

DUPLICATE
ORIGINAL

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192

CASE NO. 158

CHAMBER ONE

AWARD NO. 238-158-1

AERONUTRONIC OVERSEAS
SERVICES, INC.,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
THE AIR FORCE OF THE ISLAMIC
REPUBLIC OF IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	20 JUN 1986 تاریخ
	۱۳۶۵ / ۲ / ۲۰
No.	158 شماره

AWARD

Appearances:

For the Claimant:

Mr. K.E. Wolf,
Mr. R. McCall,
Attorneys;
Mr. H. Breslin,
Mr. J. McNally,
Representatives.

For the Respondents:

Mr. A. Shirazi,
on behalf of the Agent of
the Government of the

fees incurred to protest tax assessments. Interest and legal costs are also claimed.

2. The Claimant also seeks a declaration that the Air Force shall pay all taxes and penalties assessed against Aeronutronic with respect to the Contract, and that Aeronutronic is released from all such liability.

3. The Respondents deny liability. The Air Force counterclaims for damages of \$5,100,000 due to the Claimant's alleged failure to perform under the Contract, for Rials 813,207,021 in taxes and for Rials 84,130,264 in social security premiums. The Air Force also claims interest, and both Respondents seek legal costs.

I. PROCEDURAL ISSUES

4. On 22 February 1984, the Claimant deposited with the Registry one copy of cost information relating to its Claim, consisting of five volumes of "Cost Details". In its cover letter, the Claimant stated that "[t]wo copies of these volumes were mailed to the Iranian respondents in Case No. 158 on January 16, 1984". The Registry "retain[ed] the five volumes as Master File exhibits pending any request to review them".

5. At the Hearing, the Respondents asserted that they had not received this material. They requested that it be served on them in accordance with the relevant Tribunal Rules and that they be given adequate opportunity to comment on them after the Hearing. Objecting to this request, the Claimant offered to submit to the Respondents another copy of the material immediately. The Tribunal decided to accept the five volumes "as they had been submitted", without prejudice to their acceptance for filing. It invited the Parties to comment on them during the Hearing. While it could not be anticipated whether it would in fact need to

rely on these documents, the Tribunal informed the Parties that it would give the reasons for any decision in this respect in its Award.

6. In view of the fact that the Tribunal does not, for the purposes of this Award, rely on the five volumes of "Cost Details" submitted by the Claimant, no further decision on their acceptance is required.

II. FACTS AND CONTENTIONS

7. On 28 January 1970, the Claimant's predecessor, Philco, entered into a contract with the Imperial Iranian Air Force for engineering, construction and testing of a ground-to-air communication system and related facilities ("the Contract"). The scope of the work was modified and enlarged by 13 subsequent Amendments to the Contract. The Claimant asserts that in each case its task was to provide a specified system at designated sites in Iran, and that communication between sites was not its responsibility. Performance of the Contract and several of the Amendments was delayed. The Claimant contends that the delays occurred mainly for three reasons. First, the Air Force consistently failed to provide on time necessary facilities to the Claimant in violation of its contractual obligations. Second, the Air Force repeatedly changed the scope of the work, particularly of the part that related to the installation of outside cable. Finally, the Claimant contends that it had to do additional testing of the ground-to-air system because the Air Force furnished defective radios. The Claimant asserts that it incurred additional costs due to these problems. It claims reimbursement of such costs in the amount of \$2,718,157.

8. In addition, the Claimant seeks payment of unpaid invoices submitted under the Contract in an amount of \$115,133. It also claims \$135,825 for attorneys' fees paid

to Iranian counsel to protest tax assessments that, it says, should have been satisfied by the Air Force. The Claimant finally seeks a declaration that the Air Force shall pay all taxes and penalties assessed against Aeronutronic with respect to the Contract, and that Aeronutronic is released from all such liability.

9. The Respondents have raised several jurisdictional objections. With regard to the Claimant's United States nationality, they assert that the Claimant has not submitted the proof required by the Claims Settlement Declaration. They further contend that dispute settlement clauses in the Contract exclude the Claims from the Tribunal's jurisdiction. They also argue that the Claims for damages due to delay and for Iranian attorneys' fees were not outstanding on 19 January 1981 as required by Article II, paragraph 1, of the Claims Settlement Declaration.

10. As to the merits, the Air Force contends that some of the Claimant's invoices were not accepted, that the Claimant did not complete the work undertaken in the Contract and the Amendments, that it did not deliver certain drawings and that there are deficiencies in the ground-to-air system for which the Claimant is responsible.

11. The Air Force raises a Counterclaim for reimbursement of \$5,000,000 it allegedly paid for the Claimant's services pursuant to Amendment No. 4 to the Contract. It contends that the ground-to-air system is not usable because of communication deficiencies for which the Claimant is responsible, and that the Claimant is obligated to reimburse it for the damages incurred as a consequence. The Claimant asserts that it performed its contract obligations and that any deficiencies in the communication system have nothing to do with its work.

12. The Air Force further seeks \$100,000 it allegedly had to spend in order to complete work that the Claimant left unfinished under Amendment No. 13. The Claimant argues that it fulfilled its obligations under Amendment No. 13, and offers to supply to the Air Force, upon payment of the invoice Claim, drawings it admittedly has not yet provided. The Claimant also contends that, since the Counterclaim seeks less for the work not completed than the amount of the unpaid invoices, "the Air Force's counterclaim should be precluded by the Air Force's own admission".

13. The Air Force denies any liability for taxes. It raises a Counterclaim of Rials 813,207,021 for taxes assessed by the Ministry of Finance against the Claimant, covering operations of the Claimant in Iran from 1970 through 1981. The Air Force raises a further Counterclaim of Rials 84,130,264 for social security premiums that the Claimant allegedly owes in connection with the Contract.

14. The Claimant denies that the Tribunal has jurisdiction over these two Counterclaims. The Claimant also argues that they are without merit since under the Contract taxes and social security premiums were the responsibility of the Air Force.

III. REASONS FOR AWARD

1. Jurisdiction

15. A request was made by the Respondents for the decision on the Claimant's United States nationality in the present Case to be deferred until the outcome of Case No. A20 is known. As has previously been observed in Futura Trading Incorporated and Khuzestan Water and Power Authority, Award No. 187-325-3, p. 7 (19 August 1985), in connection with an identical request, "suspension of jurisdictional determinations would for an indeterminate time bring the

work of the Tribunal to a halt as such determinations are necessary in virtually every case. For these reasons, the three Chambers have consistently made determinations of corporate nationality notwithstanding the pendency of Case A20". The Respondents' request for postponement in this Case is therefore denied.

