arises whether the Claimant can recover on the alternative basis of unjust enrichment. As the Tribunal has stated in Sea-Land Service, Inc. and The Government of the Islamic Republic of Iran, et al., Award No. 135-33-1, p. 28 (22 June 1984), reprinted in 6 Iran-U.S. C.T.R. 149, 169 ("Sea-Land"), to have recourse to this principle,

> [t]here must have been an enrichment of one party to the detriment of the other, and both must arise as a consequence of the same act or event. There must be no justification for the enrichment, and no contractual or other remedy available to the injured party whereby he might seek compensation from the party enriched.

99. In Lockheed Corporation and The Government of Iran, et al. ("Lockheed"), in which case also the claimant had performed work without a contract, the Tribunal applied the same test. It concluded that

> any benefits which may have been received by the [respondent] were conferred by [the claimant] at its own peril. By unilaterally deciding to continue the service without first arranging alternative payment arrangements with the [respondent], [the claimant] accepted the risk that it might encounter difficulty in recovering payment. Although such continued performance may have represented a sensible commercial decision, it is nonetheless clear that, while [the claimant] was aware of the risks during the months its performance continued, it took no action to resolve the matter with the [respondent] until after its performance ceased. It may not now avoid the adverse consequences of the risk it

> voluntarily undertook by claiming it was unjust for the [respondent] to have received the benefit of the service, which there is no evidence the [respondent] requested.

Award No. 367-829-2, para. 63 (9 June 1988), reprinted in 18 Iran-U.S. C.T.R. 292, 309-10.

100. The Tribunal notes that in Lockheed, the claimant, in the hope that its contract would be renewed, continued to perform work even though the contract pursuant to which it had previously assisted the respondent had expired. By contrast, in the present Case it appears that HNB undertook the extra work because the specification errors otherwise would have prevented it from fulfilling its obligations under the TRC Contract, which at that point was still in force. Had the Contract already ceased to exist, HNB would have had to face the adverse consequences of a risk it took voluntarily. In the present circumstances, however, considering TRC's expectations within its contractual relationship with HNB, the Tribunal finds it reasonable that HNB is paid for its modification work in respect of the first twenty-nine compactors.

101. That HNB did perform this work is not disputed. Mr. Buckamier has submitted copies of two invoices from HNB to TRC, the first one being dated 17 March 1979 and the second being undated, which describe the modification work performed and refer to "acceptance documents signed by the TRC Representative."[7] The total amount of HNB's invoices is

[7] The 17 March 1979 invoice states that HNB made the modifications using "a purchased 500 watt step-down transformer." The record contains a letter dated 21 November 1981 from Mr. Neirami to Mr. Buckamier indicating that TRC "have accepted to pay for the transformers." The Claimant's present claim relates to "the actual rewiring work;" as the Claimant states, "[t]he only cost incurred by HNB for this work was the technician's salary."

255,925 rials; the Claimant's 70% share is 179,147.50 rials. The Tribunal awards the Claimant the equivalent in United States dollars of this sum. Converted at the exchange rate of 70 rials per dollar, this amounts to U.S.$2,559.25. The Tribunal further determines that Mr. Buckamier is entitled to simple interest thereon at the rate of 10% per annum from 16 June 1979.

102. With respect to Mr. Buckamier's claim for repair fees, the Tribunal notes that the parties disagree as to whose responsibility it was to store and protect the compactors after they had been delivered to the site. The TRC Contract contains no provision on this subject. HNB's pro forma invoice dated 9 March 1977 states that, "[t]o cover all loses [sic] and damages, buyer will insure the goods from the country of origin to the EKBATAN job site." On the one hand, HNB's role as "project coordinator" and "total systems integrator" might be expected to encompass this responsibility. On the other hand, the size of the project, the involvement of numerous contractors and the central position occupied by the employer would make it reasonable to attribute the task of site security and insurance to TRC.

103. In the end, however, the Tribunal need not determine this issue, because it finds that, whichever party carried the responsibility to safeguard the compactors, the damages caused to them are reasonably attributable to force majeure. As described in invoices submitted by the Claimant dated 17 March and 16 May 1979, most of the damages were due to vandalism and theft. The strikes that broke out among TRC workers must have left the site abandoned for periods in early 1979.

104. As was the case with respect to the modifications, the repairs performed by HNB were a precondition to HNB's fulfillment of its obligations under the TRC Contract. It

is appropriate, therefore, that HNB be compensated for the work it has done for the benefit of TRC. The total amount of HNB's invoices is 228,650 rials. At the Hearing, the Respondent contended that the amounts paid by TRC to HNB included payment of these bills. The record of this Case contains no evidence of this contention, however. The Tribunal awards to the Claimant his 70% share of the amount invoiced. Mr. Buckamier is therefore entitled to U.S.$2,286.50. The Tribunal further decides that simple interest thereon is due at the rate of 10% per annum from 16 June 1979.

105. HNB's invoices for modifications and repairs and the explanations provided therein constitute contemporaneous evidence that, as claimed by Mr. Buckamier, HNB did complete the installation of the first twenty-nine systems. TRC contends, however, that it had awarded the job of installing the compactors not to HNB but to Chutco.[8] The Tribunal notes that HNB's initial proposal letter to TRC of 5 December 1976 identifies Claredj Co. Ltd. of Iran, Chutco's predecessor, as the company responsible for installation. The agreement between TRC and Chutco submitted by the Respondent is somewhat ambiguous in its description of Chutco's responsibilities. By contrast, the TRC Contract explicitly makes HNB "responsible for the operation of installing 282 compactors." The Contract's payment terms

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[8] In a letter to Mr. Buckamier of 9 April 1982 Mr. Neirami describes the reaction of Chutco's owner, Mr. Serafian, to this contention. According to Mr. Serafian, any such obligation "has been inserted in his contract by mistake. At the time of signing the contract he has mentioned it but they have ignored it and have told him it was not important.... he explained that the installation means the connection between the compactor and the shoots [sic] and I brought up our own company's contract.... Of course the breakdown of the prices can help him which does not show the installation expenses in his contract."

also make reference to the installation of the systems. It appears unlikely that HNB would have performed that work if that had been TRC's obligation. The Tribunal furthermore notes that HNB's proposal letter of 5 November 1977 relating to the MIO project also refers to the installation by HNB of 282 compactors in the Ekbatan project. Also, the Respondent's counterclaims for delay penalties and for a refund of payments made to HNB are based on the premise that HNB contractually was responsible for the installation.

106. Weighing these considerations, the Tribunal is satisfied that HNB performed its work pursuant to the TRC Contract. Noting the references in HNB's invoices to the acceptance of the systems by the TRC representative, the absence of evidence of complaints by TRC, and Mr. Fakhami's confirmation that the systems were fully operational, the Tribunal determines, therefore, that the Claimant is entitled to payment in accordance with the Contract. Based on the amount of U.S.$820 per compactor, Mr. Buckamier's total share consists of U.S.$16,646. The Tribunal further awards simple interest on this sum at the rate of 10% per annum due from 16 June 1979.

