

64-164

CLAIMS TRIBUNAL

وان دادری دعادی ایران - ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

Case No. 64

Date of filing: 7 Aug 85

** AWARD - Type of Award _____

- Date of Award _____

_____ pages in English

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** DECISION - Date of Decision _____

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** CONCURRING OPINION of _____

- Date _____

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** SEPARATE OPINION of _____

- Date _____

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** DISSENTING OPINION of Mr S.M. Mostafavi

- Date 7 Aug 85

18 pages in English

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In the Name of God

DUPLICATE
ORIGINAL

نسخه برابر اصل

Case No. 64

Chamber One

AWARD NO. 180-64-1

SYLVANIA TECHNICAL SYSTEMS, INC.,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,

Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
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DISSENTING OPINION OF SEYYED MOHSEN MOSTAFAVI,
MEMBER OF THE TRIBUNAL

For the reasons which I shall set forth below, I do not concur with the opinion of the Majority; at the end thereof, I present my own opinion.

1. The facts and contentions of the present Case are more or less as set forth in the Award; to avoid repetition, I therefore refrain from quoting them. The fundamental point at issue for the arbitration of this case is how Contract No. 116 between the Iranian Air Force and Sylvania was terminated. Did either of the Parties breach the Contract? If so, who is liable, and in what way should damages relating to this liability be assessed? The Majority holds that neither of the Parties breached the Contract, but rather, that "the Iranian Government made a deliberate policy decision not to continue the Contract."

In order to prove this, the Majority adduces two items of evidence:

(a) "in the text of the Respondent's letter of 16 July 1979, which says its purpose is to announce 'that the accomplishment of all the works and expenditures under the Contract [.....] has been considered to be stopped due to the recent transformations arising from the Islamic Revolution in Iran'."

(b) "the Contract contains provisions that reserve to the Respondent the right to make such policy decisions and to decide to terminate the Contract." The Majority then goes on to recite Article 4 - a of the Contract. However, the preponderant reason for the Majority holding is as follows: "considering the relations between Iran and the United States before and after the Islamic Revolution, it is reasonable to infer that after February 1979, termination of contracts such as the one in this case was governed by political considerations of the type that the Leader of the Islamic Revolution referred to in interviews published in the months prior to the Revolution, in which he declared that he intended to repudiate contracts with Americans and

other foreigners that the new government considered against the best interests of Iran". (emphasis added).

The Majority expresses a statement of fact, but it regrettably draws an erroneous conclusion thereupon, because according to recent Iranian policy, there has been no intention to cancel foreign contracts across the board; rather, those contracts were intended which were considered to be "contrary to the best interests of Iran." Therefore, the Tribunal must establish that in the view of the Government of Iran, Contract 116 is one of those contracts which were "contrary to the best interests of Iran." The very fact that Iran did not invoke its authority and powers as set forth in Article 4 of the Contract, indicates that it had no intention whatsoever of cancelling this Contract. The payment of Invoice No. 18 in March, 1979 further supports the fact that Iran had no intention of cancelling this Contract. In spite of the fact that at that time more than one month had elapsed since the victory of the Revolution, there existed no unpaid invoice until that time-- whereas many contracts had been cancelled by the Iranian Government up to then. Had there been any intention to cancel this Contract as well, this one also could have been cancelled like other contracts. However, it was Sylvania that on 15th February 1979-- that is, four days after the victory of the Islamic Revolution, wrote that "...We regret that these events leave us no choice other than cancellation...."

To justify its action, Sylvania asserted four reasons: Respondent's failure to cooperate, its failure to fund the project, its failure to increase contract price, and finally, its unrealistic appraisal of the progress of work, which reasons the Majority does not find justifiable.

Paragraph 3, of Appendix 4 to the Contract provides as follows:

"The technical data and equipment to be delivered under this Contract are not authorized to be directly or indirectly sold, leased, released, assigned, transferred, conveyed, or in any manner disposed of in or to Albania, Bulgaria, Communist China, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, Latvia, Lithuania, North Korea, Outer Mongolia, Poland, Romania, Union of Soviet Socialist Republics, any of the areas of Vietnam which is under defacto Communist Control, and any other area which is determined by the Department of State to be under Communist Control."

Article 15-2 of the Contract further provides that "The Employer will not give these documents directly or indirectly to any communist countries or any other country which the country of the Contractor prohibits issuance of such documents and informations to them." (emphasis added)

It is therefore clear that those provisions of the Contract as set out above led the Claimant to believe erroneously that it could no longer continue the performance of such a sensitive secret military contract with a revolutionary government.

