



ORIGINAL DOCUMENTS IN SAFE

Case No. 11713

Date of filing: 16 April '86

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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
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- Date _____
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CASE NO. 11713

CHAMBER ONE

AWARD NO. 223-11713-1

RONALD STUART KOEHLER,
a claim of less than \$250,000 presented
by the UNITED STATES OF AMERICA,
Claimant,
and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances:

For the Claimant:

Mr. J.R. Crook,
Agent of the United States
of America,
Mr. D.M. Price, Deputy Agent of
the United States of America,
Mr. M.F. Raboin,
Ms. L.P. Polk,
Assistants to the Agent.

For the Respondent:

Mr. M.K. Eshragh,
Agent of the Islamic Republic of
Iran,
Mr. A.A. Ryazi,
Mr. A. Mohammadi,
Legal Advisers to the Agent,
Mr. S. Rabiee,
Mr. S. Niazi,
Assistants to the Agent,
Mr. M.H. Sharif,
Representative of the National
Defence Industries Organization,
Mr. R.A. Torshizi,
Representative of Iran Electronics
Industries.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	16 APR 1986 تاریخ
	۱۳۶۵ / ۱۱ / ۲۷
No.	11713 شماره

DUPLICATE ORIGINAL نسخه برابر اصل

I. Procedural History

1. On 19 January 1982 the United States of America filed a Statement of Claim which presented the claim of less than \$250,000 of Ronald Stuart Koehler ("the Claimant"), against the Islamic Republic of Iran ("the Respondent").

2. On 16 December 1983 the Case was assigned to Chamber One, and on 20 December 1983 the Respondent was ordered to file its Statement of Defence.

3. On 5 November 1984 the Respondent filed a Statement of Defence on behalf of the Defence Industries Organization and a separate submission, styled a Reply to the Claim, on behalf of Bank Tejarat.

4. The Claimant filed a further written statement in the nature of a Supplementary Statement of Claim on 29 April 1985. The Defence Industries Organization and Bank Tejarat each filed a Response on 14 October 1985.

5. Earlier, on 29 May 1985, the Respondent filed a Counterclaim, to which the Claimant filed its defence on 15 August 1985. The Respondent commented on this in a Reply filed on 14 October 1985. On 14 November 1985 the Claimant filed comments on Iran's filings of 14 October 1985.

6. A Hearing was held on 18 December 1985.

7. At the Hearing, the Respondent submitted a document in support of the defence of Defence Industries Organization. The Claimant objected to this late submission. The Tribunal informed the Parties that its admissibility would be determined after the Hearing.

II. Facts and Contentions of the Parties

A. Jurisdiction

8. The Claimant asserts that he is a national of the United States of America by birth and has submitted copies of the relevant portions of his passport as evidence.

9. For purposes of this Claim, the Respondent Islamic Republic of Iran includes in particular Iran Electronics Industries ("IEI") and Bank Tejarat. IEI is a wholly owned subsidiary of Defence Industries Organization, which is an agency of the Government of Iran. It is not disputed that IEI and Bank Tejarat are controlled entities of the Government of Iran within the meaning in Article VII, Paragraph 3, of the Claims Settlement Declaration.

10. It is not in dispute that the Claim arises out of or relates to one or more "debts, contracts ..., expropriations or other measures affecting property rights" within the meaning of Article II, Paragraph 1, of the Claims Settlement Declaration; that the Claimant continuously owned it; and, that except as to the portion of the Claim which relates to monies on deposit in Bank Tejarat, it was outstanding on 19 January 1981.

11. As to the portion of the Claim which relates to monies on deposit in Bank Tejarat, the Respondent contends that "the Claimant did not claim from the former Iranians Bank the funds in his fixed deposits and current account prior to the Algiers Declaration, hence no dispute or claim existed to that time between the Claimant and the Bank, for it to be outstanding". Consequently, the Respondent submits that this portion of the Claim falls outside the jurisdiction of the Tribunal.

