AWARD

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 names as Respondents the Government of Iran, ("GOI"), the Military Industries Organization of Iran ("MIO"), Iran Aircraft Industries ("ICAI"), 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, 4 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 related 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. $1,286,081.0. 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-3 F 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. $1 O 1,602.60 a 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 .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. $2.75,000 against Lockheed for its allegedly wrongful refusal to return those parts, and numerous other IAF parts.5

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. 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 related 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.

[...]

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. 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 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 RAF. 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 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 over payments it made to the Claimant. Similarly, by finding that Lockheed's departure from

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Iran was not a breach of contract, the Tribunal has necessarily rejected the counterclaims for damages allegedly caused by Lockheed's abandonment of the Contract.

[...]

1 Concurring Opinion, see p. 323 below.
2 Dissenting and Concurring Opinion, see p. 324 below.
3 Filed 9 June 1988.
5 Although 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.
6 It apparently replaced a November 1972 P-3F technical assistance contract.

Referring Principles:

VI.3 - Force majeure