"Political considerations" and "historic developments" as adduced by the Majority to establish that the Contract was terminated by Respondent can best be used at this juncture since, with the materialization of this historic development, such highly secret information, provided solely to certain governments, could not, in the opinion of Claimant, continue to be available to the new government in Iran, as said historic developments would exclude Respondent from amongst trusted governments. Therefore, for "political considerations", it was only natural for Claimant to terminate the Contract. For this reason, four days after the victory of the Islamic Revolution, Sylvania announced the termination of the Contract, resorting to pretexts, which, even if relevant, were in no way attributable to the new

government. In contrast to the above actions, a month later, Respondent paid invoice No. 18, and since contract performance was suspended, in its letter dated 25.4.58 (16 July 1979), requested Sylvania to send to Tehran "on 20 Mordad 1358 (11 August 1979), your fully authorized representative having the required documents for contract negotiations and to contact telephone in case of impossibility of attendance".

In its Decision, the Majority rightly infers that "these words... do not convey that performance by the government of Iran was prevented by events beyond its control". However, it wrongly considers the letter as a termination notice. The letter solely indicates that "the accomplishment of all works and expenditures under the Contract --- has been stopped" and goes on to request contract negotiations. The Majority takes the letter to mean something that its contents cannot possibly signify. The Parties have provided contradictory affidavits concerning the conduct of negotiations between them. Thus, these affidavits can not be relied on as a matter of fact, but rather one should rely on the contents of the letter. A comparison between this letter and the Claimant's letter of 15 February 1979 gives a clear indication that, in view of the changes in Iran and its lack of trust in the revolutionary government, Claimant did not intend to continue such a highly secret and sensitive military contract, and accordingly announced its termination. On the contrary, no such reluctance is manifest in any of Respondent's communications. Rather, Respondent goes so far as to invite "Claimant's fully authorized representative for "contract negotiations".

The Majority considers the Contract as being terminated by Respondent only on the basis of the argument that the policy of the government of the Islamic Republic was to

repudiate those contracts which were deemed to be "against the best interests of Iran" but fails to note that the said major premise should be preceded by a conclusive proof of a minor premise of the proposition, i.e., that Contract 116 was indeed against the best interests of Iran, a fact that should have been declared by the government of the Islamic Republic of Iran. Here, the Majority has in fact made an analogy lacking in minor premise yet bearing a conclusion, an argument which can not be logically sound.

Unfortunately, the Majority failed to analyze Claimant's letter dated 13 February 1979 as it relates to Claimant's letter of 15 February 1979. In the former letter, Claimant informed Respondent that because conditions had arisen which threatened the lives of the company's personnel, it had to evacuate its personnel from Iran and that "It is expected that the threats could be so minimal within the near future that many of the instructors will be able to return to Tehran within a short time after a recall notice. They would then resume their assignment quickly after removal of conditions of force majeure. We are unable at this time to estimate when this will occur. This notification is given under the provisions of force majeure clause, section 6 of the Contract. We confirm our intention to resume instruction after performance is no longer impeded". The letter concludes by stating that "In the event that these occurrences should cause the Government of Iran to change its requirement for the Contract Services, we request that we be informed as soon as possible." However, two days later, i.e. on 15 February 1979, without waiting to receive the reply to its letter of 13 February, Claimant declares that "We regret that these events leave us no choice other than cancellation."

With such explicit words, and stated at such an early date, there remains no doubt that the Contract was breached

and cancelled by the Claimant. Thus, it will not be appropriate to attribute the cancellation to an action by Respondent, or to use an unconventional interpretation of Respondent's letter dated 16 July 1979 - approximately four months later - to conclude that it was Respondent that terminated the Contract. This is further supported by the relevant section of the report of the Harris Corporation, the Project coordinator, that "on 30 April 1979, the Contractor was advised by the U.S. Government that its export licence was no longer valid". Thus, it can easily be seen that in view of the cancellation by the U.S. Government of the Claimant's export licence, Claimant's performance under the Contract was rendered impossible and that the employer's letter of 16 July, even if taken as a termination notice, is nothing more than a restatement of what had already been effected. Unfortunately, the Majority ignored Claimant's letter of 15 February 1979 and knowingly failed to elaborate on the contents thereof.