12. The Claimant contends that on 20 May 1979, shortly before his departure from Iran, he made an oral demand for the transfer, in United States dollars, of the sums on

deposit in his current account with Bank Tejarat to his account in a bank in the United States. He states that he was advised by the Assistant Manager of his Bank Tejarat branch that the Central Bank of Iran would not sanction such a transfer. In these circumstances, he argues, the only practical alternative was to leave his funds with Bank Tejarat in fixed deposit accounts so that they would at least earn interest. As a result, his Claim, which is based on the refusal by Bank Tejarat to transfer these monies, was outstanding as of this date.

13. The Claimant further contends that in light of Bank Tejarat's refusal to transfer the accrued interest in account No. 5265 at the time it transferred the principal amount, as well as its advice, by a letter dated 13 October 1980, that remittance of the other funds on deposit must await permission from the Central Bank of Iran, he "recognized" that Bank Tejarat was in fact refusing to transfer the other amounts of monies on deposit. The Claimant also submits that the rate of exchange at which the sum of 200,000 rials, representing the principal amount in account No. 5265, was transferred in June 1980 to his account in Abu Dhabi was so unfavourable that it amounted to a continuing refusal to transfer the sums of money in the other accounts.

14. The Respondent submits that the Claimant has not adduced sufficient evidence to support the allegation that the Assistant Manager of Bank Tejarat had informed him that the Central Bank of Iran would not permit the transfer of his funds. It relies on the letter of 13 October 1980, which makes no mention of such a refusal. The Respondent states that the rate of exchange at which the transfer to Abu Dhabi was effected in June 1980 was stipulated by the Central Bank of Iran.

B. The Claim

Amount arising from employment with IEI

15. The Claimant was employed by IEI from 9 July 1973 through 22 May 1979. During this period the Claimant signed five employment contracts. The last, in which he was designated 'Financial Advisor', was effective as of 22 May 1978 for a period of one year. Under this contract, the Claimant was entitled to a monthly salary of \$4,900. On 10 September 1978 his salary was increased to \$5100, retroactive from 22 May 1978. One half of his salary was paid to him in Rials; the other half was transferred in United States dollars to his bank, Manufacturers Hanover Trust Company, in New York. The contract expired on 22 May 1979.

The Claimant alleges that IEI failed to pay him the sum of \$10,873 due to him as salary and other allowances, which he itemizes:

1. Portion of salary payable in dollars for the months of Farvardin and Ordibehesht (21 March 1979 - 22 May 1979)	\$ 5,100.00
2. Portion of accrued vacation pay payable in dollars	\$ 1,948.00
3. Resettlement or relocation allowance	\$ 3,825.00
Total	= \$10,873.00 =====

16. The Respondent states that the Claimant's services were terminated on the expiry date of his contract, namely 22 May 1979, and that "the Claimant received all amounts to which he was entitled at the end of the contract period and thus settled his account with the ... company". To prove that the Claimant was paid the amounts claimed by him in

respect of his salary for the months of Farvardin and Ordibehesht and of accrued vacation pay, the Respondent relies on a document dated May 1979 bearing the description, "Payment in favour of Mr. Koehler for settlement of account with the company as under" and signed by the Claimant. At the Hearing, the Respondent produced the original of the document. The Respondent asserts that while a sum of 300,000 rials, payable in rials, was paid by a cheque, the sum of 328,024 rials, the equivalent of which was stated in this document as being payable in dollars, was paid to the Claimant in cash. Reasoning that a person holding the Claimant's position would not have signed a document of this nature unless he had received all the amounts due him, the Respondent argues further that this document is also evidence of the fact that the Claimant had previously received the portion payable in dollars for the month of Farvardin.

17. The Claimant denies having received the half portion payable in dollars in respect of the salary for the month of Farvardin. He denies also the receipt of the half portion payable in dollars in respect of the salary for the month of Ordibehesht, as well as of accrued vacation pay, which he asserts is stated even in the document of May 1979 to equal 328,024 rials payable in U.S. dollars. The Claimant contends that this document is only a settlement of accounts for the month of Ordibehesht and that his signature on it acknowledged only the cheque for 300,000 rials, which he admits he received. He submits that his signature on this document therefore neither proves that he received all the amounts which were due him nor signifies a full settlement of accounts. The Claimant draws attention to the fact that the document records that a sum of 300,000 rials was payable to him in rials and the equivalent of 328,024 rials was payable in dollars. The Claimant submits that while the payment of 300,000 rials is evidenced by the cheque, the Respondent has not produced any evidence relating to the

payment of the equivalent of 328,024 rials, which was stated in this document to be payable in dollars.

