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** CONCURRING OPINION of _____

- Date _____

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

CASE NO. 10712 **83**
CHAMBER THREE
AWARD NO. 321-10712-3

IRAN UNITED STATES CLAIMS TRIBUNAL — ایران ـ ایالات متحده
FILED - ثبت شد
Date 30 NOV 1987 تاریخ
۱۳۶۶ /۹/ ۹
No. 10712 شماره

HARRINGTON AND ASSOCIATES, INC.,
a claim of less than U.S.$250,000
presented by the
UNITED STATES OF AMERICA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

CORRECTIONS TO THE
CONCURRING AND DISSENTING OPINION OF JUDGE BROWER

The following corrections are hereby made to the English text of the Opinion of Judge Brower in this Case filed on 27 October 1987:

A. At paragraph 15, line 13, delete the word "party" and add the word "action".

B. At paragraph 9, add the following citation at the end of the paragraph, "See Anaconda-Iran, Inc. and Islamic Republic of Iran, Award No. ITL 65-167-3 at para. 112 (10 December 1986) (untimely filing of counterclaim "concerns less the issue of jurisdiction than . . . admissibility")."

C. At paragraph 11, line 9, add the following citation, "Anaconda-Iran, Inc. and Islamic Republic of Iran, Award No.

ITL 65-167-3 at para. 115 (10 December 1986) (adding a counterclaim);".

D. At footnote 6, last line, add the following citation, "See Anaconda-Iran, Inc. and Islamic Republic of Iran, Award No. ITL 65-167-3 at paras. 116-118 (10 December 1986) (no prejudice found where issue was joined more than one year before the Hearing)."

A copy of the Corrected Opinion is attached.

Dated, The Hague
30 November 1987

Charles N. Brower

CASE NO.10712
CHAMBER THREE
AWARD NO. 321-10712-3

HARRINGTON AND ASSOCIATES, INC.,
a claim of less than U.S.$250,000
presented by the
UNITED STATES OF AMERICA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

CORRECTED CONCURRING AND DISSENTING OPINION OF JUDGE BROWER

1. This Award regrettably perpetuates the schizophrenia which from the Tribunal's inception has characterized its approach towards the belated specification of parties.

2. The first episode was the Tribunal's action in accepting for filing a claim lodged against Iranian respondents by "AMF Overseas Corporation (Swiss Company) (wholly owned subsidiary of AMF Inc.)," notwithstanding the complete absence of any allegation in the Statement of Claim regarding the nationality of "AMF Inc.," while on the same day rejecting a claim filed against an Iranian respondent by "Raymond International (U.K.) Ltd.," of whose ultimate United States nationality there was at least a hint in the fact that the English text of the Statement of Claim was "typed on the stationary [sic] of Raymond International Builders, Inc., Houston, Texas." In both cases the American parent corporations had petitioned the Tribunal after the 19 January 1982 deadline for filing claims set forth in Article

III(4) of the Claims Settlement Declaration, requesting reversal of the Co-Registrars' earlier refusal to accept their Statements of Claim for filing and supporting their requests with appropriate allegations regarding their nationality. Inexplicably the Tribunal admitted the first as a permissible "clarification of who is the proper Claimant" but rejected the second as an unacceptable attempt "to substitute a new Claimant for the original one [which] is tantamount to the filing of a new claim" out of time. Compare In re AMF Overseas Corporation, Refusal Case No. 20 at 2 (8 December 1982), reprinted in 1 Iran-U.S. C.T.R. 392, 392 with In re Raymond International (U.K.) Ltd., Refusal Case No. 21 at 3 (8 December 1982), reprinted in 1 Iran-U.S. C.T.R. 394, 395.

3. Unfortunately the Tribunal has persisted in following both precedents. It has permitted a "clarification" to substitute as claimant the parent corporation to which the named Claimant had assigned its claim before filing its Statement of Claim. At the same time it has rejected as "an attempt to file a new claim after the deadline" the identification of the ultimate United States national sole owner where the Statement of Claim was filed in the name of "Claimant, Universal Enterprise, Ltd. ('UEL') [which] is a corporation organized and existing under the laws of the Cayman Islands" and "also stated that 'UEL's capital stock is more than 50% owned by individuals who are United States citizens." Compare First Travel Corporation and Islamic Republic of Iran, Award No. 206-34-1 at 9 (3 December 1985), with Universal Enterprises, Ltd. and National Iranian Oil Company, Decision No. DEC 38-246-2 at 1-3 (23 July 1985), reprinted in 8 Iran-U.S. C.T.R. 368, 368-69.