2. The Majority, allowing for the right of the government to "make policy decision" based on sovereignty, believes that this right arises from Article 4 - a of the Contract and accordingly applies that "by analogy" to the settlement of disputes. Article 4 of the Contract and the criteria contained therein are not based on the principle of the sovereignty of the State. What has been agreed upon in this connection by the Parties is limited to their contractual relations and originates from their willingness to formulate their legal relations. Therefore, an analogy between Article 4, which arises from the exercise of managerial power, and the right to make policy decision, which emanates from State sovereignty, is indeed a paralogism. As such, the consequences of the exercise of managerial power cannot be extended to those of the exercise of State sovereignty; rather, each of these two has its own specific consequences. Combining the two incompatible concepts, the Majority Decision attributes the cancellation of the Contract to the Respondent, alleges that such cancellation was effected by

the Respondent's exercise of sovereignty right, and finally bases the settlement of financial disputes on Article 4 of the Contract, disregarding the fact that this Article does not at all deal with the cancellation of contract on the basis of State sovereignty. Indeed, the Contract does not provide for such cancellation.

3. Unfortunately, the Majority's Decision concerning invoices Nos. 19,20 and 21 lacks systematic reasoning and manifests blatant contradictions. In connection with the objection that those invoices have not gone through the normal processing procedure, the Majority argues that since Article 4 - a of the Contract provides that "Contractor's claim for reimbursement under this clause shall be substantiated by accounting records, which may be verified by independent auditors prior to payment", it is therefore "not necessary that costs incurred by the Claimant in order to be payable, must have been certified and approved by the Respondent according to the contractual invoice certification and processing procedures. Rather, under Article 4 - a, the Claimant need only substantiate such costs by accounting records and satisfy the Tribunal that the Claimant incurred the costs for its performance under the Contract".

This could have been a proper argument if the provisions of Article 4 - a had been applied in their entirety; i.e., in order to substantiate it, such accounting records should have been examined by independent auditors. But, unfortunately, this most important point has been neglected. Instead, it is stated that the Claimant had its documents ready for review at the hearing but the Respondent did not request the opportunity to review the documents. The minutes of the hearing clearly reflect that on the second day of the proceedings, Respondent's representative "requested the Tribunal to permit the Respondent to file a post-hearing memorial to the various new documents presented

by the Claimant at the hearing" (emphasis added). (Page 3, minutes of the hearing. English text). The request was not granted and now the Majority argues against the Respondent for its failure to challenge the amount of any particular item of the invoice. Thus, not only has the Respondent been denied an opportunity to defend its case but its objection has been considered ineffective because it is general in nature, rather than directed to individual items. It should also be noted that, in the first place, the production of such documents at the hearing without prior advice to the Respondent so that it might prepare itself and send individuals with the relevant expertise, violates the principles of equity and therefore deserves censure. Secondly, it was the Majority that did not grant Respondent's request for an opportunity to respond to Claimant's newly presented documents at the hearing; and finally, in view of the Respondent's general objection raised under such difficult circumstances, the only proper course of action would have been to appoint an independent auditor to determine the costs, as provided by the Majority's assumed criterion, i.e., Article 4 - a of the Contract.

4. The above argument equally applies to claims raised under "Post-breach Costs". This is because here too, the Respondent has raised objections which were not deemed sufficient by the Majority because of their general nature and lack of reference to any particular items; and since the Claimant stated at the hearing that it had its documents ready for review, the Majority considered that to be sufficient and awarded the Claimant the relief sought except for the amounts of \$6,437.13, for payment to Iranshahr Bank, and \$405,441.02, for the charges incurred with respect to the letters of credit. These two baseless claims and the demand for costs, despite the fact that the Claimant is well aware that it has not incurred such costs, demonstrate that

since the Respondent was denied an opportunity to defend its case at the hearing, the Majority Decision should, in accordance with the provisions of Article 4 - a, have provided for appointment of an independent auditor to review the presented material in order to ensure at least, that no other unwarranted amounts were awarded.

