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CASE NO. 443

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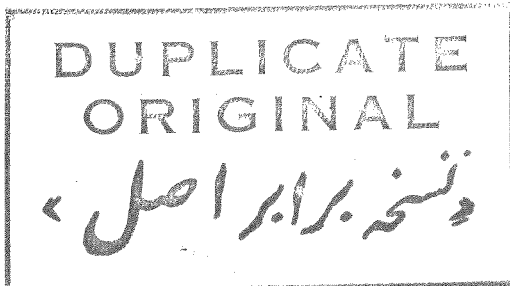
AWARD NO. 420-443-3

SEISMOGRAPH SERVICE CORPORATION,
COMPAGNIE FRANÇAISE DE PROSPECTION SISMIQUE,
Claimants,

and

NATIONAL IRANIAN OIL COMPANY,
THE ISLAMIC REPUBLIC OF IRAN,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داورى دعاوى ایران - ایالات متحدہ
ثبت شد - FILED	
Date	31 MAR 1989
۱۳۶۸ / ۱ / ۱۱	

AWARDAppearances:

For the Claimants:

Mr. Lawrence W. Newman,
Mr. Anthony G. Petrello,
Mr. David Zaslowky,
Attorneys;
Mr. Jacques Chavy,
Mr. Ronald Haskett,
Mr. Claude Taverne,
Representatives of
Compagnie Française
de Prospection Sismique;
Mr. Joseph L. Hull, Jr.,
Representative of Seismo-
graph Service Corporation.

For the Respondents:

Dr. J. Niaki,
On behalf of the Agent of
the Government of the
Islamic Republic of Iran;
Dr. N. Mokhtari,
Legal Advisor to Agent

of the Government of the
Islamic Republic of Iran;
Mr. Allahyar Mouri,
Attorney for the National
Iranian Oil Company;
Mr. Hassan Kaveh,
Mr. A. Rahimi,
Mr. A. Hashemi,
Representatives of the National
Iranian Oil Company.

Also Present:

Mr. John Crook,
Agent of the Government of the
United States of America;
Ms. Lucy F. Reed,
Assistant to the Agent of the
Government of the United States
of America.

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I. INTRODUCTION

1. The Claimant in this Case, SEISMOGRAPH SERVICE CORPORATION ("SSC"), and its wholly owned French subsidiary, Compagnie Française de Prospection Sismique ("CFPS")¹ are engaged in the business of carrying out geophysical exploration and related activities on behalf of oil and gas companies through the use and interpretation of seismic and gravity tests. In the period 1976 until 1978 the Oil Service Company of Iran ("OSCO") entered into five different contracts with CFPS for various services in CFPS' field of operation. The claim in this Case arises out of, or is related to, these five contracts. The Respondents named are the NATIONAL IRANIAN OIL COMPANY ("NIOC"), as successor in interest to OSCO, and the ISLAMIC REPUBLIC OF IRAN ("Iran"). The claim is partly for payment of amounts allegedly due and owing under, or in relation to, the contracts and partly for compensation for the alleged expropriation of certain property brought into Iran by CFPS for the execution of three of these contracts. The total claim, as finally pleaded, is for \$20,029,303.52² plus twelve percent interest, costs and attorney's fees. Several counterclaims have been raised in relation to each of the contracts at issue. A number of these have not been quantified. The counterclaims include demands for specific performance by the Claimant.

¹In light of the fact that the Tribunal decides in this Award that SSC may assert indirectly the claim of its wholly owned subsidiary CFPS, all references to "the Claimant" in this Award refer only to SSC (see para. 18, infra).

²Throughout this Award, "Fr." and "francs" stand for French francs, "\$" and "dollars" stand for United States dollars, and "Rls." and "rials" stand for Iranian rials.

II. PROCEDURAL ISSUES

2. A number of procedural issues requiring consideration arose prior to, during and subsequent to the Hearing held on 14-15 November 1985. Initially, the Tribunal will give a brief account of the procedural history of this Case.

A. Procedural History

3. The Statement of Claim was filed on 18 January 1982 and NIOC's Statements of Defense and Counterclaim were filed on 20 July 1983. In addition, a counterclaim for allegedly unpaid taxes was filed on 22 August 1983. The Claimant replied to the counterclaims by a submission filed on 27 October 1983 and on 25 June 1984 NIOC filed its rejoinder. A Pre-hearing Conference was held on 17 July 1984 and the Claimant submitted a brief and evidence on the issue of its nationality on 3 December 1984 and its Memorial and Summary of Evidence on 5 February 1985. By Order of 24 June 1985 the Tribunal extended the time limit for the submission of the Respondents' Memorial until 1 August 1985, set 1 October 1985 as the date for the filing of simultaneous Rebuttals and scheduled a Hearing for 19 and 20 November 1985. By Order of 1 August 1985 the Tribunal rejected a request by the Respondents to postpone the Hearing, but modified the schedule by granting the Respondents an extension until 2 September 1985 to file their Memorial, rescheduling the filing date for the Rebuttals to 1 November 1985 and the Hearing for 14 and 15 November 1985. By Order of 11 September 1985 the Tribunal again decided to modify the schedule by granting the Respondents a further extension of time to submit their Memorials, until 23 September 1985, with which time limit NIOC complied.

B. Timeliness Of Filings

4. On 1 November 1985 the Tribunal received NIOC's Memorial in rebuttal and a request from the Claimant for an extension of time until 8 November 1985 to submit its rebuttal. In view of the requirement for simultaneous filings by the Parties, NIOC's submission was filed but not distributed. The Tribunal granted the Claimant's request and on 8 November 1985 the Claimant submitted its Memorial in rebuttal comprising a one volume brief submitted in both English and Persian and two volumes of evidence submitted only in English. The Tribunal notified the Parties that the Claimant's submission was accepted for filing, but that a decision on its admissibility would be taken at a later stage. Consequently, both the Respondents' and the Claimant's submissions were distributed on 8 November 1985.

5. On the day before the Hearing NIOC requested that the Tribunal "dismiss and disregard" the Claimant's submission of 8 November 1985 on the ground that it did not constitute a pleading in rebuttal but formed part of the Claimant's evidentiary submissions which should have been filed at an earlier stage of the proceedings. As the Claimant's submission was filed only six days before the Hearing, NIOC contended it was unable to respond to it and thus was unable to defend its case properly.

6. At the Hearing the Tribunal announced that it had considered NIOC's request and had examined the pleadings filed, as well as the procedural history of the Case. The Tribunal noted that the Claimant's submission of 8 November 1985 contained new evidence, particularly on the question of valuation of the property which formed part of the claim as presented in 1982, and that until this submission of 8 November 1985 no other evidence had been presented to the Tribunal on this issue. Because the lateness of this evidentiary submission clearly prejudiced the Respondents,

and as the Claimant failed to assert any ground adequately explaining or excusing the lateness of the submission, the Tribunal decided not to admit the documents insofar as they concerned the question of valuation of the allegedly expropriated property.

7. During the Hearing the Claimant requested the Tribunal to reconsider its decision on the ground that the Claimant had not deemed it necessary to submit this evidence until this late stage of the proceedings because NIOC had not taken issue with the valuation of the property in its Statement of Defense or Rejoinder. Consequently, according to the Claimant, up until September 1985 it was unaware that NIOC contested this issue. The Claimant further argued that in any event NIOC's lack of objection entitled the Tribunal to grant the claim even in the absence of evidence on the question of the value of the property.

8. The Respondents objected to the Claimant's request, stating that the lack of evidence on the issue of valuation rendered it impossible for NIOC to take a position thereon and that it is the Claimant which has the burden to prove its claim.

9. Having re-examined the pleadings in this Case in light of the submissions of the Parties, the Tribunal notes that statements made by the Claimant in earlier written pleadings appear to conflict with the Claimant's present position. Both in its Statement of Claim and in its Memorial the Claimant stated that it intended to submit evidence on the question of the value of the property. The Tribunal infers from these submissions that the Claimant itself deemed a further showing of value an appropriate part of the main case. Consequently the Tribunal finds that the Respondents were justified in drawing the same inference from the submissions of the Claimant. The Claimant thus has failed to set forth any reason which would excuse or explain the

lateness of the filing. For the foregoing reasons, the Tribunal confirms its decision not to admit the Claimant's submission of 8 November 1985 insofar as it pertains to the question of valuation of the allegedly expropriated property. The remaining part of the Claimant's submission of 8 November 1985 was admitted in these proceedings.

10. One part of the claim under Contract 340 is for \$1,571,666.67 in allegedly unpaid invoices for standby fees. By submission of 8 November 1985 the Claimant for the first time raised an alternative claim for compensation for these costs amounting to \$1,598,461, based on a theory of unjust enrichment. In its submission the Claimant submitted certain new evidence. Given the late stage at which this claim was raised and the volume of the submission, the Respondents have not had sufficient time fully to respond to it. The Tribunal notes, however, that it is not bound by the legal theories invoked by the Parties in support of their contentions. This alternative claim in effect amounts to a proposed alternative theory on which the Claimant's existing claim can be based. As such, the Tribunal accepts the claim for consideration. The Tribunal does not reach the issue of the admissibility of the new evidence invoked since the Tribunal in any event need not rely on it. This is discussed in more detail in relation to the merits of the claims pertaining to Contract 340. Finally, the Tribunal finds that although this alternative claim raises the amount claimed in this part by \$26,794.33, the global amount of the claim has not been raised in view of the adjustments made by the Claimant in the same submission (see Section IV, B, infra).

11. During the Hearing the Claimant also sought to submit certain photographs allegedly depicting the "state and condition" of the property which is the subject of the Claimant's expropriation claim. On the same ground as stated above, the Tribunal declined to admit this material.

The Tribunal, however, decided to permit the Claimant to distribute, during the Hearing, certain tabulations and calculations wholly based on information already in evidence in this Case.

12. Subsequent to the Hearing, on 26 November 1985, the Claimant submitted an "Affidavit in Support of Attorney's Fees and Costs." By letter filed 5 December 1985 the Respondents requested the Tribunal to reject this submission as untimely. By Order of 20 December 1985 the Tribunal stated that: "According to the general practice of the Tribunal, documents relating to the costs of the proceedings are not normally rejected for untimely filing as costs cannot be assessed until a very late stage." Consequently the Tribunal rejected the Respondents' request and invited the Respondents to submit comments on the Claimant's submission. Such comments were filed on 17 January 1986.

13. The Tribunal notes that the Respondent Iran has not submitted any responsive pleading in this Case. At the Hearing, however, the representatives of Iran stated that Iran considered itself as having responded to the claim by the pleadings and evidence submitted by NIOC.

C. Translations Of Filings

14. As to the admitted portions of the Claimant's submission of 8 November 1985, the Tribunal notes that the documentary evidence submitted lacked Persian translations. As this evidence mainly consists of invoices and other documents previously exchanged between the Parties, the Tribunal hereby relieves the Claimant of the obligation to submit Persian translations thereof.

15. The Tribunal further notes that the Respondents' submission of 1 November 1985 equally lacked translations into Persian of certain parts. At the Hearing the Claimant

stated that it did not object to its admission on this ground. Therefore the Tribunal relieves the Respondents of the obligation to submit Persian translations of these parts of their submission.

D. Witnesses

16. On 14 October 1985 the Claimant notified the Tribunal of its intention to present five witnesses at the scheduled Hearing. The Claimant stated that two of these witnesses, Mr. Newton and Mr. Rotg, were to testify on, respectively, "the value of certain of CFPS's property" and "the value of certain of CFPS's vehicles." By letter filed 1 November 1985 the Respondents asserted that the testimony of these two witnesses was inadmissible because it would constitute untimely new evidence. By Order of 8 November 1985 the Tribunal decided to defer decision on this issue. At the Hearing the Tribunal decided that the testimony of Mr. Newton and Rotg was inadmissible for the same reasons it had rejected the written evidence on the value of the alleged expropriated property.

17. Subsequently the Claimant requested leave of the Tribunal to hear Mr. Newton as a rebuttal witness. The Tribunal granted the Claimant's request on the condition that the testimony would not concern the issues declared inadmissible.

III. JURISDICTION

18. The Claimant has submitted evidence establishing to the satisfaction of the Tribunal that, at all relevant times, (1) the contracting party, CFPS, was a corporation duly registered and existing under French law; (2) SSC owned 99.98% of the shares of CFPS; (3) SSC was a U.S. corporation, duly registered and existing under the laws of the

State of Delaware in the United States; (4) SSC, in turn, was wholly owned by another U.S. corporation, Raytheon Company, likewise duly registered and existing under the laws of the State of Delaware in the United States; and (5) more than 50% of the outstanding shares of Raytheon Company are owned by citizens of the United States. Consequently, the Tribunal finds that the Claimant in this Case is a national of the United States of America within the terms of the Claims Settlement Declaration ("CSD") and that it may assert indirectly the claim of CFPS.

19. Likewise the Tribunal finds it established by the evidence submitted that the Claimant has continuously owned the claim and that the claim arises out of a contract, transaction or occurrence within the terms of the CSD. The claim therefore is within the Tribunal's jurisdiction.

20. NIOC contends that the claim is not attributable to it on the ground that the contracting party in this Case was OSCO and not NIOC. In conformity with the Tribunal's earlier findings the Tribunal here holds that NIOC is the successor in interest to OSCO and that NIOC is thus a proper Respondent in this Case. See Oil Field of Texas, Inc. and Islamic Republic of Iran et al., Award No. ITL 10-43-FT (9 Dec. 1982), reprinted in 1 Iran - U.S. C.T.R. 347.

21. The Tribunal's jurisdiction as to the counterclaims raised will be dealt with below.

IV. THE CLAIMS

A. Factual Introduction

22. CFPS or, as it is presently known, Seismograph Service, France, is the French subsidiary of the Claimant, which is one of the largest companies in the world engaged in

geophysical exploration. The Claimant corporation, SSC, was founded in 1932 and has at present approximately 50 to 60 seismic crews working worldwide. The object of the work carried out by SSC and CFPS is to locate and define "geological traps" which could contain hydrocarbons. This is done through sending acoustical waves down into the earth, by exploding charges on the surface, by dropping weights, or by using special tools. These acoustical waves are reflected back through the various geological layers and are then picked up by geophones and recorded on a magnetic tape. These recordings are processed by computer to produce a "map," or a seismogram, which may show possible traps in a particular geological layer underneath the earth's surface. It is on the basis of such seismograms that most of the major oil companies base their drilling programs.

23. CFPS performed its first contract for OSCO in 1966 and thereafter performed work almost continuously for OSCO under different contracts for either data acquisition or data processing. At issue in this Case are five different contracts, four of which concerned data acquisition by surface or vertical sounding. The fifth was an agreement to set up a data processing center for OSCO ("Dedicated Processing Center").

24. Two of the data acquisition contracts expired by their terms around the middle of 1978. The remaining three contracts, however, terminated prematurely. At the time when the contractual relationships between CFPS and OSCO were interrupted CFPS was operating three seismic crews, one calibration unit and the Dedicated Processing Center on OSCO projects. Altogether CFPS had some 60 expatriates working in Iran, employed approximately 30 Iranian technicians and had subcontracted temporary work for some 100 Iranian laborers.

25. The claims raised in this Case can be subdivided into three categories: (1) claims for payment for charges under contracts which otherwise were fully performed; (2) claims for payment for charges under contracts the completion of which was interrupted; and (3) a claim for compensation for certain allegedly expropriated CFPS property used in Iran for the performance of the contracts here at issue ("property claim"). The Tribunal initially will deal with the first two categories of claims, seriatim, followed by a discussion of the property claim. In a final section the Tribunal then will examine the merits of the counterclaims raised by the Respondents in relation to the various contracts. First, however, the Tribunal must consider certain general contentions and concessions.

B. General Contentions And Concessions

i. The Contentions

26. In its Statement of Claim the Claimant stated that it had "received certain advances . . . against payment of the amounts due under the contracts" during the period from July 1979 through January 1980. The Claimant conceded that the full amount of these advances should be credited against the total amount of its claim. After conversion,³ the Claimant stated that the credit thus due was \$964,246.62.

³With respect to debts outstanding in rials and francs, the Claimant claims entitlement to payment of awarded amounts at the allegedly applicable conversion rates of 70 Rls./\$ and 4.17 Fr./\$. On the ground that the Respondents have objected neither to the claim for payment in dollars, nor to the conversion rates claimed applicable, the Tribunal accepts the claim to payment in dollars at the stated conversion rates. Throughout this Award, and when relevant, these are the conversion rates applied.

27. In its Statement of Defense NIOC raised, inter alia, a defensive plea that it had paid some of the invoices at issue in this Case.

28. In its Memorial the Claimant did not further address the credit due the Respondents but simply referred to the position set out in its Statement of Claim. Its response to the Respondents' defense of payment was that the Respondents had the burden of proving that such payments were made.

29. In its Memorial and Rebuttal NIOC submitted evidence indicating that OSCO effected direct payments and remitted advances to CFPS totalling \$4,268,357.73. With respect to invoices claimed in this Case NIOC alleged that OSCO had examined and approved 27⁴ of the 55 invoices at issue, and that OSCO considered that \$1,019,269.80 of the total payments made to CFPS constituted payment in satisfaction of these 27 invoices. NIOC also contends, however, that some of the 27 invoices were paid in order to enhance the possibility of a settlement between the Parties but that CFPS actually was not entitled to payment. NIOC seeks, by way of counterclaim, repayment of the outstanding advances and alleged overpayments. NIOC has not, however, taken a clear position regarding the amount of credit it considers due now.

30. In its final Rebuttal, filed six days before the Hearing, the Claimant raised a series of new contentions regarding its position. The Claimant now contends that from December 1978 through December 1979 CFPS received nine separate rial payments and advances from OSCO totalling Rls. 336,942,565 and that from 29 December 1978 through 4

⁴Invoices Nos. 2649, 2664, 2665, 2668, 2678, 2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2692, 2693, 2695, 2696, 239BIS, 242, 243, 245, 246, 251, 252 and 253.

January 1980 it received six separate "Credit Advances from Bank" in dollars totalling \$2,475,298.43. The amounts thus acknowledged as received total \$7,288,763.64. The Claimant alleges, however, that CFPS was unable to identify which invoices OSCO sought to pay with these advances and payments. Therefore CFPS allocated the amounts received to pay a number of invoices which consequently are not at issue in this Case.⁵ According to a list containing invoice numbers and corresponding amounts submitted by the Claimant, Rls. 273,645,324 was used to pay 28 invoices quoted in rials and \$2,372,449.52 was used to pay 28 invoices quoted in dollars. The Claimant concludes that there remains an unallocated balance in favor of the Respondents of Rls. 63,297,241 and \$102,848.91, or, in dollars, \$1,007,095.21. This is the amount the Claimant finally concedes should be credited the Respondents against the total amounts awarded to the Claimant in this Case.

ii. The Tribunal's Findings

31. The Claimant's belated contentions constitute, as the Tribunal sees it, an attempt to defeat the Respondents' defensive plea of payment of 27 of the 55 invoices the Claimant contends are outstanding in this Case. The Claimant's argument, however, hinges on its alleged right to allocate the payments and advances indisputably received from the Respondents.

⁵Although the Claimant does not specifically so state, it is clear from its pleadings that it also contends that it had the right to allocate funds received from NIOC to any invoice outstanding on any of the five contracts at issue here.

a. The Claimant's Entitlement To Allocation

32. When a payment is made for specific invoices a party is not free to allocate the amount received to payment of other invoices. It is generally recognized, however, that a party receiving unspecified advances or payments from a debtor has the right to allocate such payments to previously rendered invoices, subject to certain overriding principles.

33. In this Case, the evidence on which the Respondents rely to assert that they specified the invoices to be paid consists of copies of their payment instructions to Iranian banks, cheques and certain internal forms entitled "Payment Authorization" and "Contract Payment Certificate." On the Payment Authorizations it is clearly indicated that a copy of same was to be distributed to the Contractor, i.e., CFPS. The Tribunal finds no reason to doubt that these copies actually were sent to CFPS and that this was the regular practice of NIOC. Furthermore, in the event CFPS occasionally did not receive such copy in respect of a particular invoice, CFPS should have taken action by requesting further specifications. In view of the foregoing the Tribunal finds that the Claimant has not established to the Tribunal's satisfaction that it was unable to identify the \$1,019,269.88 evidenced as paid on account of 27 of the 55 invoices here at issue. Consequently, the Claimant cannot be heard to recover a second time on these 27 invoices.