4. The present Award is suitably consistent in its inconsistency. Its ruling that the Claimant may not now amend its Statement of Claim to substitute for itself the real party in interest, i.e., its former owner to whom it

assigned its claim prior to filing the Statement of Claim, is directly contrary to the Tribunal's previous award in First Travel Corporation, supra. The result may fairly be described as Dickensian: A valid claim over which we have jurisdiction cannot be considered because it is not advanced by the true owner, but that true owner is barred from stepping into the Claimant's shoes. I submit that in logic and justice the Award cannot be right on both points.

I.

5. I believe that the rather erratic record of the Tribunal as exemplified in this Award is due to subtle and enduring confusion of three familiar but quite distinct concepts: jurisdiction, admissibility and locus standi. It is my hope that the dissection of the present Award which follows may contribute to clearing up this confusion and lead the Tribunal in the future to a more consistently correct practice.

II.

6. The Award declines the proffered amendment principally on the ground that it "would amount to accepting the substitution of a proper party, Mr. Harrington, for an improper party, the Claimant, after the jurisdictional deadline prescribed by the Claims Settlement Declaration." (Para. 24.) In other words, rejection is justified inasmuch as Article 20 of the Tribunal Rules forbids any amendment made "in such a manner that . . . [the amended claim] falls outside the jurisdiction of" the Tribunal. The "deadline" prescribed by Article III(4) of the Claims Settlement Declaration is, however, not "jurisdictional;"[1] it is in the

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[1]It is true that a Chamber of the Tribunal recently has
(Footnote Continued)

nature of a municipal statute of limitations or prescription, and thus poses a bar to admissibility.

7. The Claims Settlement Declaration's jurisdictional provisions, in Article II, focus on claims as opposed to parties. It is indisputably correct that the Tribunal has jurisdiction to consider the Claim here whether asserted by Claimant or by the proposed substitute. Since the assignment in question concededly was between United States nationals (Award, para. 20) the requisite continuity of nationality is present. It is clear that the Claim arose out of a sales contract prior to 19 January 1981. The only contested jurisdictional point, i.e., whether the Iranian contracting party, Iran Carton, Inc. ("Iran Carton"), was "controlled" by Iran within the meaning of Article VII(3), is, as I see it, easily resolved in favor of exercising jurisdiction.[2] In any event, the Award does not find

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(Footnote Continued)
referred to this time limit as "jurisdictional." St. Regis Paper Company and Islamic Republic of Iran, Award No. 291-10706-1 at para. 31 (29 January 1987). The Full Tribunal, however, has more circumspectly referred to it only as "the treaty deadline." In re Raymond International (U.K.) Ltd., supra, at 2, reprinted in 1 Iran-U.S. C.T.R. at 395.

[2]The Respondent admits that Iran Carton was placed under the control of "provisional" government-appointed managers in 1979, and has not denied Claimant's allegation that those managers are still in place. The imposition of provisional managers whose tenure turns out to be permanent is a clear indication of control. SEDCO, Inc. and National Iranian Oil Co., Award No. ITL 55-129-3 at 40-41 (28 October 1985); Cal-Maine Foods, Inc. and Islamic Republic of Iran, Award No. 133-340-3 at 10 (11 June 1984), reprinted in 6 Iran-U.S. C.T.R. 52, 58-59; Raygo Wagner Equipment Co. and Star Line Iran Co., Award No. 20-17-3 at 6 (15 December 1982), reprinted in 1 Iran-U.S. C.T.R. 411, 413. Indeed, Iran Carton's letterhead concededly now bears the emblem of the Islamic Republic of Iran, with the legend "under the control of the Organization of National Industries of Iran," an agency of the Iranian Government. In addition, in a settlement agreement in Case No. 85 reached between the
(Footnote Continued)

otherwise. Thus whatever problem here presented is not one of jurisdiction.

8. This claim cannot suddenly fall outside our jurisdiction if the assignee is substituted for the assignor by an amendment occurring after the 19 January 1982 claims filing deadline. To find otherwise would shift our jurisdictional focus from claims to parties and deny that for our purposes a claim has an existence separate from its connection to any particular owner.