16. The Claimant's United States nationality has been established to the satisfaction of the Tribunal pursuant to the standards set forth in Flexi-Van Leasing, Inc. and The Islamic Republic of Iran, Case No. 36 (Order of 20 December 1982) and General Motors Corp. and The Government of the Islamic Republic of Iran, Case No. 94 (Order of 21 January 1983). The Claimant has submitted proxy statements and affidavits of the corporate secretary as well as of certified public accountants. This evidence shows that Aeronutronic has at all material times been wholly owned by Ford Aerospace & Communications Corporation, which in turn has been wholly owned by Ford Motor Company, and that 97.98 percent of the shareholders of common stock and 100 percent of the shareholders of Class B stock of Ford Motor Company have addresses in the United States. On 29 September 1975, the Claimant changed its name from Philco, under which name it had entered into the Contract, to Aeronutronic, its present name. This was a change of name only.

17. As the Tribunal had already indicated in its Interim Award No. ITM 44-158-1 (27 August 1984) in this Case, the provisions of the Contract relevant to the settlement of disputes do not exclude this Claim from its jurisdiction. Article IV of Part C of the Contract provides:

"Arbitration

All disputes arising in connection with this Contract, relative to interpretation thereof, the carrying out of the provisions therein, refusal to comply with it, or the laws governing it, shall be solved by amicable means between the Parties".

Article VII of Part C provides in pertinent part:

"The rights and obligations of the parties under this Contract shall be governed in all respects by the laws of Iran".

18. These provisions do not come within the terms of the exclusion of Article II, paragraph 1, of the Claims Settlement Declaration. See Gibbs & Hill, Inc. and Iran Power Generation and Transmission Company et al., Interlocutory Award No. ITL 1-6-FT, Part III (5 November 1982).

19. As discussed below, the Tribunal finds that the Claims for damages due to delay and for Iranian attorneys' fees were outstanding on 19 January 1981.

20. Finally, as also discussed below, the Tribunal finds that it lacks jurisdiction over the Counterclaims for taxes and social security premiums.

2. Merits of the Claims

a) The invoice Claim

21. The Claimant asserts that it submitted three invoices to the Air Force for payments due under the Contract as amended which were not paid: one invoice, dated 29 January 1974, relating to work under Amendment No. 7, and two invoices, both dated 13 May 1978 and both relating to work under Amendment No. 13. The Claimant submits that the aggregate amount of these three invoices is \$135,133. The Air Force denies any obligation to pay these invoices. It contends that the Claimant has not completely fulfilled its contractual obligations, that the whole communication system was unusable and that "[i]t cost the Air Force hundreds of thousands of dollars" to complete the work left unfinished by the Claimant. The Claimant acknowledges that it did not complete three items, and it agrees that the value of two of

these unfinished items should be deducted from the amounts due it. With regard to the third item, the so-called "as-built drawings", the Claimant offers to submit them to the Air Force after payment of its invoice Claim. Two further unfinished items, the Claimant asserts, were changed by agreement of the Parties into supervisory services which it offered, but which services the Air Force never requested it to render.

22. The Tribunal is satisfied that, apart from the five unfinished items mentioned above, the Claimant fulfilled its obligations pursuant to the Contract as amended. At a meeting on 16 August 1978 between representatives of the Air Force Communication Directorate and Communication Command and representatives of the Claimant, the participants agreed that, in order to complete its performance under Amendment No. 13, the last Amendment of the Contract, the Claimant undertook to supervise certain cable laying work and that the Claimant "after repairing the [remaining three] defects, . . ., has completed its contractual obligations". No other defects were claimed by the Air Force during the contractually stipulated warranty period of one year. In view of the confirmation of completion expressly stated by the Air Force at the August 1978 meeting, and absent any objections to the Claimant's performance since then until the filing of its Statement of Defence in the present proceedings, the Air Force cannot now invoke such a fundamental objection as the one that the whole system was completely unusable. The Claimant is thus entitled to payment of the three outstanding invoices.

23. In order to determine the ultimate amount due the Claimant under the three invoices, however, the three unfinished items must first be taken into account. The Claimant values the costs of the two admittedly uncompleted items at \$20,000. It does so on the basis of a contemporaneous estimate made by itself for internal

purposes. The Tribunal accepts that this is the best approximation that can presently be found for the cost of this work at that time. Because this Claim is for part of the contract price, the contractually provided 26 percent overhead and 15 percent profit margin have to be added to the \$20,000 estimated costs. The amount to be deducted from the amount due the Claimant for the three unpaid invoices is thus \$28,980.

24. With regard to the "as-built drawings", the Claimant is obligated, as it acknowledges itself, to submit those to the Air Force, now that it is awarded the invoice amounts owed to it by the Air Force. As to the supervisory services that substituted the two last unfinished items, the Claimant's assertion that it offered these services but that it was never asked by the Air Force to render them has not been rebutted. Thus, no reduction should be made on account of these items.

25. The Security Account established by the Algiers Accords being in United States Dollars, it is necessary - and as confirmed by the previous practice of this Chamber - that any Award likewise be expressed in Dollars. Accordingly, because two of the three unpaid invoices are denominated in Rials and only one is denominated in Dollars, the question of the appropriate rate of currency conversion must first be resolved. Payment schedules, attached to the Amendments to the Contract, specified that certain contractual payments were to be made in Rials and others in Dollars. It appears that the Rial amounts on the two unpaid invoices correspond to amounts that under the payment schedules were payable in Rials. The Claimant has not specified at what rate it has converted the Rial amounts on the two invoices into Dollars, and the Respondents have not discussed this. The question thus arises as to the correct date for the conversion into Dollars of the Rial amounts found payable under the two invoices.

26. The test applied by the Tribunal in previous Awards has been to select the date on which the obligation became due, and to apply the rate of exchange applicable on that date in making the conversion, provided it is satisfied that the Claimant would, in the normal course of events, have repatriated the funds if they had been received on the due date. See, e.g., Blount Brothers Corporation and The Government of the Islamic Republic of Iran et al., Award No. 215-52-1, p. 31 (6 March 1986). There is nothing to suggest, and it was not asserted in the present Case, that contractual payments would have been retained in Iran.

27. Accordingly, the Tribunal finds that the proper rate to apply is the market rate applicable at the date each of the obligations became due. Under the Contract, payment of services was to be made "against presentation" of the invoices, and payment of material "in any event . . . thirty days after presentation" of the invoices. The invoice of Rials 590,000 is dated 29 January 1974. Payment thus became due not later than 1 March 1974. According to International Monetary Fund, International Financial Statistics (Supplement on Exchange Rates 1981), the official rate at 1 March 1974 was 67.625 Rials to the Dollar. The amount payable to the Claimant on the first invoice is thus \$8,724.58. The invoice of Rials 960,750 is dated 13 May 1978. Payment of this amount became due on 13 June 1978. The official rate at that date was 70.475 Rials to the Dollar. The amount payable to the Claimant on the third invoice is thus \$13,632.49. The remaining invoice of \$113,730 being in Dollars requires no conversion. The total amount of the three invoices, expressed in Dollars, is thus \$136,087.07.

