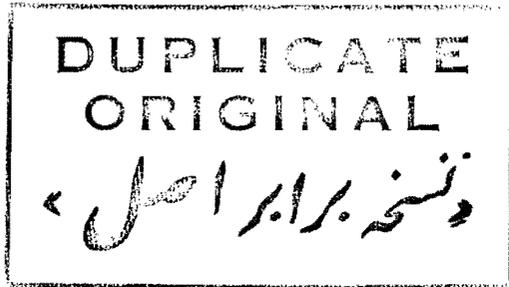


IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعوی ایران - ایالات متحدہ



CASE NO. 121

CHAMBER TWO

AWARD NO. 379-121-2

GEORGE W. DRUCKER, JR.,
Claimant,

and

FOREIGN TRANSACTION COMPANY,
INSURANCE COMPANY OF IRAN,
NATIONAL GRAIN, SUGAR, AND TEA ORGANIZATION,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	22 JUL 1988
	۱۳۶۷ / ۴ / ۲۱
	شماره

AWARD

I. INTRODUCTION

1. The Claimant brought five claims against the Respondents based on various transactions between those Respondents and the South Gulf Trading Company ("South Gulf"), a Dubai corporation of which the Claimant alleges that he is the majority shareholder. The claims are for unpaid amounts allegedly owed for commodities ordered by the Respondents from South Gulf and for amounts allegedly due pursuant to an insurance policy. The claims arose at various times between 1974 and 1979. The Foreign Transaction Co. also raised a counterclaim.

2. In Interlocutory Award No. 4-121-FT, 5 November 1982, the Full Tribunal determined that two of the five claims were excluded from the jurisdiction of this Tribunal to the extent that they were based on contract. The questions whether and to what extent those two claims are based on contract were left to the decision of this Chamber in the course of further proceedings. Those questions need not be decided, however, in view of the decision reached infra by the Tribunal with respect to the Claimant's ownership of a controlling interest in South Gulf.

3. It is clear that South Gulf has never been a national of the United States and could not, therefore, bring a claim against Iran before this Tribunal pursuant to the Claims Settlement Declaration. The Claimant, however, has established to the satisfaction of the Tribunal that he has been since birth a national of the United States. Therefore, the Tribunal would have jurisdiction over an indirect claim by the Claimant, provided that such a claim satisfies the requirements of the Declaration, including the requirements of Article VII, paragraph 2. Pursuant to that provision, the Claimant must prove that the claims have been owned continuously from the dates on which they arose to 19 January 1981, when the Declaration entered into force, by nationals of the

United States. More precisely, the Claimant must prove that he owned, either alone or collectively with other U.S. nationals, sufficient capital stock or other proprietary interest in South Gulf from mid 1974 to 19 January 1981 to control South Gulf.

II. ALLEGATIONS AND EVIDENCE

4. In order to describe in context the evidence on the basis of which the Tribunal must decide this question, it is necessary to describe the sequence of submissions in this Case relevant to the Claimant's ownership and control of South Gulf.

5. First, on 13 July 1983, a telex from the Claimant was received by the Tribunal in which the Claimant said that he had learned that unauthorized persons might attempt to affect his claim adversely and that he had not given any authority to act on his behalf to such persons. Soon thereafter, on 5 August 1983, the Tribunal received a letter on the stationery of South Gulf, signed by a Mr. Mir, seeking to withdraw Claim 5 on the ground that an earlier law suit on the same claim was pending in Iran. The letter enclosed a resolution signed by the President of South Gulf authorizing Mr. Mir to withdraw the claim. The resolution stated that it was passed at a "general body meeting" of South Gulf in London on 7 July 1983. The letter also stated that the withdrawal of Claim 5 "does not derogate from, or prejudice, any or all other claims filed by the Company and/or Mr. George W. Drucker, Jr. as a shareholder of the Company pending before the Iran-United States Claims Tribunal. . . ."

6. The Tribunal referred to the purported withdrawal of Claim 5 in an order filed on 8 September 1983 and informed the Parties that, as South Gulf was not the Claimant, the Tribunal could not consider its motion for withdrawal.

