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ED STATES CLAIMS TRIBUNAL

دیوان داوری دعای ایران - ایالات متحد

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ORIGINAL DOCUMENTS IN SAFE

Case No.

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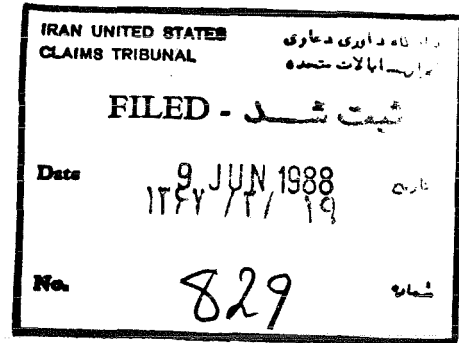
CHAMBER TWO

AWARD NO. 367-829-2

LOCKHEED CORPORATION,
Claimant,

and

THE GOVERNMENT OF IRAN,
THE IRANIAN MINISTRY OF WAR, and
THE IRANIAN AIR FORCE,
Respondents.



AWARD

Appearances:

For the Claimant:

Anthony F. Essaye,
Attorney for Claimant;
Carole A. Jeandheur,
Attorney for Claimant;
Alan Land,
Legal Counsel of
Claimant;
Joseph Galli;
Lockheed Representative;
John Williamson,
Lockheed Representative;
Art McCrum,
Lockheed Representative.

For the Respondent:

Mohammad K. Eshragh,
Agent of the Government
of the Islamic Republic
of Iran;
Ali Heyrani Nobari,
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Dr. Akbar Shirazi,
Legal Adviser
to the Agent;
Dr. Gholamreza Davariyan,
Attorney for the
Iranian Air Force;

Mansour Tehrani,
Representative of
Iranian Air Force;
Rasoul Ghafouri,
Representative of
Iranian Air Force;
Naser Shakibi,
Party Witness;
Ahmad Vafadar Anzabi,
Assistant to the
Legal Adviser;
Javad Bahar Shanjani,
Assistant to the
Legal Adviser;
Mohammad Asbaghi,
Assistant to the
Legal Adviser.

Also present:

Michael F. Raboin,
Deputy Agent.

I. INTRODUCTION

1. This claim was filed by LOCKHEED CORPORATION ("Lockheed") to recover losses allegedly sustained by three of its corporate divisions in the course of their business activities with the Respondents. Lockheed is a California corporation primarily engaged in the production, sale, and maintenance of aircraft and aerospace equipment. The divisions of Lockheed involved initially in this claim were Lockheed Aircraft Service Company ("LAS"), Lockheed-California Company ("CALAC"), and Lockheed-Georgia Company ("GELAC"). These divisions, which are not separately incorporated entities, were each engaged in distinct activities with the Respondents. LAS was involved in the design of an aircraft maintenance facility to be located at the Tehran airport. CALAC provided maintenance, training, and repair services related to several Lockheed-manufactured P-3F Orion antisubmarine aircraft previously purchased by Iran. GELAC was primarily engaged in similar activities related to Lockheed-manufactured C-130 and Jetstar aircraft in service with the Iranian Air Force. In its Statement of Claim, Lockheed sought to recover U.S.\$11,213,266 based on twelve claims. It named as Respondents the GOVERNMENT OF IRAN, ("GOI"), the MILITARY INDUSTRIES ORGANIZATION OF IRAN ("MIO"), IRAN AIRCRAFT INDUSTRIES ("IACI"), the IRANIAN MINISTRY OF WAR ("MOW"), and the IRANIAN AIR FORCE ("IAF").

2. On 25 July 1986, pursuant to a Settlement Agreement between Lockheed and Respondents IACI and the National Defense Industries Organization ("NDIO") (formerly the MIO), this Tribunal issued a Partial Award on Agreed Terms (Award No. 242-829-1, 25 July 1986) which settled Claims One, Eight, Nine, and Ten. The settlement of these four claims resolved all disputes involving LAS, MIO, and IACI. Thus, MIO and IACI are no longer named as Respondents in this Case. The remaining eight claims, all of which relate most closely to the IAF, are the subject of this Award.

3. Lockheed asserts seven separate claims within its general Claim Two (numbered Two(A) through Two(G)), seeking to recover a total of U.S.\$1,286,081.60. All seven of these claims relate to goods and services allegedly provided by CALAC to the IAF in connection with its program to maintain and operate its Lockheed P-3F aircraft.

4. Claim Two(A) involves a dispute concerning Lockheed's performance under Contract PS/76-74762A ("the P-3F Contract") in which Lockheed provided managerial, administrative, technical, and flight crew assistance to the IAF related to its P-3F program at its air base at Bandar Abbas. Lockheed seeks recovery of U.S.\$1,050,000 for services it allegedly provided under this contract for which it was not paid. The IAF asserts a counterclaim for U.S.\$300,000 on the grounds that it overpaid Lockheed for services rendered under the P-3F Contract, and that Lockheed abandoned the Contract, thereby causing damages to the IAF. In a further counterclaim, the IAF alleges that Lockheed failed to pay social security fees due in connection with the Contract.

5. Under Claim Two(B), Lockheed seeks compensation of U.S.\$27,709 for having assigned its personnel, at IAF request, to temporary duty outside Bandar Abbas at various times during 1977 and 1978 to support IAF P-3F missions. The IAF maintains that Lockheed has not proved that its personnel carried out the assignments for which compensation is requested.

6. Lockheed alleges in Claim Two(C) that it repaired an IAF P-3F aircraft at Lockheed's facility in California at a cost of U.S.\$22,039, and that the IAF has not paid for these repairs. It seeks recovery of this amount. The IAF claims the repairs were not carried out.

7. Claim Two(D) involves the services of two Lockheed personnel hired by the United States Navy through a Foreign

Military Sales ("FMS") contract with Iran to support the IAF's P-3F program. Lockheed alleges that after the expiration of the FMS contract, and at IAF-request, these two personnel continued to perform their duties for seven months. Based on a theory of quantum meruit, Lockheed seeks to recover U.S.\$101,602.60 as the reasonable value of the services rendered during the seven months. The IAF defends its non-payment by alleging that there is no contractual basis to the claim, that it did not request the continued performance of these personnel, and that they in fact did not perform any services for the IAF after the expiration of the FMS contract.

8. Lockheed seeks U.S.\$35,874 under Claim Two(E) as reimbursement for salaries it paid to secretaries pursuant to Article 6.2 of the P-3F Contract. The IAF admits liability for part of these costs and denies liability for the rest on the grounds that the Contract and an IAF order required Lockheed to reduce the number of secretaries employed under the Contract.

9. Claim Two(F) involves the purported delivery of aircraft parts from Lockheed to the IAF pursuant to IAF purchase orders. Lockheed seeks U.S.\$13,857, the alleged value of the parts. The IAF denies receiving the parts.

10. Under Claim Two(G), which is based on Article 10.2 of the P-3F Contract, Lockheed seeks to recover U.S.\$35,000 in costs it incurred in evacuating its personnel and their dependents from Iran in January 1979. The IAF claims Lockheed is not entitled to these costs because its personnel breached the Contract by leaving the country without receiving permission or otherwise coordinating their departure with the IAF.

11. Lockheed seeks to recover U.S.\$23,650 under Claim Three for pilot training provided by its GELAC division to two IAF

pilots during 1978. The IAF admits the training was provided, but maintains that the quality of instruction was inadequate. It thus denies liability for payment and counterclaims to recover U.S.\$45,000 in damages it alleges occurred as a result of the poor training.

