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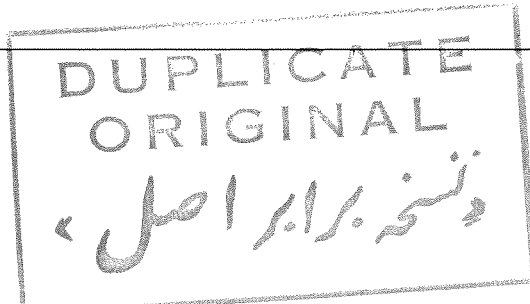
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CHAMBER THREE

CASE NO. 159

AWARD NO. 236-159-3

396

FORD AEROSPACE & COMMUNICATIONS CORPORATION
and AERONUTRONIC OVERSEAS SERVICES, INC.,

Claimants,

and

IRAN UNITED STATES CLAIMS TRIBUNAL		ایران و ایالات متحده	
ثبت شد - FILED			
Date	17 JUN 1986	تاریخ	
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No.	159	شماره	

THE AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN,
THE GROUND FORCES OF THE ISLAMIC REPUBLIC OF IRAN,
THE MINISTRY OF NATIONAL DEFENSE OF THE ISLAMIC
REPUBLIC OF IRAN, BANK MARKAZI IRAN and THE
GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,

Respondents.

AWARD

Appearances:

For the Claimants:

Mr. Mark McCall
Attorney

Mr. Karl Wolf

Vice-President, General
Counsel, Ford Aerospace
& Communications Corporation

Mr. Hugh D. Breslin

Ford Aerospace &
Communications Corporation

For the Respondents:

Dr. J. Niaki

On behalf of the Agent of the
Government of the Islamic
Republic of Iran

Mr. M.T. Naderi
Legal Advisor to the Agent of
the Government of the
Islamic Republic of Iran
Mr. M. Moslemi
Mr. A. Toussi
Representatives of the Ground
Forces
Mr. A. Fatemi
Attorney for the Ministry of
Defense
Mr. H. Kalantar Kashi
Advisor to the Ministry
of Defense
Mrs. S. Ershadi
Representative of Bank
Markazi
Mr. M.R. Mashaiekh
Mr. M. Raïssi
Mr. M.T. Sarabi
Representatives of the
Ministry of Finance

Also present:

Mr. John Crook
Agent of the United States of
America
Mr. M. Glanz
Legal Advisor to the Agent of
the United States of America
Mr. A. Malek
Representative of Bank Mellat

I

GENERAL STRUCTURE OF THE CASE

1. The claims in this Case are based on four different agreements and three groups of purchase order transactions entered into between FORD AEROSPACE & COMMUNICATIONS CORPORATION ("Ford Aerospace") or AERONUTRONIC OVERSEAS SERVICES, INC. ("AOSI"), on the one hand, and Iranian military authorities, on the other, during the period from 1975 to 1978. Two claims are for amounts allegedly owed for work performed, two claims are based on certain provisions concerning adjustment in relation to exchange rates and the three remaining claims are for payment of certain materials

and equipment allegedly delivered pursuant to various purchase orders. The total amount claimed is U.S.\$366,778. The Claimant AOSI further seeks release from certain bank guarantees and related obligations issued in connection with two of the agreements in question. In addition, the Claimants seek interest as well costs of arbitration. Counter-claims have been raised by some of the Respondents.

II

P R O C E E D I N G S

2. The Claimants, Ford Aerospace and AOSI, submitted their Statement of Claim on 17 December 1981 against the Respondents, the AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN ("IAF"), the GROUND FORCES OF THE ISLAMIC REPUBLIC OF IRAN ("IGF"), the MINISTRY OF NATIONAL DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN ("MOD"), BANK MARKAZI IRAN ("Bank Markazi") and the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran").

3. With respect to an agreement invoked as a basis for one of the claims raised, viz., Contract No. 103, dated 29 August 1976, between AOSI and "The Imperial Government of Iran" (the "Peace Sceptre Contract"), this Chamber relinquished jurisdiction to the Full Tribunal on 31 March 1982 "for the limited purpose of hearing and deciding whether claims therein arising out of contracts containing provisions for the settlement of disputes fall within the provision of paragraph 1, of Article II of the Claims Settlement Declaration...."

4. On 5 November 1982 the Full Tribunal rendered Award No. ITL 6-159-FT holding "that Article 9 of the Peace Sceptre Contract does not fall within the scope of the forum clause

exclusion contained in Article II, paragraph 1 of the Claims Settlement Declaration," and referring the Case "back to Chamber Three for further proceedings."

5. By a submission of 7 February 1983 the Claimants informed the Tribunal that AOSI on 17 January 1983 had received a summons advising it that MOD had filed suit against AOSI in the Public Court of Tehran alleging breach of the Peace Sceptre Contract. By the same submission, and pursuant to Article 26 of the Tribunal Rules, the Claimants requested the Tribunal to order that the proceedings in Iran be dismissed or stayed.

6. On 20 October 1983 the Tribunal issued Award No. ITM 28-159-3 which, inter alia, "request[ed] the Government of Iran to take all appropriate measures to ensure that the proceedings before the Public Court of Tehran [related to the Peace Sceptre Contract] be stayed further at least until 30 days after" a Hearing to be held on the request of the Claimants for interim measures.

7. Following such Hearing, which was held on 3 May 1984 (together with a Pre-Hearing Conference and a Hearing on certain jurisdictional issues), the Tribunal issued, on 4 June 1984, Award No. ITM 39-159-3 "request[ing] the Government of the Islamic Republic of Iran, and particularly its Ministry of National Defense, to take all appropriate measures to ensure that the proceedings now pending before the General Court of Tehran, Chamber 18, against Aeronutronic Overseas Services, Inc. brought by said Ministry of National Defence in regard to Contract No. 103 of 29 August 1976 relating to Peace Sceptre Project 2 be stayed until further order of the Tribunal."

8. The Tribunal notes that Bank Mellat, appearing as successor to the Foreign Trade Bank of Iran and claiming to be a proper Respondent in this Case, submitted on 15

December 1983 a Statement of Counterclaim against the Claimant AOSI. On 1 February 1984 AOSI submitted a reply thereto. On 20 February 1984 Bank Mellat submitted an "Addendum" to its Statement of Counterclaim, to which AOSI responded on 4 April 1984. Other submissions have been made by AOSI and Bank Mellat.

9. The Parties have submitted pleadings and Memorials on all issues in the Case. A Hearing on all issues was held on 4 October 1985, at which time the Parties and Bank Mellat appeared and presented oral argument.

