IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

210

213-210

ORIGINAL DOCUMENTS IN SAFE

Case No. 213 Date of filing: 7 Nov '95

** AWARD - Type of Award Final

- Date of Award 7 Nov '95

112 pages in English — pages in Farsi

** DECISION - Date of Decision _____

_____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

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- Date _____

_____ pages in English _____ pages in Farsi

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASES NOS. 213 and 215
CHAMBER THREE
AWARD NO. 567-213/215-3

DADRAS INTERNATIONAL, and
PER-AM CONSTRUCTION CORPORATION,
Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN, and
TEHRAN REDEVELOPMENT COMPANY,
Respondents.

AWARD

Appearances

First Hearing

For the Claimants:

Prof. Aly S. Dadras,
Claimant;
Mr. Gordon W. Paulsen,
Mr. John C. Koster,
Counsel;
Mr. George K. Duvé Sr.,
Witness;
Mr. Theodore Liebman,
Rebuttal Witness.

For the Respondents:

Mr. Ali H. Nobari,
Agent of the Government of the Islamic Republic of Iran;
Dr. Bijan Izadi,
Deputy Agent of the Government of the Islamic Republic of Iran;
Dr. Nemat Mokhtari,
Mr. Nozar Dabiran,
Legal Advisors to the Agent;
Mr. Zabihollah Alavi Harati,
Legal Advisor to TRC;
Mr. Mohammad Jazayeri,
Attorney for TRC;
Mr. Alireza Nazem Bokaee,
Technical Representative of TRC;
Mr. Keyvan Ramian,
Witness;
Mr. Mirsadredin Amirkhalkhali,
Mr. Mohammad Taghi Entezari,
Mr. Mohammad Habibi,
Expert Witnesses;
Mr. Hashem Atifeh Rad,
Rebuttal Witness.

Also present:

Mr. D. Stephen Mathias,
Agent of the Government of the United States of America;
Ms. Mary Catherine Malin,
Deputy Agent of the Government of the United States of America.

Second Hearing

For the Claimants:

Prof. Aly S. Dadras,
Claimant;
Mr. Gordon W. Paulsen,
Mr. John C. Koster,
Counsel.

For the Respondents:

Mr. Ali H. Nobari,
Agent of the Government of the Islamic Republic of Iran;
Mr. Nozar Dabiran,
Legal Advisor to the Agent;
Mr. Alireza Nazem Bokaee,
Technical Representative of TRC;
Mr. Mohammad Jazayeri,
Attorney for TRC;
Mr. Rahman Golzar Shabestari,
Witness;
Mr. Gerald E. Gilbert,
Attorney for Witness.

Also present:

Mr. D. Stephen Mathias,
Agent of the Government of the United States of America;
Ms. Mary Catherine Malin,
Deputy Agent of the Government of the United States of America.

I. INTRODUCTION

1. The Claimant in Case No. 213 is DADRAS INTERNATIONAL, the trade name used by Professor Aly Shahidzadeh Dadras, an architect who possesses dual Iran-United States nationality. The Claimant in Case No. 215 is PER-AM CONSTRUCTION CORPORATION ("Per-Am"), a company incorporated under the laws of the State of New York, United States of America, in which Professor Dadras is the principal shareholder. The Respondents in Cases Nos. 213 and 215 are the TEHRAN REDEVELOPMENT CORPORATION ("TRC") and THE ISLAMIC REPUBLIC OF IRAN ("IRI").

2. At all times relevant to these Cases, Professor Dadras held the exclusive license in Iran for the Dyna-Frame Celdex System, a proprietary technique for the construction of the superstructure of buildings that involves the use of prefabricated structural components. On 9 September 1978 Dadras International, Per-Am and Kan Consulting Engineers (a company in Tehran associated with Dadras International) allegedly entered into a construction contract ("the Contract") with TRC for the construction of the superstructure of a number of buildings comprising the North Shahyad Development Project ("the Project"), a large housing complex on the outskirts of Tehran. Pursuant to this Contract, Dadras International was to receive payment for certain work it had already performed for TRC, that being the completion of structural calculations and alterations to pre-existing architectural drawings for the Project prepared by another architectural firm, Housing and Urban Services International, Inc. ("HAUS").[1] Dadras International was to receive an additional fee for supervising the construction. Per-Am was to be responsible for the actual construction under the Contract and was to be paid for that work.

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[1] HAUS brought a separate claim before this Tribunal based upon its performance of services in connection with the North Shahyad Project. See Housing and Urban Services International, Inc. and The Government of the Islamic Republic of Iran, et al., Award No. 201-174-1 (22 November 1985), reprinted in 9 Iran-U.S. C.T.R. 313 [hereinafter "HAUS"].

3. The Claimants allege that TRC is an entity controlled by the Government of Iran; that TRC failed to pay Dadras International for the work it performed and halted work on the North Shahyad Project before construction began; and that the Contract was consequently breached by TRC. In the alternative, the Claimants seek damages for the alleged tortious interference with the Contract by the Respondent IRI.

4. The Claimant in Case No. 213 (Dadras International) claims the sum of U.S.$3,235,756.81, plus interest and costs. Of this amount, U.S.$3,109,436.00 is claimed for work performed prior to the execution of the Contract, and U.S.$126,320.81 is claimed for construction supervision fees provided for in the Contract, based on the amount of work that would have been performed by 19 January 1981 (the jurisdictional cut-off date of the Tribunal) had work on the Project commenced as scheduled.

5. The Claimant in Case No. 215 (Per-Am) claims U.S.$3,112,880.00 as lost profits under the Contract. Interest and costs are also claimed.

6. The Respondents deny liability. They raise a number of jurisdictional and other preliminary objections, including the following: that Dadras International is not a legal entity; that Prof. Dadras's dominant and effective nationality was not that of the United States; that Per-Am was not a United States national; that Per-Am had been dissolved; that the Tribunal has no jurisdiction over TRC; that TRC is not the proper Respondent; that the Tribunal lacks jurisdiction because the Contract contains a forum selection clause; that Kan Consulting Engineers is an indispensable party to these proceedings; and that the Contract is not binding because it was signed by only one of TRC's directors and because the company's seal does not appear on the Contract.

7. The Respondents further contend that the Contract presented to the Tribunal by the Claimants is a forgery, that various pre-contractual documents submitted by the Claimants are likewise

forged and that the documents presented to the Tribunal by Dadras International as its completed work product are merely copies of similar documents created by HAUS and rejected by TRC. The Respondents deny that there is any trace of documents in the files of TRC pertaining to contractual negotiations between TRC and the Claimants. They ask that the Cases be dismissed and that they be awarded costs of arbitration.

II. PROCEDURAL HISTORY

A. Background

8. On 11 January 1982 the Claimants filed their Statements of Claim. On 9 August 1982 the Respondents filed their Statements of Defence, to which the Claimants replied on 13 August 1986, and to which TRC filed a response on 8 January 1987.[2]

9. The Claimants filed their Memorials on the merits and an additional affidavit on the issue of nationality on 15 April 1987. The Agent of the IRI subsequently requested that the question of nationality be considered as a preliminary issue.

10. By Order of 12 June 1987 the Tribunal noted that the Full Tribunal in Case No. A18 had held "that it has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States," and noted further that the Claimants had submitted their memorials and evidence on all issues including nationality on 15 April 1987. The Tribunal ordered the Claimants to inform the Tribunal by 10 July 1987 whether they intended to submit any further evidence on the question of their dominant and effective nationality, and to submit such evidence if they so intended. On 6 July 1987 the

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[2] Due to their factual similarities, Cases Nos. 213 and 215 have been treated together by the Parties and the Tribunal.

Claimants informed the Tribunal that they had no more information on nationality to file at that time.

11. By Order of 30 November 1990 the Tribunal joined the issue of the dominant and effective nationality of the Claimants to its consideration of other jurisdictional issues and the merits, and it set a schedule for further submissions.

12. On 29 November 1991 the Respondents filed a memorial on the nationality of Dadras International, to which the Claimants responded on 29 January 1992, and to which the Respondents replied on 1 October 1992. Also on 29 November 1991 the Respondents filed their memorials on jurisdictional issues and the merits. On 31 March 1992 the Parties were notified that a Hearing would take place on 28 January 1993. By Order of 3 December 1992 the Hearing was extended to two days, namely 28 and 29 January 1993.

13. The Claimants filed their reply memorials on 29 January 1992 and the Respondents filed their rebuttal memorials on 1 October 1992.

14. On 30 November 1992 the Respondents filed a request for examination of the originals of certain of the Claimants' documents. The Claimants did not object, and the Tribunal accordingly ordered that the inspection of documents take place at the Tribunal's registry three days before the Hearing.

15. Witness lists were filed by the Respondents on 30 November 1992 and by the Claimants on 30 December 1992. A facsimile from the Claimants listing their witnesses had, however, been received by the Tribunal on 24 December 1992.

16. On 11 December 1992 the Claimants objected to the inclusion in TRC's rebuttal brief of an extract from the testimony of a Mr. Rahman Golzar Shabestari at the hearing held

before the Tribunal in Case No. 812.[3] The Claimants requested that they be furnished with a copy of the complete testimony of Mr. Golzar in Case No. 812 in order to refute the conclusions drawn by the Respondents from the extract. By Order of 15 December 1992, the Tribunal decided that, in view of the confidential nature of the Tribunal's hearings, the transcript excerpt in question would not be admitted into evidence unless the Respondents submitted to the Tribunal no later than 30 December 1992 a written declaration by the Claimant in Case No. 812 agreeing to the release of Mr. Golzar's entire hearing testimony. No such declaration was filed by the Respondents, and the extract was not admitted into evidence.

17. By facsimile of 7 January 1993 (subsequently filed on 11 January 1993) the Claimants informed the Tribunal that one of their designated witnesses, Mr. John Paul Osborn, would not be able to testify at the Hearing, although he would provide an affidavit. The Claimants further notified the Tribunal of a substitute witness, Mr. Theodore Liebman, and submitted an affidavit by him. On 8 January 1993 the Respondents objected to the Claimants' original list of witnesses on the ground that it had not been filed thirty days before the Hearing, as required by the Tribunal Rules; to the substitution of Mr. Liebman for Mr. Osborn; and to the late filing of the affidavit by Mr. Liebman.

18. By Order of 13 January 1993, the Tribunal denied the Respondents' request that the Claimants' original list of witnesses be rejected. Noting that the English version of the Claimants' list of witnesses had been received by the Tribunal in facsimile form and communicated to the Respondents on 24 December 1992, and that the same list was subsequently filed in both English and Persian on 30 December 1992, the Tribunal decided that the witnesses identified on that list should not be barred from testifying at the Hearing.

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[3] See Abrahim Rahman Golshani and The Government of the Islamic Republic of Iran, Award No. 546-812-3 (2 March 1993), reprinted in __ Iran-U.S. C.T.R. __ [hereinafter "Golshani"].

19. A separate Order of the same date informed the Parties that the substitution of Mr. Liebman for Mr. Osborn as a witness did not comply with Article 25, paragraph 2 of the Tribunal Rules, because Mr. Liebman's testimony appeared to cover a broader range of subjects than Mr. Osborn's would have. The Tribunal further determined that the Liebman affidavit could not be admitted into evidence at that late stage of the proceedings.

20. By facsimile dated 14 January 1993, the Claimants objected to the Tribunal's ruling denying permission to substitute Mr. Liebman for Mr. Osborn and gave notice under Article 25, note 2 of the Tribunal Rules that to the extent matters were placed in issue by the Respondents to which Mr. Liebman could provide relevant rebuttal testimony, he would present such testimony at the Hearing.

21. On 19 January 1993 the Respondents noted that the Claimants had designated Messrs. Duvé and Perry as witnesses and that these individuals had not previously presented affidavits to the Tribunal. They therefore designated Mr. Hashem Atifeh Rad as a potential rebuttal witness.

22. By Order of 22 January 1993 the Tribunal informed the Parties that Prof. Dadras would be allowed to present evidence as a Party witness, and that both Mr. Liebman and Mr. Rad would be allowed to present evidence as rebuttal witnesses to the extent justified by the Respondents' and Claimants' presentations.

23. A Hearing was held in these Cases on 28 and 29 January 1993. The Respondents' primary defense at the Hearing was that the Contract relied upon by the Claimants was forged.

B. The Respondents' Post-Hearing Submission

24. More than one year after the Hearing, on 1 February 1994, when the Tribunal had reached an advanced stage of its deliberations in these Cases, the Respondents filed a letter by

the Agent of the IRI. Attached to the letter was an affidavit from Mr. Rahman Golzar Shabestari dated 31 January 1994 (the "Golzar affidavit"). Mr. Golzar was the Managing Director of TRC at the time the Contract at issue was allegedly signed and was himself the alleged signatory of the Contract on behalf of TRC. The Golzar affidavit alleged that although TRC had entered into certain cost-free preliminary agreements with the Claimants, no final contract was ever concluded. The covering letter by the Agent of the IRI explained the circumstances under which the affidavit was obtained (see paras. 32 to 34, infra) and requested that it be admitted into evidence. By Order of 4 February 1994 the Tribunal solicited the comments of the Claimants on the Respondents' submission.

25. On 18 February 1994 the Claimants filed their comments on the Golzar affidavit, with which they included an affidavit by their handwriting expert, Mr. John Paul Osborn. The same affidavit had been proffered by the Claimants at the Hearing, but had been excluded from evidence by the Tribunal on the ground that it was not timely filed. The Claimants asserted in their comments that the "new" evidence from Mr. Golzar was untimely and untrustworthy, and that accepting the affidavit amounted to re-opening the case. The Claimants pointed to Mr. Golzar's "known mendacity," as evinced in the Golshani case,[4] and speculated as to his possible questionable motivations for submitting the affidavit. The Claimants argued that the affidavit should be excluded from evidence by the Tribunal.

26. By Order dated 23 February 1994, the Tribunal decided to admit the Golzar affidavit into evidence, see para. 36, infra. The Tribunal did not explain the underlying reasons for its decision at that time, however, and proceeds to do so now.

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[4] Golshani, Award No. 546-812-3. In Golshani, the Tribunal concluded that Mr. Golzar's testimony in that case had been unpersuasive in several respects.

27. The Tribunal Rules grant considerable discretion to the Tribunal to admit or exclude written submissions. This discretion includes the power to accept unauthorized post-Hearing submissions, as derived from Article 15, paragraph 1; Article 22; Article 25, paragraph 6; and Article 29, paragraph 2 of the Tribunal Rules.

28. Tribunal precedent is, however, strongly against the admission into evidence of unauthorized late-filed documents. The Tribunal has expressed a particular aversion to admitting documents that are submitted not only after filing deadlines, but also after the Hearing itself. The most extensive treatment of this issue is to be found in Harris International Telecommunications, Inc. and The Islamic Republic of Iran, et al., Award No. 323-409-1 (2 November 1987), reprinted in 17 Iran-U.S. C.T.R. 31, 45-50.

29. Harris emphasizes that in deciding whether to admit a late submission, it is important that the Tribunal treat the parties equally and fairly, bearing in mind that accepting late-filed documents from one party can result in prejudice to the other. A further consideration is the "orderly conduct of the proceedings."[5] In applying these principles to the facts of a given case, the Tribunal should consider the "character and contents of late-filed documents and the length and cause of the delay."[6] Late-filed submissions containing new facts and evidence "are the most likely to cause prejudice to the other Party and to disrupt the arbitral process if filed late."[7]

30. Thus the considerations that are generally relevant when deciding whether to admit late-filed documents are the possibility of prejudice, the equality of treatment of the

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[5] Harris, 17 Iran-U.S. C.T.R. at 46-47.

[6] Id. at 47.

[7] Id.

Parties, the disruption of the arbitral process caused by the delay and the reason for the delay.

31. Applying those factors to the present Cases, the Tribunal first notes that the Golzar affidavit clearly contained new facts and evidence, i.e., an assertion by an alleged signatory to the Contract that he did not in fact sign it.

32. The explanation given by the Agent of Iran for the length and cause of the delay was that because Mr. Golzar was "Iran's adversary" in the Golshani case, Iran "had reasons to believe that he would not cooperate with it to explain certain issues, namely his alleged signing of . . . [the] contract dated 9 September 1978 raised in Cases Nos. 213 and 215." However, Iran assertedly sought his assistance at "the first possible opportunity" (i.e., January 1994) when "an official of the Bureau of International Legal Services of Iran (BILS) happened to meet [Mr. Golzar] in Paris."

33. The Tribunal remains uneasy about this explanation, which seems to rest on a series of fortuitous coincidences. The explanation was furthermore contradicted by Mr. Golzar's subsequent testimony that he had been contacted by telephone by a BILS official and that no chance meeting had occurred.

34. The Agent of Iran further contended in his letter that Mr. Golzar's testimony was obtained "at the first possible opportunity." In this regard, it should be noted that the Statements of Claim in these Cases were filed on 11 January 1982. Attached to the Statements of Claim were copies of the 9 September 1978 Contract relied upon by the Claimants. Thus the Respondents had been aware that the Contract was the basis of the Claims in these Cases for a full 12 years before the Golzar affidavit was submitted. During that time, there would appear to have been ample opportunity for consultation with Mr. Golzar, either through the regular contact that the Respondents had with him throughout the decade of the 1980s due to certain litigation in the French courts detailed in Golshani (which was still

ongoing at the time of the "chance meeting" in Paris),[8] or by other means.[9] In addition, even if Mr. Golzar's interest in the outcome of the Golshani case had constituted an impediment to obtaining his testimony,[10] which the Tribunal does not accept, the Respondents offer no explanation for the further delay between the issuing of the award in Golshani on 2 March 1993 and the filing of the Golzar affidavit on 1 February 1994.

35. In short, the Golzar affidavit appeared to present the very difficulties that generally have led the Tribunal to reject late-filed evidence -- the presentation of new facts, a likelihood of prejudice to the other party, disruption of the arbitral process and an inadequate explanation for the delay.

36. Notwithstanding these substantial difficulties and deficiencies, the Tribunal was ultimately persuaded to admit the Golzar affidavit into evidence. This was accomplished by an Order dated 23 February 1994, which, based upon considerations of fairness, also admitted the Osborn affidavit proffered by the Claimants in their comments on the Golzar affidavit. In so doing, the Tribunal was motivated by the crucial fact that the affiant was the other alleged signatory to the Contract at issue, thus lending his evidence a seemingly significant character. The Tribunal emphasizes, however, that it considers the situation to have been highly unusual and very unlikely to recur.

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[8] Golshani, Award No. 546-812-3, at paras. 26-46.

[9] For example, during the Respondents' cross-examination of Mr. Golzar at the Hearing in the Golshani case, there was specific mention of the North Shahyad Project, yet the Respondents' counsel neglected that opportunity to question Mr. Golzar about the Contract at issue in these Cases.

[10] For a description of the claim in Golshani and Mr. Golzar's possible interest in the outcome, see paras. 152-153, infra.

C. The Tribunal's Scheduled Post-Hearing Pleadings

37. In addition to admitting the Golzar and Osborn affidavits, the Order of 23 February 1994 set out a schedule for two rounds of simultaneous post-Hearing pleadings, composed of comments and rebuttal comments, for the parties to address the "relevance, materiality and weight" of the respective submissions by the opposing party. In compliance with this Order, on 28 March 1994 the Claimants filed their comments on the relevance, materiality and weight of the Golzar affidavit. The Claimants' submission contained comments on the credibility of Mr. Golzar and a discussion of his history before the Tribunal in connection with the Golshani case. In addition, the Claimants included a supplementary affidavit by Mr. Osborn.

38. On 24 and 28 March 1994 the Respondents filed their comments on the relevance, materiality and weight of the Claimants' original submission on the Golzar affidavit dated 18 February 1994. In these comments the Respondents argued: that they had had no previous access to Mr. Golzar; that the timing of the submission of the affidavit was not unprecedented; that it was in fact the Claimants who were under an obligation to produce an affidavit from Mr. Golzar; that Mr. Golzar was the best qualified person to present evidence as to the authenticity of the Contract; and that the arguments by the Claimants about Mr. Golzar's motivations were misleading. In addition, the Respondents attached another affidavit by their handwriting expert, Colonel Entezari, as well as several statements from ex-TRC officials who had, according to the Claimants, been involved in the negotiation of the Contract -- namely Mr. Parviz Golshani, Mr. Mehdi Amini, Mr. Joseph Morog and Mr. Mohsen Farahi. In these statements the latter four individuals denied any knowledge of the existence of a contract between the Claimants and TRC. No explanation was offered by the Respondents as to why the statements from these latter four individuals, one of whom was apparently living in Tehran, were not submitted to the Tribunal before the First Hearing.

39. In further compliance with the Order of 23 February 1994 and a supplementary Order of 30 March 1994, the Respondents submitted rebuttal comments on 20 April 1994, arguing that the character of Mr. Golzar's testimony in the Golshani case should not affect his credibility in the present Cases, as he was a party in interest in Golshani but not in the present Cases. In addition, the Respondents repeated the assertion that the Golzar affidavit was obtained at the first available opportunity. The Respondents further pointed out that the other four newly-submitted affidavits supported that of Mr. Golzar.

40. Also in compliance with the Tribunal's Orders, on 19 April 1994 the Claimants provided rebuttal comments to the Respondents' submissions of 24 and 28 March 1994. The Claimants initially objected that the statements of Messrs. Amini, Golshani, Morog and Farahi were not affidavits or sworn statements, but rather merely contained an "acknowledgement" by the notary that the signatory was the person whose name was subscribed to the statements. The Claimants further alleged that they had been informed that "improper pressure may have been brought on, or promises of valuable rewards made to, the signers of the four statements and on other persons to provide evidence in favor of Respondents."[11] In support of this latter allegation, the Claimants attached the affidavit of Dr. Dariush Farhang Darehshuri, an Iranian national living in Europe who had worked with Dadras International on the North Shahyad Project.[12] Dr. Darehshuri also affirmed the existence of the Contract between the Claimants and TRC and confirmed a claim made seven years earlier by Prof. Dadras that Dr. Darehshuri, who was living in Tehran at the time, had tried to recover Dadras International's fee in the months following the signing of the Contract.

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[11] On 27 April 1994, the Agent of the Islamic Republic of Iran denied these allegations.

[12] Dr. Darehshuri's affidavit contained allegations that the Tribunal found unnecessary and in any case impossible to verify.