107. TRC's counterclaim for a refund of Mr. Buckamier's share of the monies paid to HNB requires an investigation of the basis for these payments. The Respondent disputes the Claimant's assertion that these were made as a cost-efficient way to pay the sales commission due to HNB on the sale of the compactors. As TRC argues, "advance paymetn [sic] and wages are two different matters and one may not use advance payment in place of wages or vice versa, each having its own legal definition and is not interchangeable with the other."[9] The Contract does indeed provide that, as each

[9]The Tribunal notes that at the same time, the
(Footnote Continued)

compactor is delivered, the first installment is paid to HNB "for installing as an advance payment."[10] On the other hand, as indicated in the following paragraph, the record also contains strong evidence of the purpose of the payments as described in the affidavits of Mr. Buckamier and Multi-Pak's Mr. O'Rourke and in Mr. Fakhami's statement -- an explanation that appears consistent with HNB's role as initiator of the sale and coordinator of the project.

108. For example, HNB's proposal letter of 5 December 1976 describes the planned invoicing procedure as follows:

> By the method of invoicing chosen by HNB Consultants, considerable savings can be obtained by TRC. Multi-Pak has agreed to invoice for only their manufacturing costs plus overhead, with their C&A costs and profit being handled after the unit is imported. All the other costs that normally would be included in the state-side invoice, such as distributor costs, finance charges, etc. will be handled after the unit is imported. This will result in a two stage invoicing for the payment of the compactor[.]

HNB's pro forma invoice also distinguishes between the purchase price of the compactors and the post-delivery costs covering "[i]nstallation, other Iran incurred charges and support products." The installation price mentioned in HNB's proposal letter as confirmed by several other documents in the record matches the amount of the second installment under the TRC Contract. The Tribunal further

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(Footnote Continued)
Respondent, discussing the O'Rourke affidavit, points out that Mr. O'Rourke has admitted that, in the words used by the Respondent itself, "the sale commission relating to 270 machines was paid by T.R.C. to Mr. Buckamier."

[10] Similarly, in a letter to Mr. Buckamier of 25 June 1982, Mr. Neirami states that "they have paid us more than 15 million Rls as advance payment for installing the compactors." In the same letter, though, he also defends the installation fee as not being "too expensive" because HNB had not received any commission payment from Multi-Pak.

notes that, although the circumstances had prevented the installation of a single compactor since HNB had completed the installation of the first twenty-nine systems in the spring of 1979, TRC continued to pay the first installment to HNB until the final delivery in September of that year.

109. Weighing all the foregoing factors, the Tribunal accepts that the first installment was intended to cover the sales commission earned by HNB. The fact that -- unlike what the Claimant and Mr. O'Rourke implicitly suggest -- the conclusion of the TRC Contract actually preceded the signing of HNB's sales representation agreement with Multi-Pak is not incompatible with this notion; the record contains ample evidence that HNB's proposal and conclusion of the TRC Contract were based on arrangements Mr. Buckamier had made with Multi-Pak. In conclusion, because the compactors in respect of which TRC paid a sales commission to HNB were delivered, the Tribunal denies TRC's counterclaim for a refund of Mr. Buckamier's share of those payments.

110. Mr. Buckamier argues that the Tribunal, in addition to rejecting TRC's counterclaim for the sales commission payments, should order TRC to release the 5% of those amounts withheld by way of guarantee. As the Claimant states, "[p]ursuant to Article 4 of the contract, this amount should have been returned to HNB six months after delivery." More specifically, Mr. Buckamier asserts that "[t]his money was to be returned to HNB Consultants after the compactors were physically present at the job-site for six months, not six months after installation."

111. The Tribunal finds, however, that the Claimant's argument is predicated upon an inaccurate translation of the Contract. As translated by the Tribunal's Language Services Division, the warranty under article 4 covers the proper performance of all the works and not just the compactors from the time of their delivery to the site. Such a

rendition clearly makes more sense than the one offered by the Claimant: it enables the purchaser to test the systems before the warranty expires, and encompasses not just the physical delivery but also the contractually agreed installation of the compactors. Bearing in mind that the argument advanced by Mr. Buckamier is conditioned upon an incorrect explanation of the Contract, the Tribunal under the particular circumstances of this Case finds it appropriate to reject his claim for his share of the retention funds.

112. The Tribunal also denies TRC's counterclaim for delay penalties. Just as the Claimant's claims for lost profits must fail for the reasons set out in paragraph 95, supra, the Respondent has not established grounds that would justify an award on the basis of breach by HNB. Moreover, the Tribunal notes the absence of evidence of any contemporaneous objection by TRC. Finally, in view of the Tribunal's denial of the counterclaims, TRC's general claim for bank charges incurred in connection with the project must also be dismissed.

(iii) The Isiran Contract

113. The final agreement to be dealt with by the Tribunal is the contract HNB concluded with Isiran on 9 July 1978. Isiran (short for "Information Systems Iran"), an Iranian government agency owned by Iran Electronics Industries Corporation, provided computers, technical support, training and procurement to the Iranian Army. According to an affidavit submitted by Charles H. Hughes, a former director of Isiran's Contracts and Legal Division who was employed by Isiran from 15 May 1976 until 8 February 1979, Isiran functioned as the prime contractor for each branch of the armed forces, hiring subcontractors such as HNB to provide specific supplies, installation services, and technical expertise.

114. The services HNB was to supply under the Isiran Contract related to the so-called Computerized Automated Logistics System ("CALS") Project, which Isiran coordinated for the Imperial Iranian Ground Forces.[11] The Contract called for HNB to manufacture and install bins and racks and lighting systems in fourteen military warehouses located in or near the cities of Esfahan, Abyek, Maraghe, Kermanshah and Mashhad. The first five warehouses were to be completed by 28 November 1978, and the final ones by 28 April of the following year. The total amount of the Contract was 180,698,000 rials, 25% of which HNB was to receive as an advance payment against a bank guarantee to be provided by it. The remaining 75% percent were to be paid in accordance with the progress of the work. The Contract further provided for HNB to furnish a performance bond in the amount of 10% of the Contract value. In the event that HNB failed to complete its obligations, Isiran could cancel the Contract and defray its losses from this bond and from the bank guarantee.

115. According to Mr. Buckamier, having obtained the required performance bond on 2 July 1978, HNB obtained a line of credit to finance its investment in the Contract. This credit was secured by the advance payment of 45,174,500 rials, which Isiran had deposited into an escrow amount. HNB acquired new machines, leased and equipped a larger factory, developed tooling to produce bins and racks according to Isiran's specifications, and arranged for the purchase of steel and paint.

116. However, "[a]lmost immediately," the Claimant contends, "HNB's performance under the Isiran Contract was hindered

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[11] See also William Ray Hollyfield and The Islamic Republic of Iran, Award No. 446-10087-2, para. 3 (3 Nov. 1989), reprinted in 23 Iran-U.S. C.T.R. 276, 277.

and delayed by Isiran, the Iranian Army, and the Iranian government." As Army personnel allegedly had given the wrong keys to Isiran, HNB had to wait from 16 to 27 August 1978 before it could commence installation. The security officers at the base -- in breach of Isiran's oral assurances and contrary to its custom with other contractors, the Claimant asserts -- would not permit HNB workers to live on base during the installation, thus causing extra costs and reducing the productive time.

