IRAN-UNITED STATES CLAIMS

38-76
۳۸-۷۶

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

38-76
۴۸-۷۶

CASE NO. 38

CHAMBER THREE

AWARD NO.122-38-3

SCHERING CORPORATION,

Claimant,

v.

THE ISLAMIC REPUBLIC OF IRAN,

Respondent.

AWARD

Appearances

For the Claimant:	Mr. Joseph Griffin Ms. Lucy Reed Attorneys Ms. Carolyn E. Hansen Counsel for Schering Corporation
For the Respondent:	Mr. Mohammad K. Eshragh Deputy Agent of the Islamic Republic of Iran Prof. Jafar Niaki Mr. Seyed Hossein Tabaie Mr. Mohammad Reza Motamedi Dr. Abdollah Poosti Legal Advisers to the Agent
Also present:	Ms. Jamison M. Selby Deputy Agent of the United States of America

I. THE PROCEEDINGS

Claimant SCHERING CORPORATION ("Schering") filed its Statement of Claim on 16 November 1981 against THE ISLAMIC REPUBLIC OF IRAN, setting forth three claims.

On 15 April 1982, the Government of the Islamic Republic of Iran filed its Statement of Defence as well as Statements of Defence from three entities to which the claims related, namely Bank Markazi, the Foundation for the Oppressed and the Workers' Council of Schering Corporation (Iran) Ltd. ("Workers' Council").

On 1 October 1982, there was a Pre-Hearing Conference in this case. The Hearing was held on 28 February and 1 March 1983. Prior to the Hearing and at the Hearing the parties submitted evidence and arguments. At the invitation of the Tribunal, the parties subsequently filed post-hearing submissions.

Following the Hearing, the member of the Tribunal appointed by the Islamic Republic of Iran resigned. A new member was appointed. The Tribunal has hereby determined, in accordance with Article 14 of the Tribunal Rules, not to repeat the prior Hearing. In addition, pursuant to Tribunal Rules, the member of the Tribunal appointed by the United States who resigned from the Tribunal after the Hearing in this case participated in this Award.

II. FACTS AND CONTENTIONS

Schering manufactures and markets pharmaceutical products in the United States, sells and licenses products around the world and owns pharmaceutical companies in many countries.

With regard to its status and organization of business, Schering contends as follows: Schering is a United States corporation, which is a wholly-owned subsidiary of Schering-Plough Corporation ("Schering-Plough"), also a United States corporation. Schering has owned all of the stock of Scherico Ltd. ("Scherico"), a Swiss corporation, which in turn has owned all of the stock of Essex Chemie A.G. ("Essex"), another Swiss Corporation. Scherico has also owned 6,996 of the 7,000 shares of stock of Schering Corporation (Iran) Ltd. ("Schering-Iran"), an Iranian corporation; the remaining four shares have been owned in the name of Essex and senior executive officers of Schering companies. Schering Corporation (Puerto Rico) ("Schering Puerto Rico"), a United States Corporation, is a wholly-owned subsidiary of Schering-Plough. The shares of stock of Schering-Plough are widely-held and publicly traded.

Claimant alleges that it established Schering-Iran to trade in Schering pharmaceuticals in Iran. Firooz Corporation ("Firooz"), an Iranian company, purchased goods from Schering-Iran on credit, under a Distributor Agreement, for distribution. According to Claimant, Schering-Iran

purchased pharmaceutical products and raw materials from other Schering affiliates and paid for such products in United States dollars or Swiss francs. Schering-Iran regularly paid royalties to Schering in United States dollars pursuant to a Trademark Licensing Agreement of 1968 and regularly paid dividends to its shareholders in foreign exchange.

In 1976, Claimant alleges, Scherico made a five year loan of US $1.1 million to Schering-Iran. Under the terms of the loan agreement, Schering-Iran was to pay interest due on the loan every six months until 2 March 1981 at which date the loan was to be paid back. Until March 1979, Claimant contends, Schering-Iran regularly made the interest payments in US dollars.

