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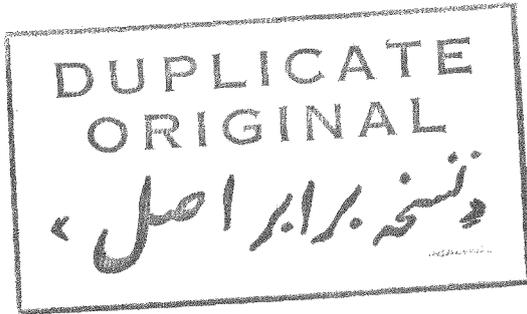
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داورى دعاوى ایران - ایالات متحدہ



CASE NO. 248

CHAMBER ONE

AWARD NO. 509 -248 -1

ROY P.M. CARLSON,
Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
MELLI INDUSTRIAL GROUP,
Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	1 MAY 1991
	تاریخ ۱۳۷۰ / ۲ / ۱۱

AWARD

Appearances:

For the Claimant:

Mr. Lawrence W. Newman,
Mr. David Zaslowsky,
Mr. Manual Teehankee,
Mr. Hamid Sabi, Attorneys
Mr. Roy P.M. Carlson, Claimant
Dr. U.R.S. Dietrich,
Representative, expert on
Swiss Law
Dr. Lothar Erdtmann,
Mr. Ashraf Khan,
Mr. Christopher Reinhardt,
Mr. Peter Nesti,
Mr. Assadulah Ammari,
Mr. Bagher Hatami,
Mr. David Ashton, Witnesses

For the Respondents:

Mr. Ali H. Nobari, Agent of the
Government of the Islamic
Republic of Iran,
Dr. Ali A. Riyazi, Legal Adviser
to the Agent,
Mr. Mohammad H. Zaheddin-Labbaf,
Legal Assistant,
Mr. M. Mirshafiyan, Attorney to
National Industries
Organization of Iran,
Mr. Najma H. Fasharaki,
Mr. Khayyam Dadashzadeh,
Representatives of National
Industries Organization of
Iran,
Mr. Mohammad Isari,
Mr. Manouchehr Pouja,
Mr. Gholamreza Salami, Experts to
National Industries
Organization of Iran,
Mr. Abdul M. Mahallati Kazemini,
Expert,
Dr. Wolfgang Peter,
Representative, Expert on
Swiss Law,
Mr. Steinmann, Representative

Also present:

Mrs. Lucy F. Reed, Agent Designate
of the Government of the
United States of America,
Mr. Michael F. Raboin, Deputy
Agent of the Government of the
United States of America

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I. INTRODUCTION

1. The Claimant, Roy P.M. Carlson ("Carlson"), claims compensation for the alleged unlawful actions of the Respondents, the Government of the Islamic Republic of Iran and the Melli Industrial Group ("MIG"), effecting the taking of Carlson's property interests in several Iranian companies, all belonging to the Melli Group of companies. Carlson is, in particular, claiming compensation for the alleged expropriation of a ten per cent equity interest in MIG and of a certain number of other shares in Iranian companies associated with MIG, held in the name of North West Investment Corporation Zürich ("North West (Zürich)"), a company incorporated in Switzerland, and for the alleged expropriation of another ten percent equity interest in MIG held in the name of Grafton Export Company Ltd. ("Grafton"), a company incorporated in the United Kingdom.¹ The Respondents contest the claims. In addition, MIG has presented nine separate Counterclaims. A Pre-hearing conference was held on 18 May 1984 and a Hearing took place on 30 October - 1 November 1989.

2. After the Hearing the Claimant filed a notice of challenge with the Appointing Authority on February 22, 1990 alleging that Mr. A. Noori cannot sit as a judge in this Case because his previous relations with the National Industries Organization of Iran give rise to justifiable doubts as to his impartiality and independence. After the parties filed briefs on this issue with the Appointing

¹Carlson claims that he owned through North West and Grafton 600,000 shares in MIG; 1854 shares in United Chemical Co.; 244 shares in Negarestan Co.; 97 shares in Central Gummi (Iran) Co.; 197 shares in Standard Shoe Manufacturing Co.; 96 shares in Melli Boot Co.; 97 shares of Melli Engineering and Machine Mfg. Co.; 317 shares of Industrial Footware (Iran) Co.; 296 shares of United Shoe Co. and 97 shares in Melli Caoutchouc Co.

Authority and after explanations had been provided by Mr. Noori, the challenge was dismissed on 31 August 1990 by the Appointing Authority as "unfounded".

II. FACTS AND CONTENTIONS

3. Carlson, a United States citizen, was employed by Bank of America from 1955 to 1975. In 1974, Carlson was appointed head of Bank of America's newly established office in Beirut. In this capacity Carlson allegedly became acquainted with Mr. Rahim M. Irvani of Tehran, an important customer of the Bank. Carlson states that on various occasions Mr. Irvani invited him to join MIG, in order to guide both the company's expansion and its financial restructuring. Carlson states that initially he rejected the offer because of the compensation and benefits he had as an executive of Bank of America. However, during 1975, when the political situation in Beirut had deteriorated, Carlson decided to take Mr. Irvani's offer more seriously. In July 1975, a meeting was arranged between Carlson, Irvani, and Dr. Lothar Erdtmann, a German financier, who was significantly involved in Mr. Irvani's business operations. During this meeting Mr. Irvani and Dr. Erdtmann offered Carlson the following proposal. Carlson would replace Mr. Irvani as managing director of MIG, the parent company of the Melli Group, and be paid a salary of 2 million rials (roughly US\$29,000)² per year. Further, he would be entitled to suitable housing accommodations, a car and driver and other customary perquisites. According to Carlson, the most important part of the compensation arrangement was that he would have the opportunity to invest up to \$10 million in shares of companies in which Mr. Irvani was involved,

²All references to dollars in this Award are to United States dollars.

including up to twenty percent of the equity of MIG. The share purchases would be at par, rather than market value. Carlson asserts that since he did not have the personal means to invest \$10 million, Dr. Erdtmann agreed to make available to him an interest-free loan of \$10 million for the purpose of buying the shares. Carlson submits that he planned to repay the debt by selling all or part of the shares, realizing substantial gains. Carlson alleges that it was agreed that, instead of interest on the \$10 million loan, he would be obligated to pay forty-five per cent of his capital gains to Dr. Erdtmann. Letters of guarantee, under which MIG would be obligated to buy back the shares at par value, were an essential part of the arrangement. The buy-back agreements were intended to eliminate the risk that Carlson would not have the funds to repay the loan, thereby protecting both Carlson and the lenders providing the line of credit of \$10 million. Carlson states that after having discussed the proposal with his family he accepted the proposal and agreed to take up his new position as Managing Director of MIG in August 1975.

