

ORIGINAL DOCUMENTS IN SAFE

Case No. 120

Date of filing 27 July 1983

☒ I.T.L.
AWARD. Date of Award 27 July 1983

25 pages in English. 21 pages in Farsi.

120-95
120-92

☐ DECISION. Date of Decision _____

_____ pages in English. _____ pages in Farsi.

☐ ORDER. Date of Order _____

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☐ CONCURRING OPINION of _____

Date _____ pages in English. _____ pages in Farsi.

☐ DISSENTING OPINION of _____

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CASE NO. 120

CHAMBER TWO

AWARD NO. ITL23-120-2

CHAS. T. MAIN INTERNATIONAL, INC.,

Claimant,

and

KHUZESTAN WATER & POWER AUTHORITY
and THE MINISTRY OF ENERGY OF
THE ISLAMIC REPUBLIC OF IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
۱۳۶۲ / ۵ / ۵	۲۷ JUL 1983
۱۲۰	۱۲۰

INTERLOCUTORY AWARD

Appearances:

For the Claimant:

Ms. Carol Goodman
Mr. Marc Sage
Attorneys of the Claimant
Mr. John Sullivan
Representative of the Claimant

For the Respondents:

Mr. M.K. Eshragh,
Deputy Agent of the
Islamic Republic of Iran
Mr. Akbar Shirazi,
Legal Advisor to the Agent
Mr. Yaha Alizadeh,
Attorney of KWPA
Mr. Kaykhosrow Zohour,
Representative of KWPA
Mr. Ahmad Babaie,
Attorney of the
Ministry of Energy

Also Present:

Mr. Arthur Rovine
Agent of the United States
of America



I. The Proceedings

The Claimant filed its Statement of Claim on 19 November 1981 requesting an award of amounts allegedly due under a contract with the Khuzestan Water & Power Authority (KWPA). Statements of Defence and Counterclaims were filed by both KWPA and the Ministry of Energy (the Ministry) on 30 April 1982. The Claimant filed its Response to the Statements of Defence on 26 August 1982. Following a pre-hearing conference which was held on 28 September 1982, memorials and evidence were filed by the Claimant on 19 October and 30 November 1982 and by KWPA on 25 April 1983. A Hearing was held 19 May 1983 and was attended by representatives of the Claimant, KWPA and the Ministry. Post-Hearing Memorials were filed by the Claimant on 22 June 1983 and by KWPA on 24 June 1983.

II. The Facts

In mid-April 1978, at meetings held in Iran, representatives of the Claimant were informed by the Managing Director of KWPA that the Ministry had selected the Claimant, in cooperation with Mahab Consulting Engineers (Mahab), an Iranian government agency, to contract with KWPA for the purpose of being the consulting engineer on the construction of the second Reza Shah Kabir powerhouse (RSK II). At the request of KWPA, Mahab and the Claimant prepared a proposal regarding the scope of engineering services recommended for RSK II and their proposed fee schedules for

such work. This proposal, submitted to KWPA and the Ministry on 3 May 1978, recommended that the three powerhouse construction bids previously solicited by KWPA be rejected and that a new approach be adopted, pursuant to which Mahab and the Claimant would immediately begin conceptual designs, conduct systems studies and prepare tender documents for award of contracts for RSK II construction and equipment.

In early June 1978, contract negotiations among the Claimant, Mahab and KWPA were held in Iran. These negotiations led to both minor modifications in the proposed scope of engineering services and a reduced fee schedule for the Claimant's services. Following these negotiations, and in response to a request from KWPA, the Ministry, on 25 June 1978, issued Letter No. 3900 directing KWPA to issue a letter of intent approving Mahab's and the Claimant's proceeding with the engineering work. Subsequent to this directive, KWPA, on 17 July 1978, issued Letter No. 3131 which authorized the Claimant and Mahab to perform the following work listed on an attachment to that letter:

- 1) to review the technical aspects of the three proposals previously solicited by KWPA and upgrade their technical specifications and improve their deficiencies;

- 2) to review the commercial, financial and legal aspects of the three proposals; and

- 3) to prepare a report and recommendation for KWPA.

Following an initial review of the three proposals, on 7 August 1978, the Claimant and Mahab submitted to KWPA a report which a) recommended the rejection of all three bids; b) stated that, because of deficiencies and noncompliance with Iranian regulations, the three bidders would be required to resubmit their proposals; c) informed KWPA that the Claimant and Mahab would be "continuing conceptual design and major equipment specifications in Boston and ... collecting needed field data in Iran;" and d) further informed KWPA that "after the contractors resubmit ... we will submit the requested report with recommendations."