41. At the end of its scheduled post-Hearing pleadings, the Tribunal was therefore confronted with conflicting statements by Messrs. Amini, Golshani, Morog, Farahi and Dr. Darehshuri. The Tribunal initially had to determine the admissibility of these statements.

42. Because of the lateness of the filing of the Golzar affidavit and the disruption to the arbitral process caused thereby, the Tribunal had ordered the Parties to confine their comments to the "relevance, materiality and weight" of the original submissions by the other Party. The Tribunal had been concerned to prevent the submission of further new evidence at that late stage of the proceedings, and the wording of the Order of 23 February 1994 had clearly instructed the parties merely to comment on the evidence that had already been submitted. The arguments of the Claimants and the Respondents, and the supplementary affidavits of the Claimants' and Respondents' handwriting experts, were directly focused on the already submitted evidence and did not contain substantially new evidence. The Tribunal therefore admitted the supplementary affidavits of Mr. Osborn and Colonel Entezari. The Tribunal further concluded, however, that the contents of the statements by Messrs. Amini, Golshani, Morog, Farahi and Dr. Darehshuri went far beyond the scope of the "comments" solicited on the "relevance, materiality and weight" of the original submissions by Respondents and Claimants. The Tribunal concluded that the filing of these statements constituted an impermissible attempt to introduce further new, late and unauthorized evidence into the record contrary to the express terms of the Tribunal's Order.

43. Accordingly, the Tribunal informed the Parties by Order of 27 April 1994 that it regarded these five statements as not in conformity with the Orders of 23 February and 30 March 1994. The Tribunal therefore excluded all five of the statements from evidence in these Cases. In light of the exclusion of these statements on the aforementioned grounds, it was not necessary for the Tribunal to consider the substance of the allegations

contained in the statements. Judge Aghahosseini filed a dissent to the Tribunal's 27 April Order on the same day.

D. Reopening of the Hearing

44. On 27 May 1994, the Agent of the IRI filed a request for the reopening of the Hearing in these Cases. In his request, the Agent referred to the admission into evidence by the Tribunal of the Golzar and Osborn affidavits (see para. 36, supra). The Agent noted that the "manner of evaluation and weighing the credibility of those affidavits by the Tribunal is now under consideration" and added that "[o]f course, the proper assessment of a testimony, cannot be conducted without the possibility of cross-examining the witness." The Agent concluded that "the Tribunal is emphatically requested to take due action as to the fixing of such hearing."

45. In support of his request, the Agent of Iran asserted further that "the Claimants' stand in this score is exactly that of the Respondents" and cited a passage from one of the Claimants' scheduled post-Hearing submissions. However, on 10 June 1994 the Claimants filed a response to the request in which they "not only strongly object[ed] to Iran's request, but also reject[ed] the [aforementioned] justification offered by the Respondent" and asserted that "Claimants' position is quite the opposite." The Claimants argued that the passage from their previous submission cited by the Agent was taken out of context and that the Agent's letter had ignored other relevant statements made in that pleading, including the comment that "to require Claimants to incur substantial further expense and delay because of statements obtained in 1994, long after the close of the written record and hearing would be grossly unfair." The Claimants concluded that "[i]n its Order of 27 April 1994, the Tribunal effectively and finally closed the record in these cases" and urged the rejection of the Iranian Agent's request for the reopening of the Hearing.

46. Notwithstanding the Claimants' strenuous objection in their 10 June 1994 submission to the Iranian Agent's request to reopen the Hearing, it is worth noting that the Claimants themselves had acknowledged in an earlier submission that if the Golzar affidavit were admitted into evidence, Mr. Golzar should be subjected to cross-examination.

47. By Order of 22 July 1994, the Tribunal acceded to the Iranian Agent's request to reopen the Hearing, noting that the "post-Hearing submission of an affidavit by Mr. Golzar and the subsequent acceptance of that affidavit into the record . . . has introduced new material into the record." The Tribunal noted further that

> it is now confronted with directly conflicting and irreconcilable statements from the two alleged signatories to the contract. The Tribunal considers that its task to determine which version of events is the more accurate can better be accomplished by observing and examining Messrs. Golzar and Dadras in each others' presence at a hearing.

Consequently, the Tribunal "determine[d] that exceptional circumstances exist such that the Hearing in these Cases should be reopened in accordance with Article 29, paragraph 2, of the Tribunal Rules, for the sole and limited purpose of hearing the testimony of Messrs. Rahman Golzar Shabestari and Aly Shahidzadeh Dadras." The Order emphasized that "[b]ecause of the advanced stage of deliberations and the procedural history of these Cases, in the interests of procedural orderliness the Tribunal will not reopen the Hearing for any other than this very limited purpose." On 25 July 1994, Judge Allison filed a Dissenting Opinion to the Order of 22 July 1994 reopening the Hearing. On 12 August 1994, Judge Aghahosseini filed a Concurring Opinion to the same Order.

48. A Second Hearing was held in these Cases on 20 October 1994. At the Second Hearing Mr. Golzar and Prof. Dadras gave testimony on the authenticity of the Contract and were cross-examined on that subject.

49. The Tribunal, while making a finding in its Order of 22 July 1994 that "exceptional circumstances" existed justifying the reopening of the Hearing, did not significantly expand upon this finding, and therefore proceeds now to explain the underlying reasons for its decision.

50. The Article empowering the Tribunal to reopen a hearing is Article 29, paragraph 2 of the Tribunal Rules, which reads as follows:

> The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

51. There is a brief discussion of this provision in Dames and Moore and The Islamic Republic of Iran, et al.,[13] in the context of a request for the reopening and reconsideration of an award. After citing Article 15 and Article 29, paragraph 2 of the Rules, the Tribunal expressed itself in cautious terms:

> Thus whatever entitlement to "hearings for presentation of evidence by witnesses . . . or for oral argument," or for submission of "documents and other materials," may exist prior to the rendering of any award, it thereafter is no longer extant. Indeed, even during the interval between the close of the Hearing and the Award . . . no submission may be accepted unless the Tribunal itself determines this is "necessary owing to exceptional circumstances".[14]

Thus according to Dames and Moore, the existence of a right to reopen a Hearing is not a given, but rather "may" exist in some circumstances prior to the rendering of an award.

52. This caution is reflected in subsequent cases. Despite the formal entitlement that exists in the Tribunal Rules to reopen a hearing upon a finding of exceptional circumstances, the

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[13] Decision No. DEC. 36-54-3 (17 April 1985), reprinted in 8 Iran-U.S. C.T.R. 107.

[14] Id. at 115.

Tribunal had never before exercised that power. Several requests made by parties have been refused by the Tribunal. See Touche Ross and Company and The Islamic Republic of Iran, Award No. 197-480-1 (30 October 1985), reprinted in 9 Iran-U.S. C.T.R. 284, 300; Development and Resources Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 485-60-3 (25 June 1990), reprinted in 25 Iran-U.S. C.T.R. 20, 24; Vernie Rodney Pointon, et al., and The Government of the Islamic Republic of Iran, Award No. 516-322-1 (23 July 1991), reprinted in 27 Iran-U.S. C.T.R. 49, 53; General Petrochemicals Corp. and The Islamic Republic of Iran, et al., Award No. 522-828-1 (21 October 1991), reprinted in 27 Iran-U.S. C.T.R. 196, 210-212.

53. The key criterion in deciding whether to reopen a hearing under Article 29, paragraph 2 is whether the Tribunal finds "exceptional circumstances" to be present -- a finding that had never before been made by the Tribunal in any case in its 13-year history. However, the Tribunal in the present Cases considered that it faced an unprecedented situation, and one unlikely to recur. The Tribunal believed that this derived from three factors. The first factor was the nature of the allegations made by Mr. Golzar, allegations that directly contradicted the Claimants' case and -- if found to be true by the Tribunal -- would lead to the dismissal of the claim and the characterization of Prof. Dadras as the perpetrator of an attempted fraud upon an international tribunal. The second factor was the identity of Mr. Golzar as the alleged signatory to the Contract, and therefore as the one person, besides Prof. Dadras, who could be expected to hold direct knowledge of and who was most intimately involved with the transaction in question. The third factor was that the disposition of these Cases rested heavily on the credibility of the main players. Therefore, the Tribunal considered it crucial to submit the two key players to cross-examination in each other's presence. For these reasons, the Tribunal decided to reopen the Hearing in these Cases under Article 29, paragraph 2 of the Tribunal Rules.

54. In support of the request to reopen, in addition to Article 29, paragraph 2 of the Tribunal Rules, the Agent of Iran also cited Article 15, paragraphs 1 and 2 and Article 25, note 6(b) of the Rules as authority for holding a second hearing in these Cases. The Tribunal deems it appropriate to evaluate these alternate grounds for reopening.

55. Article 15, paragraph 2 of the Tribunal Rules reads as follows:

> If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

56. The Tribunal concludes that Article 15, paragraph 2 is primarily applicable to the situation where there has not yet been a hearing and one of the parties requests one. The right of the parties to request a hearing under Article 15, paragraph 2 is not, however, an absolute right. For example, in World Farmers Trading, Inc. and Government Trading Corporation, et al., Award No. 428-764-1 (7 July 1989), reprinted in 22 Iran-U.S. C.T.R. 204, 209, the Tribunal held that although Article 15, paragraph 2 of the Tribunal Rules states that a party may request a hearing "at any stage of the proceedings," "[t]his provision should be interpreted, in light of the particular circumstances of each case, to mean that Hearings are to be held upon the reasonable request of a party made at an appropriate stage of the proceedings." This interpretation of Article 15, paragraph 2 was followed in Tchacosh Company, Inc., et al. and The Government of the Islamic Republic of Iran, et al., Award No. 540-192-1, para. 21 (9 December 1992), reprinted in _Iran-U.S. C.T.R._,_, in which the Tribunal refused to grant the claimant's request for a hearing, saying that the request had not been made at an "appropriate time" because it was made more than one year after the Tribunal had informed the Parties of its intention to take

a decision on jurisdiction on the basis of the written evidence before it.

57. Thus even where no hearing has been held, Article 15, paragraph 2 does not oblige the Tribunal to accede to any request by a party for a hearing. The applicable criteria in evaluating each request are whether the request is both reasonable and made at an appropriate stage of the proceedings. In a context such as the present, where a Hearing has already been held, the reasonableness of the request and the appropriateness of the timing become even more important because the disruption of the arbitral process is that much greater and because the parties have already had an extensive opportunity to present their cases.

58. For the foregoing reasons, the Tribunal does not consider Article 15, paragraph 2 to be capable of justifying the reopening of the Hearing in the present situation.

59. The Agent of Iran also cited Article 15, paragraph 1 of the Rules as authority for the Respondents' request to reopen. That provision reads as follows:

> Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

The Agent of Iran argued that

> [t]here is no doubt that if an affidavit is accepted as evidence in a case while, on the other hand, the adverse party is not given the permission to orally and directly examine the said witness at the hearing session, the latter will be completely deprived of the "full opportunity" he is supposed to be given for presenting his Case. In other words, it is not possible to deprive a party of the right of examining a witness whose written testimony has been accepted and still claim that the latter party has been granted a "full opportunity" of presenting his case.

60. The Tribunal need hardly point out, however, that this Tribunal (like many others) customarily accepts affidavits into evidence and takes account of those affidavits without the opposing party necessarily being given the opportunity to cross-examine the affiant. Several examples (unchallenged by either of the Parties) are to be found in these very Cases.[15]

61. Furthermore, the Tribunal is unpersuaded that any Party can credibly claim that it has been denied a "full opportunity of presenting [its] case" given the procedural history of these Cases. The key word is "opportunity": the Tribunal is obliged to provide the framework within which the parties may present their cases, but is by no means obliged to acquiesce in a party's desire for a particular sequence of proceedings or to permit repetitious proceedings.

62. The final Article invoked by the Agent of Iran in support of the request to reopen was Article 25, note 6(b), which reads as follows:

> Witnesses may be examined by the presiding member and the other members of the arbitral tribunal. Also, when permitted by the arbitral tribunal, the representatives of the arbitrating parties in the case may ask questions, subject to the control of the presiding member.

63. The Tribunal regards this Article to have been wrongly invoked. Article 25 of the Tribunal Rules concerns the conduct of the Tribunal's hearings. It contains provisions regarding the testimony of witnesses, the recording of hearings, attendance at a hearing and the making of a hearing record. Note 6 of Article 25 deals with the manner in which witnesses may be examined at a hearing, including the oath that the witness will be required to take and the right of members of the Tribunal to examine a witness. It is this latter provision that was invoked by the

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[15] See, e.g., the affidavits of Mr. Stanley J. Shaftel, Dr. S.H. Safai, Mr. Mohammad Nassiri, Mr. Abbas Zahedi and Dr. Mahmoud Erfani.

Agent of Iran as providing a right for the members of the Tribunal to examine Mr. Golzar. However, the Tribunal believes that the aim of Article 25 in general is to regulate the conduct of hearings and the manner in which witnesses should be treated at hearings. It would be erroneous to take Note 6 of Article 25 out of context and use it as the basis for a request for the reopening of a hearing. It is clear from Article 25, note 6(b) that the individual members of the Tribunal have the right to examine witnesses who appear at a hearing. This provision does not give individual members of the Tribunal, much less one of the parties, the right to demand the reopening of a hearing in order to examine a new witness or re-examine an old one. The Tribunal does not regard Article 25, Note 6(b) as providing any justification for reopening the Hearing in these Cases.

64. For the foregoing reasons, the Tribunal is of the opinion that the only Article of the Tribunal Rules applicable to the present circumstances is Article 29, paragraph 2, which it invoked in its Order dated 22 July 1994 reopening the Hearing in these Cases.

III. JURISDICTION

65. The Respondents have raised a number of threshold objections relating to jurisdiction and other preliminary matters in Case No. 213 and Case No. 215. The Tribunal deems it appropriate to address each of these objections seriatim before turning to the main issue in both Cases -- the validity of the Contract upon which Dadras International and Per-Am rely.

A. Use of the Name "Dadras International"

66. The Claim in Case No. 213 has been brought by Dadras International. In the Statement of Claim the Claimant was identified as: "Dadras International (Claimant) (Architects, Engineers and City Planners) . . . Nationality: U.S.A." In a submission filed on 13 August 1986, the Claimants' attorney wrote

that "Dadras International is under the sole proprietorship of Prof. Aly S. Dadras."

67. The Respondents contend that Dadras International is not a legal entity and that, consequently, no claims can be legally introduced by it before the Tribunal. The Respondents argue that the Claimants' counsel was at fault in not submitting the Claim in the name of Prof. Dadras himself. The Respondents maintain that, since this did not happen, and since it is now too late to amend the Claim, the Tribunal should dismiss the Claim for lack of standing.

68. The Claimant contends that, from the outset, the Claim was filed on behalf of Prof. Dadras as an individual. According to the Claimant, Dadras International was named as the Claimant in the Statement of Claim because Prof. Dadras has the right to do business under that name pursuant to the law of the State of New York, and because it was under that name that he signed the Contract with TRC. The Claimant concludes that, as the Claim has been filed on behalf of Prof. Dadras in the Statement of Claim, albeit under the name "Dadras International," the only question that can arise regarding the Tribunal's jurisdiction is that of Prof. Dadras's nationality.

69. The Tribunal finds that no legitimate question exists as to the identity of the Claimant in Case No. 213. On the contrary, it emerges clearly from the registration form filed by the Claimant with the United States Department of State and from the Statement of Claim that the Claim was brought by the Claimant as an individual. It is uncontested that Prof. Dadras had the right under New York law to use the trade name "Dadras International." The Tribunal therefore concludes that Dadras International has standing to bring this Claim before this Tribunal. The question of the nationality of Dadras International thus depends upon the nationality of Prof. Dadras himself.

B. Dominant and Effective Nationality of Professor Dadras

70. Professor Dadras was born in Iran to Iranian parents on 21 March 1927. He was naturalized as a United States citizen on 14 November 1963. There is no evidence in the record that the Claimant has relinquished or otherwise lost either his Iranian citizenship in accordance with Iranian law or his United States citizenship in accordance with United States law. Consequently, the Tribunal finds that since 14 November 1963, Prof. Dadras has been a citizen of both Iran and the United States.

71. On 6 April 1984 the Full Tribunal issued a decision in Case No. A18, Decision No. DEC 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265, in which it determined that the Tribunal has jurisdiction over claims against Iran by dual nationals "when the dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." For the Tribunal to have jurisdiction over his claim, it must be shown that Prof. Dadras's United States nationality was dominant and effective during the relevant period, i.e., from the date his claim arose (allegedly 9 September 1978) until 19 January 1981, the date on which the Claims Settlement Declaration entered into force.

72. With respect to this issue, the record reveals that Prof. Dadras obtained a diploma from the Tehran Technical College in 1947 and served as a Lieutenant at the Iranian Military Academy Engineering Division in 1948 before entering the United States in December 1949 to study. Since that time his professional training and practice have been almost exclusively in the United States. He attended the American Television Institute, the Illinois Institute of Technology and the Chicago Technical College from 1949 until December 1951. He subsequently entered the University of Miami, Florida, in February 1952 and graduated with a Bachelor of Science in Architectural Engineering (cum laude) in June 1954. He attended Columbia University Graduate

School of Architecture from September 1954 and received a Master of Science in Planning and Housing in June 1956. After receiving a license to practice in the Commonwealth of Puerto Rico in November 1958, Prof. Dadras started his own practice. He began his practice under the name "Dadras International City Planners" in August 1960, and in 1965 he changed this name to "Dadras International Architects - Engineers - City Planners." In April 1965 he received a license to practice architecture in New York State. The vast majority of his professional commissions have been performed in the United States. They include design, planning and architectural work on a wide range of buildings used for commercial, educational, cultural, religious, recreational and residential purposes.

73. According to the documents provided by Prof. Dadras, his professional activities and honors in the United States over the years have included membership of the Engineering Honor Society at the University of Miami, the National Mathematics Honor Society and the National Engineering Honor Society. He was elected an associate member of the American Institute of Architects in December 1956 and a full member in February 1964, and he served as a member of the House Consulting Committee of the American Institute of Architects from September 1957 to July 1965. In October 1963 he joined the staff of the New York Institute of Technology as an instructor in architecture, becoming an Assistant Professor in Architectural Technology in September 1964, an Associate Professor in 1965, and a Professor of Architectural Technology in September 1966. From August 1965 until August 1972 he served as Chairman of the Department of Architectural Technology. He was appointed a member of the National Panel of Arbitrators of the American Arbitration Association in May 1967. He was the President of the New York Institute of Technology Chapter of the American Association of University Professors from September 1972 until August 1976, and he served on several university committees from 1966 onwards.

74. In November 1957 Prof. Dadras married Ursula Majewski, who had been born a German national and who was naturalized as

an American citizen in March 1963. Prof. Dadras and his wife had three sons and a daughter -- in August 1958, October 1961, November 1963 and September 1967 -- all born in New York City. In August 1958 the Claimant made a Declaration of Intention to become an American citizen. He became a naturalized citizen on 14 November 1963 and received Certificate of Naturalization No. 8716723. The Claimant's four children attended elementary and high schools in New York City, followed by college degrees from various American universities. The Claimant contends that none of his children speaks Persian. He contends that while he has owned a family residence in New York City since March 1971, as well as two other properties in New York State, he has not owned any real or personal property in Iran since 1964. He claims to have paid New York State and City income taxes since 1954 and United States federal income taxes since 1950. He further claims to have been registered as a member of the Republican party since 1964, and to have been a member of the Douglaston Community Church since 1966.

75. The Claimant states that he has visited Iran ten times since 1949. His wife and eldest son accompanied him on a visit in 1959 lasting for seven months. The remainder of his visits were business trips undertaken from 1976 until 1979, in connection with planning and architectural work on the Tehran City Hall, a Gendarmerie housing project, planning for the cities of Bandar Abas and Ahvaz, the Kan Residential Project and the North Shahyad Development Project. He has travelled on a United States passport since June 1969, with the exception of his visits to Iran from 1976 to 1979, when he used an Iranian passport that had been issued in 1975. According to Prof. Dadras, he used the Iranian passport on the instructions of the Iranian Consul in New York, who told him that because he had been born in Iran he would only be permitted to enter Iran on an Iranian passport.

76. The Respondents emphasize that the Claimant never attempted to relinquish his Iranian nationality and that he had family in the country of his birth. The Respondents further argue that the Claimant completed his primary, secondary and a

part of his university education in Iran, and then travelled to the United States on a student visa to further his studies. They point out that he obtained from the Iranian authorities the necessary certificates in the fields of architecture and urban development to exercise his profession in Iran and that he worked on a number of construction projects in Iran in the middle to late 1970s. The Respondents conclude that the activities of Prof. Dadras in Iran were such that Iran was the center of his economic and professional activities, and that he never severed his economic and emotional ties to the country of his birth.

77. The Tribunal finds that although the factors raised by the Respondents demonstrate that Prof. Dadras did not sever all his links with Iran, these factors do not outweigh his much closer and very lengthy ties to the United States. His professional, economic and personal activities have been centered in the United States of America since at least 1970. The Tribunal therefore finds that the dominant and effective nationality of Prof. Dadras from the date his claim is alleged to have arisen (9 September 1978) until 19 January 1981 was that of the United States. It follows that the Tribunal has jurisdiction over the claim in Case No. 213.

C. The Nationality of Per-Am Construction Corporation

78. Per-Am alleges that it is a national of the United States as defined in Article VII, paragraph 1 of the Claims Settlement Declaration. The Respondent disputes this contention. In support of its assertion, Per-Am has produced a Certificate of Good Standing, establishing its incorporation under New York law on 5 June 1978. In order to prove that a majority of its shares are held by United States nationals, Per-Am has submitted an affidavit dated 15 April 1987 by Mr. Stanley J. Shaftel, the Vice President and Secretary of the Company. In that affidavit he declares that:

> According to Per-Am's corporate records, the following persons own all outstanding shares of stock in the Corporation:
> (a) Aly S. Dadras: 102 shares, issued June 5, 1978;
> (b) George K. Duve, Jr.: 30 shares, issued December 1, 1978; and
> (c) Ursula M.S. Dadras: 19 shares, issued December 1, 1978.
> All shareholders of Per-Am are United States citizens.