28. As noted above, \$28,980 for the unfinished items must be deducted from the total amount of the three invoices of \$136,087.07. Thus, the Claimant is entitled to a total of \$107,107.07.

b) Additional engineering, re-testing and delay costs

29. The Claimant asserts that it incurred costs which were not covered by the Contract price and not paid by the Air Force due to additional engineering requested by the Air Force, additional testing of the communication system and frequent delays for which only the Air Force was responsible. The Claimant contends that these additional costs were caused by a number of factors. First, the Air Force repeatedly amended and changed the scope of the work required from the Claimant, in particular with regard to the installation of outside cable. Second, the Air Force constantly failed to provide facilities on time that it was contractually required to provide and on which the progress of the Claimant's work depended. Third, the Air Force furnished defective radios, thereby forcing the Claimant to do additional testing of the ground-to-air system.

30. The re-engineering having been requested by the Air Force and performed by the Claimant, the Claimant seeks payment of the additional costs "under either a contractual theory . . . or under the principles of unjust enrichment". The Claim for damages due to delay is based on Article III.C. of Part B of the Contract which requires "equitable adjustment for delays or cost incurred" by the Claimant as a result of the Air Force's failure to provide the contractually required support. The total amount of additional costs claimed is \$2,718,157.

31. The Claimant contends that it submitted its re-engineering claim to the Air Force for the first time in October 1974. The Air Force then proposed a new, and much larger, contract to the Claimant, and in the hopes of receiving such a contract, the Claimant withdrew its re-engineering claim in December 1974. When the Air Force decided not to award it the new contract, the Claimant resubmitted its re-engineering claim in December 1975,

together with its claim for extra costs due to delays. The Claimant states that it withdrew its claims a second time to assess the impact of a decision by the Air Force to change completely the location and nature of the cable installation work, expressly reserving the right, however, to resubmit them upon completion of its review. By letter dated 1 November 1976, the Claimant submitted its claims for re-engineering, delays and re-testing in final form and in the amount sought by the present Claim.

32. The Air Force argues that these claims were not outstanding on 19 January 1981 because the Parties had settled all claims between themselves in 1977 by Amendment No. 13 to the Contract and because the Claimant had not raised these claims since then until the filing of its Statement of Claim on 17 December 1981.

33. As to the merits of these Claims, the central contention of the Air Force is that Amendment No. 13 to the Contract, effective 25 July 1977, constitutes the basis of all contractual rights and obligations of the Parties as of that date, and in particular that it settled all claims raised by the Claimant in its 1 November 1976 letter. The Air Force asserts that, as a compensation for the Claimant's additional costs, it agreed to reduce the scope of work by requiring the Claimant to install a cable system only at one site instead of at eleven sites. This reduction, it asserts, was what Amendment No. 13 mainly dealt with, and the Parties agreed that as of 25 July 1977 their contractual relationship would be governed by that Amendment only. Finally, the Air Force argues that having chosen not to exercise its right under Article IV.C. of Part B to terminate the Contract and demand reasonable costs in case of the Air Force's breach of the Contract, the Claimant waived any right to claim damages in the future.

34. In the Claimant's view, the Air Force's position is based on a misunderstanding of Amendment No. 13. The Claimant asserts that while Amendment No. 13 reduced the number of sites at which the cable system was to be installed, it required the Claimant to do more work at that one site than it would have been required to perform at the previous eleven sites taken together. According to the Claimant, both Parties were aware prior to the signing of Amendment No. 13 that the Claimant did not consider its re-engineering claim satisfied by the contemplated amendment. The Claimant argues that in light of the statement in its 1 November 1976 letter that the "contents of this submission have been based upon the agreements reached concerning this subject and assumes that appropriate contractual documents reflecting" the changes in the scope of work would be issued, the Parties could not have intended to extinguish Aeronutronic's claims in an amendment that does not even refer to them. The Claimant asserts that the same rationale applies to its claim for damages due to delay. It could not have been compensated for a claim for over \$2,000,000 by an amendment that had a total price of approximately \$500,000. Even the Air Force's own witnesses allege that Amendment No. 13 was only intended to compensate Aeronutronic for its re-engineering claim, the Claimant states.

35. The Claimant argues that its interpretation of Amendment No. 13 is confirmed by the fact that its representatives had continuing discussions with Air Force authorities on its claim into 1978, and that Air Force authorities acknowledged the additional work done and informed the Claimant that payment would be approved.

36. As regards the objection to its jurisdiction over the Claim for additional costs, the Tribunal determines that this Claim was outstanding on 19 January 1981. It is not disputed that the circumstances giving rise to this Claim

occurred before that date, and the Claimant submitted to the Air Force parts of the claim several times and the whole claim at least once by 1 November 1976. Regardless of the effect of Amendment No. 13, this Claim was outstanding as of 19 January 1981.

37. As to the merits, the key question is whether Amendment No. 13 settled this Claim. On the basis of the record before it, the Tribunal concludes that this question must be answered in the affirmative. The Tribunal reaches this conclusion from an interpretation of the Claimant's 1 November 1976 letter and of Amendment No. 13 as well as the relationship of these two documents, taking into account the Parties' conduct before and after 1 November 1976.

38. The letter dated 1 November 1976 is from the Claimant's Contracts Administration Manager in Iran to the Imperial Iranian Air Force. Its stated subject is "Added Costs" for the Contract. It starts out by stating that Aeronutronic "herewith submits its firm fixed price for costs associated with program extension and added scope efforts to perform Phase IV of the Peace Net Program for [the Air Force]. The overall price increase is \$2,718,157 and is broken down into" an increase for three sets of program extensions, for re-testing and for re-engineering. The letter then encloses cost back-up material in 5 volumes.

39. The next paragraph of the letter reads as follows:

"Although written direction has not yet been received concerning the revised outside cable plant installation, several meetings have been held between IIAF and AOSI representatives in which it is understood that AOSI will provide the engineering of Khatami, Bushehr, Tabriz and Bandar Abbas Air Bases as well as the cable installation into a manhole and duct system at Khatami AB in lieu of the outside plant cable requirements in the present contract. The contents of this submission have been based upon the agreements reached concerning this subject and assumes that

appropriate contractual documents reflecting these changes will be issued."

