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DE-247

ORIGINAL DOCUMENT

Case No. 54

Date of filing: 23 APR 85

\*\* AWARD - Type of Award \_\_\_\_\_  
- Date of Award \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

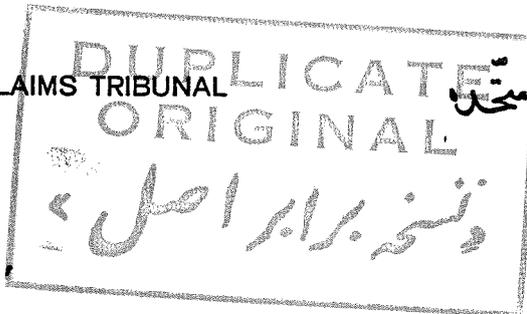
\*\* DECISION - Date of Decision 17 APR 85  
21 pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* SEPARATE OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DISSENTING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
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\*\* OTHER; Nature of document: \_\_\_\_\_  
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CASE NO. 54  
 CHAMBER THREE  
 DECISION NO. DEC 36-54-3

DAMES & MOORE,

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,  
 THE ATOMIC ENERGY ORGANIZATION  
 OF IRAN, THE NATIONAL IRANIAN  
 STEEL COMPANY, THE IRANIAN  
 MEDICAL CENTER and THE NATIONAL  
 IRANIAN GAS COMPANY,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری ایران - ایالات متحده
ثبت شد - FILED	
Date	23 APR 1985 ۱۳۶۴ / ۲ / ۳
No.	54
	تاریخ
	شماره

DECISION

The Tribunal here confronts the question of whether or not it may and should reopen and reconsider an Award once it is rendered, having due regard for the particular circumstances of the case and the allegation by the Respondent that the Award was procured by use of forged documents and perjury. The Tribunal finds that it cannot reasonably doubt either the authenticity of the documents or the veracity of the testimony submitted to it on which it based the Award. The Tribunal concludes that it therefore need not in this case consider the degree, if any, to which it possesses the revisory powers invoked.

I.

Procedural History

Claimant Dames & Moore filed a Statement of Claim on 17 November 1981 against, inter alia, the National Iranian Gas

Company ("NIGC"). Dames & Moore alleged that it had performed "engineering and technical quality control work" under a contract concluded "in or about 1973" with NIGC, and that invoices in the amount of 7,628,397 Rials (converted to \$108,435) for the performance of such services in 1978 remained unpaid. Claimant noted that it "is not in possession of its contract with NIGC because said contract and all copies thereof are in Iran and Claimant has been unable to remove any of its documents located in Iran." A summary of the two unpaid invoices was attached to the Statement of Claim, however, as Exhibit E.<sup>1</sup> Claimant stated further that NIGC terminated its services following the Iranian Revolution, at which time "NIGC orally informed Claimant's representatives that it had no dispute with these amounts, but that all of its funds were frozen and therefore, no payment could be made." Dames & Moore claimed the monies owing on the alternative bases of contract, an account stated and quantum meruit.

NIGC filed its Statement of Defence on 2 July 1982. NIGC asserted that "Claimant has not furnished any evidence

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<sup>1</sup>The summary set forth the same invoice dates, amounts, and "Job No." or reference number as appeared in the actual invoices when they later were submitted (see infra). The Statement of Claim stated that the invoices were "available" and could be submitted at any time.

to support its claims .... Should substantiating evidence [be submitted] .... necessary measures will be taken [by NIGC]...."<sup>2</sup>

On 8 November 1982 Dames & Moore filed its Statement Regarding Prehearing Conference, attaching as Exhibit A copies of the two allegedly unpaid invoices. The invoices had the same reference number, 8732-016-50; were addressed "Attention: Mr. Moghimi" at NIGC; referred to "Addendum No. I Ref. ET/744 to contract agreement No. 302/2093" and "Soil and Concrete Inspection - Proposed Gas Treating Plant - Khangiran, Sarakhs, Iran"; and principally set forth various charges for "full time" personnel and "overtime" work.