4. Carlson asserts that the arrangement between Erdtmann, Irvani and himself was based on trust and confidence, and that no contracts were signed. Carlson alleges that Dr. Erdtmann and his group of lenders provided him with a credit line to purchase up to \$10 million worth of shares in MIG and related companies from Mr. Irvani. Dr. Erdtmann was to disburse the funds directly to Mr. Irvani in accordance with the latter's directions. Mr. Irvani would then arrange for the transfer of the shares to Carlson. Initially, twenty percent of the issued shares in MIG, namely 160,000, was to be allocated to Carlson, which would require using approximately \$2.3 million from the credit line.

5. Carlson submits that he was informed by Mr. Irvani that in order for the Melli Group to qualify for certain Iranian tax advantages, no single foreign shareholder could

own more than 10% of the company's shares. Therefore, it was agreed among Messrs. Irvani, Erdtmann and Carlson that Carlson would set up a company to hold one ten percent block of 80,000 shares and that Grafton, a then existing U.K. Corporation, would hold an additional 80,000 shares on Carlson's behalf. According to Carlson, Grafton was a shell corporation with share capital amounting only to three pounds sterling. Carlson asserts that in 1977 he assumed control of Grafton when seven new shares, for one pound sterling each, were issued to a holding company, North West (Zürich).

6. According to Carlson the formation of the holding company was somewhat complicated. Carlson asserts that after consultation with Mr. Humphreys, a London solicitor, he decided to set up a Luxembourg company to hold the shares in the Iranian Companies. Accordingly, North West Corporation, S.A. ("North West (Luxembourg)"), was incorporated on 25 November 1975. Carlson further submits that in order to generate income to help meet the Luxembourg Company's expenses, Mr. Irvani agreed to use it for certain of the Melli Group's foreign transactions. However, it turned out that for tax reasons the Luxembourg company was unsuitable for use as an operating company, and Carlson was advised by Dr. Erdtmann to meet with a Swiss lawyer, Dr. Reinhardt, regarding the setting up of a Swiss Corporation that would both hold Carlson's shareholding and also be able to generate income from transactions. Such a Swiss company, North West Investment Corporation Zürich ("North West (Zürich)"), was registered in Zürich on 10 December 1976. According to an affidavit executed by Dr. Reinhardt, North West (Zürich) was capitalized at 50,000 Swiss Francs; 100 bearer shares were issued, all but five of which were delivered to Carlson.

7. Carlson further states that North West (Zürich) was engaged in a number of activities for the Melli Group,

resulting in income for North West (Zürich) that offset some of its costs of operation. Dr. Erdtmann served as a director of North West (Zürich) and assisted in effecting business transactions for the company. Dr. Erdtmann also advanced the costs of the incorporation and related costs for North West (Zürich).

8. Meanwhile, Carlson submits, his immediate tasks were the rationalization and reorganization of the capital and financial structure of MIG. This was necessary in order to qualify the shares for listing on the Tehran Stock Exchange and to comply with new Iranian legislation that had been enacted requiring public participation in the ownership of major companies. In March 1977, after MIG shares were officially admitted to trading on the Tehran Stock Exchange, the planned recapitalization was carried out. Following the recapitalization of MIG, Carlson states that his ownership in MIG increased from the initial 160,000 shares (of which 80,000 were registered in the name of North West (Zürich) and 80,000 in the name of Grafton). This occurred in two successive stages, resulting in an increase from 400,000 to a total of 600,000 shares by early 1978. Of these 600,000 shares, 300,000 were registered in the name of North West (Zürich) and 300,000 in the name of Grafton. These two blocks of shares represented a twenty per cent interest in the company. The recapitalization brought MIG's capital to three billion rials.

9. In 1977 Dr. Erdtmann and Carlson had formalized their credit line agreement. Carlson states that in May of that year he accepted a draft for \$10 million and entered into a letter agreement containing the terms and conditions of the credit arrangements discussed in 1975. The loan for investment in shares in MIG and other companies related to the MIG Group was interest free and payable at the end of 1984, but Erdtmann reserved the right to require sale of the shares at any time up to 31 December 1984, with payment at

the time of sale of the full amount of the sum advanced, up to \$10 million, plus forty-five per cent of the capital gain realized. The letter agreement envisioned that Carlson would protect the sums advanced by arranging letters of guarantee assuring that MIG would buy back all the acquired Iranian shares at their par value. The rights and obligations under these agreements could be exercised up to 31 December 1984.

10. Carlson states that in April 1978, two nominee agreements were executed, one between him and North West (Zürich), and one between the latter company and Grafton. Carlson explained that these nominee agreements were essential because the two holding companies, which were minimally capitalized, could not hold the MIG shares on their balance sheets without increasing their capitalization, which would result in increased tax burdens. The first agreement provided that in consideration of the payment of Sw. fr. 1.- North West (Zürich) was to hold all the acquired 600,000 shares in MIG and another few thousand shares in related companies for Carlson, and was obligated to carry out any instructions from Carlson in relation to the shares. In a separate agreement, Grafton similarly agreed in consideration of the payment of £1.- to hold 300,000 shares in MIG as a nominee for North West (Zürich).

11. Carlson asserts that during 1979 the shares in MIG he held through North West (Zürich) and Grafton were expropriated through actions of the Government of the Islamic Republic of Iran. He argues that on 23 June 1979 the Iranian Ministry of Industry and Mines appointed a new board of directors for MIG and its related companies. This action was allegedly taken pursuant to a law passed on 16 June 1979 entitled the Legal Bill Concerning the Appointment of Provisional Directors for Supervising Production, Industrial, Commercial, Agricultural and Service Units Whether in Public or Private Sector. Then on 1 July 1979, the

Islamic Revolutionary Council passed the Law on the Protection and Development of Industries in Iran (the "Protection Law"), which provided for the classification of various industrial enterprises into four categories. Carlson asserts that Category B, under which MIG was classified, required the confiscation by the Government of all shares owned by 51 named individuals and their relatives. One of the 51 persons designated by the Protection Law was Mr. Rahim M. Irvani, who, with his family, had a controlling interest in MIG. Carlson goes on to assert that as a result MIG shares registered in the name of North West (Zürich) and Grafton were designated as being in Category B, and were taken by the Government without payment of compensation. The evidence presented to the Tribunal includes an Iranian tax return filed by MIG after Carlson left Iran that lists the shares owned by North West, Grafton, and by members of the Irvani family as being in Category B.