12. Claim Four involves a dispute over whether Lockheed's GELAC division should recover the costs it incurred in repairing some twenty two IAF aircraft parts in the United States which it refused to ship back to the IAF because the Iranian Consulate in Houston reportedly would not "certify" the related invoices. Such certification allegedly was a condition of receiving payment under the relevant letter of credit. The amount of the claim is U.S.\$12,652. The IAF maintains that the Consulate's actions were proper in that certifications were to be issued only after shipment of the parts. It has also filed a counterclaim for U.S.\$275,000 against Lockheed for its allegedly wrongful refusal to return those parts, and numerous other IAF parts.¹

13. Under Claim Five, Lockheed seeks to recover U.S.\$34,182, the invoice value of various aircraft parts allegedly ordered by the IAF under a written contract and sent by CALAC to the IAF's U.S. agent, Behring International Inc. ("Behring"). The IAF denies receipt of the parts in question. The IAF has counterclaimed to recover U.S.\$45,000 for alleged non-return of parts sent to CALAC for repair under the same contract.

14. Claim Six arises from a dispute under a contract in which Lockheed agreed to provide technical advisory services to the IAF related to its C-130 and JetStar aircraft.

¹Although asserted under Claim Four, in its later pleadings the Respondent has indicated that of these alleged damages, U.S.\$200,000 related more closely to Claim Five.

Lockheed seeks payment for contractual services rendered at various IAF air bases during the second half of 1978. The amount claimed is U.S.\$440,197.54. The IAF denies liability for any unpaid amounts under the contract, contending that Lockheed has not proved it performed its contractual duties during this time, and that its performance was otherwise defective. A counterclaim for 5,430,663 Rials lodged by the GOI asserts that Lockheed failed to pay social security assessments associated with this contract.

15. Claim Seven involves a dispute over propeller maintenance training provided by GELAC to six IAF personnel pursuant to a written contract. The price for the training was U.S.\$29,400, the amount now sought by Lockheed. The IAF defends its non-payment of this fee on the ground that the training, although provided, was inadequate. It counterclaims for U.S.\$35,000 in damages it allegedly incurred due to the inadequacy of the training.

16. Lockheed seeks U.S.\$4,910.70 under Claim Eleven, the invoice value of several aircraft parts ordered by the IAF and allegedly sent by GELAC to Behring. The IAF denies receipt of the parts.

17. Claim Twelve is a claim to recover U.S.\$153,764 in bank account deposits purportedly left by Lockheed in various Iranian banks.

18. The IAF has brought two additional counterclaims. These relate to the assessment of taxes on Lockheed's operations in Iran from 1977 through 1979, and to certain telephone charges allegedly unpaid by Lockheed.

19. A Hearing was held on 8 February 1988.

II. JURISDICTION

20. The Tribunal finds that Lockheed, which includes its LAS, CALAC, and GELAC divisions, has established its U.S. nationality as defined under Article VII of the Claims Settlement Declaration. To establish its U.S. nationality Lockheed has submitted a certificate from the Secretary of State of the State of California attesting to Lockheed's incorporation in that state, affidavits by a corporate officer, proxy statements issued around the time the events subject to this claim occurred, and a letter from an accounting firm.

21. There is no dispute that the Respondents are included within the definition of "Iran" as defined in Article VII, paragraph 3 of the Claims Settlement Declaration.

22. Concerning jurisdiction over the claims asserted, the Tribunal finds that Claims Two through Seven and Eleven satisfy the jurisdictional requirements of Article II, paragraph 1 of the Claims Settlement Declaration in that these claims "arise out of debts, contracts . . . , expropriations or other measures affecting property rights" which were outstanding on 19 January 1981.

23. The Tribunal determines, however, that it has no jurisdiction over Claim Twelve, which concerns attempts by Lockheed to recover bank deposits left by it in Iran. The Claimant has presented no evidence that it attempted to remove these deposits from Iran prior to the signing of the Algiers Accords on 19 January 1981. As the Tribunal has previously held, the mere entitlement to funds in a bank account is not a claim or dispute. See, Harza Engineering Company and The Islamic Republic of Iran, Award No. 19-98-2 (30 December 1982), reprinted in 1 Iran-U.S. C.T.R. 499; Training Systems Corporation and Bank Tejarat et al., Award No. 283-448-1 (19 December 1986). Therefore, this claim was

not outstanding on the date of the Algiers Accords and it must accordingly be dismissed.

24. The Tribunal also finds that counterclaims seeking social security assessments raised in Claims Two(A) and Six are not within its jurisdiction. The Tribunal has held consistently that social security premiums become payable by operation of Iranian law and therefore do not arise out of the same "contract, transaction, or occurrence" as the claim, as required by Article II, paragraph 1 of the Claims Settlement Declaration. See, T.C.S.B., Inc. and The Islamic Republic of Iran, Award No. 114-140-2 (16 March 1984), reprinted in 5 Iran-U.S. C.T.R. 160; Howard Needles Tammen & Bergendoff and The Government of the Islamic Republic of Iran, et al., Award No. 244-68-2 (8 August 1986). Nothing in the present Case would justify a different result. Accordingly, these two counterclaims are dismissed for lack of jurisdiction. For the same reason, the Tribunal also holds that Respondents' counterclaim related to the assessment of taxes on Lockheed's operations in Iran from 1977 through 1979 is not within its jurisdiction. Similarly, the Tribunal must dismiss the counterclaim for allegedly unpaid telephone charges for lack of jurisdiction because the Respondents have presented no evidence that these charges arose out of the same "contract, transaction, or occurrence" as any of the claims before the Tribunal.

25. All other counterclaims satisfy the jurisdictional requirements of Article II, paragraph 1 of the Claims Settlement Declaration, as they arise "out of the same contract, transaction, or occurrence that constitutes the subject matter" of the claim.

III. THE CLAIMS AND COUNTERCLAIMS

A. CLAIM TWO

26. The Claimant has brought seven separate claims within Claim Two. Because each of these seven claims involves distinct facts and legal issues, they will be addressed separately.

CLAIM TWO (A)

1. The Facts

27. The P-3F Contract was signed on 1 July 1976.² Its purpose was to provide managerial, administrative, technical, and flight crew assistance to the IAF to support the maintenance and operation of its P-3F aircraft for two and one-quarter years. The Contract was extended to 30 June 1979 by an amendment concluded on 1 July 1978. Under the amended Contract, the scope of Lockheed's services was redefined to delete the reference to managerial and administrative personnel. Moreover, Lockheed was required to provide "qualified technical and flight crew personnel to assist Buyer personnel in the maintenance and operation" of its P-3F aircraft. This claim relates solely to performance under the amended Contract, that is for the period from 1 July 1978 to 30 June 1979.

28. The amended Contract provided, in relevant part, that Lockheed assign a specific number of maintenance and flight crew specialists to work at the IAF's Bandar Abbas air facility, where its six P-3F aircraft were based. Article 3.2 provided for the assignment of sixteen maintenance

²It apparently replaced a November 1972 P-3F technical assistance contract.

specialists for the duration of the Contract, and Article 3.3 provided for the assignment of eleven flight crew specialists from 1 October through 31 December 1978, and for eight such personnel thereafter until expiration of the Contract. In consideration for the maintenance and operational services of these Lockheed employees, the IAF agreed to pay a "firm fixed price" of U.S.\$2,652,550.00. The first payment was due one month after signing the Contract, and thereafter payments were due at two-month intervals in various amounts specified in the contract.

29. The evidence reveals little of what occurred during the first three months of the Contract. However, several significant matters have emerged. First, it is clear that not all of the sixteen maintenance positions required to be filled during this time were filled. These shortfalls ranged from two to six persons. Second, at least four of these maintenance positions became vacant pursuant to controversial dismissals insisted upon by the IAF. At least one of these dismissals occurred at the end of September. The first two payments under the Contract, which became due during these three months, were both paid despite the vacancies.