Claimant contends that in November of 1979, Bank Markazi refused to permit the payment of certain Schering drafts payable in US dollars to Schering-Plough and Essex.

Claimant alleges that in 1979, after the Iranian Revolution, Workers' Councils were established in Iranian offices and factories and that such a Workers' Council was formed at Schering-Iran in October 1979. Claimant asserts that, as from January of 1980, the Workers' Council assumed control of Schering-Iran's finances and prevented it from paying its debts to Schering affiliates.

According to Claimant, as a result of the foregoing alleged actions by Bank Markazi and the Workers' Council, Schering-Iran has not paid the following amounts which are still owing: (a) US $6,305,161.89 and 7,882,864.11 Swiss francs, or a total of US $10,811,310.33, to Essex for pharmaceutical products sold to Schering-Iran; (b) US $4,572,100.51 to Schering and its Plough International division for pharmaceutical products sold to Schering-Iran; (c) US $912,356.50 and 1,159,584.10 Swiss francs, or a total of US $1,520,816.69, to Schering Puerto Rico for pharmaceutical products sold to Schering-Iran; (d) US $238,297.16 to Schering for royalties; (e) US $69,000 to Essex as dividends; and (f) US $1,854,328.83 to Scherico for principal and interest on the above-mentioned loan.

Under the first claim Claimant seeks recovery of these debts, which total US $19,065,854.02.

Under the second claim Claimant alleges that the Government of Iran, by and through the Workers' Council, has expropriated from Schering-Iran 80 million rials, valued at the time of the expropriation at US $1,135,154.30. Claimant seeks damages in that amount.

Claimant alleges, in its third claim, that the Foundation for the Oppressed took control of Schering-Iran's distributor, Firooz, and that Firooz failed to pay Schering-Iran US $5,367,000 in debts for pharmaceuticals acquired by Firooz. Claimant alleges that the Foundation for the

Oppressed is an entity controlled by the Government of Iran and acted on its behalf.

Claimant further seeks interest on the principal amounts claimed.

Respondent challenges the jurisdiction of this Tribunal on various grounds. It alleges that claims of Schering-Iran cannot be maintained because it is an Iranian corporation; and that Iranian law requires that jurisdiction be in Iran. Respondent further asserts that the Tribunal had no jurisdiction over any claim which could have been brought by Schering Puerto Rico, which was a United States national.

With regard to the first claim Respondent denies liability, arguing that Bank Markazi refused transfer only of a portion of the debts and that such refusal was lawful. Respondent further argues that the Workers' Council of Schering-Iran has not interfered with the operation or management of that company and that in any event Respondent is not liable for the actions of the Workers' Council.

As to the second claim Respondent denies liability on the ground that it is not liable for the actions of the Workers' Council.

With regard to the third claim Respondent contends that the Tribunal has no jurisdiction because (a) according to Respondent disputes between Schering-Iran and Firooz came

under the exclusive jurisdiction of Iranian courts by virtue of the Distributor Agreement concluded between those two companies and (b) the claim was not outstanding on 19 January 1981 as required under Article II, paragraph 1, of the Claims Settlement Declaration. Respondent denies liability arguing that it is not liable for the actions of the Foundation for the Oppressed and that no debt is now outstanding.

Both parties seek their costs of arbitration.

III. JURISDICTION

Submitted evidence shows that at all relevant times Claimant Schering has been a United States corporation which is a wholly-owned subsidiary of Schering-Plough, another United States corporation. A survey shows that 11.1 per cent of the outstanding capital stock of Schering Plough was owned by non-United States citizens and that not less than 99 per cent of the outstanding common shares of Schering Plough was held by shareholders reporting United States addresses. Schering Plough's proxy material disclosed no person owing more than 5 per cent of its outstanding shares. There is evidence showing that at all relevant times Schering Corporation has owned all of the stock of Sherico and Essex, which are Swiss companies, and that Sherico has owned all of the stock of Schering-Iran.