12. In his Statement of Claim, filed on 13 January 1982, Carlson sought \$11,784,974 as compensation for the value of his shares in MIG and its associated companies allegedly expropriated by the Government of Iran. In the alternative, he sought \$9,024,134, on the basis of MIG's alleged obligation to buy back the shares as provided for in the letters of guarantee issued to North West (Zürich) on 26 February and 6 March 1978. In Carlson's Hearing Memorial, filed on 25 April 1988, the claim was pursued only on the ground of expropriation of the shares. Based on an Audit Report by Coopers & Lybrand dated 2 July 1979, Carlson increased the monetary relief sought to a total of \$39,084,020, allegedly reflecting the value of Carlson's interests in MIG and its subsidiaries as of March 1979. In his Rebuttal Memorial, filed on 27 February 1989, Carlson adopted the valuation contained in a Report by Arthur Anderson & Co. of at least \$32.4 million as the amount of compensation to which he is entitled for the expropriation of his twenty percent interest in MIG, and sought as

monetary relief, including the compensation for his interests in the subsidiaries, a total of \$32,746,649.

13. Carlson has presented his claim as a direct claim under Article VII, paragraph 1 of the Claims Settlement Declaration ("CSD"), on the basis of the allegedly valid and enforceable fiduciary agreements between him and North West (Zürich) and between North West (Zürich) and Grafton, which he states made him the beneficial owner of the shares. In the alternative, Carlson asserts his claim as an indirect one, pursuant to Article VII, paragraph 2 of the CSD, by virtue of his ownership of the capital of North West (Zürich) and Grafton.

14. The Respondent MIG asserts that Carlson based his claim initially and until after the Pre-hearing Conference on Article VII, paragraph 1 as a direct claim, and that he is therefore estopped to sue on the basis of an indirect claim. In this respect, the Respondent refers to the Statement of Claim and to the statement of Carlson's counsel at the Pre-hearing Conference. According to this statement Carlson was asserting the claim on his own behalf in accordance with Article VII, paragraph 1 of the CSD and not on behalf of North West (Zürich). The Respondent also refers to the second paragraph of the Order filed on 7 June 1984 in which the Tribunal stated that "the Claimant is asserting his claim as a direct claim and not as an indirect claim as defined in paragraph 2 of Article VII of the Claims Settlement Declaration". The Respondent considers Carlson's theories based on a direct and an indirect claim as inconsistent and therefore mutually exclusive.

15. MIG argues that Carlson lacks standing to file a direct claim on the following grounds. First, MIG disputes that Carlson is the beneficial owner of shares of MIG and its subsidiaries, registered in the name of North West (Zürich) and Grafton. MIG argues that the fiduciary

agreements which form the basis of Carlson's direct claim are simulated and invalid. In support of this contention MIG points out that North West (Zürich) allegedly was established on 10 December 1976, while Carlson on the other hand alleges that North West (Zürich) was already a shareholder of MIG in 1975. Furthermore, MIG submits that one of the companies mentioned in the fiduciary agreement dated 6 March 1978 between Carlson and North West (Zürich) is Melli Caoutchouc Co., whose shares, according to MIG, were not issued until 26 March 1978. Therefore North West (Zürich) could not possibly have confirmed receipt of shares which had not even been issued. Instead, however, shares of companies, such as Parsi Chap, Kafsh-e Ganjeh, General Rang and Sard-Khaneh-e Sam in which North West (Zürich) was a shareholder as of 6 March 1978 were not mentioned in the fiduciary agreement.

16. MIG further asserts that, assuming that the validity of the fiduciary agreements is governed by Swiss law, the Swiss legal provisions of representation for companies require that two directors of the company should have given their consent by signing the agreements. These agreements, however, were only signed by Dr. Erdtmann. The other signature, Carlson's, cannot be considered to be a valid signature of a company director since he acted in his own capacity as a party to the agreement. Even if he had acted as a director, he would have violated the Swiss rules on double representation.

17. MIG further argues that, if it is assumed that the laws of Switzerland and England are applicable to the fiduciary agreements, those laws can be applied only in assessing the validity of the agreements as between principal and agent. However, Swiss and English law cannot be applied regarding the enforcement of those agreements as to the shares issued by Iranian companies and the claims related to those shares. MIG argues that according to an

established rule of conflict of laws, the law governing the relationship between the shareholder and the company is that of the lex societatis, the place where the company is domiciled. Turning then to Iranian law, MIG submits that the Commercial Code of Iran, as amended in 1969, contains certain mandatory provisions concerning the ownership and transfer of registered shares of joint-stock companies. Article 40 of the Commercial Code provides that

The transfer of registered shares must be entered in the share register of the company and the transferor or his attorney or his legal representative should sign such transfer in the share register.

When the total par value of share is not paid up, the full address of the transferor must be entered in the share register and signed by the said transferor or his attorney and shall be binding in respect of fulfilment of obligations arising from a conveyance.

Any change in domicile should be registered in the same manner. Any transfer which takes place contradictory to the provisions mentioned above shall be considered as null and void as far as the company and third parties are concerned.

Therefore, if share transactions are effected between persons without observing the provision of Article 40, the agreements may be valid between the parties concerned, but are not valid in respect of the company and third parties.

18. MIG further submits that Iranian law does not recognize beneficial ownership of shares. It asserts that the mandatory and explicit rules of the Iranian Commercial Code, which relate as a *lex specialis* to the Civil Code as the *lex generalis*, make the beneficial ownership of shares impossible; under Iranian law all the shareholding rights belong to the legal owner of the shares. Accordingly, MIG argues, even if Carlson's alleged beneficial ownership concerning the shares registered in the name of North West (Zürich) and Grafton is proved, any agreement between the

legal owner of shares and another person contrary to the provisions of the Commercial Code cannot be held to be effective vis-à-vis the company and third parties. Moreover, MIG submits that its Articles of Association and all share certificates issued to North West (Zürich) and Grafton state that the rights and obligations of each share belong to the owner of that share. Therefore, according to both Iranian law and MIG's Articles of Association, Carlson does not own the claim.