Following the submission of the 7 August report, representatives of the Claimant and Mahab met with KWPA on 8 and 9 August 1978. In the course of these meetings, two documents detailing additional work to be performed by the Claimant were issued. The first of these documents, Telex No. 3844, was sent on 8 August 1978 by the Claimant's representative in Iran to the Claimant's Boston office. The telex, which was initialed by KWPA's Deputy Director, indicated that Main had been authorized to undertake further work with the three bidders and to perform additional services, including preparation of conceptual design and general specifications. The second document, a letter dated 9 August 1978 from the Claimant and Mahab to KWPA, listed additional items of architectural, electrical and geological work which were to be performed.

At the request of KWPA's Managing Director, representatives of the Claimant and Mahab again met in Iran with KWPA officials on 13 September 1978. After the Claimant had described the work completed and in progress for KWPA, the schedule for future engineering work to be performed by the Claimant and Mahab was discussed. Following this meeting, the Claimant and Mahab drafted and submitted to KWPA a schedule for the completion of the engineering work under the first two phases of the proposed contract with KWPA.

KWPA officials repeatedly assured the Claimant and Mahab that the draft contract had been approved and was in the process of being translated. On 29 November 1978, the Claimant and Mahab signed the formal contract setting out the terms of their engagement by KWPA. The contract was then delivered to KWPA for its signature, but it was never signed.

From early August 1978 to mid-December 1978 approximately 185 Main employees worked on RSK II in Boston, Tehran, Ahwaz and at the RSK II project site. These employees included geo-technical, electrical, architectural, mechanical and specification experts who performed investigations and studies, gathered and reviewed data, prepared drawings, conceptual designs and specifications, met with the three bidding contractors and prepared contract documents for international tendering. During this period

meetings were held between officials of the Claimant and KWPA. Written reports and data were also sent by the Claimant to KWPA and by KWPA to the Claimant both in Iran and in Boston.

By mid-December 1978 the situation in Iran made it impossible for the Claimant's employees to continue working there. Adequate housing, food, transportation and power were not available. Demonstrations and strikes immobilized sections of the country. As a result, the Claimant withdrew its last employee from Iran on 12 December 1978.

Following the withdrawal of its employees from Iran, the Claimant continued working on RSK II in its Boston offices. During this period, the Claimant regularly sent documents to KWPA through Mahab, including technical specifications, a progress report covering the period 17 July 1978 through 31 December 1978 and a site selection report. The Claimant's work for KWPA continued until 14 May 1979 when it was advised by telex from Mahab that both the Claimant and Mahab had been requested to stop all RSK II work. Following the Mahab telex, the Claimant performed "pack-up" work on RSK II, consisting of shipping completed documents to KWPA and preparing work in progress for filing.

III. Contentions of the Parties

A. The Claimant

The Claimant maintains that KWPA retained it to conduct investigations and studies, to prepare contract documents and to design and manage construction of RSK II. The Claimant alleges that, even if the formal written agreement between it and KWPA was never signed by KWPA, a contractual relationship nevertheless existed between the two parties. This contractual relationship was evidenced by certain written documents which were either drafted by the Ministry or KWPA, or drafted by the Claimant in confirmation of oral instructions from KWPA, and by the course of conduct of the parties which demonstrated both KWPA's knowledge of the work being performed by the Claimant and KWPA's direction and acceptance of such work.

The Claimant maintains that KWPA breached this contract by failing to pay the invoices submitted to it by the Claimant and requests an award of 1) U.S. \$2,134,032, representing the net amount due under the invoices; 2) interest from the date of each invoice; 3) lost profits of U.S. \$825,000; and 4) costs. In the alternative, the Claimant seeks, under the theory of unjust enrichment, an award of 1) the fair value of its services, exceeding U.S. \$2,500,000; 2) interest; 3) lost profits; and 4) costs.

B. KWPA

KWPA maintains that it is a private, joint stock company which is not controlled by the Government of Iran or the Ministry, asserts that the courts of Iran have exclusive jurisdiction over this claim, maintains that suit can only be brought by the Mahab-Main partnership, denies that the Claimant has proven that it is a national of the United States and denies liability to the Claimant on the ground that no contract between it and the Claimant was ever signed. KWPA maintains that the only work assigned to the Mahab-Main partnership, and the only work for the payment of which KWPA is liable, was the limited work order contained in Letter No. 3131 and that most of the work performed by the Claimant was outside the scope of that letter. KWPA also counterclaims 1) 9,081,720 Rials for taxes for the period 1974 to 1976; 2) an unspecified amount representing duties, taxes and fees, including social security charges; and 3) costs.