30. From October until the end of December 1978, the staffing requirements were substantially, although not entirely, satisfied. While several vacancies remained in the maintenance team, the flight crew team was almost fully staffed by October. Although the staff experienced some turnover from October until its departure in January, of the twenty three employees assigned by 1 October, nineteen were still employed under the Contract in January. Of the others, one had left Bandar Abbas on 25 November and another was given a thirty-day grace period by the IAF to improve his job performance on 25 October, although it is unclear from the evidence what happened to him after that. Thus, while the evidence does not permit us to ascertain the exact

levels of staffing between October and December, we may reasonably assume there were somewhere between twenty and twenty four persons employed under the Contract during this time.

31. During the third payment phase of the Contract (October through November), the IAF base commanders lodged verbal, but no written complaints, about three of the Lockheed personnel. In contemporaneous internal memoranda, the Lockheed project director insisted that these complaints were unjustified. Although the evidence does not contain any criticism by the IAF of the overall performance of the Lockheed team, there is one indication in an internal Lockheed message in late October that the relevant IAF base commander had been directed not to sign more certifications until all tasks were manned by qualified Lockheed personnel. On 15 November 1978, Lockheed sent an invoice to the IAF seeking U.S.\$525,000 for its October and November services. The invoice, which was due 30 November, was not paid. A later request for payment was sent to the IAF on 23 June 1979. It also was not paid.

32. There were few noticeable changes in the performance of the Lockheed team during December. While, as in earlier months, the record shows no contemporaneous criticism by the IAF concerning the overall performance of Lockheed, one written complaint was lodged by an IAF commander seeking the dismissal and replacement of a Lockheed employee for alleged incompetence. The Lockheed project director at Bandar Abbas insisted that this employee was well-qualified, and he remained employed under the Contract until January. Lockheed contends that this, and the earlier complaints of incompetence, were made by various Iranian officials in order to protect themselves from criticism for shortcomings in P-3F maintenance and readiness.

33. Lockheed alleges that during December it became increasingly concerned about the safety of the Bandar Abbas employees and their dependents because of the revolutionary events occurring in Iran. Although the Tribunal cannot assess the seriousness of the threats and risks that Lockheed alleges its personnel encountered, it is satisfied that these threats, coupled with growing revolutionary violence elsewhere in the country, raised a reasonable perception of danger and directly led the Lockheed program director to evacuate the team from Iran. The evacuation from Bandar Abbas was undertaken on 2 January 1979 in an aircraft provided by the IAF.

34. On 6 January 1979 Lockheed sent the following letter to Vice Minister of War, General Toufanian:

Subject: Contract PS/76-74762A dated 1 July 1976
As Amended by Amendment No. 1 dated 1
July 1978

Dear General Toufanian,

As you are aware personnel performing under subject contract were evacuated from Bandar Abbas on 2 January 1979 because of the current hazardous conditions existing at Bandar Abbas.

This action was fully coordinated with Brig. General Savoje, Base Commander. The General has assured us that he will guard the Lockheed vehicles and other property that we left in Bandar Abbas in anticipation of our early return. General Savoje's assistance is deeply appreciated.

Accordingly it is with deep regret that we hereby respectfully notify you that we consider Article 10 - Hazardous Conditions, Property of Seller and Seller's Employees, and Article 11 - Delays, of referenced contract to be in effect in accordance with their terms until circumstances allow continuation of performance. Your advice on when conditions permit resumption of services would be appreciated.

Be assured that we stand ready willing and able to resume performance as soon as the present situation is resolved.

35. Article 10 provided for the possibility of extra pay or replacement personnel if required by hazardous conditions (including civil strife) and ultimately excused non-performance under those conditions. Article 11 excused delay in the performance of contractual obligations due to causes beyond Lockheed's control, such as armed aggression, insurrections, and riots. During January, Lockheed paid the Bandar Abbas employees their regular salaries, while keeping them in a vague "standby" status in the event that a quick return to Iran was possible. Although Lockheed alleges that this standby status was maintained due to a specific request from the IAF, there is no convincing evidence to bear this out. However, the Tribunal is satisfied that both Lockheed and the IAF hoped in January 1979 to be able to resume performance as soon as conditions in Iran permitted.

36. For its efforts in December and its payment of full salaries to its employees in January, Lockheed issued an invoice to the IAF on 9 April 1979 in the amount of U.S.\$525,000.00. A second request for payment was sent to the IAF on 14 July 1979. Moreover, a Lockheed representative still in Iran met with IAF General Safari seeking the third and fourth payments on at least one occasion. In reporting by telex the results of this meeting, which occurred on 4 September 1979, the Lockheed representative stated that the invoices for the third and fourth increments "were finally sent to MOD on 26 Aug. 79 with IAF cover letter approving payment." However, neither of these payments was ever received. Lockheed now seeks to recover U.S.\$1,050,000, the total amount due under the third and fourth payments.

37. In its counterclaim, the IAF seeks U.S.\$300,000 in damages allegedly caused by Lockheed's breach of contract in failing to staff fully the project and in wrongfully abandoning the Contract in January.

2. The Merits

38. Lockheed claims it is entitled to recover the full amounts due under the third and fourth payments of the amended Contract on the basis that it fully performed its contractual obligations from October through December 1978, and that it continued to pay its employees their full salaries during January 1979 pursuant to a request by the IAF that Lockheed be prepared to resume the Contract. While Lockheed asserts that the Respondents' failure to pay the third and fourth installments according to the Contract schedule constituted a breach of contract, Lockheed does not seek damages except for the two installments, plus interest. The IAF disputes these assertions, claiming that Lockheed was in breach of contract by understaffing the project, providing unqualified personnel, and, with regard to the fourth payment, wrongfully abandoning the project.

39. In order to characterize the legal status of the Contract upon the departure of Lockheed's personnel from Bandar Abbas, the Tribunal looks first to the behavior of the Parties at that time. Lockheed declared its position formally in its letter of 6 January to the Vice Minister of War, quoted above, wherein it cited Articles 10 and 11 of the Contract as justifying the suspension of its performance, while affirming its willingness to resume performance as soon as conditions in Iran might permit and asking the Ministry to advise it when conditions did so permit. On 22 January 1979, one of Lockheed's remaining representatives in Iran reported by telex that he had discussed the possible return of Lockheed personnel to Bandar Abbas with four IAF generals, all of whom said they had "no comment" in view of the then current situation in Iran and the prospective early return to Iran of the Imam Khomeini. The telex further said that the generals felt that Lockheed should hold at its "current status" for at least ten days. There is no evidence that the IAF ever requested Lockheed to return or

informed it that conditions had changed so that its return would be possible.

40. On the basis of the terms of the Contract, the behavior of the Parties, and the other relevant evidence, the Tribunal finds that Lockheed's non-performance of the Contract after its departure from Bandar Abbas on 2 January 1979 was excusable non-performance under Article 11 of the Contract. The threats encountered locally, and the perception of imminent danger due to the upheaval in the country generally were sufficient reasons to justify the evacuation, and thus excuse the delay in the performance of the Contract. The IAF's claim that the evacuation was an abandonment, and thus breach, of the Contract is unconvincing. The Tribunal notes that it must have been with the IAF's concurrence that an IAF aircraft was provided to carry out the evacuation. Moreover, the IAF has produced no contemporaneous evidence to show that it then considered the evacuation a breach of contract. The Tribunal concludes that, following Lockheed's departure, the Contract ultimately either terminated through frustration or expired by its own terms on 30 June 1979, without resumption of performance. Neither Party treated the matter at the time as one of termination in response to a material breach, and Lockheed does not claim damages beyond the November and January installment payments. Whether the Contract is considered ultimately frustrated or expired makes no difference in the settlement of accounts between the Parties and the determination of what one owes to the other.

