

ایالات متحده

124 - 77
114 - vv

ORIGINAL DOCUMENTS IN SAFE

Case No. 124

Date of filing: 2 Sep 1983

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- Date of Award _____
28 pages in English 22 pages in Farsi

** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
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- Date _____
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** DISSENTING OPINION of _____
- Date _____
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- Date _____
_____ pages in English _____ pages in Farsi

124-77
124-77

CASE NO. 124

CHAMBER THREE

AWARD NO. 72 -124-3

JOHN CARL WARNECKE & ASSOCIATES,

Claimant,

and

BANK MELLAT,

Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعوی ایران - ایالات متحدہ
فہت شد - FILED	
1242 / 6 / 11	شماره
2 SEP 1983	
124	شماره 124

AWARD

DUPLICATE ORIGINAL نسخہ برابر اصل

Appearances:

For the Claimant:

Mr. Michael Nussbaum,
 Ms. Marilyn Melkonian,
 Attorneys
 Mr. David B. Wilkins,
 John Carl Warnecke & Associates

For the Respondent:

Mr. M.K. Eshragh,
 Deputy Agent of the Islamic
 Republic of Iran
 Mr. Mokhtari,
 Adviser to the Agent
 Mr. R. Ansari,
 Bank Mellat
 Mr. Maadi,
 Attorney for Bank Mellat

Also present:

Ms. Jamison Selby,
 Deputy Agent of the United
 States of America

filed an unauthorized Memorial. Fairness, orderliness and possible prejudice to the other party in the case require that the Tribunal disregard this latter submission.

II. THE FACTS

Warnecke and the Foreign Trade Bank of Iran executed a contract on 22 April 1975 ("Contract") under which the former agreed to provide architectural services for the construction of a new headquarters office building for the bank. Under the contract, the services were to be performed in four phases.

In Phase I, Warnecke was, inter alia, to provide by 1 June 1975 schematic design studies, a "Statement of Probable Construction Cost" and documents sufficient to obtain a local building permit (Arts. 1.1.2-1.1.4).

Under Phase II, Warnecke was to supply by 1 August 1975 "early stage working drawings and preliminary specifications"; "a plot plan"; "structural design"; "design data sufficient to permit immediate design of the foundations and detailed specifications and drawings of the elevators and the electrical and mechanical systems and of such other essentials as may be appropriate"; and "a further, and detailed statement of probable construction cost", based upon a materials quantity survey (Arts. 1.1.6 and 1.1.7).

Under Phase III, to be completed by 31 December 1975, Warnecke was required to submit "finalized drawings and specifications setting forth in detail the requirements for the construction of the entire Project including the necessary bidding information" and to "assist the Owner in obtaining bids or negotiated proposals and in awarding and preparing construction contracts" (Arts. 1.1.9 and 1.1.12).

Phase IV was to "commence with the award of the Construction Contract" (Art. 1.1.14), and in this phase Warnecke was obligated "to supervise the progress of the project" and to "protect the Owner against defects and deficiencies in the work of the contractor" on the basis of Warnecke's "on-site observations". The names of Warnecke's on-site supervisors were to be supplied to the Owner for approval with the additional requirement that "[w]hen required such supervisor(s) shall be supplied by the Architect on a full time basis" (Art. 1.1.17). Warnecke was periodically to certify to the Owner the progress made on construction for the purpose of determining payments to the construction contractor (Art. 1.1.18). This final phase was to end upon issuance of the final certificate for payment (Art. 1.1.14), which was to be done no later than "90 days after the completion date established in the Construction Contract" (Art. 1.1.22).

As compensation for its services, Warnecke was to receive 6% of the cost of construction up to a maximum of US \$900,000, which maximum was based upon a US \$15,000,000 ceiling on construction cost recorded in the Contract (preamble to the Contract).