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<sup>2</sup>By contrast Respondents Ministry of Health and National Iranian Steel Industries, Co. ("NISCO") did respond to the Statement of Claim substantively in their Statements of Defence filed the same day, even though Claimant had not submitted its contracts with those Respondents either, alleging that they, like the NIGC contract, were unavailable to it. (Claimant had filed, however, as in the case of NIGC, a summary of the invoices claimed to be unpaid.) In response to Claimant's request for \$66,080 for services performed and invoiced to the Ministry of Health in 1978 and 1979, based on an asserted contract of 1977, the Respondent Ministry attached both the contract and various proofs of payment to its Statement of Defence filed 2 July 1982. Similarly, Respondent NISCO, from which Claimant sought \$123,523 for services rendered and billed in 1979 and 1980 under a 1975 contract, responded by quoting from the contract and submitting evidence of payment with its Statement of Defence filed 2 July 1982. Subsequently NISCO filed the contract itself and additional documents relating to payment, on 25 April 1983, before the Hearing. Ultimately, Claimant was permitted to withdraw its claim against Iranian Medical Center and the Tribunal found for NISCO. Dames & Moore and The Islamic Republic of Iran, Award No. 97-54-3 (20 December 1983).

Their individual data were as follows:

Statement No. 0712 Date: 14 August 1978

Total: Rials 4,526,282

Statement No. 778 Date: 24 October 1978

Total: Rials 3,102,115

The first invoice expressly covered charges for the period 1 March 1978 to 22 July 1978 and the second invoice "charges to your account for the period between Amordad 1 to Aban 1, 1357" (23 July to 23 October 1978).

A Prehearing Conference was held on 17 November 1982.

By Order of 19 November 1982 the Tribunal required the Parties to file no later than 2 April 1983 "all written evidence and memorials they wish to submit in support of their claims or counterclaims."

On 3 February 1983 NIGC nonetheless filed a statement repeating the assertion that "Claimant has neither presented the evidence to establish a legal or contractual relationship between Claimant and [NIGC], nor any other evidence or document to establish truth of its claim and amounts demanded therein." NIGC consequently purported to "reserv[e] the right to submit its response, statements of defense and possibly Counterclaim, in the event Claimant submits concrete and positive evidence in support of its claim." NIGC noted further that it, "too, has not been successful to find out the possible reasons or evidence for Claimant."

Dames & Moore submitted its Memorial in the case on 14 April 1983 together with further copies of the two unpaid invoices "as attachments to, and authenticated in, the concurrently filed Yaghoubian II Affidavit." The Yaghoubian II Affidavit confirmed under oath that the affiant was Claimant's Managing Director in Tehran from 1965 to 1982, authenticated the invoices and stated that "in or about early 1979", when Claimant's services were "terminated" by NIGC, they were "unpaid" although "never disputed by NIGC." The Yaghoubian II affidavit concluded:

To my knowledge, neither the NIGC, nor any other party, has ever paid [Claimant] any amount for the services listed in the invoices ....

Claimant also noted that "NIGC has not denied that Dames & Moore performed work for it at its request, that Dames & Moore's invoices for such work were reasonable and never objected to but never paid, and that a written contract did exist." Claimant noted further

Dames & Moore is willing to submit its claims against NIGC on the basis of this submission, provided that Dames & Moore reserves the opportunity to rebut at hearing any evidence introduced by NIGC in defense of this claim. However, Dames & Moore contends that any evidence NIGC proposes to introduce in defense should be barred on the ground that it is offered too late and in a manner effectively denying Dames & Moore any meaningful opportunity to rebut it.

In fact no Memorial was submitted by NIGC.

The Hearing in the case was held on 12 and 13 May 1983 and the case then was submitted for deliberation by the arbitrators.