19. MIG makes the further argument that the CSD allows indirect claims only in the specific sense of Article VII, paragraph 2. Pursuant to this provision, the owner of an indirect claim can bring a claim in a case only if he is able to prove his ownership of the shares of the legal entity which he controls and which is the direct holder of the claim.

20. MIG disputes Carlson's statements concerning his purchase of shares in MIG and the arrangements entered into for the payment of those shares. MIG alleges that the ten million dollar loan and the credit line have been fabricated, so that the ten million dollars would correspond to the nominal value of the shares listed in the fiduciary agreements. Through these arrangements a non-United States claim has been presented to the Tribunal as a claim of a United States national. In MIG's view, North West (Zürich) and Grafton were controlled by Mr. Irvani. In support of its contentions, MIG points out that the Iranian Law for the Expansion of Ownership of Production Units, enacted in 1975, required all companies whose sales exceeded a specified amount to sell up to forty-nine per cent of their shares to their workers and others through the Financial Organization for the Expansion of Ownership of Production Units and the National Investment Company of Iran. However, the Law excluded from its requirements up to a maximum of twenty percent of the shares owned by foreign companies. MIG

argues that Mr. Irvani therefore decided to issue shares of MIG and its subsidiaries in the name of foreign companies of which he was the owner.

21. Relevant to this point MIG asserts that Mr. Irvani controlled a number of companies outside of Iran, each of which held shares in MIG or related companies. It states that these companies included Savoy Investment and Tannery Investment Holding, both incorporated in Switzerland, Western Export-Import and Transaxial, both incorporated in West Germany, and Grafton Export, incorporated in England. MIG has submitted evidence that indicates that Dr. Erdtmann served as Mr. Irvani's representative on the boards of a number of European companies. In support of the contention that Mr. Irvani was the promoter and owner of North West (Zürich) and its shares, MIG refers to a number of telexes and letters in the record which show that costs and fees incurred in establishing North West (Zürich), the rents for its premises in Zürich and certain payments by or on behalf of that company were made after having sought the approval or having received the instructions from Mr. Irvani.

22. MIG disputes the validity of the loan of ten million dollars from Dr. Erdtmann and his co-lenders to Carlson. MIG asserts that it is hard to believe that Carlson, as a financial expert, and Dr. Erdtmann, as a successful businessman, did not find it necessary to conclude in advance a written loan agreement for ten million dollars setting forth the conditions of the loan. Although Carlson admits that he started to use the credit line by using \$2.3 million for a twenty per cent interest of the issued shares of MIG in 1975, it was not until 11 May 1977, when approximately \$5.9 million of the credit line had been used, that Carlson gave a promissory note for \$10 million to Dr. Erdtmann. Further, MIG disputes Carlson's statement that he did not receive the loan amounts himself, but instead requested Dr. Erdtmann to pay the amounts due to the

account of Mr. Irvani. MIG asserts that there is no proof as to who paid the monies, for what purpose, and to whom they were paid.

23. MIG also disputes Carlson's assertion that North West (Zürich) and Grafton became shareholders through increases of the share capital of MIG. MIG argues that at the time of the first increase, which took place in 1975, MIG's share capital increased from 800 million rials to 960 million rials, and in compliance with the Law for Expansion of Ownership of Production Units the entire amount of the increases was allocated to the Financial Organization for Expansion of Ownership of Production Units and the National Investment Company of Iran. The second increase from 960 million to 2000 million rials took place in 1977. The entire amount of the share capital increase was provided through conversion of Mr. Irvani's credit account to capital shares. These shares allegedly were issued in the name of Mr. Irvani. During November-December 1977 the third capital increase from 2,000 million rials to 3,000 million rials took place. MIG asserts that six hundred million rials were provided by conversion of Mr. Irvani's credit account, and, accordingly, a corresponding number of the new shares were issued in Mr. Irvani's name. MIG contends that the remaining amount of four hundred million rials was paid in cash by other shareholders. MIG argues further that the Claimant's allegation that North West (Zürich) and Grafton became shareholders through share capital increases is at variance with the Company's records, such as minutes of general meetings of shareholders and of the Board of Directors.

24. The Respondent MIG argues that Carlson also lacks locus standi to bring an indirect claim, because he has not proven that he owned more than 50% of North West (Zürich)'s shares from the period the claim allegedly arose, i.e. 23 June 1979, until the conclusion of the Algiers Accords, 19

January 1981. Noting that North West (Zürich)'s share certificates were all bearer shares, MIG submits that the statement by Carlson's accountants, Peat Marwick, to the effect that Carlson was the sole owner of North West (Zürich) during the years 1977 through 1986 is too general and not based on any documents or evidence. Further, MIG argues that two affidavits by Dr. Reinhardt, relied upon by Carlson for proof of ownership, are inconsistent, and in fact show that Carlson was not the owner of North West (Zürich)'s bearer shares at the crucial time. MIG emphasises in particular that Dr. Reinhardt, in his certificate of 2 March 1981, explicitly declared that on that date North West (Zürich)'s shareholders were the following persons:

Roy P.M. Carlson, Atlanta)	
Alwin Kunz, Maur)	5 shares
Ingeborg Normann - Kessler, Frauenfeld)	
Dr. Lothar Erdtmann, Krefeld)	
Dr. Klemens Grosche, Düsseldorf)	85 shares
Dr. Helmuth Schmitt, Essen)	
Otto Kloetzer, Kleve)	
others	10 shares

MIG contrasts this with Dr. Reinhardt's statement in his affidavit, dated 19 May 1983, which according to MIG was drawn up for Carlson to use in the proceedings before the Tribunal. In this affidavit, Dr. Reinhardt states that in his opinion Carlson has been the sole beneficial owner of all North West (Zürich)'s issued and outstanding shares since its inception, "... notwithstanding the fact that some of the shares have been held during certain times by other persons holding the shares as nominees for Mr. Carlson." In order to prove that the 1981 certificate is the one which

corresponds to the facts, MIG refers to two groups of contemporaneous documentary evidence. The evidence consists of a telex sent to a Mr. Haji Agha Shaltchiian on 6 January 1981 and a series of letters sent by Mr. Irvani to Iranian authorities, dated March and April 1978, in which names of other individuals together with Carlson's name were given as owners of shares in North West (Zürich).