The total compensation was allocated to each of the phases of the Contract in the following proportions: Phase I, 20%; Phase II, 15%; Phase III, 40%; and Phase IV, 25%. (Art. 5.2). Actual payment was to be based upon an estimated total compensation of US \$792,000 "for prorating purposes" (Art. 5.2). An advance payment of 25% of the fee for each phase was to be made "against a Bank Guarantee" to be provided by Warnecke (preamble to the contract), and the remaining 75% at the end of the phase (Art. 5.2). Any differences between the amounts paid based upon the estimated total compensation "and the final calculated compensation due shall be settled when the construction contract is signed and, the balance at the end of the last phase if any" (Art. 5.2).

The Contract provided that either party could terminate the Contract upon breach by the other party by giving thirty days written notice (Art. 6.1). Moreover, the Contract stated that "[i]f the project is abandoned in whole or in part, the Architect shall be paid for services performed to

the date of receipt of written notice to that effect" (Art. 5.3). Finally, the Contract provided that disputes in relation to the contract "shall be settled by arbitration" (Art. 9.1).

The project work began in early 1975. It was terminated in January 1979 before the building had been completed.

Warnecke arranged for a bank guarantee of US \$80,000 from a United States bank, the amount of which was later reduced to \$50,000 upon agreement of the parties.

After construction was abandoned in January 1979, Warnecke brought an action in a United States District Court to enjoin payment of the \$50,000 bank guarantee. Bank Mellat retained counsel to defend against the action. The court subsequently issued an injunction prohibiting payment.

III. CONTENTIONS OF THE PARTIES

Warnecke alleges that it is a United States national within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration and that the subject matter of the claim comes within the terms of Article II, paragraph 1, of the Claims Settlement Declaration. Warnecke also alleges that the Respondent is an entity controlled by the Government of Iran within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration.

The claim is based upon Warnecke's contention that whereas it fully performed its obligations under the Contract and the related subsequent agreements, the Respondent has breached its contractual obligations by failing to make full payment. Warnecke seeks damages in the total amount of US \$373,590, plus interest and costs of arbitration.

Bank Mellat denies the claim. The Bank admits that it did not make the payments claimed by Warnecke, but maintains that this non-payment was justified by contract breaches on the part of Warnecke.

The Bank also presents four counterclaims, two of which are based upon Warnecke's alleged contract breaches. First, the Bank claims US \$100,000 in fees that it allegedly paid to an Iranian engineering consultant, which it alleges was hired to provide architectural supervision in Phase IV because of Warnecke's allegedly wrongful failure to provide these services.

Second, the Bank claims that Warnecke is liable for damages resulting from the alleged fact that due to Warnecke's performance delays, the project was not completed prior to the revolutionary events in Iran, which brought a halt to the project. The Bank seeks recovery of US \$10,000,000 including US \$8,000,000 which it alleges to have expended on the project and unspecified amounts for price inflation and loss of anticipated profits.

The third and fourth counterclaims relate to the bank guarantee arranged by Warnecke. The Bank claims the full amount of the US \$50,000 guarantee and an amount of US \$14,000 which it alleges that it expended in attorneys' fees to defend against Warnecke's January 1979 action to enjoin payment of the guarantee.

Finally, the Bank requests interest on the above amounts and its costs of arbitration.

Warnecke denies liability for each of the counterclaims. First, it maintains that the fee paid to the engineering consultant hired by the Bank during construction is not attributable to any breach by Warnecke.

Second, Warnecke denies that the failure to complete construction by January 1979 is attributable to delays on its part.

Third, Warnecke maintains that the bank guarantee required by the Contract was intended by the parties to serve only as security for the advance payments made for each phase and that as it has performed all work covered by the advance payments, its duty to maintain the guarantee terminated by January 1979. Warnecke argues that this duty could not have been breached subsequent to January 1979 and that it is therefore not liable for the amount of the guarantee.

Fourth, Warnecke contends that since the duty to maintain the bank guarantee had expired, it was entitled to take any action that it considered necessary to terminate the effect of the guarantee. According to Warnecke, it is therefore not liable for the expenses incurred by the Bank to defend against the action for injunctive relief brought by Warnecke.

IV. JURISDICTION

Warnecke has submitted evidence which establishes that it is a United States corporation and that it is wholly owned by a United States citizen. Thus, Warnecke is a national of the United States as that term is defined in the Claims Settlement Declaration (Article VII, paragraph 1).