40. Concluding the letter, Aeronutronic states that it trusts that the Air Force "will find this submission to be in order that [Aeronutronic] may rapidly conclude this open action item."

41. The Parties agree that, although designated as "price for costs associated with program extension and added scope efforts", the first part of the letter constitutes the submission of that part of the Claimant's claim which it seeks under "re-engineering, re-testing and delay Claim" in the present proceedings. The Parties further agree that the reference in the second part of the letter to "appropriate contractual documents reflecting [the] changes" with regard to the outside cable plant is to Amendment No. 13, the last amendment to the Contract. Where the Parties disagree is on what relationship exists between this second part of the letter and its first part containing the claim for additional costs, and on the conclusion to be drawn from the fact that Amendment No. 13 does not mention that claim.

42. The Tribunal notes that in the first part of the letter, Aeronutronic stated that it "submits" its price for additional costs (emphasis added). The second part of the letter refers to the fact that "[t]he contents of this submission" are based upon the agreements concerning the changes in the outside cable plant installation, and it "assumes that appropriate contractual documents reflecting these changes will be issued" (emphasis added). Although under the Contract no amendment was required to incorporate the Claimant's additional costs, it appears from the quoted language of the letter that the Parties in fact created a link between those costs and the envisaged Amendment No. 13, expecting that this final Amendment would deal with all the remaining rights and obligations under the Contract. The same inference can be drawn from the fact that the Claimant

had previously withdrawn its re-engineering and delay claims because of envisaged changes in the outside cable plant installation and because it wanted to assess the impact of such changes on those claims.

43. The "appropriate contractual documents" referred to in the 1 November 1976 letter were then in fact issued in form of Amendment No. 13 to the Contract. On 22 November 1976, the Claimant sent a copy of Amendment No. 13, signed by it, to the Air Force for signature. As stated in the cover letter, "[t]he Amendment represents the direction for [Aeronutronic] to proceed, at no additional cost to [the Air Force], with the engineering and installation of an outside cable plant at Khatami" Air Base and the engineering of an outside cable plant at three other air bases. According to the letter, these works were in lieu of the cable requirements as previously required under the Contract. No mention was made of the Claimant's claims for additional costs.

44. Amendment No. 13 became effective on 25 July 1977. According to its stated purpose (i.e., to change the scope of work to be performed by the Claimant under the Contract), the Amendment stipulated that, instead of providing an outside cable plant system at eleven sites, the Claimant was to engineer, furnish and install a different outside cable plant system at Khatami Air Base and to engineer the outside cable plant at three other air bases. Consequently, the Amendment adjusted the price of the work for the outside cable plants and set up a new payment schedule for that work. It did not, however, only deal with the cable plant work, but also with "[t]he other work associated with Amendment 4". It also set up a remaining payment schedule for the funds associated with that work, thus modifying the whole payment schedule of Amendment No. 4, during the performance of which the delays had occurred which are at issue in the Claimant's claim for damages due to delay. It

further set up a new delivery schedule, and finally it also increased the "total fixed price for the work" under the Contract. Amendment No. 13 does not mention, however, the Claimant's delay costs, nor its additional costs for re-engineering and re-testing. Taking into account the link established between the submission of the claim for additional costs in the Claimant's 1 November 1976 letter and Amendment No. 13, the absence of any reference to this claim in that Amendment, viewed together with the Claimant's conduct before and after 1 November 1976 as described hereinafter, leads the Tribunal to conclude that once Amendment No. 13 became effective the Claimant was not entitled to payment of any costs which were not provided therein.

45. After its 1 November 1976 letter, and notwithstanding the conclusion of Amendment No. 13, the Claimant did not raise its claim for additional costs in writing until 18 September 1981, when it submitted a calculation and back-up documents to the Air Force in the context of settlement negotiations, and next on 17 December 1981 when it filed its Statement of Claim with the Tribunal. In view of its previous conduct with regard to its additional costs claim, the Claimant's silence precludes it from raising this claim now. By letter dated 28 October 1974, the Claimant submitted its claim for re-engineering costs for the first time. Although no delay claim was formally made then, the Claimant had advised the Air Force that the delays, which had occurred already, could result in such a claim. In December 1974, the Claimant withdrew its re-engineering claim based on an understanding with the Air Force that it be awarded a major new contract. When this contract was not awarded, the Claimant by letter dated 22 December 1975 submitted its re-engineering claim again, and at the same time also submitted its claim for delay costs. As described more fully above, by letter dated 7 September 1976 the Claimant withdrew its re-engineering and delay claims again

in order to assess the impact of the changes regarding the outside cable plant work. In its letter of 1 November 1976, the Claimant submitted these two claims and the claim for costs of re-testing in the aggregate amount sought by the present Claim. This letter contains the discussed reference to Amendment No. 13. It appears from this pattern of conduct that the Claimant not only submitted its claim for additional costs in writing, but it also expressly re-submitted it when it had withdrawn or foregone it for various reasons. This is incidentally what one would expect with regard to a claim of that size and in a contractual relationship that was characterized by so many changes, modifications and amendments, especially when towards the later stages of the performance a need for a clear definition of remaining rights and obligations became apparent.

46. Not only did the definition of such rights and obligations in Amendment No. 13 not mention the delay claim, but subsequent dealings of the Parties did not contain any such reference either. In a Status Report to the Air Force dated 23 April 1978 with regard to the work at Khatami Air Base pursuant to Amendment No. 13, the Claimant summarizes, inter alia, that it "considers it has met its contractual obligations for Amendment 13 and Khatami [Air Base]" and that it "will be phased out of Khatami [Air Base] by 6 May 1978". Although the work at Khatami Air Base was the major portion of the work left to do under Amendment No. 13, and this work seemed to be close to the end then, no mention is made in that Report of outstanding claims against the Air Force. At a meeting of representatives of the Claimant and the Air Force on 16 August 1978, which, as the Parties agree, identified the last unfinished items of work and which acknowledged that after their completion the Claimant "has completed its contractual obligations", the claim for additional costs was also not mentioned. Finally, the record contains a telex dated 19 October 1978 from the

Claimant's program manager, who at the time was charged with supervising the performance of all of the Claimant's military contracts in Iran, to its superior. The telex gives "the status of [the Contract]". Under "open items" it lists the five unfinished items under Amendment No. 13, which are described above, and the three invoices, the payment of which the Claimant seeks in the present Claim, as "remain[ing] outstanding". The telex gives a schedule for and estimates the costs of completion of the open items. At the end, the telex describes the situation with regard to taxes assessed against the Claimant in Iran. Although the telex purports to deal with the status of the whole Contract, and in fact deals with all other issues of the present Claim, it contains no reference to any claim for additional costs.