41. Lockheed seeks recovery of the payments due on 30 November 1978 and 31 January 1979 on the basis that it performed its obligations through January 1979 and therefore should receive the payments required to be made to it during the same time. However, the Tribunal, for two reasons, cannot agree. First, as noted above, the Tribunal does not consider that Lockheed has proved that its standby payments

to its employees during the month of January 1979 were requested by the IAF. The only evidence to that effect is the 22 January 1979 telex from Lockheed's representative in Iran reporting that the four IAF generals "feel we should hold at our current status" for at least ten days. What the generals knew of that "status" is uncertain. Moreover, the 6 January letter to the Vice Minister of War made no reference to any such standby payments. As standby payments for personnel withdrawn from Iran are not foreseen by the Contract, this evidence falls far short of what would be required to commit the IAF to reimburse such payments for the month of January 1979 or to consider such standby status as amounting to performance under the Contract.

42. Second, the Tribunal cannot agree that the schedule of payments set forth in the Contract is determinative of the value of performance to the due dates of those payments. The total fixed price of the Contract was U.S.\$2,652,550, and the period of performance was 12 months. Lockheed performed for six months; during this time, it is clear that roughly half of the performance bargained for in the Contract was supposed to be accomplished by Lockheed. Therefore, it is reasonable to conclude that the maximum amount to which Lockheed could be entitled would be one-half of the Contract price, or U.S.\$1,326,275. In determining how much of this amount Lockheed should recover, the Tribunal notes that Lockheed already received two installments totalling U.S.\$825,000. Despite some staff vacancies during the period corresponding to these installments, July through September 1978, there is no evidence that the IAF expressed any reservations to tendering these payments in full. Taking into account the two payments received, and on the basis of performance for six months, Lockheed would still be owed U.S.\$501,275.

43. Awarding this amount to Lockheed, however, would not take into consideration its admitted failure to staff fully

the project. The Contract, in Article 4.1, clearly tied the fixed price to both the schedule and the staffing requirements. Therefore, some equitable adjustment to this amount appears required. The Contract provides no guidance in how adjustments in Contract payments should be determined. Neither is there clear evidence on which a statistical rendering of the value of Lockheed's performance could be calculated. In light of these considerations, and taking into account all the evidence of Lockheed's performance, the Tribunal determines that Lockheed is owed an additional amount of U.S.\$350,000. In order to compensate Lockheed for its loss, the Tribunal also awards Lockheed interest at the rate of 10.5 percent, beginning 1 February 1979, which is thirty days after the date on which Lockheed discontinued performance of services under the Contract.

44. The IAF has argued that a further reduction in Lockheed's recovery would be warranted because, in its view, some of Lockheed's personnel were unqualified, and it points to evidence that it had requested during 1978 the replacement of several Lockheed personnel, some of whom were, in fact, replaced. As noted above, Lockheed denies that any of its personnel were unqualified and asserts that these accusations were intended to protect Iranian officers from criticisms for inadequate P-3F maintenance and readiness. The Tribunal considers the evidence inadequate for it to determine whether any Lockheed personnel in Iran during the period at issue in the present claim were unqualified. Consequently, the allegations that certain personnel were unqualified cannot be a factor in determining the amount owing to Lockheed under this Contract.

45. By its finding that Lockheed is owed additional compensation under the Contract, the Tribunal has necessarily rejected the Respondent's counterclaim related to alleged overpayments it made to the Claimant. Similarly, by finding

that Lockheed's departure from Iran was not a breach of contract, the Tribunal has necessarily rejected the counter-claims for damages allegedly caused by Lockheed's abandonment of the Contract.

CLAIM TWO (B)

1. The Facts

46. Article 8.2 of the P-3F Contract permitted the IAF to assign Lockheed's personnel stationed at Bandar Abbas to other locations on a temporary basis to assist in the P-3F program. Article 8.2 also provided that any Lockheed personnel assigned for such temporary duty outside Bandar Abbas would be compensated by Lockheed at per diem rates of U.S.\$52 and \$55, and that the IAF would fully reimburse Lockheed for this expense.

47. Between 18 October 1977 and 16 August 1978, the IAF requested that Lockheed carry out eleven temporary duty assignments, involving varying numbers of Lockheed personnel. Lockheed has submitted the IAF forms by which Lockheed's services were requested for the assignments at issue. These forms indicate the number of personnel, the approximate number of days anticipated to be required, and the locations at which the temporary assignments were to be performed.

48. On 20 December 1978, Lockheed issued two invoices covering the per diem expenses allegedly incurred in carrying out the assignments in a total amount of U.S.\$27,709. On 23 June 1979, Lockheed requested reimbursement for these expenses in a letter to the IAF. Lockheed apparently received no response to this letter.

49. Although the IAF does not dispute the authenticity of the request forms, it questions whether the assignments were

carried out and contends that Lockheed should have submitted certifications by IAF officials that they were carried out. The IAF also questions one of the proffered invoices on the ground that it requests payment for a substantially higher number of days than estimated as required by the corresponding IAF request form.

2. The Merits

50. Article 8.2 entitles Lockheed to per diem compensation for performing temporary duty assignments outside Bandar Abbas. It is uncontested that Lockheed personnel were asked to undertake such assignments eleven times between October 1977 and August 1978. The Tribunal notes that the IAF request forms and the invoices provide detailed information concerning when these assignments were undertaken, which Lockheed personnel were involved, what their job titles were, how many days the assignments lasted, and, in most instances, where the assignments were carried out. While certifications by IAF personnel would be conclusive evidence, Lockheed has submitted adequate evidence to establish prima facie its Claim. The IAF has not produced any evidence of its own to raise doubts about the Claimant's assertions. Given the details the Claimant has produced concerning its personnel's performance of the missions, the Tribunal believes the IAF should have been able to produce some evidence to the contrary if, in fact, the invoiced claims were not factual. In the absence of any evidence to the contrary, the Tribunal holds that Lockheed's evidence is therefore sufficient to establish that its employees carried out the missions at issue.

51. While the relevant Contract provision refers to temporary duty assignments elsewhere than Bandar Abbas "in Iran", a number of the IAF requests, which referred to the Contract provision, were for assignments partly or wholly outside Iran. The Tribunal considers the Parties must have

assumed that such temporary assignments would involve per diem costs for the Claimant and finds that the reference to the Contract provision in the requests constituted agreement by the IAF to per diem compensation outside of Iran.

52. With respect to the one assignment which, in the request form was anticipated to last sixteen days, while the invoice billed the IAF for a mission of forty-two days, the Tribunal notes that the request forms specified the "approximate" length of the requested assignments. Therefore, they can not preclude the possibility that a proposed mission would last for a longer period of time than specified. In this instance, the Claimant has presented a reasonable and un rebutted explanation that the mission was extended because of mechanical problems experienced by the aircraft. The Tribunal further notes that the IAF has presented no documentary or testimonial evidence to raise doubts that the assignment in question was not conducted for the invoiced period of forty-two days. The Tribunal therefore accepts the validity of the invoice.

53. In view of the foregoing, the Tribunal awards Claimant U.S.\$27,709.00, plus interest at the rate of 10.5 percent. Claimant first issued an invoice for these services on 20 December 1978. However, the Claimant has not asserted that it sent the invoices to the IAF until 23 June 1979. Accordingly, Claimant is awarded interest from 23 July 1979.

CLAIM TWO (C)

1. The Facts

54. The relevant, and uncontested facts of this claim establish that around September 1978, IAF P-3F aircraft number 8-702 flew to Lockheed's CALAC facility in California to be outfitted with a Harpoon missile launcher pursuant to a Foreign Military Sale ("FMS") contract between the IAF and

the U.S. Navy. While inspecting the aircraft, Lockheed personnel identified some 120 "squawks," or minor discrepancies on the aircraft, which required maintenance attention. On 30 September Lockheed drafted a letter to the IAF estimating repair of these discrepancies at U.S.\$20,000 and requesting IAF concurrence to proceed. The 30 September letter also stated that Lockheed would repair only "those discrepancies which will not affect" the Harpoon missile modification schedule, and that Lockheed would obtain clearance from the U.S. Navy before repairing the discrepancies. Finally, the letter suggested that the IAF fund the project through a Basic Ordering Agreement, which would allow Lockheed to bill the IAF through direct invoice. In response to this letter, the IAF Director of Materiel, General Mehrabanzad, replied that:

1. The IIAF concurs with your suggested proposal for repair and correction of the listed discrepancies on P-3F 8-702.
2. Payment for the repairs will be by direct invoice to the IIAF Director of Procurement. The IIAF Materiel Directorate will assist when necessary.