C. The Ministry

The Ministry denies liability on the grounds that no contract existed between the Claimant and the Ministry and asserts that KWPA is a private, joint stock company, independent of the Ministry. The Ministry also counterclaims for costs.

IV. Jurisdiction

A. Control of KWPA by the Government of Iran

Under the KWPA Charter, all the stock of KWPA is owned by the Ministry of Energy. Furthermore, KWPA's General Assembly, which selects both KWPA's Board of Directors and its Managing Director, consists of the Minister of Energy and two of his Deputies, both of whom are appointed by such Minister. It is thus clear that KWPA is an "entity controlled by the Government of Iran or any political subdivision thereof" within the meaning of Article VII of the Claims Settlement Declaration and that jurisdiction therefore exists over claims against KWPA, the Ministry and the Government of which they are part.

B. Forum Clause

Although the draft contract between KWPA and the Claimant contained a forum selection clause, this contract was never executed by KWPA; therefore, any forum clause contained therein would not be binding on the parties. Furthermore, had the draft contract been executed, the forum clause contained therein, which provided that disputes between the parties "shall be settled through competent Courts according to Iranian Law," would not have sufficed to exclude the jurisdiction of the Tribunal. See, Interlocutory Award No. ITL 1-6-FT (Gibbs & Hill, Inc.) dated 5 November 1982.

C. Suit by Mahab-Main Partnership

In order to constitute a partnership, the parties must share profits and losses. See, Mass. Gen. Laws c. 108A, §7; The Commercial Code of Iran, Art. 119, The Civil Code of Iran, Art. 575. The evidence introduced by the Claimant clearly shows that it and Mahab, although associated as a joint venture in the work they performed for KWPA, did not create a new legal entity and did not share profits or losses. The draft contract among KWPA, Mahab and the Claimant specifically provided that Mahab and the Claimant were jointly and severally liable and were to be paid separately according to different fee schedules. Thus, the Claimant is entitled to bring this suit against KWPA and the Ministry without the joinder of Mahab.

D. Nationality of the Claimant

The Claimant has submitted affidavits, copies of certificates of legal existence and other evidence to prove that it and its parent, C.T. Main Corporation, met at all relevant times the nationality requirements of the Claims Settlement Declaration. This evidence was sufficient to satisfy the Tribunal that, during the relevant period from the time the claim arose until 19 January 1981, Main was a Massachusetts corporation wholly-owned by the C.T. Main Corporation, a closely-held Massachusetts corporation, in which natural persons who were citizens of the United States

owned interests equivalent to more than 50 percent of its capital stock. Thus, Main is a national of the United States within the meaning of Article VII, paragraph 1 of the Claims Settlement Declaration.

Therefore, the Tribunal holds that this claim is within its jurisdiction.

V. Merits

A. Existence of a Contract

In selecting the Claimant, in April 1978, to provide consulting engineering services on RSK II, the Ministry demonstrated its intention that KWPA sign a contract with the Claimant. This intention was clearly expressed in Letter No. 3900 dated 25 June 1978, in which the Ministry authorized KWPA to issue a work order for "the performance of engineering services ... by Mahab and Chas. T. Main". Letter No. 3131 of 17 July 1978, issued by KWPA pursuant to such authorization, made that intention still clearer and confirmed the award of a contract to the Claimant and Mahab. In that letter, KWPA consented "to the start of engineering services as soon as possible in accordance with the attached details". Such letter, which was signed by KWPA, the Claimant and Mahab, reflected more than an intention to

contract. It was, in reality, a contract authorizing the Claimant and Mahab to perform the following listed work:

1. Examine and review the proposals received for the execution of the project [RSK II] and wherever necessary, uprate the technical specifications ... with due consideration to the improvements and corrections of the deficiencies....
2. Examine and review the commercial, financial and legal aspects of the proposals received and wherever necessary clarify the outstanding points with the respective tenderers.
3. Prepare the necessary report and recommendation for KWPA approval.

An invitation to commence preliminary work creates an obligation to pay for that work. KWPA has repeatedly admitted that it is liable to the Claimant for work performed pursuant to Letter No. 3131, although it disagrees that such work was performed or was performed adequately.