III

PROCEDURAL ISSUES

10. In its Statement of Claim the Claimants named Bank Markazi as a Respondent as "Bank Markazi . . . has undertaken to perform the obligations of the Government of Iran with respect to maintenance and replenishment of the security account". On 27 February 1984 the Claimants offered to withdraw their claims against Bank Markazi and requested that Bank Markazi be stricken from the list of the Respondents. In an objection thereto, filed 10 April 1984, Bank Markazi alleged that the Claimants' Statement of Claim contains "various foreign exchange claims against Bank Markazi." Bank Markazi appeared at the Hearing and presented oral argument. The Tribunal finds that, as the Claimants have formulated their Case, no claim is asserted against (or by) Bank Markazi pertaining to the subject matter of the present Case. Consequently the Tribunal finds that Bank Markazi is not a proper party to this Case.

11. Particular issues are raised by the submissions involving Bank Mellat. In view of their close relation to the facts in this Case, these issues are dealt with in

connection with the contractual claims to which they relate (see paragraphs 34-56 and 67-71).

12. On 3 October 1985, the day before the Hearing on all issues in this Case, the IGF submitted a supplementary Statement of Defense. At the Hearing on 4 October 1985 the Claimants objected to this submission on the ground of untimeliness. In view of the requirements of equality between, and fairness to, the Parties, the Tribunal decided that no new submissions could be accepted at such stage of the proceedings. Consequently, the Tribunal disregards the unauthorized submission by IGF of 3 October 1985. For the same reasons the Tribunal declined to accept a claim of the Iranian Ministry of Finance for taxes proffered at the Hearing.

IV

J U R I S D I C T I O N

13. The Respondents have raised the objection that the Claimants have not proven their United States nationality and continuous ownership of the claims within the meaning of Articles II, paragraph 1, and VII, paragraph 1, of the Claims Settlement Declaration. No evidence has been submitted in support of the Respondents' contentions.

14. In its Award No. ITM 39-159-3, rendered on 4 June 1984, the Tribunal found that the Claimants had made a prima facie showing of United States nationality.

15. Since the rendering of that Award the Claimants have submitted detailed evidence as to their nationality and continuous ownership of the claims.

16. Having examined the evidence submitted, the Tribunal finds that the United States nationality of the Claimants

and the continuous ownership of the claims in this Case by the Claimants is established.

17. In its Award No. ITM 39-159-3, rendered 4 June 1984, the Tribunal also noted that "[n]o doubt has been raised as to the propriety of Respondents being named in this case". No such doubt has been raised since then. Accordingly, the Tribunal finds that each Respondent fulfills the requirements of Article VII, paragraph 3, of the Claims Settlement Declaration.

18. In connection with certain bank guarantees at issue certain claims have been raised. These claims, as well as the submissions of Bank Mellat, raise particular issues of jurisdiction which are dealt with in connection with the claims to which they relate (see paragraphs 34-56 and 67-71).

19. Subject to the foregoing, the Tribunal finds it clear that the claims asserted in this Case arise out of a debt or contract within the terms of Article II, paragraph 1, of the Claims Settlement Declaration.

20. In the following paragraphs the claims (and counter-claims) raised by (and against) the two Claimants will be dealt with separately.

V

T H E C L A I M S O F A O S I

21. The Claimant AOSI asserts three separate groups of claims against the Respondents MOD, IAF, IGF and Iran (collectively also referred to as "Respondents"), based on different agreements. These claims, and their related counterclaims, are dealt with immediately below.

A. CLAIMS BASED ON TWO CONTRACTS NO. 73/53

22. The Tribunal will deal initially with the claims and counterclaims based on two separate but related contracts, and subsequently with the claims and counterclaims related to a bank guarantee issued pursuant to one of these contracts. The claim for interest as well as the issue of the currency in which this Award is to be rendered are dealt with separately below (see Sections VIII and IX).

a) THE CLAIMS

23. On 16 March 1975 the Claimant AOSI, then called Philco Overseas Services, Inc., executed two contracts under No. 73/53 with IGF. The first, generally referred to as the "Equipment Contract", required AOSI to provide "Key Telephone Hot Line Systems" at ten sites in Iran at a total price of U.S.\$360,794. It appears undisputed between the Parties that all the equipment called for under the Equipment Contract had been delivered in Iran by 16 May 1979 with the exception of "one ringing supply" and "three amber lenses". According to the Claimant's latest submissions, this missing equipment was worth a total of U.S.\$111. AOSI was paid in full in accordance with the Equipment Contract and as of 8 October 1977 IGF ordered the cancellation of the guarantee furnished by AOSI in respect of the Equipment Contract.

24. The second or "complementary" contract, generally referred to as the "Services Contract", required AOSI to install the ten Key Telephone Hot Line Systems for a total price of 14,258,913 Iranian Rials. It is undisputed that AOSI was paid 25%, or 3,564,728 Iranian Rials, of the contract price, in accordance with Section 7(1) of the Services Contract. It is further agreed between the Parties that as of 29 November 1977 the scope of the Services

Contract was reduced to the installation of eight Key Telephone Hot Line Systems, instead of the original ten.

25. The claim now asserted by the Claimant AOSI is for payment of the remaining 75%, i.e., 10,694,185 Iranian Rials allegedly due and owing. In stating its claim, the Claimant has converted the Rial amount to U.S.\$153,984 by use of an exchange rate allegedly applicable at the time AOSI considered its performance completed. After deduction made for the missing equipment referred to in paragraph 23 above AOSI thus claims U.S.\$153,873 plus interest.

26. The dispute between the Parties concerns, in essence, the question of whether performance was completed in accordance with the Services Contract, and, if so, what amount is due and owing to the Claimant for services rendered.

27. The Claimant makes the following contentions. The Services Contract provided that AOSI would install the Key Telephone Hot Line Systems at sites selected by IGF. AOSI was prevented from doing so in time due to delays caused by IGF. The installation of Key Telephone Hot Line Systems at the eight sites selected by IGF was completed as of July 1977 and one such system had been tested. The subsequent performance by the Claimant of the final "systems tests" of the remaining systems installed was prevented by IGF's failure to provide, as required by the Services Contract, operational circuits connecting the various sites. In accordance with a specific provision incorporated by reference into the Services Contract, the responsibility for the performance of the systems tests passed from AOSI to IGF one year after the start of the installation at the first site. As the installation of eight Key Telephone Hot Line Systems was completed as of July 1977, by 22 July 1978 the Claimant no longer had any obligation to perform according to the Services Contract. Consequently, the Claimant AOSI is entitled to payment for the services rendered.