7. On 14 October 1983, the Claimant filed a letter in which he denied that there had been any resolutions by South Gulf authorizing withdrawal of Claim 5 and stated that the question of his stock ownership "can easily be established at the time of trial." The Claimant enclosed a written statement by a Mr. Amanullah Riggi in which he asserted that: (a) the Claimant owned 60 percent of South Gulf, a Dr. Ali Reza Saheb owned 30 percent, and he (Riggi) owned 10 percent of South Gulf; (b) there had been no General Meeting of South Gulf since 31 December 1982; (c) he did not recognize the signature of the President of South Gulf on the purported resolution enclosed with Mr. Mir's letter, a person he had never heard of; and (d) South Gulf did not want to withdraw any portion of its claims. Also enclosed with the Claimant's letter was a minute of a shareholders' meeting of South Gulf of 30 September 1983 in Virginia Beach, Virginia. The minute stated that Dr. Saheb was removed from the Board of Directors, and a new Board consisting of the Claimant and Mr. Riggi was appointed. The minute was signed by the Claimant and by Mr. Riggi.

8. On 26 October 1983, the Tribunal established a schedule for the filing of briefs and evidence and requested the Claimant to include documents in support of his ownership of the claim, his control over South Gulf, and his nationality.

9. On 17 November 1983, a letter from a firm of London solicitors was received by the Tribunal. The letter stated that the firm was acting on behalf of Mr. Saheb, who "is and always has been" the majority shareholder in South Gulf, and that Mr. Saheb and South Gulf wished to withdraw all claims filed by the Claimant. Enclosed with the letter were copies of a 17 April 1974 Order by the Ruler of Dubai authorizing Saheb and Riggi to establish a trading and shipping company "between themselves or with any other person according to their wishes," a form related to the Dubai Register of Commerce dated 18 April 1974 completed by Saheb and Riggi

which stated that Saheb held 90 percent of the shares and Riggi 10 percent, and South Gulf's trade license.

10. On 16 April 1984, the Claimant filed evidence of his United States nationality and another copy of the Riggi statement filed on 14 October 1983. In a covering memorandum the Claimant stated that other documents relating to the claims were kept at the Tehran offices of South Gulf and were confiscated by the Government of Iran. He added that further evidence is in the possession of the Bank of Credit and Commerce International and that he was suing the Bank in California to compel disclosure. For these reasons he asked to be permitted to offer further evidence later or at the hearing.

11. On 8 May 1984, the Tribunal issued an Order in which it noted the absence of evidence of Claimant's ownership and control of South Gulf. In view of the place of incorporation of the company, Dubai, the Tribunal requested the Claimant to provide further explanation as to why evidence of ownership could not be provided. The Tribunal also informed the Parties that it intended to decide the question of the Claimant's ownership and control as a preliminary jurisdictional issue.

12. Pursuant to that Order, the Claimant filed on 1 June 1984 a statement asserting that he had bought 60 percent of the shares of South Gulf from Dr. Saheb on 18 April 1974, that it was agreed that his ownership would remain undisclosed because he was American and Jewish, that their "first attorney in this matter", Jeffrey L. Gould, Esq. of London assured him that non-disclosure of his ownership was valid, that he remained the owner of 60 percent of the shares until the time the Claim was filed in this proceeding and thereafter, and that he had made frequent trips to Iran to confer with Saheb and Riggi concerning company operations.

13. Enclosed with the Claimant's statement was a copy of a document that reads as follows:

This will confirm the following agreement entered into between Dr Ali Reza Saheb and George W. Drucker, Junior, this 18th day of April 1974.

1. Drucker does hereby buy and Saheb does hereby sell 60,000 shares of Common Stock of South Gulf Trading and Shipping Company Limited of Dubai, United Arab Emirates, for the sum of One Dollar (US\$ 1) and other valuable considerations.

2. Drucker agrees to pay to the company a sum not to exceed United States Dollars Sixty Thousand (US\$ 60,000) for said shares when the same is needed by the company and Saheb notifies Drucker by registered mail of such need; and Drucker agrees to hold Saheb harmless from any obligation to the corporation respecting any such capital contribution concerning the said 60,000 shares.