47. The Claimant asserts that it is inconceivable that it would give up a \$2,000,000 claim for an amendment the total price of which was only \$500,000. Moreover, it states that it in fact pursued its claim through discussions with representatives of the Air Force until early 1978. In support of the latter contention, the Claimant's Vice-President in Iran at the time testified at the Hearing that, commencing a few weeks after the Claimant's 1 November 1976 letter, he discussed the additional costs claim with high Air Force officials, that the claim was approved by the Supreme Commander, but that at the time of his last discussions in April 1978 the claim had still not been paid. In an Affidavit filed before the Hearing, the same former official of the Claimant had stated that his discussions with the Air Force officials had taken place in approximately February 1977. Assuming that the asserted discussions took place and that they lasted into early 1978, this cannot alter the Tribunal's conclusion reached above. The Claimant's Vice-President might well have discussed the claim with high level Air Force officials, and certain representations might have been made to him. Such

representations, however, did not sufficiently crystallize so as to supersede the written arrangements of the Parties, and in view of the magnitude of the claim and the previous conduct of the Claimant, the oral discussions cannot in this case be a substitute for pursuing the matter in writing. The Claimant, as it had done before, may have foregone this claim for reasons not directly related to this Contract or Amendment No. 13. But the fact remains that it did not raise its claim again in a manner that was sufficient, taking into account its previous conduct and the other circumstances surrounding Amendment No. 13.

48. To the extent that the Claimant seeks reimbursement of its re-engineering costs on the basis of the principle unjust enrichment, such a remedy is not available in the present Case. As the Tribunal held in T.C.S.B. Inc. and Iran, Award No. 114-140-2, pp. 20-21 (16 March 1984), "[w]here a valid contract exists, unjust enrichment is a derivative, or at best a secondary alternative, legal theory to an action on the contract". In such a situation, "the issue of whether a performance of the contract results in any 'enrichment' of a party and whether such enrichment is 'unjust' in relation to the other party, cannot be decided without specifically determinating the contractual rights and obligations of the parties". This is the situation that exists here with regard to the Claim for re-engineering costs. In performing additional engineering services, the Claimant purports to have acted upon the requests of its contract party, pursuant to obligations under and within the framework of the Contract. It contends that the Air Force accepted these services as contractual performance. Since a contract already existed determining the legal relationship on which this Claim is based, a substitute right of action based on unjust enrichment does not arise in this Case.

c) Iranian attorneys' fees

49. The Claimant seeks reimbursement of \$135,825 for attorneys' fees allegedly incurred in connection with taxes assessed against it in Iran. The Claimant argues that under the Contract the Air Force was required to reimburse it for all taxes assessed by Iran in respect of the Contract. The Air Force failed to honour this obligation, the Claimant contends, when taxes were assessed against it for the years 1970 through 1978. Although repeatedly asked for help by the Claimant, the Air Force refused to resolve the assessments or to pay them. In order to mitigate the damages that the Air Force was incurring vis à vis the Claimant by this violation of its contract obligations, the Claimant asserts that it was forced to initiate proceedings before the Tax Commission in Iran to obtain a withdrawal or reduction of the assessments. For these administrative proceedings, which resulted in a substantial reduction of the assessments, it had to retain Iranian counsel for whose services it incurred legal fees at least in the amount claimed, the Claimant asserts.

50. The Claimant has submitted four invoices in support of this Claim. One invoice, dated 10 March 1976, is from the law office of Dr. Sotoudeh to Aeronutronic in Tehran; it refers to "[t]ax related to 1973 operation" and is for an amount of Rials 4,700,178, which the Claimant has converted into \$67,434.40. The three other invoices, all dated 11 May 1981, are from the law office of Dr. Kordestani to Aeronutronic, c/o Dr. Kordestani in Tehran. One refers to "1976 Tax litigation (per Mr. Costello telexed authorization of 23 January 1981) (including services rendered on 1970-1975 Taxes)" and is for an amount of \$7,039.75. The invoice states that the legal fees charged in Rials are converted into Dollars at the "official exchange rate of Rls. 73.35 (on 28 Jan., 81) for One U.S. \$". Another invoice refers to "1977 Tax litigation (Per Mr. Costello

telexed authorization of Jan. 23, 81)" and is for an amount of \$7,099.00, using the same exchange rate. The last invoice refers to "1978 Tax litigation (Per Mr. Costello telexed authorization of 27 Feb., 81)" and is for an amount of \$277,915.00, using an exchange rate of Rials 75.50 per 28 February 1981.

51. The Claimant contends that while the fees in the four invoices relate to services in connection with all its operations in Iran at the relevant times and are not allocated by contract, services in connection with the Contract at issue in the present Case accounted for \$131,295 of the fees for the four years covered. The fees allocable to the Contract for the other five years, which on average accounted for half of the amounts incurred, would more than exceed the \$135,825 claimed by the Claimant when added to the \$131,295 reflected in the invoices, the Claimant contends.

52. The Air Force denies that the Claim for attorneys' fees was outstanding on 19 January 1981. According to the Air Force, the invoices show that the services were only authorized, rendered and billed after that date, and a claim for reimbursement of these amounts could thus not have arisen before. The Air Force further asserts that no evidence has been submitted to show an allocation of fees to the Contract.

53. The Claimant explains that it changed attorneys during the proceedings and retained the new law firm of Dr. Kordestani, who needed the authorization mentioned on the invoices to represent the Claimant in the appeal before the Tax Dispute Settlement Board. In its view, this appeal and the services connected therewith related to all taxes assessed with regard to the Contract from 1970 through 1978, and the claim for reimbursement of these fees thus arose

when those taxes were assessed, but not paid or objected to by the Air Force.

54. Article X of Part B of the Contract provides in pertinent part:

"5. The GOI, its agencies and political sub-divisions, shall levy NO taxes or fees (including taxes on individual or corporate income, or property, customs or import duties and other taxes on personal household goods, privately owned automobiles or professional effects imported into Iran for personal use) on POSI, its non-Iranian subcontractors, the non-Iranian employees of either, or the dependents of such employees.

6. In the event these exemptions are not granted and such taxes are imposed and required to be paid, POSI shall be reimbursed for said payments."

55. From this provision it is clear that the Air Force was contractually required to reimburse the Claimant for the taxes assessed against it in connection with the Contract. It was not unreasonable for the Claimant to try to obtain the withdrawal or reduction of these tax assessments, for the Claimant thereby in fact sought to eliminate or reduce the amount of damages to which it was entitled from the Air Force. When the Air Force did not fully cooperate in these efforts, the Claimant had the right to use the services of local attorneys, who actually obtained a substantial reduction of the tax assessments, and the Claimant's costs incurred for these attorneys' fees are in principle to be borne by the Air Force.