It is undisputed that Bank Mellat is an agency, instrumentality, or entity controlled by the Government of Iran, thereby making it subject to the Tribunal's jurisdiction under Article II, paragraph 1, and Article VII, paragraph 3, of the Claims Settlement Declaration.

The remaining jurisdictional issue is whether the dispute lies exclusively under the jurisdiction of Iranian courts. Article 9.1 of the Contract refers disputes to be settled through arbitration. The Tribunal has held that such a clause is not one "specifically providing that any

disputes [under the contract] shall be within the sole jurisdiction of the Iranian courts ...", so as to divest the Tribunal of jurisdiction over the claim under Article VII, paragraph 1, of the Claims Settlement Declaration. See for instance Gibbs & Hill Inc. and TAVENIR, et al., Case No. 6, Interlocutory Award No. ITL 1-6-FT.

In view of the foregoing, the Tribunal determines that it has jurisdiction over Warnecke's claim.

The first three counterclaims clearly arise out of the same "contract, transaction or occurrence" as does the claim so as to give the Tribunal jurisdiction by virtue of Article II, paragraph 1 of the Claims Settlement Declaration. There is considerable doubt whether the same requirement is fulfilled with regard to the fourth counterclaim for legal expenses incurred by Bank Mellat to defend against Warnecke's action for injunctive relief, but in view of the findings below the Tribunal does not have to determine this issue.

V. THE MERITS OF THE CLAIM AND THE COUNTERCLAIMS

1. The Claim

a. Phase I and II of the Contract

It is not in dispute that Warnecke performed Phases I and II of the Contract and that it received an initial

payment for this work in the amount of US \$227,000 in accordance with Article 5.2 of the Contract.

Not until 14 February 1983 did Bank Mellat challenge Warnecke's performance with regard to Phases I and II, asserting that it had been delayed and defective in certain respects through Warnecke's fault. The Tribunal holds, however, that, having paid Warnecke for the first two phases and not having previously complained that Warnecke was in breach of contract in respect of its Phase I and II performance, the Bank cannot now be heard to make such a complaint.

The amount initially paid, US \$227,000, is equivalent to 35 per cent of the sum established "for prorating purposes" in Article 5.2 of the Contract. The remaining issue with regard to Phase I and II is whether, within the total limit of US \$900,000 stipulated in that article, Warnecke is entitled to additional payment taking into account the actual construction cost budgeted at \$28 million in the construction contract signed on 9 March 1978.

The above-mentioned article provides that

"[any] differences between ... [the initial payment] and the final calculated compensation shall be settled when the construction contract is signed and, the balance at the end of the last phase, if any".

Warnecke argues that, in accordance with this provision, it is entitled to an adjustment in the payments as of 9 March 1978, whereas Bank Mellat argues that such payment would not be due until the conclusion of the last phase.

The wording of this article is not altogether clear. It is, however, in the Tribunal's view reasonable to assume that adjustment in payment for the first phases was intended to be made as soon as the definite basis for calculating such payment was known - i.e., at the time the construction contract was signed. In view of this, the Tribunal accepts Warnecke's interpretation as being the more plausible one. Consequently, with regard to Phase I and II, Warnecke is entitled to additional payment as of 9 March 1978.

Warnecke has claimed additional payment in the amount of US \$37,800. This amount should be reduced by 5.5 per cent which Bank Mellat was to withhold for taxes under the Contract (Article 5.1). The total amount due to Warnecke for Phases I and II is therefore US \$35,721.

Phase III

On 26 March 1976, Warnecke received US \$79,200 as advance payment for its work under Phase III, and on 11 July 1977 the Bank paid an additional amount of US \$117,600.

Warnecke asserts that it performed its obligations under Phase III and claims the remaining portion of the payment in the amount of US \$163,200. Out of the amount sought, US \$120,000 represents a sum withheld by Bank Mellat for the subsequent performance of certain tasks (see below) and US \$43,200 represents the additional amount claimed for Phase III under Article 5.2 of the Contract.