28. The Respondent IGF denies the claim in its entirety. With respect to the Equipment Contract, the Respondent contends that the missing equipment was essential to the functioning of the Key Telephone Hot Line Systems and that therefore its alleged value of U.S.\$111 is not an appropriate measure of its worth. As to the Services Contract, the Respondent IGF contends that the delays in the performance of the contract were not caused by IGF but by AOSI. Furthermore, IGF alleges that AOSI failed to deliver installed and tested equipment as required by the Services Contract, and IGF cannot be obligated to pay for such incomplete performance. The Respondent further objects that any amount due should be awarded in Iranian Rials rather than in United States Dollars. The latter objection is dealt with separately below.

29. With respect to the Equipment Contract, the Tribunal notes that the Parties did agree, at the relevant time, that it had been fully performed, as is evidenced by the release of the guarantee. The fact that the Claimant admits to the non-delivery of certain equipment and appropriately sets off the value of same against the claims raised therefore can not now be invoked against the Claimant. As to the value of the undelivered equipment, the Tribunal finds no reason to deviate from the valuation provided by the Claimant.

30. As concerns the Services Contract, the Tribunal initially notes that the Parties agree that the scope of the contract was reduced to include the installation of Key Telephone Hot Line Systems at only eight sites. The remaining issue concerns responsibility for final systems testing. As concerns the Parties' performance during the life of the Services Contract, the Tribunal notes that the Respondent IGF's allegations of delays in AOSI's performance (as opposed to delays by IGF in making available the circuits required to perform systems testing) are of a general nature and are not substantiated by any evidence. Indeed, the

Claimant's allegations as to IGF's delays inferentially are corroborated by the conclusion, as of 29 November 1977, to delete two of the originally contemplated ten sites. In this respect the Tribunal notes that the Respondent IGF does not expressly contest AOSI's interpretation of the Services Contract, i.e., that the responsibility for final systems testing would pass from AOSI to IGF one year after the start of the installation of the Key Telephone Hot Line Systems at the first site. Although the evidence submitted does not permit the Tribunal to establish the exact time when AOSI commenced installation at the first site, the Tribunal finds it established that this must have occurred some time prior to July 1977. The Tribunal therefore finds that responsibility for conducting final systems testing must have passed to IGF at least by 22 July 1978 as claimed by AOSI. In conclusion, and based on the foregoing, the Tribunal finds that AOSI had fully performed its obligations according to the Services Contract as of 22 July 1978.

31. The Tribunal next must establish what amount is due and owing to AOSI under the Services Contract. The outstanding balance according to the contract, which originally envisaged installation of Key Telephone Hot Line Systems at ten sites, is 10,694,185 Iranian Rials. No evidence has been adduced suggesting that the contract price was intended to be reduced proportionately to reflect the reduction in the scope of the Services Contract (to eight sites), and no evidence has been offered on the basis of which the Tribunal itself might calculate such reduced price. There is no evidence that the Claimant AOSI itself agreed to a reduction of its contractual expectations. With respect to the two omitted sites the Tribunal finds it reasonable, in the circumstances of this Case, to allow AOSI to be compensated for an appropriate profit and expenses actually incurred in relation thereto. In view of the foregoing the Tribunal determines that the Claimant AOSI is entitled to 80% of the contract price, or 11,407,130 Iranian Rials, in full as a

proportionate contractual price for the eight Key Telephone Hot Line Systems actually installed, and that of the remaining contract price it is entitled to 50%, or 1,425,891 Iranian Rials. The resulting total of 12,833,021 Iranian Rials must be diminished by the sum already paid, i.e., 3,564,728 Iranian Rials, resulting in an outstanding balance of 9,268,293 Iranian Rials. From the dollar amount hereinafter determined to be payable to the Claimant in respect of other claims (see paragraph 54 below) U.S.\$111 shall be deducted to compensate for the value of the undelivered equipment under the Equipment Contract.

b) COUNTERCLAIMS RELATED TO FURTHER EXPENSES

32. The Respondents IGF and MOD have both raised counterclaims for repayment of the entire Equipment Contract price, or U.S.\$360,794, as well as for compensation for further unspecified expenses for "insurance" and "other expenses" totalling 617,963 Iranian Rials (as asserted by IGF) or U.S.\$36,000 (as asserted by MOD). The grounds invoked are that AOSI, by its own admission, has not fully performed the Equipment Contract. The Respondent IGF further has counterclaimed for repayment of the 25%, or 3,564,728 Iranian Rials, previously paid to AOSI pursuant to the Services Contract. The Claimant AOSI denies these counterclaims.

33. The previous rulings of the Tribunal rejecting the Respondents' allegations of AOSI's inadequate performance of the Equipment Contract and the Services Contract are dispositive of these counterclaims as well. Consequently these counterclaims are rejected.

c) THE BANK GUARANTEE

34. The Services Contract contains provisions requiring the issuance of a performance guarantee. In relation thereto the Claimant AOSI raises claims for declaratory relief and damages against IGF. In addition, as discussed below, the Claimant at a later stage of the proceedings has sought to raise certain claims directly against Bank Mellat, which had asserted certain counterclaims. After setting forth the factual background and the Tribunal's findings related thereto, the Tribunal will address these claims in turn.

i) The Factual Background

35. As required by Section 8 of the Services Contract, the Claimant caused the Foreign Trade Bank of Iran (to which Bank Mellat is the successor) ("Bank") on 16 March 1975 to issue "Guarantee No. 892/14" (also bearing No. 5376) in favor of IGF in the amount of 10% of the contract price, i.e., 1,426,000 Iranian Rials ("Guarantee"). According to the Services Contract the "Guarantee for Proper Performance of the transaction" by AOSI, was to "be kept to the end of completion of fulfillment of the Obligation and installation of the Line Systems." On its face, the Guarantee was valid until 16 March 1978 but provided that it "may be renewed upon the request of [IGF]."

36. As security AOSI issued to the Bank four promissory notes in the amount of 400,000 Iranian Rials each, and deposited with the Bank 10% of the Guarantee amount (i.e., 142,600 Iranian Rials) on 29 March 1975. The debit note for the deposit stated that this sum was to be "held in escrow" for "performance bond No. 5376...." and that "the money will be returned upon release by [IGF]."

37. On 16 March 1980 the Bank informed AOSI that IGF had called the Guarantee on 21 February 1980. AOSI was notified subsequently that pursuant to this demand the Bank paid the amount of 1,426,000 Iranian Rials to IGF in March 1980. There is no evidence submitted that IGF extended the Guarantee beyond the stated expiry date, but the validity of the Guarantee at the time the call was made has not been disputed.

38. Subsequently, AOSI was advised that the Bank had sued AOSI in the General Court of Tehran on the four promissory notes for a total of 1,600,000 Iranian Rials, plus interest and costs, and obtained from Branch 10 of that court a default judgment dated 21/4/80 (12 July 1982) against "Filco [sic] Ford of Tehran" (which the Claimant understands to mean AOSI) in the amount of 1,901,259 Iranian Rials ("Judgment"). Neither Party contends that the Judgment has been paid.