79. Because Prof. Dadras is the majority shareholder in Per-Am, and because he has been found to be a dominant and effective United States national during the relevant period, the Tribunal holds that Per-Am Construction Corporation is a national of the United States as defined in Article VII, paragraph 1 of the Claims Settlement Declaration.

D. The Dissolution of Per-Am

80. The Respondents contend that the Certificate of Good Standing submitted by Per-Am demonstrates that the company has been dissolved and therefore is incapable of asserting a claim before the Tribunal. This is based on the following statement appearing in the Certificate:

> A proclamation of the Secretary of State dissolving [Per-Am] was published December 29, 1982, pursuant to Section 203-A of the Tax law; . . . such dissolution proceedings were annulled and the existence of the corporation revived, reinstated and continued by a certificate duly filed in this Department January 21, 1987, pursuant to Chapter 203-A of the Tax law.

81. Per-Am acknowledges that dissolution proceedings were initiated against it in December 1982 because of failure to pay its annual fees to the State of New York. It argues, however, that the law of the State of New York "provides that any corporation which has been dissolved because of failure to pay annual fees can be fully reinstated upon payment of back fees." In support of this assertion Per-Am relies on Chapter 203-a of the New York Tax Law, which states in relevant part that

> [t]he filing of such certificate of consent [evidencing payment of back fees] shall have the effect of annulling all of the proceedings theretofore taken for the dissolution of such corporation under the provisions of this section and it shall thereupon have such corporate powers, rights, duties and obligations as it had on the date of publication of the proclamation [of dissolution], with the same force and effect as if such proclamation had not been made or published.

Per-Am points out that its Certificate of Good Standing indicates that the company was reinstated pursuant to the filing of the aforementioned certificate on 21 January 1987.

82. The thrust of the Respondents' argument seems to be that because Per-Am was temporarily dissolved in 1982, ownership of the claim either evaporated or, perhaps, passed into the hands of non-United States nationals. This argument is unpersuasive. The Tribunal previously has held that the Claims Settlement Declaration ("CSD") contains neither an explicit nor an implicit requirement of continuous ownership of claims by United States nationals beyond 19 January 1981. The requirement of continuous ownership is satisfied, and the Tribunal has jurisdiction over the claim, as long as it was owned by a United States national from the date it arose to the date the CSD entered into force. Consequently, any change of ownership after 19 January 1981 does not affect the jurisdiction of the Tribunal. See Development and Resources Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 485-60-3 (25 June 1990), reprinted in 25 Iran-U.S. C.T.R. 20, 28; Sedco, Inc., et al. and National Iranian Oil Co., et al., Interlocutory Award No. ITL 55-129-3 (28 October 1985), reprinted in 9 Iran-U.S. C.T.R. 248, 253-54; Gruen Associates, Inc. and Iran Housing Company, et al., Award No. 61-188-2 (27 July 1983), reprinted in 3 Iran-U.S. C.T.R. 97, 103.

83. The Tribunal therefore finds that the technical dissolution of Per-Am from December 1982 until January 1987 is no bar to the jurisdiction of the Tribunal over the claim.

E. Jurisdiction of the Tribunal Over TRC

84. The Respondents next challenge the Tribunal's jurisdiction over TRC. For the Tribunal to have jurisdiction over the Claims against TRC it must be established that TRC is an "agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof," as expressed in Article VII, paragraph 3 of the CSD. The Tribunal has held previously that TRC is an entity controlled by the Government of Iran. See HAUS, 9 Iran-U.S. C.T.R. at 325; DIC of Delaware, Inc., et al. and Tehran Redevelopment Corporation, et al., Award No. 176-255-3 (26 April 1985), reprinted in 8 Iran-U.S. C.T.R. 144, 154-55 [hereinafter "DIC of Delaware"]. The Respondents have not presented any new evidence capable of undermining the conclusion reached in these prior awards, and therefore the Tribunal is satisfied that it has jurisdiction over TRC.

F. TRC as the Proper Respondent

85. The Respondents claim that the North Shahyad Development Project (including the land on which the buildings comprising the development were to be built) was owned by a corporation called the North Shahyad Development Company ("NSDC"). According to the Respondents, NSDC is a legal entity separate from TRC. Consequently, the Respondents argue that even if the 9 September 1978 Contract relied upon by the Claimants had been signed by Mr. Golzar on behalf of TRC, it was for the benefit of NSDC and therefore cannot be binding on TRC. The Respondents maintain that their position is confirmed by the fact that correspondence emanating from HAUS -- the architect for the North Shahyad Development -- was exclusively addressed to NSDC. They further maintain that although the individuals with whom Prof. Dadras claims to have negotiated between March and August 1978 (Messrs. Golzar, Golshani, Amini and Farahi) held positions in TRC, they were in fact also officials of NSDC.

86. In essence, the Respondents are arguing that TRC cannot be bound by the Contract relied upon by the Claimants -- and thus is not a proper Respondent in these Cases -- because the North Shahyad Development was owned and managed by a different corporation. Ultimately, the Respondents are arguing that entering into the Contract was an ultra vires act on the part of TRC's management.

87. In determining whether entering into the Contract was an ultra vires act on the part of TRC's management, it is necessary to consider the corporate purposes of TRC. According to TRC's articles of association, its corporate purposes include the following:

> a) Construction of residential units and pertaining buildings and facilities; purchase and import of construction materials, equipment and parts, and any kind of related machinery, and sale of building units.
> b) Redevelopment and road construction.
> c) Conducting any activity that is directly or indirectly related to any of the above-mentioned matters and that is in one way or another useful, including the acquisition purchase and sale, and renting moveable and immovable properties, and concluding contracts and signing agreements.

88. The Tribunal notes that the conclusion of a contract such as the one relied upon by the Claimants, which relates to a construction project, appears to fall squarely within TRC's corporate purpose. However, a further dimension to the Respondents' argument is that the proper party to have signed the contract with the Claimants was NSDC and not TRC. In this regard it should be noted that the Contract names TRC as a contracting party and is signed by TRC's Managing Director. Absent any indications to the contrary, it must be presumed that the rights and obligations under the Contract accrued to TRC. Furthermore, the NSDC is a company forming part of the TRC group.[16] It is

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[16] According to the affidavit of Mr. Golzar in Case No. 174 (HAUS), the North Shahyad Company was a subsidiary of TRC.

common business practice for a corporation entering into a new business venture to set up a new company to manage that project. It seems likely that NSDC was similarly established by TRC to manage the Project. This is confirmed by the Tribunal's award in the HAUS case. The Tribunal held in that case that "North Shahyad . . . had only been set up by TRC's owners as an operational company for the project."[17] In such a situation, it would not be unusual that some of the contracts relating to the venture would be signed by the parent company instead of the subsidiary. It further emerges from the HAUS case that the contract in question in that case had been signed between HAUS and TRC, rather than the North Shahyad Development Corporation. For all of the foregoing reasons, the Tribunal finds that entering into the Contract with the Claimants was not an ultra vires act by TRC's management and that TRC is the proper Respondent in these Cases.

G. The Forum Selection Clause

89. The Respondents assert that the Tribunal lacks jurisdiction over these Claims because the Contract relied upon by the Claimants contains a forum selection clause. Provision G of the Contract provides, inter alia, that "[t]he General Conditions of Contract printed and approved by Sazemane Barnameh Va Budgeh [Plan and Budget Organization] shall be part of this contract." According to the Respondents, Article 53 of these General Conditions reads as follows:

> In the event of any disputes arising between Employer and Contractor, regardless of whether they relate to performance of operations constituting the subject-matter of the Contract or to the interpretation or construction of any Article of the Contract and the General Conditions thereof and other documents and annexes appended thereto, should the Parties be unable to resolve such disputes through mutual agreement the matter shall be settled by referring the dispute to the competent courts and authorities of the Ministry of Justice.

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[17] HAUS, 9 Iran-U.S. C.T.R. at 324.

The Respondents argue that the Tribunal should refrain from exercising jurisdiction over the claims in Cases Nos. 213 and 215 in light of this clause.

90. Article II, paragraph 1 of the CSD excludes from the jurisdiction of the Tribunal "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts." Whether a claim is excluded from the Tribunal's jurisdiction by this provision of the CSD depends on the specific language of the forum selection clause at issue. The test applied by the Tribunal is whether the particular dispute settlement clause fulfills with sufficient clarity the requirements laid down in the exclusion provision of Article II, paragraph 1 of the CSD. See, e.g., Orton/McCullough Crane Company and Iranian State Railways, et al., Award No. 484-440-3 (25 June 1990), reprinted in 25 Iran-U.S. C.T.R. 15, 17.; Itel International Corporation and Social Security Organization of Iran et al., Interlocutory Award No. ITL 43-476-2 (29 June 1984), reprinted in 7 Iran-U.S. C.T.R. 31, 33; Halliburton Company, et al. and Doreen Imco, et al., Interlocutory Award No. ITL 2-51-FT (5 November 1982), reprinted in 1 Iran-U.S. C.T.R. 242, 244; Gibbs and Hill, Inc. and Iran Power Generation and Transmission Company (Tavanir) of the Ministry of Energy of the Government of Iran, et al., Interlocutory Award No. ITL 1-6-FT (5 November 1982), reprinted in 1 Iran-U.S. C.T.R. 236, 238.

91. Article 53 of the General Conditions of Contract as incorporated into Provision G of the 9 September 1978 Contract does not unambiguously restrict jurisdiction to the courts of Iran. The particular formulation contained in Provision G refers only to disputes regarding the performance of operations or the interpretation of the Contract, implying that the parties have left certain aspects of the Contract outside the jurisdiction of the Iranian courts. Indeed, the clause is indistinguishable from other forum selection clauses that the Tribunal has found not sufficient to divest the Tribunal of jurisdiction in past cases. See Zokor International, Inc. and The Government of the Islamic

Republic of Iran, et al., Interlocutory Award No. ITL 7-254-FT (5 November 1982), reprinted in 1 Iran-U.S. C.T.R 271, 272-73.

92. The Tribunal therefore finds that Provision G of the 9 September 1978 Contract does not fall within the scope of the forum clause exclusion contained in Article II, paragraph 1 of the CSD. Consequently, even assuming that this provision was incorporated into the Contract, it does not deprive the Tribunal of jurisdiction over the Claims.

H. Kan Consulting Engineers as an Indispensable Party

93. Aside from Dadras International, Per-Am Construction Corporation and the Tehran Redevelopment Corporation, another company, namely Kan Consulting Engineers ("Kan"), was also a party to the Contract dated 9 September 1978. This company was an Iranian engineering firm with which Dadras International had worked in the past. Kan Consulting Engineers is identified in the Contract as "Consultant," together with Dadras International. According to the Contract, Kan, together with Prof. Dadras, was to provide on-site supervisory services in Iran in the course of the construction of the North Shahyad Development Project.

94. In their initial pleadings, the Respondents suggested that Kan Consulting Engineers was an indispensable party to the present proceedings. They contended that because Kan is not present in these proceedings, the Claimants have no standing to sue in either of these Cases. The Claimants deny that Kan is an indispensable party. According to the Claimants, this is because no formal partnership or joint venture had been created between Dadras International and Kan Consulting Engineers. Furthermore, the Claimants stress that the undertakings assumed by Kan under the Contract are different from those of Dadras International and Per-Am, and that the Contract provides for separate payments to be made to Dadras International, Per-Am and Kan.

95. The Tribunal notes that the tasks of Per-Am and the Consultants (Dadras International and Kan) were separately

defined in the Contract and that separate and differing payments for each of the entities were specified in the Contract. Consequently, the Tribunal finds that Dadras International's and Per-Am's rights to the payments they allege are due from TRC are readily identifiable and separable from those of Kan. See HAUS, 9 Iran-U.S. C.T.R. at 332. The Tribunal therefore finds that Kan Consulting Engineers is not an indispensable party to these Claims.

IV. MERITS -- FACTS AND CONTENTIONS

A. The Claimants' Contentions

96. The Claimant in Case No. 213, Prof. Dadras (doing business as Dadras International), contends that his claim arises out of a Contract concluded with TRC for architectural, structural and support services in connection with the North Shahyad Development Project in Tehran, Iran. This Project involved the construction of approximately 5,000 residential units. Although another architectural firm, HAUS, had already designed the Project by the time that Prof. Dadras became involved with the venture, the Claimant contends that TRC contracted with Dadras International to revise HAUS's architectural drawings and calculations to permit construction of the superstructure of the Project using the proprietary Dyna-Frame Celdex Construction System; in addition, Prof. Dadras would supervise the construction. Per-Am was responsible for the construction itself, and it is this aspect of the agreement that forms the basis for the claim in Case No. 215. The details of this agreement are contained in four primary documents submitted by the Claimants: a 29 March 1978 Agreement; a 14 June 1978 Proposal; a 27 August 1978 letter from TRC to Prof. Dadras; and the Contract dated 9 September 1978.

97. With regard to the background leading up to the Contract with TRC, Prof. Dadras contends that after many years in the United States, he returned to Iran in 1977 in connection with a

building project known as the Gendarmerie project. He avers that through his work on that project he became acquainted with the Rezaie family, property developers who were building a housing development on the outskirts of Tehran called the Kan Residential Project (the "Kan Project"). Professor Dadras became involved in the Kan Project in November 1977. By that time, the architectural plans for the project had already been completed. Prof. Dadras was engaged on the Kan Project to convert Kan's preexisting architectural plans to accommodate the use of the Dyna-Frame Celdex Construction System, which, according to the Claimant, was both quicker and cheaper than the conventional poured concrete method. Prof. Dadras's involvement with the Kan Project is the subject of Dadras International's claim in Case No. 214, which is pending before the Tribunal.

98. The service offered by Prof. Dadras was access to the Dyna-Frame Celdex ("D-F-C") technology, which was controlled by him as the exclusive license-holder in Iran for that technology. Prof. Dadras assertedly had obtained an exclusive license for the use of this system in Iran from its United States developers, P/K/D/R International ("PKDR"). In support of this contention, the Claimants produced a letter dated 10 February 1978 written to Prof. Dadras by Mr. George Duvé, the then-President of PKDR. This point is further confirmed by a brochure from PKDR, submitted by the Claimants, which lists Prof. Dadras as the exclusive licensee in Iran of the D-F-C technology. Finally, Mr. Duvé testified at the First Hearing in these Cases that Prof. Dadras's exclusive license remained in force throughout 1978, covering the entire period relevant to these Cases.

99. According to the Claimants, the benefits of the D-F-C technology are many. The system involves the use of prefabricated concrete structural components, which are substantially cheaper to produce and significantly faster to erect than the traditional poured concrete method. The D-F-C System consists of pre-stressed concrete beams, columns and stairs (Dyna-Frame), plus a system of post-tensioned hollow-core concrete planks (Celdex). Three plants would be set up at the

intended construction site to produce these structural elements, which would then be assembled by crane on the construction site. Prof. Dadras asserts that on a project the size of the North Shahyad Development, the cost of the D-F-C technology would have been recovered by TRC in savings on interest payments alone.

100. The Claimants relate further that the legal advisor for the Kan Residential Project, Mr. Javad Jabary, who was also an advisor to TRC, introduced Prof. Dadras to Mr. Golzar, the then-Managing Director of TRC. At that time TRC was preparing to build the North Shahyad Development Project in Tehran. A meeting was held on 29 March 1978 at TRC headquarters in Tehran; Prof. Dadras, Mr. Golzar and other TRC officers were in attendance. At the meeting, Prof. Dadras made a presentation to TRC about the benefits of the D-F-C technology in connection with the North Shahyad Project. According to the Claimants, this meeting resulted in the execution of a formal Agreement. Pursuant to this Agreement, Prof. Dadras agreed to take certain preliminary steps, with a view to the later conclusion of a formal contract with TRC. The handwritten Agreement, in Persian, was signed by Prof. Dadras and various of the TRC officials present. A typewritten version in Persian was subsequently produced.

101. The original handwritten Agreement dated 29 March 1978 and the typewritten version of this document dated 3 April 1978 have been provided by the Claimants and form part of the record in these Cases. The Agreement contemplated the construction of the North Shahyad Development by United States contractors using the D-F-C System, which would be incorporated by Prof. Dadras into the pre-existing architectural drawings for the Project that HAUS had already prepared. The Agreement gave Prof. Dadras two months to "secure the contractors and bring them to Iran in order for the Corporation to sign the contract" for construction. Article 5 of the Agreement specifies that no payment would be made to Prof. Dadras "in the present stage." However, Article 4 expressly contemplates a future agreement for compensation, providing that "[o]n the professional fee for the preparation of the preliminary drawings and construction documents for the

project, negotiations will be conducted and an understanding will be reached at a later date."

102. Prof. Dadras recounts that after the execution of the Agreement he returned to New York and began to assemble the contractors referred to in the Agreement. Together with other individuals "experienced in construction work and in systems engineering," he formed the Per-Am Construction Corporation on 5 April 1978. It was intended that Per-Am would enter into a contract with TRC to perform the actual construction. On the same day, Prof. Dadras also arranged for the formation of the American International Dynacel Corporation ("AIDC"). The purpose of AIDC was to supply, construct and supervise the operations of the Dyna-Frame Celdex plants to be located at the site of the Project.

103. Prof. Dadras returned to Tehran in June 1978. On 5 June 1978 he met with Mr. Golzar and other TRC officers; he presented to them, inter alia, a draft proposal for a contract and a Critical Path Method diagram ("CPM"). The CPM showed the proposed timetable for various stages in the construction. After a series of meetings, Mr. Golzar and Prof. Dadras ultimately signed a written Proposal dated 14 June 1978. The Claimants included a copy of this Proposal in their pleadings. In essence it expressed TRC's intent to construct the superstructure of the North Shahyad Project using D-F-C technology, with Per-Am being responsible for the actual construction. The terms of the Proposal required Prof. Dadras, inter alia, to revise the architectural plans previously completed by HAUS to accommodate the D-F-C system, within a timeframe of approximately two months.

104. The Claimants relate that the two months after the signing of the 14 June Proposal were dominated by frantic activity, as Prof. Dadras and his staff, working in New York, completed the structural calculations necessary for the use of D-F-C and for the incorporation of D-F-C into the architectural plans for the North Shahyad Project.

105. Prof. Dadras avers that on 18 July 1978 he met with HAUS personnel to review HAUS's architectural designs for the Project. At this meeting he succeeded in obtaining HAUS's cooperation in the revision of their architectural drawings, as well as HAUS's agreement to deliver a set of drawings to Dadras International for review and adaptation. Corroborating testimony was provided at the First Hearing by Mr. Theodore Liebman, the President of HAUS at the relevant time and the person responsible for the architectural designs for the North Shahyad Project, who testified that he had cooperated with Prof. Dadras on the instructions of TRC. Further corroboration that contact between Prof. Dadras and HAUS took place is provided by a contemporaneous letter (dated 25 July 1978) from HAUS to TRC, which was submitted into evidence in the HAUS case. That letter refers to "an exchange of info with Prof Dadras."

106. On 19 August 1978 Prof. Dadras returned to Tehran and submitted the following to TRC with a covering letter: the completed construction drawings; computer-generated structural calculations; a guide to the structural calculations; and drawing guides. The Claimants allege that after an initial meeting with TRC officials on or about 19 August 1978, Prof. Dadras was told on 21 August that the drawings had been approved and was instructed to draw up a draft contract. He asserts that he produced a draft on the same day and took it to TRC, where he met with Mr. Golzar. Several further meetings were held before the final Contract was signed.

107. On 27 August 1978, Prof. Dadras again met with Mr. Golzar. At that time he asked Mr. Golzar for a letter stating that TRC had approved the construction drawings and calculations and setting out Prof. Dadras's fee. According to Prof. Dadras, Mr. Golzar dictated a letter in his presence attesting to TRC's approval of Prof. Dadras's work product and setting his fee at 6.75% of the total cost of construction. Prof. Dadras collected the letter later that day. A copy of the 27 August 1978 letter has been placed into evidence by the Claimants.

108. The Claimants assert that on 9 September 1978 the final Contract was signed by Prof. Dadras for Dadras International and Per-Am, and by Mr. Golzar on behalf of TRC. That document, which the Claimants submitted into the record, is allegedly a slightly revised version of the draft contract prepared by Prof. Dadras on 21 August 1978. The Contract's key provisions are summarized at paras. 127-131, infra.

109. Prof. Dadras returned to New York on 13 September 1978. He alleges that shortly after returning he caused Per-Am to enter into a contract with AIDC for the purchase of the three on-site D-F-C plants.

110. The Claimants allege that TRC never paid the fees owing to Dadras International for the design and construction documents already submitted and approved by TRC by the time the Contract was signed. They further allege that TRC failed to initiate construction of the North Shahyad Project as required by the Contract. The Claimants contend that Prof. Dadras's associate in Tehran, Dr. Darehshuri (of Kan Consulting Engineers), acted as local liaison with TRC. He allegedly made repeated and unavailing inquiries of TRC about action to be taken in terms of the Contract, which efforts he reported to Prof. Dadras by telephone in October and November 1978. At that stage, Dr. Darehshuri told Prof. Dadras that he had finally reached Mr. Golshani of TRC. According to Prof. Dadras, Mr. Golshani had told Dr. Darehshuri that TRC was "waiting for the situation to get better before proceeding."

111. In mid-1979, Prof. Dadras returned to Tehran in person to make inquiries of TRC about the status and progress of the Contract. On 30 July 1979, he allegedly went to TRC's headquarters in Iran to discuss the Project with the newly-appointed managing director of TRC, Mr. Iraj Pursardar. Prof. Dadras contends that Mr. Pursardar refused to discuss the Project and advised him to leave Iran immediately because of the troubled situation. The Claimants allege that since that time, they have had no further contact with TRC.

112. The Claimants assert that the Respondent TRC breached the 9 September 1978 Contract. Based upon the alleged breach, the Claimant in Case No. 213 (Dadras International) seeks payment for professional fees for services rendered, as specified in Article E(2) of the 9 September 1978 Contract, in the amount of U.S.$3,109,436.00,[18] as well as U.S.$126,320.81 for fees for supervision services that Dadras International would have earned had TRC proceeded with the project as agreed.[19] The Claimant in Case No. 215, Per-Am Construction Company, claims compensation in the amount of U.S.$3,112,880.00 for profits it allegedly would have earned under the Contract by the Tribunal's jurisdictional cut-off date of 19 January 1981.[20] In addition, the Claimants seek interest and costs.