In an unauthorized submission of 31 August 1983 NIGC for the first time lodged a counterclaim for unpaid taxes and social security premiums and at the same time proffered certain "Exhibits" as follows:

1. "Exhibit 1" consisted of two invoices:
  - a. A signed invoice on Claimant's letterhead identical in contents to Statement No. 0712 summarized in the Statement of Claim and submitted 8 November 1982 (and later attached to the Yaghoubian II Affidavit) except that it bears the date 25 October 1978 instead of 14 August 1978 and clearly has been typed independently. Every overtime charge has been lined through by hand, however, and the resulting amount of Rials 1,215,525 subtracted from the invoice total, which in turn is lined through by hand, replaced by a revised total of Rials 3,310,707 affixed by hand. (There is no indication as to when and by whom these handwritten changes were made.)
  - b. A signed invoice on Claimant's letterhead identical in every respect to, and hence quite possibly the original of, Statement No. 778 summarized in the Statement of Claim and submitted

8 November 1982 (and later attached to the Yaghoubian II Affidavit). On this invoice, too, every overtime charge has been lined through by hand and the resulting amount of Rials 882,115 subtracted from the total. Likewise the invoice total has been replaced by a handwritten revised total, in this case Rials 2,220,000. (Here, too, there is no indication as to when and by whom these handwritten changes were made.)

2. "Exhibit Two" was a "Payment Order No. 02490" dated 6 May 1979 related to "Contract No. 302/2093" in the initial amount of Rials 4,664,169. Following stated deductions this order sets forth a "Net Amount Payable" of Rials 3,966,872 and records it as "Paid by Cheque No. 17002" from "Current Account No. 90009." It is signed by one "Mohammad Hadi Jafari."
  
3. "Exhibit 3" consisted of four separate items:
  - a. A note addressed to NIGC dated 8 May 1979 signed "Shahin Asgari - Managing Director" on behalf of Claimant and stating that "Mr. Mohammad Hadi Jafari is hereby introduced and designated for receiving this company's cheque."

b. A "Contract Payment Certificate" dated 12 April 1979 referring to "Contract No. 302/2093" and covering the period "from 1.3.78 to 22.10.78". This document bears the signature inter alia of "N. Moghimi." It sets forth initially the amount of Rials 5,530,707 (i.e., the sum of the revised totals handwritten on Claimant's invoices after striking overtime charges as set forth at 1.a. and b. above). It then deducts, however, Rials 866,538 on the ground that this amount "has been paid to [Claimant] as a overtime" as part of a previous payment. (There is no apparent correlation between this figure and the overtime charges which were stricken in their entirety from Claimant's invoices as set forth at 1.a. and b. above.) The resulting net amount certified was Rials 4,664,169 (i.e., the sum set forth in "Payment Order No. 02490" submitted by NIGC as set forth at 2. above).

c. A letter dated 15 November 1978 from Parsons Overseas Company to NIGC recommending for payment invoices of Claimant "hand carried to Site by Mr. Jaffari" as follows:

8732-016-50 dated 24th Oct 1978....

(Statement No. 778).

8732-016-50 dated 25th Oct 1978....

(Statement No. 0712).

In the body of the letter the invoice totals are typed in the same amounts as originally typed on the invoices, but are then lined through by hand and replaced by handwritten totals corresponding to those substituted on the invoices as presented to the Tribunal by NIGC. (Here, too, there is no indication as to when and by whom those changes were made, i.e. whether the revised handwritten totals were contained in the letter as dispatched to NIGC or whether they were affixed by someone thereafter.)

d. A notice from the Official Gazette of 27 March 1979 signed by the Director General of the Corporate Registration and Industrial Patents Office stating that as of 17 March 1979 Mr. Shahin Asgari "was appointed as the Managing Director of the Company." (Mr. Asgari signed the note of 8 May 1979 authorizing Mr. Jafari to receive payment referred to at 3. above.)<sup>3</sup>