5. Interest : While this Tribunal, as well as other international Tribunals, has applied various rates of interest, depending on the specific circumstances of a case, the Majority of this Chamber decided to follow a different approach, stating that "This Chamber finds it in the interest of justice and fairness to develop and apply a consistent approach to the awarding of interest in cases before it". In order to justify this approach, which is contrary to the existing precedents, the Majority argues that "In the circumstances of this Tribunal, however, it is desirable to have uniformity of treatment of a large number of parties in many cases....". Indeed, to ensure respect for justice and equity, the very factors "large number of parties" and "many cases", which inevitably give rise to varying circumstances, call for a careful consideration of the varying circumstances of each case and for refraining from rendering uniform awards in the thousands of cases with varying circumstances⁽¹⁾. The prevailing practice of international arbitral tribunals does not show any uniformity, and no attempt has been made in this connection. International tribunals which have allowed interest have used varying rates and, as Whiteman states, the usual rate of interest allowed by international tribunals varies from 3 to 6 percent per annum (see Whiteman's Damages, pp. 1975-76). In summing up the practice of arbitral tribunals, O'Connell states:

(1) The draft of the Harvard Convention on the International Responsibility of States for Injuries to Aliens provides that in determining the rate of interest, the amount of obligation and duration at the time of award should be taken into account.

"Tribunals have varied the interest between 3 and 12 percent. Perhaps the prevailing rate has been 6 percent and there are only two instances below 5 percent." O'Connell, p. 1123.

Thus, the Majority approach is not only inconsistent with "justice and fairness" but incompatible with the precedents set by international tribunals as well as by this Tribunal. International tribunals have in general avoided the application of commercial rates in computing interest. In the Giovanni Cervetti Case (Italy vs. Venezuela), Ralston, the Chief Arbitrator, in applying a 3% rate of interest, stated that:

"Although commercial rates are somehow useful, yet, they are so uncertain that it is not desirable for an arbitrator to consider himself bound thereby".

In order to justify basing its awarded rate of interest on the average rate of interest paid on six-month certificates of deposit in the United States, the Majority argues, inter alia, that "the fact that all United States Claimants before the Tribunal have the benefit of the security provided by the Security Account established by the Algiers Declaration might also be seen as a reason supporting the use of a general rate of interest derived from rates of return on investment.....". It must be considered that claims before other international arbitral tribunals, and even Iran here at this Tribunal, do not enjoy the advantages of a Security Account such as this one in order to insure payment of the awarded relief to the successful party within a few days; it is only United States Claimants who enjoy such an exclusive privilege. The existence of some sort of security led the Venezuelan Arbitration Commissions of 1903 to deny interest except in rare cases, and to grant a low rate even in those rare cases

where interest was awarded. Thus, the advantage of the automatic enforcement of awards enjoyed exclusively by United States Claimants should necessarily affect the rates of interest awarded. While 12% is the highest rate of interest applied by international tribunals, and that only in very rare cases, it is evident that the Majority, having applied such a rate "in the interest of justice and fairness", has indeed failed to take note of same. Moreover, the Security Account is not accompanied by any of the risks involved in the investment of capital, against which risks a part of the interest is provided. Thus, the relief satisfied out of the Security Account can not be compared with a bank deposit. At the Tribunal, United States Claimants are not burdened with the enormous task of enforcing awards, where it is not known when, and to what degree, the award will be paid; the relief is paid out of the Security Account in a matter of a few days, without need for the Claimant to incur any costs or to waste time. Considering that other tribunals only in rare cases apply the maximum rate of 12%, partially in light of the fact that the successful party may not be able to enforce the award at all, it is evident that the Majority Decision fails to uphold the criteria of "justice and fairness".

In addition, the Contract in the instant case is governed by the laws of Iran, as provided explicitly by Article 10 thereof. The Majority has neglected that Article and has sought to develop a general rule, an approach similar to a legislative function. This is an issue which should be decided in case A 19, and the above observations apply to the present case.

The Majority has also made an erroneous determination of the date as of which the interest is payable. In view of the fact that it has invoked Article 4 - a in determining that the Contract was terminated, and since Article 4 - a - 2 provides that "payment of amounts due to Contractor under

this clause shall be made not later than 120 days after receipt by the employer of Contractor's Claim", the Majority has again, as in the case of its refusal to appoint an auditor, refused to implement the explicit provisions of the article on which it chose to base its Decision. Instead, it has determined that the interest is payable as from 16 July, 1979.

The Article clearly provides that the payment obligation starts 120 days after the date of the Contractor's claim for payment and that the employer has no such obligation prior to that date. Thus, if the Contractor is found to be entitled to any payment, the employer's obligation shall begin" 120 days after receipt by the employer of Contractor's Claim." It is true that the Decision states that it applied the Article on the basis of analogy. However, if the Decision is to be based on the provisions of Article 4 - a, it is necessary that the entire text of the Article, and not just a selected portion of it, be applied. It is wrong deliberately to disregard the provisions of Paragraph 2 of the Article, while the determination of the damages is based on paragraph 1 of the same Article.