9. The 19 January 1982 "deadline prescribed by the Claims Settlement Declaration" to which the Award refers (para. 24) is not contained in the Claims Settlement Declaration's jurisdictional provisions (Article II). Rather it appears in Article III, which deals with the composition and procedures of the Tribunal. Specifically, paragraph 4 provides:

> No claim may be filed with the Tribunal more than one year after the entry into force of this Agreement or six months after the date the President is appointed, whichever is the later. These deadlines do not apply to the procedures contemplated by Paragraphs 16 and 17 of the Declaration of the Government of Algeria of January 19, 1981.

Thus the filing deadline is not a jurisdictional element; like municipal statutes of limitations it merely provides a prescriptive bar to what in international practice is called the admissibility of a claim.[3] See Anaconda-Iran, Inc. and

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(Footnote Continued)
United States Export-Import Bank and Bank Markazi, Iran Carton was listed among companies which Iran did not deny were "controlled entities" and as to the debts of which it agreed to make settlement. Accordingly, I would think Iran Carton's status as a controlled entity beyond serious question.

[3]Van Dijk in Judicial Review of Governmental Action and the Requirement of an Interest to Sue 14, 17 (1980) confirms
(Footnote Continued)

Islamic Republic of Iran, Award No. ITL 65-167-3 at para. 112 (10 December 1986) (untimely filing of counterclaim "concerns less the issue of jurisdiction than . . . admissibility").

10. Paragraph 2 of the same Article III that in paragraph 4 sets the filing deadline requires that the Tribunal "shall conduct" its business in accordance with the UNCITRAL arbitration rules. The only exception is that the States Parties or the Tribunal may modify these rules "to assure that this Agreement can be carried out." In fact, Article 20 of the Tribunal Rules is taken virtually verbatim from the UNCITRAL rules. It expressly prohibits amendments which would assert a claim beyond our jurisdiction but says nothing about amendments affecting issues of admissibility. The principle of inclusio unius est exclusio alterius strongly suggests that amendments thus are appropriate in the latter case.[4] Had the Tribunal at any time found that mandate inconsistent with that of Article III(4) it could have modified it. The absence of any such revision suggests that amendment here pursuant to Article 20 would not, as the Award assumes, run counter to Article III(4) of the Claims Settlement Declaration.[5] See paras. 13-16, infra.

(Footnote Continued)
that "[where] the applicant has exceeded a given time limit" his "application is not admissible." (Emphasis added.)

[4]This conclusion is in accord with the principle that a tribunal "can generally be expected to interpret the requirements as to its jursdiction in a more restrictive way than the requirements as to the admissibility of the application." Van Dijk, supra, at 16.

[5]St. Regis Paper Company and Islamic Republic of Iran, supra, on which the Tribunal relies (para. 24), is in any event distinguishable. In that case the identity of the American party to the contract at issue was not revealed in the Statement of Claim.

11. The Tribunal has invoked none of the other bases on which Article 20 permits rejection of an amendment.[6] That

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[6]Absent a jurisdictional problem Article 20 grants a party the broad right to "amend or supplement his claim or defence" unless the Tribunal finds that the proposed amendment would be inappropriate "having regard to the delay in making it or prejudice to the other party" or "other circumstances." The Tribunal elsewhere has referred to "other circumstances" as meaning "concrete circumstances." International Schools Services, Inc. and Islamic Republic of Iran, Award No. ITL 57-123-1 at 10 (30 January 1986). Under the principle of ejusdem generis such circumstances should be of a character similar to prejudice or delay (which itself is a cause of prejudice). (The applicability of this principle to interpretation of international agreements has been questioned. See Dissenting Opinion of Howard M. Holtzmann in Grimm and Islamic Republic of Iran, Award No. 25-71-1 at 9-10 (22 February 1983), reprinted in 2 Iran-U.S. C.T.R. 78, 86; McNair, "Application of the Ejusdem Generis Rule in International Law," [1924] Brit. Y.B. Int'l Law 181. Its critics acknowledge, however, its relevance in construing "an agreement made only between two parties," McNair, supra, at 182, and possibly "when very specific categories are followed by a highly vague and general phrase such as 'or otherwise,'" Dissenting Opinion of Howard M. Holtzmann in Grimm, supra, at 86.) Indeed, the Tribunal recently has described Article 20 as requiring that amendments be accepted "unless delay, prejudice, or loss of jurisdiction would result." St. Regis Paper Company and Islamic Republic of Iran, supra, at para. 24.