As evidence that he had not received these amounts, the Claimant also relies on two letters he wrote in July 1979, shortly after his departure from Iran, to officials of IEI requesting payment.

18. The Claimant acknowledges that Article VI of the employment contract restricts the resettlement or relocation allowance to employees hired outside Iran, but relies on a document which he submits is an excerpt from IEI's Employee Policy Manual. The document lists this allowance as a benefit payable to American nationals hired in Iran, as he was. He relies also on a letter he wrote to the Managing Director of IEI, dated 16 May 1979, in which he stated that an employee named Brian Maloney was paid this allowance.

19. The Respondent challenges the authenticity of the document which the Claimant identifies as an excerpt from IEI's Employee Policy Manual. It points to Article XXI of the employment contract, which requires that any amendments to the contract be "set forth in writing and executed by both parties".

Monies on deposit in Bank Tejarat

20. The Claimant alleges that on 20 May 1979, one day prior to his departure from Iran, he deposited 350,000 rials in four Fixed Deposit accounts with Bank Tejarat Iran because the Assistant Manager of his Bank Tejarat branch refused his request to transfer the funds in his current account to his New York account in U.S. dollars. The Claimant alleges that he was instead advised that the Central Bank of Iran would not sanction the transfer of these funds in United States dollars to his account in New York. He had also had a sum of 200,000 rials in a Fixed Deposit account since March 1979, in addition to money in a

checking account. The particulars of these accounts are as follows:

<u>Account No.</u>	<u>Principal amount deposited</u>	<u>Amount in account as of date of filing claim</u>
1. 5265	200,000 rials	20,000 rials *
2. 5902	100,000 rials	108,500 rials
3. 5903	100,000 rials	108,500 rials
4. 5904	100,000 rials	108,500 rials
5. 5905	50,000 rials	54,250 rials
6. Checking Account No. 52908-7		<u>65,331</u> rials
	Total	465,081 rials
		=====

21. The Claimant alleges that in March 1980 he requested Bank Tejarat to transfer the amount in account No. 5265 to him in Abu Dhabi. The principal amount, namely 200,000 rials, was transferred at an exchange rate stated by Bank Tejarat to have been stipulated by the Central Bank of Iran, but Bank Tejarat informed the Claimant that the Central Bank had not permitted remittance of 20,000 rials, which represented the interest that had accrued on this deposit. The Claimant contends that for this reason he "recognized" that Bank Tejarat was in fact refusing to transfer the full amount of monies in his other accounts and therefore made no further attempts to have these amounts transferred. As indicated by the table above the Claimant alleges that he has in his accounts with Bank Tejarat funds totalling 465,081 rials.

22. The Respondent accepts that the Claimant has deposits as claimed. However, the Respondent contends that

* The Claimant, in his original Statement of Claim filed on 19 January 1982, claimed the amount in deposit in this account without specifying the amount, but after the Statement of Defence was filed, in which the Respondent asserted that the Claimant had in fact received the principal amount, the Claimant in his Supplementary Statement of Claim, explained that he was claiming only the accrued interest amounting to 20,000 rials.

"the Claimant's cash on hand in his account in Bank Tejarat, representing his deposits and current account, is in Rials, and the Claimant may, by returning the deposit certificates, recover the funds of the deposits in Rials. Furthermore, transfer of Rial funds is subject to the monetary and exchange regulations in Iran, and it will be impossible without the authorization of Bank Markazi Iran". The Respondent states that the Claimant "may utilize his current account by producing, according to prevailing regulations, an authorized signatory to draw on the account in Rials".