25. Respondent MIG further argues that Carlson should have presented to the Tribunal North West (Zürich)'s corporate records, such as minutes of meetings of its shareholders. MIG contends that these records would indicate the identity of North West (Zürich)'s shareholders at the crucial period, from the time the claim arose until the entering into force of the Algiers Accords, 19 January 1981.

26. In response to the expropriation claim, the Respondents state that only shares belonging to Mr. Irvani and his immediate family were expropriated. Moreover, MIG refers to documents which show that only five out of eight directors of MIG were appointed by the Ministry of Industry and Mines in its capacity as majority shareholder replacing the Irvani family. MIG states that shares of North West (Zürich) and Grafton were not expropriated. In support of this the Respondent refers to correspondence between North West (Zürich) and MIG in which North West (Zürich) had, until the end of 1981, sought and obtained information, including MIG's financial statements. The attempt by North West (Zürich) and Grafton to implement rights under the buy-back agreements, on 21 December 1981, is another indication, in the Respondent's view, of the fact that North West (Zürich) and Grafton considered themselves as owners of the shares in MIG, at least until that date. The Respondents state that the shares of North West (Zürich) and Grafton have remained intact ever since, as it was and is the case with other minority shareholders.

27. MIG asserts nine counterclaims against Carlson in the total sum of Rials 217,325,410. The counterclaims are for:

- 1) a debt to Industrial Footwear Company in the amount of Rials 20,000,000, arising from sums allegedly paid to Carlson;
- 2) a debt to the Economic Consultation Board in the amount of Rials 21,600,000, representing the cost of a house provided to Carlson;
- 3) a debt to the Development and Services Corporation in the amount of Rials 1,524,000 in respect of expenses for registration and transfer of a house to Carlson;
- 4) a debt to the Development and Services Corporation in the amount of Rials 6,379,862 in respect of construction costs related to Carlson's house;
- 5) a debt to the Development and Services Corporation in the amount of Rials 1,655,008 in respect of Carlson's personal expenses and educational costs of his children;
- 6) a debt to the Development and Services Corporation in the amount of Rials 363,020 in respect of goods purchased for Carlson's house;
- 7) a debt to MIG in the amount of Rials 519,520 in respect of goods purchased for Carlson's house;
- 8) a debt to Fars Shoe Company in the amount of Rials 165,000,000 in respect to a check issued to Carlson in this amount;
- 9) a debt to MIG in the amount of Rials 284,000 in respect of goods purchased for Carlson's house.

III. REASONS FOR AWARD

A. Jurisdiction

28. The Tribunal first will deal with the Respondents' contention that Carlson must assert his claim either directly or indirectly. Having initially brought the claim only as a direct claim, of which the Tribunal made mention in its Order filed on 7 June 1984, the Respondents argue that Carlson is estopped from asserting his claim as an indirect one as defined in paragraph 2 of Article VII of the CSD. The Tribunal notes, however, that this issue has already been resolved, as indicated by the Tribunal Orders filed on 12 August 1986 and 24 October 1986. In the Order of 12 August 1986 the Tribunal stated that "[i]t remains open to the Claimant to establish jurisdiction either directly or indirectly over any part of the Claim." In its Order of 24 October 1986 the Tribunal stated "it is for the Claimant to establish to the satisfaction of the Tribunal that jurisdiction exists over each part of the claim. The Claimant has the choice whether to present each claim as a direct claim or an indirect claim. Nothing in the Tribunal's previous Orders limits this right in any way or affects the right of the Respondent to make any arguments it considers appropriate on this issue." Therefore, the Tribunal now confirms that Carlson can assert his claim in alternative form, either as a direct or an indirect claim.

29. There is a dispute as to whether MIG is covered by the definition of "Iran" for the purpose of assuming jurisdiction over this Respondent as stated in Article VII, paragraph 3, of the CSD. The Respondents assert that MIG and its affiliated companies are entities with separate and independent status. The Government of the Islamic Republic of Iran denies any responsibility as to MIG and objects to the jurisdiction of the Tribunal.

30. In view of the conclusion reached in this Award, see infra, paras. 42 and 50, and also considering the fact that the Government of the Islamic Republic of Iran has been, from the inception, the main Respondent in this Case, the Tribunal finds it unnecessary to decide the dispute as to whether or not a claim against MIG falls within its jurisdiction.

B. Merits

a) The direct claim

31. The Tribunal next will consider Carlson's direct claim, asserted pursuant to Article VII, paragraph 1 of the CSD, and based on the expropriation of his alleged beneficial interests in MIG. The Tribunal will first examine Carlson's alleged employment conditions with MIG. The Tribunal finds insufficient proof of Carlson's employment arrangements. Although Carlson has enumerated the various financial agreements he allegedly concluded with MIG when he became Managing Director, the Tribunal notes that no documentary evidence confirming such agreements has been submitted, with the exception of three letters, two written by MIG accountants and one by Mr. Irvani, outlining the compensation paid to Carlson in 1976, 1977, and 1978. First of all, there was no written contract of employment. There is also a lack of reliable contemporaneous documentary proof concerning the arrangement by which Carlson was to receive an interest free loan for up to ten million dollars in order to purchase shares of MIG and related companies. The opportunity to invest in MIG was one of the most important elements of the compensation package allegedly provided to Carlson. Yet the only contemporaneous document in the record is an unsigned handwritten memo by Dr. Erdtmann allegedly relating to the discussion with Carlson in Tehran in 1975. According to the memo Carlson or North West (Zürich) would be advanced a ten million dollar

interest-free credit line by the Erdtmann group to finance the investments in MIG. Carlson would pay to the Erdtmann group forty-five per cent of any capital gain realized when the shares were sold. The memo also mentions that Carlson would agree to take full responsibility for investments through North West (Zürich). The Tribunal notes, however, that North West (Zürich) was only established in December 1976.

32. Furthermore, in his testimony as a witness at the Hearing Dr. Erdtmann stated that there was no written agreement between him and the other members of the group which lent the ten million dollars. Dr. Erdtmann further explained that, in his business practice, such arrangements were usually conducted by a handshake and not put in writing. He added that the group of lenders consisted of six persons altogether, including himself, his mother and Mr. Otto Kloetzer, a German businessman, who at the time the loan was agreed upon was the general manager of the Gustav Hoffmann Shoe Company, a leading European shoe manufacturer for children. Dr. Erdtmann declined to disclose the names of the other three lenders. He submitted that as a management consultant he could not disclose the names of his clients.