Any rejection on grounds of delay or prejudice would have been unjustified. The Claim was de facto amended to include the assignee at the first opportunity. Following the United States' filing of a three-page Statement of Claim in 1982 the first pleading submitted was Claimant's Supplemental Statement of Claim filed 27 July 1984. It attached as Exhibit 8H (in the Farsi text only) a copy of the assignment. While Claimant certainly did not highlight the assignment, it in no way escaped Respondent's notice. The Respondent's very first responsive pleading, its Statement of Defense filed 2 September 1985, expressly argued that due to the assignment the Claimant no longer owned the Claim and thus could not prevail. Thus issue was joined on this point more than a year prior to the Hearing and was discussed in each subsequent pleading. See Anaconda-Iran, Inc. and Islamic Republic of Iran, Award No. ITL 65-167-3 at paras. 116-118 (10 December 1986) (no prejudice found where issue was joined more than one year before the Hearing).

Article's presumption in favor of amendments therefore constitutes here an unavoidable mandate which the Tribunal was bound to honor. See International Schools Services, Inc. and Islamic Republic of Iran, Award No. ITL 57-123-1 at 10 (30 January 1986) (Article 20 "affords wide latitude to a party who seeks to amend a claim, and the Tribunal's practice is in accord with this liberal approach"); Anaconda-Iran, Inc. and Islamic Republic of Iran, Award No. ITL 65-167-3 at para. 115 (10 December 1986) (adding a counterclaim); Fedders Corporation and Loristan Refrigeration Industrial Corporation, Decision No. DEC 51-250-3 at 2 (28 October 1986) (adding a new respondent); Thomas Earl Payne and Islamic Republic of Iran, Award No. 245-335-2 at para. 9 (8 August 1986) (amendment allowed absent prejudice); Questech, Inc. and Ministry of National Defence of the Islamic Republic of Iran, Award No. 191-59-1 at 28 (25 September 1985) (same); R.J. Reynolds Tobacco Co. and Islamic Republic of Iran, Award No. 145-35-3 at 12 (6 August 1984), reprinted in 7 Iran-U.S. C.T.R. 181, 187-88 (considering, in dictum, the possibility of adding a new claimant).

12. It is most significant that this very Chamber of the Tribunal in American International Group, Inc. and Islamic Republic of Iran, Award No. 93-2-3 at 9 (19 December 1983), reprinted in 4 Iran-U.S. C.T.R. 96, 101, permitted the filing of an amended Statement of Claim two months after the Hearing which substituted a new claimant for the original one in respect of two-sevenths of the Claim. The Tribunal found that since the "amendment does not change the amount sought or the factual or legal basis of the claim and cannot be said to prejudice the Respondent" disallowance of it would "amount to a degree of formalism which is hard to

justify."[7] Thus the Tribunal should have had no doubt about the admissibility of the amendment proposed here. I regret that unjustified formalism should nonetheless belatedly triumph in this Award.[8]

III.

13. The Award also rejects the amendment on grounds not permitted by Article 20. The omission of such bases from Article 20 alone precludes resort to them for this purpose. Quite apart from that they are devoid of merit.

14. The first such ground asserted (para. 24) is that "it necessarily follows from [the finding that Claimant itself lacks locus standi] that the Claimant [cannot] be heard . . . on a request to amend ['the claim']." The correctness of this pronunciamento is far from self-evident. It is not dictated by, or to be inferred from, the Algiers Accords or our Rules. Indeed, the special nature of the Tribunal, which is established "to terminate all litigation as between the government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration," General

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[7]Attempts to distinguish this case on the ground that it "permitted the addition of" a party, Universal Enterprises, Ltd. and Islamic Republic of Iran, supra, para. 5.a., n.3, reprinted in 8 Iran-U.S. C.T.R. at 369, or "merely added a Claimant . . . and transferred part of the claim to it," St. Regis Paper Company and Islamic Republic of Iran, supra, para. 30, is a distinction without a difference. As to its two-sevenths of the Claim the "added" claimant, itself an American company, had always been the only entity entitled to assert the claim before the Tribunal.

[8]It is all the more regrettable in light of the more recent decision by this Chamber (in its present composition) to permit the addition of a wholly new respondent to a claim long after 19 January 1982. Fedders Corporation and Loristan Refrigeration Industrial Corporation, supra.

Declaration, General Principle B, requires us, within the margins of our powers, to be welcoming of claims rather than hostile or even indifferent.[9] Doubtless this is why Article 20 mandates acceptance of amendments such as that offered here. Cf. Vienna Convention on the Law of Treaties, Article 31, para. 1 ("A Treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.") (quoted in United States and Islamic Republic of Iran, DEC. 37-A17-FT at para. 9 n.7 (18 June 1985)).