23. As to the Respondent's contention that the Claimant may, upon returning the deposit certificates, recover the funds in rials, the Claimant contends that "Iran's continued refusal to remit Claimant's funds in readily convertible currency in effect deprives Claimant of the use of those funds. Bank Tejarat's suggestion ... that claimant withdraw the funds in rials negates claimant's right to use them at all because United States nationals are effectively precluded by the situation in Iran from safely entering or remaining in that country". The Claimant challenges the validity of such refusal on three theories of liability: i) that it violates the Respondent's duties under both the Treaty of Amity and international law; ii) that it interferes with the Claimant's property interest in the funds and constitutes a de facto expropriation; iii) that Iran has been unjustly enriched.

24. At the Hearing, Mr. Niazi, the Assistant to the Agent of the Islamic Republic of Iran, stated that Bank Tejarat does not require the physical presence of the Claimant in Iran, but he explained that the money could be returned only in the same currency in which it had been deposited. He confirmed that the Claimant could draw on his account by a cheque from abroad or utilize these funds, for

example, to purchase goods to be shipped abroad or to pay the bills of a person visiting Iran.

C. The Counterclaim

25. The Respondent filed a Counterclaim for 4,900,186 rials, which it alleges represents a tax debt owed by the Claimant on the salary received by him during his entire period of employment with IEI. It also stated that the Claimant was liable for a late payment penalty, in an unspecified amount. In a later submission, the Respondent stated that the principal amount of the Claimant's tax debt equalled 5,366,919 rials and that he also owed a late payment penalty of 1,180,590 rials and applicable interest. The Respondent alleges that the Claimant's obligation to pay these taxes arises out of the series of employment contracts between him and IEI. Further, the Respondent alleges that the Claimant was in breach of his contractual obligation as he "made an abuse of his position held in the said company as the director of financial affairs, financial consultant and the deputy to the managing director and, contrary to law, his obligation and honesty, refrained from deducting the relevant taxes and received and drew his entire salary without deducting the taxes".

26. The Claimant argues that the Counterclaim does not "arise out of the same contract, transaction or occurrence that constitutes the subject matter of [his] claim" as required by Article II, Paragraph 1, of the Claims Settlement Declaration, but instead arises out of Iranian tax laws, and is therefore outside the jurisdiction of the Tribunal. The Claimant further submits that in any event the Claim is based on his last employment contract, dated 22 May 1978, whereas the Counterclaim purports to be based on employment contracts dating back to 1973. The Claimant also argues that the Counterclaim is untimely; that the Respondent Defence Industries Organization lacks standing to

assert a Counterclaim for taxes; that the Tribunal lacks jurisdiction over the Counterclaim because international tribunals generally lack jurisdiction to enforce the municipal revenue laws of individual States; that the evidence submitted by the Respondent does not suffice to est- ablish the tax obligation; that in light of the routine examination of the company's books by other personnel, as well as the responsibility of others as to payroll matters, it is implausible that the Claimant could have successfully evaded taxes for the entire period of his employment with IEI; and that employees of IEI were exempt from payment of taxes by virtue of Subsection 10 of Article 95 of Chapter 3 of Iran's Direct Taxation Act. Finally, the Claimant characterizes the Respondent's allegations of unethical conduct as "crude and libellous."

III. Reasons for Award

A. Admissibility of the late filing

27. "[I]n determining whether the admission of a late-filed document will cause undue prejudice to a party, the Tribunal considers the nature of the submission and the length and cause of the delay". Trustees of Columbia University and Islamic Republic of Iran, Award No. 222-10517-1, paragraph 23 (April 1986). Here the Respondent waited until the Hearing to produce a document on which it sought to rely, a delay which it explained by stating that as it considered the document signed by the Claimant in May 1979 as constituting a complete defence to the portion of the Claim arising from employment with IEI, it did not deem it necessary to produce this document earlier. Since the Respondent could not anticipate what weight the Tribunal would eventually attach to the document of May 1979, the Tribunal does not consider this a satisfactory explanation. Accordingly, the Tribunal decides not to take the document into account in making this Award.