55. On 12 October 1978, the Lockheed administrator in charge of the installation of the harpoon missile launcher on the IAF P-3F reported in an internal memo that he had received verbal approval from the U.S. Navy to repair the discrepancies. On the same day, he sent a telex to Lockheed's representative in Iran stating, "we have started to work the squawks and will work as many as possible, within the reservations previously stated." The reference to "reservations" was apparently to the requirement mentioned in the 30 September letter that Lockheed would repair only those discrepancies which would not affect the harpoon missile modification schedule.

56. On 24 January 1979, Lockheed forwarded an invoice to the IAF in the amount of U.S.\$22,039 for repair of the

discrepancies undertaken on P-3F Aircraft 8-702. No response to this invoice was received by Lockheed. Lockheed now seeks to recover the cost of the repairs.

2. The Merits

57. The IAF disputes that the repairs were carried out, although it produces no evidence to substantiate this claim. In its pleadings, the IAF further asserts that, although it requested the repairs, "it dismissed the actual carrying out of the repairs." Again, it produces no evidence to support that assertion.

58. The Tribunal notes that Lockheed offered in writing to repair the minor discrepancies at issue for an estimated price of U.S.\$20,000.00. This offer was explicitly accepted in writing by the IAF. The communications referred to above and the invoice constitute sufficient contemporaneous, although circumstantial, evidence to establish a rebuttable presumption that these repairs were carried out.

59. The IAF has submitted no evidence to support its assertion that the repairs were not carried out. Therefore, the Tribunal accepts this Claim and awards Lockheed U.S.\$22,039.00. Lockheed is also awarded interest on this amount at the rate of 10.5 percent, beginning 23 February 1979, thirty days after the date on which the invoice was sent to the IAF.

CLAIM TWO (D)

1. The Facts

60. In an effort to improve the supply of spare parts for the IAF's P-3F aircraft, the IAF signed an FMS contract with the United States Navy under which the Navy agreed to provide three logistical supply personnel to assist the IAF

in Iran. The Navy subcontracted this work to Lockheed. The three Lockheed employees sent to Iran were paid by the Navy pursuant to the FMS contract until its expiration on 30 June 1978. Although the contract was not renewed, it is clear that Lockheed hoped it would be and that it believed the IAF was attempting to secure the funds necessary to do so.

61. Although the contentions asserted in the pleadings are contradictory, the contemporaneous evidence presented indicates that, with the knowledge of the IAF, during July 1978 the three Lockheed employees continued performing their jobs, and that from August until the end of January 1979 two of these employees remained at work in Iran. It is undisputed that the contract was not in effect after 30 June 1978. During January 1979, an IAF officer informed Lockheed that the IAF had no authority to renew the FMS contract, and both men departed Iran around the beginning of February 1979.

62. The Claimant presented an invoice dated 31 January 1979 addressed to the Vice Minister of War seeking reimbursement of U.S.\$101,602.60 for these services. The Claimant also presented a letter dated 23 June 1979 addressed to General Safari, the IAF Deputy Director of Logistics, explaining that the Lockheed supply personnel had "provided uninterrupted supply support services for seven months without receiving any reimbursement." The letter went on to "propose" that the IAF "purchase" these services directly from Lockheed since the FMS contract had not been in effect and would not be renewed. Lockheed again requested U.S.\$101,602.60, which it said was calculated using the same rate proposed by the Navy in the FMS contract for such services (U.S.\$307 per day per employee), and which included additional costs related to departure expenses of the two remaining employees. No reply to this correspondence was ever received. In the present claim, Lockheed seeks recovery of that amount on the basis of unjust enrichment.

2. The Merits

63. Whether the principle of unjust enrichment justifies recovery under the circumstances presented requires consideration of several issues. First, as the Tribunal has held in other Cases, the Claimant must establish that there is no valid and enforceable contract on which an action for damages could be based. See, Dames & Moore and The Islamic Republic of Iran, Award No. 97-54-3 (20 December 1983). In the present Case, this is not in dispute. Second, the Claimant must establish that the Respondent has been enriched at the Claimant's expense, the extent of such enrichment and that it would be unfair for the Respondent not to pay for the benefits it has received. Without deciding whether the Respondent has been enriched, the Tribunal finds that any benefits which may have been received by the IAF were conferred by Lockheed at its own peril. By unilaterally deciding to continue the service without first arranging alternative payment arrangements with the IAF, Lockheed accepted the risk that it might encounter difficulty in recovering payment. Although such continued performance may have represented a sensible commercial decision, it is nonetheless clear that, while Lockheed was aware of the risks during the months its performance continued, it took no action to resolve the matter with the IAF until after its performance ceased. It may not now avoid the adverse consequences of the risk it voluntarily undertook by claiming it was unjust for the IAF to have received the benefit of the service, which there is no evidence the IAF requested. Accordingly, the claim is rejected.

CLAIM TWO (E)

1. The Facts

64. By this claim, Lockheed seeks reimbursement for U.S.\$35,874 in secretarial salaries it paid during 1978. Under Article 6.1.7 of the Contract, the IAF was required to provide seven secretarial and clerical personnel to assist Lockheed in performing the Contract. Under Article 6.2, Lockheed was permitted to hire its own secretarial and clerical staff in the event that the IAF failed to do so, in which event the IAF would reimburse the "actual and reasonable costs thereof." Because the IAF did not provide a staff, Lockheed hired its own. In accordance with the Contract, the Parties agreed that the rate of payment for each of these staff members would not exceed 45,000 rials per month.

65. When the P-3F Contract was renewed in July 1978, the provisions related to the hiring of the secretarial staff were not amended. However, presumably due to the decrease in the scope of Lockheed's responsibilities under the amended Contract, it reduced its secretarial staff to between three and four persons from July until November. In December 1978, the IAF instructed Lockheed to reduce its secretarial staff to three persons, and Lockheed promptly complied with this instruction. Lockheed billed the IAF for reimbursement of all secretarial expenses incurred in 1978 in a letter dated 8 July 1979, but no payment or other response was ever received.

2. The Merits

66. The Tribunal finds that Lockheed hired the secretarial staff in accordance with Articles 6.1.7 and 6.2 of the

Contract. Article 6.1.7 committed the IAF to "furnish English speaking secretarial and clerical personnel (seven (7) persons)." Article 6.2 provided that:

In the event of a failure by the Buyer to furnish [seven secretarial and clerical personnel], the Seller may, at its option, provide same, and Buyer will thereupon reimburse the Seller for the actual and reasonable costs thereof.

67. The July 1978 amendment to the Contract did not require a reduction in the number of these staff members, as alleged by Respondents. Nevertheless, reductions were made by Lockheed. Moreover, Lockheed timely complied with the December 1978 IAF order requiring a reduction of the staff to three. The Tribunal is satisfied that Lockheed has properly documented its secretarial expenses and billed the IAF accordingly. Finally, the Tribunal notes that the IAF admits that it has not paid any of the secretarial expenses billed.

68. The claim is therefore awarded to Claimant in the amount of U.S.\$35,874.00. Interest on that amount is also awarded as of 7 August 1979, which is thirty days after the date of Lockheed's request for payment.

CLAIM TWO (F)

1. The Facts

69. Lockheed claims it shipped a variety of P-3F aircraft parts to the IAF between October 1978 and February 1979 in response to IAF purchase orders. It has submitted invoices requesting payment for these shipments dated from November 1978 to February 1979. There is no indication that the IAF responded to these invoices. The total amount requested under the invoices, and now claimed, is U.S.\$13,857. Lockheed has also submitted internal forms related to the shipments, all of which reference an IAF purchase order

number and indicate that the items were destined for shipment to the IAF via Behring, its freight forwarder.