34. On the other hand, however, the Respondents, by way of counterclaim and as part of their defense, have also contended that some of the payments made to CFPS were voluntary and that they formed part of a settlement sought between them. Apart from the Respondents' assertions to that effect the Tribunal finds nothing in the record which substantiates this contention. The Tribunal concludes that

the Respondents' evidenced payments of invoices in this Case establish their liability for such payments.⁶

b. The Credit Due

35. It is clear from the submissions of both Parties that the total amount claimed and conceded as having been remitted by NIOC to CFPS includes remittances intended to satisfy payment obligations other than those at issue in this Case. According to the Claimant, the global status of accounts between the Parties results in a credit due of \$1,007,095.21. The Claimant has not, however, furnished documentation to the Tribunal necessary for it to establish conclusively the global status of accounts between the Parties and the record does not otherwise permit the Tribunal to do so. In any event, the Tribunal cannot accept such a belated radical change of the basis of the claim in this Case, particularly in view of the fact that the Respondents have not had sufficient opportunity to respond thereto. Under such conditions the Tribunal must take judicial notice of the fact that the Claimant initially conceded that \$964,246.62 should be credited to the Respondents against the claims in this Case, and that six days prior to the Hearing it amended this figure to \$1,007,095.21. In the absence of any means to calculate this figure more accurately, the Tribunal finds that the Respondents, in any event, are entitled to a credit of the amount so conceded, which shall be offset against any amount found due and owing to CFPS.

⁶This is subject, however, to a few instances in this Case in which the Claimant concedes that a retention of payments received would amount to a double recovery (see para. 83, infra).

C. Claims Under Contracts Terminated By Their Own Terms (Contracts 215 and 064)

i. The Contractual Background

36. During 1976 CFPS and OSCO concluded two contracts for seismic data acquisition services. The first one, Contract No. 3-73-215-01-339, was executed on 1 January 1976 and, pursuant to an amendment thereto, continued in effect until 31 August 1978, when it expired by its own terms ("Contract 215"). A second contract, Contract 3-74-064-01-339, was negotiated while CFPS was performing under Contract 215, and was executed on 1 September 1976 ("Contract 064"). While Contract 064 originally provided for a shorter term, it also was amended to continue in effect until 31 August 1978, when it expired by its own terms.

37. The Claimant contends that both Contract 215 and Contract 064 included an escalation clause which would compensate the Claimant, pursuant to a specified escalation formula, for changes in the real value of certain of the fixed prices quoted. The claim is for payment of allegedly outstanding escalation charges totalling, in dollars, \$497,911.84, based on invoices rendered from 1 April 1978 through the termination of the Contracts. In addition, the Claimant seeks compensation for certain extra expenses it allegedly incurred on account of a change in the Social Security Law of Iran. The Respondents dispute the claim on the ground that the Contracts did not contain such an escalation clause.

ii. The Claims For Escalation Charges

a. The Entitlement

38. Clause 5, paragraph ii, of Contract 215 provided that CFPS would be compensated for escalation of contract charges on the basis of "an escalation formula to be agreed ... and to be incorporated herein by form of an Amendment." The Claimant contends that a few weeks after the execution of the Contract the Parties agreed on an escalation formula which was included as an amendment to Contract 215. This agreement was allegedly confirmed by a letter from OSCO to CFPS, which, however, is no longer in CFPS' possession. As proof, the Claimant relies instead on testimonial evidence by Mr. Ronald W. Haskett, "Président - Directeur Général" of CFPS since 1968.

39. As concerns Contract 064, the Claimant relies on a letter from CFPS to OSCO dated 13 February 1976. This letter was a reply to an invitation for tenders by OSCO in respect of what later became Contract 064. It contains a proposal to include "the same escalation clause as exists in our present contracts with OSCO" and sets out a detailed formula for the calculation of the escalation charges. Mr. Haskett has testified that, at that time, the only contract in force between OSCO and CFPS was Contract 215.

40. Finally, the Claimant has submitted contemporaneous documentation evidencing that CFPS, in fact, received full payment from OSCO on 11 October 1978 for escalation charges under both Contract 215 and Contract 064 for the period October 1977 until March 1978. The Claimant also relies on the evidence of payment, submitted by the Respondents, for the rial amounts of the escalation charges based on invoices for the period covered by this claim, i.e., 1 April 1978 through the terms of the Contracts.

41. NIOC disputes that any agreement was reached as to the inclusion of the escalation formula, arguing that the evidence submitted by the Claimant constitutes only proposals and does not prove that any agreement was reached. Although the Respondents do not dispute that payments were made for escalation charges under both Contracts up until March 1978 and that the rial amounts of the escalation charges claimed here were paid under both Contracts, they contend that these payments were made on a voluntary basis in order to enhance a successful conclusion of negotiations on other contracts. With respect to the claimed charges based on franc and dollar invoices, the Respondents further contend that these payments were duly withheld pending the production by CFPS of a "Clearance Certificate" from the Social Security Organization ("SSO") evidencing CFPS' payment of all its debts. The fact that this certificate has yet to be produced by the Claimant is alleged to justify a continued withholding of the amounts.

42. The primary evidence of the Respondents' liability is their payment of the escalation charges billed under the Contracts, including partial payment of the rial charges here claimed. The Respondents have failed to substantiate their allegation that their payment of these invoices was merely voluntary. The Tribunal thus concludes that OSCO and CFPS agreed to include an escalation clause on the terms and conditions contained in the letter of 13 February 1976 in both Contracts 064 and 215, that the escalation formula was identical in both Contracts and that the Respondents are liable to compensate the Claimant for the outstanding amounts. As to the Respondents' contentions regarding the production of an SSO Clearance Certificate, the Tribunal finds by this Award that the Respondents have not substantiated their contentions that CFPS owes any debts to the SSO (see Section VI, A, infra). This defense therefore does not preclude a recovery.

b. The Amounts Due

43. The Claimant seeks payment of the allegedly unpaid escalation charges for the final months of the contracts, namely from 1 April through 31 August 1978. The escalation charges were calculated on the basis of invoices quoted in rials, francs or dollars and were apparently payable in the same currencies. The amounts allegedly due are as follows:

	<u>Rls.</u>	<u>Fr.</u>	<u>\$</u>
<u>Contract 215</u>	3,187,420	450,239.62	66,307.92
<u>Contract 064</u>	5,743,756	436,402.26	91,391.77
<u>Total</u>	8,931,176	886,641.88	157,699.69

44. Converted to dollars, the claimed total under Contract 215 is \$219,813.61 and under Contract 064 \$278,098.23, for a grand total of \$497,911.84.

1. In Rials

45. In respect of the escalation charges based on invoices in rials the record establishes that NIOC paid Rls. 3,026,713 on account of escalation under Contract 215 and Rls. 5,427,734 on account of escalation under Contract 064, or a total of Rls. 8,454,447. The amount shown as paid in the documentary evidence of payment, however, is Rls. 476,729 less than the amount claimed here. Of this amount Rls. 422,722 constitutes the contractual SSO retention to which the Claimant now is entitled to repayment. The Tribunal finds, however, that the Claimant has not substantiated its claim to the additional Rls. 54,007. The Tribunal concludes that the rial portion of these charges has been satisfied in full, that the Claimant is entitled to a credit of Rls. 422,722 or \$6,038.89 and otherwise rejects the claim.

2. In Francs And Dollars

46. In substantiation of the part of the claim which is based on invoices rendered from 1 April 1978 through 31 July 1978 the Claimant relies on calculations contained in certain "worksheets" submitted. Mr. Haskett has testified that separate invoices for escalation charges were never submitted to OSCO. Rather, the procedure followed was that CFPS would supply OSCO with information regarding the relevant indices in France and Iran as well as calculations of the amounts due on a special form on a six month basis. After checking CFPS' calculations OSCO would send the money to CFPS. As concerns the part of the claim which is based on invoices rendered for the period 1 through 31 August 1978, the Claimant has stated that, due to the unavailability of relevant indices for this month, the amounts sought are based on estimated figures. The Claimant finally points out that in any event the Respondents have not disputed the amounts sought.

47. The Claimant also contends that statements contained in four telexes from OSCO's agent Iranian Oil Services Limited ("IROS") in London dated 22 November 1979 constitute an admission as to the amounts here at issue. Each of these telexes contains a calculation listing, inter alia, escalation invoices with reference to Contract 064 or Contract 215 in either francs or dollars from which OSCO deducted charges for taxes, SSO premia and amounts pending SSO Clearance Certificates, leaving a total outstanding amount of zero.

48. The Respondents dispute that the Claimant's entitlement can be based on the "worksheets" in question on the ground that their origin cannot be established as they are not signed or dated. The Respondents, however, have not otherwise addressed the method and accuracy of the Claimant's calculations.

49. The Claimant has not alleged that the worksheets on which it relies are the contemporaneous "special forms" that were submitted to OSCO in the regular course of dealings between the Parties. On the face of the documents it is not possible to establish whether that is the case. The Tribunal therefore finds that the worksheets submitted by the Claimant do not, per se, conclusively establish the Claimant's entitlement to the amounts claimed, particularly in light of the procedure followed by the Parties as described by the Claimant. The Tribunal further notes that these "worksheets" contain certain discrepancies and inconsistencies that impair their reliability.

50. In addition, the Tribunal finds that the telexes are not conclusive as to the amounts due since the Claimant itself does not rely on the amounts quoted by OSCO. The claimed amounts, based on the computations contained in the worksheets discussed above, are lower than the amounts OSCO quotes in the telexes.

51. In view of the foregoing the Tribunal must examine and determine the amounts due the Claimant on the basis of the record in this Case. The escalation formula, identical in both contracts, provides for the application of an adjustment coefficient ("A") which accords a fixed relative weight to: (1) the proportional change of the consumer prices in France (" F_y ") in relation to the consumer prices in France as published in International Financial Statistics as of February 1976 (" F_t "), and (2) the proportional change of the consumer prices in Iran (" I_y ") in relation to the General Cost of Living Index as published by Bank Markazi also in respect of February 1976 (" I_t "). Both F_t and I_t are thus constants and are equally applicable in respect of Contract 215 and Contract 064.

52. In its calculations, as they appear in the "worksheets," the Claimant has, however, based its calculations

on application of two different constants in respect of Contract 215 ($F_t = 148.2$ and $I_t = 114.9$) and Contract 064 ($F_t = 161.6$ and $I_t = 117.3$), respectively. At any given variable, the constants used to calculate the adjustment coefficient A with respect to Contract 215 yield a higher amount of compensation for the Claimant. As the Claimant has failed to explain the reasons for application of a more favorable set of figures to Contract 215, the Tribunal decides to apply the figures applicable to Contract 064 to Contract 215 as well.

53. The Tribunal further notes that six of the relevant invoices are dated 22 August 1978 and that another six invoices are dated 31 August 1978. As to the adjustment coefficient applied to these invoices, the Claimant contends that the figure for the cost of living in Iran as of August 1978 was unavailable and that the calculations of the adjustment are based on estimates thereof. For unexplained reasons, however, the Claimant appears to have based its claimed adjustment amount on a different adjustment coefficient for many of these twelve invoices. The coefficient which appears to have been used varies between 0.184692 (applied to an invoice dated 31 August 1978) and 0.312379 (equally applied to an invoice dated 31 August 1978). For the same reasons as stated above (see preceding paragraph), the Tribunal determines that the applicable adjustment coefficient to be applied to these invoices should be 0.184692. The Tribunal decides, however, otherwise to retain the figures used by the Claimant.

54. On the basis of the foregoing the Tribunal determines that the remaining escalation charges based on invoices quoted in francs and dollars, after conversion into dollars, are \$132,505.28 for Contract 215, and \$184,584.51 for Contract 064.

c. Tax Withholding And SSO Retentions

55. The Tribunal notes that, pursuant to the General Conditions (see Section IV, D, i, infra) applicable to both Contract 215 and Contract 064, payments for "all gross amounts owing to [CFPS] under the Contract[s]" were subject to tax withholding under Clause 23, paragraph 2, and SSO premia retentions under Clause 23, paragraph 3.

56. Although the Parties have not specifically addressed these issues, it can be inferred from the evidence that their practice was to make such deductions from the escalation payments.

57. In accordance with its earlier practice, the Tribunal finds that the tax withholding pursuant to Clause 23, paragraph 2, constitutes an enforceable contractual provision. The record establishes that the applicable tax amounted to 5.5% of the gross amounts due. The Tribunal therefore decides to deduct 5.5% from the escalation charges otherwise found due.

58. The Tribunal finds, however, that the SSO retention is not presently enforceable against the Claimant. Its purpose is moot and, in any event, the Tribunal finds by this Award that the Respondents have not substantiated their allegation that the Claimant owes any funds to the SSO. Accordingly, the Tribunal determines that Clause 23, paragraph 3, does not apply to the present payments to the Claimant.

59. In conclusion, the Tribunal awards the Claimant \$6,038.89 on account of SSO retention made on the effected payment of the rial invoices and \$125,217.49 on account of Contract 215 and \$174,432.36 on account of Contract 064 with respect to the charges based on franc and dollar invoices.

iii. Increased Costs

60. The Claimant alleges that the contract rates under Contracts 215 and 064 were calculated to include sums necessary for CFPS to pay SSO premia for Iranian employees but that "in or about October 1978" a new law was adopted in Iran which allegedly caused an increase in the costs incurred by requiring such payments also to be made for expatriate personnel. The Claimant argues that NIOC obligated itself to reimburse CFPS the increased costs of this charge. On the basis of the foregoing the Claimant now seeks payment of \$111,372.50.

61. It is undisputed that both Contract 215 and Contract 064 expired by their terms on 31 August 1978. Although the Claimant does not specifically so state, the Tribunal infers from its submissions that the Claimant contends that this new law had a retroactive application as of 1 January 1978.

62. The Claimant relies on Debit Note 241, dated 28 January 1979, in the amount of Rls. 7,796,076 requesting reimbursement for such increased premia for the period 1 January to 31 August 1978, as well as on testimony of Mr. Haskett. Mr. Haskett states that following this change of law he "had numerous discussions with OSCO," most often with Mr. M. Trevor Davies, the OSCO chief geophysicist, who agreed that OSCO would reimburse CFPS for this increased cost.

63. The Respondents dispute the claim on the ground that the changes introduced in the Social Security Law constituted no material change in the law and that therefore the Claimant could not have incurred any extra costs. The Respondents further contend that, in any event, OSCO did not agree to compensate CFPS.

64. The Tribunal notes that although the terms of Contracts 215 and 064 do not expressly preclude the possibility of such an oral agreement, the Claimant has not explained why the alleged contract amendment was not made in writing. In any event, the Claimant has not rebutted the Respondents' evidenced contention that the new law in question made no substantive change to the law in force when the Contracts were executed. On the basis of the foregoing, the Tribunal rejects this portion of the claim.

D. Claims Under Prematurely Terminated Contracts
(Contracts Nos. 340, 338 and 334)

i. The Contractual Background

65. On 1 June 1978 CFPS and OSCO entered into Contract No. 3-73-338-01-339 for the provision of well velocity calibration services for a period of 24 months, i.e., until 31 May 1980 ("Contract 338"). Subsequently, on 1 July 1978, the same parties entered into Contract No. 3-73-334-01-339 for the provision of "computer processing services with respect to seismic field data" to be performed in Tehran, also for a period of two years, i.e., until 30 June 1980 ("Contract 334"). Finally, immediately upon the conclusion of performance of Contract 215 and 064 on 31 August 1978 OSCO and CFPS entered into another contract, Contract No. 3-73-340-01-339, for similar seismic data acquisition services, this time for three seismic crews ("Contract 340"). This new Contract was dated 1 September 1978 and by its terms it was to continue for two years, i.e., through 31 August 1980.

66. Structurally the three Contracts at issue are similar. In addition to certain provisions specific to the individual Contracts a set of General Conditions is incorporated by reference into each of the Contracts. The provisions (Clauses 29, 31, 32 and 33) governing termination are

contained in these General Conditions and thus apply equally to all three Contracts.

67. Clause 29, entitled "Right to Terminate," provided:

[OSCO] may at its absolute discretion terminate the Contract with or without cause at any time, upon giving 60 days notice in writing to [CFPS].

68. Clause 31, entitled "Termination by [OSCO] Without Cause," provided:

If the Contract is terminated by [OSCO] without cause . . . then the following rights, obligations and duties shall arise:

(1) [OSCO] shall assume and become liable for all obligations, commitments and claims that [CFPS] may have heretofore in good faith undertaken or incurred in connection with the Contract and in accordance with the terms thereof, and [OSCO] shall thereupon be entitled to all rights, set-offs and benefits held by [CFPS] under or in connection with such obligations, commitments and claims.

(2) [CFPS], as a condition of receiving the payments provided herein, shall execute all documents and take all steps required by [OSCO] to vest such rights, set-offs and benefits in [OSCO].

(3) [OSCO] shall reimburse [CFPS] for so much of the Services chargeable to [OSCO] incurred up to the date of such termination plus an amount to be agreed by the parties hereto representing [CFPS'] reasonable profit.

69. Clause 32, entitled "Termination by [OSCO] With Cause," in relevant part, provided:

(1) If [CFPS] . . . (a) has abandoned the Contract . . . then [OSCO may expel CFPS and complete the work itself]

(2) If [CFPS] shall be expelled under sub-clause (1) of this Clause [OSCO] shall not be liable to pay to [CFPS] any money on account of the Contract . . . until the completion of the Services and thereafter until the costs of completion and damages for delay in completion and all other expenses incurred by [OSCO] have been ascertained. [CFPS] shall then be entitled to receive only such sum or sums (if any) as would have

been due to [CFPS] upon completion of the Contract after deducting the said costs, damages, and expenses.
. . .

70. Finally, Clause 33, entitled "Termination by [CFPS]," provided, inter alia, that:

(1) In the event of [OSCO]: - (a) failing to pay to [CFPS] any approved amount due within the time specified . . . [CFPS] shall be entitled without prejudice to any other rights or remedies [it] may have either by virtue of the Contract or otherwise to terminate the Contract by giving 60 days' notice in writing to [OSCO].

(2) In the event of such termination [OSCO] shall be under the same obligations to [CFPS] in regard to payment as if the Contract has been terminated under the provisions of Clause 31 hereof.

71. Of relevance in this Case is also Clause 23 of the General Conditions, "Payment of Contract Price," which provided as follows:

(1) [CFPS] shall, at the end of each Month, submit to [OSCO] invoices in quintuplicate for all amounts owing to [CFPS] under the Contract in respect of that Month. Provided that [OSCO's] Representative has first certified the correctness of such invoices payment of the amount shown on the invoice less the deductions and retentions made by [OSCO] by virtue of subclauses (2) and (3) hereof, shall be made by [OSCO] or IROS to [CFPS] within 30 days of receipt of the invoice by the Company.

(2) Notwithstanding anything herein contained there shall be deducted on account from all gross amounts payable under the Contract the applicable tax in accordance with the Direct Taxation Act of Esfand 1345 (March 1967) or any re-enactment or amendment thereof for the time being in force. From the net amount so ascertained there shall also be deducted any amounts owing to [OSCO] from [CFPS].

(3) [OSCO] shall retain a further 5% of all the gross amounts payable to [CFPS] under the Contract. Upon expiry or earlier termination of the Contract [CFPS] shall submit to [OSCO] (a), an invoice in quintuplicate for the total amount of the said retentions, (b), a certificate from the Social Insurance Organization to the effect that either [it] has paid all this S.I.O. premia or [it] is exempt from the payment thereof and

(c), proof that [CFPS] has exported and/or has obtained customs clearance to sell in Iran all [its] Service Plant imported in [OSCO's] name for the purpose of the Contract. On receipt of (a), (b) and (c) [OSCO] shall pay or cause IROS to pay the said retentions to [CFPS].

72. In the following the Tribunal will deal with the claims based on Contract 340, Contract 338 and Contract 334 seriatim. The Tribunal will then examine the merits of the counterclaims raised in Section VI, infra.

ii. Contract 340

a. The Claimant's Contentions

73. Pursuant to Contract 340 CFPS was to carry out reflection seismographic survey operations in southern Iran. These services were to be carried out by three "seismographic crews." As payment the Claimant was to receive a basic monthly fee of \$362,000 and Rls. 8,280,000. In addition, pursuant to Clause 1.5.2, Section I, and Clause 2.3 of the Tender, the Claimant was also to receive a monthly basic fee of Rls. 520,000 for the maintenance of a base office in Ahwaz.

74. It is undisputed that both Parties performed under the Contract until the end of December 1978. On 27 December 1978, however, CFPS received the following telex from OSCO concerning Contract 340:

In view of current situation we feel it is desirable to close down operations of your seismic field parties temporarily. We wish to discuss the details with your authorized representative soonest. We envisage keeping equipment in store and absolute minimum manpower for a period of time during which all other personnel would be out of Iran. We intend to continue the operation of the processing centre. Please advise urgently availability and eta of your representative in Tehran for discussions.

75. According to the Claimant this telex constituted an instruction to CFPS to close down its survey operations in

Iran. The Claimant further contends through the testimony of Mr. Haskett, at the time the Managing Director of CFPS, that pursuant to OSCO's request in the telex the Parties met in Tehran on 29 December 1978 to negotiate the terms on which they could agree to stop work without terminating the Contract. Following this meeting CFPS informed OSCO of its requirements in a letter dated 30 December 1978, signed and hand delivered to OSCO by Mr. Haskett on the same day. This letter contained the following terms:

Following our conversation with Mr. Molanazadeh and Mr. Mohebbi, Head of Contract Services, and the decision made by OSCO to stop all Seismic Field Operations for a period of two months, we have the following comments to make: -

1. All three of our crews were operating normally when the order to cease operations was given on 30 December 1978.
2. We are prepared to accept your decision, providing, of course, we are compensated to cover all costs incurred during the standby period.