B. Jurisdiction

28. The Tribunal is satisfied that the Claimant is a national of the United States of America. It is not disputed that IEI and Bank Tejarat are controlled entities within the meaning of Article VII, Paragraph 3, of the Claims Settlement Declaration. See Ultrasystems, Inc. and Islamic Republic of Iran, Award No. 27-84-3, pp. 8-9 (4 March 1983) (IEI); Harza Engineering and Islamic Republic of Iran, Award No. 19-98-2, p. 8 (30 December 1982) (Bank Tejarat). It is also not in dispute that the Claim arises out of or relates to one or more "debts, contracts ..., expropriations or other measures affecting property rights" within the meaning of Article II, Paragraph 1, of the Claims Settlement Declaration; that it was continuously owned by the Claimant; and that the portion of the Claim arising from employment with IEI was outstanding on 19 January 1981. The Tribunal is satisfied that it has jurisdiction over this portion of the Claim.

29. As to the Claim relating to monies on deposit in accounts in Bank Tejarat -- for the moment excluding account No. 5265 -- amounting to 445,081 rials, the Tribunal notes that the mere holding of funds in deposit, though sufficient to give rise to a contractual right to payment, does not by itself fall within the definition of Article II, Paragraph 1, of the Claims Settlement Declaration so as to constitute a claim "outstanding on the date of this Agreement". In order to found an actual claim based on breach of contract against the Bank, there must be evidence of some demand or request for the funds in these deposits prior to 19 January 1981. The Tribunal notes that no direct demand was made to Bank Tejarat at any time to transfer these amounts. The Claimant in his letter of 9 September 1980 to Bank Tejarat wrote as follows:

"I would solicit your recommendations on what I should do with the Rial 350,000 in

additional Fixed Deposits I currently have. I am reluctant to exchange these at the rate of exchange expressed in your letter i.e. Rials 242.8 : Sterling 1. Are there alternative investment opportunities?".

In the view of the Tribunal this does not constitute a demand for the transfer of these monies, nor can the reply dated 13 October 1980 by Bank Tejarat be construed as a refusal to transfer these monies.

30. In order to assess the Claimant's contention that he made a demand on 20 May 1979 to transfer the monies to his account in New York and was advised by the Assistant Manager of Bank Tejarat that the Central Bank of Iran would not sanction such a transfer, the Tribunal must examine the statements of the Claimant in his affidavit in the light of the surrounding circumstances and his own conduct. While it is understandable that the Claimant may have preferred to take his money out of the country at the time of his departure from Iran, his depositing these amounts with Bank Tejarat is consistent also with a reluctance to attend to the formalities associated with obtaining the necessary approval of the Central Bank on the last day of his stay in Iran. Furthermore, the Tribunal notes that Bank Tejarat did in fact obtain the approval of the Central Bank of Iran and transfer the sum of 200,000 rials in account No. 5265, and that in its reply of 13 October 1980 Bank Tejarat advised the Claimant that "[R]egarding the Rials 350,000 (Fixed Deposit) upon your despatch of relevant certificate (upon Maturity) we will after CBI's permission remit you accordingly". In the light of such subsequent conduct of Bank Tejarat and considering the circumstances relating to the deposit of these amounts one day prior to his departure, the Tribunal is not satisfied that the Claimant was compelled to make these deposits as a result of a refusal by Bank Tejarat to transfer these funds to the United States.

31. In these circumstances, the Tribunal is not satisfied that there was a demand for the transfer of these

monies. For these reasons the Tribunal holds that the portion of the Claim relating to 445,081 rials on deposit with Bank Tejarat was not outstanding as of 19 January 1981. This portion of the Claim must therefore be dismissed for lack of jurisdiction. The Tribunal notes, however, the explanation given by Mr. Niazi at the Hearing in regard to the use the Claimant may make of these funds. See paragraph 24, supra.

32. The Claimant did make a demand for the transfer of the amount of 20,000, rials representing the accrued interest on the deposit of 200,000 rials in account No. 5265, and Bank Tejarat by letter dated 13 October 1980 informed the Claimant that "the Central Bank of Iran has not permitted remittance of the same". This portion of the Claim was therefore outstanding as of 19 January 1981 and for this reason is within the Tribunal's jurisdiction.