From the foregoing, the Tribunal concludes that, as far as Claimant's nationality is concerned, it has jurisdiction over claims by Claimant, and that claims arising out of transactions with Schering or with its foreign subsidiaries Sherico and Essex are claims of United States nationals within the jurisdiction of this Tribunal as provided for by Article VII, paragraph 2, of the Claims Settlement Declaration.

The first of the three claims is partly based on a claim by Schering Puerto Rico, which is a United States corporation wholly owned by Schering Plough. There is a jurisdictional question (the effect of an alleged assignment) whether under the Claims Settlement Declaration Claimant is entitled to assert this portion of the claim. In view of the findings below as to the merits of the first claim, the Tribunal need not deal with this question.

The third of Claimant's claims against Iran is based on a claim of Schering-Iran, an Iranian corporation indirectly owned by Claimant, for monies due from Firooz, another Iranian company allegedly under the control of the Iranian Government through the Foundation for the Oppressed. Respondent alleges, inter alia, that the Tribunal has no jurisdiction over this third claim because the Algiers Declarations do not vest the Tribunal with jurisdiction over claims by Iranian companies against their own Government; and that, consequently, a correct interpretation of Article VII, paragraph 2, of the Claims Settlement Declaration must

lead to the conclusion that such claims are excluded from the indirect claims which a national of the United States may bring before the Tribunal by virtue of the provisions of the said paragraph.

The Tribunal deems it unnecessary to deal also with this jurisdictional issue in the present case in view of its findings in Part VI of the Award.

Respondent also invokes an alleged "forum selection clause" (Article X) in the Distributor Agreement concluded between Schering-Iran and Firooz, and said to exclude jurisdiction of the Tribunal over this claim. The clause referred to is, however, a governing law clause and not a forum selection clause capable of ousting the jurisdiction of the Tribunal, as contended by Respondent.

The remaining jurisdictional issue whether or not the third claim was outstanding on 19 January 1981 will be dealt with in Part VI of the Award.

IV. THE FIRST CLAIM

Claimant seeks recovery of amounts that Schering-Iran allegedly owed to Claimant and certain of Claimant's subsidiaries as payment for pharmaceuticals sold to Schering-Iran, as royalties, as dividends and as interest and principal on a bank loan. The total claim is for US $19,065,854.02.

Claimant contends that the Respondent is now liable for at least some of these intercompany debts on the alleged ground that Bank Markazi unlawfully refused Schering-Iran to transfer payment of these debts. Claimant further contends that Respondent is responsible for remaining portion of the debts on the ground that, through actions of the Workers' Council, it prevented payment of the debts.

Respondent denies liability under either theory but does not dispute that Schering-Iran is indebted to Schering and its subsidiaries in approximately the total amount claimed.

a. Question of Bank Markazi Preventing Payment of Debts

The evidence shows that on 9 November 1979 Bank Markazi instructed Foreign Trade Bank not to pay Schering's Plough International Division a draft for US $307,859.01 (No. 24435) and Essex a draft for US $100,593.36 (No. 24861), both drawn for deliveries of antibiotics to Schering-Iran, the reason apparently being that the shipment had taken place more than two years earlier and that, therefore, there was a possibility that payment had already been made before the coming into force of certain foreign exchange regulations issued by Bank Markazi in 1978 and 1979.

Claimant argues that by not allowing the drafts to be paid, Bank Markazi acted in violation of Iranian Law; the Treaty of Amity, Economic Relations and Consular Rights

between the United States of America and Iran dated 15 August 1955; the International Monetary Fund Agreement; and general principles of international law.

Respondent asserts that the disapproval by Bank Markazi on 9 November 1979 as to payments of drafts Nos. 24861 and 24435 was "purely intended to ensure that the amounts of these drafts had not been transferred abroad prior to the application of restrictions". Respondent adds that if Claimant has not received the amounts of these drafts, it can obtain the permit for transfer from Bank Markazi, upon submission of a certificate issued by the Ministry of Finance of the place of domicile of the vending company as to the facts that the amounts are outstanding and unpaid.