39. On 15 December 1983 the Bank, claiming to be a proper Respondent in this Case, submitted a Statement of Counterclaim against AOSI. The counterclaim initially requested payment for the loss caused by the call on the Guarantee in the amount of U.S.\$22,270, allegedly the equivalent of 1,426,000 Iranian Rials plus interest and costs. In a subsequent amendment the Bank asserted, without further specification, a counterclaim for payment of a lump sum of 2,773,711 Iranian Rials for "accrued interest" and "commission fees" incurred both in relation to this Guarantee and to two other guarantees at issue in relation to the Peace Sceptre Contract (see paragraphs 67-71 below).

40. Following the submissions of the Bank, AOSI stated that it considered the Bank a proper Respondent in this Case; it stated further that the Bank's counterclaims should be rejected on the merits.

ii) The Claims for Declaratory Relief

41. In its Statement of Claim the Claimant requested the Tribunal to declare "that any liability under the letter of Guarantee described in Paragraph 13 above [i.e. the factual account in the Statement of Claim] shall be paid, satisfied or extinguished by or among the respondents and AOSI released therefrom". In subsequent pleadings AOSI clarified that it seeks "the cancellation of the Services Guarantee and related promissory notes...."

a) Claim Against IGF

42. As an initial matter the Tribunal finds that to the extent that this claim is for relief from the Guarantee itself, the undisputed fact of payment by the Bank to IGF under the Guarantee renders moot the relief sought.

43. As to the claim for relief against IGF related to "any liability" under the Guarantee, the Tribunal declares that, in view of the holdings of the Tribunal as to the Claimant's performance under the Services Contract, IGF was unjustified in making the call and that IGF is not entitled to retain the payment received from the Bank pursuant to the call. Consequently the Tribunal declares that IGF is under an obligation to take all necessary steps to relieve AOSI from any possible liability in connection with the payment received by IGF.

b) Claim Regarding the Bank

44. In addition to the claims asserted against IGF, AOSI latterly has sought to raise an independent claim against the Bank. As noted, the Claimant seeks relief from any liability arising from IGF's call of the Guarantee, including specifically the four promissory notes, which were issued to secure AOSI's undertakings vis-à-vis the Bank.

45. In its Statement of Claim AOSI does not explicitly list the Bank among the Respondents, although the factual description on which it relies refers both to the Bank and to its obligations toward the Bank. As previously noted, in subsequent documents the Claimant specifically has urged that the Bank is a Respondent in this Case. The Tribunal does not find it necessary, however, to determine whether the Claimant has made a timely claim against the Bank, for the claim must fail in any event.

46. The Tribunal notes that by virtue of the Judgment, AOSI's liability to the Bank, whether based on the promissory notes or otherwise, merged into the Judgment. Consequently, a release from the notes as well as from the underlying liability secured by the notes can now be effected only by a release from the Judgment itself, which relief, as noted below, the Tribunal cannot grant. It is clear in any case that the promissory notes are of no further effect, and cannot be the basis of any further liability independent of the Judgment.

iii) The Claims Related to the Judgment and for Damages

47. AOSI raises two alternative claims related to the Judgment, as well as a claim related to the deposit made with the Bank.

48. In the first of the alternative claims, AOSI seeks an award directing IGF to satisfy the Judgment obtained by the Bank against AOSI in the General Court of Tehran. While the Tribunal has found that IGF owes AOSI a duty to relieve it of any liability resulting from IGF's wrongful call, it is difficult to see on what basis the Tribunal could direct IGF to satisfy a judgment issued by an Iranian court in a proceeding to which IGF was not a party.

49. The second alternative claim, as the Tribunal understands it, is a claim for damages in an amount sufficient to satisfy the Judgment. The Claimant has not elaborated on the grounds invoked for this claim. The Tribunal has a duty to determine, whether, if proved, the facts alleged would constitute a legal basis for such a claim.

50. To the extent the claim is based on the Judgment itself, the claim clearly must fail. Although the Judgment may serve as a fact establishing the extent of AOSI's present liability against the Bank, it cannot be an independent source of damages against IGF.

51. To the extent the claim is a claim for damage arising out of IGF's breach of contract, i.e., the wrongful call, the claim also must fail. The Judgment constitutes a liability of AOSI which was caused by IGF's wrongful call on the Guarantee; however, because it has not yet been executed, the Judgment does not now constitute an actual liquidated loss on the part of AOSI for which damage can be awarded.

52. The Tribunal recognizes, however, that the Bank may obtain execution of the Judgment some time in the future. The Tribunal holds that IGF is liable to AOSI, for any damage or liability that AOSI may incur in the future arising from either the call or the judgment.

53. In addition AOSI raises a damage claim against IGF in an amount equivalent to the deposit. AOSI contends that because IGF's call under the guarantee was wrongful, AOSI is entitled to damages in the amount of 142,600 Iranian Rials (or, at an allegedly appropriate conversion rate, U.S.\$2,037), equivalent to the 10% deposit made to the Bank.

54. The Tribunal accepts this claim against IGF but not on the ground invoked by the Claimant. In view of the Tribunal's findings as to the Claimant's performance under the

Services Contract, the Tribunal finds that IGF was obliged to cause a release of the deposited amount. This was not done. The Claimant is, therefore, awarded damages in the amount (and currency) of U.S.\$2,037 as claimed. In consequence of its earlier finding (see paragraph 31 above), the Tribunal decides here to deduct the U.S.\$111 the Claimant owes the Respondent. The amount payable to the Claimant is therefore U.S.\$1,926.

iv) The Bank's Counterclaims

55. As noted above, the Bank has counterclaimed for reimbursement from AOSI for the amounts under the call plus certain interest and commission fees. The Tribunal does not determine the fundamental question of jurisdiction in respect of this counterclaim, as it fails in any event.

56. As noted above, the Bank did not assert its counterclaim against AOSI until after it had already obtained the Judgment on the promissory notes which were the security given for the same obligation that forms the basis of the counterclaim. The Bank had the option to pursue its claim against the Claimant either here, as a counterclaim, or in a municipal court. See E-Systems, Inc. and Iran, Award No. ITM 13-388-FT, (4 Feb. 1983), reprinted in 2 Iran-U.S. C.T.R. 50 at 57. Having elected to proceed on the claim in the General Court of Tehran, the Bank is precluded from reasserting the claim here. Moreover, the Judgment transformed the claim on the notes into a judgment debt. The Counterclaim is thus, in effect, a request that the Tribunal execute a judgment debt that arose subsequent to 19 January 1981, a request that for this reason alone is clearly outside our jurisdiction. The Bank's counterclaim is therefore dismissed.