B. The Respondents' Contentions

113. Throughout the pleadings and at the First Hearing, the Respondents denied all knowledge of contractual negotiations

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[18] Article E(2) provides:

> The CONSULTANT shall be paid 5.4 per cent of the total cost of the PROJECT which is 243,918,000 Rials or U.S. Dollars 3,454,929 for the work already completed for the design and preparation of construction documents by computer of the Alternate Structural System. From the above payment, Dadras International shall receive 219,525,200 Rials or U.S. Dollars 3,109,436 and Kan Consulting Engineers shall receive 24,391,800 Rials.

[19] Article E(3) of the Contract provides that Dadras International and Kan Consulting Engineers should be paid 1.35% of the total cost of the project for construction supervision, with the larger portion of that amount (U.S.$215,933) going to Dadras International. Prof. Dadras asserts that by 19 January 1981, U.S.$126,320.81 of that amount would have fallen due.

[20] The Contract provides for downpayments to Per-Am totalling 20% of the total contract price, followed by monthly progress payments after construction began. Per-Am asserts that its claim for damages is derived from the total of the downpayments plus those monthly payments that would have fallen due according to the CPM by 19 January 1981.

between the Parties; they also denied the existence in the files of TRC of the Contract or any work product by Prof. Dadras. The Respondents further alleged that they could find no trace in their records of any documents relating to contractual negotiations between the Claimants and TRC, to the Contract itself or to the Claimants themselves. According to the Respondents, the contractual documents presented to the Tribunal by the Claimants are forged documents; specifically, they asserted that the signatures purporting to be those of Mr. Golzar on the 14 June 1978 Proposal, the 27 August 1978 letter from Mr. Golzar to Prof. Dadras and the Contract itself are not genuine signatures.

114. The Respondents initially argued that the signature of Mr. Golzar on the letter dated 27 August 1978 was "not conformable" with other signatures of Mr. Golzar. TRC subsequently expanded this allegation by asserting that the letter dated 19 August 1978 from Prof. Dadras to Mr. Golzar submitting the construction documents had likewise been fabricated; all knowledge of the construction documents was denied. In TRC's Memorial (relied on as to common issues by the Government of Iran), the Respondents further maintained that the 29 March 1978 Agreement had not been signed by Mr. Golzar; that no record of the Proposal dated 14 June 1978 could be found in TRC's records; that the letters dated 19 August 1978 and 27 August 1978 were subsequently prepared forgeries; and that the Contract itself was a subsequently produced forgery. Any trace in TRC's records of the Proposal, the 19 and 27 August 1978 letters and the Contract itself was denied.

115. Supporting testimony was provided by Mr. Keyvan Ramian, a present office-holder at TRC, who testified at the First Hearing that he had been unable to find any trace in TRC's files of any of the contractual documents. However, Mr. Ramian further testified that in his search of TRC's files he had also not come across a letter from Prof. Dadras to TRC dated 11 September 1978,

which was in fact submitted by the Respondents to the Tribunal on 29 November 1991.[21]

116. The Respondents in their pleadings alleged that it was in fact HAUS, and not Prof. Dadras, that originally proposed the use of the D-F-C construction method. According to the Respondents' briefs, HAUS had proposed a number of alternatives for the construction of the North Shahyad Development's superstructure at the outset of the Project. One of those alternatives involved the use of the D-F-C System. TRC allegedly rejected this alternative and decided instead to proceed with the more conventional poured concrete method. As TRC had already rejected HAUS's proposal to use D-F-C, the Respondents contend, it is inconceivable that TRC would have displayed any interest in a similar system proposed by Prof. Dadras. Consequently, the Respondents' pleadings denied that Prof. Dadras submitted any drawings and calculations to TRC. They argued instead that the construction drawings and structural calculations submitted by Prof. Dadras to the Tribunal, purporting to be copies of the work product delivered to TRC on 19 August 1978, are simply slightly reworked versions of the drawings and calculations prepared by HAUS in the context of its own D-F-C proposal. In support of this argument, the Respondents submitted into the record a calculation booklet and structural drawings allegedly prepared by HAUS. The Respondents argued that the fact that the booklet refers to Dyna-Frame Celdex, PKDR (the inventors of the system) and HAUS, but not to Prof. Dadras, shows that TRC had received a proposal for the project using D-F-C without the involvement of the Claimants.

117. In support of their allegation that Prof. Dadras's alleged work product was a hasty "cut and paste" job, the Respondents presented the testimony of Mr. Mirsadredin Amirkhalkhali, who testified at the First Hearing that the structural design proposed by the Claimants was not compatible

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[21] For a description of this letter and its significance, see paras. 200-211, infra.

with the architectural plans prepared by HAUS. According to Mr. Amirkhalkhali, Prof. Dadras's work product was entirely preliminary and would need thousands of hours of work to reach the implementation stage.

118. In support of their forgery allegations in general, the Respondents presented the testimony of Colonel Entezari at the First Hearing held on 28 and 29 January 1993. On the basis of an inspection of original documents that took place on 25 January 1993 (three days before the Hearing), Colonel Entezari testified that the signatures attributed to Mr. Golzar on the letter dated 27 August 1978 and on the Contract dated 9 September 1978 were not genuine. However, he also testified, contrary to the Respondents' prior allegations, that the signature on the 14 June 1978 Proposal was indeed a genuine signature of Mr. Golzar.

119. Based upon their allegation of forgery, as well as the contentions described in Sections VI.C. and VI.D., infra, the Respondents ask that both Cases be dismissed.

V. PRELIMINARY ISSUES ON THE MERITS

A. The Burden of Proof

120. The Tribunal need hardly recall the general proposition that the burden of proof rests on the party asserting or alleging a fact. Article 24, paragraph 1 of the Tribunal Rules reads: "Each party shall have the burden of proving the facts relied on to support his claim or defence."

121. In all but the simplest of cases, the burden of proof is borne variously by the different parties as to particular issues, depending on the nature of the allegations upon which they seek to rely.[22] As described by Sandifer in his oft-cited work on the practice of international tribunals,

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[22] Rupert Cross et al., Cross on Evidence 111 (7th ed. 1990) [hereinafter "Cross"].

> [t]he broad basic rule of burden of proof adopted, in general, by international tribunals resembles the civil law rule and may be simply stated: that the burden of proof rests upon him who asserts the affirmative of a proposition that if not substantiated will result in a decision adverse to his contention. This burden may rest on the defendant, if there be a defendant, equally with the plaintiff, as the former may incur the burden of substantiating any proposition he asserts in answer to the allegations of the plaintiff.[23]

122. In these Cases, the Claimants allege that they engaged in a process of contract negotiation with TRC, and that this negotiation process resulted in the signing of the 9 September 1978 Contract, which Contract was breached by the Respondent TRC. On these and supplementary issues the Claimants bear the burden of proof, and they can prevail only if they meet their burden on these issues. The Respondents, in addition to disputing the Claimants' version of events, have raised the affirmative defense that some or all of the Claimants' documents have been forged. The burden of proving that a forgery was committed therefore falls on the Respondents.

B. The Standard of Proof

123. In these Cases, the Tribunal is confronted with allegations of forgery that, because of their implications of fraudulent conduct and intent to deceive, are particularly grave. The Tribunal has considered whether the nature of the allegation of forgery is such that it requires the application of a standard of proof greater than the customary civil standard of "preponderance of the evidence." Support for the view that a higher standard is required may be found in American law and English law, both of which apply heightened proof requirements to allegations of fraudulent behavior. In American law the burden imposed is described as "clear and convincing" evidence,[24]

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[23] Durward V. Sandifer, Evidence Before International Tribunals 127 (1975).

[24] Michael H. Graham, Evidence -- Text, Rules, Illustrations and Problems 755 (1983).

and English law speaks of a flexible civil standard that raises the burden of proof where the commission of a fraud or a crime is alleged in civil proceedings.[25]

124. The allegations of forgery in these Cases seem to the Tribunal to be of a character that requires an enhanced standard of proof. Consistent with its past practice, the Tribunal therefore holds that the allegation of forgery must be proved with a higher degree of probability than other allegations in these Cases. See Oil Field of Texas, Inc. and Government of the Islamic Republic of Iran, et al., Award No. 258-43-1 (8 October 1986), reprinted in 12 Iran-U.S. C.T.R. 308, 315 (holding that alleged bribery would not be established if, on the evidence presented, "reasonable doubts remain"). The minimum quantum of evidence that will be required to satisfy the Tribunal may be described as "clear and convincing evidence," although the Tribunal deems that precise terminology less important than the enhanced proof requirement that it expresses.

C. Technical Objections: Single Signature and Company Seal

125. The Respondents have raised two technical objections to the validity of the Contract. First, they argue that the Contract relied upon by the Claimants is not binding on TRC because it was signed by only one of TRC's directors, Mr. Golzar, whereas according to the company's articles of association at least two directors should have signed the Contract. The Tribunal notes, however, that it is undisputed that Mr. Golzar was TRC's managing director at the time of the alleged signing of the Contract and other agreements with the Claimants. According to Article 10 of the company's articles of association, the managing director "is vested with full powers to manage the Corporation." Article 12 states further: "Authorized Signatories: Mr. Rahman Golzar Shabestari, alone, with the seal of the Corporation." Thus, even under TRC's own internal

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[25]Cross, supra note 22, at 147-8.

provisions, the validity of the Contract would not be affected by the fact that only Mr. Golzar signed it.

126. The Respondents further maintain that the Contract is not binding because the company's seal does not appear on the Contract. In keeping with its precedents, the Tribunal finds that the absence of the seal is not sufficient to render the Contract invalid. See Alan Craig and Ministry of Energy of Iran, et al., Award No. 71-346-3 (2 September 1983), reprinted in 3 Iran-U.S. C.T.R. 280, 286-87.[26]

VI. MERITS -- THE TRIBUNAL'S FINDINGS

A. Introduction

1. Overview

127. The 9 September 1978 Contract is facially a contract between the "owner" (TRC), the "builder" (Per-Am) and the "consultants" (Dadras International and Kan Consulting Engineers) for the construction of the superstructure of the North Shahyad Development Project in Tehran. It is signed by Prof. Dadras on behalf of Dadras International, Per-Am and Kan and contains a signature purporting to be that of Mr. Golzar on behalf of TRC; however, as noted earlier, the Respondents dispute the authenticity of the latter signature. The total cost of construction was U.S.$63,980,000.00 and the superstructure was to cover an area of some one million square meters. Under the Critical Path Method ("CPM"), the time-schedule referred to in Article B of the Contract, construction work was to begin in March 1979 following site preparation by TRC. However, because the Contract was signed in September instead of July, as anticipated in the CPM, the date for actual construction by Per-

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[26] Furthermore, it should be noted that, according to the testimony of Mr. Liebman at the First Hearing, the HAUS contract with TRC also bore no company seal.

Am to begin would have become May 1979 under the terms of the CPM.

128. The most important terms of the Contract are the following. Article A(1) states that the structural revision work of Dadras International has been completed and approved by TRC. Article E(2) sets out the obligation of TRC to pay Prof. Dadras the amount of U.S.$3,109,436 for the work already completed.

129. Under the Contract, TRC was to be responsible for the provision and preparation of the construction site and the provision of certain services and supplies for construction. Specifically, TRC was to: provide a site for erection of the three plants necessary for the manufacture of the D-F-C System components (Article A(9)); provide water supply, electricity and telephone service for the use of Per-Am (Article A(10)); conduct excavation and surveys in readiness for construction (Article A(13)); provide roads to plant sites and between plant and building sites (Article A(14)); and deliver certain building materials (Article C(3)).

130. The responsibilities of Per-Am under the Contract are all related to the actual construction of the Project. They include: importing from the United States the three plants necessary for the manufacture of the D-F-C components (Article A(8)); construction of footings (Article A(3)); construction and erection of each superstructure within the Project (Article A(12)); and removal of the plants from the site at the end of construction (Article A(11)).

131. The payment terms of the Contract concerning Per-Am are contained in Articles E(4) and E(5). Article E(4) provides that 15% of the total construction cost -- an amount of U.S.$9,597,025 -- was payable to Per-Am upon provision of a bank guarantee for an amount up to 15% of the value of the Contract. Article E(5) provides that a further 5% of the total cost -- said to be U.S.$3,199,008 -- was payable to Per-Am upon delivery of the three D-F-C plants. Finally, under Article E(6), monthly amounts

of U.S.$1,330,788 were payable to Per-Am after the commencement of construction.

132. Based upon the foregoing the Tribunal concludes that the 9 September 1978 Contract contains all of the elements necessary to create a binding agreement between the parties and therefore appears, on its face, to constitute a valid and binding contract. Its facial validity is further supported by credible testimony and evidence. Such testimony includes that of Prof. Dadras himself, as well as Mr. Liebman from HAUS and Mr. Duvé from PKDR, who corroborated Prof. Dadras's contentions in crucial respects. The testimony of these individuals is backed up by several pre-contractual documents evidencing the stages of negotiation between the Claimants and TRC; a separate document confirming that Prof. Dadras was the exclusive license-holder in Iran of the D-F-C technology; and Dadras International's completed work product.

133. The evidence presented in these Cases also sheds light on TRC's motivations for entering into the Contract. TRC's other big construction project at the time, Ekbatan, which used the traditional poured concrete method of construction, was significantly behind schedule.[27] Furthermore, Mr. Liebman testified at the First Hearing that HAUS had begun to be concerned that the North Shahyad Project, too, was falling behind schedule. In this context, it is quite plausible that TRC would have been searching for an alternative to the traditional poured concrete method of construction.

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[27] This point had been made by Mr. Golzar himself in his testimony at the hearing in the Golshani case, and by Mr. Liebman at the First Hearing in these Cases. It is confirmed by the Award in another Tribunal case, DIC of Delaware, which had occasion to find that several factors "combined to bring the work on the Ekbatan project almost to a halt in May of 1978." See 8 Iran-U.S. C.T.R. at 168-69. Mr. Liebman further testified that at one point he had discussed with TRC the possibility of using steel for the Ekbatan project as a potentially faster structural system.

134. The facial validity of the Contract and the rational nature of the transaction do not, of course, fully answer the Respondents' primary defense in these Cases -- the contention that the 9 September 1978 Contract and the preceding contractual documents are forged. It is to this contention that the Tribunal now turns.

2. The Respondents' forgery allegations

135. The Tribunal notes initially that the Respondents' precise position regarding the authenticity of the Claimants' documents has changed fundamentally during the proceedings in these Cases. As outlined above in more detail, the initial allegation of the Respondents was that the signature on the letter dated 27 August 1978 was "not conformable" with known signatures of Mr. Golzar. In later pleadings, the authenticity of Prof. Dadras's letter transmitting the construction documents, the drawings and structural calculations, the letter dated 27 August 1978, the Agreement dated 29 March/ 3 April 1978, the Proposal dated 14 June 1978 and the 9 September 1978 Contract itself were called into question. The Respondents denied that there was any trace of these documents in the records of TRC.

136. In the same memorial in which a blanket denial of the authenticity of these documents was found, however, the Respondents produced a letter from Prof. Dadras to Mr. Golzar dated 11 September 1978. Although introduced to buttress the Respondents' forgery argument (see para. 200, infra), the letter had the collateral effect of clearly confirming the entire history of contract negotiations until 21 August 1978 as recounted by Prof. Dadras in the Claimants' pleadings and in his testimony at the First Hearing. Furthermore, at the First Hearing, the Respondents' own forgery expert testified that the 14 June Proposal bore an authentic signature of Mr. Golzar. Thus by the end of the First Hearing, the Respondents had impliedly renounced their earlier position that no negotiations had occurred, and had by implication affirmed a significant part of the version of events given by Prof. Dadras.

137. The history of the proceedings is similar regarding the drawings and calculations submitted to the Tribunal by Prof. Dadras as the work product that he provided to TRC. In their written pleadings the Respondents denied that the blueprints submitted by Prof. Dadras were his work product, alleging instead that the drawings were merely slightly reworked copies of drawings and calculations submitted by HAUS to TRC in the course of an earlier proposal by HAUS to use the D-F-C method for the North Shahyad Project.

138. At the First Hearing, however, it became clear to the Tribunal that the drawings submitted to the Tribunal by the Respondents -- which they asserted to have been prepared by HAUS -- were identical to the drawings submitted by Prof. Dadras. It further became clear that the drawings had been produced by Prof. Dadras himself, and not by HAUS. This conclusion was apparent from the very drawings submitted by the Respondents. These drawings bore the name of the American International Dynacel Corporation, the company formed by Prof. Dadras for the purpose of designing and installing the three plants necessary to implement the D-F-C System at the North Shahyad Project. The date imprinted on the blueprints is 17 August 1978, i.e., two days before Prof. Dadras claims to have submitted the drawings to TRC. Prof. Dadras's passport confirms that he did in fact arrive in Tehran on 19 August 1978. Furthermore, Mr. Liebman of HAUS testified that HAUS had never proposed the use of the D-F-C System to TRC, and that HAUS had cooperated with Prof. Dadras in his task of adapting HAUS's architectural drawings to accommodate the D-F-C System, on the orders of TRC itself. For these reasons, the Tribunal is persuaded that the blueprints and structural calculations submitted by Prof. Dadras to the Tribunal were in fact completed by him, and were also submitted to TRC. The Tribunal is thus convinced that Professor Dadras performed the work specified in Article E(2) of the Contract.

3. The authenticity of the preliminary agreements

139. Despite the changes of position on the part of the Respondents and the often contradictory stances argued, the Tribunal is able to identify certain points -- based upon its reading of the combined written pleadings of the Parties and the evidence at the First Hearing -- that were not in dispute between the Parties, at least until the Second Hearing held on 20 October 1994 (see paras. 166 to 179, infra).

140. It emerges from a combined reading of the written pleadings and the testimony at the First Hearing that by the close of that Hearing the authenticity of the following documents appeared to be essentially unquestioned: the 29 March 1978 Agreement; the 14 June 1978 Proposal; the 19 August 1978 cover letter from Prof. Dadras transmitting the structural drawings to TRC; and the architectural drawings and structural calculations. This can be concluded from the letter dated 11 September 1978 submitted by the Respondents and relied on to support their defense of forgery, the testimony offered by the Respondents' forensic document expert at the Hearing and the construction drawings themselves.[28]

141. The Tribunal therefore concludes, based upon the foregoing and the record as a whole, that the following matters are effectively undisputed. First, negotiations took place between the Claimants and TRC.[29] Second, Prof. Dadras had a

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[28] The "11 September" letter sets out a detailed history of the Parties' contract negotiations; it confirms the vast majority of the meetings, documents and events described by Prof. Dadras in his affidavit and testimony. The construction drawings bear the name of AIDC, the company created by the Claimants, and could not have been prepared by HAUS as alleged by the Respondents. Colonel Entezari testified that the 14 June Proposal bore an authentic signature by Mr. Golzar.

[29] As discussed below, Mr. Golzar's testimony at the Second Hearing contradicted the Respondents' prior positions to some extent. For example, Mr. Golzar denied signing the 14 June 1978 Proposal, although the Respondents' expert had testified at the First Hearing that the signature of Mr. Golzar on that document

product to offer that was potentially interesting to TRC, namely the Dyna-Frame Celdex System of prefabricated concrete construction. Third, TRC and Prof. Dadras drew up an Agreement on 29 March 1978 (the typed version of which is dated 3 April 1978). Fourth, pursuant to the Agreement, Prof. Dadras was to form a construction team capable of constructing the superstructure of the North Shahyad Development Project using the D-F-C System. Fifth, between 3 April and 14 June 1978 Prof. Dadras caused Per-Am Construction Corporation and AIDC to be formed for this purpose. Sixth, on 14 June 1978 TRC and Prof. Dadras signed a Proposal under which Prof. Dadras undertook to adapt the pre-existing architectural plans for the North Shahyad Development to accommodate the D-F-C System. Seventh, between 14 June and 19 August 1978 Prof. Dadras (in conjunction with his staff at Dadras International and his associates at PKDR) adapted those pre-existing architectural plans. Eighth, the drawings and calculations were submitted to TRC officials on 19 August 1978, with a covering letter.

142. The Tribunal is satisfied that the version of events up until and including the submission of the completed work product occurred much in the manner presented by the Claimants, as set forth above. Not only have the Claimants presented a credible account of the background to the contract negotiations and of those negotiations themselves, but each significant event described by the Claimants is backed up by corroborating documentation and is either explicitly or implicitly supported by documentation presented by the Respondents or their witnesses. In addition to the pre-Contractual documents, such corroborating documentation includes: the submitted work product; the cover-letter for the submission of the work product, dated 19 August 1978; a letter confirming Prof. Dadras to be the exclusive license-holder in Iran of the proprietary D-F-C technology at all relevant times; and the "11 September" letter.

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was genuine. To the extent that Mr. Golzar's testimony at the Second Hearing was inconsistent with the eight points listed in the text, the Tribunal finds that such testimony is not credible.

143. The Claimants have further provided a credible motive for both parties to enter into negotiations. Prof. Dadras was the exclusive license-holder for the proprietary D-F-C technology, which potentially could have saved TRC significant time and money on the North Shahyad Project. Corroborating testimony was provided by Mr. Liebman to the effect that he had co-operated with the Claimant on the instructions of TRC. Further corroborating evidence was provided by Mr. Duvé, who testified about the license agreement with Prof. Dadras and PKDR's role in assisting in the preparation of the structural calculations. Finally, the Respondent's own witness, Colonel Entezari, affirmed the validity of Mr. Golzar's signature on the 14 June 1978 Proposal.

144. In sum, then, the Tribunal is satisfied that contract negotiations took place between the Claimants and TRC, and that these negotiations were recorded in various preliminary agreements.

4. The 27 August 1978 letter and the 9 September Contract

145. There is sharply conflicting evidence, however, as to the genuineness of subsequent documents, namely the 27 August 1978 letter from Mr. Golzar to Prof. Dadras concerning the latter's fee and the 9 September 1978 Contract. The record is further complicated by the testimony offered by Mr. Golzar, through his affidavit dated 31 January 1994 and particularly by his testimony at the Second Hearing.