Bank Mellat denies this claim on the ground that Warnecke failed to perform its contractual duties. Specifically, the dispute concerns whether Warnecke (a) provided all construction drawings required for the super-structure; (b) provided a detailed quantity survey; and (c) assisted in negotiation of the construction contract.

Both parties have submitted extensive documentary evidence, consisting mainly of telexes and letters exchanged between them over the years 1975-1978. This evidence shows that the relationship between the parties was often contentious, there being a series of misunderstandings or differences of opinion as to the parties' obligations under the Contract and controversies regarding their respective performance.

In brief, the evidence shows the following factual background with regard to the Phase III dispute. Warnecke provided substructure drawings in December 1976 and further construction drawings in April 1977. In May 1976, Warnecke submitted a detailed quantity survey showing a probable cost of construction of US \$30,000,000. Also in May 1976,

Warnecke interviewed prospective construction contractors and made its recommendations on 12 May 1976. Warnecke then issued an invoice for the balance due under Phase III. The Bank, however, declared that it would not make the payments claimed due at the completion of Phase III until Warnecke provided additional assistance in negotiating and preparing the construction contract, supplied an additional quantity survey acceptable to the Bank and supplied detailed "shop drawings" necessary for the actual construction of the building.

On 15 July 1976, Bank Mellat informed Warnecke that it had chosen the firm of J.A. Jones-Fischbach & Moore as construction contractor. Following meetings between the parties and a series of correspondence regarding the three above-mentioned points of dispute under Phase III, the parties met in Tehran on 17 October 1976. There was later disagreement as to the outcome of that meeting. By a telex of 29 December 1976, the Bank gave notice of termination of the Contract as of 17 January 1977. Further negotiations between the parties resulted in a suspension for a probationary period of the termination and in Warnecke's acceptance, in a letter of 18 February 1977, of new conditions to the payment of amounts for Phase III. Under those terms, Warnecke would, inter alia, supply a new, revised quantity survey by 15 March 1977, give further assistance to the Bank in finalizing the construction contract and "complete the drawings and specifications required pursuant to Article 1.1.9 before April 16, 1977". Upon performance of these terms, the parties were to meet and determine what

payments were to be made. Warnecke supplied a new quantity survey on 14 March 1977, and gave further assistance in the preparation of the contract. On 16 April 1976, Warnecke submitted shop drawings for the structural steel bars used in the fabrication of the building. Furthermore, Warnecke sub-contracted for the preparation of the remaining shop drawings for a price of US \$50,000 to be paid upon delivery. After communications in June 1977, the parties agreed that the Bank would make the payments due at the end of Phase III less US \$120,000 which would be released gradually as further shop drawings were supplied. Accordingly, on 11 July 1977 the Bank made payments of US \$117,600 for Phase III.

On the basis of the evidence before it the Tribunal finds that Warnecke fulfilled its obligations to "assist the owner in obtaining bids or negotiated proposals and in ... awarding and preparing construction contracts". This conclusion is further supported by the fact that the June 1977 agreement did not make payment of the remaining Phase III compensation contingent on any further performance in this respect.

The Tribunal reaches the same conclusion with regard to the supplying of a new quantity survey. There is no evidence that Warnecke failed to meet its obligations in this respect; on the contrary, the contents of the June 1977 agreement support Warnecke's position that the quantity survey was supplied as agreed-upon by the parties.

The remaining issue is, then, whether Warnecke is in default with regard to the shop drawings which were required by the Bank and which Warnecke agreed to supply. By entering this agreement Warnecke consented to the amount of US \$120,000 being withheld until the shop drawings were delivered during the course of the construction of the building. It is undisputed that the shop drawings were never delivered, due to the fact that the construction work did not proceed far enough to necessitate such drawings. Warnecke argues that shop drawings were not within the scope of the Architect's duties and that it undertook to provide them as only an extra item in order to ensure that it received the payments for services already rendered and invoiced. The Bank, on the other hand, argues that the sum of US \$120,000 was payment for the shop drawings to be supplied by Warnecke in accordance with the June 1977 agreement.