B. Scope of the Contract

KWPA maintains that most of the work performed by the Claimant was outside the scope of Letter No. 3131. In this respect, both parties have discussed the effect of Telex No. 3844 sent by the Claimant's representative in Iran to the Claimant's main office in Boston. In essence, the telex stated that the Claimant had been authorized to undertake additional work with the three bidders, including analysis of resubmitted bids, and to prepare the conceptual designs and general specifications for RSK II. The Claimant insists that, since the original of this telex bore the initials of the Deputy Director of KWPA, the contents of the telex were

approved by KWPA. KWPA insists that the telex was initialed solely to authorize the Claimant's use of the KWPA telex equipment. While it is difficult to ascertain the exact significance of the initials, the telex is evidence of an oral understanding between KWPA and the Claimant. KWPA was presumptively aware of the Claimant's interpretation of that oral understanding.

The parties also discussed the terms of the 9 August 1978 letter which was sent by the Claimant and Mahab to the Deputy Director of KWPA and which contained a listing of additional work to be performed. Three versions of this letter have been submitted to the Tribunal; two by the Claimant and one by the Respondent. The first version submitted by the Claimant lists 18 additional items of work to be included in the construction contract and is signed only by a representative of the Claimant. The second version, also signed only by a representative of the Claimant, lists only 17 additional items of work. However, this version contains the following sentence, not contained in the first version: "We would appreciate your acknowledgment of the above mentioned work if it meets your approval...." The version submitted by KWPA lists only 16 items of additional work, is signed by representatives of both the Claimant and Mahab and contains the same request for approval. However, assuming that the version which was received by KWPA contained a request for approval, it is clear from the minutes of the subsequent meetings between the Claimant and KWPA, that such approval was given.

The exact meaning of both of these documents is irrelevant to the Tribunal's decision regarding the scope of the contract. In that respect, the only important points for the Tribunal to ascertain are:

1. Whether, with regard to the engineering services it was to perform, the Claimant was restricted only to the work enumerated in Letter No. 3131.

2. Whether the work actually performed by the Claimant fell within the enumerated list of that letter.

3. Whether KWPA subsequently, either expressly or tacitly, ratified any of the work not so enumerated. In this connection it should be noted that the law of Iran and the United States both recognize that such subsequent ratification is the equivalent of mutual consent preceeding the performance of the work. See, The Civil Code of Iran, Art. 193 (M. Sabi trans. 1973); 3A Corbin, Corbin on Contracts §564 (1960 & Supp. 1982).

In reviewing all the evidence submitted to the Tribunal, it is clear that although the Claimant performed work on RSK II which was outside the scope of Letter No. 3131, such work was subsequently ratified by KWPA. Such ratification is evidenced by the minutes of the various meetings between the Claimant and KWPA, by the letters sent either to Mahab or to KWPA by the Claimant, by the reports submitted by the Claimant to KWPA either directly or indirectly through Mahab, by the data provided by KWPA to the Claimant

and by the large number of Claimant's employees who worked in Iran with KWPA personnel. It is clear from such evidence that KWPA was constantly kept apprised of the work being performed for it by the Claimant, and yet it was not until 14 March 1979, after receipt of the first invoice from the Claimant, that KWPA wrote to Mahab and objected to the scope of services which had been performed.

The fact that many of the letters, reports and minutes which have been submitted into evidence were neither drafted nor signed by KWPA is not decisive in the instant case. During the exchange of briefs, the pre-hearing conference and the Hearing, KWPA neither protested against the terms of the letters or reports nor contested the contents of the minutes. Although fully aware of these documents since 30 November 1982, KWPA never alleged that they were erroneous. Such documents, therefore, must be considered as admissible proof, particularly in light of the fact that the documents corroborate one another and make it clear that the top officials of KWPA were constantly aware of the work being performed by the Claimant and approved the scope of that work, even though that scope exceeded the scope of Letter No. 3131.

The Tribunal thus concludes that the RSK II consulting engineering services performed by the Claimant for KWPA were either authorized by Letter No. 3131 or were subsequently

ratified by KWPA. As a result, KWPA is obligated to pay for those services, regardless of whether they were performed in Iran or in Boston. The Tribunal reaches this conclusion despite the fact that Letter No. 3131 expressly required that all work be performed at KWPA headquarters in Ahwaz, since, by its conduct, KWPA clearly authorized the performance of work in Boston. Not only was KWPA aware that certain of the work could not be performed in Iran, much less in Ahwaz, which was over 150 kilometers from the RSK II site, but KWPA, after having been informed by the Claimant that work was being undertaken in Boston, did not protest against such work, and sent data to the Claimant's Boston office.