Respondent further asserts, and offers evidence that, subsequent to the Iranian Revolution, Bank Markazi in several other instances, inter alia in August and September 1979 and July 1980, granted transfer of Schering-Iran's payments.

There is no evidence before the Tribunal showing that in November 1979, there was any provision under Iranian Law authorizing Bank Markazi to refuse payment for imported goods in foreign currency on the ground that delivery had taken place more than two years earlier. This conclusion is reinforced by the fact that, as asserted by Bank Markazi, payments relating to such early deliveries were allowed on several occasions in the latter half of 1979. In light of

this, the Tribunal must conclude that Bank Markazi's refusal to grant payment of the two drafts was not in accordance with the law of Iran in force at the time.[1] Respondent is clearly responsible for the actions of Bank Markazi in this respect. Consequently, the Tribunal holds that Claimant is now entitled to damages in the amount of the two drafts in question, or US $408,452.37. Claimant is also entitled to interest on this amount at the fair rate of 10 per cent as from 1 December 1979.

In addition to the two drafts now dealt with, Claimant asserts that Bank Markazi rejected several additional drafts from Schering's Plough Division for at least US $1,195,657.70, all of these drafts allegedly relating to purchase of raw materials from Essex and Schering's Plough Division. Respondent denies that Bank Markazi ever received requests for permission to have these additional drafts paid. In support of its allegations with regard to these drafts, Claimant relies on an affidavit by the Controller of Schering-Iran at the relevant time, Mr. Browning; two internal company memos of 10 and 14 December 1979 signed by Mr. Browning; and a chart of intercompany payables also drawn up by Mr. Browning. However, neither the requests for permission, nor any bank correspondence or other similar

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1) There is no evidence that at the relevant points in time Bank Markazi based its refusal of payment on the then existing foreign exchange regulations. The effect of those regulations, therefore, need not be examined here.

documents reflecting the decisions allegedly taken by Bank Markazi with regard to the additional drafts have been submitted. In view of this, the Tribunal does not consider it clear from the evidence that requests for permission to transfer payments were submitted to Bank Markazi but were not dealt with, or were rejected, by that bank - let alone which were the grounds for such rejections. The conclusion must therefore be that there is insufficient ground for holding the Government of Iran liable for any action or omission by Bank Markazi with regard to the intercompany debts now discussed.

Claimant does not allege that Bank Markazi refused payment of any other portions of the intercompany debts which are the subject of this claim; it appears that in fact no such payments were requested. The Tribunal therefore finds that Respondent cannot be held liable for any action by Bank Markazi with regard to the remaining portion of receivables sought under the first claim.

b. Workers' Council

The evidence shows that on 20 January 1980 negotiations between Schering-Iran and the Workers' Council of that company resulted in an Agreement which, inter alia, stipulated that Schering Iran's cash balance as of 31 December 1979 would be used to purchase chemicals and finished products from affiliated companies of Schering-Iran; and that payments to those affiliated companies for

merchandize payables existing on 31 December 1979 would be subject to, among others, completion of such purchase of chemicals and finished products.

The 20 January 1980 Agreement further stipulated as follows:

> "It is agreed that until December 31, 1980 all payments made by Schering-Iran to affiliated companies will require three signatures of which two shall be designated by the Board of Directors of Schering Corporation and one will be from a group of two designated by the Workers' Council from amongst its own members".

It can be concluded that the Agreement assured the Workers' Council controlling influence over the payment of the intercompany debts which are subject to the first claim.