Our present monthly fee for the three crews, including the additional equipment and personnel added at OSCO's request, is some U.S. \$ 514,000.

Until our equipment is stored in Ahwaz and the personnel sent home, we should receive our full fee, as our costs are essentially the same as when we are operating in the field.

Once this has been achieved our monthly costs will drop some \$ 108,000 per month or 21% of our total fee, to give a monthly standby fee of \$ 406,000.

The expatriate staff will be kept available to re-start operations in Iran as soon as you give the order.

We see no point in dismissing all or part of the staff as they all have 3 months notice written into their contracts, or in some cases their contracts are for a firm 2-year period.

When the crews return to work the full fee would commence once the personnel are assembled in Ahwaz ready to move to the field.

C.F.P.S. will absorb the cost of storing its equipment in Ahwaz and the move out and move in of its field personnel. This latter cost will alone be of the order of \$ 70,000.

We also agree that if during the standby period we can use some of the expatriate personnel on other C.F.P.S. crews in other areas, we will give corresponding credit notes to OSCO.

3. We would remind you that C.F.P.S. has imported some \$ 3,700,000 of equipment to honor our contracts with OSCO, and we have another \$ 500,000 of equipment, which will be ready for shipment to Iran within the next 15 days.

If OSCO were to invoke clause 29 of the general conditions of the contract, then clause 31 would automatically apply, and although we have not yet had time to determine what claims we would make against the Company, one major consideration would be the speed with which our equipment could be exported from Iran for use elsewhere. Under present conditions, this could take a considerable time.

Concerning Contract no. 3.73.338.01.339 for well calibration services, our standby fee will be 60% of the normal operations fee, that is \$ 15,000 per month.

76. According to the Claimant, OSCO subsequently orally agreed to the terms of this letter, including the required standby fees. Under date of 20 January 1979 CFPS received a reply letter from OSCO which the Claimant alleges constitutes an acknowledgement of OSCO's agreement to pay CFPS the standby fee. The letter, stated to concern Contract 340, provided that:

We refer to your letter of December 30th 1978 in respect of the temporary suspension of Seismic Field Operations by your Company.

Should it become necessary, in the opinion of the Company, to terminate your employment under the Contract, the matter will be dealt with in accordance with terms of the Contract applicable to the situation.

In the meantime we would request that action necessary to mitigate the costs which your Company will incur [sic] during the suspension period be taken by you.

At a later date, it will be necessary for a meeting to discuss the matters raised in your above mentioned letter.

77. According to the Claimant CFPS instructed its "seismic crews" to commence the storage operation immediately after having been instructed by OSCO to go on standby. CFPS was, however, unable to complete such action until 15 January 1979, after which it informed OSCO, by letter dated 20 January 1979, that the standby fee had commenced on 16 January 1979. This letter provided, as follows:

Following your instructions of 30th December 1978 to suspend seismic operations of our crews, immediate action was taken:

Your instructions were transmitted on 31st December 1978 to our three seismic parties which started to remove equipment from the field on the same day.

Storage operations were completed in about 10 days, however, because of very scarce transportation facilities, the evacuation of our staff could not be completed before the 15th of January 1979.

Therefore, we kindly inform you that our stand-by fees quoted in Mr. Haskett's letter will start from 16th January 1979.

78. After this date CFPS remained on standby and, pursuant to the purported agreement, invoiced OSCO for the standby fees. In the period January through May 1979 CFPS was, however, neither paid for these invoices nor paid for other outstanding invoices. It appears that the Parties took up some discussions regarding a possible resumption of performance under the Contract in the beginning of May. On 22 May 1979, however, NIOC sent CFPS a letter which, according to the Claimant, constituted a repudiation of Contract 340. This letter from NIOC, a telexed copy of which was received by CFPS on 23 May 1979, was stated to concern Contract 340 and provided as follows:

We are pleased to advise that we have reached a stage permitting resumption of normal business activities.

With regards to your performance of the Seismographic Survey under the subject contract where we were both compelled to suspend operations during the period of Iranian Revolution we have, recently, been discussing with you the ways and means towards continuing the work, there has also been an exchange of correspondence between us on the subject which has enabled us to inform the Management of the National Iranian Oil Company (Oil Fields) of the outcome of our discussions.

We are now putting on record the requirements from our Company as a formal contractual communicate as follows:

- (1) We require you to resume operation of the subject contract but with two crews instead of three i.e. one portable crew and one portable equipped with Cobra Drills in accordance with alternative 9 of your Tender, Section 2 of your Contract.
- (2) We greatly appreciate the efforts and the cooperation you have extended towards protection of the sites and the equipment relevant to your operations throughout the idle period and we hope to utilise this spirit of understanding in our future business developments with you.
- (3) Concerning the compensation which you claimed for the period January through May 1979 we regret to inform you that under the circumstances and because of the provisions of the Force Majeure State of the Contract we cannot agree to pay any compensation in respect of idle men and equipment. In spite of our utmost sympathy on the fact that you have sustained losses due to non-productivity we can only consider compensating you for Guards and protection arrangements of the sites and equipment throughout this period of time. We assure you, however, that if it was decided on compensating other foreign contractors in respect of losses for similar circumstances we shall extend the same consideration and appreciation towards you also.
- (4) We expect to receive your confirmation of the above arrangements and to observe your re-starting of operations within two weeks from the date of this letter which also has been transmitted to you on the same date via telex.

79. On 25 May 1979 CFPS sent a telexed response to this communication, which contained the following statements:

- (1) We would remind you that operations of our three crews were stopped at OSCO's request and not by Force

Majeure. We refer to your telex . . . dated 27th December 1978.

It was at the request of your representatives in Tehran that we stated the standby fee we required during the suspension of operations.

(2) The conditions under which we agreed to retain the crews on a standby basis were detailed in our letter dated 30th December 1978

(3) At that time we estimated these costs [incurred during the standby period] at US dollars 406,000 per month and our accounts since then reflect the verity of this estimation.

The above letter was personally presented to OSCO by me in Tehran, at which time discussions were held with Messrs Molanazadeh, Mohebbi and Chingizi and they agreed to the terms of the letter and the standby fee of US dollars 406,000 per month.

(4) On 15th January 1979 we submitted a second letter [not in evidence] at the request of your representatives detailing the compensation we would require if one of the three crews under the contract was terminated and the other two were kept on standby.

Your request evidenced OSCO's recognition of its continuing obligation under the termination clause of our contract as well as our standby agreement.

Also your letter of January 20th 1979 further substantiates the above statements and again recognises your liability for the standby fee and termination fees if a crew is cancelled.

(5) After all the discussions and correspondence we have had, we find it incomprehensible that you now state that there will be no compensation for the standby period and no compensation for the termination of one of the three crews.

This is in complete contradiction to the terms of our contract and our standby agreement.

. . . .

(7) As for your reference to Force Majeure we remind you that our crews were operating when you requested they be placed on a standby basis.

At the same time you requested we continue operations under our data processing contract and such operations have continued to this date.

. . .

(8) In view of your present attitude we cannot agree to resume operations untills [sic] we have resolved satisfactorilly [sic] the problems of compensation for the standby period, compensation for the termination of the third crew, and payment in full for all amounts owed CFPS including the above.

We await your reply.

80. The Claimant argues that the 25 May 1979 telex "clearly notified NIOC that CFPS considered NIOC in breach of the Contract because of nonpayment, and that CFPS would consider the Contract terminated unless NIOC revived it by making payment" and that "this telex was sent more than 60 days before CFPS terminated the contract retroactively to May 22, 1979."

81. The Claimant further states that starting on 18 June 1979 with a meeting in Iran the Parties commenced settlement negotiations. They could not, however, agree on mutually acceptable terms for the resumption of Contract 340. As an alternative, they sought to negotiate a new contract, known as "Contract 376," intended to supersede Contract 340. These negotiations were conducted over a considerable period of time. Although there is evidence that by January 1980 these negotiations reached such a stage that NIOC executed Contract 376, the Claimant contends that NIOC failed to accept certain final points which caused CFPS not to execute the new contract. The negotiations broke down by the time CFPS received NIOC's telex dated 27 February 1980 in which NIOC stated it would consider Contract 340 terminated as of 27 December 1978 unless CFPS executed Contract 376 within 14 days. The Claimant disputes that NIOC had any right to terminate Contract 340 retroactively as of 27 December 1978, the day when OSCO instructed CFPS to go on standby.

82. As CFPS stated in its telex to NIOC of 25 May 1979, the Claimant disputes that OSCO effectively invoked force majeure as a cause for requiring CFPS to go on standby. In

any event, the Claimant contends that the Respondents have not proven the existence of any force majeure conditions at the relevant time.

83. On the basis of the foregoing, the Claimant contends that it is entitled to termination damages pursuant to Clauses 31 and 33 of the Contract. The claimed amounts are as follows:

- a. \$1,571,666.67 on account of unpaid invoices for standby fees in a total amount of \$1,691,666.67 reduced by cost savings amounting to \$120,000. Alternatively, the Claimant seeks \$1,598,461 in compensation for costs incurred during the period 16 January 1979 up to and including 21 May 1979 under the theory of unjust enrichment;
- b. \$348,977.36⁷ on account of unpaid invoices for services rendered in a total amount of \$192,025 and Rls.10,986,666;
- c. \$484,836.79⁸ on account of debit notes for reimbursable disbursements in a total amount of Rls.33,938,575;
- d. \$52,100.78 on account of the unamortized portion of the mobilization expenses for CFPS's three crews;
- e. \$2,953,834.38 constituting reasonable profits lost over the remaining term of Contract 340, i.e., 15 months and 10 days; and

⁷The Claimant concedes, however, that if it is awarded its entire standby fee then this portion of the claim must be reduced to \$314,310.70.

⁸The Claimant concedes, however, that if it is awarded its entire standby fee then this portion of the claim must be reduced to \$311,268.86.

- f. \$94,107.38 on account of monies retained pursuant to Clause 23(3).

b. The Respondents' Contentions

84. NIOC contends initially that the Claimant abandoned the Contract as of 27 December 1978 by ceasing to perform services as of that date. NIOC further contends that the instructions given to CFPS in the December telex were caused by force majeure. The Respondents dispute that any agreement was reached between the Parties regarding payment of either a standby fee or compensation for costs during the standby period, arguing that CFPS' 30 December 1978 letter to OSCO (see para. 75, supra) only contained proposals made by CFPS to OSCO which were not accepted.

85. According to the Respondents, CFPS breached the Contract by failing to resume operations upon receipt of the telex dated 22 May 1979 from NIOC. Consequently, the Claimant was neither entitled nor able effectively to terminate the Contract for cause as of 22 May 1979. Furthermore, irrespective of the considerable efforts and concessions made by NIOC in order to settle the differences between the Parties, CFPS refused to execute the new Contract 376 which, according to the Respondents, evidences a lack of good faith on the part of CFPS. Under these circumstances NIOC alleges that it was justified in regarding the contract as terminated for cause as of 27 December 1978, which it did by transmitting the following telex, dated 27 February 1980, to CFPS:

Now to our surprise we understand that CFPS has changed its attitude towards NIOC by refusing to execute the new contract which is based on lengthly [sic] negotiations and mutual agreements.

We, therefore, are compelled to hereby notify you that you are expected to arrange for execution of Contract [376] within 14 days of the date of this telex. Otherwise Contract [340] shall without prejudice be regarded

as terminated with cause by the company with effect from 27th December, 1978. NIOC shall however hold CFPS accountable for all losses sustained by the company.

86. The Respondents' specific defenses to the different parts of the claim will be examined in more detail below.

c. The Tribunal's Findings

1. The Standby Arrangement

87. Neither of the Parties has alleged that the other performed unsatisfactorily under Contract 340 prior to the end of December 1978. It is also clear that CFPS ceased to perform under the Contract as of 16 January 1979. The Tribunal must now determine the cause of this interruption of CFPS' performance and examine its effects on the contractual relationship between the Parties.

88. As concerns the cause of this interruption, NIOC contends that OSCO's request to CFPS to go on standby was caused by existing force majeure conditions in Iran. The Tribunal finds this contention irrelevant as CFPS does not allege any breach of contract on the part of NIOC. NIOC, however, contends that CFPS abandoned the Contract, i.e., that CFPS unilaterally decided to cease to perform under the Contract. The Tribunal finds this contention unsubstantiated and contradicted by the record in this Case, particularly the express terms of the 27 December telex.

89. In view of the foregoing, and on the basis of the record in this Case, the Tribunal accepts the Claimant's contention that OSCO, by its telex of 27 December 1978 and at the meeting held on 29 December 1978, instructed CFPS to cease performance under Contract 340.

90. Under other circumstances, pursuant to the terms of the Contract this would have had the effect of terminating the

Contract. The Claimant contends, however, that by the 27 December telex, as well as during the meeting in Iran on 29 December 1978, OSCO requested CFPS to "go on standby." It should be noted that Contract 340 contained no provisions regulating the effects of an instruction by OSCO that CFPS go on standby. The Tribunal finds, however, that the contemporaneous evidence and the conduct of the Parties establish that the Parties agreed that OSCO's instruction to CFPS to cease performance was an instruction for CFPS to "go on standby" so that CFPS would discontinue its performance of services under the Contract during the period of standby, but that this would not cause the Contract to be terminated, and that CFPS would retain its personnel and store its equipment in such a state that performance could be resumed on short notice.

91. It follows from the foregoing that essential terms and conditions of Contract 340 became suspended for the duration of the standby period. To the extent here relevant, the Tribunal thus has to determine whether, and to what extent, any provisions of Contract 340 remained applicable during the standby period. The Tribunal must also determine what rights and obligations the Parties agreed would govern their relations during the existence of the "Standby Arrangement."⁹

92. The Tribunal must first determine the inception of the Standby Arrangement. The Claimant contends that although OSCO gave CFPS the instruction to go on standby by the end of December 1978, CFPS was unable to carry out this instruction immediately. It was only on 16 January 1979 that CFPS had finalized the necessary arrangements to do so,

⁹The Tribunal employs the term Standby Arrangement for reasons of convenience only. It is used to denote the amendments to the Contract caused by OSCO's instruction to CFPS to go on standby.

which is allegedly evidenced by the 20 January 1979 letter from CFPS to OSCO. Thus the Claimant contends that Contract 340 continued in full effect up to and including 15 January 1979. The Tribunal infers from the Respondents' arguments that they dispute this contention. The Tribunal determines, however, that OSCO's instruction to CFPS to cease performance reasonably must be deemed to include an agreement on the part of OSCO to allow the Claimant sufficient time to carry out this instruction. Under the circumstances, and particularly in view of the scope and magnitude of the operations under Contract 340, the Tribunal concludes that the Contract continued in full effect up to and including 15 January 1979 and that the Standby Arrangement thus took effect as of 16 January 1979.

93. To summarize, the Tribunal finds that OSCO instructed CFPS to cease performance under Contract 340 on or about 27 December 1978, that this did not cause the Contract to be terminated, and that, as of 16 January 1979, CFPS was "on standby" within the meaning established above (see para. 90, supra).

2. Termination

94. Although the Parties now agree that Contract 340 was terminated at some point in time, they disagree as to who terminated the Contract, for which cause it was terminated and when it was terminated. The Contract contained clear and detailed provisions regarding the respective rights and obligations of the Parties relative to termination. The Tribunal must determine whether, and to what extent, the Standby Arrangement affected the termination provisions of Contract 340.

95. The Respondents appear to allege that the Contract was terminated as of 27 December 1978, i.e., the date of OSCO's

telex requesting standby, by CFPS' alleged abandonment of the Contract.

96. The Claimant contends that it terminated the Contract for cause on 22 May 1979 upon NIOC's repudiation of the Contract on the same date. In support of its position, the Claimant relies on its telex dated 25 May 1979 in response to NIOC's 22 May 1979 telex.

97. In their allegations invoking the authority to terminate the Contract, the Parties have not alleged that they complied with the termination provisions in the Contract. Although by the telex of 27 December 1978 OSCO effectively instructed CFPS to interrupt its performance, the Tribunal cannot find that the telex constituted a formal notice of termination. Indeed, the Claimant, too, does not allege that it communicated any formal notice of termination to OSCO as required by the Contract. Furthermore, the Tribunal cannot find any support in the contemporaneous evidence in this Case that prior to 27 February 1980 either of the Parties actually expressed any clear intention to terminate the Contract. To the contrary, the Tribunal finds that the protracted settlement negotiations displayed a common intent of the Parties to avoid a formal termination of the contractual relations between them. When these settlement negotiations broke down, however, the situation changed and, as the Parties agree, the Contract was considered terminated.

98. Under such circumstances the Tribunal must examine all the circumstances in this Case and determine the most reasonable point in time the Contract can be deemed to have been terminated. The Tribunal has already found that the Standby Arrangement did not have the effect of terminating the Contract. It is undisputed, however, that it, at least temporarily, substantially changed the terms of the Contract between the Parties. Although NIOC's 22 May 1979 telex

constitutes an express refusal to honor the Standby Arrangement, it does not constitute a termination of the Contract. To the contrary, NIOC expressed a clear intention to continue the Contract by requesting the Claimant to resume performance. By CFPS' telex dated 25 May 1979, however, CFPS clearly informed NIOC that it considered NIOC's refusal to honor the Standby Arrangement a material breach of the Contract that justified CFPS' refusal to resume performance. The Tribunal thus finds that by 25 May 1979 both Parties had definitely become aware that a resumption of performance under the Contract was conditioned on reaching a settlement of their differences, which they did not succeed in reaching. As it is undisputed that CFPS never resumed performance, the Tribunal finds that Contract 340 must be deemed to have been terminated as of 25 May 1979.

99. As concerns the contractual formalities such as the requirement of 60 days written notice, the Tribunal notes that these were designed for circumstances different from the present ones. Furthermore, the conduct and submissions of the Parties establish that they were in agreement not to require application of these formalities.

100. The termination provisions regulated the possible causes and effects of termination of the Contract. It could be argued, and such an argument can be inferred from NIOC's submissions, that in the particular circumstances of this Case the contractual termination provisions should not apply. Based on the record in this Case and the conduct of the Parties, however, the Tribunal finds the contrary conclusion to be more reasonable.

101. The Tribunal thus has found that CFPS' performance was interrupted on instructions of OSCO and that CFPS' refusal to honor the instruction to resume performance was justified. NIOC has not alleged, and the Tribunal finds

nothing in the record which would cause it to conclude, that NIOC had any other cause for terminating the Contract. Under such circumstances the Tribunal concludes that Contract 340 was terminated by the Claimant for cause as of 25 May 1979 and that the Claimant is entitled to contractual damages as provided in Clauses 31 and 33 (see Section IV, D, i, supra).

3. The Damages

aa. Standby

102. The Claimant does not contend that during the standby period CFPS was entitled to the fees stipulated in the Contract. Rather it contends that OSCO agreed to pay CFPS a specific standby fee, the amount of which was discussed and determined during the meeting of 29 December 1978 as confirmed in CFPS' letter of 30 December 1978.

103. It is clear that at the meeting of 29 December 1978 the Parties discussed the terms and conditions of the Standby Arrangement, including the amount of compensation CFPS was to receive. It is less clear, however, that OSCO undertook to pay CFPS a fixed standby fee of \$406,000 per month as the Claimant alleges. Rather the Tribunal finds that the evidence on record establishes that OSCO undertook to compensate CFPS for costs incurred during the standby period on the stated condition that CFPS take such "action necessary to mitigate the costs" it would incur.

104. The Claimant has submitted evidence of the costs incurred during the period 16 January up to and including 21 May 1979, i.e., until the date on which, according to the Claimant, Contract 340 was terminated. As evidence of the costs incurred during that period the Claimant relies on computer printouts of accounts prepared in the ordinary course of business allegedly listing the different items of

expense. The Claimant also has submitted certain explanations thereto as well as a "Summary Table" of the costs allegedly incurred. Upon examination of this evidence the Tribunal finds the explanations and summary tables to be so incomplete and internally inconsistent that it cannot rely upon them to any significant degree. Consequently the evidence submitted does not establish the Claimant's entitlement to the claimed amount. The Tribunal must therefore determine a reasonable amount of compensation due to the Claimant.