The Tribunal finds that the contents of this agreement strongly suggests that, regardless of whether Warnecke was obligated to do so under the Contract itself, the parties in effect reached a new agreement whereby Warnecke undertook to supply shop drawings against payment of US \$120,000 already earned. Since the drawings could not be supplied because of the abandonment of the project, for which Warnecke had no responsibility, Warnecke is now entitled to receive such payment. However, it is also clear that the abandonment of the project benefitted Warnecke to the extent that it permitted it to avoid US \$50,000 in costs associated with

the sub-contract for the preparation of the remaining drawings. Therefore, the Tribunal finds that Warnecke is entitled to US \$70,000 in compensation of its actual loss in connection with this portion of the claim.

As with the Phase I and II payments, Warnecke is entitled to additional payment for Phase III pursuant to Article 5.2 of the Contract, taking account of the actual construction cost. Such payment amounts to US \$43,200.

After deduction of 5.5 per cent for taxes (see discussion above concerning Phase I and II) the total amount to which Warnecke is entitled for work under Phase III is US \$106,974.

The Tribunal deems Warnecke to be entitled to such payment as from January 1979 when the project was terminated.

Phase IV

On 11 July 1977, the Bank made an advance payment to Warnecke for Phase IV work in the amount of US \$49,500.

Warnecke claims that by the time the project was abandoned it had performed 50 per cent of its Phase IV duties. Therefore, it seeks further compensation in the amount of US \$49,500 plus US \$13,500 as a payment adjustment in accordance with Article 5.2 of the Contract.

The Bank denies this part of the claim, arguing that Warnecke failed to fulfil its duty under Article 1.1.17 of the Contract to provide a full-time supervisor of the construction work as required by the Bank.

The evidence shows that in several communications to Warnecke the Bank demanded full-time supervision of the construction work. Warnecke's attempts to arrange for such supervision -- inter alia, by seeking to recruit a supervisor in the United States -- indicate its agreement that fulltime supervision was "required" within the meaning of the Contract. However, it appears from the evidence that a full-time supervisor was never employed and that therefore Warnecke's performance was to some extent deficient. In view of this, the Tribunal determines that Warnecke should not be awarded any compensation for work done under Phase IV in addition to what it has already received. However, it is entitled to additional payment in accordance with Article 5.2 of the Contract. After reduction for taxes (see discussion above concerning Phase I and II), such payment amounts to US \$6,379 as from January 1979.

2. The Counterclaims

a. Fees for architectural supervision

With regard to the counterclaim for US \$100,000 in fees paid by the Bank to an Iranian engineering consultant, the

Tribunal notes the that the Bank's contract with that consultant had a considerably wider scope than just supervision of the construction work, the purpose of that contract being generally described as "the precise and total investigation of the constructional activities concerning the construction of the ... [building]". Through that contract the consultant was hired to perform tasks as an "owner's representative", and there is no suggestion that the conclusion of this contract was necessitated by Warnecke's failure to provide full-time on-site supervision. In view of this, the Tribunal finds no ground for allowing any recovery under this counterclaim.

b. Damage as a result of delay

As stated above, the Bank terminated the Contract in December 1976 on the assertion that Warnecke had failed to perform certain of its obligations under the Contract - delivery of drawings, delivery of a detailed quantity survey, and assistance in negotiations of the construction contract. Upon Warnecke's request, the Bank then granted Warnecke a "probationary" period within which Warnecke would complete certain of its tasks. Except for the shop drawings, these tasks were subsequently performed, and the termination never became effective. The fact that Bank Mellat gave its notice of termination and the subsequent communications between the parties shows that the contract schedule with regard to Phase III was not fully adhered to by Warnecke. With regard to Warnecke's performance in connection with

Phase IV, the Tribunal has found that Warnecke failed to provide a full-time on-site supervisor as agreed upon by the parties.

The questions then arise whether Warnecke, through its acts or omissions, caused a delay of the construction project and, if so, what financial loss were caused to Bank Mellat through such delay.