3. Saheb agrees to deliver to Drucker the said 60,000 shares when the same have been issued by the company.

4. Saheb agrees that he shall not, without the prior written consent of Drucker, publicly disclose to any person, firm, corporation or political entity that Drucker is a shareholder of South Gulf; and Saheb further agrees that should any disclosure be made contrary to these provisions, Saheb shall immediately pay to Drucker the sum of United States Dollars One Hundred and Twenty Thousand (US\$ 120,000) as liquidated damages.

5. Drucker does hereby grant Saheb full Power of Attorney to vote his shares at all shareholders' meetings of the company and, in accordance with the provisions of para 4, directs that Saheb not disclose the existence of such Power of Attorney; said Power of Attorney to continue until revoked in writing by Drucker.

The document was signed by Saheb and Drucker.

14. Also enclosed with the Claimant's 1 June filing was a second statement by Mr. Riggi in which he said that he had filed the papers in Dubai to organize South Gulf on 17 April 1974, that the following day in London Saheb and the Clai-

mant signed the above-quoted agreement, and that the Claimant continued to own 60 percent of South Gulf at the time the Claim was filed with the Tribunal.

15. On 24 August 1984, the Respondent Insurance Company of Iran filed its brief and evidence denying that South Gulf's office in Tehran had been taken over by the Government and demonstrating that an attorney for South Gulf was still pursuing its claim in a Tehran court in April 1984. The Insurance Company also attached certifications from the Chamber of Commerce of Dubai and the Office of Commercial Licenses of Dubai municipality both of which stated that Saheb and Riggi were listed on their records as the owners of South Gulf, along with a brief memorandum from a firm of advocates and legal consultants in Dubai concluding that, according to the Trade License, Saheb and Riggi "have always been and still are the only owners/shareholders" of South Gulf.

16. On 17 September 1984, the Tribunal informed the Parties that it intended to decide the question of jurisdiction on the basis of the documents before it.

17. On 25 February 1985, the Claimant filed a further statement to which was attached a copy of Minutes of a South Gulf Board of Directors Meeting of 20 December 1982, signed by Dr. Saheb, in which it was stated that the Claimant had owned shares of the company since 1974. The document reads as follows:

The Meeting of the Board of Directors of South Gulf Trading & Shipping Co. Ltd., Deira Dubai, was held on this Day of 20th of December, 1982, with the presence of Mr. Amanullah Riggi. The following decisions were made:

A) 30% of the shares of the company owned since April, 1974, by Mr. George W. Drucker, Jr., American National, presently living in Virginia, U.S.A., were sold on proxy by Dr. A. R. Sahab and transferred to Mr. Mehdi Metghalchi, Iranian

National, resident in the United Kingdom, for a consideration, which was fully paid.

B) Also 20% of the shares of Mr. G. W. Drucker Jr., were sold on proxy by Dr. A. R. Sahab and transferred to Mr. Mohamed Fouladi for a consideration, which was fully paid.

C) 10% shares of Mr. G. W. Drucker Jr. were sold and transferred to Dr. A. R. Sahab on proxy for a consideration, which was fully paid.

D) 5% of the shares of Mr. A. A. Riggi were sold and transferred to Dr. A. R. Sahab for a consideration, which was fully paid.

In light of the above transactions, which were approved in the Board Meeting according to Article 7 of the Articles of Association of South Gulf Trading & Shipping Co. Ltd., the present shareholders of the company consist of the following:

<u>Name</u>	<u>Designation</u>
1) Dr. A. R. Sahab	Chairman & President
2) Mr. A. Riggi	Director & Vice President
3) Mr. Mohamed Fouladi	Director
4) Mr. Mehdi Metghalchi	"
5) Mr. G. W. Drucker Jr.	"

<u>Nationality</u>	<u>Percentage of Equity</u>
1) U. K. Mahajer	35%
2) Iranian	5%
3) Iranian	20%
4) Iranian	30%
5) American	10%

E) The new shareholders viz. M/s. Mohamed Fouladi and Mehdi Metghalchi are in no way liable to any debts or liabilities of the company South Gulf Trading & Shipping Co. Ltd., if any, before December 1st, 1982, nor they have any right/rights, claim/claims whatsoever to and from the Receivables and Proceeds of any transaction or claims of the company versus other persons which are derived from any transaction or initiation before December 1st, 1982. It has to be noted in particular that all the claims of the company proceedings in Iran-American Tribunal at The Hague - International Court of Arbitration, is completely outside the purview of this new participation in the equity of the Company.