The Respondent submitted written arguments based on the

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<sup>3</sup> The Tribunal notes that Claimant submitted in this case an Affidavit of Shahen Askari sworn to 31 March 1983 in support of a claim of expropriation asserted by Claimant against the Islamic Republic of Iran which stated that "in February 1979, I was designated the General Manager of the Dames & Moore Tehran office with full power to manage the company's business in Iran," that he then "went to Tehran" and was there "[d]uring 1979 . . . regularly" until his "last trip [there] in or about August 1979."

documents and stated that "pursuant to receiving documentation relating to the affidavit of Mr. Najdeh Yaghoubian and invoices appended thereto, which unfortunately was received by us after the hearing, we succeeded, after exerting much effort and following-up the matter, in obtaining certain documents ... hereby respectfully brought to the attention of the Tribunal...."

On 16 September 1983 NIGC filed with the Tribunal an additional document, namely a check numbered 017002 dated 7 May 1979 drawn on "Account No. 90009" at Bank Melli, apparently referring to the "Contract Payment Certificate" noted at 3.b. above and payable to Claimant in the amount of Rials 3,966,872.

On 3 October 1983 Dames & Moore objected to the filing of such "further written submission, exhibits, and counterclaims by the National Iranian Gas Company after close of hearing" on the following grounds:

- (a) The Tribunal ordered that all written evidence or submissions be filed by April 2, 1983;
- (b) The hearing in this matter was closed on May 13, 1983;
- (c) The Tribunal has not authorized any post-hearing memorials or evidentiary submissions concerning Dames & Moore's claim against NIGC; and
- (d) Rule 19 of the Tribunal's Rules provides that, absent a Tribunal order, all counterclaims must be filed with the Statement of Defence. NIGC's Statement of Defence was filed on July 2, 1982, and no Tribunal order has been requested or issued allowing counterclaims to be filed late.

Dames & Moore also noted that

At the hearing before the Tribunal on May 12 and 13, 1983, a representative of NIGC advised the Tribunal that NIGC had no evidence to present. Dames & Moore offered to have Mr. Yaghoubian, who was present in The Hague, appear at the hearing and testify to the matters already sworn to in his affidavit and answer any questions that the Tribunal members or NIGC's representative might have. No party requested that Mr. Yaghoubian testify, and the matter was submitted on Dames & Moore's written evidence.

Lastly, Dames & Moore stated that "[u]nless requested to do so by the Tribunal, Dames & Moore does not intend to respond to NIGC's late-filed memorial, further written submission, exhibits, or counterclaims." The Tribunal did not so order Claimant.

On 14 December 1983 NIGC submitted a further statement in defence and in support of its counterclaim.

On 20 December 1983 the Tribunal rendered Award No. 97-54-3, Dames & Moore and The Islamic Republic of Iran et al., disposing of, inter alia, the claim against NIGC. In the Award, the Tribunal acknowledged that "NIGC made an additional filing 31 August 1983, presenting new evidence" as well as "an additional exhibit" on 16 September 1983 and further "arguments" on 14 December 1983. The Tribunal ruled that "[f]airness, orderliness and possible prejudice to the other party in the case require that the Tribunal disregard the unauthorized filings made by the parties<sup>4</sup> after the

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<sup>4</sup> Claimant, too, had made an unauthorized filing after the Hearing relating to a claim against another Respondent in this case.

Hearing." The Award, inter alia, grants the demand of Claimant against NIGC and concludes "Respondent NATIONAL IRANIAN GAS COMPANY is obligated to pay and shall pay to Claimant DAMES & MOORE the sum of One Hundred and Eight Thousand Four Hundred and Thirty Five United States Dollars (US \$108,435). . . ."