33. The submissions of both parties, and in particular Dr. Erdtmann's own affidavit, show clearly that Dr. Erdtmann was a close business associate of Mr. Irvani, and that Mr. Irvani had significant ties to both North West (Zürich) and Grafton. Dr. Erdtmann served as a director of North West (Zürich), North West (Luxembourg) and Transaxial Export & Import GmbH, which, the Respondent asserts, were controlled by Mr. Irvani. Mr. Carlson has stated that Mr. Irvani made specific arrangements so that Dr. Erdtmann could be present at a meeting concerning Carlson's possible employment with MIG, and that "Mr. Irvani and Dr. Erdtmann proposed" a compensation package for him, including the \$10 million

loan. There also are a number of telexes in the record demonstrating frequent communication between Dr. Erdtmann and Mr. Irvani on business matters.

34. The Tribunal also is convinced on the basis of evidence available in the record that Mr. Irvani was involved in the establishment of North West (Zürich). There are telexes in the record, dated December 1976 (when North West (Zürich) was incorporated), which show that Dr. Erdtmann consulted Mr. Irvani about payments for expenses necessary to the incorporation of North West (Zürich). Concerning Grafton, which allegedly was acting as fiduciary for a block of shares in MIG, the record indicates that Grafton was founded by Mr. Buhoslav Muller, a close business relation of Mr. Irvani. There is also evidence in the record indicating that Grafton was initially founded by Mr. Irvani through the "Economic Consultancy Center", a charity institution set up to manage the affairs of twenty children adopted by Mr. Irvani who were sent to England for their studies. At the time Carlson joined MIG in 1975, Grafton already held ten per cent of MIG's equity. It continued to hold 10 per cent of MIG's equity, amounting to 300,000 shares in 1978, on behalf of North West (Zürich).

35. Dr. Erdtmann confirmed during his testimony at the Hearing that he arranged the payments to Mr. Irvani for the shares in MIG and related companies, which allegedly were bought for Carlson. Most of the payments were made from Dr. Erdtmann's account at Bank Vontobel & Co., in Zürich, Switzerland, to accounts allegedly controlled by Mr. Irvani or members of his immediate family. It should be added that the debit invoices of Bank Vontobel do not indicate that these payments had to be made to Mr. Irvani. There are, though, receipts in the record showing Mr. Irvani's signature and indicating that Mr. Irvani had received the amounts, which Carlson asserts were necessary for the purchase of the shares through Dr. Erdtmann. These receipts

also contain the words, "in reference to share account." However, the Tribunal notes that these receipts lack any information concerning the bank and accounts these amounts were received from. Therefore, the receipts are not conclusive proof that the payments to Irvani related to Carlson's acquisition of shares in MIG.

36. The Tribunal has also noted that the loan arrangement was memorialized by a letter-agreement dated May 1977, which letter set forth the conditions of the credit arrangement between Carlson and Dr. Erdtmann. This letter-agreement appears to have been prompted by a letter from Carlson to Dr. Erdtmann dated 19 April 1977, asking that the terms of the agreement they reached in 1975 be set out in writing. Erdtmann, however, in 1976 already had commenced making payments allegedly on behalf of Carlson for various stock purchases in MIG and related companies. Carlson had not paid anything for these shares. The Tribunal observes on the basis of the documentary evidence that in May 1977, at the time when Carlson and Erdtmann had formalized their arrangements, Erdtmann had made payments in the amount of \$5,987,305. The Tribunal finds these early payments hard to reconcile with the fact that the loan agreement was not formalized until May 1977 and that on that date Erdtmann expressed in his letter to Carlson his willingness to advance to him ten million dollars, although nearly six million dollars allegedly had been advanced on Carlson's behalf already. Furthermore, the Tribunal notes that Carlson did not sign a draft obligating himself to repay the ten million dollars until May 1977. The draft, which was written in German and is described as "Wechsel", would be payable to Dr. Erdtmann after 31 December 1984.

37. The important role Dr. Erdtmann played in managing the various business deals of MIG, and in particular with respect to Carlson's arrangements with MIG, is further evidenced by his statements made as a witness at the

Hearing. In response to a question by the Tribunal he stated that Carlson would not have sold any of his shares in MIG without discussing it with him.

38. The Tribunal further observes that Carlson's opportunity to borrow up to ten million dollars was beneficial not only to him, but to Mr. Irvani as well. Due to the loan arrangement, and the share purchases that that arrangement allegedly supported, Mr. Irvani could shift ten million dollars from his holdings in MIG to use for other purposes. Clearly the arrangement was also beneficial to the lenders group led by Dr. Erdtmann; the group would receive forty-five per cent of any capital gains realized, and at the time a booming economy in Iran presented the likelihood of a fairly large return. Further, the letters of guarantee provided the lenders group with the assurance that they would at least recoup the amount of the loan in the event the shares could not be sold at a higher price.

39. Dr. Erdtmann also stated at the Hearing that there was an agreement between the lenders group and Carlson concerning the proceeds of the claim in this Case, if any. Mr. Carlson explained at the Hearing that in a modification of the earlier loan agreement it was agreed between him and the lenders group that the group would be repaid the amount of the loan out of the proceeds of the claim plus eight per cent interest from the time the loan agreement was concluded, which was in 1976, until the date payment of the awarded amount would be made. Mr. Carlson explained that in 1987 a lawsuit had been filed in California to protect Dr. Erdtmann's interest in the draft. The lawsuit was eventually settled by Carlson's lawyer and Dr. Erdtmann's lawyer. The settlement agreement provided that Carlson would waive the statute of limitations indefinitely, while at the same time attempts would be made to get the loan repaid through the proceedings before this Tribunal. This settlement agreement makes it explicit that Dr. Erdtmann and

his lenders group have a clear financial interest in the outcome of the proceedings of this Case. The Tribunal takes that interest into account when weighing Dr. Erdtmann's statements.