Therefore, by refusing to pay for work within the scope of the contract, KWPA was in breach of contract.

C. Value of the Work Performed

In order to ascertain the value of the work performed by the Claimant, the Tribunal concludes that the fee schedule in the draft contract between the Claimant and KWPA should be used. It is clear from the evidence presented that the fee schedule initially proposed by the Claimant was negotiated downward by KWPA to an amount that was satisfactory to both parties. Furthermore, Letter No. 3131 did

not contain a fee schedule. It is reasonable to conclude that both parties intended that the Claimant would be paid according to the fee schedule contained in the draft contract.

Because of the technical complexity of the work performed by the Claimant, the Tribunal concludes that the appointment of two experts is necessary.

VI. Terms of Reference of the Experts

The Tribunal accordingly sets forth the following as the terms of reference of the two experts:

Expert No. 1

After familiarizing himself with the documents filed by the parties and necessary to the performance of his task, Expert No. 1 shall give his opinion on the following:

1. the items of work performed by the Claimant which, according to standards of good engineering practice, were both necessary for the performance of consulting engineering services on RSK II and were performed adequately and accurately, including, but not limited to, the following:

- a. Review of the technical, commercial, legal and financial aspects of the three bids previously solicited by KWPA;

- b. Improvement of the technical aspects and deficiencies of the three bids;
- c. Preparation of a report and recommendations on the three bids;
- d. Preparation of conceptual design and equipment specifications;
- e. Identification of the deficiencies in the original Reza Shah Kabir powerhouse and incorporation of their improvements into RSK II;
- f. Investigations and studies;
- g. Architectural work;
- h. Electrical engineering work;
- i. Geological work; and
- j. Preparation of tender documents.

2. the amount of time and category of employee which, according to the standards of good engineering practice, would have been necessary to complete such work given the nature of the work and the conditions under which it had to be performed.

Expert No. 2

After familiarizing himself with the documents filed by the parties and necessary to the performance of his task, Expert No. 2 shall give his opinion on the following:

- 1. the fees to which the Claimant is entitled for such work. Such fees shall be arrived at by applying,

to the amount of time and category of employee claimed by the Claimant, limited as required by the findings of Expert No. 1, the payment rates contained in Sections 1(a), 1(d) and 1(g) of Appendix III of the draft contract between the Claimant and KWPA. Overhead costs shall be reimbursed in accordance with Section 1(b) of Appendix III of the draft contract. Expenses which were reimbursable under Section 1(c) of Appendix III of the draft contract and which, according to the standards of good engineering practice, were necessary to the work performed by the Claimant on RSK II shall be reimbursed in accordance with Section 1(c) of Appendix III of the draft contract. As regards the "pack-up" work performed by the Claimant after 14 May 1979, reimbursement for such work shall be allowed to the extent that Expert No. 1 has ascertained that such work was consistent with the standards of good engineering practice, and shall be based on the payment rates contained in Sections 1(a), 1(d) and 1(g) of Appendix III of the draft contract.

In the course of performing his duties, Expert No. 2 may call upon the services of Expert No. 1, giving specific reference to those portions of his task which are unable to be resolved without such expertise.

The appointed experts shall be entitled to hear any person with knowledge of RSK II, in the presence of the parties or the parties having been duly invited to attend such meeting.

The appointed experts shall also be entitled to obtain from any party all documents which they deem necessary for their investigations. Each party shall without delay provide the other party with a copy of any documents which it communicates to the experts.

In case of any difficulty arising in the course of their investigation, the experts shall be allowed to refer to the Tribunal for clarification or resolution.

In the event that it should prove necessary, the experts shall be allowed to visit the site if circumstances permit.

Not later than 6 months after deposit by the Claimant of the advance for the costs of expert advice, the experts shall distribute their proposed reports to the parties and allow them to make any comments within one month. The final reports may incorporate the experts' observations on these comments.

The final reports shall be submitted to the Tribunal by the experts individually not later than 2 months after the proposed reports have been distributed to the parties.

In order to ensure coordination and eliminate duplication of investigations, Expert No. 2 shall carry out his work in liaison with Expert No. 1, who shall have the freedom for that purpose to organize any general meeting with the parties.