117. According to Mr. Buckamier, the political unrest and strikes occurring during that period also began to make working conditions difficult. The area in which HNB's Tehran factory was located was without electrical power from 12 September to 4 October 1978. Over the next four months, power was turned off at irregular intervals. As a result, HNB's manufacturing output was reduced to approximately 25% of its projected capacity. Power problems allegedly also affected HNB's installation of the bins and racks in the warehouses. The Claimant states that "[f]or virtually the entire period we were working at Abyek, from September 1978 through February 1979, there was no electrical power at all in warehouse number 23, the warehouse where we were working." This slowed HNB's assembly efforts and forced it to purchase portable diesel generators.

118. Mr. Buckamier further asserts that from December 1978 onward, HNB personnel were prevented by Army security and revolutionary guards from entering the Abyek base for extended periods of time. Next, according to the Claimant, following several attempts by HNB to obtain access and resume work, "on February 19, 1979 the revolutionary council barred us from entering the base, stating that a letter from the Prime Minister's office was required before we could return to work." In the meantime, allegedly acting pursuant to a government proclamation prohibiting the dismissal of workers, HNB continued to pay all of its employees.

119. HNB repeatedly requested Isiran to take the steps necessary to make work under the Contract possible. According to Mr. Buckamier, through the spring, summer and fall of 1979 his business partner Mr. Neirami and HNB's attorney Mr. Mirfakhrai visited the Isiran offices once or twice a week and wrote letters seeking permission for HNB to resume work. Specifically, HNB requested Isiran to issue a permission letter that the Army apparently required as a condition for allowing HNB access to the base. According to the Claimant, however, HNB "received no cooperation whatsoever." On 26 August 1979 Isiran responded to HNB's requests by informing HNB that the Army's requirements were undergoing a study and that HNB would be notified once a decision as to these requirements had been taken.

120. According to the Claimant, this pattern continued following his departure from Iran in November 1979. Mr. Neirami and Mr. Mirfakhrai made attempts to obtain remuneration for the work HNB had performed and to receive permission for HNB to resume the project. No such permission was granted, however. The status of the Contract remained unclear until 10 December 1980, when Isiran withdrew its advance payment by calling the bank guarantee provided by HNB. On 27 January 1981 Isiran sent a formal notice informing HNB that "due to unexplainable delays on your part the ... contract is considered void."

121. The Claimant argues that by acting in the manner described in the preceding paragraphs, Isiran breached the Contract. According to the Claimant, by the time Isiran refused to allow HNB to continue its performance, HNB had completed 40% of the lighting installation at twelve of the fourteen warehouses and had installed bins and racks in the Abyek warehouse. HNB allegedly had spent U.S.$ 1,071,195 on the factory lease, the purchase of equipment and raw materials, labor and administrative costs, as well as lighting installation. Mr. Buckamier claims his share of

these expenses. He also claims his part of the profits lost as a result of Isiran's alleged breach, which loss he calculates to be U.S.$256,000, as well as the salary that Isiran's breach prevented him from earning. In addition, the Claimant seeks interest on the amount of his claim at the rate of 12% per annum.

122. Isiran contests that it denied HNB access to the site and that it refused to extend cooperation to HNB. It states that "[a]s a matter of principle, ISIRAN never breached the mutually concluded Contract 002 which ... was in fact, violated by HNB." Isiran argues that, based on HNB's alleged breach of the Contract, Isiran was fully entitled to withdraw its advance payment and terminate the Contract.

123. As a preliminary point, the Respondent contends that the Contract "was not concluded in a healthy manner as it normally should be." In support of this contention, Isiran refers to "[t]he manner in which a contract was entered into between an association, which, at the time of concluding the said contract, was considered as non-profit and of educational and consulting character," and to "the inability or lack of possibilities of the above-mentioned Association in carrying out the operations under the contract at the time of signing thereof." According to Isiran, "[a]n association which was non-commercial and whose objective was providing counselling, could not and had not the right to assume executive work."

124. The Respondent asserts that HNB failed to provide the contractually required performance bond.[12] Isiran states

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[12]The Claimant maintains that HNB did submit the required guarantee, but that Isiran later returned it. The Tribunal notes that the parties contemplated the provision of this bond to be a precondition to the Contract, which
(Footnote Continued)

that "[s]ubsequently, and after much delay, HNB sent to the site at Abyek certain qualities of ironwares and basis tools required for carrying out the works." The Respondent disputes Mr. Buckamier's assertions regarding the extent to which HNB had managed to complete the work. In fact, Isiran contends, "HNB not only failed to complete and deliver even one of the 5 warehouses, but also was unable to ship the requirement[s] and new materials for shelves and lighting system to Maragheh, Esfahan, Mashhad and Kermanshah." Even if the claim of having invested significant amounts in the Contract is presumed to be true, that "could be taken as ... evidence of HNB's poor ability and preparation and lack of resources at the time of concluding the Agreement and the[r]eafter."

125. In Isiran's view, HNB does not have a valid excuse for its incomplete performance. The Respondent notes that the contractually envisaged "completion and delivery date preceded the success of the Islamic Revolution of Iran by at least 2½ months and up to that date no complaint or grouse had been voiced by HNB in respect of any alleged working problem;" "at least until 27 April 1979," the Respondent asserts, Mr. Buckamier had "given no notice of the existence of any operational difficulties." As to a letter from HNB to Isiran dated 25 February 1979, of whose existence Isiran claims only to have learned when the Claimant filed it in this proceeding, Isiran argues that its text merely confirms that at least until 25 February 1979 HNB encountered no difficulties in the performance of its contractual activities. The Respondent contends that the Claimant has not presented any evidence in support of his claim that HNB was denied access to the warehouses. Isiran further asserts that it had never undertaken to provide accommodation for

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(Footnote Continued)
Isiran proceeded to sign. There is no evidence of any subsequent protest by Isiran either.

HNB personnel. Likewise, it points out that the Contract does not include a commitment for the employer to provide electrical power.

126. The Respondent contests Mr. Buckamier's assertion that it refused to respond to requests for cooperation under the Contract. According to Isiran, considering the obligations set forth in the Contract and the delays in performance, there were no terms to address HNB's requests of 25 February and 27 April 1979 relating to residence of the workers, taxes on the Contract, and reimbursement for materials. As to the letters submitted to Isiran by Mr. Mirfakhrai, while admitting its receipt of these communications, Isiran argues that since Mr. Mirfakhrai "failed to present any power of attorney indicating that be [sic] genuinely represents HNB, it is only natural that ISIRAN should not be able to respond to his requests." According to Isiran, "even HNB never introduced the said gentleman to ISIRAN as its representative." As to the letters sent by Mr. Neirami, Isiran notes that the first was sent one month after expiry of the time limit for completion of the Contract. The Respondent also states that "at an unspecified date in early 1358 (Iranian year equivalent to the year starting on 21 March 1979), HNB changed its statutory address without informing ISIRAN of the same. As a result ISIRAN was practically deprived of the possibility of conveying its letter."