6. The Majority cites numerous difficulties with respect to the delivery of the equipment which the Contractor was obligated to make under the Contract, and notwithstanding the Contractor's acknowledgement of the obligation, the Counterclaim was finally dismissed. Why and on what grounds the Counterclaimant's equipment can be allowed to remain in the custody of the Counterrespondent is not explained, notwithstanding the fact that included in the relief sought by the Claimant for costs of breach of the Contract was a sum of \$48,333.29 for cost of storage of such equipment until 1 January 1984, and despite the fact that the Majority's Decision awards this sum as part of the post-termination costs.

While it is true that the equipment list was not attached to Exhibit 3 of the Counterclaim, reference was made thereto and Counterclaimant, acknowledging this fact, submitted the list at a later date. This, is in no way inconsistent with Article 20 of the Tribunal Rules because (i) the claim was clearly filed within the time limit provided, (ii) it does not constitute an amendment within the meaning of the Article, (iii) even if it is considered an inappropriate amendment, the Tribunal has, as set forth in the Decision (I. Procedural Issues), accepted documents submitted "late" by both parties, (iv) the equipment list was filed on 20 January 1984 i.e. over a year prior to the hearing, and "in view of the contents [its] acceptance does not create prejudice to the other party", and (v) considering that Claimant has referred to Exhibit 3 to the Counterclaim, the Tribunal should, as provided in Article 22 of its Rules, have required the Counterclaimant to provide clarification as to why the Exhibit was not attached. It is astonishing that the Majority considers the filing of the equipment list as untimely and inappropriate even though it was filed over a year prior to the hearing. In striking contrast, the Majority accepts Claimant's invoices, which had been challenged by the Respondent, on the ground that no request was made by any Respondent for a review of the said invoices at the hearing. The back-up material for invoices and post-termination costs was produced at the hearing for the first time without prior notification to, and preparation by, Respondents, whose representative, as stated on Page 3 of the Minutes (see Para. 3 above), requested reasonable time to provide a reply to the newly presented materials. The Majority, however, argues that since Respondents (1) did not "specifically" challenge any of the documentation, offering only a general objection, and (ii) did not request review of the back-up material, it finds the Claimant's argument satisfactory, and therefore requires the Respondents to pay the relief sought. In contrast, in the case of the exhibits filed over a year

earlier, as stated above, and despite their contents and the Counterrespondent's admission that it held "property belonging to the Respondent" and had sold a part thereof as well, the Majority rejects the submission as having been filed "late", on the excuse that "the prejudice to the Claimant and to the Tribunal's processes would be too great to permit the amendment". Counterrespondent acknowledges that it holds property belonging to the Respondent, has presented invoices covering storage charges for the equipment until January 1984, and has stated that "the equipment is available to the Respondent whenever the Respondent reimburses the Claimant for its storage charges on the equipment and makes arrangements to transfer it" (Page 38 of the Award). Nonetheless, the Majority suddenly dismisses all of the above facts, and rejects the Counterclaim, thereby granting the Counterrespondent the continued possession of items of equipment which it does not even dispute is owned by the Counterclaimant. On Page 29 (Page 26 of the English text) of the Award, discussing the Respondent's challenge to the claim for the amounts of the invoice (as well as to the alleged post-termination costs), the Majority argues that the Claimant had "the material ready for review at the hearing", but that the Respondent did not "request an opportunity to review the back-up material that the Claimant offered to present and had available at the hearing" (see Page 3 of the Minutes of the hearing for Respondent's request for such opportunity). However, 17 pages later in the Award (13 in the English text), i.e. on Page 46, where the positions of the Claimant and Respondent have changed, and the Counterclaim is being dismissed, although the exhibit to the Counterclaim had been filed 13 months prior to the hearing date. In order to dismiss the Counterclaim, it is argued that the "Claimant has not had an opportunity to submit evidence on whether the list is accurate".

It is interesting to note that the Majority finds the few hours of the hearing time adequate for the Respondent to review the multitude of items of invoices and alleged termination costs and at the same time, it finds the 13 - month period inadequate for Claimant, while Claimant not only failed to request an opportunity to review but acknowledged the possession of the equipment. In order to reinforce its argument, the Majority goes on to state that "the Respondent does not actually seek delivery [of the equipment]".