56. As to the amounts sought, the Claim for reimbursement of the costs reflected in the invoice dated 10 March 1976 and related to taxes for 1973 was clearly outstanding. The Parties have not discussed the exchange rate used by the Claimant to convert the Rial amount of this invoice into Dollars, and the Tribunal therefore accepts, as it has previously done, the conversion suggested by the Claimant. See Walter W. Arensberg et al. and The Ministry of Housing

and Urban Development of the Islamic Republic of Iran, Award No. 213-61-1, p. 24 (27 February 1986). The Tribunal further accepts the Claimant's allocation of half of the \$67,434.40 thus reflected in this invoice to services in connection with the Contract. The Claimant is thus entitled to reimbursement of \$33,712.20 for this invoice.

57. With regard to the three invoices dated 11 May 1981, the Tribunal determines on the basis of the evidence before it that the Claim for reimbursement of the fees reflected therein was outstanding as of 19 January 1981 as required by Article II, paragraph 1, of the Claims Settlement Declaration. The services of the attorneys, to which these fees relate, were rendered in connection with appeal proceedings that covered taxes assessed for 1970 through 1978. The Claimant has submitted evidence showing that as early as May 1973 it requested the Air Force's assistance in defending against the tax assessments, and that it initiated administrative proceedings protesting them. For example, by letter dated 19 January 1976, it informed the Air Force that "[i]t is of the utmost importance to both [Aeronutronic] and to the [Air Force] to prevent the illegal assessment since the attorney fees required to be paid in order to protest the assessment are quite high and must be paid by [the Air Force]". The letter then lists as an example attorneys' fees of \$73,000 only to protest the 1973 assessment. The attorneys' fees reflected in the May 1981 invoices thus relate to legal services that started not later than 1973, were caused by events occurring from then through 1978 and were of a continuing nature. The Claim for reimbursement of these fees is based on the Air Force's breach of Article X of Part B of the Contract, which breach occurred before 19 January 1981. The attorneys' fees were thus damages due which started to be incurred well before that date and which only continued to accrue thereafter, thereby raising the amount of a claim that was already outstanding before. This situation is different from that in J. I. Case Company and

The Islamic Republic of Iran, Award No. 57-244-1, p. 5 (15 June 1983), where one of several instalments to be paid under an invoice only became due after 19 January 1981. Instead, the conclusion reached in the present Case is in line with the decision in Behring International Inc. and Islamic Republic of Iran, Award No. ITM/ITL 52-382-3, pp. 47-48 (21 June 1985), where the Tribunal held that "[i]f a breach occurred on or prior to 19 January 1981, the Tribunal has jurisdiction to adjudicate a counterclaim for all reasonably foreseeable damages accruing thereafter, proximately caused by such breach, irrespective of when such damages began to accrue or whether such damages continued beyond 19 January 1981." Consequently, the Tribunal has jurisdiction over this part of the Claim.

58. The Tribunal does not need to discuss the exchange rates indicated in the May 1981 invoices. The Claimant itself has allocated only \$97,582.80 to these invoices; this figure is arrived at by deducting the \$33,712.20 allocated by the Claimant to the first invoice from the \$131,295.00 allocated by it to all four invoices. The \$97,582.80 is not higher than the aggregate half of the three May 1981 invoice amounts, as converted through the exchange rates given in those invoices.

59. The Air Force has disputed any fees that are claimed in connection with tax assessments not reflected in the above four invoices. The Claimant has not submitted any evidence for such fees, nor for their eventual allocation to the Contract. Absent that evidence, the Claimant is only entitled to reimbursement of \$131,295, the aggregate amount of Iranian attorneys' fees reflected in the above four invoices.

d) Interest

60. The Claimant seeks interest at the prime rate on all amounts

claimed from November 1976 to the date of payment of the Award. It asserts that it is funded through its parent company Ford Aerospace which is in turn funded by its parent company Ford Motor Company. The Claimant regards the prime rate as the "appropriate measure of the cost of funds to Ford Motor Company (or in the alternative, the investment return that could have been earned had Respondents made the payments required by these contracts). . . ."

61. The Respondents request that the Tribunal defer its decision on the interest until the Full Tribunal has decided Case No. A19.

62. The argument that interest must not be allowed pending the Full Tribunal's decision in Case No. A19 cannot be accepted. As the Tribunal held in R. J. Reynolds and The Islamic Republic of Iran, Award No. 145-35-3, p. 21 (6 August 1984):

"When the issue of interest was previously raised informally in the Full Tribunal, the prevailing opinion was that pending an eventual decision on the subject by the Full Tribunal, each Chamber shall resolve issues of interest in cases before it according to its own best judgment. The three chambers have consistently done so. To act otherwise would have meant blocking the work of the Tribunal for an unforeseeable length of time, as interest is claimed in practically every case."

The Respondents' request is therefore denied.

63. The Claimant is entitled to interest on the \$107,107.07 for unpaid invoices and on the \$131,295 for costs of Iranian attorneys. Except for the relatively small amount reflected in the first invoice, the amount awarded for unpaid invoices

became due on 13 June 1978. The Tribunal therefore awards interest on the \$107,107.07 from 13 June 1978.

64. With regard to attorneys' fees, the Claimant cannot have incurred the costs reflected on three of the invoices before 11 May 1981, which is the date of these invoices. The Claimant does not assert that it paid these invoices, or even the fourth invoice, before that date, nor does it assert that it requested payment of these attorneys' fees from the Air Force before it filed its Statement of Claim with the Tribunal on 17 December 1981. Iranian attorneys' fees were also not included in a summary of its claim that the Claimant submitted to the Air Force on 18 September 1981 in the context of settlement negotiations. The Tribunal therefore awards the Claimant interest on \$131,295 from 17 December 1981, the date when the Claimant filed its Statement of Claim.

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

66. In the Sylvania case itself, the Tribunal applied a rate of interest approximating the average rate of interest on six-month certificates of deposit for the relevant period

in that case, which was approximately 1979 through 1984. The rate used was 12 percent. In the present Case, the relevant periods for the two Claims begin at different times. Therefore, the Tribunal applies different interest rates to each Claim.