127. Isiran remarks that if it "intended to unilaterally revoke or cancel the contract, it could have cancelled the contract and demanded late delivery penalties one month after the Claimant's failure to undertake its obligation by relying upon Article 8 of the Contract." Rather, Isiran states, it "postponed action on cashing the bank guarantees until 10 Dec. 1980. But in the face of [HNB's] conspicuous failure to deliver the contracted services, [there] remained no reason for it." The Respondent states that ultimately it

settled its financial dispute with HNB through the settlement agreement of 8 September 1983 discussed in paragraphs 52 through 55, supra. Isiran notes that pursuant to this agreement it handed over all of HNB's equipment and materials to Mr. Neirami. In the present proceedings, Isiran claims compensation of its legal costs.

128. The parties' dispute thus centers on the performance of the Contract, with Isiran and Mr. Buckamier (HNB) each accusing the other of having breached its obligations. Before investigating this issue, however, the Tribunal must address the preliminary arguments the Respondent has advanced with regard to the conclusion of the Contract. Isiran argues that HNB, considering its status "as non-profit and of educational and consulting character," was not entitled to enter into such a commercial transaction. Moreover, Isiran suggests that HNB was undercapitalized and thus "could not reasonably assume the responsibility" connected with the Contract.

129. Isiran thus appears to suggest that the Contract was invalid. The Tribunal notes that the Respondent has not explained any basis in law for this conclusion. In the absence of such an explanation, Isiran's contention remains a mere suggestion. Moreover, Isiran conducted itself in a manner that indicates that it considered the Contract to be valid. When it entered into the Contract, in all likelihood Isiran was, and clearly should have been, aware of HNB's status. In a letter to Isiran of 27 June 1978 Mr. Buckamier offered to contract through a commercial company affiliated to HNB rather than through HNB itself. The Contract refers to HNB's non-commercial character and its corporate registration number. By signing the Contract Isiran may therefore be deemed to have waived any objection it may have had against HNB's status. Isiran's transfer of the advance payment and its subsequent facilitating of HNB's work confirm this conclusion. See also R.N. Pomeroy, et al. and

Government of the Islamic Republic of Iran, Award No. 50-40-3, p. 17 (8 June 1983), reprinted in 2 Iran-U.S. C.T.R. 372, 380 ("Pomeroy").

130. Having thus decided the preliminary issue raised by the Respondent, the Tribunal now turns to the question of the parties' performance under the Contract. In addition to denying the Claimant's contentions of breach, Isiran argues that it was in fact HNB that breached its obligations under the Contract by failing to complete the work in accordance with the delivery schedule. Thus, the Respondent implies, when HNB made its requests for cooperation HNB itself was in default. Isiran notes that it could have claimed delay penalties long before it eventually terminated the Contract.

131. While he does not dispute that HNB's performance did not meet the contractual schedule and eventually remained incomplete, Mr. Buckamier disclaims any responsibility on the part of HNB in this regard. In addition to the factors that Mr. Buckamier attributes to Isiran mentioned in paragraphs 116 through 119, supra, the Claimant cites political unrest, strikes and power failures as causes for the delays incurred from late 1978 through the beginning of 1979. In a letter to Isiran's managing director dated 3 December 1980 HNB's attorney Mr. Mirfakhrai also invoked force majeure. Under the heading "Force majeure arising from general strikes in the year 1357" this letter, as translated by the Tribunal's Language Services Division, states as follows:

> Circular No. 1-104415-4-247 dated 23.4.79, issued by the Plan and Budget Organization (copy of which is attached herewith) confirms that the operation of contracts had come to a halt throughout the country during the second half of the year 1357, both in the public and private sectors. In case the application of the 6 month extension of it to H.N.B.'s contract is disputed by the honorable employer, the said circular at least suggests that a state of force majeure affected the execution of the contracts throughout the country, including

> the contract at issue. Furthermore, the provisions of the statutory bill concerning the extension of the domestic contracts of the Iranian Islamic Republic Armed Forces apply to all the contracts concluded in the year 1357 and implicitly confirm the force majeure situation which resulted in non-performance and untimely delivery of the work in the year 1357. In view of the foregoing, such delay in the delivery of the subject-matter of the contract, for being outside the contractor's will to fulfil its obligations, falls within the scope of article 13 of the contract which is binding upon both parties.

132. Mr. Mirfakhrai's description is consistent with the general picture of disruption that characterized Iran in the months leading up to the success of the revolution. See William J. Levitt and Islamic Republic of Iran, et al., Award No. 520-210-3, para. 102 (29 Aug. 1991), reprinted in -- Iran-U.S. C.T.R. --, -- ("Levitt II"), citing Sea-Land, Award No. 135-33-1 at p. 22, reprinted in 6 Iran-U.S. C.T.R. at 165. As the Tribunal noted in Gould Marketing, Inc. and Ministry of National Defense of Iran, Interlocutory Award No. ITL 24-49-2, p. 11 (27 July 1983), reprinted in 3 Iran-U.S. C.T.R. 147, 152-53, by December 1978, strikes, riots and other civil strife in the course of the Islamic revolution had created classic force majeure conditions at least in Iran's major cities. See also Amoco International Finance Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 310-56-3, para. 81 (14 July 1987), reprinted in 15 Iran-U.S. C.T.R. 189, 212.

133. The Respondent nevertheless maintains that HNB lacks a valid excuse for the initial delays incurred. As noted in paragraph 125, supra, Isiran contends that the contractually envisaged completion date preceded the culmination of the revolution by more than two and one-half months and that at least until 27 April 1979 HNB had not reported any difficulty. Neither of these contentions is correct. The completion schedule indicates -- see paragraph 114, supra -- that the dates for delivery of the systems fell well within what the Tribunal has previously identified as "the very

period of foment and disorder which preceded and accompanied the Revolution." Sea-Land, Award No. 135-33-1 at p. 24, reprinted in 6 Iran-U.S. C.T.R. at 166. See also Touche Ross & Company and The Islamic Republic of Iran, Award No. 197-480-1, p. 14 (30 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 284, 295; Anaconda-Iran, Inc. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 65-167-3, para. 50 (10 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 199, 213.

134. The record also indicates that HNB regularly contacted Isiran about the difficulties encountered in performing the Contract. Its letter to Isiran of 25 February 1979 states that HNB "has been in daily verbal contact with [Isiran's] Mr. Khaladi for the past several weeks. Per his instructions, we have been standing-by waiting for the instructions to return to work." The letter further notes that "[w]hen the contract continues, we will make-up these and the considerable other extra costs that we have sustained during these troubled times," and that "[d]ue to the political unrest, we did not send our electricians to the (1) ambar at Kermanshah and the (1) ambar at Mashah." Another letter from HNB to Isiran submitted by Mr. Buckamier, dated 27 April 1979, contains similar references, mentioning "the serious difficulties experienced by HNB Consultants due to the political problems of the past eight months" and "the many and obvious external problems that HNB has experienced performing to Contract ≠002."

135. HNB's contemporaneous notices find confirmation in the testimony provided by former Isiran employee Hughes, whose affidavit includes the following statement:

> In my judgment, the Iranian revolution began on September 8, 1978, when martial law was declared. There had been some social and political unrest for the eight preceding months, which began to cause difficulty in normal business operations. The situation immediately increased in intensity upon declaration of martial law, including strikes

> and mass demonstrations.... I was aware that work disruptions were occurring on many of the ISIRAN projects, including CALS, during the fall of 1978. These disruptions were due to strikes, demonstrations, power outages, and other events directly related to the political unrest.