It is true that the Respondent did not explain why Exhibit 3 was not attached to its Statement of Defense and Counterclaim. However, in view of the fact that this Statement was filed on 19 May 1982, and the Exhibits on 20 January 1984, it can easily be concluded that the Respondent (Counterclaimant) did in fact seek the delivery of the equipment; otherwise, it would not have pursued the claim after such a long period of time. Moreover, had detailed Minutes been prepared at the hearings as in the past, it would have been well established that the Respondent did, at the hearing, seek such delivery. I can still recall the statements made by the Respondent's representatives emphasizing the necessity of delivering the equipment, though I do not intend here to offer my recollection as a piece of evidence. What should be regarded as evidence for such demand for delivery, in addition to the submission of a claim therefor, is the production of the Exhibit following the filing of the Statement of Defense and the pursuit of the claim a long time thereafter, a strong indication of the nonwithdrawal of the claim, let alone the fact that on no occasion has the Respondent actually withdrawn its claim for the equipment. The Statement that "[the Respondent] did not address the question of storage and shipping charges" is not relevant to, and should not be construed as, withdrawal, as the Respondent did not in the first place consider itself liable for storage charges.

7. Arguing that obligation to pay social security premiums is imposed not by the Contract but by operation of law, the Majority dismissed the Respondent's Counterclaim in face of the explicit provisions of Article 10 of the Contract, which states: "This Contract is subject to the laws and regulations of Iran in every respect". Application of Iranian laws and regulations was therefore agreed to under the Contract, and it was made part of the Contract by mutual consent of the Parties. The social security regulations have their origin in the law. However, it was agreed under the Contract that it be made subject to the laws of Iran. Such regulations have therefore become an inseparable and integral part of the Contract. In this particular case, the assumption that payment of insurance premiums is imposed by the operation of law and not by the Contract means that Article 10 of the Contract is entirely meaningless or, alternatively, it will lead to the impossible conclusion that it never contained that Article. The Claimant was aware of the applicability of the Article, and it therefore attempted in its pleadings to evade the obligation by invoking Article 14 - 7 of the Contract, which provides: "All payments shall be made free and clear of any deduction for any Iranian Government taxes, or charges", and submitted affidavits in order to establish that the Article applied to social security premiums as well. Claimant's invocations and attempts are based on its awareness of the import of Article 10 and the extent of applicability of the Iranian laws and consequently the contractual origin of the insurance premium. It is therefore for this very reason that the Claimant makes an effort to prove to the Tribunal that when Article 14 -7 was raised in contract negotiations, Claimant was given assurance that the exemptions set forth therein equally applied to social security premiums. In thus admitting the contractual origin of the premiums, Claimant then attempted to make Article 10 ineffective by invoking the provisions of Article 14 - 7. Obviously, the Majority's argument and the related background are not

unknown to the Respondent. However, it did not set forth the argument because of the existence of Article 10 of the Contract.

The Majority's Decision reads that "[i]n the present case, as in T.C.S.B., the Claimant is entitled to the value of its contract right, and only liabilities specifically imposed by the Contract can be taken into account".

Under Article 10 of the Contract, the Claimant is explicitly and unambiguously bound by and obligated to adhere to, Iranian laws, including the Social Security Law. This duty arises out of this very Contract. Claimant's adherence to Article 10 of the Contract burdens Claimant with the effects and consequences of the Article, and Claimant's legal obligations are exactly those arising out of the Contract and Article 10 thereof. Thus, the dismissal of the Counterclaim for Social Security Premiums is inconsistent with the provisions of the Claims Settlement Declaration and is the outcome of a faulty interpretation of Article II, Paragraph I thereof, and will result in unjust enrichment.

8. Based on the foregoing, and for the reasons set forth in paragraph 1 above, Sylvania expressly announced the cancellation of the Contract by its letter dated 15 February 1979. Respondent's letter of 16 July 1979 inviting the Claimant for contract negotiations, failed to alter Claimant's decision.

Therefore, I believe that having breached the Contract, the Claimant must compensate Respondent for damages incurred, must deliver the equipment belonging to Respondent and currently in the possession of the Claimant, must make social security payments, and must bear all the consequences arising out of its breach of the Contract.

Seyyed Mohsen Mostafavi