As there was no further matter to be discussed, the Meeting was closed.

18. On 19 March 1985, the Tribunal issued an Order drawing the attention of the Respondents to the evidence filed by the Claimant on 25 February. The Tribunal said: "Given the relevance of this evidence, the Tribunal wants to ensure that the Respondents have a right of rebuttal."

19. On 10 May 1985, the Respondent Foreign Transaction Company requested the Tribunal to order the Claimant to submit all relevant documents and communications, including minutes of all meetings of shareholders or directors of South Gulf, all annual balance sheets of South Gulf, communications and other documents relating to the contracts on which claims are brought, bank documents or other evidence that Claimant paid U.S.\$60,000 for 60 percent of the shares of South Gulf, and all communications between the Claimant and either South Gulf or Dr. Saheb.

20. In response to that request, the Claimant commented on 9 August 1985 that the request was overly broad and diversionary. He added that other communications between South Gulf, Dr. Saheb, and himself were irrelevant in view of his 18 April 1974 agreement with Saheb and the minutes of the 20 December 1982 "purported" directors' meeting, in which Saheb acknowledged the Claimant's ownership, while, in the Claimant's view, invalidly attempting to transfer the Claimant's shares. With respect to proof of payment, he noted that the 1974 agreement did not call for payment, and he said that "exchanges and financial drafts in relationship with the stock ownership claim are equally irrelevant, particularly those (if any exist) which occurred subsequent to January 19, 1981." The Claimant asserted that in February 1979 Dr. Saheb was arrested in Tehran and imprisoned and all books, records and papers of South Gulf at the Tehran office were seized by the Government of Iran. Alleging that those records would show his 60 percent ownership, the Claimant

argued that Iran should not be permitted to benefit by his consequent inability to produce those records. He said that, in his various moves, "many old papers and records were destroyed and many were packed in boxes which cannot be located." However, the Claimant said that he found a few communications, copies of which he submitted as attachments to his comments. The Tribunal notes, however, that none of the telexes (which date from 1975 and 1976) refers to South Gulf, although they do indicate that the Claimant knew Dr. Saheb in that period and that he traveled to Iran. The telexes deal with construction projects, a gypsum mine, and the furnishing of certain commodities. The only document referring to South Gulf is a letter from the Claimant dated 23 November 1981 in which the Claimant identified Dr. Saheb as his partner in South Gulf.

21. On 28 February 1986, the Respondent Insurance Company of Iran filed evidence, including a letter from the legal adviser to the Dubai municipality stating that any non-public change in share ownership has no legal effect vis-a-vis third parties, a letter from the Chamber of Commerce of Dubai, a copy of the registration of South Gulf to do business in Iran, and an agreement in an Iranian court between the Insurance Company and South Gulf that "with due regard to the mandatory laws of Dubai". . . the Claimant "is not a legal shareholder." On the same date, the Respondent Foreign Transactions Company filed a brief and attached evidence that South Gulf had filed an appeal with the Iranian Supreme Court in 1982.

22. On 25 April 1986, the Tribunal received a signed statement from Dr. Saheb, along with several attached documents. In his statement, Dr. Saheb said: (a) he has always owned 90 percent of the shares of South Gulf; (b) he had known the Claimant during the 1970s in connection with a housing project, but that the Claimant had nothing to do with South Gulf; (c) after he came to London in June/July

1981 following a period of detention in Iran, the Claimant came to see him concerning some possible business cooperation; (d) the Claimant suggested that a majority of the shares of South Gulf be given to him "superficially" so that he could bring South Gulf's claims to this Tribunal for a fee equal to 25 percent of the amounts he is able to recover, provided that South Gulf pays the legal expenses; and (e) the agreement dated 18 April 1974 and another handwritten agreement dated 17 December 1981 were both executed at the same time for the purposes of permitting the Claimant to bring to this Tribunal South Gulf's claims as its majority shareholder and then subsequently return 35 percent of the shares to Dr. Saheb so that the Claimant's ultimate recovery would be 25 percent. The handwritten agreement dated 17 December 1981 reads as follows:

Dr. Ali Reza Saheb
President
South Gulf Trading and Shipping Co., Ltd.