The Tribunal further decides, in accordance with Tribunal Rule 41 (2), that the Claimant shall deposit within two months from the date of this Award the sum of Twenty-Five Thousand United States Dollars (US \$25,000) into account number 24.58.28.583 at Pierson, Heldring and Pierson, Korte Vijverberg 2, 2513 AB The Hague, in the name of the Secretary-General of the Iran-United States Claims Tribunal (Account No. II), as an advance for the costs of expert advice. The account shall be administered by the Secretary-General of the Tribunal, who shall consult with the Tribunal. The Tribunal further retains jurisdiction to request from the parties such other amounts as may be required from time to time in connection with the expert's work, or to decide any disputes which may arise in connection with that work.

VII. Counterclaims

KWPA has counterclaimed for taxes allegedly owing for the period 1974 to 1976. Since such taxes obviously do not relate to the work performed by the Claimant in 1978 and 1979, this counterclaim does not arise out of the "same contract, transaction or occurrence" that constitutes the subject matter of the claim (Claims Settlement Declaration, Article II, paragraph 1). It therefore must be dismissed for lack of jurisdiction.

KWPA has also counterclaimed for an indeterminate amount representing other "duties, taxes, fees, including social security payments" allegedly owed by the Claimant. Such a counterclaim is a mere allegation. KWPA has introduced no proof regarding either the amount due or the applicable Iranian law. Therefore, quite apart from the jurisdictional questions raised by tax and social security counterclaims which were summarized by the Tribunal in its Award No. 59-220-2 of 27 July 1983 in the claim of Intrend, this counterclaim must be dismissed in this case for lack of proof.

AWARD

The Tribunal awards as follows:

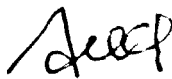
The counterclaim of KWPA for taxes for the period 1974 to 1976 is dismissed for lack of jurisdiction.

The counterclaim of KWPA for duties, taxes and fees, including social security charges, is dismissed for lack of proof.

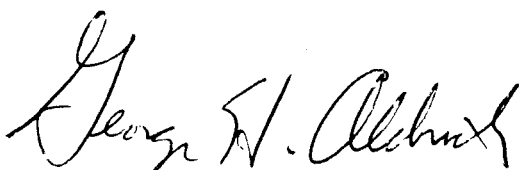
Two experts shall be appointed. Expert No. 1 shall be an engineer experienced in the field of hydro-electric power plant construction. Expert No. 2 shall be an accountant experienced in the business practices and administration of important consulting engineering contracts. Such experts shall, if possible, be chosen by agreement between the Claimant and KWPA. Should those two parties fail to mutually select the experts by 1 October 1983, the Tribunal shall make the appointments.

Dated, The Hague

27 July 1983



Pierre Bellet
Chairman
Chamber Two



George H. Aldrich

In the Name of God,

Shafie Shafeiei

After the Hearing in this case on 19 May 1983 the three arbitrators agreed to begin deliberations at the end of June. Throughout the period from February to late June the three arbitrators had been in agreement that July would be fully dedicated to the final deliberations in this and the other pending cases, in view of the 1 August effective date of Chairman Bellet's resignation from the Tribunal.

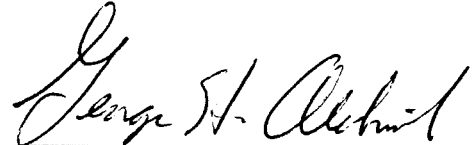
On 23 June 1983, however, Mr. Shafeiei sent Chairman Bellet a note informing him that he intended to be absent from the Tribunal on vacation until the end of July. The Chairman responded by a note dated 29 June saying that, while a brief vacation was acceptable, Mr. Shafeiei was expected after 5 July. Nevertheless, after a further exchange of notes, Mr. Shafeiei has absented himself until the present and has given no address or telephone number where he could be reached. Only yesterday afternoon, too late to be of any use, did Mr. Shafeiei's legal assistant give the Tribunal a telephone number in another country where Mr. Shafeiei might be reached.

The Chairman has had all the successive drafts of this award since Mr. Shafeiei's departure deposited in his office in due time so that, if he had been present, he could have read and commented upon them, but no comments have been received. The Chairman also deposited in Mr. Shafeiei's office on 20 July 1983 a letter enclosing the final draft of the present award and informing him of the place and time of signature. Mr. Shafeiei failed to respond to the letter and

did not attend the signing. In these circumstances, an arbitral tribunal cannot permit its work to be frustrated. This statement is made pursuant to Article 32, paragraph 4 of the Tribunal Rules of Procedure.



Pierre Bellet
Chairman
Chamber Two



George H. Aldrich

Dated: The Hague
27 July 1983