105. In determining a reasonable amount of compensation for costs the Tribunal takes into account statements made by Mr. Haskett, supported by documentary evidence, that the projected monthly sales for Contract 340 amounted to \$520,765.58 and that, based on the actual sales during the first three months of operations under the Contract, the profit percentage realized was 37%. The projected average costs of the Contract thus amounted to \$328,082.32 per month. The Claimant has conceded that it succeeded in mitigating the costs incurred by \$30,000 per month. Taking these figures into account, as well as the fact that the foregoing figures were based on costs incurred during full operation, the Tribunal determines that the Claimant is entitled to a monthly compensation for costs of \$280,000 for the period 16 January 1979 through 24 May 1979, or \$1,204,000.

106. The Tribunal also finds that this compensation should not be subjected to tax withholding pursuant to Clause 23, paragraph 2, because it constitutes compensation for costs.

bb. Services Rendered

107. The Claimant asserts a claim for nine allegedly unpaid invoices totalling \$348,977.36. The invoices are numbered 2656Bis, 2657Bis, 2678, 2683, 2686, 2694, 2697, 2700 and 2703. The Respondents have submitted evidence of payment of Rls. 4,033,466 on account of Invoices 2678, 2683 and 2686, i.e., the full amount of these invoices less contractor's tax and SSO retention.

108. Two of the unpaid invoices, Invoice 2656Bis¹⁰ and Invoice 2657Bis, include a claim for payment for the provision of "three reflection service parties" between 1 and 15 January 1979 in the amount of Rls. 4,140,000 and \$192,025. The total dollar amount claimed is \$251,167.86.

109. The Respondents have raised the general defense that CFPS is entitled to payment only up to and including the date when it ceased to perform under the Contract, i.e., 31 December 1978, and that CFPS has been paid for its services up to this date by payment of, inter alia, Invoices 2656 and 2657 (not at issue in this Case).

110. The Tribunal already has found that the Contract continued in full effect through 15 January 1979. Consequently the Claimant is entitled to payment for services rendered through 15 January 1979 pursuant to the Contract and Invoices 2656Bis (partially) and 2657Bis.

¹⁰ Invoice 2656Bis covering the period 1 through 15 January 1979 lists two separate charges under the heading "three reflection service parties." The first charge (Rls. 4,140,000) corresponds to the contractually provided charge (Rls. 260,000) for the "three reflection service parties," while the second charge corresponds to the agreed charge for the base office in Ahwaz. The Tribunal concludes that this invoice covers charges for these two services.

111. In addition to the services related to the provision of the "three reflection service parties" the Claimant had undertaken to maintain a base office in Ahwaz in Iran. The costs incurred for this base office amounted to Rls. 520,000 per month. The claimed total for these services amounts to Rls. 6,846,666¹¹ and covers services rendered in the period 1 January 1979 through 20 January 1980. The Respondents have paid the charge through the month of Shahrivar 1358, i.e., up to and including 22 September 1979.

112. As concerns the period 1 January 1979 through 22 May 1979, the Claimant has stated that in determining the standby fee to which CFPS claims entitlement provision was made for compensation for the services related to the base office in Ahwaz. In order to avoid a double recovery the Claimant has conceded that in the event the Tribunal grants the Claimant's claim to standby fees the claimed compensation for the base office in Ahwaz should not include payment for the standby period. In such a case, according to the Claimant, Invoice 2678, in the original amount of Rls. 2,946,666, covering the period 1 January through 21 June 1979, should be reduced to Rls. 520,000.

113. As regards the remaining part of the claim, the Claimant invokes Clauses 31 (specifically Clause 31, paragraph 1) and 33 of the General Conditions of Contract, according to which expenses incurred in good faith by CFPS would be the responsibility of OSCO even after termination of the Contract. Furthermore, and in response to the Respondents' contentions, the Claimant stated at the Hearing, unsupported by evidence, however, that CFPS was contractually bound to maintain the base office in Ahwaz and

¹¹The remaining part of Invoice 2656Bis otherwise found due is hereby rejected on the ground that it covers charges also claimed pursuant to one of the seven invoices presently under consideration, Invoice 2678.

that the rental contract in question did not expire until 20 January 1980.

114. The Respondents reject the claim entirely. They invoke the effected payment and further contend that the Claimant is not entitled to payment for unperformed services, i.e., for the period after 31 December 1978 and, in any event, not after the termination of the Contract, be it on 27 December 1978 as contended by the Respondents or 22 May 1979 as contended by the Claimant. Finally, the Claimant allegedly has not sought to mitigate the costs incurred after the date of termination of the Contract as it was contractually bound to do.

115. The Tribunal has already found that the inception of the standby period was 16 January 1979. Consequently the Claimant is entitled to payment up to 16 January 1979. By this Award, however, the Tribunal rejects the standby fees as claimed but has awarded the Claimant reasonable compensation for costs during the standby period (see para. 105, supra). The Tribunal finds that the Claimant is not entitled to any further compensation for costs during this period. As regards the charges through 22 September 1979 the Tribunal finds the Respondents' payment thereof to be determinative. For the remaining part of this claim the Tribunal agrees with the Claimant that Clause 31, paragraph 1, would entitle CFPS, even after termination of the Contract, to compensation for undertakings entered into, in good faith, prior to the termination of the Contract. The Claimant has not, however, substantiated that it sought to mitigate the expenses it incurred. Although this obligation is a "best efforts" obligation and not an obligation of result, it at least places an obligation on the Claimant to evidence that it was bound to incur the expenses so claimed. The Claimant having failed to do so the Tribunal finds the claim in this part unsubstantiated.

116. On the basis of the foregoing and after deduction of the contractually provided contractor's tax the Tribunal awards the Claimant \$237,353.63¹² pursuant to Invoices 2656Bis and 2657Bis. Further, with respect to the seven remaining invoices the Claimant is entitled to payment for the period from 1 through 15 January 1979 and from 25 May through 22 September which amounts to Rls. 2,288,000. Less the contractor's tax the Claimant is entitled to Rls. 2,162,160. The Respondents have evidenced payment of Rls. 4,033,466 on account of these charges. The Respondents are thus entitled to a credit of the corresponding dollar value of Rls. 1,871,306 or \$26,732.94, against the sum awarded to reach a net award of \$210,620.69.

cc. Debit Notes

117. The Claimant also seeks reimbursement for costs incurred pursuant to ten debit notes, numbered 239Bis, 243, 246, 251, 252, 253, 254, 255, 257 and 258 in a total amount of Rls. 33,938,575 or, in dollars, \$484,836.79. The Respondents have paid a total amount of Rls. 25,521,815 on account of the first six of these invoices. Pursuant to the Contract, none of these invoices has been subjected to any deductions for contractor's tax or SSO premia.

118. Pursuant to Debit Note 239Bis the Claimant seeks compensation for "seismic damage payments" in the amount of Rls. 22,550. The Claimant alleges these costs to be reimbursable under the Contract. The Respondents contend that these costs have been paid, and have submitted evidence to that effect. The claim in this part is rejected.

¹²Calculated as follows: (Rls.4,140,000:70 + \$192,025) - 5.5%(Rls.4,140,000:70 + \$192,025).

119. Debit Note 258, dated 30 January 1980, covers "Lawyers' fees" and "Court expenses" in a total amount of Rls. 1,623,038. It is undisputed that these expenses were incurred by CFPS in defending a labor case brought by a Mr. Turkzadeh who was employed by CFPS for work under Contract 340. Of the defenses raised by the Respondents the Tribunal finds that there is possible merit only to the contention that the Claimant cannot successfully claim reimbursement for costs apparently incurred after the termination of the Contract. Nevertheless, as it is established that the labor dispute in question involved an Iranian national employed by CFPS for the purposes of performing services under Contract 340, the expenses arose out of and during the life of the Contract, although the amount of CFPS' expenses was established only after the termination of the Contract. The Tribunal finds that these expenses were reimbursable under the Contract and that the Respondents have not substantiated their contention that the amount at issue is unreasonable.

120. Two of the Debit Notes, Nos. 252 and 257, in the amounts of Rls. 23,414,925 and Rls. 6,524,372, or a total of Rls. 29,939,297, pertain to costs incurred by CFPS in the period 1 January through 31 December 1979 for guarding CFPS' equipment in Iran. According to the Claimant, the statements made by NIOC in the 22 May 1979 letter constitute an undertaking to compensate CFPS for these expenses (see para. 78, supra). The Claimant has further stated, however, that as part of its standby fee CFPS included an amount pertaining to guard costs. Therefore it concedes that in the event the Tribunal awards CFPS the standby fee claimed this debit note should be reduced accordingly.

121. Although the Respondents have paid the charges covered by Debit Note 252 they reject liability for the same charges pursuant to Debit Note 257 on the ground that CFPS is not entitled to compensation after the termination of the Contract.

122. This Award compensates the Claimant for the costs it incurred during the standby period (see para. 105, supra). The Tribunal finds that the Claimant is not entitled to any further compensation for costs incurred during this period. As this Debit Note has been paid the Respondents must be credited with the proportionate amount of costs incurred between 16 January and 24 May 1979, i.e., Rls. 11,187,131. As concerns the remaining period (covered by the claim under Debit Note 257), the evidenced payment lends credence to the Claimant's contention that throughout the negotiations between the Parties its understanding was that NIOC would compensate it for the cost of guarding the equipment. Although it appears from the record that this undertaking may have formed part of the settlement between the Parties the Tribunal finds it established that the evidenced payment of Debit Note 252 was not so conditioned. Based on the record in this Case and the inference that can be drawn from the Respondents' evidenced payment of Debit Note 252 the Tribunal concludes that OSCO/NIOC is liable to compensate CFPS for the guarding costs through 31 December 1979. Of the total amount claimed of Rls. 29,939,297 the Tribunal thus finds the Claimant entitled to Rls. 18,752,166. The Respondents have already paid Rls. 23,414,925 on account of these invoices and are thus entitled to a credit of Rls. 4,662,759 or \$66,610.84.

123. The remaining Debit Notes Nos. 243, 246, 251, 253, 254 and 255 all concern costs incurred by the Claimant in the period 22 December 1978 through 31 December 1979 for the guarding of explosives used in connection with Contract 340. The total amount of these costs is Rls. 2,353,690. The Claimant contends that under the Contract OSCO was responsible for guarding these explosives but that in late 1978 OSCO requested CFPS to take charge of storing the explosives since it was storing its other equipment nearby.

124. The defenses raised by the Respondents include those invoked earlier, i.e., that costs incurred after the termination of the Contract cannot be reimbursed and that any undertaking to provide such reimbursement was conditioned on a resumption of work under the Contract by the Claimant.

125. Although the Tribunal agrees with NIOC that the Contract appears not to require NIOC to reimburse the Claimant for the expenses here at issue, the fact that the Respondents did pay Debit Notes 243, 246, 251 and 253 must be seen as evidence that the Respondents nonetheless considered themselves to be liable for these charges. The Tribunal concludes that the Claimant is entitled to reimbursement for the costs also pursuant to the remaining unpaid Debit Notes 254 and 255, in the amounts of Rls. 170,000 and Rls. 85,000, to reach a total of \$3,642.86.

126. To conclude, and on the basis of the foregoing, the Tribunal finds that on account of the ten Debit Notes at issue the Claimant is entitled to a total of \$26,829.12, which, after a setoff against the Respondents' credits found due of \$66,610.84, results in a net credit in the Respondents' favor of \$39,781.72.

dd. Mobilization Expenses

127. As finally pleaded the Claimant raises a claim for recovery of the "total unamortized mobilization costs" over the remaining 15.3 months of the Contract in the amount of \$52,100.78. The Claimant contends that ordinarily there would be no charge for such costs because CFPS included them within its monthly fee, thus amortizing them over the term of the Contract. The early termination of the Contract, however, allegedly precluded full amortization.

128. Relying on the terms of the Contract, the Respondents reject this claim. The Respondents invoke Clause 10.16 which provided that no payment would be due for positioning at and removal from the actual field location, or for travel time of personnel and shipment costs of equipment. They argue that pursuant to the Contract this obligation was in no way subject to a condition that the Contract would not be terminated prematurely. On the contrary, they argue that Clause 29 gave OSCO an unconditional right to terminate for convenience.

129. Upon an examination of the terms of Contract 340, as well as the evidence submitted, the Tribunal cannot accept the claim in this part. The above-quoted contractual provision explicitly precludes the Claimant from recovering the claimed amounts. Furthermore, this provision formed part of the bargain between the Parties which also included an unconditional right for OSCO to terminate the Contract. Under such conditions the Tribunal must conclude that CFPS, in agreeing to grant OSCO such a right, evaluated the possible consequences the exercise of this right might have for CFPS and accorded it a monetary value which was included in the contract price. Stated in other terms, this would presumably have had an effect on the profit margin the Claimant deemed reasonable under the circumstances. Furthermore, the Tribunal finds no reason to infer from the submissions of the Parties that by amendment of the Contract they would have agreed to any different arrangement pursuant to the Standby Arrangement. In addition, the Tribunal notes that the Claimant has failed to submit any evidence substantiating the costs it claims it actually incurred. For the foregoing reasons, the Tribunal rejects the claim for compensation for mobilization expenses.

ee. Contractual Profit Lost

130. With reference to Clauses 33 and 31, paragraph 3, of Contract 340, the Claimant contends that it is entitled to a "reasonable profit . . . with respect to the terminated portion of the Contract." The Claimant further contends that the average monthly sales CFPS realized from Contract 340 were \$520,765.58 per month, which resulted in a monthly gross profit of \$192,683.26. This amounts to a profit margin of 37%. According to the Claimant, this is the "reasonable profit" envisaged by Contract 340. The Claimant finally contends that the Contract entitles it to receive this amount from the date of the alleged termination, i.e., 22 May 1979, to the expiration date provided for in the Contract, i.e., 31 August 1980. The claimed amount is thus \$192,683.26 per month for 15.33 months, which equals \$2,953,834.38.

131. The Respondents reject this part of the claim on the general ground that the Claimant abandoned the Contract. Relying on the terms of Clause 31, paragraph 3, they further contend that the Claimant cannot be entitled to recover any profits over the balance of the Contract term and that only profits incurred up to the date of termination are recoverable. Furthermore, they contend that the Claimant's interpretation would render meaningless the Respondents' indisputable right under Clause 29 to terminate Contract 340 for convenience.

132. The terms of Clause 31, paragraph 3, require consideration of two preliminary issues. The first one concerns the interpretation of the concept "reasonable profit" and the second concerns the Claimant's entitlement to "reasonable profit" after termination of the Contract.

133. As concerns the first issue, it appears from the Claimant's submissions that it considers "reasonable profit"

to be identical to "anticipated profit." The Tribunal disagrees. Although anticipated profit, per se, is not necessarily unreasonable profit, the fact remains that under any general rule of interpretation these two concepts are distinct. Under normal circumstances the wording of Clause 31, paragraph 3, would require an agreement between the Parties as to what, under the circumstances, would constitute "reasonable profit" within the terms of Contract 340. Under the present circumstances, however, and as the Parties failed to agree on this issue at any relevant time, the Tribunal must determine a reasonable level of profit on the basis of available facts.

134. In determining the profit margin to which the Claimant is entitled it is relevant to consider a letter dated 15 January 1979 from CFPS to OSCO in which CFPS responded to a request from OSCO regarding the costs that CFPS considered would be entailed by a reduction of Contract 340 from three to two crews. In this document CFPS stated that the "reasonable profit" it would expect to receive for the remaining term of the Contract amounted to "8% after tax to allow us a reasonable return on assets employed." This submission is particularly relevant since it is a contemporaneous assessment by CFPS. This statement by CFPS, however, does not conclusively establish the Claimant's entitlement to a profit margin. The Contract was a fixed fee contract and it included an unconditional right for OSCO to terminate the Contract without cause. Under these circumstances the Tribunal determines that the Claimant is entitled to a profit margin of 10% of the average monthly sales or \$52,076.56.

135. As to the second issue, the Tribunal finds it difficult to concur with the Claimant's view that the termination provision unambiguously entitled it to compensation for lost profit for the full term of the Contract. The Claimant takes the position that the purpose of Clause 31, paragraph

3, is to "place the non-breaching party in as good a position as he would have been had the other party not broken the contract," and that the remedies available to CFPS are identical whether the Contract was terminated by CFPS for cause or by NIOC without cause. By such an interpretation the Respondents' contractual right to terminate the Contract for convenience would be rendered devoid of most of its meaning. The Respondents rely on the Tribunal's findings in Sylvania Technical Systems, Inc. and Government of the Islamic Republic of Iran, Award No. 180-64-1, pp. 29-30 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 319, in which it was held that a clause providing for a "fair profit incurred by the [Claimant]" at the time of termination did not permit an award for profit reasonably expected for the remaining term of the contract. Although the wording of the relevant clause in Sylvania is not identical to the the present one, the Tribunal still finds that the conclusions in Sylvania hold equally true here.

136. The Claimant's last argument is even less convincing. It contends that "[i]f NIOC had terminated the Contract without cause under Clause 29, it would have been liable for full lost profits under Clause 31(3). Therefore, CFPS quite reasonably expected NIOC to complete the Contract term because NIOC would be liable for full lost profits if it did not do so." The Tribunal finds this reasoning obviously circular and holds that an interpretation of a contract provision cannot rely on the expectation that one of the parties will not exercise any of its express contractual rights. Thus, contrary to the CFPS interpretation, the Tribunal finds that the Contract does not entitle CFPS to lost profit over the whole original term of the Contract.

137. The above conclusions, however, do not settle the issue in its entirety. Pursuant to the principle that a greater claim must be taken to include a smaller claim, the Tribunal

finds that the claim for compensation for profits lost in the period 22 May 1979 up to the term of the Contract includes a claim for compensation for profit lost in the standby period, i.e., 16 January 1979 through 24 May 1979. The Tribunal holds that although the circumstances during the standby period were unusual, the Claimant is contractually entitled to recover a reasonable profit lost during the standby period which the Tribunal has determined amounts to \$52,076.56 per month.

138. In conclusion, the Tribunal awards the Claimant \$223,929.21 constituting contractual profit lost on Contract 340 for the period 16 January 1979 through 24 May 1979.

ff. SSO Retentions

139. Finally, the Claimant raises a claim for repayment of SSO retentions made on invoices paid in relation to Contract 340. The amount claimed is \$94,107.38. In support the Claimant contends that it has fully performed under the Contract including its obligations to pay all its dues to the SSO. The Claimant also contends that the Respondents impliedly recognized the amounts due since their only defense raised is that the Claimant has not produced the contractually required SSO Clearance Certificate.

140. As noted, the Respondents object to the present claim on the ground that the Claimant has not produced an SSO Clearance Certificate. With reference to the counterclaims raised, the Respondents further contend that the Claimant has not paid its SSO premia. Consequently the claim should be rejected.

141. By this Award the Tribunal finds that the Respondents have not proven their allegation that the Claimant failed to perform its SSO obligations. Under such circumstances and in harmony with previous practice the Tribunal cannot accept

that nonproduction of an SSO Clearance Certificate, per se, justifies a continued retention by the Respondents of the amounts here claimed. Although the Claimant's entitlement thus does not depend on the production of an SSO Clearance Certificate, the terms of the Contract provide that payment in full of the SSO premia due is a condition for repayment of the retentions. It is clear from the Contract that, contrary to the tax withholding, the amounts retained on account of SSO were retained as a security for CFPS' performance of its payment obligations to the SSO, and were not intended directly to satisfy CFPS' obligations under the Contract. The Claimant would therefore have a right to repayment of this retention if it can prove to the satisfaction of the Tribunal that it has paid its debts to the SSO. In this Case the Claimant relies on evidence of payment of SSO premia which allegedly establish that CFPS paid SSO premia in the regular course of business. The Respondents have not, however, alleged or established that NIOC had to assume any of CFPS' debts in this respect. Thus the Tribunal deems it proper to allow repayment of the monies retained on account of SSO premia. On the basis of the foregoing, the Tribunal decides that the Claimant is entitled to repayment of the retentions in the amounts claimed and awards \$94,107.38 to the Claimant.

iii. Contract 338

a. The Claimant's Contentions

142. Pursuant to Contract 338 CFPS was to calibrate certain sonic well logs in order to obtain accurate acoustic velocity information. In performing its obligations CFPS used two work teams for which it was to receive a basic monthly fee of \$25,000. The Claimant contends that both Parties performed under Contract 338 until 27 December 1978 when CFPS received the December telex (see para. 74, supra).

Although OSCO made no express reference to Contract 338 in this telex, the Claimant contends that this telex constituted an instruction to CFPS to cease performance under Contract 338 and to put the personnel involved in that Contract on standby. The Claimant further contends that at the meeting in Tehran on 29 December 1978 Mr. Haskett was orally so instructed by a representative of OSCO, Mr. Chingizi, and that the amount of compensation CFPS would receive while its personnel were on standby was discussed. Subsequent to these discussions CFPS transmitted to OSCO the letter dated 30 December 1978 (see para. 75, supra) in which CFPS quoted its required standby fee of \$15,000 per month. Mr. Haskett further has testified that representatives of OSCO orally agreed to the required standby fee.