Starting shortly after the Award was rendered both the Agent for the Islamic Republic of Iran and NIGC urged the Tribunal to reopen the case and reconsider the Award in the light of NIGC's post-Hearing submissions. In a letter of 19 January 1984 the Agent simply "[r]aised my objection against the" Award and "solicit[ed] consideration thereof." In response to this "objection" Claimant asserted "there is no legal or equitable basis to reopen this proceeding." NIGC in turn replied to this statement of Claimant, taking the position that the Yaghoubian II Affidavit was a "mere lie" and describing the invoices presented by Claimant as "forged." NIGC relies especially on Article 15 (1) and (2) of the Tribunal Rules as authority for reopening this case. A letter of the Iranian Agent of 23 May 1984 relies on Articles 29(2), 35 and 37 of the Tribunal Rules. That letter, too, refers to the invoices submitted by Claimant as being "manipulated," "fictitious" and characterizes the Yaghoubian II Affidavit as "false testimony." The final Iranian submission on this point, a letter of the Iranian Agent of 30 July 1984, enclosed a letter of 2 June 1984 from NIGC to "Bank Mellat, Vanak Branch" inquiring whether "the cheque [017002 referred to above] [was] credited to Dames

and Moore's account," and, if so, "the date and the exact amount thereof," as well as asking for "the balance of account . . . as of today and whether the said account is open or closed . . . and the latest status of the said account . . . ." The same letter also enclosed Bank Mellat's reply of 16 June 1984 (including a statement of account) stating that the check "was credited to the account of the said company on [14 May 1979]," that the account "at present is closed," having been "inactive in four years," with a remaining balance of 903 Rials "kept in creditors suspense account."

On 4 February 1985 the Iranian Agent, without explanation, requested the Tribunal to "suspend consideration of [the] request" for reopening of the Award. By a Communication to Parties filed 20 March 1985, however, the Tribunal denied such suggestion, noting that the original requests for reconsideration "raise serious allegations concerning the conduct of Claimant . . . and the validity of" the Award against NIGC which it is "vitaly important . . . be dealt with promptly."

## II.

### Reasons for Decision

As a matter of principle the Claims Settlement Declaration and the Tribunal Rules militate against the reopening and reconsideration of awards once rendered. Article IV(1) of the Claims Settlement Declaration states that "[a]ll decisions and awards of the Tribunal shall be final and

binding." Likewise, Article 32(2) of the Tribunal Rules provides that the "award shall be made in writing and shall be final and binding on the parties."<sup>5</sup>

In the face of these provisions as to finality the Respondent and the Islamic Republic of Iran have directed the attention of the Tribunal to Articles 15 (1) and (2), 29 (2), 35 and 37 of the Tribunal Rules. None of these, however, constitutes a grant of authority for the Tribunal to act as now requested. To the contrary, rather than providing even limited exceptions to finality, they prescribe the methods for achieving it in various circumstances.

Article 15(1) and (2) of the Tribunal Rules provide:

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any given stage of the proceedings each party is given a full opportunity of presenting his case.

2. If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

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<sup>5</sup>Article III(2) of the Claims Settlement Declaration provides, inter alia that "the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the Parties or by the Tribunal to ensure that this Agreement can be carried out." Article 32(2) of the Tribunal Rules adopted on 3 May 1983 is unchanged from Article 32(2) of the UNCITRAL Rules. However, a note added to Article 32 of the Tribunal Rules points out that "the term 'parties' means the arbitrating parties."

It is clear from the language and context of Article 15 that its operative terms apply during the arbitral proceedings themselves, prior to the issuance of an award. Its applicability terminates with the rendering of an award. This is especially apparent when Article 15 is compared with Article 29(2), cited by the Iranian Agent, which provides:

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

Thus whatever entitlement to "hearings for presentation of evidence by witnesses... or for oral argument," or for submission of "documents and other materials," may exist prior to the rendering of any award, it thereafter is no longer extant. Indeed, even during the interval between the close of the Hearing and the Award -- precisely the time during which Respondent NIGC proffered its rejected "Exhibits" -- no submission may be accepted unless the Tribunal itself determines this is "necessary owing to exceptional circumstances." Thus neither Article 15 nor Article 29(2) supplies a basis for entertaining this post-Award request for reopening and reconsideration.