2. The Merits

70. The Tribunal finds that the documents submitted do not establish the terms and conditions of sale or prove shipment of the parts to Behring. Accordingly, the claim is dismissed for lack of proof.

CLAIM TWO (G)

1. The Facts

71. As noted above in Claim Two(A), Lockheed evacuated from Iran some twenty of its employees working under the P-3F Contract at Bandar Abbas in early January 1979. An almost equal number of these employees' dependents were also evacuated at Lockheed's expense at the same time. On the day of departure from Bandar Abbas, the Lockheed program director there met with several IAF officials to inform them of Lockheed's decision. It is not clear whether these officials concurred in the decision to evacuate, but there is no evidence that they opposed it. An IAF C-130 aircraft was made available later that day to carry the Lockheed personnel and dependents to Tehran. From Tehran, the evacuees flew to New York aboard a chartered Pan Am flight, and from there to their respective homes of record aboard various U.S. domestic flights. Along the way they incurred expenses, primarily flight costs and hotel accommodations in Tehran and New York. An additional seven Lockheed employees not in Iran at the time of the evacuation were also provided air fare by Lockheed to return to their homes of record during January. The total cost of all these flights, hotel rooms, and other miscellaneous expenses was U.S.\$35,000, which Lockheed now seeks to collect from the Respondents.

2. The Merits

72. Lockheed seeks to recover this claim under Article 10.2 of the Contract, which provides that the IAF must reimburse Lockheed for "additional costs" resulting from its evacuation caused by the existence of "hazardous conditions." A condition of reimbursement is that the evacuation shall have been "coordinated" with the IAF. The IAF interprets this provision as requiring its approval.

73. The Tribunal finds that, based on the evidence recounted above, Lockheed's coordination of its departure with the IAF, under the difficult circumstances then existing in Iran, satisfied the requirements of Article 10.2. The Tribunal considers that coordination is not synonymous with agreement or approval, and that the nature of the coordination is necessarily dependent to some extent on the circumstances.

74. However, there remain several problems with Lockheed's claim. First, a plain reading of Article 10.2 indicates that it was not intended to compensate Lockheed for expenses of evacuating the dependents of its employees or for travel expenses of its employees not in Iran at the time of evacuation. Second, insofar as the expenses of evacuation of employees from Iran are concerned, Lockheed is entitled by Article 10.2 to compensation only for "additional costs." Lockheed was expected by the Contract to bear the costs of repatriation of its employees at the end of their service in Iran. While it is conceivable that their repatriation at an earlier date than would otherwise have been expected may have involved some additional costs, Lockheed has not presented any evidence showing that it incurred "additional costs" which it would not have otherwise eventually borne. Accordingly, this claim is dismissed partly on the merits and partly for lack of proof.

B. CLAIM THREE

1. The Facts

75. On 6 June 1978, Lockheed and the Government of Iran signed a contract (GLX-43) under which Lockheed agreed to provide pilot training in JetStar aircraft from August to October 1978 for two Iranian pilots at a cost of U.S.\$23,650. Lockheed duly tendered an invoice to the IAF Director of Procurement on 6 January 1979 for the amount provided in the contract. The IAF did not pay or otherwise respond to the invoice. On 2 July 1979 Lockheed again sought payment by sending a duplicate original invoice to the IAF's Deputy Director of Logistics. Again the IAF did not reply. Lockheed now seeks to recover the amount due under the contract, plus interest.

76. The IAF has lodged a counterclaim in which it argues that the training provided was inadequate and resulted in "hard landings" which caused damages of U.S.\$45,000.

2. The Merits

77. The evidence clearly establishes that the training was provided, both in the United States and Iran, from August to October 1978. The Claimant has also presented a copy of the signed contract, attendance records for each phase of the course which indicate that the requisite number of IAF personnel attended the course for the periods specified in the contract, and two requests for payment directed to the Respondent. The Tribunal finds that this evidence establishes a prima facie case that the Claimant performed its obligations under the contract.

78. For its part, the IAF has acknowledged that the pilot training at issue was provided in accordance with the terms of the contract. Its only defense to the claim is that the

quality of the instruction was inadequate, and resulted in a number of "hard landings" by the pilots who received the training. However, it has provided no evidence to support this defense. Therefore, the Tribunal finds that Respondents remain obliged to pay the Claimant U.S.\$23,650.00, the price stipulated in the contract. Interest on this amount, at the rate of 10.5 per cent, is also awarded to the Claimant from 5 February 1979, which is thirty days from the date of the invoice.

79. The IAF counterclaim consists essentially of the same allegations raised by the IAF in its defense. The Tribunal again notes that no evidence has been presented to support the Respondent's allegation that "hard landings" resulted from inadequate training provided by Claimant, or that such "hard landings" caused U.S.\$45,000 in damages. The counterclaim is therefore dismissed for lack of proof.

C. CLAIM FOUR

1. The Facts

80. The few relevant facts established by the evidence in this claim may be summarized as follows. Between May 1978 and June 1979 the IAF sent some twenty two aircraft parts to Lockheed's GELAC facility for repair. Lockheed arranged and paid for repair of these items through subcontractors. Before shipping the parts back to Iran, however, Lockheed asked the Iranian Consulate to certify the invoices it intended to send the IAF to request payment for repair of the parts. Lockheed asserts that such a certification was a condition for collecting the invoiced amounts under the letter of credit issued to pay for the repairs. The Iranian Consulate allegedly refused to certify the invoices, and Lockheed did not ship the parts. It now seeks U.S.\$12,652 in compensation for their repair.

81. The IAF filed a counterclaim in the amount of U.S.\$75,000 for the non-return of these twenty two parts. It asserts that the letter of credit required Lockheed to ship the parts to Iran before seeking certification of the invoices from the Consulate. Thus, it asserts, the Consulate acted properly in refusing to certify the invoices, and Lockheed acted wrongfully in refusing to ship the parts. The IAF adds further counterclaims totalling U.S.\$200,000 for Lockheed's alleged wrongful retention of other C-130 parts allegedly shipped to Lockheed for repair and not returned. These latter counterclaims are accompanied by a written list of the parts at issue.

2. The Merits

82. Lockheed alleges that the relevant letter of credit required it to obtain a certification of its invoices from the Iranian Consulate before it could collect the invoice amounts from the issuing bank, and asserts that a Consulate official had informed one of its accountants in a telephone conversation that the Consulate had stopped certifying invoices due to the internal situation in Iran. However, the relevant letter of credit has not been placed in evidence in this Case. Without it, the Tribunal cannot determine what it was that the Consulate was to certify and the reasonableness of Lockheed's response. Therefore, the Tribunal rejects the claim due to the insufficiency of the evidence.

83. With regard to the counterclaim related to the return of the twenty two parts, the Tribunal faces the same impossibility of determining the requirements of the letter of credit without having access to the document itself. The Respondents have submitted no other evidence of what these requirements were, nor it should be noted, any evidence of their damages. Thus, the Tribunal finds that Respondents have submitted insufficient evidence to determine whether

Lockheed breached an obligation in refusing to ship the parts. Accordingly, the counterclaim must also be rejected.

84. Concerning the further counterclaims of Respondents seeking U.S.\$200,000 for Lockheed's alleged retention of numerous C-130 parts shipped to it for repair and not returned, the Tribunal notes that, other than a long list of parts, the Respondents have not produced any evidence to support this claim. Therefore, this counterclaim also must be rejected for lack of proof.³

D. CLAIM FIVE

1. The Facts

85. Pursuant to the receipt by GELAC of IAF purchase orders, it shipped twenty consignments of aircraft parts valued at U.S.\$34,182 to the IAF during January and February 1979. The IAF denies receiving any of the parts in question. A written contract (GLX-245) between the Parties apparently provided terms and conditions related to the purchase of these and other parts ordered by the IAF for its C-130 aircraft. That contract has not been produced by either of the Parties.