Claimant further bases this claim on the theory that the 20 January 1980 Agreement is not valid because the Managing Director of Schering-Iran, Mr. Kapur, who signed the Agreement on behalf of the company acted under duress when doing so. According to Claimant, the Agreement, in practice, has deprived Claimant of its contractual and property rights to payment from Schering-Iran. Claimant further contends that Respondent is responsible for the actions of the Workers' Council because (a) the Council is an entity controlled by Iran and acted on behalf of the Government and (b) in any event Respondent failed to protect Claimant against the Council's alleged interference as it was obliged to do under the Treaty of Amity and general principles of international law.

The Tribunal will first deal with the question of whether Respondent is liable for the actions of the Workers' Council. In this regard both parties have submitted extensive arguments.

The Constitution of the Islamic Republic of Iran deals, in Principle 104, with the formation of Workers' Councils in Iran and reads as follows:

> "In order to safeguard Islamic justice in the preparation of programs, and in the coordination of progress in the affairs of industrial and agricultural production units, councils composed of representatives of workers, farmers, and other employees and managers will be organized to operate in educational, administrative, and service units. These councils will thus be comprised of representatives of the members of these units.
>
> The manner of organizing these councils and the limits of their duties and privileges shall be prescribed by law."

In October 1979, the Council of Ministers in Iran approved Rules for the formation of Workers' Councils of institutions within the private and governmental sectors. In the preamble to these Rules, the formation of such councils is declared as "useful for the advancement of the objectives of the Islamic Republic, should the management or the workers be ready for it". The preamble further states:

> "The Islamic Republic of Iran does not consider the Workers' Council of any institution and the management thereof, as separate from each other, and believes that the interests of the workers are common to the interests of the institution and the interests of the institution are

> common to the interests of the country and the people, and recommends the following rules for the formation of the councils. These Councils are functioning within the framework of the laws of the country and the relevant regulations." (Emphasis added.)

Under Article 1 of the Rules, "the aim in forming the Councils is to create better understanding and cooperation among the workers and management in the direction of satisfactory advancement of the workers and the institution, in order to render the best possible service to society, with due observance of the legitimate rights of the workers". Article 2 contains various provisions with regard to the two main bodies of the Workers' Councils, namely the General Meeting (consisting of all employed workers of any institution, Article 2.1) and the Coordination Council (whose members are to be elected by the General Meeting, Article 2.4).

The constitutional and regulatory framework[2)] for the creation of Workers' Councils do not indicate that the Councils were to have other duties than basically representing the workers' interest vis-à-vis the management of companies and institutions and to cooperate with the

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2) In addition to the legislation mentioned previously, the Tribunal notes that on 30 June 1980 a law was enacted regarding Workers' Councils "for Manufacturing, Industrial, Agricultural and Service units". Related by-laws were introduced on 31 July 1980. This legislation provides, inter alia, for participation of a governmental representative on a "supervisory board for council affairs". Neither party invoked this legislation in its pleadings in the present case.

management. That the formation of the Councils was initiated by the State does not in itself imply that the Councils were to function as part of the State machinery.

Furthermore, regardless of what has now been said there is no evidence in this case that the Workers' Council in fact acted on behalf of the Government of Iran or any of its agencies or entities, that there was any governmental influence over the election of the members of the Council, that any governmental orders, directives or recommendations were issued to the Council or that it acted under instructions of any governmental body.[3)]

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3) In this connection Claimant gives special weight to a letter dated 7 July 1981 from Schering-Iran to the Office of the Prime Minister, Litigation Committee, transmitting, inter alia, the balance sheet of the company as of 31 December 1980. The letter contains the following comments on the issue of the 80,000,000 rials amount: "For the purpose of implementing the legitimate demands of the Company's employees consisting of constraining the foreign directors to import basic medicines for which there was a great shortage throughout the Country as well as for payment of possible termination pay (damages) to employees, in January of 1980 as proposed by the Workers' Council, approved by the General Meeting of the Workers and agreed to by the two Iranian directors who have signatory authority, the amount of Rials 80,000,000 of the Company's cash on hand with banks was withdrawn and was deposited in a separate bank account under the name of a number of members of said Council. Said amount has remained untouched to this time and is reflected in the balance sheet as preferred obligation of Schering Iran to its employees." This letter, however, only explains the intentions behind the actions of the Workers' Council in January 1980 and does not indicate that the Government was in any way responsible for these actions.