B. THE CLAIMS BASED ON THE PEACE SCEPTRE CONTRACT

57. On 29 August 1976 the Claimant AOSI and the "Imperial Government of Iran" entered into the Peace Sceptre Contract according to which AOSI undertook to deliver certain equipment and services in relation to command post facilities at two IAF bases, Chah Bahar and Omidieh. In consideration for this, AOSI was to receive U.S.\$450,103 and 9,270,750 Iranian Rials, or (in U.S.\$, at an allegedly appropriate conversion rate) a total of U.S.\$581,747. AOSI now claims payment from IAF of the allegedly outstanding balance. AOSI further claims payment for certain "additional work" performed, as well as relief from certain bank guarantees. Finally, the Claimant seeks interest on the claimed amounts. The claim for interest as well as the issue of the currency in which the Award is to be rendered are dealt with separately below (see Sections VIII and IX).

58. Preliminarily the Tribunal notes that it was in relation to this contract that the Full Tribunal in its Award No. ITL 6-159-FT, issued 5 November 1982, determined that no forum selection clause precluded the jurisdiction of this Tribunal. Although this issue has been reargued by the Respondent MOD, the Full Tribunal's finding is final and binding. In the absence of any other exclusionary grounds, the Tribunal has jurisdiction in regard to this claim, as well as the counterclaim for non fulfillment of contractual obligations raised by MOD. The Tribunal notes that the subject matter of this claim and counterclaim is thus outside the jurisdiction of any other court including that court in which proceedings heretofore have been stayed. See Award No. ITM 39-159-3, supra paragraph 7 at 9 - 10.

a) THE BALANCE DUE

59. It is agreed that both Parties basically performed under the Peace Sceptre Contract, but that certain parts of the work were not executed by the Claimant AOSI. The dispute concerns thus, in essence, the valuation of the work not performed and, consequently, whether or not there is any amount due to the Claimant.

60. The Claimant makes the following contentions. AOSI provided substantially all materials and services required under the Peace Sceptre Contract. Indeed, on 18 October 1978 IAF accepted the work at Chah Bahar, subject only to correction of small defects. For its work AOSI is still owed U.S.\$8,203 and 1,854,145 Iranian Rials. AOSI was, however, unable fully to complete its performance under the Peace Sceptre Contract. Rectification of the few defects at Chah Bahar would have required additional work during "no more than one day for two men" and an additional U.S.\$533 worth of equipment. Completion of the work at Omidieh would have required one week of final testing by two men and installation of components valued at U.S.\$1,246. In total, the value of the services not performed amounts to U.S.\$7,821. In conclusion, the total value of the remaining performance under the contract thus amounts to U.S.\$9,600. After setting off U.S.\$9,600 and converting the Rial amounts due at an allegedly applicable conversion rate, AOSI thus claims payment of a net amount of U.S.\$24,932 for work completed under the Peace Sceptre Contract.

61. The Respondents contend in general that, as admitted by the Claimant, performance under the Peace Sceptre Contract was only partially completed. As to the value of the uncompleted work the Respondents suggest varying figures. The Respondent MOD, by way of a counterclaim to this claim, evaluates the cost of completing the work at U.S.\$69,732, without specifying how this amount has been calculated. In its complaint presented in the General Court of Tehran relating to this project MOD sought the equivalent of

approximately U.S.\$25,700 from AOSI as compensation for work not completed. According to the Respondent IAF the value of the services not rendered in relation to the works performed in Omidieh amounts to U.S.\$26,329.

62. The Tribunal finds, in the absence of any allegations to the contrary by any of the Respondents, that the allegation of the Claimant AOSI that it substantially completed the work at both sites is confirmed by the fact that AOSI was paid all but a relatively minor part of the U.S.\$ portion of the contract as well as approximately one fifth of its Rial portion (which itself constituted the lesser part of the contract price). As to the value of the remaining work to be performed and material to be provided under the Peace Sceptre Contract, the Tribunal finds that the weight of the evidence supports AOSI's estimations. According to the Peace Sceptre Contract, the entire price for materials was to be paid in dollars and the services rendered were to be paid 50% in U.S. Dollars and 50% in Iranian Rials. In view of the foregoing contractual provisions, the Tribunal notes that 50% of the services not performed evaluated at U.S.\$7,821 should be set off against payments due in Rials. By application of the conversion rate alleged by the Claimant to be the rate at the relevant time, i.e., 70.42 Rials per dollar, the Tribunal concludes that under the Peace Sceptre Contract the amounts due and owing by the Respondent MOD to AOSI are U.S.\$2,513.50 and 1,578,768 Iranian Rials.

b) ADDITIONAL WORK

63. The Claimant AOSI claims payment of U.S.\$44,800 for two items of "additional work" performed in relation to the Peace Sceptre Contract.

64. The Claimant cites several items of evidence to substantiate its assertions. AOSI was requested by letter of 31 December 1977 from "Telecommunications Company of Iran" signed by "H. Kalantari - Peace Sceptre II Project Executer" to "hire sleep-in watchmen" for certain buildings, and to "approach to MOW [MOD] to discuss ... expenses". The letter was countersigned by "M. Tanir - Project eng." Further, as reflected in official minutes of a meeting held 11 January 1978, attended by Mr. M. Tanir, AOSI was requested to submit a "contract amendment" for the additional work of installing a "power panel". AOSI submitted a price quotation for the work additional to the Peace Sceptre Contract in the total amount for both items of U.S.\$44,800. No formal amendment to the Peace Sceptre Contract was executed between the Parties. The work was performed, however, and AOSI is owed U.S.\$44,800.

65. While not disputing either that the work in question actually was performed by the Claimant at its request or the fairness of the charges for the work performed, the Respondents deny the claim on the grounds that the price quotation referred to by the Claimant was never received by the IAF and that a written contract amendment was not executed as assertedly required by Appendix 6 to the Peace Sceptre Contract.

66. The Tribunal notes that Appendix 6 to the Peace Sceptre Contract contains the contractual requirements as to the form required for amendments and additional agreements between the Parties. The Tribunal finds, however, that such formal requirements cannot be construed to have the effect asserted by the Respondents. The purpose of such requirements would appear to be to ensure that no claims are raised for additional work which has not actually been ordered and provided and that the price or value of such work would be agreed or subject to determination by an established procedure. It is established, however, that the work was ordered

and provided. Furthermore, no exception has been taken as to the amount stated by the Claimant to be appropriate, nor to the currency in which it has been expressed. In these circumstances, the Tribunal finds that the claim must be granted in the amount and currency requested, U.S.\$44,800.

c) THE BANK GUARANTEES

67. Pursuant to the terms of the Peace Sceptre Contract AOSI caused (now) Bank Mellat to issue two bank guarantees in favor of the "Imperial Government of Iran." The first is guarantee No. 2474 issued in the amount of U.S.\$58,602 to guarantee the "correct execution of the contract" by AOSI under the Peace Sceptre Contract, which under Article 8.2 "the Buyer [was] obliged to release four weeks after termination of the concerned work in the case of well performance of the works." The second is guarantee No. 2475 issued in the amount of U.S.\$79,651 to secure a down payment in the same amount paid to AOSI under the Peace Sceptre Contract. The Peace Sceptre Contract provided in Article 8.5 that "[i]n any case the Bank Guarantee for down payments will be released 4 weeks after clearance of down payments."