86. Lockheed prepared and retained in its files internal forms entitled "Commercial Invoice & Packing Sheet" for most of the items now claimed. These forms reference, inter alia, the date of shipment, the name of the carrier which was to transport the items from the Lockheed facility, the bill of lading number used by that carrier, the IAF purchase order number, and the destination of the shipment, which in

³As this counterclaim is rejected for lack of proof, the Tribunal need not decide whether it would have more properly been considered in relation to Claim Five. See, footnote 1, para. 12, supra.

all cases is Behring's facility in New Jersey. Lockheed has also submitted in evidence receipts from the carriers which took delivery of ten of the twenty consignments for carriage to Behring. Between 29 January and 12 February 1979, Lockheed sent invoices to the IAF seeking payment for all the items now claimed. Although these invoices reference a letter of credit, it appears that Lockheed sought payment through direct billing to the IAF. Lockheed seeks to collect payment of the U.S.\$34,182, plus interest, through this claim.

87. In its counterclaim, the IAF seeks U.S.\$45,000 for consequential damages resulting from Lockheed's alleged wrongful retention of various C-130 parts it allegedly sent to GELAC for repair under Contract GLX-245. However, neither in the pleadings nor at the Hearing did the IAF present any probative evidence related to this counterclaim.

2. The Merits

88. To recover the claim, Lockheed must show that it fulfilled the obligations it assumed in the underlying transactions. Determining what those obligations were is complicated by the absence of copies of the applicable purchase orders and the relevant contract. However, reference to the applicable letter of credit, the invoices, and the carrier receipts establishes that Lockheed was not required to pay the cost of insurance or freight associated with carriage of the parts to Behring's facility, or to Iran. In such transactions, a seller's risk of loss or damage to goods customarily does not extend beyond the point at which its liability for transportation and insurance costs ceases. The Tribunal has no reason to believe, and the IAF has not asserted, that Lockheed accepted any greater risk of loss here. In these circumstances, the Tribunal is prepared to presume that Lockheed did not bear the risk of loss for the parts subject to this claim beyond the point at which it

delivered them to carriers for shipment to Behring and that, upon such delivery, the risk of loss for the parts was transferred to the IAF. Therefore, the IAF became indebted to Lockheed for any consignment as soon as that consignment was delivered to the carrier for forward transportation to Behring. The IAF argues that Lockheed was required to submit a receipt signed by one of its representatives evidencing delivery of the items to Behring before it establishes a claim for payment. Such a signed receipt is a requirement for collecting payment under the letter of credit. That cannot, however, affect the debt owed on the underlying transaction.

89. Lockheed has submitted receipts showing it delivered ten of the consignments, valued at U.S.\$18,623.00, into the custody of carriers for shipment to Behring. Thus, Lockheed fulfilled its contractual obligations with regard to these parts, and is entitled to payment whether or not they were received by the IAF. Lockheed has not submitted carrier receipts for the other parts subject to the claim, and therefore has not established that it fulfilled its contractual obligations or that the risk of loss for these parts was transferred to the IAF. Accordingly, the Tribunal awards the amount of U.S.\$18,623.00, plus interest of 10.5 percent from 13 March 1979, which is thirty days after the date of the last invoice.

90. With regard to the counterclaim, the Tribunal notes that the Respondents have not submitted any evidence to support their contentions, and the counterclaim must therefore be rejected for lack of proof.

E. CLAIM SIX

1. The Facts

91. This claim arises out of a written contract (GLX-302) signed by Lockheed and the IAF on 27 April 1977, and amended by the Parties on 12 December 1977. Under the contract, Lockheed agreed to provide to the IAF a variety of personnel trained in aircraft maintenance, spare parts supply, and other aircraft support functions to assist the IAF in its C-130 and JetStar aircraft operations. These personnel were assigned to several IAF facilities in Iran. In exchange for these services, the IAF agreed to pay Lockheed a fixed price for each man-month of service actually provided. As stipulated in the amended contract, the IAF agreed to pay U.S.\$7,725.00 for each month of service performed by each Lockheed employee during calendar year 1978. Payment was due quarterly, half in dollars and half in rials.

92. Lockheed tendered invoices, and was paid, for the first two quarterly installments of 1978. For the third quarter of 1978 (1 July through 30 September), Lockheed tendered an invoice on 17 October 1978, which the covering letter stated was accompanied by copies of IAF-approved daily attendance records, for U.S.\$303,685.20, seeking compensation for 41.6 man-months of service. This total reflected a contractual deduction of 5.5% to satisfy all taxes, fees, and other charges imposed "by the Government of Iran, or any political subdivision thereof." Approximately one month later, the rial half of the invoice was paid. A Lockheed representative in Iran reported in November that the IAF had informed him that the dollar half of the third quarter invoice had been approved for payment by the IAF and that the matter was in the hands of the issuing bank. Whether approved or not, there is no dispute between the Parties that the dollar amount of U.S.\$151,842.60 was not paid.

93. Meanwhile, Lockheed was undertaking its contractual obligations for the fourth quarter of 1978. On 7 January 1979, it forwarded a letter and invoice to the IAF requesting U.S.\$288,354.94 for 39.5 man-months of service performed under the contract during this time. This amount also reflected the contractual deduction of 5.5%. The letter stated that daily attendance records certified by the IAF reflecting the 39.5 man-months of service performed were attached. No payment or other response to this invoice was received. Lockheed pursued payment through three additional correspondences during the next six months without success. Lockheed now seeks collection of the unpaid amounts on both invoices through this Tribunal.

2. The Merits

94. A discussion of the merits of this claim focuses on two narrow questions. First, did Lockheed perform the services it claims to have performed during the third and fourth quarters of 1978? Second, if it did, what is it now entitled to receive? The Tribunal will first discuss Lockheed's entitlement to its request for U.S.\$151,842.60 under the third payment of the amended contract.

95. The Tribunal notes that Lockheed timely delivered a request for payment to the IAF for services rendered during the third quarter. This request refers to attached "daily attendance records . . . approved by the respective IIAF officials to substantiate the amount invoiced." The Tribunal further notes that, in response to this payment request, the IAF timely paid the 50 percent rial portion of the invoice in accordance with the contractual stipulation that one half of any amount due under the contract was to be paid in rials and the other half in dollars. The Tribunal determines that such payment constitutes clear acceptance by the IAF of the validity of the total amount, including the half to be paid in dollars. The IAF made no contemporaneous

objections about the amount requested or the authenticity of the attendance records. While the IAF has alleged that Lockheed's performance during the third quarter had "numerous defects," the Tribunal notes that this allegation is not supported by any relevant evidence and is inconsistent with its evident approval of payment in 1978. Accordingly, the Tribunal holds that Lockheed's evidence, unrebutted by any evidence to the contrary, is sufficient to establish its claim to the remaining dollar amount due for the third quarter of 1978. Therefore, the Claimant is awarded U.S.\$151,842.60, plus interest of 10.5 percent on this amount payable from 16 November 1978, which is thirty days after the date of the initial invoice.

96. With respect to the fourth quarter, Lockheed presented its bill in writing four times within seven months of completing the fourth quarter services. At least three of these requests explicitly mention that the referenced attendance records were attached. Furthermore, there is no evidence that the IAF complained or protested contemporaneously about the validity of any of the requests for payment or the authenticity of the daily attendance records. The Tribunal concludes that Lockheed has therefore established a prima facie case for its claimed fourth-quarter payment.