136. Considering the foregoing, the Tribunal finds that the force majeure conditions prevailing in Iran during the second part of 1978 and the first part of 1979 affected HNB's performance of the Contract. In view of the fact that HNB discussed these problems with Isiran, the total absence from the record of any contemporaneous complaint by Isiran about delays further appears to confirm the validity of Mr. Buckamier's claim of force majeure.[13]

137. Having addressed Isiran's argument that HNB was the party in default, the Tribunal proceeds to investigate the Claimant's allegations of breach. While some of these regard issues that may be considered of dubious consequence within the parties' contractual relationship, such as Isiran's refusal to let HNB's workers reside on base and its failure to provide electrical power in the warehouses[14], the essence of Mr. Buckamier's contentions is that Isiran refused to allow HNB to perform. The most relevant claim in this regard is his assertion that Isiran denied HNB access to the work site, an assertion that the Respondent denounces as a "total fabrication." Accordingly, the following investigation of the record concentrates on this issue.

138. HNB's letter to Isiran of 25 February 1979, which discusses the status of the project, concludes that "HNB

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[13]The first communication in the file in which Isiran expresses any dissatisfaction is its termination notice dated 27 January 1981.

[14]Services that, as the Tribunal notes, the Contract by its terms did not require Isiran to provide.

Consultants is standing-by anxiously awaiting ISIRAN's instructions to resume work on the referent contract." The next letter in the record, HNB's communication of 27 April 1979, refers to a meeting between HNB, Isiran and Army representatives. According to the letter, the purpose of this meeting was "to request permission for HNB personnel to enter the Abyek base to continue the assembly of warehouse bins/racks/lighting in warehouse ≠ 23." HNB informed Isiran that "Lt. Col. Adamian granted the verbal permission to return to work and he assured HNB that our assembly people can work from 7AM to 7PM, seven days per week." The letter further notes that "HNB was making satisfactory progress until our personnel were ordered to leave Abyek immediately after the revolution. We are pleased that we can now return to work."

139. Apparently Isiran did not respond to these letters. On 1 June 1979 HNB wrote to Isiran, as translated by the Tribunal, as follows:

> I respectfully refer you to our letters No. 250279 dated 25.2.1979 and No. 042779 dated 27.4.1979 concerning the impossibility of continuing with the work in Abyek for the reasons stated in those letters. Owing to the undue lapse of time since those letters were sent to ISIRAN, and since you have taken no action on our requests and have to date not even responded to our letters, you are requested not to cause any further damage to this company, and to issue proper instructions that the necessary steps be taken for the removal of those obstacles so that the work may be continued. Please advise us of the results.

After this notice went unanswered as well, HNB's next reminder, a letter of 13 August 1979, was worded in more specific terms. Translated by the Tribunal, it reads:

> In reference to our request no. 42780 dated 1 June 1979 concerning facilitation of performance on the Contract concluded on 2 July 1978 between our Company and ISIRAN, which matter was also raised orally in discussions that took place with you in the presence of Dr. Mir-Fakhrai, the attorney for

> our Company and Mr. Ahmad-zadeh, the Director of ISIRAN's Legal and Contracts Division, you are hereby informed that because ISIRAN has not taken any action to this effect for eight months, we were unfortunately obliged to go directly to the Commander of the Abyek Garrison, Colonel Tahmasp, once more and also to Lieutenant-Colonel Daftarian, the person responsible in this connection. Despite the pressing need which the said Garrison has for provision of shelving in the warehouses which are the subject of the Contract, the written authorization of your Company is deemed necessary for continuation of our Company's work. Therefore, we have notified you once more of this matter in order that the pertinent letter of authorization can be issued. We request that you inform this Company of the results of your actions.

140. On 26 August 1979 Isiran's Contracts and Legal Division finally replied to HNB (as translated by the Tribunal) that

> the needs and requirements of the Islamic Republic Army and other branches of the armed forces are undergoing a general study, and to date there has been no announcement as to the requirements for the coming program. You will certainly be notified promptly, once we have received word in this regard.

The next correspondence between HNB and Isiran in the record is a letter by Mr. Mirfakhrai of 1 June 1980, whose text, as translated by the Tribunal, is as follows:

> Despite our repeated written and verbal requests in the sixteen months since the Revolution that the esteemed Director and other officers of ISIRAN make a decision on the status of contract No. 002 dated 2.7.78 concluded between ISIRAN and my client, H.N.B. Company, unfortunately no results have yet been achieved. Although there are no specific provisions in the contract for dealing with such negligence on the part of the employer, it cannot be imagined that the continuing injury inflicted on my client as a result of ISIRAN's refusal to decide my client's status can be justified within the context of the country's general principles of law.
>
> Therefore, given the fact that the Ground Forces Logistics Command has expressly stated that they need the shelves to be installed in the warehouses

> as provided under the contract, and further, the invalid excuse mentioned in letter 1-103-6Q/10500 dated 26.8.1979 has been eliminated, you are kindly requested to dispose of the status of the contract, whether the decision be positive or negative, and to advise us of the results as soon as possible.
>
> Respectfully yours,
>
> (Signed)
> A.M. Mirfakhrai, Ph.D.
> Attorney to H.N.B. Company

141. By letter of 16 September 1980 Mr. Neirami updated Mr. Buckamier on the status of the project, stating in relevant part:

> Concerning racks and bins, we have not been sitting idle. We have had many meetings but all of them were, more or less, waste of time. The answer is that they've spent all their budget including ours on other projects. Now they do not have one single cent, and there is nobody to have enough guts to make a decision. I, personally, believe with present atmosphere they have no choice but to cancel the contract.

142. The next communication in the record is Mr. Mirfakhrai's letter to Isiran's managing director of 3 December 1980, which includes the reference to force majeure cited in paragraph 131, supra. Mr. Mirfakhrai's letter, which takes the form of a report expressing "the contractor's main view points and the factors contributing to the stoppage of work," opens by stating that "as you are aware, the H.N.B. Company, the party to the contract 002 dated 2.7.78, has been continuously insisting on fulfilling its obligations for over 21 months." Addressing Isiran's alleged refusal to let HNB resume work under the Contract, the report states, inter alia:

> Since ISIRAN is fully aware of the details of its refusal to issue the required permit for the resumption of the subject-matter of the contract, despite the contractor's repeated demands and daily pursuit of the matter, and that fact is clearly reflected in the records of ISIRAN,

> Ministry of Defense and the Logistics Command, we do not deem it necessary to discuss this issue in details.
>
> As a reminder, I only submit that the contractor's first written request in this respect was filed with ISIRAN on 25.2.79, that is, immediately after the Revolution and even before the end of the year 1357. Our second and third requests were submitted to ISIRAN on 27.4.79 and 3.6.79 respectively, and after the receipt of the written reply no. 103-6/gh/10500 dated 26.8.79 (copy of which is attached) to the effect that a decision on the matter had been postponed until an unforeseeable future, we sufficed to pursue the subject verbally, as is reflected in the records.