Dear Ali Reza,

This letter confirms my irrevocable contract of sale in connection with the sale of 35% of South Gulf Trading and Shipping Co. Ltd. of Deira, Dubai, UAE to you represented by 35,000 of my 60,000 shares together with that share of all rights, interests and proceedings including pending arbitrations and court proceedings now pending, all for the consideration already received by me in full.

You have my power of attorney to complete on my behalf the Stock Transfer Form and to register with the Registrar the transfer of the above mentioned shares.

Very truly yours,
(signed)
George W. Drucker Jr.

Agreed and Accepted
(signed)
Ali Reza Saheb

23. In the same submission, Dr. Saheb enclosed a copy of a judgment of a British court dated 17 November 1983 in which Dr. Saheb was adjudged to pay to the firm of Youngstein and

Gould some £15,000. Dr. Saheb said that these were legal fees for work done in filing the claim in the Iran-U.S. Claims Tribunal for which he had been found personally liable. Dr. Saheb also attached a document which he described as his statements submitted to the British court, but that document has many questions and additions in pen and appears to be a draft.

24. On 2 May 1986, the Tribunal accepted Dr. Saheb's submission for filing pursuant to note 5 to Article 15 of the Tribunal Rules.

25. On 21 July 1986, the Tribunal received a copy of a letter to the Claimant dated 11 July 1986 from Mr. Jeffrey L. Gould of Youngstein and Gould. The same letter was later filed by the Claimant on 22 September 1986. In that letter, Mr. Gould denied that Saheb's "statements" were submitted to the British court in his case and said that, in his initial meeting with Dr. Saheb concerning the claims of South Gulf, Dr. Saheb advised him that a United States national owned more than half the shares of South Gulf, that subsequently, Dr. Saheb introduced him to the Claimant as that majority shareholder, and that Gould had acted in the good faith belief that all documents presented by Dr. Saheb were genuine and all statements made by Dr. Saheb and the Claimant were true.

26. On 22 September 1986, the Claimant filed an extensive rebuttal statement, as well as several new documents, in particular, the Articles of Association of South Gulf, a legal opinion on the law of Dubai, an agreement between the Claimant and Dr. Saheb dated 11 November 1982, and an additional statement by Mr. Riggi. In his statement, the Claimant asserted that South Gulf had been organized in Dubai because it would not be subject to taxes there, but that it was agreed not to disclose the Claimant's interest in South Gulf because he was Jewish. He contended that the

transfer of shares to him by Dr. Saheb without disclosure of such transfer was permissible under the law of Dubai, and he submitted a legal opinion to that effect by the firm of Chadbourne, Parke and Afridi. That opinion stated that the decree of the Ruler of Dubai establishing South Gulf contained no notification requirement and, therefore, transfer was permissible so long as it was done in accordance with all relevant provisions of the Memorandum and Articles of Association.

27. With respect to his non-payment for his shares, the Claimant asserted that he was never called on to pay for his shares and that neither Dr. Saheb nor Mr. Riggi paid for their shares. The Claimant further asserted that, after formation of South Gulf, he was regularly informed by Saheb and Riggi concerning the business "generally by telephone or in person". The Claimant stated that Dr. Saheb told him in 1981 that South Gulf's only assets were its claims but that it could borrow the funds to pay the legal fees for prosecuting those claims.

28. In explanation of the 17 December 1981 agreement which Dr. Saheb had submitted, the Claimant said that in late 1981, Dr. Saheb told him that he had developed some valuable business contacts in Nigeria and was building a large poultry business but would not contribute them to South Gulf. The Claimant asserts that, in the hope the business of South Gulf could be revitalized, he agreed to transfer 35 percent of the shares of South Gulf to Dr. Saheb if the latter would utilize his Nigerian contacts for the benefit of South Gulf and transfer the poultry business to South Gulf. The Claimant stated that, while he pursued the Nigerian prospects on behalf of South Gulf, the anticipated contracts did not materialize. Moreover, he alleged that, in early or mid 1982, Dr. Saheb wanted the poultry business back and, after much discussion, he and Saheb agreed to that and to the cancellation of the 17 December 1981 agreement by

which the Claimant had transferred 35 percent of South Gulf's shares to Saheb. However, no document evidencing such cancellation was submitted.