143. By letter dated 20 January 1979 OSCO inquired of CFPS concerning the costs of a reduction in Contract 338 to one team. This letter stated, inter alia:

We refer to your letter of December 30th, 1978 where in you quote the standby fee, we consider that the survey teams should be reduced to one team only and this team kept on standby, effective 1st January 1979.

Accordingly will you please indicate your standby fee for one team only.

According to the Claimant, however, this communication constituted only an inquiry by OSCO, and as OSCO did not expressly decide to reduce teams specified in the Contract, CFPS kept the two teams on standby.

144. The Claimant contends that at the end of January 1979 CFPS orally informed OSCO about the costs and later communicated this information to OSCO in CFPS' letter dated 26 April 1979, in these terms:

We refer to your letter dated 20th January 1979:

- 1) The standby fee for one well calibration unit will be \$7,800 per month.

- 2) The compensation required for the premature cancellation of one well-calibration unit will be \$ 5,124 per month during the remaining life of the contract.

The above is on the understanding that all our equipment and spare parts can be exported from Iran.

- 3) CFPS however would reduce this compensation if any or all of the equipment is put to work in other areas of the world.

Any chance of using the equipment elsewhere will of course depend on the rapidity with which the equipment can be exported from Iran and our own eventual activity outside Iran.

145. From January through May 1979 the Claimant sent monthly invoices to OSCO. Although OSCO did not object to these invoices it did not pay them and they remain outstanding. By its telex dated 22 May 1979 NIOC stated its refusal to pay the standby fee to which the Parties allegedly had agreed. In the Claimant's view this amounted to a repudiation of NIOC's obligations under Contract 338. Because NIOC failed to pay the standby invoices, as well as other outstanding invoices, CFPS was not willing to comply with OSCO's request to resume performance under Contract 338. Instead, the Claimant alleges that by its letter of 25 May 1979 CFPS terminated Contract 338 for cause as of 22 May 1979, entitling CFPS to the rights enumerated in Clause 33, paragraph 1, of the General Conditions.

146. On the basis of the foregoing, the Claimant now seeks damages in the following amounts:

- a) \$70,000 on account of standby fees for the period 1 January 1979 through 21 May 1979;
- b) \$27,220 on account of unpaid invoices for services rendered;
- c) \$20,000 on account of mobilization expenses;

- d) \$92,475 on account of reasonable profit lost from the termination until the end of the Contract; and
- e) \$14,467.27 on account of retentions made for securing SSO premia payments.

b. The Respondents' Contentions

147. In respect of this Contract the Respondents generally take the same position as regards Contract 340. Consequently they argue that it was CFPS, at its own initiative, that stopped performing under Contract 338. They specifically dispute that the 27 December 1978 telex constituted an instruction for CFPS to cease operations under Contract 338 since the telex explicitly referred only to Contract 340.

148. In addition the Respondents contend that OSCO reduced the scope of the Contract pursuant to its authority under Clause 29, as per its instructions contained in the letter dated 20 January 1979 (see para. 143, supra).

149. While not disputing that discussions concerning standby arrangements were held NIOC contends that it did not agree with CFPS to compensate CFPS for standby and that in any event no agreement was reached as to the amount. Finally, as CFPS refused to resume performance after having been instructed to do so by NIOC's 22 May 1979 letter, NIOC contends that CFPS was in breach of Contract 338 and that it had no other option but to terminate Contract 338 for cause as of 22 May 1979.

c. The Tribunal's Findings

1. The Standby Arrangement

150. Neither Party alleges that the other performed unsatisfactorily prior to the end of December 1978 or that CFPS did not perform under the Contract as of 1 January 1979.

151. Taken alone, the 27 December 1978 telex does not establish that OSCO instructed CFPS to cease performance under Contract 338 as well as under Contract 340. The Parties' discussions in Tehran on 29 December 1978, however, must have included a consideration of Contract 338 as well as Contract 340. This conclusion is supported by the text of CFPS' letter of 30 December 1978, in which an explicit reference is made to Contract 338. In view of the general conditions invoked in OSCO's 27 December 1978 telex, and the similar nature of the services performed under Contracts 340 and 338, it would be unreasonable to assume that the Respondents' intention was that CFPS would continue performance under Contract 338. Contrary to the situation of Contract 340, however, the Claimant has not alleged that CFPS was unable to cease operations under Contract 338 immediately. The Tribunal therefore concludes that CFPS was instructed by OSCO to cease performance under Contract 338 as of 1 January 1979, and that CFPS thereby, and as of that date, was instructed to go on standby within the meaning established in relation to Contract 340 (see para. 90, supra).

2. Reduction Of The Scope
Of The Contract

152. An additional issue in relation to Contract 338 is NIOC's allegation, based upon the 20 January 1979 letter, that OSCO effectively reduced the scope of Contract 338 to include only one team.

153. The Tribunal agrees with NIOC. It is not disputed that OSCO had the right by virtue of Clause 29 to terminate the Contract for convenience. It follows that OSCO likely had a similar right to reduce the scope of the Contract. Although the Claimant contends that the decision to reduce the scope of the Contract was not clearly and unambiguously conveyed to CFPS, the Tribunal finds that by the 20 January 1979 letter OSCO conveyed a decision to CFPS that the Contract be so reduced. The Tribunal concludes that Contract 338 was reduced to one team only. The effective date of the reduction of Contract 338 is fixed at 20 February 1979, as the Tribunal finds that CFPS reasonably must be allowed some time to carry out the instruction received.

3. Termination

154. The circumstances regarding termination of Contract 338 are essentially similar to those regarding the termination of Contract 340 and the Parties rely on the same contentions in support of their respective positions.

155. Although the documents invoked in this context essentially, and sometimes explicitly, are stated to concern Contract 340, the Tribunal finds no ground to conclude that the Parties did not intend to include Contract 338 in the context of the two specifically relevant telexes of 22 and 25 May 1979. Based on the same reasoning as invoked in relation to Contract 340 (see paras. 94-101, supra) the Tribunal determines that Contract 338 also was terminated as of 25 May 1979 and that the Claimant is entitled to the contractually provided damages contained in Clause 33 (see para. 70, supra).

4. The Damages

aa. Standby

156. The situation is similar to that in respect of Contract 340 in that the Claimant argues, and the Respondents dispute, that an agreement was reached as to a specific monthly fee for the two teams of \$15,000.

157. Although the evidence does not establish that OSCO agreed to pay CFPS a monthly standby fee of \$15,000, the Tribunal finds that an agreement was reached whereby CFPS was to receive compensation for actual costs incurred during the standby period with the proviso that these costs to the extent possible would be reduced to a minimum.

158. The Claimant, however, has not submitted any evidence regarding the actual costs incurred during the standby period or otherwise proven that the claimed standby fee of \$7,500 per month per crew corresponded to the amount of its actual costs. The Claimant also has not evidenced any attempts to minimize the costs. In the absence of such evidence, the Tribunal must determine a reasonable amount based on all other available facts in this Case.

159. In the course of settlement negotiations between the Parties NIOC was willing on stated conditions to pay CFPS compensation for costs incurred during the standby period in the amount of \$5,930 per month per team. Under the circumstances the Tribunal determines that this is a reasonable amount of compensation. Thus the Claimant is entitled to a monthly compensation of \$11,860 from 1 January 1979 through 20 February 1979, i.e., the effective date of the reduction of the Contract, and \$5,930 per month from 21 February 1979 through 24 May 1979, i.e., until the termination of Contract 338.

160. On the basis of the foregoing the Tribunal awards the Claimant \$38,189.

bb. Services Rendered

161. The Claimant seeks payment for two invoices allegedly due and outstanding as of 1 January 1979. The first one, Invoice 2649, is for services rendered in the period 22 November - 21 December 1978 and is in the amount of \$25,000. The Respondents defend, supported by evidence, that this invoice has been paid.¹³ Consequently this claim is rejected.

162. As concerns the second claim, it appears from the record that CFPS sent OSCO two different invoices under date of 26 December 1978. The first invoice is numbered 2652 and is in the amount of \$2,220. Although the Claimant concedes that this invoice pertained to services rendered under Contract 739, the predecessor to Contract 338, it argues that it is entitled to payment therefor as it was unable to bill the Respondents for these services until 26 December 1978.

163. NIOC's defense of payment of Invoice 2652 pertains, however, to payment of another invoice, numbered 2652Bis, in the amount of \$1,860, which concerns services rendered under Contract 338. Nevertheless NIOC appears also to object to payment of the invoice actually at issue, Invoice 2652, on the ground that this invoice clearly is for payment of services rendered under an earlier contract between the Parties, Contract 739, which is not at issue in this Case.¹⁴

¹³According to this evidence, and for unexplained reasons, this invoice was not subjected to any contractual retentions on account of contractor's tax or SSO premia.

¹⁴This invoice was allocated payment (see Section IV, B, supra).

164. The Tribunal concurs with the Respondents. Contract 739 is not invoked in this Case and the Claimant has not otherwise sought to substantiate its entitlement to payment under this invoice. Consequently the claim for payment of Invoice 2652 is also rejected.

cc. Mobilization Expenses

165. The arguments invoked by the Claimant in support of its claim to mobilization expenses are essentially identical to those invoked in relation to Contract 340 (see para. 127, supra). As finally pleaded, the Claimant seeks payment of \$20,000 for unamortized mobilization expenses.

166. The Respondents reject this claim on the same contractual ground as invoked in relation to Contract 340 (see para. 128, supra).

167. For the reasons stated earlier (see para. 129, supra), the Tribunal cannot accept the claim for compensation for mobilization expenses under Contract 338.

dd. Contractual Profit Lost

168. With reference to Contract 338 the Claimant contends that it is entitled to a "reasonable profit with respect to the terminated portion of the Contract." The Claimant further contends that the Contract price of \$25,000 per month included an amount of \$7,500 per month as profit and that this amount constitutes the "reasonable profit" envisaged by Contract 338. The Claimant finally contends that the Contract entitles it to receive this amount from the date of termination, i.e., 22 May 1979, to the expiration date provided for in the Contract, i.e., 31 May

1980. The claimed amount is thus \$7,500 per month over 12.33 months or \$92,475.

169. The Respondents reject this part of the claim on the general ground that the Claimant abandoned the Contract. Relying on the terms of Clause 31, paragraph 3, they further contend that the Claimant cannot in any event be entitled to recover any profits over the balance of the Contract term and that only profits incurred up to the date of termination are recoverable. Furthermore, they contend that the Claimant's interpretation would render meaningless the Respondents' undisputed right, pursuant to Clause 29, to terminate Contract 338 for convenience.

170. In relation to this Contract the claimed profit amounts to thirty percent of the average monthly sales of \$25,000. The Tribunal finds no reason to award the Claimant a different profit margin under this Contract than under Contract 340 (see para. 134, supra). For the reasons stated in connection with Contract 340 (see paras. 135-138, supra) the Tribunal finds that the Claimant is entitled to lost profit amounting to 10% of the monthly sales for the period 1 January 1979 through 24 May 1979. The Tribunal determines that this finding is not affected by the reduction of the scope of the Contract.

171. On the basis of the foregoing and the Tribunal's earlier findings the Tribunal awards the Claimant \$12,000 constituting contractual profit lost on Contract 338 for the period 1 January 1979 through 24 May 1979.

ee. SSO Retentions

172. As with Contract 340 the Claimant raises a claim for repayment of SSO retentions made pursuant to Contract 338 (see para. 139, supra). The amount claimed here is \$14,467.27. The Respondents take the same position here as they take as to Contract 340 (see para. 140, supra).

173. On the same grounds as invoked in respect of Contract 340 (see para. 141, supra) the Tribunal decides that the Claimant is entitled to repayment of the retentions in the amounts claimed and awards the Claimant \$14,467.27 for its claim in this part.

iv. Contract 334

a. Factual Background

174. Pursuant to Contract 334 CFPS agreed to set up a Dedicated Processing Center in Iran where the seismic field data acquired under Contracts 340 and 338 would be processed. The Contract entered into force on 1 July 1978 and was to expire on 30 June 1980. Unlike the situation with Contracts 340 and 338, CFPS was not instructed by OSCO to go on standby under this Contract.

175. The Contract provided that CFPS was to receive a basic monthly fee of \$82,655 and Rls. 4,385,000. It appears that pursuant to "Amendment 1" the basic monthly fee due in rials was amended to be Rls. 4,993,000. Furthermore, during the term of Contract 334, OSCO requested certain variations in the scope of work to be performed. CFPS invoiced OSCO accordingly. Up until March 1979 these variations in the scope of the Contract appear to have been agreed between the Parties.

176. By letter dated 11 March 1979, however, OSCO requested that the scope of the Contract be reduced by approximately one half. The requested reductions included a reduction in the office space used. Following negotiations the Parties agreed to reduce the scope of the Contract. The Parties disagree, however, on the terms of the agreement concerning office space.

177. It is undisputed that the Contract terminated prematurely. Rather, the essential dispute between the Parties concerns the cause and effects of the termination.

b. The Claimant's Contentions

178. The Claimant bases its claim on NIOC's alleged failure to make timely payment of certain invoices. According to the Claimant, NIOC ceased making regular payments on CFPS' invoices in about April 1979. The Claimant contends that it did not at that time invoke this breach as a ground for terminating the Contract because NIOC promised CFPS that it eventually would pay these invoices.

179. During the course of negotiations in late June 1979 CFPS was informed that NIOC, as a condition for payment of outstanding invoices, would require CFPS to provide it with a performance guarantee as provided for in the Contract. CFPS had not previously posted this guarantee because OSCO allegedly had waived such a requirement at the time of the execution of the Contract. In September 1979, however, CFPS caused American Express International Banking Corporation to post the guarantee. The Contract specified that the guarantee should be for 10% of the Contract price. CFPS, however, provided a guarantee for only 5% of the Contract price on the ground that the Contract was already half performed.

180. The Claimant alleges that by December 1979 NIOC still had not paid the outstanding invoices. By letter dated 20 December 1979 CFPS notified NIOC that "effective December 20th 1979 [CFPS] is giving notice on the above mentioned contract under clause 33 of 'General Conditions' for the non-observance by NIOC of Clause 23, which states that all invoices shall be paid within 30 days of their receipt."

181. The Claimant does not dispute that Clause 33 contained a requirement that CFPS give 60 days notice of termination. The Claimant contends, however, that CFPS continued to perform under the Contract only through 1 January 1980. As the Tribunal understands it, the Claimant appears to argue that force majeure conditions at that time caused CFPS to cease performance. A second argument is that notwithstanding the 60 day notice provision of Clause 33 CFPS was entitled to stop work entirely because it had become clear that NIOC did not intend to pay CFPS. The Claimant thus contends that CFPS was not obligated to provide further services for which it would not receive compensation from NIOC.

182. In response to NIOC's claim that it terminated the Contract for cause as of 2 January 1980, the Claimant disputes that NIOC had such a right. The Claimant argues that NIOC was already in default at that time and, as CFPS was excused from performing during the 60 day notice period, NIOC had no ground for terminating the Contract.

183. The Claimant also disputes NIOC's contention that all outstanding invoices had been paid by 20 December 1979. In a telex dated 2 January 1980, responding to CFPS' notice of termination, NIOC claimed that payment had been effected by IROS in London. CFPS then inquired with IROS whether NIOC had given instructions to pay CFPS. IROS responded to CFPS on 3 January 1980 stating that "[W]e have no information regarding payment."

184. On the basis of the foregoing, and as finally pleaded,¹⁵ the Claimant seeks damages in the following amounts:

¹⁵Since filing the Statement of Claim the Claimant has
(Footnote Continued)

- a. \$968,802.56 on account of outstanding invoices for services, totalling Rls. 46,934,200 and \$298,314;
- b. \$13,541.76 on account of debit notes for reimbursable costs amounting to Rls. 872,853 and \$1,072.43;
- c. \$160,625 on account of "termination costs," of which \$85,035 is on account of the unamortized portion of mobilization of CFPS' personnel and equipment and \$75,590 on account of costs totalling Rls. 5,291,272 incurred for the remaining 7 months of a 27 month lease entered into for office space;
- d. \$130,684.02 on account of reasonable profit lost over the remaining term of the Contract; and
- e. \$63,876.51 on account of retentions made for securing SSO premia payments.

The Claimant also seeks a declaratory judgment to the effect that the Performance Guarantee CFPS caused to be issued in favor of NIOC by the American Express International Banking Corporation on 27 September 1979 in the amount of 5% of the Contract price, i.e., Rls. 12,254,612, is null and void.

(Footnote Continued)

withdrawn a claim for unamortized demobilization costs of personnel and a claim for repayment of "Salaries for early termination to its Iranian staff" and raised the amount of the claim for mobilization expenses. The net effect of these changes is that the total amount of the claim is lowered by \$171,919.06.

c. The Respondents' Contentions

185. The Respondents dispute this claim in its entirety. As concerns the reduction of the scope of the Contract, the Respondents essentially take issue with the Claimant as to the effect of this reduction on the entitlements pertaining to the lease of office space.

186. The Respondents further dispute CFPS' right to terminate the Contract on 20 December 1979. First, they contend that they had paid the invoices in question and therefore were not in default. In any event they contend that the purpose of the 60 day notice period was to give the Respondents an opportunity to cure their alleged breach. They also argue that while Clause 23, paragraph 1, of the Contract required payment of invoices within thirty days the Parties had developed another practice in the course of their dealings. According to this practice advances were remitted to CFPS on account of unpaid invoices. The individual invoices were then verified and approved after the lapse of a certain period of time. Consequently the Respondents assert that the Claimant is not entitled to invoke the requirement of payment within 30 days as a ground for termination of the Contract.

187. The Respondents further contend that CFPS' "abandonment" of the work on 2 January 1980 and its failure to return to work pursuant to NIOC's instruction on 12 January 1980 constituted a breach of CFPS' contractual obligations and permitted NIOC to terminate the Contract for cause under Clause 32. In addition, the Respondents contend that the abandonment of work constituted a breach of the contractually required 60 day notice period.

188. Based on the foregoing, and by way of counterclaim, NIOC takes the position that it has incurred damage and is entitled to compensation pursuant to Clause 32. The amount

claimed is 10% of the Contract price, i.e., Rls. 24,509,225, which is equivalent to the amount of the contractually required performance guarantee.

189. NIOC further alleges several breaches on the part of CFPS in relation to the provision of the performance guarantee. First, NIOC alleges that CFPS failed to submit the performance guarantee in a timely manner and contends that the contractual requirement to submit the guarantee was not waived.

190. Second, it alleges that CFPS breached the Contract by failing to submit the guarantee in the contractually required amount, asserting that NIOC did not agree to accept a performance guarantee of half the stipulated amount. By way of counterclaim NIOC requests the Tribunal to order the Claimant to post an additional performance guarantee in an amount equalling the difference between the posted guarantee and the contractually required amount, i.e., an additional 5%.

191. Third, NIOC points out that it sought to draw down on the guarantee after CFPS' breach of the Contract but that CFPS blocked the draw. NIOC seeks by way of counterclaim damages incurred by this action in the amount of the performance guarantee.

d. The Tribunal's Findings

1. Termination

192. NIOC contends that the Contract was terminated on 2 January 1980. The Claimant has not clearly specified the date as of which it considers the Contract terminated, but it does not dispute NIOC's asserted termination date. The record establishes that at the time CFPS considered the

Contract terminated as of 2 January 1980. The Tribunal thus finds it agreed that the termination date was 2 January 1980. The main dispute centers on the cause of termination.

193. As to the Claimant's contention that CFPS was entitled to give notice of termination of the Contract on 20 December 1979 because of NIOC's breach of the contractual requirement of payment of invoices within 30 days, the Tribunal disagrees with the Claimant for several reasons. There is ample evidence in this Case that OSCO and CFPS carried out a system of payment of invoices at variance with the contractually provided requirements in Clause 23 of the Contract. The record clearly evidences that the Respondents did not comply with the literal requirements in Clause 23, in particular the requirement to effect payment of invoices within 30 days. There is nothing in the record in this Case to indicate that during the course of its business relationship with OSCO, CFPS objected to the Respondents' non-compliance with this provision. The Tribunal therefore concludes that CFPS by its conduct is estopped to invoke NIOC's non-compliance with the requirement of payment of invoices within 30 days as a ground for terminating the Contract.

194. This finding does not imply that the Claimant necessarily could not terminate the Contract on the ground that NIOC defaulted in payment of invoices. This practice, however, must place on the Claimant the burden of proving that NIOC's remittances to CFPS in the form of advances and payments on account of Contract 334 were insufficient to cover all outstanding invoices as of 20 December 1979. In the circumstances of this Case, particularly in light of the longstanding contractual relationship between the Parties and the fact that the Claimant in these proceedings has conceded that NIOC is entitled to a credit of over one million dollars, the Claimant must be required to evidence a

general and substantial default in payment on the part of the Respondents.

195. In proving its Case the Claimant relies essentially on what it contends constitutes admissions of default on the part of NIOC.