68. As the Claimant has fully performed the work under the contract, and as no amounts paid as down payment to AOSI is due to the Respondent, the Claimant AOSI now seeks a declaration of release from these guarantees.

69. In view of the Tribunal's findings as to the performance of the Claimant under the Peace Sceptre Contract, the guarantees Nos. 2475 and 2474 have no further purpose and IGF is obliged to cause AOSI's release therefrom.

70. In its pleadings, Bank Mellat alleges that pursuant to a call by the account party of the two guarantees payment

was effected in the full amount of the guarantees. Bank Mellat contends that it is entitled by way of counterclaim to seek reimbursement for these amounts paid, in addition to "accrued interest" and "commission fees" incurred.

71. The Tribunal notes that according to the evidence submitted both the call and the alleged payment under these guarantees were made after 19 January 1981. On this ground the Tribunal finds that in any event it has no jurisdiction over the counterclaims asserted by Bank Mellat and they are hereby dismissed. In view of this finding the Tribunal need not here decide Bank Mellat's standing to raise the asserted counterclaim.

C. THE CLAIMS FOR COMPENSATION DUE TO EXCHANGE RATE FLUCTUATION

72. The Claimant AOSI entered into two contracts, Contract No. 54-103 and an unnumbered contract dated 17 April 1976, with Respondent IAF which were fully performed on both sides with the exception that AOSI has not been reimbursed for certain compensation to which it claims it is entitled under both contracts in respect of fluctuation in the Rial/Dollar exchange rate during the period of the contracts.

a) CONTRACT NO. 54-103

73. The Parties agree that AOSI and IAF entered into Contract No. 54-103 on 20 May 1975 for work relating to a communications network. Part B, Article III, Paragraph C of the contract at issue provided that the Rial payments foreseen in the contract had been calculated on the assumption of a Rial/Dollar exchange rate of 66.52 and that in case of fluctuation in such rate the Rial payments "will be adjusted" accordingly.

74. The Claimant attests that as a matter of practice invoices for payment under the contract were submitted "approximately two weeks before the contractual payment date". Having completed its performance under the contract, AOSI submitted on 16 October 1976 an invoice to the Respondent IAF in the amount of 1,672,553 Iranian Rials, corresponding to U.S.\$23,724 at an allegedly appropriate exchange rate, in respect of such adjustments for the entire contract period.

75. The Respondent IAF does not dispute the Claimant AOSI's interpretation of the contract, but states that the exchange losses suffered by AOSI were due generally to its delay in invoicing. By way of counterclaim the Respondent MOD requests the Tribunal to order the Claimant to submit certain "work certification forms" allegedly due according to the contract.

76. The Tribunal notes that no evidence has been submitted in support of the Respondent's allegations. In view thereof and due to the nature of the claim the Tribunal finds that AOSI is entitled to its claim in the amount and currency as claimed, i.e. U.S.\$23,724. The counterclaim raised for the submission of "work certification forms" is dismissed inasmuch as the Parties do not dispute that the work called for under the contract in fact was performed.

b) CONTRACT DATED 17 APRIL 1976

77. It is undisputed that on 17 April 1976 the Claimant AOSI executed a contract with the Respondent IAF for the operation and maintenance of a communications network, and that, as in Contract No. 54-103 discussed above, provision was made for adjustment in Iranian Rial payments to the extent the Rial/Dollar exchange rate would vary from the stated exchange rate on which the contract prices expressly

were based. On 9 September 1977 an invoice was submitted by the Claimant AOSI to the Respondent IAF for such fluctuation compensation in the amount of 218,881 Iranian Rials.

78. The Claimant contends that this invoice was never honored and therefore now claims payment. In addition, the Claimant seeks payment in U.S. Dollars at an allegedly applicable exchange rate, i.e., U.S.\$3,045.

79. The Respondent IAF raises the same arguments in respect of this claim as it does in respect of the claim under Contract No. 54-103, and the Respondent MOD alleges a similar counterclaim for the submission of work certification forms (see paragraph 75 above).

80. For the reasons set forth just above (see paragraph 76 above), the claim is approved by the Tribunal in the amount of U.S.\$3,045 and the counterclaim is dismissed.

D. LETTER NO. 1401-42/19-35 ORDER

81. The Claimant AOSI contends that by means of letter No. 1401-42/19-35 the Respondent IAF on 18 June 1975 ordered 39 separate items of material or equipment from it. By letter of 14 July 1975 AOSI notified IAF that those items already stocked within Iran would be provided free of charge but that the other items would involve a total charge of U.S.\$2,500. Following receipt of the order AOSI states it delivered all 39 items and on 4 February 1976 IAF was invoiced accordingly. AOSI sought payment from IAF on further two occasions, i.e., by letter of 16 November 1976 and by letter of 13 September 1977.

82. The Memorial filed on behalf of IAF confirms that the "Air Force does not challenge the fact that it did place the purchase order, and reaffirms now that it did place the

order". IAF, however, denies liability, generally contending that it did not receive the items.

83. In view of the proof submitted by AOSI, and considering the generality of IAF's defense, the Tribunal concludes that AOSI is entitled to payment in the amount and currency as claimed, i.e., U.S.\$2,500.

VI

T H E C L A I M S O F F O R D A E R O S P A C E

84. The Claimant Ford Aerospace asserts two claims for goods sold and delivered to the Respondent IAF pursuant to purchase orders.

A. PURCHASE ORDER OF 21 DECEMBER 1976

85. Ford Aerospace asserts that under date of 21 December 1976 it received a purchase order from IAF for four categories of spare parts for prices totalling U.S.\$13,483. Under the terms of the purchase order the purchase price was secured by a letter of credit issued by Manufacturers Hanover Trust Company. The letter of credit originally had an expiry date of 21 November 1977 but it later was extended, first to 13 February 1978 and later to 31 July 1978. As recorded in a letter of 13 May 1978 from Ford Aerospace to IAF, the ordered goods were delivered and "written acceptance" received from IAF. Ford Aerospace apparently was unable to obtain payment under the letter of credit because the manner in which the goods were delivered made it impossible to comply with the formal terms of the letter of credit with respect to documentation. Specifically, after

the transaction was initiated it determined to supply a number of the items from its "in country" stock in Iran, rather than having it shipped from the United States, and consequently it was unable in respect of such items to present air waybills, for example, called for on the face of the letter of credit. By means of letters it addressed to IAF under date of 13 May 1978 and 15 August 1978, Ford Aerospace solicited the cooperation of IAF in either amending the formal terms of the letter of credit or otherwise achieving payment. Ford Aerospace contends that it has not been paid to date and the claim is for payment of the U.S.\$13,483 allegedly due and owing.