67. The period for the Claim of \$107,107.07 begins on 13 June 1978. The average rate of interest paid on six-month certificates of deposit from that date through the date of this Award was approximately 11.25 percent, and it is that rate which the Tribunal applies for that period.¹

68. The period for the Claim of \$131,295 begins on 17 December 1981. The applicable average rate from that date through the date of this Award is 10.00 percent.

e) Liability for taxes

69. The Claimant submits that taxes were assessed against it in respect of the Contract for the years 1970 through 1978 in an amount of Rials 560,297,197. The Claimant "requests that the Tribunal enforce the clear intention of the parties that the Air Force was to be responsible for payment of all Iranian taxes by declaring (i) that the Air Force shall pay all taxes and penalties against [Aeronutronic] in respect of the Peace Net Contract; (ii) that the Air Force shall provide [Aeronutronic] with receipts evidencing such payments; and (iii) that [Aeronutronic] is released from all such liability". At the Hearing the Claimant further specified that it requests "effective release" from all tax liability in connection with the Contract.

¹ The Tribunal uses the last published rate available to it and rounds the rate awarded to the nearest quarter of a percentage point.

70. The Respondents deny that the Claimant is entitled to the relief sought here. They argue that the tax exemption in the Contract violates compulsory provisions of Iranian law, and that consequently the Air Force is not responsible for the payment of any taxes in connection with the Contract. Rather, the Air Force asserts that the Claimant is obligated to pay taxes of Rials 813,207,021, for which amount the Air Force makes a Counterclaim.

71. The Tribunal determines that, whether or not the tax exemption in the Contract is valid and binding on the Parties under Iranian law, the Claimant may rely on that part of Article X of Part B of the Contract which requires the Air Force to reimburse the Claimant in the event taxes are imposed and required to be paid by the Claimant. Whatever obligations Iranian law may impose on the Claimant with regard to the payment of taxes, this does not affect the contractual obligation to reimburse that the Air Force has undertaken by the above provision. Having never raised any objection to such a reimbursement clause or to the subsequent practice of the Parties prior to the present proceedings, the Government or a Ministry cannot now persuasively argue that such a contract provision is null and void and cannot be relied upon. Thus, the Air Force cannot require the Claimant to pay taxes, the repayment of which the Claimant could demand under the reimbursement clause of the Contract.

72. Consequently, the Tribunal holds that the Air Force is not entitled to demand from the Claimant payment of the taxes that the Claimant or the Air Force assert to have been assessed against the Claimant relating to the Peace Net Contract. Any claim for any additional taxes which, after the rendering of this Award, might be found due from the Claimant in connection with the performance of that Contract would be outside the Tribunal's jurisdiction, and thus the Tribunal lacks jurisdiction to grant a release from any such

potential future liability. See Computer Sciences Corporation and The Government of the Islamic Republic of Iran et al., Award No. 221-65-1, p. 37 (16 April 1986). The further declaratory relief sought by the Claimant essentially amounts to a request that the Tribunal apply the tax laws of Iran, and, as the Tribunal also held in Computer Sciences Corporation, *id.* at p. 55, it lacks jurisdiction over any such claim. Therefore, in view of the holding set forth above, the Tribunal does not see any need or basis for further relief.

f) Relief with regard to the proceedings in the Public Court of Tehran

73. The Air Force filed its Counterclaims for breach of contract in this Case on 20 September 1982. On 1 October 1983, the Ministry of National Defence of the Islamic Republic of Iran filed an action against the Claimant in the Public Court of Tehran that raised claims identical to the Air Force's Counterclaims for breach of contract. At the request of the Claimant, which had been summoned to appear in the Tehran proceedings, the Tribunal issued Interim Award No. ITM 44-158-1 of 27 August 1984, in Aeronutronic Overseas Services, Inc. and The Government of the Islamic Republic of Iran et al., providing for the Government of Iran to move for a stay of proceedings before the Public Court of Tehran pending the Tribunal's decision on the Claimant's request based on the views of both Parties. Having received the comments of the Air Force on the Claimant's request, in which it was stated that the Hearing before the Tehran Court had been adjourned, the Tribunal issued Interim Award No. ITM 47-158-1 of 14 March 1985 in this Case, requesting that the Government of Iran take all appropriate measures to ensure that the proceedings before the Public Court of Tehran be stayed until final determination of the proceedings in the present Case. Following a second summons to the Claimant to appear before the Tehran Court, the

Tribunal in an Order filed on 17 May 1985 "urgently remind[ed] the Respondents that the terms of its Interim Award No. ITM 47-158-1 of 14 March 1985 remain in full force and effect". Following a third summons to the Claimant to appear before the Tehran Court, the Tribunal in an Order filed on 18 December 1985 "again urgently remind[ed] the Respondents that the terms of its Interim Award No. ITM 47-158-1 of 14 March 1985 remain in full force and effect".

74. At the Hearing, the Claimant sought appropriate relief with regard to the last summons. Since the Tribunal by this Award renders a final decision on the jurisdiction over the merits of the Claimant's Claims and the Air Force's Counterclaims, the interim relief granted in this Case expires by its terms. When the Tribunal assumes jurisdiction over the Claims and the Counterclaims for breach of contract in this Case (the Tribunal has no jurisdiction over the Counterclaims for taxes and social security premiums, see infra at III.3.c) and d)), such Claims and Counterclaims are considered to be excluded from the jurisdiction of any other court as of the date of their filing with the Tribunal. This consequence of Article VII, paragraph 2, of the Claims Settlement Declaration has been confirmed by the consistent practice of the Tribunal since Interim Award No. ITM 13-388-FT of 4 February 1983 in E-Systems, Inc. and The Government of the Islamic Republic of Iran. The effect of the Tribunal's assumption of its jurisdiction in the present Case is that as of 20 September 1982, the date of the filing of the Air Force's Counterclaims with the Tribunal, the Tehran Court is no longer considered to have jurisdiction to deal with the subject matter of the claims which the Air Force brought before that court on 1 October 1983. While confirming this legal consequence of Article VII, paragraph 2, of the Claims Settlement Declaration and noting the Interim Awards issued in this Case, the Tribunal does not find a need or basis for the ordering of any relief beyond that previously granted.

See Questech Inc. and The Ministry of National Defence of the Islamic Republic of Iran, Award No. 191-59-1, p. 35 (25 September 1985).

g) The Claims against the Government of Iran

75. In its Statement of Claim, the Claimant sought the relief in this Case from all Respondents, including the Government of Iran. At the Hearing, the Claimant confirmed that its Claim was against the Government of Iran and its controlled entity, the Air Force. In this Award, the Tribunal determines that the Air Force is obligated to pay the Claimant certain amounts of unpaid invoices and of attorneys' fees. The Claimant's remaining Claims are dismissed. Thus, there is no separate liability by the Government of Iran for any of the Claimant's Claims. This determination is without prejudice to the Tribunal's finding that the Public Court of Tehran is no longer considered to have jurisdiction to deal with the subject matter of the claims brought before it by the Air Force on 1 October 1983.