146. The issue for decision thus becomes whether the negotiations and preliminary agreements between the Claimants and TRC culminated in a binding contract, as the Claimants contend, or whether no contract was ever executed, as the Respondents maintain. This question in turn boils down to whether the 27 August 1978 letter and the 9 September 1978 Contract are authentic documents or, as the Respondents allege, forgeries penned well after the fact. It is to this issue that the

Tribunal now turns. In analyzing this question the Tribunal will focus on the 9 September 1978 Contract, which is the operative legal document, although what is said below also applies to the Respondents' contention that the 27 August 1978 letter is forged.

147. The Respondents have advanced two kinds of direct evidence in support of their forgery allegations. The first is the testimony of Mr. Golzar, which was related in his 31 January 1994 affidavit and through his oral testimony at the Second Hearing. The second type of direct evidence is the Hearing testimony of the Respondents' forensic document expert, Colonel Entezari, as well as the affidavit from him that the Tribunal accepted subsequent to the First Hearing.

148. In addition to this direct evidence of forgery, the Respondents have relied upon a number of items of circumstantial evidence in support of their assertion that the 27 August letter and the 9 September 1978 Contract are forged. The Tribunal will first evaluate the Respondents' direct evidence and will then turn to its circumstantial evidence and arguments.

B. The Authenticity of the Contract

1. The Respondents' direct evidence of forgery

a. The Golzar affidavit and testimony

149. In support of their contention that the 9 September 1978 Contract is forged, the Respondents rely in large measure upon the testimony of Mr. Rahman Golzar, the former Managing Director of TRC and an alleged signatory to the Contract. As explained earlier in this Award, the Respondents proffered an affidavit from Mr. Golzar on 1 February 1994, and he subsequently testified, together with Prof. Dadras, at the Second Hearing held on 20 October 1994. The testimony of Mr. Golzar and Prof. Dadras at the Second Hearing was entirely contradictory.

150. The dispositive issue thus becomes whether it is Mr. Golzar or Prof. Dadras who is telling the truth. For the reasons that follow, the Tribunal finds that Prof. Dadras was credible and that Mr. Golzar was not.

151. At the outset, it is important to note that Mr. Golzar is no stranger to the Tribunal, which found occasion to assess his credibility and demeanor in a previous case before Chamber Three of the Tribunal, namely Abrahim Rahman Golshani and The Government of the Islamic Republic of Iran, Award No. 546-812-3 (2 March 1993), reprinted in _ Iran-U.S. C.T.R. _.

152. In Golshani, the claimant, Abrahim Rahman Golshani, a dual Iran-United States national who resided in the United States, claimed over one billion dollars for the alleged expropriation of his ownership interests in TRC and other properties. Mr. Golshani maintained that he had become the owner of this interest pursuant to the execution on 15 August 1978 of a deed of conveyance by Mr. Rahman Golzar Shabestari (variously described as his brother or cousin), the same Mr. Golzar who allegedly signed the Contract in these Cases. Through statements made in several affidavits and in testimony before the Tribunal, Messrs. Golzar and Golshani contended that during a visit made by Mr. Golshani to Iran in 1978 to perform an internship with TRC, he and Mr. Golzar had executed the Deed whereby Mr. Golzar transferred to him 59/60 of his 60% share in TRC and other corporate shareholdings and real and personal property. According to Mr. Golzar, the Deed had been registered in the ledger of a Notary Public Office. Mr. Golshani contended further that after May 1979 the Government of Iran took measures that served to expropriate the property acquired from Mr. Golzar.

153. The Government of Iran contended in Golshani that the Deed had been forged in the course of 1982 and backdated to August 1978, with the intention of placing assets owned by several Iranian nationals (including Mr. Golzar) in the name of the Claimant, whose American nationality would enable him to claim for their value before the Tribunal. The Respondent

contended that the Deed had been fabricated with the help of a Notary Public who was a friend of Mr. Golzar and then attributed to a different Notary Public Office. Mr. Golzar, in contrast, maintained that the evidence in support of the Respondent's contentions had been fabricated in order to defeat the claim.

154. The award in Golshani (issued on 2 March 1993) first addressed the reliability of the Deed relied upon by Mr. Golzar. In this regard, the Tribunal noted that

> the affidavits of the Claimant [Mr. Golshani] and Mr. Golzar lack coherence and consistency on several key aspects regarding the alleged transaction. These aspects include the events presented by the affiants as triggering the execution of the Deed, the date on which it was signed, the motivations for choosing the Claimant as Mr. Golzar's successor, the consideration for the transfer and the percentage of shares transferred.[30]

The Tribunal found it "implausible"[31] that the affiants (including Mr. Golzar) could have made a mistake regarding the date of the transaction and concluded that "most of the affiants' explanations of the underlying motivations for the preparation of the Deed and for the choice of the Claimant as Mr. Golzar's successor also are unconvincing."[32] The Tribunal thus found many "disturbing inconsistencies"[33] in the Claimant's corroborating evidence, which included Mr. Golzar's affidavits and testimony.

155. The ultimate conclusion of the Tribunal in Golshani was that "the Deed and the affidavits of its signatories [Messrs. Golzar and Golshani] do not inspire the minimal degree of confidence in the Deed's authenticity required to shift the burden of proof to the Respondent" on the forgery issue.[34] The

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[30] Golshani, Award No. 546-812-3, at para. 111.

[31] Id. at para. 115.

[32] Id. at para. 116.

[33] Id. at para. 121.

[34] Id. at para. 122 (emphasis added).

Claim was dismissed for lack of proof of ownership and the Respondent was awarded U.S.$50,000.00 in costs of arbitration.

156. The credibility of Mr. Golzar was denounced in even stronger terms in the separate opinion filed by Judge Aghahosseini in Golshani. Judge Aghahosseini concurred in the dismissal of the case based on the Claimant's failure to prove ownership of the property claimed. He opined, however, that the Tribunal should have expressly declared that Messrs. Golzar and Golshani had committed a forgery.

157. Evidence presented by Mr. Golzar in Golshani, including several affidavits and testimony given under oath before this Chamber of the Tribunal, is variously described in Judge Aghahosseini's concurrence as "incredible," "most unnatural," not "remotely convincing," "contradicted, flatly," "unconvincing," "inaccurate," "directly contradicted by the Statement of Claim" and again "incredible." Furthermore, his affidavit "cannot be given any probative value," it contains "contradictions and inconsistencies," he "should not be believed" and the claim is described as "sordid."[35] Judge Aghahosseini criticizes his fellow arbitrators for their "reluctance to call a forged document by its proper name, when it [the Tribunal] comes to realize its true character."[36] The Tribunal, he suggested, should be "forthright in exposing the instances of abuse and in censuring the perpetrators"[37] and should label the perpetrator of a fraud with a "deserved stigma."[38]

158. The Tribunal must agree that a "deserved stigma" does indeed follow Mr. Golzar. Although the award in Golshani found it unnecessary to decide the question of forgery, even seen in

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[35] Separate Opinion of Mohsen Aghahosseini in Golshani, Award No. 546-812-3, at 24, 40, 44, 45, 46, 50, 52, 101, 102.

[36] Id. at 2.

[37] Id. at 107.

[38] Id.

the most generous light Mr. Golzar is a man who attempted to obtain a billion dollar payment from this Tribunal through his younger relative by means of a "Deed" which could not inspire even a "minimal degree of confidence in [its] authenticity" (according to the award), and which was a "forgery" (according to Judge Aghahosseini). The Tribunal cannot but justifiably fear that a man who has once presented highly suspect documentation and testimony under oath to an international arbitration tribunal may have few scruples in repeating the act.

159. The Respondents seek to buttress Mr. Golzar's credibility as a witness in the instant Cases by pointing out that an affidavit from Mr. Golzar was taken into consideration by the Tribunal in the HAUS case. It should be noted, however, that the Tribunal had no reason to question the credibility of Mr. Golzar in HAUS, as the award in that case was issued more than seven years before the award in Golshani. Furthermore, it is unclear what role, if any, Mr. Golzar's affidavit played in the Tribunal's decision in HAUS.

160. The Respondents in these Cases suggest that the testimony of Mr. Golzar in Golshani was not credible because he was a party in interest in that case and stood to gain large sums of money from testimony favorable to the Claimant. In contrast, it is argued, his testimony is credible in these Cases because he has nothing to gain by testifying for the Respondents, and so testifies as an independent witness.

161. The Tribunal is unable to accept the proposition that a double standard applies for witnesses with and without an interest in a case. While the interest of a witness in a case is a possible indicium of bias that may cause the Tribunal to accord less weight to his or her evidence, or to look for corroborating evidence, the standard of honesty that the Tribunal expects from all witnesses who testify before it is the same. The Tribunal is not inclined to treat with a greater degree of tolerance dubious testimony given where there is a personal

interest at stake than similar testimony given by a so-called "neutral" witness.

162. It has also been suggested that the testimony of a witness who is testifying contrary to his own interests, or who has a history of conflict of interest with the beneficiary of his testimony, is somehow more credible than that of a witness with an interest in the case or even an "independent" witness. In this scenario, Mr. Golzar is characterized as testifying against his own interests as he has in the past been an "enemy" of the Respondent Government and has engaged in multiple litigations against it. The Tribunal, however, is not convinced that a credibility determination necessarily depends upon the "status" of the witness; rather, the Tribunal must weigh a witness's credibility taking into account all of the pertinent circumstances.

163. Moreover, the Tribunal is unable to determine whether Mr. Golzar has any personal interest in the outcome of these Cases. The Claimants have engaged in speculation as to the possible motivations for Mr. Golzar's tardy offering of his testimony. The Claimants contend that there is no indication that the award of costs totalling U.S.$50,000.00 against the Claimant in Golshani has been paid to the Government of Iran; they further note that Mr. Golzar has been involved in litigation against Iran regarding a Paris apartment and assert that "Mr. Golzar's current eagerness to assist Respondent . . . can only be the result of complicity favoring Mr. Golzar financially (i.e.[,] his current 'testimony' is a quid pro quo for the settlement of other disputes and accounts between Mr. Golzar and Respondent[)]."

164. The Respondents contend, however, that "[n]one of these issues has any relevance to the Golzar Affidavit." In support of this denial, the Respondents provide an exchange of letters between the Agents of the Governments of Iran and the United States regarding the satisfaction of the award of costs against Mr. Golshani. What this exchange of letters reveals, however, is simply that although the Government of Iran has attempted to

obtain satisfaction of the costs order through official channels, by March 1994 the award had not yet been paid. Be that as it may, inasmuch as the Tribunal does not have the information before it either to confirm or reject such allegations as to the motivations for Mr. Golzar's testimony, it cannot draw any conclusions one way or the other as to whether Mr. Golzar has an interest, financial or otherwise, in offering his testimony in these Cases.

165. Nevertheless, the Tribunal concludes that Mr. Golzar's credibility has been dealt a severe blow by the evidence he presented to the Tribunal in the Golshani case. Mr. Golzar cannot be conveniently rehabilitated by his conversion into an "independent" witness, particularly as the Tribunal does not have the information at its disposal to pronounce itself one way or the other on the question of the disinterestedness of Mr. Golzar.

166. The testimony given by Mr. Golzar at the Second Hearing did nothing to reestablish his credibility. On the contrary, the Tribunal was struck by the vagueness of Mr. Golzar's oral testimony; his tendency to resort to blanket denials, rather than a detailed and reasoned account of events; and his evasiveness under cross-examination.

167. Mr. Golzar's testimony at the Second Hearing was remarkably inconsistent and vague. Although he had clearly denied signing the Contract in his 31 January 1994 affidavit, it never emerged clearly at the Hearing whether it was his testimony that he (a) did not sign the Contract and the preceding pre-contractual agreements; (b) could not remember having signed the Contract and other documents; or (c) believed that if he had signed such documents he would have remembered doing so. His responses during cross-examination and questioning from the arbitrators were evasive, and he was unable to provide corroborating detail to substantiate any of his blanket denials.

168. Most striking for the Tribunal, however, were the inconsistencies between what was contained in his affidavit,

signed on 31 January 1994, and his testimony given at the Second Hearing less than ten months later.

169. In his affidavit, Mr. Golzar stated that "though there were certain cost-free preliminary agreements for that purpose, no contract was eventually concluded for the construction of that project [North Shahyad] with Mr. Dadras." This statement clearly seems to imply some knowledge of and interaction with Prof. Dadras. At the Hearing, however, Mr. Golzar testified that he "neither knew Mr. Dadras nor my memory is refreshed now that I see him. This is the first time that I see him or hear his name." This denial was later repeated: "At the beginning I said that the first time I am seeing Mr. Dadras is today here."

170. Furthermore, Mr. Golzar testified repeatedly that he had not signed (or could not remember signing, see para. 167, supra) any agreements at all with Dadras International or Per-Am. For instance, he testified: "[N]one of these letters or papers that I have seen I have never seen them before."[39]

171. Mr. Golzar further stated in his affidavit that he had decided not to enter into a final contract with Prof. Dadras because "my inquiries, after our preliminary agreements, with regard to both the proposed terms of the transaction and the individuals involved on the other side, had dissuaded me from entrusting the intended construction of the project to Mr. Dadras." However, at the Second Hearing, he was unable to provide any details of inquiries supposedly made by him and testified instead that any inquiries would in fact have been made by one of the departments of TRC. Again, he was unable to provide any further details, answering a question about the nature of the inquiries with: "As I submitted to you, what you are stating right now is not something that I remember" and "I submitted to you that personally I was not in a position to go

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[39] At the Hearing, Judge Aghahosseini corrected the translation of this sentence, saying that Mr. Golzar (who testified in Persian) had said that he did not "remember," rather than that he had not "seen."

and talk to individual people one by one. I would ask the people working for me to go and investigate and enquire and see whether Mr. Dadras would be a person to implement a project."

172. Regarding these alleged inquiries, when pressed by questions from the arbitrators, Mr. Golzar acknowledged that perhaps his affidavit should have been differently phrased:

> It is possible that what I said in my affidavit, that it dissuaded me. I should have said 'would have dissuaded me' because it was not such a thing that I did not do. If I would take all the documents it would have become . . . would have dissuaded me.

This latter piece of testimony contradicts his own earlier Hearing testimony that other TRC officials had made inquiries and implies instead that in fact no inquiries were made.

173. Mr. Golzar also gave inconsistent testimony at the Second Hearing about the number of his recent trips to Iran, first testifying that he had travelled there once in the course of 1994, and then acknowledging that he had in fact been there twice during 1994 after his passport was reviewed by Claimants' counsel.

174. Mr. Golzar's testimony at the Second Hearing also contradicted some of the assertions made by the Respondents in these Cases. Although in their earlier pleadings the Respondents had denied any knowledge of the Contract or the related materials produced by the Claimants (despite their own submission of the "11 September" letter), by the end of the First Hearing it had become clear that the drawings submitted by the Respondents as those of HAUS were in fact prepared by Dadras International and that at least the 14 June Proposal contained an authentic signature of Mr. Golzar, as testified to by the Respondents' own handwriting expert, Colonel Entezari. Mr. Golzar appeared to affirm this later version of events in his affidavit. However, at the Second Hearing, he denied all knowledge of Prof. Dadras, Per-Am and any agreements or documents involving the Claimants.

175. More specifically, Mr. Golzar directly contradicted testimony by the Respondents' handwriting expert, Colonel Entezari, at the First Hearing that the signature on the Proposal dated 14 June 1978 was an authentic signature by Mr. Golzar. Colonel Entezari had said: "Mr. Chairman. In respect of the proposal's signature which you just gave me I compared this. This is a correct signature and this indeed belongs to engineer Golzar, in page 4 of the proposal." At the Second Hearing, however, Mr. Golzar testified that he did not sign (or at least did not remember signing) the Proposal.

176. Mr. Golzar also contradicted other testimony by Colonel Entezari. For instance, Colonel Entezari had used a letter written by a Mr. Abolghassemi of TRC, and apparently endorsed by Mr. Golzar, as an example of a document on which Mr. Golzar's authentic signature appeared. However, when shown this document at the Hearing, Mr. Golzar denied any knowledge of Mr. Abolghassemi and denied that the signature on the top of the letter was in fact his.

177. Also at the Second Hearing, Mr. Golzar testified that at the time of the alleged Contract with Prof. Dadras, TRC had no other offers for construction of the North Shahyad Project. However, the record of these Cases contains such an offer by an Italian firm, Russotti SPA, which document was submitted by the Respondents themselves for other purposes.

178. The Tribunal further notes that the explanation given by the Agent of Iran on 1 February 1994 for the meeting that led to the submission of the Golzar affidavit was directly contradicted by Mr. Golzar at the Second Hearing, where he testified that he had received a phone call in Paris from a BILS official and had then been invited to phone the BILS office in The Hague. In addition, this constitutes yet another contradiction for Mr. Golzar, who stated in his affidavit that he had "met with" -- not spoken on the telephone with -- a BILS official.

179. Furthermore, Mr. Golzar's testimony at the Second Hearing conflicts with that given at the First Hearing by Mr. Liebman, who had impressed the Tribunal as a credible witness. Mr. Liebman testified that he had been instructed by TRC to cooperate with Prof. Dadras by providing Dadras International with HAUS's architectural drawings for North Shahyad. At the Second Hearing, Mr. Golzar denied having given such an instruction and denied any knowledge of such an instruction having been given by any other official at TRC.[40]

180. In sum, then, the testimony of Mr. Golzar at the Second Hearing was of such a quality that it reinforced the Tribunal's previous impression of Mr. Golzar's lack of credibility, rather than bolstering the Tribunal's confidence in him as a witness. For the foregoing reasons, the Tribunal finds that Mr. Golzar is not a credible witness and that it is unable to attach any evidentiary weight to the allegations contained in the Golzar affidavit or to the testimony of Mr. Golzar at the Second Hearing.

b. The credibility of Professor Dadras

181. In a case that depends to some extent on the credibility of the main protagonists, it is important to compare the credibility of Prof. Dadras with that of Mr. Golzar. Prof. Dadras's curriculum vitae reveals that he combines academic work with that of a practicing architect. He is a tenured Professor of Architecture at the New York Institute of Technology and a member of, inter alia, the American Institute of Architects. He has served as President of the New York Institute of Technology's Chapter of the American Association of University Professors. His professional achievements are wide-ranging, and he has received repeated public recognition for those achievements, see

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[40] Later during the Second Hearing, Mr. Golzar retreated from his previous statement somewhat, stating: "I did not have any contacts with [Mr. Liebman of HAUS]. It could be that somebody from TRC or from the North Shahyad project got in touch with him."

paras. 72 to 73, supra. The impression created by his biographical data is that of someone who would be risking a considerable professional reputation by presenting forged documents and perjured testimony to an international tribunal.

182. Even more importantly, the assertions that Prof. Dadras has made in his evidence and testimony have remained constant throughout these Cases. He has resolutely maintained his narrative regarding the negotiations with TRC that were reflected in various preliminary agreements and that culminated in the 9 September 1978 Contract. Any inconsistencies in his testimony are of a minor nature, such as his confusion over whether Mr. Golzar had dictated the 27 August 1978 letter in English or Persian; which precise figures were the starting points for the negotiation between himself and Mr. Golzar; and the exact dates on which these negotiations over fees occurred.[41] The Tribunal

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[41] Prof. Dadras testified at the First Hearing that he had seen Mr. Golzar dictating the 27 August letter to his secretary in English, which statement he corrected later in that Hearing to having seen him dictate the letter in Persian, noting that Mr. Golzar did not speak good enough English at the time to be able to dictate in English. At the Second Hearing, Prof. Dadras reaffirmed that the letter had been dictated in Persian. The Tribunal believes that this confusion may be explained by the lapse of years, and notes that Prof. Dadras in any case corrected his own testimony.

Another dispute arose at the First Hearing as to whether Mr. Golzar had signed the 29 March Agreement, or whether it had been signed by other TRC officials. Prof. Dadras maintained that Mr. Golzar's signature could be seen on the document, and that he believed Mr. Golzar had signed. At the Second Hearing, however, he admitted that he was "not 100% sure that [Mr. Golzar] did do that." It is in fact not entirely clear to the Tribunal whether Mr. Golzar signed the Agreement himself (in addition to other TRC officers) due to the illegibility of the signatures on that document. As this issue cannot be regarded as significant, the confusion is minor.

Again, a point made at the Second Hearing by Respondents' counsel was that Prof. Dadras had testified that Mr. Golzar had walked out on him in a meeting that occurred at TRC headquarters on 19 August 1978, whereas he had stated in his written pleadings that Mr. Golzar had initially greeted him. This passage of the testimony, however, seems to the Tribunal to be confused and emotional, rather than to reveal any significant cracks in Prof. Dadras' story.

finds these inconsistencies to be small and immaterial and concludes that they in no way undermine Prof. Dadras's credibility. The inconsistency between the date of the "11 September" letter and Prof. Dadras's testimony regarding that point is examined at paras. 200 to 210, infra.

183. In sum, at both the First and Second Hearings in these Cases the Tribunal was struck by the consistency of Prof. Dadras's testimony, the candor of his demeanor and the openness with which he responded to questions by counsel and by the arbitrators. The Tribunal consequently finds Prof. Dadras to be credible and determines that his testimony should be accorded substantial weight.

184. Having concluded that Mr. Golzar's testimony was not credible and that Prof. Dadras was credible, the Tribunal now turns to the Respondents' other direct evidence of forgery, namely, the evidence of the Respondents' handwriting expert, Colonel Entezari.

c. The testimony of Colonel Mohammed Taghi Entezari

185. It should be noted initially that evaluation of the Respondents' forgery allegations involves three main elements. First, the authenticity of the signature purporting to be that of Mr. Golzar on the 9 September 1978 Contract has been challenged by the Respondents. Second, the authenticity of the signature also purporting to be that of Mr. Golzar on the letter dated 27 August 1978 has been challenged. Third, on every page of the 9 September 1978 Contract appears a set of initials, also purporting to be those of Mr. Golzar. The authenticity of the

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One other alleged contradiction involved Prof. Dadras' testimony regarding what his fee covered. As set out in more detail below, however (see paras. 218 to 220, infra), the Tribunal considers this question to be one more relevant to the internal relations of the group of contractors Prof. Dadras had gathered together to work on the North Shahyad Project, rather than to the Claims against TRC.

initials has not been specifically put at issue by the Respondents.