The Tribunal finds that there is insufficient evidence that Warnecke was responsible for any delay during the course of the building project. On the contrary, there is evidence that the project was held up as a result of circumstances for which Warnecke was not responsible - e.g., shortage of cement, cuts in the supply of electricity and lack of equipment. Even if it were established that Warnecke was responsible for delays that occurred, there is no evidence that Bank Mellat suffered any damage through such delays. The Tribunal notes in this connection that the project was in fact terminated by the Bank in early 1979, the underlying reasons being outside Warnecke's control. The Contract having been thus terminated, the Bank cannot establish that it incurred a loss as a result of a previous delay caused by Warnecke. Even assuming that delay on the part of Warnecke did lead to such a loss, it would hardly have been a foreseeable consequence of Warnecke's acts or omissions and therefore the loss would not have been a compensable one.

In conclusion, the Tribunal finds no proof of damage incurred on the Bank through any fault of Warnecke's.

c. The bank guarantee

The Bank has not stated precisely the legal basis for its third and fourth counterclaims relating to bank guarantee required by the Contract. The only language which mentions that bank guarantee is to be found in the Preamble to the Contract which states as follows:

An advance payment of twenty-five (25) per cent of the fee for each phase shall be made against a Bank Guarantee at the time the Architect is directed to proceed with work for each respective phase.

Implicit in this language are duties on the part of Warnecke to arrange the issuance of a bank guarantee in an amount sufficient to cover advance payments as they are made at the beginning of each phase and to maintain those guarantees until the performance of the services covered by the advance payments is completed.

The evidence establishes that advance payments were made for all four of the phases of the contract and that Warnecke arranged for a bank guarantee sufficient to cover those payments. As discussed above, it is also clear that Warnecke performed services entitling it to at least the 25 per cent of the fees payable under the Contract for each of the phases. Subsequent to the abandonment of the project,

Warnecke obtained an injunction against payment on the guarantee, and the Bank incurred certain legal expenses in defending the suit for injunction.

Given this state of the facts, the Tribunal is unable to conclude that there is any legal basis for these counter-claims. Warnecke's obligations under the Contract have been fully performed in respect of the advance payments. Even if the United States District Court had not enjoined payment under the guarantee, the Bank could not have rightfully called for payment. Although the Contract does not explicitly provide for a duty on the part of the Bank to release the guarantee, once the performance secured by the guarantee was complete, Warnecke was entitled to take whatever action it deemed necessary to terminate the guarantee. Therefore, Warnecke is not liable for either the amount of the guarantee or for the Bank's legal expenses. These conterclaims are therefore dismissed.

3. Summary of principal amounts due

In conclusion, the Tribunal has found Warnecke entitled to US \$35,721 for Phases I and II, US \$106,974 for Phase III, and US \$6,379 for Phase IV, or to a total principal amount of US \$149,074.

4. Interest on amounts due

The Tribunal finds that Warnecke is entitled to interest on principal amounts due, running at the fair annual

rate of 10 per cent from 9 March 1978 with regard to the amounts due for Phases I and II, and from 1 January 1979 with regard to remaining amounts, to the date upon which the Escrow Agent instructs the Depository Bank to pay the Award.

5. Costs

The Tribunal holds that, in the circumstances of this case, each party shall bear its own costs of this arbitration.

IV. AWARD

THE TRIBUNAL AWARDS AS FOLLOWS:

The Counterclaims of Respondent BANK MELLAT are hereby dismissed.

The Respondent BANK MELLAT is obligated to pay and shall pay to the Claimant JOHN CARL WARNECKE & ASSOCIATES the sum of One Hundred and Forty Nine Thousand and Seventy Four United States Dollars (US \$149,074) plus interest at the annual rate of ten (10) percent, calculated as from the dates indicated below, to the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account:

- a) on US \$ 35,721 from 9 March 1978; and
- b) on US \$113,353 from 1 January 1979.

Such payment shall be made out of the Security Account established pursuant to Paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

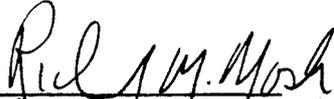
Each party shall bear its own cost of the arbitration.