3. The Counterclaims

a) With regard to Amendment No. 4

76. The Air Force seeks reimbursement of \$5,000,000 allegedly paid for the Claimant's services pursuant to Amendment No. 4 to the Contract. It contends that the ground-to-air system, which constituted a major portion of that Amendment, is totally unusable because of communication deficiencies for which the Claimant is responsible. The Claimant asserts that it performed its contract obligations, and that any deficiencies in the communication system have nothing to do with its work. It further asserts that the Air Force accepted the ground-to-air system and all work performed under Amendment No. 4.

77. The Claimant has submitted a final acceptance form with a cover letter from the Air Force addressed to it approving that form. The form states that "[t]his document certifies that Aeronutronic Overseas Services, Incorporated (AOSI) has successfully complete[d] their contractual obligations in accordance with Amendment 4 of the Peace Net Contract CP 2054". In view of this acceptance and absent any contemporaneous objection to the services rendered by the Claimant, the Tribunal is satisfied that the Claimant properly performed its obligations pursuant to Amendment No. 4 to the Contract. This Counterclaim is therefore dismissed.

b) With regard to Amendment No. 13

78. The Air Force seeks reimbursement of \$100,000 it allegedly had to spend in order to complete work that the Claimant left unfinished under Amendment No. 13. The Tribunal has determined before that, with the exception of five specific items, the Claimant has fulfilled its obligations under that Amendment. See supra at III.2.a). In awarding the Claimant amounts due under Amendment No. 13, the Tribunal has accounted for the value of those unfinished items. This Counterclaim must therefore also be dismissed.

c) Taxes

79. The Air Force has brought a Counterclaim of Rials 813,207,021 for taxes assessed by the Ministry of Finance against the Claimant, covering operations of the Claimant in Iran from 1970 through 1981. The Air Force contends that, according to the Contract the Claimant was obligated to pay taxes. The Claimant denies the Tribunal's jurisdiction over this Counterclaim, and it asserts that it is without merit.

80. Pursuant to Article II, paragraph 1, of the Claims Settlement Declaration, the Tribunal only has jurisdiction

over a counterclaim "which arises out of the same contract, transaction or occurrence that constitutes the subject matter of" the main claim. As the Tribunal has found above at III.2.e), the Contract specifically provided for the Claimant to be exempted from the payment of taxes. The asserted obligation to pay taxes in this Case is thus not imposed by the Contract that is the subject matter of the Claim, but could only follow from operation of the applicable Iranian tax law. As the Tribunal has consistently held, the obligation to pay taxes is a legal relationship that arises out of the application of the law to a factual situation of a person or legal entity rather than a contractual relationship that exists between the parties to a contract by virtue of that contract. For these reasons, the Counterclaim of the Air Force for taxes is outside the Tribunal's jurisdiction.

d) Social security premiums

81. The last Counterclaim that the Air Force makes is for social security premiums in the amount of Rials 84,130,264, which the Claimant allegedly owes in connection with the Peace Net Contract. The Air Force argues that, having concluded the Contract with the Air Force and paying wages to employees in performance of that Contract, the Claimant was obligated to pay insurance premiums "in accordance with the laws concerning Iranian social security". It also asserts that "under Article 38 of the Social Security Act, the Air Force shall be held responsible for settlement of [social security] dues". The Claimant denies that the Tribunal has jurisdiction over this Counterclaim, and it denies any liability under the social security law.

82. As stated above in connection with the tax Counterclaim, the Tribunal only has jurisdiction over a counterclaim "which arises out of the same contract, transaction or occurrence that constitutes the subject matter

of" the main claim. The asserted obligation to pay social security premiums in this Case is imposed not by the Contract that is the subject matter of the Claim, but by operation of the applicable Iranian social security law. The Air Force itself does not point to any other legal basis. Any such obligation involves, as the Tribunal found in T.C.S.B., Inc., and Iran, Award No. 114-140-2, p. 24 (16 March 1984) and confirmed in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1, p. 41 (27 June 1985), "legal relationships arising out of the application of the law to a situation in which either party individually finds itself" rather than a "contractual relationship between the parties to the contract inter se". The Tribunal thus has no jurisdiction over the Air Force's Counterclaim for social security premiums.

4. Costs

83. The Claimant seeks costs of arbitration in an amount of \$105,000, which includes \$70,000 for attorneys' fees, \$26,000 for expenses and \$9,000 for travel and other expenses of witnesses. Having regard to criteria of the kind outlined in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1, pp. 35-38 (27 June 1985), and taking into account the outcome of this Case, the Tribunal determines that each Party shall bear its own costs.

IV. AWARD

84. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

a) The Respondent THE AIR FORCE OF THE ISLAMIC REPUBLIC OF

IRAN is obligated to pay the Claimant AERONUTRONIC OVERSEAS SERVICES, INC., the sum of Two Hundred Thirty Eight Thousand Four Hundred Two United States Dollars and Seven Cents (U.S. \$238,402.07); plus simple interest at the rate of 11.25 percent per year (365-day basis) on \$107,107.07 from 13 June 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account; plus simple interest at the rate of 10.00 percent per year (365-day basis) on \$131,295.00 from 17 December 1981 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

b) These 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.

c) The Claimant AERONUTRONIC OVERSEAS SERVICES, INC. is obligated to deliver to the Respondent THE AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN the "As-built OCP engineering drawings at Khatami Air Base", as defined in Amendment No. 13 to Contract No. CP-2054.

d) With regard to the request of the Claimant AERONUTRONIC OVERSEAS SERVICES, INC. for relief from the proceedings in the Public Court of Tehran commenced by the Respondent THE AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN, the Tribunal determines that the Claims over which this Tribunal has found in this Award that it has jurisdiction were, as of the date such Claims were filed in the form of Counterclaims in this Tribunal, and continue to be, excluded from the jurisdiction of that Court or any other court by the terms of the Claims Settlement Declaration.

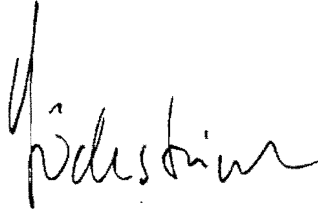
e) Each Party shall bear its own costs.

f) The remaining Claims and the Counterclaims are dismissed.

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

Dated, The Hague

20 June 1986



Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God



Mohsen Mostafavi
Concurring in part,
dissenting in part. See
Separate Opinion



Howard M. Holtzmann
Dissenting with Respect to
denial of Re-engineering
and Delay Claims; joining
in all other parts of the
Award. See Separate Opinion