15. Furthermore, such a conclusion is directly contrary to the familiar jurisprudence of at least one of the two States Parties, which supplies a relevant backdrop to interpretation of the Accords. Rule 17 of the United States Federal Rules of Civil Procedure states as follows:

> Real Party in Interest. . . . [N]o action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for . . . joinder or substitution of, the real party in interest; and such . . . joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(Emphasis added.)[10] In practice such rules are applied to cases precisely like the present one to permit the

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[9]The Tribunal has held that the General Principles stated in the General Declaration "constitute an integral part of the 'commitments' made by the two Governments" and are not merely "a preamble" devoid of "operative provisions." Islamic Republic of Iran and United States of America, Award No. ITL 63-A15(I:G)-FT at paras. 16, 18 (20 August 1986).

[10]In addition, Rule 15 of the Federal Rules of Civil Procedure states as follows:

(Footnote Continued)

substitution of the correct plaintiff. For example, in Staren v. American National Bank and Trust Company of Chicago, 529 F.2d 1257, 1263 (7th Cir. 1976), the shareholders of a company brought a suit alleging securities laws violations. Following objections by the defendant that the corporation rather than its shareholders should have been the proper plaintiff the plaintiffs moved to amend the complaint to substitute the corporation as the plaintiff. Even though the very premise of the motion was the shareholders' lack of locus standi to pursue the lawsuit the Court of Appeals allowed them to make the amendment.[11] The reductio ad absurdum of this ruling of the Award is that no person mistakenly coming before a tribunal would have the opportunity to turn it in the right direction.

16. The second ground extraneous to Article 20 on which the Award (para. 24) relies to reject amendment is that Claimant "has not evidenced any legal basis on which it could pretend to have the right to act on behalf of a third party [Mr. Harrington] in order to submit a claim in the name of the latter." This, of course, is irrelevant where an amendment substituting a claimant is the issue. In any event it is simply incorrect. The laws of many constituent States of the United States, including Indiana, the State in which

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(Footnote Continued)

> Relation Back of Amendments. Whenever the claim or defense asserted in [an] amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

[11]Significantly, the Court also rejected the contention that the amended complaint was "a new and separate action" that would have been "barred by the applicable statute of limitations," and held that the amendment related back to the time of the original filing. The court noted that the amended complaint did not alter the nature of the suit and that the change was a "merely formal" one which "in no way alter[ed] the known facts upon which the action is based."

this assignment was made, allow or even compel the assignor to be the named claimant in a lawsuit brought under state law. See 4 Corbin on Contracts 577, 581, 625 (assignor's name can "be used as the nominal plaintiff" and in some jurisdictions "an assignee must sue in the name of the assignor, in the absence of assent by the obligor to the assignment"). The Award inexplicably ignores this point while apparently acknowledging the relevance of United States law.[12] Beyond that, the fact that following the assignment, and well before any issue regarding it was raised here, the assignor filed the Claim here and the assignee did not is itself evidence of agreement between the two that the former was empowered to proceed here for the benefit of the latter.[13]

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[12]It deals only (paras. 21 and 22) with the related but less relevant principle of applicable United States law that an obligor who has assigned his obligation is still liable to his original obligee absent notice to him of assignment to a new obligee.

[13]This alternatively is important proof that the assignor intended to assign only the proceeds of the Claim and not also legal title to it. I personally think that the Award too easily finds that the assignment bars the claim. The assignment in question is a short letter given on 4 October 1980 by Mr. Floyd Kehl, who had recently purchased Claimant, Harrington and Associates, Inc., from Mr. George F. Harrington, its former owner, to Mr. Harrington. The relevant sentence reads as follows:

> I, hereby, release to George F. Harrington all claims on any outstanding Invoices to Iran Carton and Benefits thereof.

The Award decides (para. 19) that "the effect of the Assignment was not a mere assignment the benefits, but also of the claims themselves."

Both Mr. Kehl and Mr. Harrington testified, however, that the document was an informal letter prepared without assistance of counsel and was intended only "to transfer, on behalf of Harrington & Associates the right to receive the proceeds of any claim asserted by the Company against Iran Carton." In other words, Harrington and Associates, Inc.

(Footnote Continued)

IV.