40. Turning now to the MIG shares of which Carlson claims that he was the beneficial owner, the Tribunal notes that the Parties in this Case agree that these shares were registered in MIG's share register in the name of North West (Zürich) and Grafton. In this respect, the Tribunal notes that since MIG and its associated companies are established under Iranian law, any transfer of shares is governed by the laws of Iran. See Ian McHarg, et al. and The Islamic Republic of Iran, Award No. 282-10853/10854/10855/10856-1, p. 21 (17 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 286, 302.³ Article 40 of the Iranian Commercial Code, as amended in 1969, provides the requirements relating to such transfer of shares in companies. It reads, in relevant part, as follows, see also supra para. 17.

The transfer of registered shares must be entered in the share register of the company and the transferor or his attorney or his legal representative should sign such transfer in the share register.... Any transfer which takes place contradictory to the provisions mentioned above shall be considered null and void as far as the company and third parties are concerned.

No transfer of shares from North West (Zürich) or Grafton to Carlson had been recorded in MIG's share register, although

³In the McHarg Case, shares in an Iranian Company allegedly were transferred to the corporation or to the shareholders by a letter. The Tribunal held that "[b]earing in mind that WMRT/Iran was incorporated in Iran and therefore that any transfer of its shares is governed by the laws of Iran, the Tribunal decides that [the] letter is insufficient to show that [the shares were] validly transferred . . . to the corporation or to the four remaining shareholders."

Carlson has asserted that his stock purchases in MIG started back in 1976. Carlson at no time became the registered owner of such shares as shown on the books of MIG in accordance with the mandatory provision of Article 40 of the amended Iranian Commercial Code.

41. Finally, the Tribunal notes that the nominee agreement, in which North West (Zürich) acknowledges receiving from Carlson 600,000 shares in MIG and other shares in related companies, is dated only 6 March 1978. Yet the Claimant asserts that North West (Zürich) and Grafton obtained their shares in MIG in 1976 and 1977, directly from Mr. Irvani. The inconsistency of dates casts doubt on the existence of the underlying transaction on which Carlson bases his claim, as does the lack of any mention of the buy-back agreements in the minutes of shareholder meetings of MIG. These doubts are not sufficiently removed by Carlson's explanations at the Hearing that the arrangements with Mr. Irvani and Dr. Erdtmann were not disclosed in MIG records because it would have been detrimental for MIG if Carlson had been registered as the owner of more than 10 per cent of MIG's shares, since it appears that in accordance with Iranian law MIG would then have lost certain tax advantages. Carlson explained at the Hearing that this would have had an unacceptable impact on the local shareholders. Therefore, Carlson did not inform the other employees of MIG of the arrangements he allegedly made with Mr. Irvani and Dr. Erdtmann. Nor are there any minutes of shareholders meetings in the record which refer to Carlson's alleged financial arrangements with Mr. Irvani.

42. In sum, for the reasons set forth in paragraphs 31-41 above the Tribunal concludes that Carlson has not borne the burden of proving the existence of the arrangements on which he bases his direct claim. That claim must, therefore, be dismissed for lack of standing to sue.

Accordingly, the Tribunal need not reach the remaining contested issues relating to governing law and the application of such law.

b) The indirect claim

43. In the alternative Carlson asserts his claim indirectly by virtue of his alleged ownership and control of North West (Zürich) and Grafton in accordance with Article VII, paragraph 2 of the CSD, which reads in relevant part:

"Claims of nationals" of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this Agreement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interests in judicial persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this Agreement.

Carlson must therefore demonstrate that he was controlling the companies concerned from the time the claim arose until 19 January 1981, the date of the conclusion of the CSD. The Tribunal finds that Carlson has failed to meet this burden.

44. In support of his alleged ownership of North West (Zürich) Carlson places particular reliance on Dr. Christopher Reinhardt's affidavit dated 19 May 1983. In the affidavit, Dr. Reinhardt, who as an attorney-at-law from Zürich had incorporated North West (Zürich) in Switzerland, states "[t]hat based on information personally obtained and documents on record ... I am of the opinion that Mr. Carlson is today and has from its inception been the sole beneficial owner of all the issued and outstanding shares of North West (Zürich) Investment Corporation notwithstanding the fact that some of the shares have been held during certain times

by other persons holding the shares as nominees for Mr. Carlson." The Tribunal notes, however, that Dr. Reinhardt did not attach to his affidavit copies of any of the documents which he states supported his conclusion that Carlson was the sole beneficial owner of North West (Zürich).

45. In addition to this lack of corroboration, Dr. Reinhardt appears to have made inconsistent statements concerning the ownership of North West (Zürich). In an earlier certificate dated 2 March 1981, Dr. Reinhardt declares that he is "... fully familiar with the Company's affairs and matters and its records and minute books, and that

[o]n the date of this certificate, the following persons were shareholders of the Company.

Roy P.M. Carlson, Atlanta)	
Alwin Kunz, Maur)	5 shares
Ingeborg Normann - Kessler, Frauenfeld))	
Dr. Lothar Erdtmann, Krefeld)	
Dr. Klemens Grosche, Düsseldorf)	85 shares
Dr. Helmuth Schmitt, Essen)	
Otto Kloetzer, Kleve))	
others		10 shares"

In addition Dr. Reinhardt stated in this 1981 certificate that with respect to the identity of North West (Zürich)'s shareholders he had examined "various documents which were made available to [him] and which [he] considered necessary to verify the accuracy of the above certificate." It is also important to note that Dr. Reinhardt, who appeared as a witness at the Hearing, confirmed the accuracy of both his affidavits, explaining that the 1981 certificate referred only to "record ownership", and not beneficial ownership. Nevertheless, the explanation that the 1981 certificate refers only to record ownership cannot be regarded as of decisive value. This is also true regarding Dr. Erdtmann's

statements at the Hearing that the 1981 certificate was prepared for humanitarian reasons, see para. 48, infra. The Tribunal further notes that the evidentiary value of the certificate which is signed in March 1981 - and therefore close to 19 January 1981, the date of the conclusion of the Algiers Accords - should be given more weight than that of the affidavit signed in 1983. Therefore, it seems that in March 1981 Carlson was the legal owner only of five bearer shares in North West (Zürich). Moreover, the 1981 certificate is consistent with certain other evidence, referred to infra, in paras. 47 and 49.

46. The Tribunal further notes that Carlson has not presented in evidence any minutes of shareholders meetings of North West (Zürich), which might have clarified the identity of the shareholders of the company. The only documentary evidence submitted by Carlson consists of a sworn statement by his accountants, the firm of Peat Marwick, which reads in relevant part

Our files indicated that Mr. Carlson has submitted such informational returns reporting his sole ownership of North West Investment Corporation, Zürich, Switzerland for calendar years 1977 through 1986 ...