In reality what Respondent NIGC and the Agent of Iran appear to be arguing, in reliance on Article 15 and 29(2), is that the Tribunal erred in not finding that "exceptional circumstances" made "necessary" a consideration of the NIGC "Exhibits" when introduced after the Hearing but before the Award. There is, if anything, less legal basis for a

post-Award review of this procedural decision, however, which is imbued with judicial discretion, than for a post-Award reopening of the merits.<sup>6</sup>

The other bases asserted in support of the request for reopening and reconsideration are equally unavailing. Article 35 provides:

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 32, paragraphs 2 to 7, shall apply.

Even if the 19 January 1984 "objection" of the Iranian Agent lodged against the Award of 20 December 1983 were treated as a timely request of Respondent NIGC under this Article, it is clear that what is sought is not truly an interpretation but rather a complete revocation of the Award against NIGC. Likewise the pending request cannot be understood as des-

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<sup>6</sup>The Tribunal notes nevertheless that NIGC's Co-Respondents Ministry of Health and NISCO were able to plead and offer proof of payment in a timely fashion under quite similar circumstances. This suggests that "exceptional circumstances" indeed were absent, and that the Tribunal was well within its legitimately exercised powers in declining to consider NIGC's "Exhibits" offered for the first time 21 months after notification as to Claimant's invoices (in the Statement of Claim), nearly ten months after the invoices themselves were introduced, and over three months after the close of the Hearing.

cribing, under Article 37 of the Tribunal Rules,<sup>7</sup> an "additional award as to claims presented in the arbitral proceedings but omitted from the award" as the Agent of Iran suggests.<sup>8</sup>

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<sup>7</sup>The full text of Article 37 is as follows:

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.
3. When an additional award is made, the provisions of article 32, paragraphs 2 to 7, shall apply.

<sup>8</sup>Although neither NIGC nor the Agent of Iran has cited Article 36 of the Tribunal Rules expressly, reliance thereon appears to be implied in the Agent's 24 May 1984 submission. Article 36 provides:

1. Within thirty days after the receipt of the award, either party with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 7, shall apply.

Clearly, however, the alleged "error" which NIGC and Iran are calling to the Tribunal's attention is not "of similar nature" to "errors in computation" or "clerical or typographical errors."

In the absence of an express grant of authority to the Tribunal to reopen and reconsider cases on the merits after issuance of an award, the question has been posed as to whether an "inherent power" to do so may exist "under exceptional circumstances", at least where an award "was based on forged documents or perjury." See Mark Dallal and The Islamic Republic of Iran, Decision No. 30-149-1 (12 January 1984) and Henry Morris and The Government of the Islamic Republic of Iran, Decision No. 26-200-1 (16 Sept. 1983). The implied or inherent power of an international claims tribunal in this area is an issue which has been subjected to learned analysis<sup>9</sup> and limited judicial scrutiny, with wholly inconsistent results.<sup>10</sup> The instant

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<sup>9</sup>See W. Reisman, Nullity and Revision 208 (1971); D. Sandifer, Evidence Before International Tribunals 403 (Rev. ed. 1975); and J. Simpson & H. Fox, International Arbitration 241 (1959).