186. Before the post-Hearing admission of late-filed documents, there was no evidence in the written pleadings supporting the Respondents' allegation that the signatures appearing on the letter dated 27 August 1978 and on the Contract itself were forged. At the Hearing, however, on the basis of an inspection of the originals of the documents that took place three days earlier, the Respondents' handwriting expert, Colonel Mohammed Entezari (a forensic document specialist certified by the Iranian Ministry of Justice), gave his opinion as to the genuineness of the signatures in dispute.[42]

187. Colonel Entezari testified that he perceived "differences and discrepancies" between genuine signatures of Mr. Golzar and the signature on the 27 August 1978 letter, but he was unable to specify this in any way other than to say that, compared to genuine signatures, the "oval form" of the disputed signatures was "more open." His attempts to expand upon this conclusion did not extend beyond a reference to "the quality, the habit of the writer which unconsciously appears on the paper." Furthermore, he offered no explanation for concluding that the signature attributed to Mr. Golzar on the Contract was not genuine, other than to say that "from a qualitated point of view this signature is different." Colonel Entezari further testified that the signature appearing on the 14 June Proposal was a genuine signature of Mr. Golzar.

188. Significantly, neither in his pre-Hearing affidavit nor at the Hearing itself did Colonel Entezari address the authenticity of the initials appearing on each page of the 9 September 1978 Contract, including the signature page. The authenticity of Mr. Golzar's initials on each page of the

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[42] Although the Respondents had previously submitted an affidavit by Colonel Entezari, this affidavit was confined entirely to various questions arising from the letter dated 11 September 1978.

Contract thus remained unchallenged by the Respondents up to and throughout the First Hearing.

189. The Tribunal considers that the testimony of Colonel Entezari as it stood at the First Hearing was insufficient to sustain an allegation of forgery for the following reasons. First, it was characterized by a general lack of thoroughness and completeness. Second, his Hearing testimony on crucial points was unsupported by his previously-submitted affidavit. Third, and most importantly, he failed to address the validity of the initialling on the Contract. Colonel Entezari's Hearing testimony therefore left the Tribunal with incomplete and unconvincing testimony on the disputed signatures of Mr. Golzar, and no testimony at all on the initials.

190. In addition, Colonel Entezari's testimony at the First Hearing was to some extent undermined by the testimony of the former HAUS president and architect, Mr. Theodore Liebman. Although he claimed no technical handwriting expertise, Mr. Liebman was a credible witness who had the benefit of years of familiarity with Mr. Golzar's signature as a result of his own business dealings with TRC. He testified firmly that he believed that the signature and initials appearing on the Contract were written by Mr. Golzar. In response to a question from Claimants' counsel, Mr. Liebman stated:

> This is the contract you showed to me and this is the contract where I identified both the signature and the initials. As you recall I was very concerned that I have this correct. It has been many years so I went to my storage unit and found my contract [the HAUS-TRC contract] and compared them again, so I would be 100% sure. And I must say that from reviewing each and every page with both the initials and the signature and the 19 pages or so on my own contract I am 100% sure that this is Mr. Golzar's signature and his repeated initialling of both contracts.

When pressed by counsel for the Respondents, he elaborated in the following way:

> It is interesting, because when I was called by the [Claimants'] attorneys and they said they wanted me to identify Mr. Golzar's signature, I said I can probably attempt to draw what it looks like because I remembered it, because each and every time I went to his office he would sign a check for me and I watched that signature happen. It was a very important signature for me and he frankly was a very important client for me. But I was very concerned that I would be correct and I therefore went to my contract and if you compare on page after page for 19 or 20 pages of mine that strange little initialling, repeated and repeated and repeated on his contract on every page, and on mine in little places where the dates are, . . . that kind of a forgery would be a monumental repetitive forgery. To the best [of] my ability -- and my eye is my work; I am not expert on calligraphy or signatures -- I believe that to be true.

Mr. Liebman's testimony is therefore one further factor that tends to undermine the testimony and conclusions reached by the Respondents' witness, Colonel Entezari.

d. Post-Hearing affidavits by Colonel Entezari and Mr. John Paul Osborn

191. As outlined above, a year after the First Hearing in these Cases the Tribunal accepted various late-filed documents into evidence (see paras. 37 and 42, supra). Among these documents were an affidavit and a supplementary affidavit by the Claimants' handwriting expert, Mr. John Paul Osborn, and a second affidavit by Colonel Entezari.

192. Mr. Osborn is certified as a Forensic Document Examiner by the American Board of Forensic Document Examiners. His first report, dated 22 January 1993 (i.e., before the First Hearing in these Cases was held) examined the signatures and initials purporting to be those of Mr. Golzar appearing on the 14 June 1978 Proposal, the 27 August 1978 letter and the 9 September 1978 Contract. These signatures and initials were compared with "known specimen signatures" of Mr. Golzar, namely affidavits submitted by him in the Golshani and HAUS cases, the contract in the HAUS case and several documents that had been submitted into evidence by the Respondents and used by Colonel Entezari as

genuine samples of Mr. Golzar's signature. All the "known" samples appeared on photocopies of documents, while all of the "questioned" samples appeared on original documents.

193. Mr. Osborn's report contained two qualifications, namely that it was "generally preferable" that at least some of the "known" signatures be submitted on original documents, and that it would have been desirable to have had access to a larger number of "known" signatures. He considered the number of specimen initials to be sufficient. On the basis of the samples that he had, he came to the conclusion that it was "probable that the questioned signatures appearing on the [questioned] documents . . . are the genuine signatures of Rahman Golzar Shabestari based on the material provided for comparison" (emphasis added). He found it "highly probable" that the initials on the questioned documents were written by Mr. Golzar.

194. Mr. Osborn based his conclusion as to the signatures on the fact that while there were some differences between the "questioned" and "known" signatures, there were also subtle variations among the "known" signatures. He considered these latter variations to be significant because of the overall simplistic formation of the signature. He consequently rendered an opinion that was "probable," but emphasized that "there are no unexplainable differences between the questioned and known signatures of a significant enough nature to suggest the questioned signatures were executed by a writer other than Rahman Golzar Shabestari." He reached a similar conclusion as to the initials, stating that "[t]he questioned initials . . . contained no significant unexplainable differences when compared with the known specimens, including any evidence of an attempted imitation process." Significantly, he added that

> both in regard to the questioned signatures and the questioned initials there is a consistency, not only between these writings and the known specimens submitted for comparison, but also between and among themselves. The attempted imitation of an individual's signature once would be considered difficult, so the larger the number of attempted imitations the more difficult the

> overall task becomes. The consistency between the questioned signatures and initials, with only a normal degree of variation, is evidence of genuineness when all of those writings also conform with known genuine specimens. Secondly, the presence of a normal degree of variation between the questioned signatures, as well as between the questioned initials, demonstrates writing patterns associated with genuineness. Often an imitator will make the mistake of basing imitations on a single model signature, resulting in imitations which are too consistent with one another and do not contain the normal variations found between genuine signatures (emphasis added).

195. In response to Mr. Osborn's report, and as part of the Tribunal's scheduled post-Hearing submissions, the Respondents submitted a supplemental affidavit from Colonel Entezari dated 15 March 1993 dealing with the disputed signatures. In this affidavit, Colonel Entezari paid particular attention to discrepancies he perceived between known and disputed signatures. He discussed such technical features as the pause, hesitation and writing speed of the disputed signatures. He also opined that had Mr. Osborn had access to the original documents on which the "known" signatures appeared there would have been no difference of opinion, and that Mr. Osborn was hampered by his lack of familiarity with the Persian alphabet.

196. With regard to the initials appearing on every page of the Contract, Colonel Entezari stated that initials were not of the same legal force and validity as signatures and that in all his years of experience he had never been involved in the forensic examination of initials. He did "not generally regard initials [as being] of any value of comparison, but consider[ed] any technical determination in connection therewith, erroneous and risky, and [could] not, in principle, make any conclusive determination in this connection."

197. Mr. Osborn's second affidavit, dated 16 March 1994, reported his supplementary analysis of the disputed signatures based on additional samples obtained from the 31 January 1994 affidavits in English and Farsi by Mr. Golzar, and with the altered premise that the signature on the 14 June 1978 Proposal

could be regarded as a known specimen of Mr. Golzar's signature (as Colonel Entezari testified at the First Hearing). Mr. Osborn asserted that his previous conclusions had been strengthened by the additional information. He regarded the signatures on the 31 January 1994 affidavits as significant in that they showed "significant variation when compared with one another" despite being executed on the same day. The fact that the 14 June Proposal (which had been provided to him in connection with his first affidavit) could now be regarded as bearing a genuine signature affected his conclusion the most, because "[t]he characteristics exhibited by this signature can be most closely associated with those appearing within the remaining questioned signatures." The 14 June Proposal was, moreover, an original document rather than a photocopy. Mr. Osborn concluded:

> It is my opinion that the combined effect of comparison between the signature on [the 14 June 1978 Proposal], the signatures appearing on the 31 January 1994 affidavits as additional known specimens; together with all other known specimens previously submitted strengthens the previously rendered conclusion to the extent that a highly probable, rather than probable, conclusion that they were all executed by the same person is justified (emphasis added).

198. The Tribunal is thus left with expert testimony from both Parties which is technically detailed and thorough, but also entirely inconsistent. As discussed above, the Respondents bear the burden of proving that the disputed documents are forged. Mr. Osborn has produced detailed and complete reports in which his conclusions are expressed with apparent candor. His opinion is also to some extent strengthened by the testimony presented by Mr. Liebman. The Tribunal therefore concludes that the testimony presented by Colonel Entezari has been undermined to the extent that it cannot be regarded as showing, either decisively or on balance, that a forgery has been perpetrated by the Claimants.

199. Having concluded that the Respondents' direct evidence of forgery is insufficient to sustain their burden of proof on the forgery issue, the Tribunal now turns to the Respondents'

circumstantial evidence and arguments. These will be examined seriatim.

2. The Respondents' circumstantial evidence of forgery

a. The significance of the letter dated 11 September 1978

200. One of the pieces of evidence relied on most heavily by the Respondents in support of their forgery allegation is the letter dated 11 September 1978. As noted earlier, this is the only document submitted by the Respondents which indicates that some interaction occurred between the Claimants and TRC. In the letter Prof. Dadras urges Mr. Golzar to proceed with the signing of the final contract. The letter is dated two days later than the date that appears on the Contract itself.

201. The significance of the letter is two-fold. First, if the date on the letter is correct, it constitutes very good proof that the Contract is not an authentic document. On the other hand, the letter is in many ways very useful to the Claimants, as it has been submitted into evidence by the Respondents as a genuine document and it corroborates Prof. Dadras's version of events up until 21 August 1978. The corollary of this latter point is that it highlights the inconsistencies in the arguments presented by the Respondents, who, as noted earlier, initially denied any contact between Prof. Dadras and TRC and asserted that there were no documents mentioning Prof. Dadras or generated by him in TRC's files.

202. The Respondents appear to have produced the "11 September" letter to challenge the authenticity of the 27 August 1978 letter and the Contract. The letter, however, contradicts many of the allegations previously made by the Respondents. In the context of a series of later disproved denials (see paras. 135 to 138, supra), this again raises questions about the credibility of the Respondents' allegations.

203. The Claimants do not dispute the authenticity of the letter. Instead, they contend that it was written on 21 August 1978 rather than on 11 September 1978 and that Prof. Dadras simply made a mistake in dating the letter 11 September 1978. The letter is written in Persian and the date is given in the Persian calendar.[43] The primary question regarding this letter, therefore, is whether it was written on the date that appears on the top -- namely 11 September 1978 -- or on another (earlier) date.

204. With regard to Prof. Dadras's alleged mistake in dating the letter, the issue is whether this explanation is credible. There are two aspects to this question. The first is whether the explanation is credible in itself. The second is whether the explanation is credible in the context of the letter.

205. The question of whether the explanation is inherently credible can be answered by reference to everyday experience. The Tribunal only has to look at the frequency with which such mistakes are made in the daily work at the Tribunal and elsewhere to conclude that such a mistake could have been made. In this regard it is significant that the letter was written in Persian, by someone who had not spoken Persian regularly for almost thirty years, necessitating laborious mental conversions between the Iranian and Gregorian calendars. The difficulty was further compounded by the fact that two different calendars were used in Iran at the time -- the Iranian Hejri-Shamsi and the Iranian Imperial calendars -- necessitating conversions between three different calendars. Moreover, the conversion process itself is fairly complicated.[44]

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[43] Prof. Dadras claims to have dated the letter 20/6/1357 (11 September 1978) instead of 30/5/1357 (21 August 1978) under the Persian calendar.

[44] Conversion of a date from the Gregorian calendar into the Iranian Hejri-Shamsi (Iranian solar) calendar involves the subtraction of the figure 621 from the current Gregorian year, if the date in question falls between 21 March and 31 December. If the date in question falls between 1 January and 20 March, the figure 622 must be subtracted from the Gregorian year to yield

206. Whether Prof. Dadras's alleged date mistake is credible in the context of the writing of the letter is a more difficult question. Prof. Dadras recounts that he arrived in Tehran on 19 August 1978, jet-lagged after the flight from New York and having just spent two months working overtime converting the HAUS drawings to accommodate the D-F-C System. When he arrived at the offices of TRC, Mr. Golzar initially ignored him. This behavior, according to Prof. Dadras, upset him. However, he nonetheless handed over the completed drawings to other TRC officials with a covering letter. On the following day he contacted Mr. Jabary, the legal advisor to both Kan Consulting Engineers and TRC, who had introduced Prof. Dadras and Mr. Golzar to one another some months earlier. Mr. Jabary allegedly advised him to write a letter to Mr. Golzar setting out the history of their negotiations thus far. Prof. Dadras returned to the TRC offices on 21 August 1978, was told that the drawings and calculations had been approved and was asked to draft a contract. He relates that he was delighted, and that he left immediately to draft a contract. At the end of this drafting session, he allegedly wrote the "11 September" letter to Mr. Golzar, summarizing the history of the parties' dealings to that date. When he returned to TRC's offices in the afternoon of 21 August 1978, however, Mr. Golzar was unexpectedly available to meet with Prof. Dadras. During this meeting the letter was given to TRC, although by that time it appeared to have become superfluous. The date written on the letter was 11 September 1978 and Prof. Dadras contends that this was simply a mistake.

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the correct Iranian year. To arrive at the equivalent day and month, a detailed conversion table is used, in which each day and month in the Gregorian calendar is given an equivalent day and month in the Hejri-Shamsi calendar.

The Iranian Imperial calendar used the same days and months as the Iranian Hejri-Shamsi calendar, but the year was different again, and could be calculated by adding the figure 559 to the current Gregorian year if the date fell between 21 March and 31 December, or adding 560 if the date fell between 1 January and 20 March.

207. The Tribunal considers the following factors to be relevant in assessing the credibility of this explanation. First, the alleged mistake in dating the letter is not an isolated and inconsistent element of the letter. The letter contains other date mistakes, which do not affect the narrative, and which are verifiable by examining Prof. Dadras's passport.[45] It is thus not inconceivable that Prof. Dadras could have made a further and equally genuine date mistake in writing the date at the top of the letter.

208. Second, the text of the letter is not inconsistent with its having been written on 21 August 1978. The letter does not mention any event occurring after 21 August 1978, but details the history of negotiations up to and including that date. Furthermore, the letter appears to be the kind of summary that Mr. Jabary allegedly suggested.[46]

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[45] He writes in the letter that he arrived in Tehran on 17/3/1357 (7 June 1978), whereas his passport shows the actual date to be 12/3/1357 (2 June 1978). Similarly, he writes in the letter that he arrived in Tehran for a second time on 23/5/1357 (14 August 1978), whereas his passport shows the actual date of arrival to be 28/5/1357 (19 August 1978).

[46] Other aspects of the letter are likewise not inconsistent with its having been written on 21 August 1978. For instance, Prof. Dadras wrote (about events occurring on the day of writing) that he "drew up a Contract on the basis of the precontract of 14 June 1978 and handed [it] over to [TRC]" (emphasis added). The Tribunal has considered whether the use of the past tense might be inconsistent with writing the letter before the draft contract was actually submitted to TRC. This question, however, may be answered by reference to the purpose of the letter, which was to summarize all the developments in the negotiation up until the time Mr. Golzar read the letter and to induce him to sign the Contract. By the time Mr. Golzar read the letter, the draft contract would also have been submitted. The use of the past tense in referring to the submission of the draft contract therefore would be consistent with the purpose of the letter.

Prof. Dadras also states in the letter that he was writing the letter " before leaving for New York." The Tribunal believes that it is quite plausible that Prof. Dadras would have included such information, if he had written the letter on 21 August, since as of that date he did not know whether the final contract negotiations would be successful, or even whether he would see Mr. Golzar again. The Tribunal also notes that the Claimant mentioned his planned departure date in the letter as being 18

209. On balance then, the Tribunal considers the wording of the letter to be consistent with the date on which Prof. Dadras claims to have written it, namely 21 August 1978, both in language and tone, and as congruent with the narrative as recounted by Prof. Dadras.

210. The third and particularly significant factor is that the letter was written in Persian, a language in which Prof. Dadras was no longer comfortable after having lived in the United States for almost thirty years, during most of which time he was married to a non-Persian speaker. As discussed above, the letter contains dates written in three different calendars, namely the Gregorian, the Iranian Hejri-Shamsi and the Iranian Imperial calendars. The necessity of making date conversions in or between three different calendars therefore would have added to the stressful situation in which Prof. Dadras found himself, and would have significantly increased the likelihood of making a faulty conversion.

211. Consequently, in the light of the foregoing factors, the Tribunal concludes that the Claimant reasonably could have made a mistake in dating the letter. The Tribunal is therefore willing to accept the explanation for the wrong date proffered by Prof. Dadras and to regard the letter as having been written on 21 August 1978.

September 1978. As revealed by his passport, however, he in fact left Tehran on 13 September 1978. It is of course possible that Prof. Dadras might have written on 11 September that he was planning to leave Tehran on 18 September, and then have in fact left on 13 September, without having signed a final contract. However, the Tribunal considers it to be by far more likely that he would have written on 21 August that he would leave on 18 September, and then in fact have left on an earlier date (13 September) after having successfully signed the Contract.

b. The nature and amount of work performed by Professor Dadras

212. The Respondents have argued that the Contract cannot be authentic because, in their view, the fee specified for Prof. Dadras's work is excessive compared to what they see as the relatively minor amount of work actually done by him. Consequently, the argument goes, the fact that the Contract purports to provide for a large sum as a fee for the work would in itself suggest that the Contract is forged. The Respondents raise a number of specific points in support of this contention.

213. The Respondents first point out that the raw engineering calculations for the superstructure were done by PKDR at Prof. Dadras's direction (although they were subsequently checked and revised by Prof. Dadras), and that PKDR, when operating independently, apparently only charged a fee for this part of the work once the D-F-C plants began to operate. This latter point emerges from the so-called "PKDR Proposal," a document prepared by PKDR for the Kan Project that was given by Prof. Dadras to Mr. Golzar during their negotiations. Consequently, the Respondents argue, it is not necessary to look any further than the PKDR Proposal to conclude that the real value of the work performed is out of proportion to Prof. Dadras's fee.

214. This argument, however, overlooks the fact that the PKDR Proposal, although a part of the record in these Cases, does not form part of the Contract. It simply cannot be assumed that the PKDR Proposal constituted a part of an "offer" by Prof. Dadras to TRC, with the intention of its becoming part of a future contract. The record does not reveal what Prof. Dadras's prime purpose was in providing the PKDR Proposal to TRC. It is quite plausible that it was submitted in the course of negotiations merely as a background document; in that case one would hardly expect that the terms of the Proposal relating to payment would appear verbatim in the final contract.

215. In addition, one crucial point should not be forgotten, namely that Prof. Dadras and not PKDR was negotiating with TRC. If PKDR had been negotiating with TRC, the Tribunal might be inclined to give more evidentiary weight to the PKDR Proposal. However, Prof. Dadras was acting for himself and not on behalf of PKDR, and he was in fact very well placed to negotiate a substantial fee for himself. Prof. Dadras was the sole license-holder in Iran of the D-F-C technology. As such, he could negotiate a fee and contract conditions different from the standard Proposal of the developer of the technology (PKDR), which had granted the exclusive license to Prof. Dadras. The method and degree of compensation to PKDR from Prof. Dadras would then be an internal matter between the two. Moreover, Prof. Dadras was the "broker" of the construction deal, and it would be quite normal for him to be compensated for that function too.

216. Furthermore, it is significant that the PKDR Proposal itself envisages payment for the type of services rendered by Prof. Dadras, albeit in the form of a royalty per square foot to be paid during construction. On a project the size of the North Shahyad Project, this fee would have worked out to be approximately U.S.$700,000. Consequently, the Tribunal cannot regard the PKDR Proposal as in any way conclusive for determining the value of Prof. Dadras's work. Furthermore, while the initial calculations were performed for Prof. Dadras by PKDR, these detailed and numerous calculations were hand-checked by Prof. Dadras and his associates at Dadras International.

217. The Respondents further suggest that Prof. Dadras's work was insignificant, and thus could not justify the fee specified in the Contract, because he made only minor changes to the architectural drawings for the Project. According to Prof. Dadras's own testimony, these alterations resulted in changes of no more than 5% to 6% in the architectural plans. However, it further emerges from testimony by Prof. Dadras, Mr. Liebman and Mr. Duvé that the understanding between all those concerned was that the architectural plans should be altered as little as possible in incorporating the D-F-C System; in other words, both

TRC and HAUS were concerned that the external appearance of the structures not be changed. Consequently, Prof. Dadras's having made only 5% to 6% alterations in the drawings would have signalled a job well done, rather than suggesting that the function performed by Prof. Dadras was in any way trivial. The most important component of Prof. Dadras's alterations concerned changes to the superstructure of the project to accommodate the D-F-C System.

218. One further aspect of the work to be done by the Claimants was designing the plants for manufacturing the structural components used in the D-F-C System. It is undisputed that this service was never rendered, and it has been suggested that Prof. Dadras's testimony was misleading as to whether his fee covered the design of the plants, or whether the plant design was to be performed by Per-Am. At the First Hearing, Prof. Dadras testified that "the cost of designing the plants is included in our fee."[47] At the Second Hearing, however, he corrected his testimony as follows:

> I did make a mistake by saying that and I apologize and I correct it. . . . I should have said 'no'. The fee was based on the contract which is in the simple language 'for the work performed up to that date'. The design of the plants [was] not done yet, so naturally could not have been included.