This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
2 September 1983


Nils Mangård
Chairman
Chamber Three

In the Name of God,


Richard M. Mosk

M. Jahangir Sani

EXPLANATION FOR FAILURE OF
JUDGE SANI TO SIGN AWARDS

The deliberations in this case were held, with members Mangård, Jahangir Sani and Mosk present, after the Hearing which was held on 17 and 18 February 1983 and before the Tribunal's summer recess, which began on 11 June 1983. During the Chamber's final meeting prior to the recess, it was determined that the Chamber would reconvene in early August 1983. In conformity with this determination, the Chairman issued a memorandum on 13 June 1983, requesting the arbitrators to reserve 8, 10 and 12 August 1983 for deliberations. Presidential Order No. 10, dated 15 June 1983, provided that, in cases involving requests for interim relief or other urgent matters, Chamber Two was authorized to act in lieu of Chamber Three until 31 July 1983. Furthermore, the Tribunal's official schedule of proceedings, dated 6 June 1983, indicated that a meeting of the Full Tribunal was scheduled for 15-17 August 1983, that Hearings before Chamber Three were scheduled for 18, 19, 25 and 30 August, and that a Pre-Hearing Conference before Chamber Three was scheduled on 1 September 1983.

On 6 August 1983, the Chairman of Chamber Three issued a schedule of meetings under which the finalization of awards was to take place in Case Nos. 84, 124, 185 and 346 on 11 and 12 August 1983, and further deliberations were to be held in Case Nos. 35, 62, 67 and 127 on 13 August 1983.

By a letter dated 10 August 1983, the Agent of the Islamic Republic of Iran stated to the Tribunal,

that Judge Mostafa Jahangir Sani the Iranian Arbitrator of Chamber Three of the Tribunal has submitted his resignation to the Government of the Islamic Republic of Iran. His resignation has been accepted by the Government and will be effective as of 10 August 1983. His successor will be introduced to the Tribunal in due course.

No reasons were cited for the purported resignation.

The President of the Tribunal ordered that certain Hearings before the Full Tribunal, which were scheduled to take place during its 15-17 August 1983 meetings, be postponed. In addition, the Chairman of Chamber Three cancelled the meetings set for the finalization of awards and further deliberations during the week of 8 August 1983.

Judge Jahangir Sani did not appear at the Full Tribunal meeting held on 15 August 1983. At the 17 August 1983 Full Tribunal meeting, the President stated that the Tribunal had as yet received no valid reasons for Judge Jahangir Sani's absence and had not authorized that absence. The President also declared that it would be for Chamber Three and the Full Tribunal to determine the legal consequences of that

absence in the individual cases pending before them. Thereafter, the Chairman of Chamber Three ordered that the Hearings scheduled for 18, 19 and 25 August and the Pre-Hearing Conference scheduled for 1 September be postponed.

By a letter dated 18 August 1983 and conveyed by post and telex, the Chairman of Chamber Three informed Judge Jahangir Sani of the President's declarations and notified him that a new schedule had been set under which, inter alia, the finalization and signing of the award in this case would take place on 2 September 1983.

In a telex dated 24 August 1983 to the Chairman of Chamber Three, Judge Jahangir Sani acknowledged receipt of the letter of 18 August 1983 and informed the Chairman that he considered his resignation to the Islamic Republic of Iran to be effective upon the Tribunal and that he was no longer legally authorized or empowered to participate in the taking of decisions or the issuance of awards except for "the preparing and drafting, or drawing up and elaborating, of a judicial opinion or award which has previously been communicated or announced".

Neither in this telex nor in a telex received on the following day, addressed to the Full Tribunal, did Judge Jahangir Sani state that it would be physically impossible for him to take part in the meeting of 2 September.

Judge Jahangir Sani was not present for the signing of the Award in this case at the 2 September Chamber meeting.

Under the above circumstances, the Tribunal has determined that it may proceed with the signing of the Award in the absence of Judge Jahangir Sani pursuant to Article 32, paragraph 4, of the Tribunal Rules.

Dated, The Hague
2 September 1983



Nils Mangård
Chairman
Chamber Three



Richard M. Mosk