In view of the above, the Tribunal must conclude that there is no ground for holding that the Workers' Council of Schering-Iran has acted on behalf of Respondent.

It has not been alleged that Claimant or Schering-Iran requested Respondent to intervene in any way in order to protect the interest and rights of Schering-Iran from being adversely affected or impaired by the actions of the Workers' Council. The Tribunal finds no basis for holding that Respondent was obligated under any rule of international law to take any such protective measures proprio motu.

In view of the above conclusions the Tribunal cannot hold Respondent liable for any action of the Workers' Council of Schering-Iran.

Having made this finding, the Tribunal need not discuss the question whether or not the Agreement of 20 January 1980, which admittedly was never repudiated by Schering-Iran's Board of Directors, was signed by Schering-Iran's Managing Director under duress.

V. THE SECOND CLAIM

The second claim arises out of the alleged expropriation of 80 million rials out of Schering-Iran's assets. The Tribunal has jurisdiction over this claim by virtue of Article II, paragraph 1, of the Claims Settlement Declaration.

As the Tribunal has found earlier that Respondent is not liable for the actions of the Workers' Council, it follows that any interference with Schering-Iran's assets on the part of the Workers' Council does not amount to expropriation of those assets by Respondent. The second claim must therefore be dismissed.[4)]

VI. THE THIRD CLAIM

It is not in dispute that Schering-Iran delivered pharmaceuticals to its distributor Firooz pursuant to a Distributor Agreement of 1977; that Firooz issued promissory notes on receipt of the merchandise; that Firooz failed to meet its payment obligations; and that by May 1979 Firooz owed Schering-Iran an amount in rials equivalent to approximately US $9.5 million, evidenced by promissory notes, for products delivered. It is also undisputed that as from some time in May 1979 the Foundation for the Oppressed assumed control of Firooz.

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4) The Tribunal notes that in a submission filed on 13 May 1983, apparantly by two Iranian signature holders of Schering-Iran, it is stated that on 19 April 1983 the amount of 80,000,000 rials was transferred from the Workers' Council account with Bank Melli to the company's account with Bank Mellat. Some documentary evidence to that effect was annexed.

On 7 July 1979 the Managing Director of Schering-Iran had discussions with representatives of Firooz and the Foundation for the Oppressed regarding the future business relationship between Schering-Iran and Firooz. Signed notes from these discussions indicate that Schering-Iran agreed to continue to use Firooz as a distributor and to reschedule Firooz's debt as of 7 July 1979 (labelled "overdue outstandings") on the condition that the Foundation and Firooz agreed to repay these outstandings according to a payment schedule of not more than 2 years. The "overdue outstandings" covered 1977 and 1978 purchases that were already evidenced by promissory notes. A subsequent, undated letter from the Foundation for the Oppressed to Schering-Iran reads:

> "Since the Firouz Joint Stock Company has become affiliated to the Foundation for the Oppressed, this foundation hereby undertakes the repayment of the delinquent debts of the Firouz Joint Stock Company in accordance with the established documents which shall be agreed to by the parties concerning the payment thereof and the manner of their payment. It is understood that this undertaking shall be valid upon the condition that the contract between the Schering Company and the Firouz Company continues."

Claimant contends that Firooz made payments on the outstanding debt approximately in accordance with the payment schedule agreed upon with Schering-Iran up to

February 1980 but that thereafter neither the Foundation nor Firooz has paid any of the "overdue outstandings". Claimant now seeks the unpaid balance, US $5,367,000. Respondent does not dispute that this amount is owing.