The Tribunal considers that the corrected testimony by Prof. Dadras at the Second Hearing is credible and that the confusion in this regard is a minor matter that does not undermine the Claimants' version of events. There is little doubt that the

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[47] Also at the First Hearing, Mr. Liebman testified that "the design of the plants, all of the other patented stuff that was very difficult and many years coming to this point, all of that was built into [Dadras International's] fee." The Tribunal does not consider Mr. Liebman's testimony as direct evidence of what was included in Dadras International's fee. Rather, the Tribunal finds that the most reasonable interpretation of this testimony is that Mr. Liebman was expressing his understanding that Dadras International's fee was intended to compensate the creativity and uniqueness of the D-F-C technology, which he expressed as "the genius that went into the design of the systems."

design of the plants was not a service covered by Dadras International's fee. Article E(2) of the Contract speaks of payment to Dadras International for "work already completed." According to the Contract, this work covered only the "design and preparation of construction documents," namely the structural calculations and the alteration of the HAUS drawings to accommodate the D-F-C system.

219. The Tribunal further notes that the contractual documents suggest that the cost of designing the D-F-C plants was covered by the internal agreements between Per-Am and Dadras International, and was a task to be performed by Per-Am -- not Dadras International -- after the signing of the Contract. This may be inferred from the fact that the 9 September Contract places responsibility for importing the D-F-C plants on Per-Am (Article A(8)) and identifies the plants as the property of Per-Am (Article A(11)). Thus the Tribunal regards Prof. Dadras's corrected testimony at the Second Hearing as most accurately reflecting the respective responsibilities of the Claimants. Any possible confusion may be attributed to Prof. Dadras's tendency, as a layperson, not always to distinguish fully between the functions and obligations of the individuals and companies involved in the transaction.

220. The Tribunal concludes that in any case the internal relationships of the companies gathered together by Prof. Dadras are not central to an understanding of the contractual relationship between the Claimants and TRC. While the internal relationship of this loose group of companies and individuals is one factor in determining the credibility of the Claimants' narrative, the primary relationship with which the Tribunal is concerned is that between the Claimants and TRC. The internal arrangements made by the Claimants in order to ensure performance of the Contract -- a matter not fully developed in the record in these Cases -- are not directly relevant to our inquiry into the authenticity of the Contract itself.

221. A further component of Prof. Dadras's duties under the Contract was supervision services. Pursuant to the Contract, Prof. Dadras, Per-Am and HAUS were all to be paid for performing some form of supervisory function during the actual construction of the Project. HAUS was to supervise the overall architectural construction pursuant to its contract with TRC. Under Article A(12) of the Contract, the "BUILDER" (Per-Am) was to be responsible for supervision of the construction and erection of the superstructure. The Contract also characterizes Prof. Dadras as the coordinator of the structural, architectural and mechanical work. It has been suggested that the fact that all three entities had some supervisory role conflicts with common business experience and suggests that the Contract is fabricated. However, the Tribunal concludes that the most plausible interpretation of the Contract is that Prof. Dadras, as the revisor -- for the superstructure -- of HAUS' plans, would be responsible for supervision in the sense of overseeing construction of the superstructure of the buildings using D-F-C. To the extent, if any, that his supervisory services may have been duplicative of those of Per-Am, or HAUS, such duplication resulted from the different functions being performed and an understandable concern on the part of TRC that there be appropriate coordination and cross-checking.

222. It also has been contended that the failure of the pre-contractual documents to specify a fee for the work performed by Prof. Dadras reveals that his work had no value. The contractual documents, however, show that payment was contemplated by the Parties at every stage of the negotiations.

223. No specific amount for Prof. Dadras's fee is recorded in the 29 March Agreement, or in the Proposal of 14 June 1978. However, both these documents contain clauses referring to subsequent negotiation of payment. Article 4 of the 29 March Agreement reads: "On the professional fee for the preparation of the preliminary drawings and construction documents for the project, negotiations will be conducted and an understanding will be reached at a later date." Similarly, Article J of the 14 June

Proposal says that although neither party assumes any obligation under the document, "[a]fter an agreement has been reached payment will be made according to the terms and conditions of the agreement." These early references to payment are then confirmed in the 27 August 1978 letter to Prof. Dadras, which reads: "Your professional fee based on our agreement for the above work including supervision of construction is 6.75% of the total cost of the structural system." This payment method is further specified in Article E(2) of the Contract, which reads as follows:

> The CONSULTANT shall be paid 5.4 per cent of the total cost of the PROJECT which is 243,918,000 Rials or U.S. Dollars 3,454,929 for the work already completed for the design and preparation of construction documents by computer of the Alternate Structural System. From the above payment, Dadras International shall receive 219,525,200 Rials or U.S. Dollars 3,109,436 and Kan Consulting Engineers shall receive 24,391,800 Rials.

224. The Tribunal is of the opinion that it would be consistent with the process of contractual negotiation for the exact fee to be settled at some point during the negotiations, rather than before the negotiation process began, as the fee itself is subject to negotiation and alteration before it is crystallized in the final Contract. The absence of a final fee in the pre-contractual documents dated 29 March and 14 June 1978 should be regarded as evidence of an immature negotiation rather than evidence of the triviality of the function to be performed by Dadras.

225. For the foregoing reasons, the Tribunal is not persuaded by the Respondents' arguments regarding the alleged triviality of Prof. Dadras's work.

c. Timing of the performance.

226. It has been argued that it is not plausible that Prof. Dadras would first have performed significant work, and later negotiated a fee for his work. This argument is unpersuasive.

The first point to note, as discussed above, is that payment was contemplated at all stages of the negotiations, although the precise amount was first specified in the letter of 27 August and then confirmed in the Contract.

227. Furthermore, in order to gain insight into how TRC had conducted business in the past, it is useful to compare the sequence of events described in the award in the HAUS case. That award reveals that HAUS also started work on the architectural designs for the North Shahyad Project before a final contract had been concluded. According to the award, HAUS started work in August 1977 after Mr. Golzar had "assured" HAUS that it would be retained as architect for the North Shahyad Project.[48] The written contract was signed on 5 December 1977. Only after the HAUS contract had been signed was the North Shahyad Development Corporation set up as a project company.[49] Thus there was a gap of approximately four months between the time when HAUS started working on the project, on the mere "assurance" from Mr. Golzar that the contract would be awarded to HAUS, and the time when their understanding was recorded in writing and a fee in excess of U.S.$2 million was contracted for as remuneration.

228. This sequence of events makes clear that it is not unusual for an architect to perform work before receiving a written assurance of payment. The immediate conclusion to be drawn from the scenario in HAUS is not that the work performed by HAUS -- designing the architectural plans for the approximately 1 million square meter North Shahyad Project -- was trivial in nature. Similarly, the conclusion to be drawn from Prof. Dadras's having started work before the Contract was signed is not that the work to be performed was of trivial value.

229. A further explanation for the sequence of events in these Cases is that since the final fee included access to proprietary

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[48] HAUS, 9 Iran-U.S. C.T.R. at 318.

[49] The contract was supposedly to enter into force retrospectively on 20 November 1977. See id.

technology and expertise in its application, Prof. Dadras would have had more than the completed work product to bargain with when entering a final contract. He would thus have been able to undertake the architectural and structural work knowing that he had additional bargaining potential for the final contract negotiations. Prof. Dadras's doubtless need for an assurance of payment is reflected in the 27 August letter from Mr. Golzar.

d. The value to TRC of the work performed by Professor Dadras.

230. It has been argued that the services rendered by Prof. Dadras were limited to minor revisions of pre-existing architectural drawings, performed in the hope of winning a lucrative construction contract. Consequently, the argument goes, the Contract must be forged because it provides for a substantial fee to Prof. Dadras for these preliminary tasks. The Tribunal believes, however, that a full comprehension of the function performed by Prof. Dadras is crucial to understanding the nature of the transaction at issue in these Cases. Prof. Dadras was offering (and being paid for) a package of drawings, calculations, services and technology. Most importantly, Prof. Dadras held the exclusive license to the Dyna-Frame-Celdex System in Iran and was selling the right to use this system, as well as the expertise to make such use possible. Working through Prof. Dadras was the only way TRC could have gained access to the technology. Prof. Dadras was thus in the enviable situation of holding a market monopoly and therefore being able to ask a substantial price for access to the technology. The Tribunal considers that Prof. Dadras's exclusive control over the D-F-C technology was an important factor attracting TRC to enter into contract negotiations and accounted for a large part of the fee to be paid to Prof. Dadras. Thus the Tribunal finds that the fee to be paid to Prof. Dadras should be properly understood as covering more than alterations to the drawings and calculations; instead, its most important element was access to, and the expertise necessary to use, the D-F-C technology.

231. Furthermore, the record suggests that the use of the D-F-C System would have saved TRC significant time and resources. In the record there is a proposal from an Italian company, Russotti S.P.A., which was submitted by the Respondents in a different context. This document contains Russotti's proposal of construction costs and timetables for the North Shahyad Project. It appears that what Russotti proposed would have cost TRC at least U.S.$280 million and taken over 8 years to complete. The arrangement TRC made with the Claimants, on the other hand, was to cost approximately U.S.$63 million and take approximately three years to complete.

232. The coincidence of the Russotti Proposal being in the record is useful to put Prof. Dadras's negotiations with TRC into perspective. It demonstrates that at least one other serious alternative faced by Mr. Golzar around the time he was negotiating with Prof. Dadras was significantly more expensive and involved a much longer construction time. As such, it tends to suggest that TRC would have viewed a contractual arrangement with Prof. Dadras in a favorable light.

233. The Tribunal concludes that the more convincing scenario regarding the type and value of the work performed by Prof. Dadras is that presented by the Claimants. The Tribunal accordingly concludes that the nature and value of the work performed by Prof. Dadras do not lend credible support to an allegation of forgery.

234. Finally, in inquiring whether the fee to be paid to Prof. Dadras by TRC was reasonable, a useful comparison may be drawn to the fee charged by Prof. Dadras in the much smaller Kan Residential Project (which is the subject of the claim in Case No. 214). This comparison indicates that Prof. Dadras's fee for similar services in the North Shahyad Project is proportional to his fee in the Kan Residential Project. The authenticity of the contract in Kan has not been challenged by the Respondents in that Case, and the fee for both projects appears to be almost identical on a cost per square meter basis. The Tribunal can

therefore infer that the fee arrived at for the North Shahyad Project is reasonable in the broader context of work done by Prof. Dadras in Iran.[50]

e. The words "bayegani shavad" appearing at the top of the letter dated 11 September 1978.

235. Another objection raised by the Respondents regarding the authenticity of the Contact arises from the Persian phrase "bayegani shavad" handwritten at the top of the letter dated 11 September 1978 (which letter, as noted earlier, the Respondents submitted from TRC's files). The phrase translates into English as "file it" or "file it away," and the Respondents have suggested that the phrase might have been intended by the writer (presumably Mr. Golzar) to mean that no further action should be taken on the matter -- i.e., that he had determined not to do business with Prof. Dadras. In addition to this phrase, a paraph of Mr. Amini (TRC'S Vice-President) and a handwritten date that seems to be 24 September 1978, appear at the top of the letter. The addition of this paraph and date, the Respondents have argued, reveals that the alleged instruction to "archive" the matter was followed.

236. The Tribunal considers, however, that the meaning of the phrase "bayegani shavad" is ambiguous at best. It is trite to say that words can have more than one meaning, and that the

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[50] The comparison with the Kan Project also reveals that the method of fee computation used by Prof. Dadras in the North Shahyad Project -- setting the fee as a percentage of construction cost -- is not unprecedented. Like the North Shahyad Project, the fee for the Kan project was not a flat fee, but rather was calculated on a fee per square meter basis, as a percentage of the total area of the project. Furthermore, the standard PKDR Proposal, which is also in the record, likewise calculates the fee based upon the total area of the project, rather than as a flat rate. The Tribunal therefore concludes that calculation of an architect's fee on a percentage basis rather than as a flat rate, far from being in any way extraordinary, seems to be the usual method by which Prof. Dadras calculated his fee; it was apparently also a method used by other professionals in the same field.

meaning is often heavily dependent upon context. The Tribunal has never been briefed as to the context and circumstances under which the phrase was written. It is equally plausible that this phrase meant that the letter was to be filed in TRC's records on the North Shahyad Project.

237. Other evidence supports the notion that the phrase may have been intended to refer to the filing away of the letter itself rather than the termination of the contract negotiations. For instance, the record contains a letter dated 7 August 1978 from a Mr. Abolghassemi of TRC regarding the North Shahyad Project. This letter refers to a study conducted by Mr. Abolghassemi of the initial plans for the North Shahyad Project. A note at the top of this letter (written by Mr. Golzar) informs Mr. Amini that action has been taken on Mr. Abolghassemi's views. After the note the words "bayegani shavad" are written. In the case of the Abolghassemi letter, it seems extremely unlikely that a current document in an ongoing matter on which action had been taken would have been "filed away" in the sense of being permanently disposed of. It seems far more likely that the use of the phrase in this context quite literally meant that the letter was to be placed in the project file. The phrase could well have been used in a similar way on the "11 September" letter.

238. Indeed, even assuming that "bayegani shavad" has the suggested meaning of disposing of a matter, that would not necessarily undermine the sequence of events asserted by the Claimants. If the "11 September" letter was in fact written on 21 August, as the Tribunal has found, then by the time that Mr. Golzar annotated the letter with the words "bayegani shavad" in mid- or late September 1978 (as evidenced by Mr. Amini's paraph), the letter itself would have become redundant, in that it had been superseded by subsequent events, namely the conclusion of the Contract.

239. In the light of the foregoing, the Tribunal concludes that the phrase "bayegani shavad" should not be construed to mean

that Mr. Golzar had instructed that negotiations with Prof. Dadras should be terminated. The existence of the phrase therefore lends no support to the Respondents' forgery allegations.

f. The absence of a rejection letter

240. In considering the Respondents' circumstantial evidence on forgery, the Tribunal is surprised by the absence of a rejection letter in the file from TRC to Prof. Dadras, such as one would expect to have been present had TRC terminated contract negotiations with Prof. Dadras, instead of proceeding to sign the final Contract. TRC official Mr. Ramian suggested at the First Hearing that it may have been the practice of TRC to write such letters, and that he had come across no such letter in his search of TRC's files for documents pertaining to the Claimants.[51] In the case of the Claimants especially, it seems that it would have been normal and prudent for Mr. Golzar and TRC firmly to end a lengthy negotiation process that might have created legal obligations for TRC, and to make a clear record of such termination. The absence of a rejection letter is thus another factor that supports the Claimants' version of events.

3. The Tribunal's conclusion on the Respondents' forgery allegations

241. In light of the foregoing, the Tribunal concludes that the Respondents have not proved by clear and convincing evidence, or even by a preponderance of the evidence, that the Contract dated 9 September 1978 or any of the pre-contractual documents were forged. The Tribunal therefore finds that the Agreement dated 29 March 1978, the 14 June 1978 Proposal, the 27 August letter and the Contract dated 9 September 1978 are genuine documents. Because the Respondents relied exclusively on the

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[51] Significantly, the record in these Cases contains a letter dated 14 August 1978 from TRC to the Super Fibre Cement Company of Bangkok, Thailand, thanking them for a seemingly unsolicited letter and declining their services.

allegation of forgery in contesting the validity of the Contract, the Tribunal further finds -- based upon its rejection of the forgery allegations and all of the other evidence in these Cases -- that the Contract dated 9 September 1978 was valid, enforceable and binding on the Parties. It therefore turns to the issues of breach and damages.

C. Breach of the 9 September 1978 Contract

1. The Parties' Contentions

242. The Claimants in Cases Nos. 213 and 215 allege that on 9 September 1978 they stood ready, willing and able to perform their obligations under the Contract. They further allege that TRC breached the Contract by failing to pay Dadras International for work already performed, and by halting construction on the project before it began.

243. The Respondents, on the other hand, allege that Per-Am did not have the ability to carry out its undertakings and meet its preliminary commitments under the Contract. They argue that Per-Am was under an obligation to secure a "letter of guarantee equal to 5% of the initial contract price" under the General Conditions of Contract approved by the Plan and Budget Organization, as incorporated into the Contract by Article J of the Contract. They argue further that the obligation to secure a letter of guarantee is reflected in Article E(4) of the Contract. In addition, the Respondents point out that no evidence has been produced by Per-Am to substantiate its contention that it entered into a contract with AIDC for the purchase of the D-F-C plants, as the Claimants contend. They further argue that the method used by Per-Am to calculate its profit is incorrect, and that in any event, many unknown occurrences during construction could have affected the time-table of the Project and therefore the payment schedule.

2. The claim in Case No. 213 for work performed

244. The 9 September 1978 Contract very explicitly sets out the relationship between Dadras International and TRC, as well as the nature of their respective obligations. Article A(1) reads as follows:

> The CONSULTANT [Dadras International and Kan Consulting Engineers] has revised the structural system in the plans of Haus International and has developed the Alternate Structural System of Dyna Frame-Celdex Industrialized Construction System, and has completed all construction documents by computer which has [sic] been approved by the OWNER [TRC] on August 27, 1978. The BUILDER [Per-Am] has seen and checked all construction documents by computer as stated above and agrees that it shall be a part of this agreement.

Thus it emerges clearly from this term of the Contract that TRC regarded the structural revision work of Dadras International to have been completed and to have been approved by TRC. This is further affirmed in Article A(5), which says that "[a]ll structural analyses have been done by the CONSULTANT."

245. Article E(2) of the 9 September 1978 Contract sets out with equal clarity the payment obligations of TRC toward Dadras International. That Article reads as follows:

> The CONSULTANT [Dadras International and Kan Consulting Engineers] shall be paid 5.4 per cent of the total cost of the PROJECT [the North Shahyad Development] which is 243,918,000 Rials or U.S. Dollars 3,454,929 for the work already completed for the design and preparation of construction documents by computer of the Alternate Structural System. From the above payment, Dadras International shall receive 219,525,200 Rials or U.S. Dollars 3,109,436 and Kan Consulting Engineers shall receive 24,391,800 Rials (emphasis added).

246. The Tribunal is satisfied that the Claimant in Case No. 213, Dadras International, performed the services described in Article E(2) of the Contract. This emerges decisively from the plain language of the Contract, which speaks of "revised," "developed" and "completed" work in Article A(1) and of payment

for "the work already completed" in Article E(2). Dadras International's completion of performance is further confirmed by the construction drawings and structural calculations themselves, which were submitted to the Tribunal, as well as by all of the other evidence in these Cases. It also must be borne in mind that in addition to the tangible construction drawings and calculations supplied to TRC, Dadras International's performance also included providing TRC with access to the proprietary D-F-C technology.

247. The Respondent has argued that the revised drawings and calculations were incomplete and inadequate. However, in the absence of any contemporaneous objection on record by the Respondent TRC, and in the face of the clear language of the Contract, which reveals that the work had been approved by TRC, the Tribunal cannot give this argument any credence. See, e.g., Anaconda-Iran, Inc. and The Government of the Islamic Republic of Iran, et al., Award No. 539-167-3, paras. 66-70, 119 (29 October 1992), reprinted in __ Iran-U.S. C.T.R. __, __; Combustion Engineering, Inc., et al. and The Islamic Republic of Iran, et al., Award No. 506-308-2 (18 February 1991), reprinted in 26 Iran-U.S. C.T.R. 60, 116; Richard D. Harza, et al., and The Islamic Republic of Iran, et al., Award No. 232-97-2 (2 May 1986), reprinted in 11 Iran-U.S. C.T.R. 76, 101, 114, 135; DIC of Delaware 8 Iran-U.S. C.T.R. at 176.

248. It is further clear from the plain language of the Contract that payment by TRC to Dadras International was not conditional upon any additional performance by Dadras International or any other party, or upon the occurrence of any other event. The Tribunal therefore finds that Dadras International has fully performed its obligations under the Contract with respect to the adaptation of the structural plans for the use of D-F-C technology and is entitled to be paid for this work at the contractually-specified price.

249. It is undisputed between the Parties that neither TRC, nor the Government of Iran when it took control of TRC, paid

Prof. Dadras any part of the amount set forth in Article E(2) of the Contract. Consequently, on the basis of all the evidence before it, the Tribunal finds that TRC is in breach of its contractual obligation to compensate Dadras International for the services performed as described in Articles A(1) and E(2) of the Contract.

3. The claim in Case No. 215 for lost profits

250. The timing and details of the respective obligations of Per-Am and TRC under the Contract are not, however, quite as straightforward as in the case of Dadras International.

251. Several terms of the Contract outline the obligations of TRC toward Per-Am. These terms include Articles obligating TRC to: provide a site for erection of the three D-F-C plants (Article A(9)); provide a water supply, electricity and telephone service for the use of Per-Am (Article A(10)); conduct excavation and surveys in readiness for construction (Article A(13)); provide roads to plant sites and between plant and building sites (Article A(14)); deliver certain building materials (Article C(3)); and make down payments and monthly payments to Per-Am as set out in Article E of the Contract. The Respondents do not allege, nor have they produced any evidence suggesting, that any of these obligations were fulfilled by TRC.

252. The Contract also sets out the responsibilities of Per-Am to TRC. These include: importation of the three plants necessary for the manufacture of the D-F-C components from the United States (Article A(8)); construction of the footings for the Project (Article A(3)); construction and erection of each superstructure within the Project (Article A(12)); and removal of the plants from the site at the end of construction (Article A(11)).

253. The payment terms of the Contract concerning Per-Am are contained in Articles E(4), E(5) and E(6). Article E(4) reads as follows:

> 15% of total cost or 677,550,000 Rials or U.S. Dollars 9,597,025 is payable to BUILDER [Per-Am] after signing of the contract when BUILDER provides the OWNER [TRC] with bank guarantee acceptable to OWNER for any amount up to 15% stated above.

Article E(5) states:

> 5% of total contract or 225,850,000 Rials or U.S. Dollars 3,199,008 is payable when three [D-F-C] plants . . . have been delivered on the PROJECT [North Shahyad Development] site and are operational. All three plants will be kept as security against down payment by the OWNER [TRC] and the OWNER will release bank guarantee equal to the total cost of the plants.