<sup>10</sup>Compare Opinion of Sir Edward Thornton, Umpire, concerning the petition for rehearings in the Benjamin Weil and the La Abra Silver Mining Co. Cases (20 October 1876) (United States-Mexican Mixed Claims Commission of 1868) reprinted in 2 J.B. Moore, International Arbitrations 1324 (1898) (Held Commission without authority to grant a rehearing even though the Agent of Mexico in the Weil case had "produced circumstantial evidence which, if not refuted by claimant, would certainly contribute to the suspicion that perjury has been committed and that the whole claim is a fraud") and Opinion of Mr. Justice Roberts, Umpire, concerning the petition for rehearing in Lehigh Valley Railroad (United States) v. Germany ("The Sabotage Cases") (15 December 1933) (United States-German Mixed Claims Commission of 1922) reprinted in 8 U.N. Rep. Int'l Arb. Awards 160, 182 (Held that "[e]very tribunal has inherent power to reopen and to revise a decision induced by fraud").

request for reopening and reconsideration, however, falls well short of justifying any such effort to ascertain the precise balance struck between finality of Tribunal dispositions, on the one hand, and the integrity of its processes on the other.

Although Respondent NIGC and Iran have referred to "forged documents" and "perjury," the "Exhibits" belatedly presented by NIGC do not raise justified concern that the processes of the Tribunal have been subverted.

First, even when read most favourably to NIGC the "Exhibits" show no more than that Rials 3,966,872 were paid to Dames & Moore of the Rials 7,638,397 it claimed from NIGC.

Second, far from being forged documents, Claimant's invoices are identical in all material respects to those produced by NIGC, which thus has confirmed their authenticity.

Furthermore, Mr. Yaghoubian's statement that the invoices remained unpaid as of "in or about early 1979," when Claimant's services were "terminated" by NIGC, is not

inconsistent with the implied allegation in NIGC's submissions that payment was made 7 May 1979. There is no basis in the present record to question Mr. Yaghoubian's belief that the invoiced amounts were "never disputed by NIGC." Likewise no reason can be seen in the record for doubting the bona fides of Mr. Yaghoubian's "knowledge" as of 29 March 1983, the date of his affidavit, that Claimant never had been paid any amount on the invoices.<sup>11</sup> In these circumstances the Tribunal could not reasonably doubt that Mr. Yaghoubian executed his oath in good faith, let alone agree with Respondent NIGC that "he has incriminated himself through perjury."

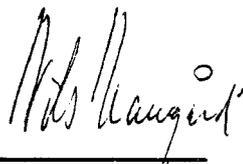
The Tribunal thus concludes that the submissions of Respondent NIGC are not such as to justify the exercise of whatever power the Tribunal might possess to reopen and reconsider a case already concluded by award on the grounds that such award was based on forged documents or perjury.

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<sup>11</sup> The Tribunal notes that in a separate Affidavit also executed 29 March 1983 and submitted in support of an expropriation claim against the Islamic Republic of Iran in this case Mr. Yaghoubian stated (Yaghoubian I Affidavit) that "[i]n or about February 1979 . . . I . . . appointed Shahen Askari as General Manager of the Tehran office and instructed him to go to Tehran . . . " and that this statement was confirmed by Mr. Askari (see note 3 supra) in an Affidavit which did not address the claim against NIGC. While this fact may suggest questions that might have been appropriate to pose to Mr. Yaghoubian at the Hearing had NIGC filed the "Exhibits" in a timely fashion, it does not give rise to a justified suspicion of perjury.

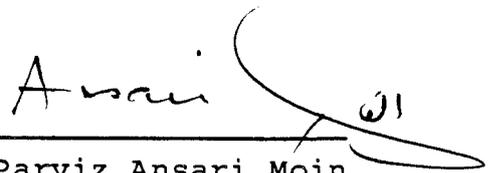
In so doing the Tribunal states no opinion as to the existence of the hypothesized power, but rather expressly reserves such question for future decision should the same be required.

Dated, The Hague  
17 April 1985

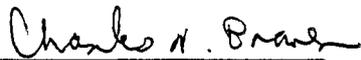


Nils Mangård  
Chairman  
Chamber Three

In the Name of God



Parviz Ansari Moin  
Dissenting



Charles N. Brower