29. The Claimant went on to assert that, in the autumn of 1982 Mr. Riggi told him that South Gulf had previously realized profits which had been concealed from the Claimant and that Riggi believed Saheb had taken for his personal use some U.S.\$235,000 paid by a Korean company in connection with a South Gulf cement contract. The Claimant stated that he was growing increasingly concerned about the costs of prosecuting the claims of South Gulf, and that, in return for Dr. Saheb's agreeing to pay all such costs, he agreed to transfer the majority of his shares to Saheb on the understanding that he would be entitled to 30 percent of the gross recovery. In this connection, the Claimant submitted a copy of an agreement dated 11 November 1982, which reads as follows:

Dr Ali Reza Saheb
80 Nottingham Terrace
London
England

Dear Ali Reza:

This will confirm the following agreement between us:

1. For valuable consideration Drucker does hereby transfer and assign to Saheb 40,000 shares of Common Stock of South Gulf Trading and Shipping Company Limited.

2. Saheb on behalf of himself and South Gulf Trading and Shipping Company Limited does hereby agree to advance all expenses including, but not limited to, attorney's fees, travel, and other incidental expenses, witness fees, appellat [sic] fees, and the like, relating to those certain matters in arbitration in the Iran-United States Claims Tribunal in the Hague.

3. Also with respect to such arbitration proceedings, Saheb, on behalf of himself and South Gulf, agrees that from any recovery to South Gulf or Drucker, Drucker will first be reimbursed expenses he has advanced and thereafter will keep,

as compensation for his services rendered, 30% of any monies recovered from the respondents. The balance shall be retained by South Gulf, for the benefit of the other shareholders.

Very truly yours,
By: (signed)
George W. Drucker, Jr.

(signed)
Ali Reza Saheb
AGREED AND ACCEPTED

30. The Claimant then stated that Dr. Saheb "betrayed" him in 1983 by trying to withdraw Claim 5 from the Tribunal and by failing to pay the fees of Youngstein and Gould with respect to the proceedings in this Tribunal. The Claimant alleges that, as a consequence of these actions, he informed Saheb that the agreement of 11 November 1982 was cancelled by reason of "fraud and failure of consideration", and he and Riggi held a shareholder's meeting in Virginia on 30 September 1983 to remove Saheb from the Board of Directors and confirm the Claimant's ownership of 60 percent of the shares.

31. In his attached statement, Mr. Riggi stated the following: (a) that he had known Dr. Saheb for 45 years; (b) that he knew of and consented to Saheb's transfer of 60 percent of the shares of South Gulf to the Claimant on 18 April 1974; (c) that the Claimant's ownership was undisclosed because, if known, it would have prevented South Gulf from doing business in Arab countries; (d) that South Gulf maintained a small office in Dubai and a larger one in Tehran; (e) that the share certificates and books showing the transfer to the Claimant were kept in Tehran and were confiscated when Dr. Saheb was arrested; (f) that he and Dr. Saheb kept the Claimant informed regarding the business of South Gulf by telephone and by meetings with him in Tehran and in London; (g) that none of the three shareholders ever paid for their shares, as they had agreed to pay only when needed by the company and "that need did not arise"; (h)

that he never transferred his shares to Saheb and was not present at the purported meeting of 20 December 1982, contrary to the minutes of that meeting; (i) that he told the Claimant (he believes in 1982) of Saheb's receipt of U.S.\$235,000 from a Korean company in connection with a South Gulf contract and his conversion of those funds to his personal use; (j) that Dr. Saheb told him in 1983 that, if Claim 5 were withdrawn from this Tribunal, the Government of Iran would not require the Bank of Credit and Commerce International to pay a guarantee related to that claim and, in that event, the Bank would relieve Dr. Saheb of his debts to the Bank and would continue to pay him monthly allowances; and (k) that Dr. Saheb later told him he would try to withdraw all the claims from the Tribunal "because he had been promised by the Government of Iran that if the Claims were all withdrawn, that the Government would settle the Claims quickly and directly with him."