86. While not disputing the factual circumstances IAF denies payment, invoking no material ground for its denial.

87. In view of the foregoing, particularly the absence of any ground for denial of payment by IAF, the Tribunal concludes that Ford Aerospace is entitled to payment in the amount of U.S.\$13,483 as claimed.

B. 87 SEPARATE PURCHASE ORDERS

88. Ford Aerospace contends that during 1978 IAF issued 87 separate purchase orders to it for various equipment at prices totalling U.S.\$100,443. In support of this claim Ford Aerospace has submitted to the Tribunal lists of the purchase orders, giving in each case their number and date and the corresponding invoice number and date. In addition, Ford Aerospace has submitted to the Tribunal the related shipping documents evidencing their delivery to shippers as requested in the purchase orders as well as the invoices. Not having received payment on any of these items, Ford Aerospace on 26 October 1979 demanded payment from IAF. Payment has not been received to date. Consequently, the claim is for payment of U.S.\$100,443.

89. In its response to this claim IAF has asserted a counterclaim alleging that "32 items" that it describes were not delivered out of the 87 items and in addition to requesting an order for their delivery seeks U.S.\$100,000 "damage caused by the non-delivery of the ordered goods".

90. The Tribunal notes that the submissions by IAF indicate that it admits ordering all 87 items and that IAF has acknowledged receipt of a substantial portion of the items ordered. In light of the detailed evidence submitted by the Claimant, the Tribunal deems it appropriate to award Ford Aerospace the amount it seeks, U.S.\$100,443, and to dismiss the counterclaim of IAF.

VII

O T H E R C O U N T E R C L A I M S

91. In addition to the counterclaims discussed above, the Respondent MOD has asserted a counterclaim for Social Insurance Organization ("SSO") contributions and for recovery of the value of a jeep station wagon.

A. SSO CONTRIBUTIONS

92. In its Statement of Counterclaim submitted on 3 October 1983 the Respondent MOD stated that the Claimants "are indebted for insurance and tax [and] the amount and the proof thereof will be presented and declared later". On 13 December 1984 MOD submitted a quantification of the counterclaim raised. It sought 3,243,764 Iranian Rials for SSO contributions, apparently relating only to the Peace Sceptre Contract. In a submission of 14 February 1985 MOD further amended its counterclaim by asserting a claim for SSO

contributions in respect of Contract No. 54-103 and the Contract of 17 April 1976, in the amounts of 23,061,975 Iranian Rials and 11,485,320 Iranian Rials, respectively.

93. The Claimants deny these counterclaims on the ground that they are untimely and that the Tribunal has no jurisdiction over counterclaims raised for taxes and SSO contributions, and that in any event no taxes or SSO contributions are due and owing.

94. The Tribunal finds initially that the counterclaims raised by the Respondent in relation to Contract No. 54-103 and the Contract of 17 April 1976 in a total amount of 34,547,295 Iranian Rials were submitted untimely and they therefore are rejected.

95. As to the counterclaims raised in relation to the Peace Sceptre Contract the Tribunal accepts MOD's submission of 13 December 1984 as an amendment to its stated counterclaim. The Tribunal notes, however, that the counterclaim is based solely on the assertions and calculations submitted by the Respondent and that no evidence has been submitted in support of these assertions. In view of the foregoing, and without prejudice to the issue of the Tribunal's jurisdiction, the Tribunal dismisses this counterclaim.

B. JEEP STATION WAGON

96. MOD further asserts a counterclaim against either AOSI or Ford Aerospace in the amount of U.S.\$3,000 representing the value of a jeep station wagon allegedly used by one George H. Casey which was "overturned . . . and was rendered useless".

97. The Tribunal notes that no proof has been submitted in support of this counterclaim. Furthermore, although it is apparent from the record that one of the Claimants did have an employee in Iran by the name of George H. Casey and that he was at some point involved in a serious automobile accident, these facts does not permit any conclusions as to the attributability of the damage allegedly caused to either of the Claimants. In view of the foregoing, the Tribunal dismisses this counterclaim.

VIII

I N T E R E S T

98. The Claimants seek interest on the amounts due and owing computed on the basis of the prime rate published by the Federal Reserve Bank of the United States.

99. In determining the applicable rate of interest in this Case, the Tribunal applies the principles set forth in McCollough & Company, Inc. and Ministry of Post, Telegraph and Telephone, et al., Award No. 225-89-3 at 37 (22 April 1986). The Tribunal takes into account, inter alia, that at issue in this Case are ordinary contracts of a commercial nature, without any provisions for applicable rates of interest in case of delayed payments, and that the breaches of contract at issue relate to non payment of invoices. On the basis of the foregoing, the Tribunal determines that a fair rate of interest to be awarded on the amounts due and owing to the Claimant is 10% per annum. The Tribunal further finds that interest shall be calculated from 1 January 1979, a date when all the obligations of the Respondents to the Claimants in any event had fallen due.

IX

C U R R E N C Y O F P A Y M E N T

100. As to the currency in which this Award is to be rendered, the Tribunal applies the principles set forth in McCollough & Company, Inc. and Ministry of Post, Telegraph and Telephone, Award No. 225-89-3 at 41, 44 (22 April 1986).

101. The Tribunal notes that the average Iranian Rial/U.S. Dollar conversion rate for the years 1977 - 1979, covering the years when the obligations arose, was approximately 70.52 Iranian Rials/U.S. Dollar, whereas the present conversion rate, according to the latest published rate¹ is 78.6 Iranian Rials/U.S. Dollar.

102. In view of the foregoing, and based on the same reasoning as in McCollough, the Tribunal determines that, in the present Case, a reasonable adjustment to the satisfaction awarded the Claimant AOSI will be obtained by adding thereto an amount constituting 9.5% of the Iranian Rials amounts due, and that consequently, the Claimant AOSI is awarded an adjustment in the total amount of 1,030,471 Iranian Rials in addition to the principal total Iranian Rial amounts awarded.