The Tribunal feels, however, that this statement by itself cannot constitute valid proof of Carlson's ownership of North West (Zürich). In these circumstances, when it appears that Carlson has failed to present any additional corroborating evidence and failed to offer any explanation as to its absence, the Tribunal will draw an adverse inference. See K.F. Hilt and The Islamic Republic of Iran, et al, Award No. 354-10427-2, para. 21 (16 Mar. 1988), reprinted in 18 Iran-U.S. C.T.R. 154, 160.

47. Moreover, MIG has in rebuttal presented three different letters and a telex that indicate that Carlson did not possess a controlling ownership interest in North West

(Zürich). First, there is a telex dated 6 January 1981 sent by Dr. Erdtmann on behalf of North West (Zürich) to Mr. Haji Agha Shaltchiian. The telex reads as follows:

We are confirming herewith that the managing director of the above company is Mr. Roy P.M. Carlson who has held the position since 1976. According to information provided the shareholders of the company are a group of investors as mentioned below:

Dr. Lothar Erdtmann, Krefeld
Dr. Klemens Grosche, Düsseldorf
Dr. Helmuth Schmitt, Essen
Mr. Otto Kloetzer, Kleve.

All above persons are German citizens and top ranking businessmen in German Industry and Commerce and each represents diverse interests.

The Tribunal notes that these individuals also appear on Dr. Reinhardt's certificate of 2 March 1981 as the main shareholders of North West (Zürich).

48. At the Hearing, Dr. Erdtmann stated that the telex served a humanitarian purpose, since Mr. Shaltchiian was threatened in Iran for his alleged connection with an American company. Therefore, Dr. Erdtmann stated that he was asked to provide proof that North West (Zürich) was not owned by Carlson. The Tribunal notes, however, that Dr. Erdtmann stated in response to a question that the telex "...[was] not an untrue statement". In addition, Dr. Erdtmann stated that since he was informed that the telex did not serve its purpose entirely, two fiduciary agreements were concluded on 20 February 1981. These agreements form part of the documentary evidence in this Case. By one agreement Carlson transferred as "trustor" to Dr. Erdtmann, as "trustee", a certificate evidencing ownership of 51 shares of North West (Zürich). By the other, Carlson transferred a certificate evidencing ownership of forty-four shares of North West (Zürich) to Mr. Klemens Grosche, Mr.

Helmuth Schmitt, Mr. Otto Kloetzer, Mrs. Johanna Erdtmann and Mr. Chris Phylactou, as co-trustees.

49. The other documentary evidence with respect to the identity of North West's shareholders was submitted by MIG and consists of three letters. The letters, which are signed by Mr. Irvani on behalf of MIG, are addressed to the Organisation for Investment and Economic and Technical Assistance of Iran in response to an enquiry concerning the identity of the shareholders of North West (Zürich). In one letter, dated 14 March 1978, Mr. Irvani states that North West (Zürich) has three main shareholders, and in the other two letters, dated April 1978, Mr. Irvani mentions four shareholders: Messrs. Kloetzer, Erdtmann, Reinhardt and Carlson.

50. On the basis of all of the documentary evidence and the statements made at the Hearing by Dr. Erdtmann, and in light of Carlson's failure to submit documentary evidence which should have been available to him, such as the minutes of the meetings of North West (Zürich), the Tribunal finds that Carlson had no controlling property rights in North West (Zürich) and Grafton from the time the claim arose until 19 January 1981. The Tribunal therefore concludes that Carlson has no standing to assert an indirect claim, based on his alleged property rights in North West (Zürich) and Grafton. Accordingly, the indirect claim is dismissed for lack of jurisdiction.

51. As noted supra, see para. 42, Carlson does not have standing to sue on the basis of his direct claim. The counterclaims asserted against Carlson on the basis of his direct claim, are dismissed for lack of jurisdiction since they do not arise out of the same occurrence which constitutes the subject matter of Carlson's claim. See e.g., R.N. Pomeroy, et al. and The Government of the Islamic Republic of Iran, Award 50-40-3 (8 June 1983) pp. 14-15, reprinted in

2 Iran-U.S. C.T.R. 372, 378, 379. Further, since the indirect claim is dismissed for lack of jurisdiction, it follows that the counterclaims asserted by MIG insofar as they are based on Carlson's indirect claim are dismissed also for lack of jurisdiction. See, e.g., International Technical Products Corporation, et al., and The Government of the Islamic Republic of Iran, et al., Partial Award No. 186-302-3 (19 Aug. 1985), at pp. 42, 43, reprinted in 9 Iran-U.S. C.T.R. 10, 38.

C. Costs

52. The Respondent MIG in its pleadings requested the Tribunal to make an award to it for its costs incurred in defending the claim. A specification of the costs has not been submitted. In view of the circumstances of the Case, the Tribunal finds it reasonable to award MIG costs of arbitration in the amount of \$15,000.

IV. AWARD

53. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a) The claim of ROY P.M. CARLSON against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and MELLI INDUSTRIAL GROUP is dismissed for lack of standing and lack of jurisdiction.

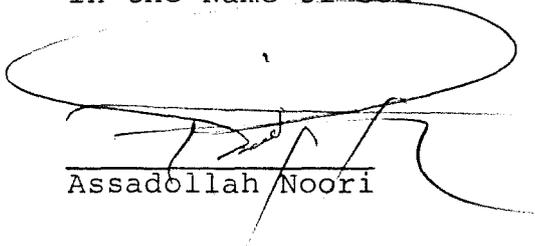
- b) The counterclaims asserted by Melli Industrial Group against Roy P.M. Carlson are dismissed for lack of jurisdiction.

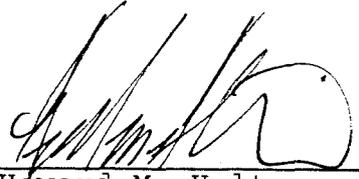
- c) The Claimant Roy P.M. Carlson is obligated to pay the Respondent Melli Industrial Group costs of arbitration in the amount of U.S.\$15,000.

Dated, The Hague
1 May 1991


Bengt Broms
Chairman
Chamber One

In the Name of God


Assadollah Noori


Howard M. Holtzmann
Dissenting, except
concurring in para-
graph 28.