196. First, the Claimant points out that NIOC concedes Invoice 2690 was not paid and that this constitutes an admission of default. In response to NIOC's objections over the payment of this invoice the Claimant contends that these objections are untimely and that NIOC is estopped to raise them. The Tribunal disagrees. This invoice was dated 13 October 1979. The Claimant's argument amounts to a contention that the Respondents should have objected to this invoice before 20 December 1979. As noted, there is ample evidence in this Case that the Respondents' approval process sometimes took over nine weeks and that the Claimant did not object to this practice. In any event, the Tribunal finds no ground to question that NIOC had a genuine dispute concerning CFPS' entitlement to payment under this invoice¹⁶.

197. The Claimant further relies on evidence of payment invoked by the Respondents in relation to a group of six invoices. This evidence includes a NIOC telex dated 27 November 1979 to IROS in London instructing it to pay CFPS \$42,042.37 on account of Invoices 245, 2665, 2679, 2681, 2684 and 2687. The Claimant points to documents allegedly demonstrating that the payment was not received by 20 December 1979, the date CFPS gave notice of termination. The Claimant further asserts that NIOC's statement in

¹⁶This conclusion is strengthened by the fact that the Tribunal by this Award rejects the claim for payment pursuant to this invoice (see para. 219, infra).

response to CFPS' termination notice that NIOC had effected the payment through IROS when in fact it had not constitutes proof that as of 20 December 1979 NIOC was in default. The record also contains a document, however, which appears to establish that IROS effected this payment to CFPS as of 28 December 1979. The Claimant bases a second ground of default on this document because some of these invoices are dated as far back as April and June of 1979. The Claimant argues that payment in 28 December 1979 establishes that NIOC was clearly in default as of 20 December 1979, constituting grounds for termination.

198. The Tribunal cannot accept this argument for two reasons. First, the Claimant concedes that NIOC is owed an amount under all five contracts at issue in this Case which exceeds the amount of arrears as of 20 December 1979 on Contract 334. Second, in its response to the termination NIOC referred the Claimant to the payment it believed erroneously that it, through IROS, had made. The inference that could be drawn from this is that NIOC's accounts did not show any outstanding balance in its favor on the advances and payments made and that consequently this payment was required to satisfy NIOC's outstanding debts. While NIOC has to bear the risk for any actions (or inactions) on the part of its payment agent IROS, the Tribunal finds that in the context of the contractual relationship between the Parties the amount at issue cannot be considered such a general and substantial default as to constitute a ground for terminating the Contract.

199. The Claimant further contends that this payment was not only untimely but evidenced an independent default which was itself ground for termination of the Contract. It appears from the evidence of payment that in calculating the amount due and paid to CFPS, NIOC subtracted an amount of \$83,712.80 "against SSO clearance" on Contract 064. The Claimant contends that it was never informed of this setoff

and that therefore it had a right to terminate the Contract due to non-payment of this amount. The Tribunal finds that the record contradicts the Claimant's contention. According to the receipt of payment of the \$42,042.37 at CFPS' bank there were "[d]etails attached" and consequently CFPS must be deemed to have known of the claimed setoff. There is no evidence of any contemporaneous objection by CFPS to the setoff made by the Respondent.

200. On balance the Tribunal finds that the Claimant's evidence is not sufficient to discharge its burden of proof. Consequently, the Claimant was not entitled to terminate Contract 334 for default on 20 December 1979.

201. The Tribunal must now examine NIOC's contention that, as stated in its telex dated 27 January 1980, it was entitled to terminate the Contract because CFPS ceased to perform under the Contract on 2 January 1980. NIOC disputes that CFPS had any right to do so because even if the 20 December 1979 termination was effective CFPS was bound to observe the 60 day notice provision of the Contract.

202. The Claimant defends CFPS' right to cease performance by what amount to allegations of force majeure and anticipatory breach. First, the Claimant contends that "all of CFPS's expatriate employees were forced to leave Iran because of the turmoil there." On the basis of the record in this Case, however, the Tribunal finds that the Claimant has failed to substantiate this contention, particularly the implied contention that the turmoil in Iran to which United States' companies and nationals were exposed also extended to French companies and nationals.

203. Second, it submits that "CFPS was able to receive no assurances from NIOC that the additional work it was doing after serving its notice of termination would ever be paid." Given that it already has been determined that the Claimant

has failed to prove NIOC in default on 20 December 1979 the Claimant's contention rests on the occurrence of a new event in the period 20 December 1979 through 2 January 1980 which would warrant a conclusion that the Respondents did not intend to continue performance of their obligations under the Contract. The Claimant has failed, however, to invoke any such fact or occurrence and there is nothing in the record which otherwise would warrant such a conclusion. There even is support to the contrary. The Respondents have adduced evidence purporting to establish that the payment of \$42,042.37 referred to above was effected on 28 December 1979. The Tribunal thus concludes that the Claimant has not evidenced any justifiable cause for interrupting performance under the Contract on 2 January 1980, that this interruption therefore constituted a breach of Contract 334, and that NIOC thus was entitled to terminate Contract 334 for cause pursuant to Clause 32.

204. Clause 32 of the Contract required NIOC to give 14 days termination notice to CFPS. This provision must be interpreted to give CFPS 14 days after the issuance of the notice to conclude its performance. It would, however, be manifestly unreasonable to enforce this provision where CFPS had already ceased performance under the Contract.

205. On the basis of the foregoing, the Tribunal concludes that Contract 334 was terminated by NIOC pursuant to Clause 32 on 2 January 1980.

2. Other Breaches

206. NIOC alleges three breaches on the part of the Claimant in relation to the provisions in the Contract concerning a performance guarantee. As to the first alleged breach nothing in the record suggests that NIOC contemporaneously alleged that the Claimant was in breach of the Contract for

not posting a performance guarantee. In any event, NIOC has not alleged any damage caused by this purported breach.

207. As concerns the second alleged breach, there is evidence on record that NIOC, subsequent to the posting of the Performance Guarantee in the lesser amount, effected payments to the Claimant. The Tribunal infers from this conduct that NIOC accepted the Performance Guarantee as posted, estopping it to invoke this breach against the Claimant.

208. With respect to the third alleged breach, the Respondents have failed to establish that they suffered any damages. This counterclaim is therefore rejected.

3. Damages To NIOC

209. In view of the findings above (see paras. 203-205, supra) the Tribunal must examine if, and to what extent, NIOC is entitled to compensation. Pursuant to Clause 32 NIOC is only liable to pay CFPS "any money on account of the Contract" after the "costs of completion and damages . . . and all other expenses incurred by [OSCO] have been ascertained" and the Claimant's entitlements are subject to a deduction of such "costs, damages, and expenses."

210. NIOC has raised a counterclaim for damages allegedly caused by the Claimant's breach of the Contract in a total amount of 10% of the Contract price, i.e., Rls.24,509,225. NIOC has not, however, presented any evidence in support of its contentions.

211. NIOC appears to contend that the Claimant's breach of contract in any event entitles the Respondents to an award of damages in the amount of the required Performance Guarantee. The Tribunal disagrees. The intended purpose of a performance guarantee is to provide security for the owner

during the performance of a contract. If the contractor commits a breach, the owner may avail itself of the performance guarantee, subject, however, to a subsequent determination of the damage caused by the breach. By this award the Tribunal finds that Contract 334 is terminated and absent any evidence regarding the actual damage incurred by the Respondents the counterclaim must be rejected.

4. The Claimant's Entitlements

aa. Services Rendered

212. The Claimant seeks payment of \$968,802.56 pursuant to twenty invoices allegedly due and outstanding covering its computer services rendered from 24 April 1979 through 2 January 1980.

213. Although NIOC disputes the claim on other grounds, it has not disputed the Claimant's entitlement under Clause 32 to payment for services rendered. Indeed, the Respondents have invoked and submitted evidence of payment regarding fifteen of these invoices.

214. The amount claimed pursuant to ten of the invoices paid totals, in dollars, \$452,146.71. The record establishes that the Respondents have paid a total amount of \$323,938.35 on account of these invoices. After deduction of the contractually required contractor's tax there remains a net entitlement in favor of the Claimant on account of these invoices amounting to \$103,340.29.

215. Another group of invoices allegedly paid raises a special problem. These invoices (Invoices 2682, 2685, 2688, 2693 and 2696) represent rial charges for the Dedicated Processing Center for the months of July through November 1979 at a monthly rate of Rls. 4,993,000. These invoices were paid by NIOC after subtracting Rls. 993,000 in each

case, representing an estimated abatement of rental charges allegedly agreed between the Parties.

216. The Claimant has conceded that OSCO had the right to reduce the scope of the Contract and there is agreement that in March of 1979 the Claimant was asked to reduce the computer center operations by about half. There is further agreement that this reduction resulted in the negotiation of new rental terms for the center premises resulting in a lower rental cost. The Parties disagree, however, as to the beneficiary and the amount of this lowered cost.

217. On the record it appears that NIOC was entitled to an abatement of the computer center charges to reflect a lower rent after a certain point. The Claimant contends that the savings amounted to Rls. 900,000. The Claimant has not evidenced this contention, however. Although NIOC requested the reductions of the scope of the Contract in March 1979, there is some evidence which suggests that the rent reduction was not finally negotiated until November. There is no clear evidence, however, of the effective date of the reduction. Under the circumstances the Tribunal determines that the reduction became effective in July 1979. In view of the foregoing, the Tribunal determines that the Claimant is entitled to no further compensation in addition to the monthly Rls. 4,000,000 already paid.

218. The remaining invoices are unpaid and in dispute. Four of them, Invoices Nos. 2698, 2699, 2701 and 2702, two of which are dated 22 December 1979 and the other two of which are dated 22 January 1980, pertain to services rendered in the period 22 November 1979 through 1 January 1980. NIOC denies any liability on the ground that it never received the computer reports to which it was entitled under the Contract. In support it provides certain allegedly contemporaneous listings purportedly establishing which reports were not submitted. The Claimant disputes the

Respondents' allegations but invokes no evidence in support of its position. In addition, while the Claimant contends that "NIOC's allegation is simply false," the Claimant argues that for the period 22 December 1979 through 2 January 1980 "CFPS is going through its records to assure itself that the reports were, indeed, handed over." On the basis of this record the Tribunal finds that the Claimant has not proven its entitlement to payment under these four invoices and the claim is therefore rejected.

219. The final invoice disputed, Invoice 2690, is for services rendered in transferring data from a 21 track tape to a 9 track tape. The Claimant contends that NIOC gave the 21 track tape to it and that this act constituted a request for the services in question. NIOC contends that it requested, but did not receive, an estimate of the charges involved which, in its view, would determine whether or not to proceed with the handling of the tape. The Tribunal concludes that the Claimant has failed to carry its burden of proof and denies this claim.

220. In conclusion, the Tribunal thus finds that the Claimant is entitled to \$103,340.29 on account of the claims for the twenty invoices here at issue.

bb. Debit Notes

221. The Claimant seeks payment of \$13,541.76 based on three debit notes.

222. NIOC contends that two of these notes (Debit Notes 242 and 245) were paid. The Tribunal finds that no further entitlement remains in favor of the Claimant on account of these Debit Notes.

223. The third note, Debit Note 256 for \$11,428.57, concerns "Expenditure for legal procedure for premises rent," i.e.,

the lease revision discussed above (see para. 216, supra). NIOC concedes that this has not been paid but denies liability on the ground that it was not previously approved and that, in the absence of such approval, it was not billable to NIOC under the Contract. The Claimant alleges, unsupported by any evidence, that NIOC requested CFPS to "use its own lawyer" in this matter. On the state of this record the Tribunal denies the claim.

cc. Termination Costs

224. With reference to Clause 31, paragraph 1, of the Contract the Claimant seeks payment of \$75,590 on account of rental of premises, \$85,035 on account of allegedly unamortized mobilization expenses and \$130,370.94 on account of "salaries for early termination to its Iranian staff."¹⁷ The Respondents denies all three claims.

225. The Tribunal finds that the Claimant has failed to substantiate this claim.

dd. Contractual Profit Lost

226. The Claimant seeks \$130,684.02 for contractual profit lost. The monthly profit allegedly lost was \$21,780.67 calculated on the basis of average monthly sales of \$94,698.57 and a profit margin of 23% over the remaining six months of the Contract.

227. Clause 32 precludes any recovery for the Claimant based on lost profit. This claim is therefore rejected.

¹⁷This claim was later withdrawn.

ee. SSO Retentions

228. The Claimant seeks repayment of \$63,876.51 for SSO retentions made pursuant to Contract 334. The Respondents dispute this claim on the basis of their counterclaim for outstanding SSO premia.

229. Clause 32 allows the Claimant to be repaid SSO retentions withheld pursuant to the Contract. The Tribunal already has found that the defenses raised by the Respondents do not preclude the Claimant's recovery. The Claimant thus is entitled to repayment of the \$63,876.51.

ff. Declaratory Relief

230. The Claimant has sought a declaratory judgment finding the Performance Guarantee here at issue to be null and void (see para. 184, supra). In view of its findings above the Tribunal decides that this request should be granted.

V. THE PROPERTY CLAIM

231. Pursuant to the Contracts here at issue CFPS was responsible for supplying at its own expense what the General Conditions defined as the "Service Plant", i.e., "all appliances, tools, materials vehicles or equipment of whatsoever nature required for the performance of the Services" (here generally referred to as the "Property"). At the time of termination of Contracts 338, 340, and, later, 334, CFPS had a considerable amount of Property in Iran. The Claimant contends that Iran expropriated all this Property by denying CFPS, through NIOC's actions and/or inactions, the effective use, control and benefit of its Property. On this ground the Claimant seeks "just compensation," allegedly entitling it to the fair market value of the Property, lost profit and interest. The

Claimant also seeks reimbursement for costs incurred for guarding of the Property.

A. Factual Introduction

232. The General Conditions to the Contracts regulated in detail the procedure for importation and exportation of the Service Plant. It was brought into Iran in the name of NIOC. Clause 15, "Ownership of Service Plant," provided, inter alia, that:

All Service Plant provided by [CFPS] at [its] expense and imported in the name of NIOC shall upon entering into Iran for the purpose of the Services vest in and be the property of NIOC

233. Clause 16, which regulated the "Export of [CFPS'] Service Plant," provided as follows:

On completion of the Services or on early termination of the Contract as provided for under these General Conditions [CFPS] shall export the Service Plant in accordance with [NIOC's] Materials Procedure in Schedule II hereto or use the Service Plant on another contract with [NIOC] or, with the prior permission of [NIOC], pay the appropriate customs duties and charges on the Service Plant and obtain a release from the customs authorities which will permit the use thereof for third parties or their sale in Iran. The final payment of the Contract Price shall be withheld pending the production of a certificate approved by [NIOC's] Representative certifying that the records of [CFPS] have been found in order and that arrangements have been completed to export the Service Plant as aforesaid or otherwise dispose of it in accordance with the above. At the time that [CFPS] exercises [its] rights hereunder the property in the Service Plant shall revert in [CFPS].

234. The materials procedure in Schedule II of the General Conditions regulated in detail the import procedure, CFPS' obligation to keep documentation and records of imported Property and the export procedure. Article 4, "Disposal by Export," provided, in paragraph A, that:

Before export from Iran of any item of Service Plant originally imported by [CFPS] in the name of NIOC, [CFPS] shall submit to [NIOC's] Representative one original and two copies of a "Request to Export" (Appendix "C") signed by [CFPS] together with a copy of the original Customs Import Djawaz for each of the items appearing on the "Request to Export".

Paragraph B of the same article listed the information CFPS had to include in the required "Request to Export" forms ("RTE"-forms). Paragraph C further provided as follows:

Upon receipt of the "Request to Export" approved by [NIOC's] Representative and endorsed by the NIOC Materials organisation, [CFPS] shall effect shipment in accordance with [NIOC's] directions. All freight and other costs will be for the account of [CFPS].

Finally, paragraph D imposed on CFPS the obligation of arranging insurance.

235. As has been noted earlier in this Award, following the instruction from OSCO to CFPS to go on standby as of the end of December 1978 CFPS proceeded to assemble and store Contract 340 and 338 related Property it had in Iran at that time. Originally it appears that this Property was stored in four different places, but the Claimant stated at the Hearing that all its Property (presumably also the Contract 334 related Property) is now stored in Ahwaz. CFPS also employed personnel for the purpose of guarding this Property. CFPS continued to employ these guards at least up to the date of the Hearing and has carried the expenses incurred therefor.

236. It is undisputed that on or about 15 May 1979 CFPS sought to export certain Contract 334 related Property (originally imported for the performance of Contract 064) no longer required in Iran. Pursuant to the General Conditions CFPS submitted to NIOC an RTE-form for this Property. A copy of this RTE-form is in the record. Under date of 9 June 1979 the two required signatures by NIOC officials indicating approval for export appear on this form. As is

evidenced by airwaybills and other relevant documents, this Property in fact was exported from Iran by the end of July 1979.

237. On 3 June 1979 CFPS submitted to NIOC a set of RTE-forms allegedly pertaining to a portion of the Property required for one of the three seismic crews covered by Contract 340 ("Seis 3" or "Crew Three"). On record are copies of 22 such forms. In all aspects relevant here these are identical to the RTE-form which was submitted on or about 15 May 1979 including the NIOC signatures of approval. According to a statement by the Claimant at the Hearing, the value of the equipment as it appears on these forms totals \$1,052,288.¹⁸ It is undisputed that this Property never was exported from Iran.

238. It also is undisputed that CFPS did not submit any RTE-forms regarding the other Property it here claims was expropriated.

239. At the beginning of June 1979 the Parties entered into negotiations in an attempt to settle the differences between them, particularly in relation to Contract 340. At this time Contract 334 was still in operation. These negotiations included negotiations for a proposed new contract - Contract 376. It appears that the Parties' intention was to use part of the Service Plant already available in Iran for the performance of this new contract. On record is a letter dated 21 June 1979 from CFPS to NIOC outlining discussions held between the Parties at an 18 June 1979 meeting. This letter states, inter alia, that:

¹⁸Pursuant to the General Conditions this is the importation value. The items listed in dollars total \$962,893.75. In addition, however, certain items of Property are listed in Dutch guilders with a value of Dfl. 169,298.

[I]t was proposed . . . that:

1. CFPS should make a new proposal for seismic services based on its existing [Contract 340], option 9, to supply two seismic crews instead of three and that the third crew (Seis 3) would be terminated.

. . . .

5.

[NIOC] will make every effort to expedite the shipment [19] of equipment of Seis 3 out of Iran.

240. As noted earlier, these negotiations were not successful. The Claimant contends that the negotiations broke down in December of 1979. The record suggests, however, that some form of negotiations continued at least up until 27 March 1980. On that date NIOC telexed a last request to CFPS to execute Contract 376, which, at that time, already had been executed by NIOC.

241. It is undisputed that CFPS personnel left Iran on 2 January 1980. Furthermore, by this Award the Tribunal also has found that Contract 334 terminated on that same date (see para. 205, supra).

242. At this point two telexes between the Parties become relevant. The first telex, dated 26 January 1980, is from NIOC to CFPS and states, in pertinent part:

On the export of Seismic [sic] 3 equipment we are doing our best to assist you in this matter.

The second is a telex from CFPS to NIOC. It is undated but according to a statement of counsel for the Claimant at the Hearing this telex was sent on 26 March 1980. In this telex, which expressly refers to Contract 340, CFPS details its view on the status of the dispute between the Parties and states as follows:

¹⁹On the copy submitted in evidence this word is crossed out by hand and replaced with the word "export."

We requested many months ago that you release the third crew, Seis Three, which you stated you did not in any event want included in the new contract you suggested. Thus far, in spite of our demands, you have failed to release it.

We have received no indication that you intend to release the other two crews, which are also under your control, even though it is clear that they will not be the subject of a contract between us.

We request that you immediately give us adequate assurance that all three crews will be released, so that we may make use of them elsewhere.

As you are aware, we are losing substantial amounts of money by having these crews withheld from us. Your releasing them will enable you to mitigate your damages as well as enable us not to incur further significant losses.

243. There is nothing in the record evidencing any further contact between the Parties until CFPS' receipt of a letter from NIOC dated 15 June 1980. It was signed on behalf of Mr. Molanazadeh, the Exploration Manager of NIOC, and provided as follows:

Export of Seismic Equipment

Reference your request for exporting of your equipment, please note that official's prerequisites [sic] for exportations of contractor's equipments are as follows:

1. Presentation of an account clearance certificate from Social Insurance indicating that the subject contractor has had no outstanding debt.
2. Presentation of a letter from the local labour department, confirming non-existence [sic] of any petition on the part of the relevant workers concerning their claims and rights.
3. Presentation of a letter from the Company Finance, confirming non-existence [sic] of any outstanding debt on the part of the Contractor.
4. Approval of the Field General Manager and his Technical Asst.
5. Indicating the port of exit.

6. Announcement of the request to the local governor general for his approval and subsequent instructions to custom officials.
7. Obtaining a permit from the Central Bank of Iran.
8. Obtaining a permit from the Revolutionary Court.