Summarizing HNB's position on this issue, Mr. Mirfakhrai states:

> I believe you would appreciate that the non-performance of the contract subsequent to the removal of force majeure, as stated above and evidenced by other probative documents, was due to the employer's refusal to issue the required permit for the resumption of the unfinished work, and that the contractor had no role but to wait and incur increasing losses.

The report concludes by requesting Isiran to consider the situation and to take appropriate measures "so that any losses to the parties to the contract can be avoided."

143. Following its withdrawal of the advance payment on 10 December 1980, Isiran by letter dated 27 January 1981 informed HNB that "due to unexplainable delays on your part the ... contract is considered void." A letter by Mr. Neirami to Mr. Buckamier of 6 March 1981 describes this cancellation in the following terms:

> Unfortunately Isiran cancelled our Racks and Bins cotract [sic] after so much efforts exerted by all of us. Their claim for cancellation has no ground and basis.... As you are aware with some parts of our negotiation we had many sessions with them. A few months ago some of the directors were changed and it was very difficult to negotiate. Their biggest problem was the lack of money and they needed every penny of it. We had come to this

> conclusion no matter how hard we work on it they are going to cancel the contract because they needed the money badly and all of our reasoning couldn't help us a bit.... the problem was that Isiran had no budget or funds for the contract to be restarted. The atmosphere in the country persuaded them to encourage them to cancel the contract.

As to the timing of Isiran's termination, Mr. Neirami informed Mr. Buckamier that

> [t]hey cancelled the contract on January 27, but we were notified a week ago. The reason was that they had sent the cancellation letter to our company's previous address, although we had notified them to correspond with us through our P.O. Box as far as I remember. When their registered letter was returned they let us know by telephone. During all this time we were talking to them, but it looks like another department had done this or at least they claim so.

144. In the Tribunal's opinion, the evidence cited in the preceding paragraphs establishes that Isiran deliberately denied HNB access to the work site. The Respondent has not submitted any evidence contradicting this finding. Isiran not only failed to allow HNB to resume work, but also did not respond to most of HNB's requests.[15] Even after HNB specifically had informed Isiran that the Army required Isiran's written permission for HNB to restart the project, the Respondent continued to withhold its consent. When HNB subsequently requested Isiran at least "to dispose of the status of the contract, whether the decision be positive or negative," Isiran still kept HNB on hold, until it finally sent its termination notice early in 1981.

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[15]The Respondent's argument regarding Mr. Mirfakhrai's status is not persuasive. Apart from the fact that HNB's requests were also made through Mr. Buckamier and Mr. Neirami, if Isiran had any reason to question Mr. Mirfakhrai's authority, it should have verified its doubts with HNB, rather than keeping it in the dark.

145. By denying HNB access to the site, Isiran clearly breached the Contract[16]. This breach was of material consequence for HNB, because it deprived it of the opportunity to perform its part of the Contract. The Tribunal therefore finds that, even if the parties continued to discuss the status of the Contract and the advance payment was not withdrawn until December 1980, the Respondent's persistent refusal to allow HNB to resume work, rendering further performance impossible, effectively amounted to termination of the Contract. See William J. Levitt and The Government of the Islamic Republic of Iran, et al., Award No. 297-209-1, para. 39 (22 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 191, 203 ("Levitt I"). The exact date by which Isiran's breach had ripened into termination of the Contract is difficult to identify. Taking into account all relevant circumstances, the Tribunal determines that the Contract may be considered to have come to an end by 1 January 1980.

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[16] While in his pleadings the Claimant does not contemplate the possibility of force majeure having affected Isiran's performance, in his report of 3 December 1980 Mr. Mirfakhrai appears to suggest that an order issued by the Ministry of Defense prevented Isiran from granting the requested permission. The Tribunal notes that the Respondent itself does not invoke force majeure to explain its refusal to allow HNB to perform the Contract; it simply denies ever having refused HNB access. Consequently, the Tribunal need not determine whether, if at all, a military entity could validly invoke an order issued by the Ministry of Defense as an excuse for the non-performance of its contractual obligations; and, if it could, whether, considering in particular HNB's letter to Isiran of 13 August 1979, such an impediment existed in the present Case. Cf. Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1, p. 20 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 312 ("Sylvania"). Mr. Mirfakhrai notes that, in any case, any such obstacle "had been removed on 22.12.79 by the said Ministry through its letters No. 2/204-56-52 dated 27.11.79 and 2-204-56-66 dated 22.12.79."

146. Having breached its contractual obligations, causing the premature termination of the Contract, Isiran is liable to compensate the damages incurred by the Claimant as a result. It is undisputed that, other than the advance payment it later withdrew, Isiran did not reimburse HNB for the work it performed. The Claimant therefore is entitled to his share of the amount HNB has invested in the Contract and the profits it has lost.

147. According to Mr. Buckamier, expressed in United States dollars[17], this investment was as follows. HNB spent U.S.$175,000 on the purchase of equipment and machinery; U.S.$25,210 for their installation in the plant; U.S.$38,810 for tooling to develop the systems; U.S.$104,250 for steel and U.S.$21,955 for paint necessary to manufacture bins and racks; and U.S.$2,055 to transport these to the site. The Claimant also alleges labor costs of U.S.$132,155; accommodation expenses of U.S.$1,275; U.S.$114,925 in lighting installation costs; and indirect expenses amounting to U.S.$455,580.[18] The Claimant contends that HNB was deprived of profits in the amount of U.S.$256,000.[19]

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[17]Based on the exchange rate of 70.6 rials to the dollar.

[18]The sum of these expenses is thus U.S.$1,071,215, rather than the figure claimed by Mr. Buckamier mentioned in paragraph 121, supra; that figure is based on the erroneous subtotal cited in paragraph 155, infra.

[19]The Claimant further contends that "the HNB directors, consisting of Neirami and myself, agreed that I was to begin receiving a salary for my efforts of $10,000 a month," which contention constitutes the basis for a claim for lost salary. The Tribunal dismisses this claim for lack of proof. Moreover, since according to Mr. Buckamier he had agreed to postpone receipt of this salary pending payment under the contracts, this item did not form part of HNB's actual expenses.

148. While it points out that HNB failed to complete any of the warehouses, the Respondent has not provided an estimate of HNB's expenses.[20] Instead, it argues that even if it were true that HNB has invested a significant amount, that only demonstrates that the contractor lacked the required resources when it signed the Contract.

149. The Claimant contends that HNB "made surprisingly successful attempts to fulfill the Isiran contract," but he has submitted little direct documentary evidence of the alleged costs of those attempts. In its discussion of the Isiran claim, the affidavit submitted in support of Mr. Buckamier by Laurence A. Mills, a certified public accountant, merely rephrases the statements contained in the Claimant's affidavit. Mr. Buckamier states that, due to the prevailing conditions, "[h]is Partners have not contributed the Company records that he has often requested." As a result, Mr. Buckamier contends, "the business records verifying these purchase figures are currently in Iran and are unavailable to me."[21] Accordingly, Mr. Buckamier bases his estimates on "my personal knowledge and recollection of these amounts at the time I prepared and filed the original claim." According to the Claimant, he was personally involved in the purchase and delivery of machines and materials and saw receipts for HNB's expenditures.