Respondent contends, inter alia, that the expiry dates of the promissory notes evidencing the debt were later extended to a date subsequent to 19 January 1981 and that, therefore, the Claim did not arise prior to that date so as to give the Tribunal jurisdiction over the claim.

Claimant admits that such extension of the expiry dates has been granted, because Firooz was reportedly without sufficient funds to pay the notes and "there was no practical alternative", but maintains that it is entitled to recovery on the basis of the Foundation for the Oppressed allegedly having breached its payment obligations both under the 7 July 1979 agreement and under the above quoted subsequent letter to Schering-Iran.

In the alternative, the Claimant argues that both the Foundation and Firooz breached the 7 July 1979 agreement through failure in February 1980 to make the rescheduled payments then due. Consequently, Claimant argues, Schering-Iran has had an "outstanding claim" for the breach of contract by the Foundation and Firooz since that date. That Schering-Iran agreed to "extend certain 1978 promissory

notes issued by Firooz past January 19, 1981, does not extinguish or otherwise affect Schering's claim against Firooz on the underlying debt".[5)]

The Tribunal finds that in conceding to such extension Claimant has waived the right to any action against Firooz for the debt, based on the promissory notes, prior to the extended maturity dates.[6)]

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5) The expression used by Claimant in this context, "certain 1978 promissory notes", is somewhat ambiguous. From the evidence submitted by Claimant, inter alia, the Hamilton and Kapur affidavits, it must be assumed, however, that all promissory notes covering the portion of the debt which was still outstanding in February 1980 - the recovery of which portion is sought under the third claim - were extended to dates subsequent to 19 January 1981.

6) A similar issue was decided by Chamber One of this Tribunal in J.I. Case Company v. The Islamic Republic of Iran a.o. (Award No.57-244-1). In that case the Tribunal found that "[o]f the amounts claimed by Case, one instalment under Invoice E-66722 only became due on 20 March 1981, pursuant to an extension granted by Case. Since no claim could have been made by Case for nonpayment of that instalment until after 19 January 1981, this part of the Claim was not "outstanding" as of that date within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration, and is therefore outside the Tribunal's jurisdiction".

It is a generally accepted legal principle that when a promissory note is given for an obligation, the obligation is, unless otherwise agreed, at least suspended until the note matures. The promissory note is then taken to cover that obligation. In the present case, the notes have continued to be renewed to dates after 19 January 1981; indeed, it has not been alleged that they have matured to this date. Thus, the Tribunal concludes that no claim was outstanding at the time of the Claims Settlement Declaration.

On the basis of the foregoing, the Tribunal holds that since the present claim was not outstanding on 19 January 1981 as required by Article II, paragraph 1, of the Claims Settlement Declaration, it should be rejected.

Moreover, to the extent the obligation can be deemed guaranteed by the Oppressed People's Foundation after the note extensions, the Foundation cannot be held liable as guarantor, since the principal obligor has been found not to be liable. For this reason, the Tribunal need not decide whether or not the Respondent is liable for the actions of the Foundation.

VII. COSTS OF ARBITRATION

In the circumstances of the case the Tribunal determines that each party shall bear its own costs of the arbitration.

VIII. AWARD

THE TRIBUNAL HEREBY AWARDS AS FOLLOWS:

The second and third claims are dismissed.

Under the first claim, Respondent THE ISLAMIC REPUBLIC OF IRAN is obligated to pay and shall pay to Claimant SCHERING CORPORATION the sum of Four Hundred and Eight Thousand Four Hundred and Fifty Two United States Dollars and thirty-seven cents (US $408,452.37) together with simple interest thereon at the rate of ten per cent (10 %) from and including 1 December 1979 up to and including the date when the Escrow Agent instructs the Depositary Bank to effect payment of the Award.

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 costs of the arbitration.

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

Dated, The Hague
13 April 1984

Nils Mangård
Chairman
Chamber Three

In the Name of God

Richard M. Mosk
Dissenting Opinion

Parviz Ansari Moin
Concurring Opinion