C. Merits

33. The Claimant is entitled to the salary and other benefits payable to him under the terms of his contract of employment. The Claimant's entitlement to be paid his salary for the months of Farvardin (21 March - 20 April 1979) and Ordibehesht (21 April - 21 May 1979) and for accrued leave is not in dispute. The Claimant admits the receipt of the half portion payable in rials for these amounts. What is in dispute is the receipt of the half portion of this amount which was payable to him in dollars. The Respondent, which bears the burden of establishing that it paid these amounts to the Claimant, asserts that the document signed by the Claimant in May 1979 constitutes a settlement of accounts by the Claimant with IEI and proves that the Claimant received these amounts. The Tribunal does not construe this document in the manner suggested by the Respondent. The Claimant's signature appears to acknowledge receipt only of the cheque for 300,000 rials constituting

the rial component of the salary and other amounts payable for the month of Ordibehesht, and is fully consistent with an expectation that the amount of money stated on the document as payable in dollars would be transferred to his account in New York in accord with IEI's usual practice with the dollar portion of the Claimant's salary. No other evidence has been furnished by the Respondent to prove that this sum was paid to the Claimant in cash. Nor does this document constitute evidence that the Claimant had received the portion of his salary which was payable to him in dollars for the month of Farvardin. On its face, it purports to cover only the month of Ordibehesht, and the Respondent has not adduced any evidence to establish this payment. The Tribunal also notes that the two letters addressed to IEI officials by the Claimant, shortly after his departure from Iran, requesting the payment of these amounts, are indicative of the fact that the Claimant had not received these amounts. In these circumstances the Tribunal holds that the Respondent has not proved that the Claimant was paid the portion of his salary payable in dollars for the months of Farvardin and Ordibehesht or the half portion of accrued vacation pay payable in dollars. The Tribunal therefore finds that a sum of \$2550 (the half portion of the salary for the month of Farvardin) has been due to the Claimant since 21 April 1979 and a sum of \$4498 (the half portion of the salary for the month of Ordibehesht and the half portion of accrued vacation pay payable in dollars) has been due to the Claimant since 21 May 1979.

34. The Tribunal notes that the resettlement or relocation allowance is not included in the contract of employment as a benefit to which the Claimant was entitled. Article XXI of the contract requires any amendment to be "set forth in writing and executed by both parties". The Claimant does not allege such an amendment, but relies on an undated one-page document which he asserts is a schedule to IEI's Employee Policy Manual. There is no evidence as to the

origin or applicability of this document, and the Claimant has not established that it was ever formalized by IEI or applied retroactively to contracts of employment already in existence. As to his letter of 16 May 1979, the Tribunal notes that while the Claimant requested the Managing Director to authorize payment of this allowance, he was aware that "the preliminary decision is that I am not entitled to return transportation" and that if he was granted this allowance "it would be an exception to existing policy". Upon receipt of this letter the Respondent did not make any admission or give any undertaking regarding the request, but forwarded it to IEI's Legal Department. Furthermore, in the absence of information about the specific provisions of Mr. Brian Maloney's employment contract, the Tribunal can accord no significance to IEI's payment of the allowance to him. In any event, even were the Claimant in the same contractual position, a decision to grant Mr. Maloney the allowance would not necessarily give rise to a corresponding obligation to pay the Claimant as well. In sum, the Claimant has not proved his entitlement to this allowance and this portion of the Claim must be dismissed.

35. As regards the sum of 20,000 rials, the accrued interest on the deposit of 200,000 rials in account No. 5265, Bank Tejarat did not effect its transfer but informed the Claimant that the Central Bank of Iran had not permitted it. Though it bears the burden of justifying this refusal, Bank Tejarat adduced no evidence that it requested permission to transfer from Bank Markazi or that Bank Markazi refused permission. Nor has Bank Tejarat relied upon or put in issue any exchange control regulations which might have prevented the transfer. In the circumstances of this Case the Tribunal finds it unnecessary to consider the validity of any exchange control regulations, and holds that Bank Tejarat's failure to transfer the accrued interest of 20,000 rials upon demand amounted to a breach of the contractual obligation existing between the Bank and the account holder.

The Tribunal therefore holds that Bank Tejarat owes this amount to the Claimant.