97. The IAF presents no evidence that these services were not rendered and rests its defense on the assertion that Lockheed has not proved its claim because it has not submitted in evidence the daily attendance records. Lockheed's explanation that these records were left in Iran is credible, and, in any event, this argument is inadequate to rebut Lockheed's prima facie case, and the Tribunal therefore accepts the claim for the fourth quarter of 1978. Accordingly, the Claimant is awarded U.S.\$288,354.94, with interest at the rate of 10.5 percent awarded from 6 February 1979, which is thirty days after the date of the initial invoice.

F. CLAIM SEVEN

1. The Facts

98. A summary of the facts of this claim begins with a review of Contract GLX-344, which Lockheed and the IAF concluded on 4 June 1978. In that contract, Lockheed agreed to conduct an eight week propeller maintenance training course for IAF personnel at its Georgia facility at a price of U.S.\$29,400. Various aspects of propeller maintenance, which the Tribunal need not review here, were to be covered in the course.

99. Six IAF students were sent to Georgia to attend the course, which began on 16 August 1978. In accordance with Article 1(b) of the contract, the training course lasted eight weeks. The sessions generally lasted eight hours per day, for a total of forty hours per week. At the end of the course, the six students evaluated the course and the Lockheed instructors on a form provided by Lockheed. Five of the six judged the course to be of "some help," while the other judged it to be of "great help." None of the students thought the course was of "no help."

100. On 15 June 1979, Lockheed forwarded an invoice for the contract price of U.S.\$29,400 to the IAF. The IAF did not pay the amount due or otherwise respond to the invoice. Lockheed now seeks to recover that amount, plus interest.

101. In a counterclaim, the IAF has asserted that the level of training provided by Lockheed was substandard. It asks for U.S.\$35,000, the cost, it states, of repairing damages caused by its six ill-trained personnel, and providing for their retraining.

2. The Merits

102. The Tribunal notes that there is no dispute that the training was provided or that payment has not been made. The only issues are those raised by the defense of the IAF that the training provided was sub-standard and that insufficient training was provided in several areas the course was required to cover. The IAF cites the student evaluation forms as justification for these allegations. However, all the students indicated that the course was helpful. Although five of the six did not believe the course was as useful as it could have been, their comments certainly are no evidence that the IAF was justified in refusing to pay for the training. With respect to the question whether the training did not cover all required subjects, the evidence cited by the IAF is unconvincing. This evidence consists of a class instruction record which summarizes the subjects covered during each week of the course. However, the summary of "subjects covered" in this document is so brief that it is not a meaningful measure of the extent to which the subject areas were actually covered during the course. Furthermore, the Tribunal finds it significant that no complaints were raised by the IAF about Lockheed's performance under the contract prior to the present proceeding.

103. The Tribunal concludes that Lockheed is entitled to payment of U.S.\$29,400.00 under the contract, plus interest at the rate of 10.5 percent to run from 15 July 1979, which is thirty days from the date of the invoice.

104. With regard to the counterclaim lodged by the IAF, the Tribunal notes that the IAF has not established that the training was deficient and that no evidence of the damages alleged has been presented. Furthermore, Article 5 of the contract released the Claimant from any liability arising out of services performed under the contract. The counterclaim is therefore dismissed.

G. CLAIM ELEVEN

1. The Facts

105. Lockheed claims that, pursuant to IAF purchase orders, it shipped six aircraft parts worth U.S.\$4,910.70 to the IAF, via Behring, in late 1978 and early 1979, and that the IAF has not paid for them. The IAF denies receiving the parts. The evidence produced by Lockheed includes the relevant IAF purchase orders sent to Lockheed's GELAC facility during various months in 1978, forms entitled "Commercial Invoice & Packing Sheet" prepared by Lockheed, and receipts from carriers hired to transport the parts to Behring. Lockheed did not submit copies of certain contractual conditions, which apparently were printed on the reverse side of the order form. Shortly after shipping the items, Lockheed sent invoices to the IAF seeking payment. No payment or other response was ever received.

2. The Merits

106. The Tribunal considers, for the same reasons as in Claim Five, that Lockheed's contractual obligations extended only to delivery of the parts to carriers for shipment to Behring because Lockheed was not required to pay for freight costs associated with such shipment. By assuming these freight costs, the IAF, rather than Lockheed, assumed the risk of loss for the parts after they were delivered to such carriers by Lockheed. Thus, Lockheed is entitled to payment for the parts involved in this claim whether or not received by the IAF because it has established that it delivered the parts to carriers for shipment to Behring. Accordingly, the Tribunal holds that Lockheed is entitled to recover the claimed amount of U.S.\$4,910.70, plus interest at the rate of 10.5 percent from 14 March 1979, which is thirty days after the date of the last invoice issued by Lockheed seeking payment.

IV. COSTS

107. Each Party shall bear its own costs of arbitration.

V. AWARD

108. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

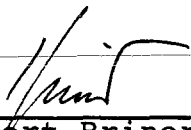
a. The Respondent IRANIAN AIR FORCE is obliged to pay the Claimant LOCKHEED CORPORATION the following sums:

- 1) Three Hundred Fifty Thousand Dollars (U.S.\$350,000.00), plus interest from 1 February 1979.
- 2) Twenty-Seven Thousand Seven Hundred Nine Dollars (U.S.\$27,709.00), plus interest from 23 July 1979.
- 3) Twenty-Two Thousand Thirty-Nine Dollars (U.S.\$22,039.00), plus interest from 23 February 1979.
- ~~4) Thirty-Five Thousand Eight Hundred Seventy-Four Dollars (U.S.\$35,874.00), plus interest from 7 August 1979.~~
- 5) Twenty-Three Thousand Six Hundred Fifty Dollars (U.S.\$23,650.00), plus interest from 5 February 1979.
- 6) Eighteen Thousand Six Hundred Twenty-Three Dollars (U.S.\$18,623.00), plus interest from 13 March 1979.

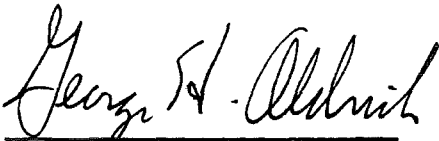
- 7) One Hundred Fifty-One Thousand Eight Hundred Forty Two Dollars and Sixty Cents (U.S.\$151,842.60), plus interest from 16 November 1978.
 - 8) Two Hundred Eighty-Eight Thousand Three Hundred Fifty-Four Dollars and Ninety-Four Cents (U.S.\$288,354.94), plus interest from 6 February 1979.
 - 9) Twenty-Nine Thousand Four Hundred Dollars (U.S.\$29,400.00), plus interest from 15 July 1979.
 - 10) Four Thousand Nine Hundred Ten Dollars and Seventy Cents (U.S.\$4,910.70), plus interest from 14 March 1979.
- b. The above amounts shall be paid with simple interest at the rate of 10.5 percent per annum (365-day basis) from the dates indicated above up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.
 - c. The obligations listed in paragraphs 1 through 10, supra, shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Democratic and Popular Republic of Algeria of 19 January 1981.
 - d. Claim Twelve is dismissed for lack of jurisdiction.
 - e. Claim Two (D) is dismissed on the merits.

- f. Claims Two (F) and Four are dismissed for lack of proof.
- g. Claim Two (G) is dismissed partly on the merits and partly for lack of proof.
- h. The counterclaims of THE ISLAMIC REPUBLIC OF IRAN, which are related to taxes, social security assessments and telephone charges, are dismissed for lack of jurisdiction.
- i. The counterclaims of the IRANIAN AIR FORCE for overpayments and breach of contract related to Claim Two (A) are dismissed on the merits.
- j. The remaining counterclaims of the IRANIAN AIR FORCE are dismissed for lack of proof.
- k. Each Party shall bear its own costs of arbitration.
- l. This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
9 June 1988



Robert Briner
Chairman
Chamber Two



George H. Aldrich
Concurring Opinion

In the Name of God



S.K. Khalilian
Dissenting and
Concurring Opinion