We also wish to inform you that regarding Clause 8 of the above, we have received instruction from Ahwaz Revolutionary Court not to give permission for exporting of your equipment until the settlement of the petition made by your ex-employees [sic].

244. With the exception of the above cited communications there is no other documentation on record containing any reference to the exportation of any of CFPS' Property from May 1979 until the present. The Claimant has not alleged, and nothing in the record suggests, that CFPS took any further action to export its Property from Iran after receipt of the 15 June 1980 letter.

245. The Claimant has submitted certain documents establishing that some items of the Property CFPS stored in Ahwaz were requisitioned by certain government officials. In evidence are two sets of receipts, the first of which contains receipts dated on or about 16 February 1980, most of which are signed by the "Ahwaz Construction Crusade," based on an undated authorization issued by the Chief Revolutionary Prosecutor of Ahwaz. The requisitioned Property consisted of a number of cars or trucks and "100 tents, 21 rubber capes and 7 pairs of boots." The stated emergency, corroborated by evidence submitted by the Respondents, was a flood that occurred in Ahwaz on 11 February 1980.

246. The second group of receipts are dated on or about 3 November 1980. Pursuant to these receipts the Gendarmerie had an "administrative need" for one Landrover; the "Office of the Chief Revolutionary Prosecutor of Ahwaz" took possession of 11 cars which were delivered to "the Construction Crusade"; and 2 water tanks were delivered to

the "247 Armoured Battalion." Finally, under date of 11 November 1980 the Gendarmerie seized 8 trucks from CFPS "in order to pay the salaries of 19 workers."

247. The Tribunal finally notes that no value has been proposed for the Property that was requisitioned pursuant to the above-mentioned receipts.

B. The Claimant's Arguments

i. The Contentions

248. The Claimant contends that the Respondents deprived CFPS of the effective use, benefit and control of its Property. In its view a taking occurs in international law "through interference by a state in the use and enjoyment" of property. It also contends that the "omission or failure to act to remove the deprivation of use also constitutes a taking," on the stated condition that the injury caused is the direct consequence of that omission.

249. In specifying the failures and omissions for which it seeks to hold the Respondents liable the Claimant originally contended that CFPS could not export its Property without NIOC's [and OSCO's] assistance. As later pleaded, the Claimant contends that NIOC refused "to permit CFPS to export its Property." The Claimant also contends that NIOC "failed to arrange for the issuance of export licenses" upon the early termination of the Contracts.

250. As originally pleaded it appears that the Claimant considered the 15 June 1980 letter only as confirmation of an expropriation that already had occurred. The Claimant characterized the eight conditions contained in the 15 June 1980 letter from NIOC as "merely an illegitimate means of achieving NIOC's objective of keeping the Property in Iran." As later pleaded, however, the Claimant contended that the

15 June 1980 letter containing the eight conditions has "given rise to a claim for the deprivation of use not only of the Contract 340 Property, but also of all the property under the other contracts still in Iran." In either event it contends that this letter contained different and additional conditions for the exportation of its Property than provided for in the Contracts. The Claimant posits that these conditions were imposed by NIOC either on its own or under order from other Iranian governmental entities or authorities. As these conditions were impossible to comply with the Claimant asserts that their imposition constituted a definitive obstacle for CFPS to export any and all of its Property.

251. As the Tribunal understands it, the Claimant contends under all circumstances that the expropriation occurred as of the respective termination dates of the Contracts. The Claimant contends that Contracts 340 and 338 were terminated on 22 May 1979. According to the findings of this Award, however, these contracts were terminated as of 25 May 1979 (see paras. 101 and 155, supra). Contract 334 was claimed, and found, to have been terminated as of 2 January 1980 (see para. 205, supra).

252. The Claimant submits that it addressed "repeated demands" to NIOC to export all its Property. It alleges that CFPS requested to export the Contract 334 related Property on 15 May 1979²⁰ and the Contract 340 related property on 3 June 1979. As evidence the Claimant relies on the RTE-forms submitted on that date, although these RTE-forms pertain only to portions of the Property related to one seismic crew, Crew Three. No date has been given with respect to the alleged demands to export the Contract 338 related

²⁰This allegation appears inconsistent with the contention that Contract 334 was terminated as of 2 January 1980.

Property. These requests were allegedly followed by other demands to NIOC. As evidence the Claimant relies essentially on the 21 June 1979 letter (see para. 239, supra) and the telexes dated 26 January and 26 March 1980, respectively (see para. 242, supra). Finally, the Claimant contends that after receipt of the 15 June 1980 letter there was no point in CFPS submitting RTE-forms for the remainder of its Property since it was obvious that neither Iran nor NIOC would permit any of CFPS' Property to leave Iran.

253. In response to defenses raised, the Claimant contends that by continuing to employ guards for the protection of Property in Iran CFPS did not intend, and was not able, to deny access to the Property to NIOC or other authorized entities or representatives of Iran. The Claimant submits that this is evidenced by the fact that certain of its Property was taken by representatives of Iran without any interference from the guards.

254. The Claimant contends that these actions and inactions on the part of the Respondents violated United States law, Iranian law, the Treaty of Amity²¹, and customary international law, entitling the Claimant to "just compensation."

ii. The Claimed Amounts

255. In the Claimant's view it is entitled to "just compensation" for the deprivation of its Property. It submits that this compensation is equivalent to the fair market value of the Property. As further specified, the Claimant subdivides the allegedly expropriated Property into two

²¹Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran, signed 15 August 1955, entered into force 16 June 1957, 8 U.S.T. 900, T.I.A.S. No. 3853, 284 U.N.T.S. 93.

groups : a) capital equipment and b) spare parts, materials and supplies. It claims the fair market value as of 6 June 1979 for the Property related to Contract 338 and 340 and the fair market value as of 1 January 1980 for the Property related to Contract 334. The claimed amounts²² (in dollars) are as follows:

	<u>Cap. Equip.</u>	<u>Spare Parts</u>	<u>Total</u>
Contract 338	105,472.50	40,915.00	146,387.50
Contract 340	2,264,268.46	2,792,598.00	5,056,866.46
Contract 334	<u>364,268.58</u>	<u>60,000.00</u>	<u>424,268.58</u>
	2,734,009.54	2,893,513.00	5,627,522.54

256. The Claimant also argues that the market for the Property CFPS was unable to export was unusual. With the possible exception of transportation vehicles and trailers, the Property at issue allegedly maintained its value and some items of Property would even have appreciated in value during the two years following the termination of the Contracts. The reason invoked is that at that time seismic crews were in exceptionally high demand. The only evidence admitted in these proceedings relative to the value of this Property is the affidavit testimony of Mr. Haskett supported by the testimony of Mr. Newton (see paras. 4-9 and 16-17, supra).

257. The Claimant also contends that the required "just compensation" entitles CFPS to compensation not only for the fair market value of its Property, but also for the profits

²²These figures are as stated in the Statement of Claim. The Claimant adjusted these amounts in its submission of 8 November 1985, which is found in this Award to be inadmissible insofar as it pertains to the question of valuation of the Property (see para. 9, supra).

CFPS was denied through loss of use of its Property. Due to the special conditions of the market, i.e., the exceptionally high demand for seismic crews, CFPS lost several opportunities to recover the losses suffered in Iran. As proof of this assertion the Claimant has introduced in evidence documents relating to three invitations to tender dated on or about 6 January 1981, 11 March 1981 and 7 May 1981. This high demand allegedly also had the effect of extending the time it took CFPS to replace the Property lost, as the delivery times for new equipment became exceptionally long. It took CFPS approximately two years after the termination of the Contracts to replace 90% of the equipment lost. On this ground CFPS seeks compensation for the lost profit over two years following termination of the Contracts.

258. As finally pleaded, CFPS seeks as its measure of damages an amount equal to the profit which it had been earning on the Iranian Contracts for the periods during which it would otherwise have had its equipment available. The Claimant contends that it would normally have had its equipment available three months after termination of a contract. Consequently it claims lost profit as of three months after the respective termination dates of the Contracts and for a period of 24 months thereafter. The Claimant submits it is entitled to the same profit margins as claimed contractually (see paras. 130, 168, and 226, supra). As stated at the Hearing, the claimed damages thus calculated total \$5,327,144.

259. CFPS also claims entitlement to compensation for the costs it incurred in guarding the Property.²³ Debit note

²³By this Award the Claimant has been found contractually entitled to compensation for guard costs through 31 December 1979 (see paras. 120-122, supra).

259, dated 1 June 1980, covers the claim for compensation for these costs as of 1 January 1980 through 30 April 1980. The Claimant contends that it has submitted this Debit Note to NIOC, but it is not on record in this Case. For the period 1 May 1980 through June 1985, CFPS had expended \$746,230. It appears that CFPS continues to incur monthly expenses ranging from \$10,000 to \$17,000, but it is not clear from the pleadings whether or not a claim is made for compensation after 30 June 1985.

260. Finally the Claimant seeks interest on the claimed amounts at the rate of 12% as of the date the claims arose. However (see para. 258, supra), it seeks interest on the lost profit in relation to Contract 340 and 338 as of 22 August 1981 and on the lost profit in relation to Contract 334 as of 1 April 1982, on the ground that the lost profit for the preceding 24 months was the measure of interest that it sought for that period.

C. The Respondents' Arguments

261. The Respondents deny all parts of this claim. Although they essentially do not dispute the facts invoked by the Claimant they dispute that any or all of the acts or omissions by either NIOC or Iran could or in fact did constitute a taking under any theory of law.

262. The Respondents' main argument is that the Claimant's failure to export its Property was not caused by any actions (or inactions) on the part of NIOC (or Iran) but rather was caused by actions (or inactions) on the part of the Claimant. In support of their contentions the Respondents refer to the General Conditions as well as to the RTE-forms on record in this Case. According to the Respondents, NIOC did all it was contractually required to do by evidencing its approval to the exportation of the Property through signing the RTE-forms. These signatures appear both on the

RTE-form dated 15 May 1979 and on the 22 RTE-forms dated 3 June 1979. With respect to the RTE-form dated 15 May 1979 CFPS did proceed with the exportation and it is undisputed that the items covered by this form, in fact, were exported from Iran. Although NIOC approved the exportation of the items of Property covered by the other 22 RTE-forms as well the Respondents assert that CFPS apparently had other reasons for not proceeding with the exportation at these times. The Respondents further invoke the undisputed fact that, with respect to the items of Property relevant here, excluding those listed in the 22 RTE-forms on record, the Claimant did not even submit RTE-forms. Finally, they invoke the fact that after the 15 June 1980 letter the Claimant in no way sought to comply with the conditions stated therein and made no further attempts to export its Property.

263. As to the content of the 15 June 1980 letter the Respondents' main contention, as the Tribunal understands it, is that this letter cannot constitute a taking under any theory of law because it contains no express intent to expropriate CFPS' Property. The Respondents also deny an implied intent to do so.

264. In addition the Respondents contend that until today the Claimant has retained control over the Property by employing personnel to guard it. Relying on the same evidence as invoked by the Claimant above (see paras. 245-246, supra), the Respondents contend that NIOC (and Iran) recognized and protected CFPS' property rights by submitting due receipts even under conditions of force majeure.

265. As to the alleged violations of law, the Respondents contend that the Claimant has misquoted Iranian law, that United States law is irrelevant, and that there can be no issue of violation of either the Treaty of Amity or

customary international law as the former generally is not applicable and as in any event no acts (or omissions) can be imputed to Iran.

266. The Respondents also dispute that "just compensation" is the appropriate standard of compensation. They further contend that, contrary to the Claimant's contentions, the Property at issue was old equipment which depreciated quickly in value. It also is alleged that CFPS abandoned its Property because the costs of exporting it would have exceeded its value. The Respondents also dispute the Claimant's contentions regarding the exceptional character of the market for seismic crews.

D. The Tribunal's Findings

267. As is clear from the foregoing, the present claim is not a traditional claim for expropriation. The Claimant does not allege an expropriation based on a taking of property rights either by direct governmental action or by way of what commonly has been referred to as "creeping expropriation." The present claim contends that CFPS has been deprived of the effective use, benefit and control of its Property and that this deprivation amounts to an expropriation. As the Tribunal understands it, the Claimant relies on two distinct causes for this alleged deprivation. The first cause is that as of the dates of the early termination of the Contracts and until CFPS' receipt of the 15 June 1980 letter certain alleged failures on the part of NIOC caused CFPS to be deprived of its Property. The second cause is the Respondents' imposition of the eight conditions contained in the 15 June 1980 letter. It is significant that in this Case the Claimant's contentions include an undisputed admission that at all relevant times the Claimant has retained a certain measure of control over the Property at issue by employing personnel in Iran at its own expense to guard the Property.

268. To the extent that Respondent NIOC's alleged failures to act are significant the initial and general issue to consider is whether the Claimant has established that CFPS itself did not cause the deprivation by failing to act in a given manner. Such failures on the part of CFPS would not be significant, however, if CFPS for some reason was prevented from taking the required actions, or if it otherwise could be considered excused from not taking such action.

269. Although a claim for expropriation is not contractual in nature the Parties' actions (and inactions) must be examined against the background of the previous contractual relation between the Parties, which imposed specific and detailed obligations on them regarding the importation and exportation of Property.

270. The General Conditions provided a detailed system for the importation and exportation of Property. It should be emphasized that the specific provisions indicating that all Property was imported in the name of NIOC and formally became the property of NIOC were intended to facilitate the procedure and the required customs clearance, as well as to relieve CFPS of the obligation to pay customs duties upon importation. The Parties have not alleged that this procedure was intended to affect, or affected, CFPS' ownership rights in the items of Service Plant brought into Iran. Consequently, it is clear that the Claimant was the owner of the Property in question.

271. It is equally clear, however, that upon early contract termination Clause 16 of the General Conditions not only entitled the Claimant to dispose of the Property it had imported into Iran free of customs duties, but also imposed on it certain specific obligations to do so.

272. In the circumstances of this Case at that time there remained two options available to CFPS for disposing of its

Property. One of these was to export its Property at its own expense. This option obviously would have been profitable only insofar as the value of the Property was higher than the transportation and insurance costs. If CFPS chose this option the General Conditions clearly stated that it had to submit RTE-forms for each item of Property, attach the original Djawas-forms received upon importation and include the detailed information set forth in the Materials Procedure in Schedule II. NIOC then was required to issue its approval evidenced by two signatures of NIOC officials, after which CFPS was required to effect the shipment "in accordance with [NIOC's] directions."

273. In this Case the Claimant contends that NIOC's actions (or inactions) thwarted CFPS' attempts to have its Property exported and, impliedly, that CFPS itself took the required actions for the export of the Property. To the extent the Claimant's Case rests on these contentions they will be examined as an initial matter.

274. The Tribunal, however, also must consider that, pursuant to its contracts, CFPS had a second option available regarding the disposal of the Property. This option was to sell the Property locally after payment of the appropriate customs duties and charges. This would only have been profitable insofar as the value of the Property was higher than the cost of the customs duties and charges at the time of sale. The Claimant has not alleged that it was precluded from using this option at any time relevant here.

275. The factual circumstances surrounding the alleged attempts of CFPS to export are not the same with respect to all the Property at issue. An initial distinction must be made between the Property related to Contracts 338 and 334 and the Property related to Contract 340. The contentions

with respect to these different categories of Property will be examined in detail separately below.

i. Property Related To Contracts 338 And 334

a. Deprivation Allegedly Caused By The Respondents' Failures To Act

276. It is clear from the evidence that CFPS was able successfully to export a portion of Contract 334 related Property on the basis of the RTE-form submitted on 15 May 1979. The record is equally clear, however, that after that date CFPS made no demands to export either the remaining portion of Contract 334 related Property, or the Contract 338 related Property, which together allegedly had a market value of \$570,656.08. Contract 338 remained in force until 25 May 1979 but by 15 June 1979 it must have been clear to the Claimant that Contract 338 related Property was not to be of further use in Iran. The negotiations for the new Contract 376 were taken up on that latter date and it is clear that the Parties considered that they would use only Contract 340 related Property under this Contract.

277. Contract 334 continued in force through 2 January 1980 when the Claimant interrupted performance by leaving Iran. Upon departure from Iran it is reasonable to have expected CFPS to take some action with respect to Property that it now contends had a fair market value of approximately \$424,268.58 on 1 January 1980. According to the record in this Case, however, CFPS did not address any demands to NIOC to have this Property exported either before or after its departure from Iran.

278. Finally, in respect of the Property related to both Contract 338 and Contract 334, the Claimant has not alleged, and the record does not otherwise suggest, that CFPS was

prevented from submitting any demands or otherwise can be considered excused therefrom.

279. The Tribunal finds this inaction on the part of the Claimant remarkable, especially as the Claimant in these proceedings argues that the seismic equipment here at issue was in particularly high demand. In view of the foregoing, the Tribunal finds that the Claimant has failed to substantiate any effort to export the Property related to Contracts 338 and 334 and that this holding precludes any finding based on the Respondents' alleged failures to act.

b. Deprivation Allegedly Caused By The
15 June 1980 Letter

280. The Tribunal finds that the rejection of the first stated cause for the alleged deprivation is also determinative as regards the second alleged cause. Because CFPS had not taken any action whatsoever with respect to the Property related to Contracts 338 and 334 no demand to export this Property was submitted to NIOC at the time of receipt of the 15 June 1980 letter. In the view of the Tribunal this letter cannot, in abstracto, be construed as a response to demands never made.

c. Conclusion

281. For the above stated reasons the Tribunal rejects the claim for compensation for CFPS's alleged deprivation of the Contract 334 and 338 related Property by the Respondents' actions or inactions.

ii. Property Related To Contract 340

282. Since the factual circumstances surrounding the Property related to Crews One and Two are distinct from those surrounding Crew Three they are dealt with separately.

a. Property Related To Crews One And Two

1. Deprivation Allegedly Caused By
The Respondents' Failures To Act

283. It is relevant to recall that from the date of termination of Contract 340 until March 1980 the Parties were engaged in negotiations with a view to settling their disputes regarding this Contract. These negotiations appear already in early June 1979 to have included negotiations for the new Contract 376, then intended to replace Contract 340. It is undisputed that pursuant to earlier practice the Parties were going to use the Property related to two seismic crews for the performance of Contract 376 then under negotiation. These facts clearly contradict the Claimant's contention that it sought to export this Property "upon ... [the] early termination" of Contract 340.

284. In fact, the only evidence on record which contains any reference to the export of this Property is the telex from CFPS to NIOC dated 26 March 1980 (see para. 242, supra). The Tribunal notes that this telex does not refer to any demands for the export of the Property related to Crews One and Two and therefore impliedly confirms that no such demands were ever presented. CFPS only requests "indications" and "assurances" that NIOC would heed a demand by CFPS to export this Property. This is remarkable as the value of this portion of the Property alone as of 6 June 1979 is stated to be approximately 3.4 million dollars.²⁴ Furthermore, no explanation has been offered by the Claimant as to the meaning of the statement that NIOC was required to "release" the Crew One and Two related Property, which was

²⁴A calculated value based on the assumption that the value of the Property related to these two crews would be two-thirds of the stated value of the three crews, i.e., \$5,056,866.46.

under CFPS' own control in Ahwaz. This telex only evidences that CFPS was contemplating exportation of this Property at the time and not that it had submitted any formal demand to that effect. As a consequence, this inaction on the part of the Claimant precludes any finding based on the Respondents' alleged failures to act.

2. Deprivation Allegedly Caused By The
15 June 1980 Letter

285. Similarly, as with Contracts 338 and 334 related Property, the Tribunal finds that as CFPS has not substantiated its intent to export this Property, the Respondents cannot be deemed to have refused any demands for export.

3. Conclusion

286. For the foregoing reasons, the Tribunal rejects the claim for compensation for the alleged deprivation of the Crew One and Two related Property.

b. Property Related To Crew Three

1. Deprivation Allegedly Caused By The
Respondents' Failures To Act

287. According to the Claimant's own submission and the letter of 21 June 1979 (see para. 239, supra) it was clear in early June 1979 that Crew Three would not be included in Contract 376 under negotiation. As the RTE-forms on record evidence, CFPS sought to export Crew Three related Property on or about 3 June 1979. The import value of the items of Property listed in the RTE-forms was approximately 1 million

dollars.²⁵ However, it is now claimed that the total fair market value as of 6 June 1979 of all the Contract 340 capital equipment was \$2,264,268.46 (see para. 255, supra). As the value of Property at the time of importation typically would be higher than the fair market value on 6 June 1979 it appears that the RTE-forms covered at least one third of the total Contract 340 capital equipment, i.e., most if not all of the Crew Three related capital equipment.

288. The Claimant has not explained, however, why in early June 1979 it decided to single out certain items of Property for export by submitting the required RTE-forms to NIOC while not submitting such forms for the remaining items of Property it already knew would not be used for Contract 376. The most reasonable explanation is that at least by 3 June 1979 CFPS had made a careful analysis of the economic consequences of Crew Three's employment future in Iran and apparently found reason only to export the parts of the Crew Three related Property for which it submitted RTE-forms.