36. This amount of 20,000 rials should have been transferred on 2 June 1980, the date when the principal amount in this account was transferred. It is clear that the Claimant did not intend to retain these funds in rials. The principal amount of 200,000 rials was remitted in Pounds Sterling. While the rate of conversion applied by Bank Tejarat for this transaction was "Rls. 242.8 per Pound as per Central Bank of Iran's regulation", the Respondent offered no evidence of such a regulation or of the accuracy or reasonableness of this rate. In the circumstances of this Case, the Tribunal holds that the sum of 20,000 rials should be converted into United States dollars for payment from the Security Account at the rate of exchange specified by the International Monetary Fund for June 1980, namely 69.920 rials to a dollar. The Claimant is therefore entitled to \$286 in respect of this portion of the Claim.

D. The Counterclaim for taxes

37. Article II, Paragraph 1, of the Claims Settlement Declaration provides that a Counterclaim falls within the jurisdiction of the Tribunal only if it arises out of "the same contract, transaction or occurrence that constitutes the subject matter" of the principal claim. See T.C.S.B. and Islamic Republic of Iran, Award No. 114-140-2, p. 24 (16 March 1984). A tax debt arising out of the application of tax law to the contract does not meet that requirement. See Sylvania Technical Systems, Inc. and Islamic Republic of Iran, Award No. 180-64-1, p. 40 (27 June 1985). The Respondent has not adduced evidence or presented any argument to establish that this Counterclaim is one directly arising out of the contract between the Parties. As to the Respondent's contention that the Claimant was in breach of his contractual obligation in not deducting from his salary

the amounts payable by him as taxes, the Tribunal finds that while the Claimant had general payroll responsibilities, the Respondent did not prove that he was specifically the person responsible for making deductions in respect of taxes. The Tribunal is therefore not satisfied that the Counterclaim arises out of a contractual relationship between the parties to the contract. In these circumstances, the Tribunal holds that the Counterclaim is outside its jurisdiction and must be dismissed.

E. Interest

38. This Chamber has developed and applied a consistent approach to awards of interest, deriving the figure applicable in a given case from the rates paid on six-month certificates of deposit during the term the liability remained unpaid. See Sylvania Technical Systems, Inc. and Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985); First Travel Corporation and Government of the Islamic Republic of Iran, Award No. 206-34-1 (3 December 1985). The Claimant is therefore entitled to simple interest at the rate of 11.50 per annum for \$2,550 from and including 21 April 1979, at 11.50 per annum for \$4,498 from and including 21 May 1979, and at 11.25 per annum for \$286 from and including 2 June 1980 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account.

F. Costs

39. The Claimant has claimed 1½% of the amount awarded as costs of the arbitration. This amounts to \$110. The Tribunal considers it evident that the Claimant must have expended at least this amount in litigating this claim. Accordingly, an amount of \$110 is awarded as costs.

IV. Award

40. For the foregoing reasons,

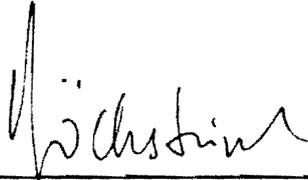
THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent THE ISLAMIC REPUBLIC OF IRAN is obligated to pay the Claimant RONALD STUART KOEHLER the sum of Seven Thousand Four Hundred Forty Four United States Dollars (US \$7,444) plus simple interest at the rate of 11.50 percent per annum (365-day year) on Two Thousand Five Hundred Fifty United States Dollars (US \$2,550) from and including 21 April 1979, at 11.50 percent per annum on Four Thousand Four Hundred Ninety Eight United States Dollars (US \$4,498) from and including 21 May 1979, and at 11.25 percent per annum on Two Hundred Eighty Six United States Dollars (US \$286) from and including 2 June 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account. This obligation 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.

(b) The remaining Claims and the Counterclaim are hereby dismissed.

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

Dated, The Hague,
15 April 1986



Karl-Heinz Böckstiegel
Chairman
Chamber One

In the Name of God



Mohsen Mostafavi
Dissenting in part,
concurring in part.
See separate Dissenting Opinion.



Howard M. Holtzmann
Joining fully in
the Award, except
as to the holding
that a portion of
the Claim for funds
on deposit in Bank
Tejarat was not
outstanding as of
19 January 1981.
See separate Opinion