17. The Award's insufficiently considered approach to the issue before it is all the more disturbing because of the potential consequences.[14]

18. While refusing to entertain the Claim here the Award nonetheless leaves it in some potential doubt as to whether either the Claimant (assignor) or his assignee can now proceed on the Claim in a municipal tribunal as the Accords foresee. It seems clear that when we determine we have no jurisdiction over a claim it may then be pursued by the

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(Footnote Continued)
retained ownership of the claim and the right to pursue the claim, as well as the duty to respond to counterclaims, while Mr. Harrington was to receive the proceeds of any eventual recovery. Under the Tribunal's precedents, retention of such legal ownership entitles a party to present the claim here. See Foremost Tehran, Inc. and Islamic Republic of Iran, Award No. 220-37/231-1 at 15 (11 April 1986); Phelps Dodge Corp. and Islamic Republic of Iran, Award No. 217-99-2 at para. 15 (19 March 1986). I think that, given the informal nature of the document, the Tribunal would have been justified in accepting the explanation of the parties to the assignment as to its purpose.

[14] It is noteworthy as well that a clearly meritorious claim is denied timely adjudication here. Claimant's case on the merits clearly is correct. The claim is largely for the remaining 10% of the purchase price of goods admittedly received. Iran Carton specifically admitted the debt it owed at the time and told Claimant that it would make payment as soon as it received Central Bank approval for the necessary currency exchange. No payment was made, however. The current justification proffered for non-payment, i.e., that the equipment was never installed, was not raised until these proceedings. This defense can easily be rejected, both because Claimant was not the entity responsible for installation (see para. 12), and in any case, even if installation were a contractual prerequisite to payment, an issue which is not entirely resolvable on the record, this was made impossible by force majeure and by Iran Carton's own actions. The remaining minor portion of the claim is for consulting fees which were provided pursuant to the contract and duly invoiced, but not paid. Accordingly, I would have awarded Claimant the amount of the Claim.

claimant before a municipal tribunal. See, e.g., 31 C.F.R. § 535.222(e). When a claimant either prevails or loses on the merits here he has had his "day in court" and need go no further. See, e.g., 31 C.F.R. § 535.222(f). But what of the claimant who neither succeeds nor fails and whose claim is not rejected in haec verba for lack of jurisdiction? The answer clearly should be that if this Tribunal has refused to hear Claimant and has declined also to decide the Claim the Claimant is free to proceed municipally. Logically the same should apply in respect of the assignee as well. Any other result would leave them in a "no man's land" and thus be inconsistent with the scheme of the Algiers Accords whereby claims such as that presented here are to be heard here if possible but when that is not possible they are to remain as equally viable claims in municipal tribunals. Allowance of the amendment would have precluded the question from ever arising even as a hypothesis.

V.

19. I do concur in dismissal of the counterclaim but my grounds necessarily are different. Reluctant perhaps to entertain Respondent's $5,393,957 in counterclaims after dismissing as "inadmissible" Claimant's meritorious demand for $36,735.39 (and rejecting an amendment which would render it admissible), the Tribunal proceeds to hold, as I read it, that where a jurisdictionally sound claim is inadmissible a jurisdictionally sound counterclaim is likewise inadmissible. I express no opinion on the very pertinent issue of whether this is a correct application of the Claims Settlement Declaration and our Rules.

20. Since I would have admitted the amended Claim I would have dismissed the counterclaims partly on the merits and partly on jurisdictional grounds. Those counterclaims allege (1) undescribed defects in or damages to the goods delivered by Claimant to Iran Carton, and (2) alleged

failure of installation by another (albeit affiliated) company pursuant to a separate contract. As to the first category, Respondent has entirely failed to submit any evidence of the claimed losses and it should be rejected on the merits. As to the second portion, there is reason to believe that we do not have jurisdiction over counterclaims arising out of the separate installation contract with a different company. See R.J. Reynolds Tobacco Co. and Islamic Republic of Iran, Award No. 145-35-3 (6 August 1984), reprinted in 7 U.S.-Iran C.T.R. 181; Morrison-Knudsen Pacific Ltd. and Ministry of Roads and Transportation, Award No. 143-127-3 (13 July 1984), reprinted in 7 Iran-U.S. C.T.R. 54. Even were our jurisdiction clear, however, given the pendency here of a separate claim on that very contract by that other company (see Harrington Manufacturing Corporation and Islamic Republic of Iran, Case. No. 10713 (Chamber Two)) I believe that wise exercise of the Tribunal's procedural discretion would dictate our dismissing the counterclaims here without prejudice to their being asserted in that other case.

Charles N. Brower

Charles N. Brower