150. While the Claimant has had difficulty in producing the complete record[22], the Tribunal observes that the evidence

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[20] See infra, n. 23.

[21] According to the Claimant, some of these records were among the documents that, as stated in paragraph 66, supra, he alleges were seized from him at the airport when he departed for the United States.

[22] See also Pomeroy, Award No. 50-40-3 at p. 25, reprinted in 2 Iran-U.S. C.T.R. at 384; and Levitt I, Award

(Footnote Continued)

submitted does contain numerous general references to HNB's expenses under the Contract. This is true in particular for Mr. Neirami's correspondence with Mr. Buckamier. On 7 July 1980, for example, the Claimant advised his partner to "prepare a letter to Isiran detailing our expenses to date," which "should show that we are close to the 45 million rials advance." In his letter of 16 September 1980 Mr. Neirami notified Mr. Buckamier that he had "started working in preparing the list of expenses" and requested his assistance in this task:

> There are some tangible expenses that I don't think they will have any objections to them. Do we have a copy of a report concerning how much job we have done. This letter was written, as far as I remember a year ago by the young man on Kakh St. whose name I've forgotten. I couldn't find a copy but if you know the percentage of the job reported in that letter please let me know.

151. In his 8 March 1981 letter Mr. Neirami declared that "[w]e owe to the bank more than ten million Rials after Isiran has withdrawn forty five million Rials." Mr. Neirami's letter of 28 August 1981, which explores the possibility of completing the installation work in one of the warehouses at Abyek, notes that Isiran "will pay for our electrical installations too." Mr. Neirami further informed Mr. Buckamier that he had "written a letter to the bank and [had] explained to them that we have enough racks and bins in umbar 23 to sell to pay our debts." Mr. Neirami's next letter in the record, dated 22 September 1981, discusses the option to submit HNB's dispute to an Iranian court in order "to justify forty million Rls expenses." His letter of 9

(Footnote Continued)
No. 297-209-1 at para. 41, reprinted in 14 Iran-U.S. C.T.R. at 203, in which the Tribunal, discussing the availability of documentation, reflects on the evidentiary considerations applying to costs incurred in Iran. Reference is further made to the considerations expressed in paragraph 67, supra.

April 1982 confirms that Isiran was prepared "to talk about the job which had been done on our wiring system."

152. HNB's notices to Isiran also testify to the degree of completion of the work and the investment made. Its 25 February 1979 letter, which refers to significant extra costs incurred by the contractor, reports that HNB had completed 40% of the electrical work in the twelve warehouses at Abyek, Maragheh and Isfahan, and that it had delivered enough materials to Abyek warehouse no. 23 to complete the "Type I bins."[23] In its communication of 27 April 1979 HNB reported to Isiran that it had been making "satisfactory progress" until its personnel were ordered to leave the site. HNB further noted that due to the revolutionary conditions its "expenses to date [were] far in excess of budget and we have more than 35,000,000/- rials invested in this contract." The "handing over proces verbal" drawn up pursuant to the settlement agreement of September 1983 -- see paragraphs 52 through 55, supra -- furthermore indicates that some twenty days were used "to fully identify all items of equipment belonging to HNB and ascertain their quantities preparing these [sic] equipment for removal and delivery."

153. The foregoing evidence warrants the conclusion that HNB's investment in the Contract was considerable. Against this background, the Tribunal must now assess the specific amounts expended. In this connection the Tribunal notes that it is established Tribunal practice that when the circumstances militate against calculation of a precise

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[23] At the Hearing, the Respondent maintained that Mr. Buckamier had made his claim of 40% completion in respect of only four warehouses. When asked to provide its own estimate, the Respondent replied that it lacked the information to answer this question, but that if the contractor's claim of 40% completion is correct, it should have confirmation of delivery of the work.

figure, the Tribunal is obliged to exercise its discretion to determine equitably the amount involved. See, e.g., Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 314-24-1, para. 339 (14 Aug. 1987), reprinted in 16 Iran-U.S. C.T.R. 112, 221.

154. The Claimant asserts that HNB incurred transportation costs of U.S.$2,055. In his affidavit in support of Mr. Buckamier, Mr. George Deshevikh, HNB's transportation manager, states that "[o]n at least six occasions I provided a flat-bed truck and hauled warehouse bins and racks materials to warehouses at the Abyek Army Base." Considering this statement and the evidence described in paragraph 152, supra, the Tribunal finds the claimed amount reasonable. The Tribunal also allows Mr. Buckamier's claim of U.S.$1,275 in respect of accommodation, which is sufficiently supported by the record. HNB's 25 February 1979 letter, for instance, notes that HNB's assembly personnel "have lived and commuted daily between the Abyek hotel and the base."

155. The Claimant contends that, as part of what he describes as "large, fixed up-front costs associated with the mobilization of resources," HNB spent U.S.$239,000 on the lease of a larger factory, the purchase and installation of machinery, and the development of tools. The amount of the Contract and the size of the advance payment support the credibility of the claimed figure, which is further confirmed by the Claimant's "chronological narrative of events" of 13 September 1979. On the other hand, it is unlikely that HNB expected fully to recoup this investment in the course of the Isiran Contract. Indeed, the Mills affidavit indicates that HNB planned to use this project to demonstrate HNB's capabilities and to serve as a "showcase" in procuring subsequent contracts. According to Mr. Mills, HNB was negotiating with Isiran for the outfitting of five additional warehouses. Taking into account these

considerations, the Tribunal determines that the amount of HNB's expenses under this heading properly attributable to the Isiran Contract is U.S.$119,500.

156. Mr. Buckamier contends that HNB purchased steel and paint worth U.S.$126,205 to manufacture bins and racks. As he states in his account of 13 September 1979, "[i]nitial orders for materials and paint were placed and delivered to the factory and production of Type I shelves, corner posts, back and side panels began 1 Aug '78." The Tribunal observes that the settlement agreement invoked by Isiran provides for the return to HNB of the materials it had installed in the Abyek warehouse. The "handing over proces verbal" confirms that this transfer indeed has been effected. It is reasonable to conclude, therefore, that even if, as decided in paragraph 55, supra, this settlement does not affect Mr. Buckamier's entitlement under the Isiran Contract, for the recovery of his share of the materials he must look to his Iranian partners.[24]

157. Isiran's return of the materials does not completely settle the issue, however. HNB was deprived of their use until October 1983, when they were finally handed back. The materials were subject to depreciation, and the delay in their return probably affected their resale value. Furthermore, pursuant to the settlement HNB bore the costs of their disassembly and transportation. The Tribunal further notes that the products had been manufactured to the particular

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[24] From the evidence submitted it appears that, while four other warehouses also were due for completion by the scheduled delivery date of Abyek warehouse no. 23, the latter was the only warehouse to which HNB had transported bins and racks for installation. The Tribunal further notes that according to Mr. Neirami's 28 August 1981 letter, the proceeds of these bins and racks would be sufficient for HNB to repay its bank debt, which, as the record bears out, amounted to roughly 10,000,000 rials.

specifications of the Isiran project. The Tribunal finds, however, that the partial credit to which these factors entitle HNB is offset by the enrichment caused by the fact that the items so returned were finished products rather than raw materials. Instead of charging the resulting difference in value against each category of HNB's expenses separately, the Tribunal decides to apply it here. In conclusion, Mr. Buckamier's claim in respect of steel and paint is denied.