289. This conclusion is in harmony with the terms of the letter dated 21 June 1979 mentioned above. The fact that this letter includes a reference to CFPS' intentions to export Crew Three related Property is wholly appropriate since NIOC at the time of this meeting would have received the RTE-forms just described. More important, in mentioning that NIOC would make "every effort to expedite the shipment of equipment of Seis 3 out of Iran" this letter implicitly referred to the pending requests embodied in these forms. The same holds true for the telex dated 26 January 1980 (see para. 242, supra).

²⁵ Approximately two-thirds of this amount represents the value of seismic equipment and the remaining one-third represents the value of trailers and transportation vehicles. The only items listed which may not be "capital equipment" are certain cables valued at Dfl. 169,298.

290. The Tribunal concludes that the Claimant has not substantiated any intent on its part to export the Crew Three related Property that was not included in the RTE-forms. Similarly, as with the Contract 338 and 334 related Property the Tribunal also concludes that the Respondents cannot be deemed to have refused any demands for export. Consequently, the Tribunal rejects the claim for compensation for the alleged deprivation of the portion of the Crew Three related Property not included in the RTE-forms.

291. The only Property still at issue is thus the Crew Three related Property which was included in the RTE-forms submitted on 3 June 1979 to NIOC.

292. NIOC approved the RTE-forms under date of 23 October 1979. It thus took NIOC over four months to approve them. This is a considerably longer time than the three weeks it took to approve the RTE-form dated 15 May 1979. This delay in approving the RTE-forms appears unwarranted. It could even be argued that it would constitute a breach of contract on the part of NIOC. At issue, however, is a claim for expropriation, based on a deprivation, and the Tribunal does not find it justifiable to infer from this delay that NIOC thereby "refused to issue export licenses for CFPS' Property" or that the Respondents otherwise affected CFPS' rights. In any event, NIOC eventually did approve the RTE-forms, a fact which the Claimant does not dispute.

293. The Parties are in dispute, however, regarding their respective obligations upon NIOC's approval of the RTE-forms. The Claimant contends that CFPS addressed "repeated demands" to NIOC to export the Crew Three related Property which were not heeded by NIOC and that NIOC refrained from providing certain assistance to CFPS which caused it not to be able to export its Property. This assistance is alleged to have been withheld "deliberately" as a "bargaining chip" in the negotiations for Contract 376.

294. The Claimant does not invoke any contractual provisions defining NIOC's alleged further obligations. Indeed, the Tribunal finds no contractual support for this contention. The Claimant's case rests on the implied meaning that the Claimant seeks to give to two telexes on record. First, the Claimant contends that the telex dated 26 January 1980 from NIOC to CFPS (see para. 242, supra) warrants the conclusion that NIOC thereby made it impossible for CFPS to export its Property. The Tribunal disagrees. NIOC's statement therein rather should be seen as a general declaration of good intent. The Claimant also relies on the telex dated 26 March 1980 (see para. 242, supra) in support of its contention that CFPS addressed "repeated demands" to NIOC to export the Crew Three related Property. In this telex CFPS states in relation to Crew Three related Property that "in spite of [CFPS'] demands" NIOC "failed to release it." The Tribunal finds that although this telex evidences that CFPS experienced some kind of difficulties in respect of the exportation of this Property the nature of these difficulties remains unknown. It also remains unclear to the Tribunal why NIOC was accused of having failed to "release" CFPS' Property which at the time indisputably was under CFPS' control in a guarded camp in Ahwaz. This accusation also is difficult to reconcile with the fact that NIOC had signed the RTE-forms months before and expressed its intent to give assistance for the shipment of the Property not needed for the new Contract 376.

295. The Tribunal finds it more in harmony with the terms of the Contracts and the circumstances of this Case to conclude that it was incumbent on CFPS to take further action upon receipt of the approved RTE-forms. CFPS had to proceed with the practical arrangements for exporting its Property, i.e., arranging for a freight forwarder, packing of the Property, and transporting it from the guarded camp in Ahwaz to the port. The Claimant concedes that while still in Iran (up to

early January 1980) CFPS did not attempt to proceed with any of these practical arrangements.

296. The Tribunal concludes that although CFPS formally requested that this Property be exported the Claimant has failed to substantiate that CFPS took all the further actions required to have this Property exported. This inaction on the part of CFPS, which persisted for several months, precludes any finding based on the Respondents' alleged failures to act, specifically when the precise nature of such failures was left unexplained and unsubstantiated.

2. Deprivation Allegedly Caused By
The 15 June 1980 Letter

297. The second cause for the alleged deprivation is, as noted, the 15 June 1980 letter, or more specifically, the eight conditions imposed on CFPS by the Respondents in this letter. The Claimant alleges that pursuant to this letter it lost "all of the effective use, control and benefits" over its Property so as to amount to a taking under international law.

298. As the Tribunal already has found, this letter must be seen as a response to demands from CFPS to have Property exported, and, as such, appears to be a response to the telex of 26 March 1980. Upon receipt of this letter CFPS made no attempt to comply with the stated eight conditions as allegedly it was clear from the outset that these conditions were impossible to comply with and that there was no point in attempting to do so.

299. The Tribunal concurs with the Claimant that under the circumstances it would most probably have been impossible for CFPS to comply with all the stated conditions as at least some of them were unjustified and unreasonable. In

particular, in the last paragraph of the letter reference is made to a labor suit in which apparently CFPS was involved. It is indisputable that under certain conditions Iran is entitled to exercise its judicial authority by attaching property within its jurisdiction. This is, however, not a defense that has been raised and in any event there was no proportionality between the value of the property subjected to the attachment (which is claimed to be abusive in the present proceedings) and the amount of the dispute in question. In this context, it is worthwhile to recall that at a later stage the Iranian authorities seized eight trucks with a view to compensating certain claims raised by former CFPS employees.²⁶ With this, and another exception²⁷ irrelevant here, the Property has remained under CFPS' guard until the present day.

300. The Tribunal concludes that the conditions mentioned in the letter of 15 June 1980 were such as to constitute unwarranted and unreasonable obstacles to CFPS's right to export the Property insofar as CFPS intended to exercise this right.

301. On the basis of the foregoing and in the circumstances of this Case the Tribunal is not convinced, however, that

²⁶The Tribunal notes that the Claimant has not disputed the decision by the relevant authorities to seize eight trucks with a view to compensating certain claims raised by former CFPS employees. Consequently, this seizure does not give rise to any liability for compensation on the part of the Respondents.

²⁷It is, however, admitted that the Respondents requisitioned against receipts certain items of Property from CFPS which indisputably were not returned to CFPS. The Respondents therefore are liable to compensate the Claimant for the loss of these items of Property. The Tribunal finds, however, that it is unable to award any compensation as the Claimant has not proposed any value for these items of Property and the Tribunal otherwise is uninformed thereof.

this finding warrants the conclusion that CFPS thereby was deprived of the effective use, benefit and control of its Property so as to constitute an expropriation. Although CFPS, by the Respondents' interference, had become unable to exercise one of its contractual options regarding the disposal of its Property, CFPS remained able to exercise its other option, i.e., to sell the Property in Iran. This presupposed, however, that CFPS was willing to pay the customs duties, a fact which must have influenced CFPS' economic evaluation of its options. Although it could be argued that it may have been difficult for CFPS to exercise this option, the fact that CFPS did have such an option, which it, prima facie, was able effectively to exercise as the Property was under its control in Ahwaz, precludes a finding of expropriation in this Case.

302. This finding does not settle the issue, however. The Tribunal has found that the Respondents effectively prevented CFPS from exercising a contractual right, namely the right to export its Property. The Tribunal finds that this interference amounts to measures affecting property rights within the meaning of Article II, paragraph 1, of the CSD and that the Respondents are liable in damages to the Claimant for taking these measures.

c. The Compensation

303. The findings in this Case entitle the Claimant to compensation in damages for the Respondents' interference with the exercise of its contractual rights. The actual damage suffered by the Claimant, and, consequently, the compensation for which Iran is liable, must not be measured in the abstract, but is limited to the extent that CFPS effectively intended to export its Property. The Tribunal has already found that CFPS chose to request the export of only a part of the Crew Three related Property. Although this choice was never explained, nothing in the record

suggests that the decision was taken for reasons other than economic convenience. It is therefore very improbable that the Claimant would have decided to export the totality of this Property, including the items which would not be worth the freight and insurance costs should it have been allowed to proceed to the export of the Property related to Crews One and Two. The Claimant has not identified the items that, in such a case, it would have decided not to export.

304. The Claimant has repeatedly insisted that its inability to export its Property has as a result that it could not use the Property in other parts of the world at a time when the market for seismic crews experienced a "boom" lasting until the end of 1981 and when, consequently, it was difficult to procure seismic equipment. The Claimant therefore claims compensation for the profits CFPS allegedly was denied through loss of use of its Property. In support of this claim the Claimant submitted three invitations to tender all dated in the first half of 1981 (see para. 257, supra).

305. On the basis of these allegations the Tribunal finds that the actual damage suffered by the Claimant as a result of the deprivation of its right to export and, therefore, of the use of the Property outside Iran is limited to the loss of the profit that it would have earned with this Property during the working life of the Property.

306. Such a loss of profit is, as the Claimant itself recognizes, relatively uncertain and therefore difficult to ascertain. According to principles well settled in international law, the Tribunal can in no way award compensation for purely speculative losses. In such a situation the Tribunal must award compensation which is reasonable and equitable taking into account all the circumstances in this Case.

307. In support of its claim for lost profits the Claimant relies on the same computations as it relied on in relation to its contract claim (see para. 130, supra). The Tribunal finds, however, the claimed profit margin of 37% to be exaggerated for several reasons. First of all, this claimed profit margin is contradicted by CFPS' own statement that in January 1979 it considered 8% to be a reasonable profit margin (see para. 134, supra). In that context the claimed 37% seems inexplicably high even if it is a pre-tax profit or "gross profit." Second, the claim of special conditions in the market is in dispute and the Tribunal is not fully satisfied that there was a special demand for seismic crews over the relevant time. Finally, the Tribunal has already found that CFPS actually was not going to export all the Contract 340 related Property. Taking these circumstances into account, the Tribunal determines that 10% is a reasonable and equitable profit margin. The Tribunal finds no reason not to accept the Claimant's contention that the profit margin should be calculated on the basis of the average monthly sales during the use of the Property in Iran. Although the Property at issue is used property and would have had a limited working life, the Tribunal deems it reasonable to expect that CFPS could profitably have made use of it over the 24 months for which it has claimed compensation. Further, and in the absence of any specific evidence on this point, the Tribunal deems it reasonable to assume that the profit generated by the Crew Three Property would be one third of the stated value of Contract 340, i.e., \$17,358.85 per month. It is acknowledged that CFPS did not attempt to export all of the Crew Three related Property. The Tribunal is satisfied that the items listed in the RTE-forms represent most if not all of the capital equipment for Crew Three (see para. 287, supra), i.e., the items most likely to generate profit and therefore no further reduction shall be made. In conclusion the Tribunal awards the Claimant U.S.\$416,612.40 as compensation for

being deprived of its right to export the Contract 340 Crew Three related Property²⁸ from Iran.

308. With respect to the claim for the costs the Claimant allegedly has incurred for the guarding of its Property, the Tribunal finds that the Claimant has failed to raise and substantiate any ground on which a successful claim for such compensation can be based. Consequently this claim is hereby rejected.

VI. THE COUNTERCLAIMS

A. SSO Premia And Taxes

(Contracts 215, 064, 340, 338 and 334)

309. The Respondents assert counterclaims for Rls. 141,716,463 for unpaid SSO premia and Rls. 249,399,179 for unpaid taxes under the Contracts at issue. The Respondents also contend that the Claimant should be required to submit SSO clearance certificates to establish its fulfillment of its obligations.

310. The Claimant contends that these counterclaims do not arise out of the same contracts, transactions or occurrences which are the subject matter of the claims in this Case, as required by the CSD. In addition, the Claimant argues that in the regular course of business CFPS fulfilled its payment obligations and that no SSO premia or taxes are due and outstanding.

311. The Tribunal notes that the only evidence presented by the Respondents in support of these counterclaims are documents containing certain computations, which appear to be neither contemporaneous nor official documents. On the

²⁸With the stated exceptions (see footnotes to para. 299, supra).

state of this record the Tribunal must reject these counterclaims for lack of proof.

B. Customs Duties
(Contract 338)

312. NIOC claims that CFPS owes it \$16,433.35 for customs duties relating to two Land Rovers. NIOC contends that under the Contract the payment of customs duties on these items was CFPS' responsibility.

313. CFPS rejects this counterclaim on jurisdictional grounds and on the merits. Initially it contends that this counterclaim is unsubstantiated because the evidence on which NIOC relies does not show the basis for any damage calculation or the applicable provisions of law that permit the imposition of customs duties under the circumstances. It also contends that NIOC has no standing to assert claims for deficiencies in payment of customs duties. Furthermore, from the evidence submitted by the Respondents the Claimant points out that these claims were not asserted before 19 January 1981, as required by the CSD. Finally, the Claimant asserts that even if customs duties are owing payment was OSCO's responsibility pursuant to Clause 14 of the Contract.

314. To the extent this counterclaim is a claim owned by the relevant Iranian customs authorities it is outside the Tribunal's jurisdiction. See Iranian Customs Administration and United States of America, Award No 105-B-16-1 (24 Jan. 1984), reprinted in 5 Iran-U.S. C.T.R. 94. To the extent that the present counterclaim is based on Contract 338, NIOC has not alleged or submitted any evidence proving that it has paid the present customs duties or otherwise suffered any damage from the Claimant's alleged breach of its obligations. For these reasons, the Tribunal dismisses this counterclaim.

C. Ahwaz Judgment
(Contract 340)

315. NIOC originally counterclaimed for Rls. 14,378,790 constituting the amount of a judgment against CFPS in a court in Ahwaz obtained by Iranian personnel hired in performance of Contract 340. The Tribunal finds the record establishes that this judgment has been satisfied by the seizure and sale of CFPS' property (see para. 299, fn. 24, supra). Consequently, this counterclaim has no further purpose.

D. Miscellaneous Counterclaims
(Contract 340)

316. In relation to Contract 340 NIOC claims that CFPS wrongfully collected \$11,363.96 from IROS in London and that NIOC provided \$115,123.40 in services to CFPS for which it has not been paid. It appears further that NIOC contends that a portion of the \$115,123.40 is owing to NIOC for customs duties.

317. The Claimant rejects these claims on the grounds that they are unsubstantiated and outside the Tribunal's jurisdiction.

318. The Tribunal finds that these counterclaims have not been substantiated and they are hereby dismissed.

E. Guarantees
(Contracts 340 and 338)

319. In relation to Contracts 338 and 340, and generally based on the allegation that the Claimant's performance under these Contracts was deficient, the Respondents have

raised counterclaims for payment of the amount of the performance guarantees that were, or should have been, posted by the Claimant.

320. The Tribunal has found that the Claimant's performance under these Contracts was not defective. To the extent that some of these counterclaims amount to allegations of breaches of contract on the part of CFPS for its failure to post the required guarantees, the Tribunal notes that OSCO has not proven that at any time prior to the present proceedings it raised this issue. The Tribunal thus finds that the Respondents' failure to present such allegations in the normal course of business estops them to invoke such breaches at the present time. For the foregoing reasons these counterclaims are rejected.

VII. AMOUNTS AWARDED

321. By this Award the Tribunal finds the Claimant's net entitlements under the Contracts total \$2,230,437.37. As stated above (see para. 35, supra), the Tribunal also has found that NIOC should be credited with the sum of \$1,007,095.21. The Tribunal decides that this amount shall be credited to NIOC before an award of interest and allocated to each Contract pro rata. The Claimant is thus awarded the net amount of \$1,223,342.16 pursuant to its contract claim. The Tribunal has further awarded the Claimant compensation in the amount of \$416,612.40 for the Respondents' deprivation of CFPS's right to export its Property.

VIII. INTEREST

322. The Claimant seeks interest at the rate of twelve percent on all amounts found due and owing. The Claimant has not specified as of which date it claims interest on the amounts awarded. The Respondents dispute the Claimant's entitlement to any interest.

323. In accordance with its earlier practice the Tribunal finds that the Claimant is entitled to interest in this Case. Further, by application of the principles announced in McCollough & Company, Inc. and Ministry of Post, Telegraph and Telephone, Award No. 225-89-3, pp. 98-103 (22 Apr. 1986), the Tribunal determines that the fair rate of interest is 10%.

324. As regards the amount awarded under Contract 334, however, the Tribunal finds that, according to Clause 32 of the General Conditions (see para. 69, supra), CFPS' entitlement to payment of any amounts due under the Contract only occurs by the rendering of the present Award. Consequently, NIOC cannot be held liable for interest on the amount awarded to CFPS under Contract 334 before the date of this Award. Thus, after allocation of the pro rata credit to NIOC, interest will run from the date of this Award on the sum of \$91,684.66²⁹.

325. With respect to the other entitlements due under the other Contracts the Tribunal has already found (see para. 42, supra) that when evaluating the claim for interest in this Case it is required to consider the lack of consistency with which the Claimant allocated payment to outstanding invoices not at issue in this Case. Furthermore, the credit

²⁹I.e., \$167,216.80 minus 7.5% (the pro rated element) of \$1,007,095.21.

CFPS recognizes NIOC should be given in this Case renders it practically impossible for the Tribunal accurately to determine the appropriate due dates of specific entitlements for interest calculation purposes. In view of the foregoing, and with respect to the entitlements due the Claimant pursuant to all Contracts except Contract 334, the Tribunal deems it justified to choose a common date as of which the claimed interest should be calculated. The Tribunal deems it appropriate to set this date at 1 October 1979.

326. As regards the compensation awarded for the Respondents' deprivation of CFPS' right to export its Property, the Tribunal finds that CFPS is entitled to interest as of 1 September 1981.

327. In conclusion, the Tribunal awards the Claimant interest at the rate of 10% on \$1,131,657.50 as of 1 October 1979, on \$416,612.40 as of 1 September 1981, and on \$91,684.66 as of the date of this Award, in all cases up to and including the date of instruction by the Escrow Agent to the Depositary Bank to make payment.

IX. COSTS

328. Both the Claimant and the Respondents have raised claims for compensation of costs in this Case.

329. Under the circumstances of this Case the Tribunal finds that each Party shall bear its own costs of arbitration.

X. AWARD

330. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

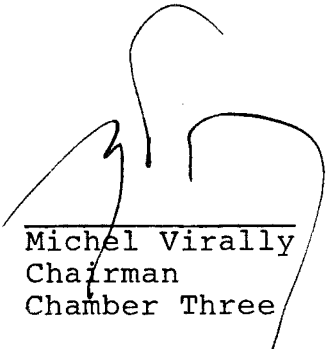
- a) The Respondent ISLAMIC REPUBLIC OF IRAN is obligated to pay the Claimant SEISMOGRAPH SERVICE CORPORATION the sum of Four hundred sixteen thousand six hundred twelve United States Dollars and Forty Cents (U.S.\$416,612.40) plus simple interest at the rate of ten percent (10%) per annum (365-day basis) from 1 September 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) The Respondent NATIONAL IRANIAN OIL COMPANY is obligated to pay the Claimant SEISMOGRAPH SERVICE CORPORATION:
 1. the sum of One million one hundred thirty-one thousand six hundred fifty-seven United States Dollars and Fifty Cents (U.S.\$1,131,657.50) plus simple interest at the rate of ten percent (10%) per annum (365-day basis) from 1 October 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
 2. the sum of Ninety-one thousand six hundred eighty-four United States Dollars and Sixty-six Cents (U.S.\$91,684.66) plus simple interest at the rate of ten percent (10%) per annum (365-day basis) from the date of this Award up to and including the date on which the Escrow Agent

instructs the Depositary Bank to effect payment out of the Security Account.

- c) All 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.
- d) The Performance Guarantee issued by American Express International Banking Corporation in favor of the Respondent NATIONAL IRANIAN OIL COMPANY on 27 September 1979 in connection with Contract 3-73-334-01-339 has no further purpose. The Respondent NATIONAL IRANIAN OIL COMPANY shall withdraw all demands for payment in connection with this Guarantee and shall refrain from making any further demands thereon.
- e) All other claims and counterclaims are dismissed.
- f) Each party shall bear its own costs of arbitration.

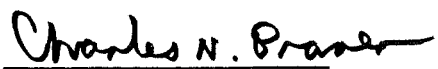
The present Award is submitted to the President of the Tribunal for the purpose of notification to the Escrow Agent.

Dated, The Hague
22 December 1988



Michel Virally
Chairman
Chamber Three

In the Name of God


Charles N. Brower
Concurring and
Dissenting Opinion


Parviz Ansari Moin
Concurring in part
Dissenting in part