X

C O S T S

103. The Claimants have collectively sought compensation for costs in a total amount of U.S.\$235,181, invoking, inter alia, their numerous required appearances before the Tribunal, as well as the extra work incurred by the successive requests for interim measures arising out of the pursuit by

¹ As of 11 June 1986 published on 13 June 1986 in The Financial Times, London.

the Respondent MOD of litigation in the General Court of Tehran.

104. In the circumstances of this Case, the Tribunal deems it appropriate to oblige MOD, IAF and IGF, jointly and severally, to compensate Ford Aerospace and AOSI for their costs of arbitration in the total amount of U.S.\$30,000.

XI

A W A R D

105. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The GROUND FORCES OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay to AERONUTRONIC OVERSEAS SERVICES, INC.

i) the sum of Nine Million Two Hundred Sixty-Eight Thousand Two Hundred and Ninety-Three (9,268, 293) Iranian Rials plus simple interest due at the rate of 10 percent per annum (365-day basis) on this amount from 1 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;

ii) the sum of Eight Hundred Eighty Thousand Four Hundred and Eighty-Eight (880,488) Iranian Rials as adjustment; and

iii) the sum of One Thousand Nine Hundred and Twenty-Six United States Dollars (U.S.\$1,926) plus simple interest due at the rate of 10 percent per annum (365-day basis) on this amount from 1 January 1979 up

to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(b) The AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay:

i) to AERONUTRONIC OVERSEAS SERVICES, INC. the sum of Twenty-Nine Thousand Two Hundred Sixty-Nine United States Dollars (U.S.\$29,269) plus simple interest due at the rate of 10 percent per annum (365-day basis) on this amount from 1 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account; and

ii) to FORD AEROSPACE & COMMUNICATIONS CORPORATION the sum of One Hundred Thirteen Thousand Nine Hundred and Twenty-Six United States Dollars (U.S.\$113,926) plus simple interest due at the rate of 10 percent per annum (365-day basis) on this amount from 1 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(c) THE MINISTRY OF NATIONAL DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay to AERONUTRONIC OVERSEAS SERVICES, INC.:

i) the sum of One Million Five Hundred Seventy-Eight Thousand Seven Hundred and Sixty-Eight Iranian Rials (1,578,768) plus simple interest due at the rate of 10 percent per annum (365-day basis) on this amount from 1 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;

ii) the sum of One Hundred Forty-Nine Thousand Nine Hundred and Eighty-Three (149,983) Iranian Rials as adjustment; and

iii) the sum of Forty-Seven Thousand Three Hundred Thirteen United States Dollars and Fifty Cents (U.S.\$47,313.50) plus simple interest due at the rate of 10 percent per annum (365-day basis) on this amount from 1 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(d) The MINISTRY OF NATIONAL DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN, the AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN, and THE GROUND FORCES OF THE ISLAMIC REPUBLIC OF IRAN are jointly and severally obligated to pay FORD AEROSPACE & COMMUNICATIONS CORPORATION and AERONUTRONIC OVERSEAS SERVICES INC. for their costs of arbitration in the amount of Thirty Thousand United States Dollars (U.S.\$30,000).

(e) All of the above 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. As to the amounts (including interest amounts) awarded in Iranian Rials, the Escrow Agent is hereby instructed to pay such amounts in United States Dollars after conversion of these amounts by application of the conversion rate of 78.6 Iranian Rials per United States Dollars.

(f) The remaining claims and counterclaims are dismissed.

(g) The Tribunal hereby declares that the call by the GROUND FORCES OF THE ISLAMIC REPUBLIC OF IRAN under Foreign Trade Bank Guarantee No. 892/14 (also bearing No. 5376) was unjustified.

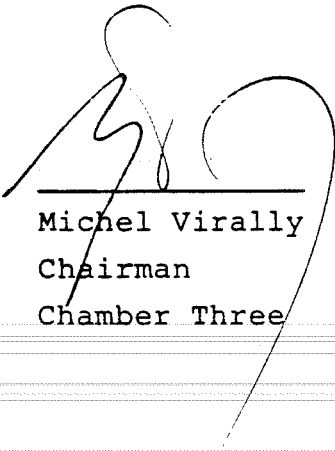
h) The GROUND FORCES OF THE ISLAMIC REPUBLIC OF IRAN, the MINISTRY OF NATIONAL DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN

and THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN are liable to AERONUTRONIC OVERSEAS SERVICES INC. for any damage or liability that it may incur in the future arising from (i) the call made or the payment received by the GROUND FORCES OF THE ISLAMIC REPUBLIC OF IRAN pursuant to the aforementioned Foreign Trade Bank Guarantee No. 892/14, or (ii) from the judgment dated 12 July 1982 obtained by Bank Mellat against Philco Ford of Tehran from Branch 10 of the General Court of Tehran.

(i) Guarantees Nos. 2474 and 2475 issued by the Foreign Trade Bank of Iran have no further purpose, and any and all demands for payment in connection with these guarantees heretofore or hereafter by the AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN shall therefore be invalid.

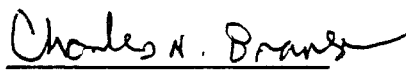
(j) This Award is submitted to the President of the Tribunal for the purpose of notification to the Escrow Agent.

Dated, The Hague
17 June 1986

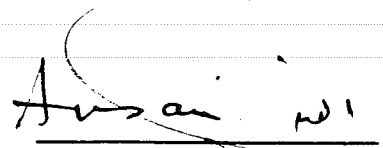


Michel Virally
Chairman
Chamber Three

In the Name of God



Charles N. Brower



Parviz Ansari Moin
Dissenting in part
Concurring in part

Joining fully in the Award, except that (1) for the reasons set forth in paragraphs 14-21 of the Concurring and Dissenting Opinion of Judge Brower, McCollough & Company, Inc. and Islamic Republic of

Iran, Award No. 255-89-3 (22 April 1986), I believe the Tribunal (a) should have expressed the awarded amounts solely in dollars, converted from rials at the prevailing rate at the time the debts were due, and (b) should have dismissed the counterclaims based on SSO contributions for lack of jurisdiction; and (2) I believe the Tribunal should have awarded the full amount of costs claimed (\$235,181), inasmuch as Claimants have prevailed 100% on all claims and counterclaims; Claimants have been required to prepare for and attend three extensive, separate Hearings, including one on jurisdictional issues relating to the forum selection clauses, a combined Hearing/Pre-Hearing Conference addressing other jurisdictional issues and interim relief, and a final Hearing on the merits (for which Claimants twice were required to travel to The Hague due to a last minute postponement of one scheduled date); and Claimant AOSI repeatedly has been obliged to request the Tribunal to issue interim measures, and, in light of the periodic issuance of summonses to it to appear in an Iranian Court notwithstanding the Tribunal's two interim awards (cited at paragraphs 6-7), to issue supplemental orders.