32. The final submissions by the Respondents on 29 September 1987 contained a summary of their arguments, but no new evidence.

III. REASONS FOR THE AWARD

33. The above-described arguments and evidentiary submissions constitute a tangled web of constantly changing allegations and contradictions that defies the finding of facts with certainty. Questions of credibility are particularly difficult to determine in the absence of the participation of the key witnesses in a hearing. In the present Case, no Party has requested a hearing on the jurisdictional question of the Claimant's ownership of a controlling interest in South Gulf. Although the Tribunal could nevertheless have held such a hearing, it could not compel the attendance and participation of witnesses. Accordingly, the Tribunal informed the Parties that it would decide the question on the basis of the documents.

34. As noted at the outset, the Claimant has the burden of proving that the claims, as required by Article VII, paragraph 2, of the Claims Settlement Declaration, have been owned continuously from mid-1974 to 19 January 1981 by nationals of the United States, and, in particular, that such nationals owned during that period sufficient capital stock of South Gulf to control the corporation. As proof, the Claimant has submitted the agreement dated 18 April 1974, his own statements, those of Mr. Riggi, and several post-19 January 1981 documents showing that Dr. Saheb recognized the Claimant's ownership of 60 percent of the shares of South Gulf. On the other hand, Dr. Saheb has stated that the 1974 agreement was in fact drawn up in 1981 for the purpose of permitting the claims of South Gulf to be brought to the Iran-U.S. Claims Tribunal, and he and the Claimant have submitted evidence of the Claimant's agreement at later dates to return to him varying percentages of the shares.

35. The Tribunal is not in a position to determine from the copies provided it whether the agreement dated 18 April 1974 was, in fact, concluded in 1974 or in 1981. However, the Tribunal considers it significant that the Claimant has not been able to submit a single document, other than that agreement, dated prior to 1981 evidencing any connection between the Claimant and South Gulf. As a result of the questions raised with respect to that document by Dr. Saheb's statements, the Claimant faced a burden of proof that he has not met. While the Tribunal understands the argument that the Claimant was generally kept informed of South Gulf's activities by telephone and through personal discussions, his inability to produce any financial statements, balance sheets, or even any written communications concerning South Gulf prior to 1981 inevitably raises doubts about his majority ownership during those years. While the Claimant visited Tehran from time to time, he apparently did not reside there. It seems doubtful that an

absentee majority owner would have received no written reports on the status of his company's business for a period of more than six years. When such doubts are added to the fact that the Claimant never paid anything for the shares he allegedly owned -- one is left to wonder what South Gulf used as working capital -- and to the changing arrangements between the Claimant and Dr. Saheb in the years immediately following the filing of the claims in late 1981, the conclusion is unavoidable that the Claimant has failed to prove adequately his ownership during the relevant period of 60 percent of the shares of South Gulf so as to permit the Tribunal to make a finding to that effect. Consequently, the Tribunal holds that it lacks jurisdiction in this Case because of the Claimant's failure to meet his burden of proof of ownership.

IV. THE COUNTERCLAIMS

36. Since the Tribunal has held that it lacks jurisdiction over the claims of the Claimant, the counterclaims allegedly arising out of one of the same transactions as one of the claims must also be dismissed for lack of jurisdiction.

V. COSTS

37. Each of the Parties shall bear its own costs of arbitrating this claim.

VI. AWARD

38. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- (a) The claims of Claimant, GEORGE W. DRUCKER, JR., against the Respondents, FOREIGN TRANSACTION CO., INSURANCE CO.

OF IRAN, and NATIONAL GRAIN, SUGAR, AND TEA ORGANISATION, are hereby dismissed for lack of jurisdiction.

(b) The counterclaim is hereby dismissed for lack of jurisdiction.

(c) Each of the Parties shall bear its own costs of arbitrating this claim.

Dated, The Hague
22 July 1988

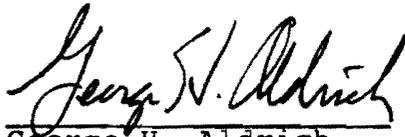


Robert Briner
Chairman
Chamber Two

In the Name of God



Seyed K. Khalilian



George H. Aldrich