Article E(6) provides for monthly payments of U.S.$1,330,788 to Per-Am after the commencement of construction.

254. It seems clear that the very first obligation under the Contract was for TRC to pay Dadras International for the work already performed. This follows from the mandatory language of the Contract ("CONSULTANT shall be paid") and from the fact that the Contract lists that payment first in setting forth the obligations of the parties. As discussed above, the Tribunal has found TRC to be in breach of that obligation. The precise sequence of performance of the remaining obligations of TRC and of Per-Am is not set forth explicitly in the Contract. Nevertheless, it is clear that the North Shahyad Project would have been unable to move forward without some signal from TRC, such as the performance by TRC of some or all of its multiple obligations with regard to the preparation of the site for construction. This is confirmed by Prof. Dadras's affidavit, which states that Mr. Golshani of TRC told Dr. Darehshuri in November 1978 that "TRC was waiting for the situation to get better before proceeding." It is undisputed that TRC did not perform any of its multiple obligations under the Contract.

255. The Respondents argue that Per-Am breached the Contract by failing to secure the bank guarantee referred to in Article

E(4) of the Contract.[52] In response, Per-Am states that it was able and prepared to obtain the guarantee, but never actually did so because "TRC never paid the fees owing to Dadras International for the design and construction documents already submitted; TRC also halted progress on beginning construction before Per-Am was able to secure the bank guarantee." In other words, Per-Am argues that TRC committed material breaches of the Contract before Per-Am was able to secure the guarantee.

256. While Per-Am technically would have become entitled to receive a substantial downpayment from TRC by securing the bank guarantee, there is no indication in the Contract that Per-Am had any obligation to act in the absence of action by TRC to begin performing its obligations under the Contract. Moreover, while securing the bank guarantee might have been to Per-Am's short-term financial benefit, there is no indication in the Contract that it was a condition precedent to TRC's performance, rather than merely a precondition to securing the downpayment.

257. It also seems reasonable to the Tribunal that Per-Am would have felt some degree of caution in incurring additional expenses by securing the guarantee, once it became clear to Per-Am that TRC was in breach of its obligation to pay Dadras International and was refraining from initiating the Project. The former obligation -- payment for work already performed before the signing of the Contract -- was due and payable immediately upon signing the Contract, i.e., on 9 September 1978. It thus would have become apparent to Per-Am immediately after (or at least very soon after) the conclusion of the Contract that TRC was in breach of a fundamental term of the agreement. It would be logical for Per-Am to be concerned about the effect of this breach on its own rights under the Contract.

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[52] Article G of the Contract makes it clear that the General Conditions of Contract shall be superseded by, inter alia, Article E of the Contract.

258. For these reasons, the Tribunal concludes that TRC breached the Contract by its failure to pay Dadras International and its failure to act in setting construction in motion, and that these breaches were material. The Tribunal finds further that on 9 September 1978 Per-Am stood ready and willing to perform under the Contract. To the extent that Per-Am can be viewed as having an obligation to secure a bank guarantee under the Contract, its failure to do so is excused by TRC's prior breaches. The Tribunal holds that TRC's non-payment of the fees owed to Prof. Dadras and TRC's failure to commence construction on the project constitute breaches of contract excusing Per-Am's obligations.

259. In light of TRC's material breaches of the Contract, the Tribunal concludes that TRC is liable to Per-Am for damages incurred as a result of those breaches.

4. The claim in Case No. 213 for supervision services

260. Article A(2) of the Contract reads as follows: "The CONSULTANT [Prof. Dadras and Kan Consulting Engineers] shall coordinate the structural, architectural and mechanical work [on the North Shahyad Project]." Payment for these services is provided for in Article E(3) of the Contract, which reads as follows:

> The CONSULTANT shall be paid 1.35 per cent of the total cost of the project for construction supervision which is 60,979,500 Rials or U.S. Dollars 863,732. From this, Dadras International shall receive 15,244,875 Rials or U.S. Dollars 215,933 and Kan Consulting Engineers shall receive 45,734,625 Rials.

261. As outlined above, the Tribunal finds that TRC breached the Contract by reason of its failure to pay Dadras International for work performed, as well as its failure to commence construction work. Dadras International's claim for supervision services is in essence a claim for lost profits -- i.e., a claim for amounts that it would have earned had the Contract not been

breached by TRC. The Tribunal therefore finds that in principle TRC is liable to Dadras International for damages caused by TRC's breach of the 9 September 1978 Contract.

D. Damages

1. The claim in Case No. 213 for work performed

262. As explained above, the Tribunal finds that the Claimant in Case No. 213, Dadras International, is entitled to compensation for the non-payment by TRC of fees for Dadras International's performance under the Contract, which, as noted earlier, consisted of structural drawings and calculations and access to proprietary technology. The question remains what the extent of that compensation should be.

263. The governing provision of the Contract is Article E(2) of the Contract, which has been quoted above. It provides in pertinent part that "for the work already completed . . . Dadras International shall receive 219,525,200 Rials or U.S. Dollars 3,109,436." Thus the plain language of the Contract unambiguously states that the sum due to Dadras International is U.S.$3,109,436.

264. Tribunal precedent is clear that a contracting party is entitled to the value of the work it has performed as specified in the contract. See generally Lockheed Corporation and The Government of Iran, et al., Award No. 367-829-2 (9 June 1988), reprinted in 18 Iran-U.S. C.T.R. 292; Ford Aerospace and Communications Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 289-93-1 (29 January 1987), reprinted in 14 Iran-U.S. C.T.R. 24; John Carl Warnecke and Associates and Bank Mellat, Award No. 72-124-3 (2 September 1983), reprinted in 3 Iran-U.S. C.T.R. 256.

265. None of the Parties in these Cases has argued that the Contract was terminated by frustration, impossibility or force majeure, so these issues are not before the Tribunal with respect

to these Cases. See Kathryn Faye Hilt and The Ministry of National Defense of the Islamic Republic of Iran, Award No. 354-10427-2 (16 March 1988), reprinted in 18 Iran-U.S. C.T.R. 154, 160. Nonetheless, it is useful to note that even where the Tribunal has held that a contract has been terminated by frustration, impossibility or force majeure, through no fault of either of the parties -- which is not the finding in these Cases -- the Tribunal has generally awarded the full contractually-specified value of the work performed prior to the frustration or force majeure event. See, e.g., Linen, Fortinberry and Associates, Inc. and The Islamic Republic of Iran, et al., Award No. 372-10513-2 (28 June 1988), reprinted in 19 Iran-U.S. C.T.R. 62, 70; Gould Marketing, Inc. and Ministry of Defense of the Islamic Republic of Iran, Award No. 136-49/50-2 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 272, 276; Queens Office Tower Associates and Iran National Airlines Corporation, Award No. 37-172-1 (15 April 1983), reprinted in 2 Iran-U.S. C.T.R. 247, 254.[53]

266. The Tribunal consequently finds that the Claimant in Case No. 213 shall be awarded damages in the amount of U.S.$3,109,436, as specified in Article E(2) of the Contract. The Tribunal

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[53] In the context of a termination of contract because of force majeure, the general rule applied by the Tribunal is that "the loss must 'lie where it falls'" and that "[t]he apportionment of the loss is subject generally to the Tribunal's equitable discretion, using the contract as a framework and reference point." Queens Office Tower Associates, 2 Iran-U.S. C.T.R. at 254. See also International Schools Services, Inc. and National Iranian Copper Industries Company, Award No. 194-111-1 (10 October 1985), reprinted in 9 Iran-U.S. C.T.R. 187, 197. Even in that circumstance, however, the Tribunal has resisted the temptation to substitute its discretion for that of the contracting parties in valuing work already performed, saying, for instance, in DIC of Delaware that the contract price should stand because it "was arrived at as the result of discussions between equally sophisticated, commercial parties." 8 Iran-U.S. C.T.R. at 167. The Parties in these Cases are surely no less "sophisticated" than those in DIC of Delaware -- which also involved a contract with TRC -- and they are equally bound by the terms of their Contract. The Tribunal regards the wording of the Contract as the best possible evidence of the Parties' obligations.

further determines that interest at the rate of 8.5% shall be awarded on the total amount due, calculated as from 9 September 1978.

2. The claim in Case No. 215 for lost profits

267. The next issue is whether Per-Am may recover under the Contract on its Claim for lost profits -- i.e., for the profits Per-Am would have earned had the Contract not been breached by TRC. In principle, lost profits may be awarded provided that Per-Am is able to establish to the Tribunal's satisfaction that such profits would have accrued had the Project proceeded to completion. See William J. Levitt and The Government of the Islamic Republic of Iran, et al., Award No. 297-209-1 (22 April 1987), reprinted in 14 Iran-U.S. C.T.R. 191, 209.

268. Per-Am calculates its lost profits as follows. It alleges that under the Contract, a total of U.S.$63,980,000 would have been paid by TRC to Per-Am by the end of the Project; of that amount, U.S.$4,660,000 (or 7.285%) would have been the total profit made by Per-Am. Per-Am alleges that before construction began, TRC would have made down payments of U.S.$9,597,025 and U.S.$3,199,008, and that after construction began, Per-Am would have received monthly payments of U.S.$1,330,788. Per-Am argues that under the Critical Path Method schedule ("CPM"), construction was to begin in March 1979. Per-Am therefore concludes that the total amount that it would have received by the Tribunal's jurisdictional cut-off date (19 January 1981) would have been U.S.$42,738,763 -- that is, the down payments of U.S.$9,597,025 and U.S.$3,199,008, plus monthly payments from March 1979 to January 1981 totalling U.S.$29,942,730. Per-Am notes that U.S.$42,738,763 represents 66.8% of the total contract price; it then calculates its lost profits as 66.8% of the total alleged profit (U.S.$4,660,000), which equals U.S.$3,112,880.

269. Many of the elements of this calculation are borne out by the payment provisions in the 9 September 1978 Contract. For instance, the Contract confirms in Article E(1) that the total

cost of the construction of the superstructure of the Project was to be U.S.$63,980,000. The Contract further confirms in Article E(4) that U.S.$9,597,025 would be paid by TRC to Per-Am as an initial down payment. The Contract further states in Article E(5) that U.S.$3,199,008 would be paid to Per-Am after the delivery of the D-F-C plants. Finally, Article E(6) and Article B of the Contract provide that monthly payments of U.S.$1,330,788 would be made once construction began as set out in "the attached schedule." The schedule referred to is the 2 June 1978 CPM.[54]

270. Nevertheless, the Tribunal has several difficulties with Per-Am's assessment of its damages. Neither the alleged profit percentage of 7.285% nor the gross amount of U.S.$4,660,000 cited by Per-Am in its pleadings as its profit margin are included in the payment provisions of the Contract. The only provision of the Contract that even indirectly supports the 7.285% figure is Article C(2). That provision, which deals with increases in the prices of the construction materials that TRC was to provide to Per-Am, states that "any increase in prices [of such items] shall increase the base price [for each square meter of construction] plus 10% overhead and 7% profit" (emphasis added). This Article thus suggests that the Parties may have had in mind a profit margin for Per-Am of approximately 7% when entering into the Contract. In the absence of further corroborating evidence, however, the Tribunal views this inferential evidence as too uncertain to sustain an award of 7.285% of the project cost as lost profits.

271. The record contains no further corroborating evidence in this regard. Neither the figure of U.S.$4,660,000 nor the percentage of 7.285% can be found in any of the preliminary documents leading up to the signing of the Contract. There is likewise no independent corroborating testimony in the record for

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[54] While the Respondents contest Per-Am's allegation that the CPM was approved by TRC, the Tribunal notes that there is no evidence in the record that the CPM was rejected by TRC, and the reference in the Contract to the "attached schedule" seems a clear reference to the CPM.

these figures. Indeed, the amount of U.S.$4,660,000 and the percentage of 7.285% appear only in the pleadings of the Claimants and in the affidavit of Per-Am's majority shareholder, Prof. Dadras, but in neither of these places is the derivation of the figures explained.

272. At the same time, there are indications in the record that even by late 1978 it was becoming clear that construction of the Project might well have been delayed by external events. One indication is given by the 2 June 1978 CPM. Per-Am alleges that the CPM shows that construction would have begun in March 1979. The Respondents point out that unforeseen events could have affected this schedule. This contention is borne out by an examination of the CPM itself, which reveals that even by the time the Contract was signed on 9 September 1978, the timetable envisaged when the CPM was prepared on 2 June 1978 had already been delayed by a full two months, because the CPM had envisaged that the Contract would be signed by July 1978 rather than in September 1978. Construction of the superstructure of the Project therefore would not have begun in March 1979 as envisaged in the CPM, but rather in May 1979. As a result, the assessment made by the Claimant of its lost profits would have to be adjusted downward to reflect the fact that there would have been at least two fewer payments made by TRC to Per-Am by 19 January 1981.[55]

273. The likelihood that the Project was already facing delays by the Autumn of 1978 is supported by the testimony of Mr. Liebman at the First Hearing that HAUS had begun to be concerned that the North Shahyad Project was falling behind schedule. See para. 133, supra.

274. Other indications of the difficulties and delays that the North Shahyad Project was beginning to encounter are evidenced

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[55] This assumes that Per-Am would not be entitled to the entirety of its lost profits based upon TRC's anticipatory repudiation of the Contract, a theory that the Claimants did not argue.

by the inquiries to TRC regarding the progress of the Project made by Prof. Dadras and his associate, Dr. Darehshuri, in late 1978 and mid-1979. Prof. Dadras related that Dr. Darehshuri had telephoned him from Iran in October 1978 and told him that he had not yet been able to discuss the payment owing to Dadras International with Mr. Golzar, adding that "many offices and agencies were on strike, and the situation in Tehran was not good." Prof. Dadras further related that Dr. Darehshuri contacted him again in November 1978 to tell him that he had reached Mr. Golshani of TRC, who had told Dr. Darehshuri that "TRC was waiting for the situation to get better before proceeding." Finally, Prof. Dadras recounted that he returned to Tehran himself in July 1979, and that at that time he and Dr. Darehshuri met with Mr. Iraj Pursardar, the new Managing Director of TRC, and brought to his attention the Contract and other documents approved by TRC for the Project, as well as the fee owed to Dadras International. At this meeting, Mr. Pursardar allegedly responded that he was planning to leave Iran as soon as possible and that the former officers of TRC had been fired and many had left the country. He allegedly advised Prof. Dadras to leave Tehran as soon as possible and not to "mention to anyone that you have been involved with the past officers of Tehran Redevelopment Corp., because you could get into trouble."

275. The circumstances described above suggest that as early as the end of 1978, TRC was uncertain about the prospects of the North Shahyad Project. The unstable conditions prevailing in Iran in the period leading up to and during the Islamic Revolution, as manifested, inter alia, in strikes, riots and other civil strife, have been well-documented in Tribunal awards. See, e.g., Anaconda-Iran, Inc. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 65-167-3 (10 December 1986), reprinted in 13 Iran-U.S. C.T.R 199, 212; International Technical Products Corporation, et al., and The Government of the Islamic Republic of Iran, et al., Award No. 186-302-3 (19 August 1985), reprinted in 9 Iran-U.S. C.T.R. 10, 23; Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985),

reprinted in 8 Iran-U.S. C.T.R. 298, 308; Gould Marketing, Inc. and Ministry of National Defense of Iran, Interlocutory Award No. ITL 24-49-2 (27 July 1983), reprinted in 3 Iran-U.S. C.T.R. 147, 152-53. Based on these circumstances, the Tribunal concludes that TRC could have experienced considerable difficulty in proceeding with the construction of the North Shahyad Project, and that considerable delays could have been expected. It is extremely unlikely that the Project would have been completed according to the timetable in the CPM, even as implicitly revised by 9 September 1978. At the same time, it is quite likely that the costs of the Project would have been increased significantly by delays in construction and other obstacles caused by the situation at TRC, and in Iran generally, at the time. See William J. Levitt, 14 Iran-U.S. C.T.R. at 209-210.

276. The Tribunal therefore finds that the damages claimed by Per-Am as compensation for lost profits under the Contract are unduly speculative, and that Per-Am has not established with a sufficient degree of certainty that the construction of the North Shahyad Development Project would have resulted in a profit for Per-Am. Consequently, Per-Am's claim for lost profits is dismissed for failure of proof.

3. The claim in Case No. 213 for supervision services

277. As found above, in principle the Claimant in Case No. 213, Dadras International, may recover on the claim for supervision services -- which amounts to a claim for lost profits -- by reason of TRC's breach of contract. Article E(3) of the Contract reads as follows:

> The CONSULTANT shall be paid 1.35 per cent of the total cost of the project for construction supervision which is 60,979,500 Rials or U.S. Dollars 863,732. From this, Dadras International shall receive 15,244,875 Rials or U.S. Dollars 215,933 and Kan Consulting Engineers shall receive 45,734,625 Rials.

Dadras International claims U.S.$126,320.81 as the amount that would have fallen due by 19 January 1981.

278. The claim for compensation for the supervision services that would have been performed suffers from many of the same deficiencies as the claim for lost profits in Case No. 215. First, the figure of U.S.$126,320 fails to take into account the cost of Dadras International's performance of those services; no indication is given by Dadras International of its expected costs in this regard. Second, Dadras International bases the amount of its lost profit claim on the assumption that construction on the North Shahyad Project would have begun in March 1979. As outlined above, however, see paras. 272 to 275, supra, even by the time the Contract was signed on 9 September 1978 the Project had been delayed by approximately two months. Furthermore, the situation at TRC and in Iran was such that the North Shahyad Project was likely to experience further delays and difficulties, with the result that the cost estimates and profit margins contemplated by the Parties would have required fundamental revision. It is entirely unclear how much of the Project would have been completed by 19 January 1981. For these reasons, the Tribunal finds that the Claimant in Case No. 213 has failed to prove with sufficient certainty its claim for "lost profit" damages for the supervision services provided for in the Contract. The claim by Dadras International for supervision services in the amount of U.S.$126,320.81 is therefore dismissed.

VII. COSTS

279. In their pre-Hearing pleadings the Claimants in Cases Nos. 213 and 215 requested costs in an amount not less than U.S.$25,000. On 26 May 1994, the Claimants submitted a "Bill of Costs" totalling U.S.$94,057.34 "in connection with refuting the contentions and allegations of Respondents" with respect to the Golzar affidavit. After the Second Hearing, on 12 December 1994, the Claimants filed a "Supplemental Bill of Costs" in the amount of U.S.$80,813.22 for expenses incurred between May and October 1994 "in connection with demands by Respondents for further hearings[,]. . . refutation of allegations by Respondents and attendance at hearings in The Hague on October 20, 1994." The

amount claimed on the submitted bills of costs equals U.S.$174,870.56. The total amount claimed in costs by the Claimants jointly is therefore not less than U.S.$199,870.56.

280. In determining the appropriate amount of costs to award, the Tribunal has on several previous occasions taken into account a party's conduct during the arbitral proceedings. Specifically, the Tribunal has held that a party is entitled to the reimbursement of extra costs that it was forced to bear because of the other party's inappropriate conduct. See Behring International, Inc. and Islamic Republic of Iran Air Force, et al., Award No. 523-382-3 (29 October 1991), reprinted in 27 Iran-U.S. C.T.R. 218, 245; William J. Levitt and Islamic Republic of Iran, et al., Award No. 520-210-3 (29 August 1991), reprinted in 27 Iran-U.S. C.T.R. 145, 185-86; Sedco, Inc. and National Iranian Oil Company, et al., Award No. 309-129-3 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23, 184-85; International Schools Services, Inc. and Islamic Republic of Iran, et al., Award No. 290-123-1 (29 January 1987), reprinted in 14 Iran-U.S. C.T.R. 65, 80; Ministry of National Defence of the Islamic Republic of Iran and The Government of the United States of America, et al., Award No. 247-B59/B69-1 (15 August 1986), reprinted in 12 Iran-U.S. C.T.R. 33, 36.

281. The procedural history of these Cases shows that the Respondents have caused considerable disruption of the arbitral process and have unnecessarily occupied the resources of this Tribunal by pursuing their unfounded allegations of forgery and belatedly proffering the unconvincing testimony of Mr. Golzar. These actions have caused the Claimants to incur substantial additional costs associated with obtaining legal advice on and responding to late-filed post-Hearing documents, as well as expenses associated with preparing for and attending a second hearing in these Cases. The Tribunal considers that these circumstances call for an award of costs against the Respondents more substantial than the amount customarily awarded by this Chamber of the Tribunal to a successful party.

282. Consequently, and bearing in mind that the Claimant in Case No. 213 has ultimately been successful in its claim for work performed, the Tribunal determines that the Claimant in Case No. 213 shall be awarded costs of arbitration from the Respondents in the amount of U.S.$75,000.00, and that the Respondents in that Case should bear their own costs.

283. Noting the similarity of the post-Hearing issues in Case No. 215 with those in Case No. 213, and noting further that the Claimant in Case No. 215 did not succeed in establishing damages with sufficient certainty, the Tribunal determines that the Parties in Case No. 215 shall bear their own costs.

VIII. AWARD

284. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a. The Respondents, the Islamic Republic of Iran and Tehran Redevelopment Company, are obligated to pay the Claimant, Dadras International, the amount of Three Million One Hundred Nine Thousand Four Hundred Thirty Six United States Dollars and No Cents (U.S.$3,109,436.00) plus simple interest at the rate of 8.5% per annum (365-day basis), calculated from 9 September 1978 up to and including the day on which the Escrow Agent instructs the Depositary Bank to effect payment to the Claimant out of the Security Account;

b. The claim of Dadras International in the amount of One Hundred Twenty Six Thousand Three Hundred Twenty United States Dollars and Eighty-One Cents (U.S.$126,320.81) for supervision fees is dismissed for failure to prove damages with sufficient certainty;

285. The claim of Per-Am Construction Corporation in the amount of Three Million One Hundred Twelve Thousand

Eight Hundred Eighty United States Dollars (U.S.$3,112,880.00) is dismissed for failure to prove damages with sufficient certainty;

a. The Respondents are ordered to pay the Claimant Dadras International costs of arbitration in the amount of Seventy Five Thousand United States Dollars and No Cents (U.S.$75,000.00);

Dated, The Hague
7 November 1995

Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God

Richard C. Allison

Mohsen Aghahosseini

Dissenting to the Award's findings, except concurring in its dismissal of the Claim in Case No. 215.
See Dissenting Opinion.