158. The next expense item to be examined is HNB's labor costs. According to the Claimant, the "out-of-pocket" costs of its work force through September 1979 were U.S.$132,155. Mr. Buckamier states that in the period from July 1978 through September 1979 from eight to thirty-three people were on HNB's payroll at any one time, earning an average monthly salary of U.S.$425. Of those thirty-three workers, thirty-one allegedly were hired specifically to fill the Isiran order.

159. The Tribunal notes that, in addition to production at HNB's plant, the Isiran project involved simultaneous installation work at five different locations in Iran within a relatively short period of time. HNB's letter of 25 February 1979 put Isiran on notice that HNB was "paying the wages of 33 workers assigned to this project in order to keep these people who are trained and now experienced." By scaling down its work force from February 1979 onwards, as indicated by a schedule submitted by the Claimant, HNB made a reasonable effort to minimize the financial consequences of the suspension of the work. Considering also the degree of completion discussed in paragraph 152, supra, the Tribunal approves the labor costs claimed.

160. Mr. Buckamier contends that HNB has incurred indirect expenses in the amount of U.S.$455,580, representing 91% of HNB's total other costs. His claim comprises general and

administrative expenses, such as management, marketing and legal services; research and development; training; employee benefits; and overhead.

161. As the Tribunal determined in Levitt II, Award No. 520-210-3 at para. 107, n. 9, reprinted in -- Iran-U.S. C.T.R. at --, given the problems of attribution inherent in indirect costs, in particular where more than one project is involved, it appears appropriate to exercise caution in relation to such indirect expenses. Several letters submitted by Mr. Buckamier, including one dated 22 April 1980 in which he requests the United States Department of State to grant him permission to return to Iran, underscore the relevance of this observation. The Claimant's letter to the State Department notes that "HNB has expended more than 40 million rials (approximately $600,000.00) to date." While this contemporaneous document enhances the credibility of the amount of direct expenses asserted, it also demonstrates that in his initial estimate of HNB's investment the Claimant himself disregarded indirect costs. It is nevertheless reasonable to conclude that HNB's performance of the Contract did require it also to incur such costs, which are not included in the other expense items. The Tribunal holds that indirect costs in the amount of U.S.$151,860 are properly attributable to the Isiran project.

162. The final item to be examined by the Tribunal consists of HNB's lost profits. Mr. Buckamier's claim of U.S.$256,000 is based on a projected profit margin of 10%. The Claimant explains that HNB was willing to accept this "very low profit margin ... to break into this type of business, on a loss-leader basis." Mr. Mills states in his affidavit that this percentage represents a "lower than average profit margin for this general area of business, and lower than HNB's target 18 percent profit margin." Indeed, according to the Claimant, the only other bid made on the Isiran project was some 42% higher than HNB's.

163. The Tribunal concurs that a profit of 10% of the Contract value as such represents a moderate margin. Cf. Seismograph Service Corporation, et. al. and National Iranian Oil Company, et al., Award No. 420-443-3, paras. 134, 307 (31 Mar. 1989), reprinted in 22 Iran-U.S. C.T.R. 3, 41, 80; Blount Brothers Corporation and Ministry of Housing and Urban Development, et al., Award No. 74-62-3, p. 18 (2 Sept. 1983), reprinted in 3 Iran-U.S. C.T.R. 225, 234. Even if the projected percentage is modest, however, in determining whether those profits are payable it is necessary for the Tribunal to consider whether, in the event the Contract had not been terminated prematurely, HNB reasonably could have expected to earn the amount claimed. See Sylvania, Award No. 180-64-1 at p. 30, reprinted in 8 Iran-U.S. C.T.R. at 319.

164. In Pomeroy, Award No. 50-40-3 at pp. 23-24, reprinted in 2 Iran-U.S. C.T.R. at 383, the Tribunal noted that an indication existed in that case that "due to events surrounding the Revolution and other factors, [Claimants'] net profits would have been less than Claimants assert." The Tribunal believes that the record in the present Case calls for a similar finding. Considering the obstacles discussed in paragraphs 131 through 136, supra, it is highly unlikely that, had the Contract not come to a halt, HNB would have earned the profits it expected initially.

165. HNB itself appears to confirm the validity of this conclusion. In its letter of 25 February 1979, discussing HNB's stand-by costs, it informs Isiran that "[w]hen the contract continues, we will make-up these and the considerable other extra costs that we have sustained during these troubled times without asking for additional money." HNB's letter of 27 April 1979 contains a similar message. While stating that the contractor's expenses were "far in excess of budget," it emphasizes that HNB did not request "a change

resulting in MORE money for HNB." These statements support the Tribunal's finding that HNB realistically could not expect to meet its asserted profit target. Taking into account all relevant circumstances, the Tribunal determines that, instead, HNB lost profits in the amount of U.S.$64,000.

166. The combined amount of HNB's lost profits and its investment in the Contract is thus U.S.$470,845. Mr. Buckamier is entitled to his share of 70% of this sum, i.e., U.S.$329,591.50. The Tribunal further determines that simple interest is payable on the amount awarded to the Claimant at the rate of 10% per annum. Recognizing that the fact that HNB's expenses were stretched out over the period preceding the termination of the Contract makes it difficult to select one particular date, the Tribunal determines that such interest shall run from 1 January 1980.

V. COSTS

167. On 28 June 1989 the Claimant filed an affidavit stating that he had incurred legal fees and expenses in this Case in the total amount of U.S.$158,676.82. Considering the outcome of the Award with respect to the Isiran claim, the Tribunal, applying the criteria outlined in Sylvania, Award No. 180-64-1 at pp. 35-38, reprinted in 8 Iran-U.S. C.T.R. at 323-24, finds it reasonable to award the Claimant costs of arbitration in the amount of U.S.$15,000.

VI. AWARD

168. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a. The Respondent TEHRAN REDEVELOPMENT CORPORATION is

obligated to pay to W. JACK BUCKAMIER the sum of Twenty-one thousand four hundred ninety-one United States Dollars and Seventy-five Cents (U.S.$21,491.75), plus simple interest at the rate of ten percent (10%) per annum (365-day basis) from 16 June 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

b. The Respondent ISIRAN is obligated to pay to W. JACK BUCKAMIER the sum of Three hundred twenty-nine thousand five hundred ninety-one United States Dollars and Fifty Cents (U.S.$329,591.50), plus simple interest at the rate of ten percent (10%) per annum (365-day basis) from 1 January 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

c. The Respondent ISIRAN is obligated to pay to W. JACK BUCKAMIER the sum of Fifteen thousand United States Dollars (U.S.$15,000) in respect of his costs of arbitration.

d. The above-stated 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.

e. All other claims and counterclaims are dismissed.

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

Dated, The Hague
6 March 1992

Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the name of God

Richard C. Allison

Parviz Ansari Moin
Concurring in part
Dissenting in part