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Case No. 94 of filing: 17 Dec 1906

\*\* AWARD - Type of Award Final  
- Date of Award 17 Dec 016  
6 pages in English          pages in Farsi

\*\* DECISION - Date of Decision           
         pages in English          pages in Farsi

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

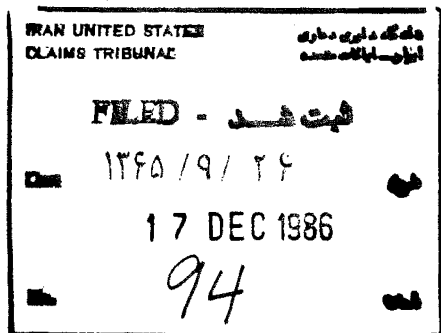
\*\* SEPARATE OPINION of           
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\*\* DISSENTING OPINION of           
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ



CASE NO. 94

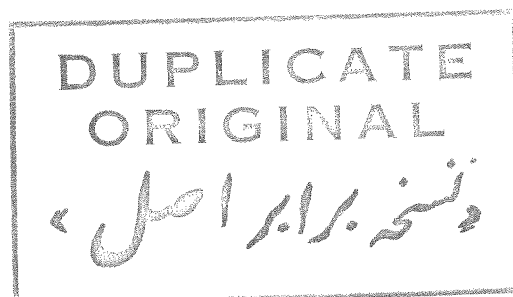
CHAMBER ONE

AWARD NO. 279-94-1

GENERAL MOTORS CORPORATION,  
 GENERAL MOTORS OVERSEAS  
 CORPORATION, and GENERAL MOTORS  
 OVERSEAS DISTRIBUTION CORPORATION,  
 Claimants,

and

THE GOVERNMENT OF THE ISLAMIC  
 REPUBLIC OF IRAN, PARS KHODRO CO.  
 (formerly GENERAL MOTORS IRAN LIMITED),  
 Respondents.

AWARD

This Award resolves the issue of the jurisdiction of the Tribunal over the counterclaim of the ISLAMIC REPUBLIC OF IRAN RAILWAYS ("IRIR") against the Claimants GENERAL MOTORS CORPORATION, GENERAL MOTORS OVERSEAS CORPORATION, and GENERAL MOTORS OVERSEAS DISTRIBUTION CORPORATION (together referred to as "GMC").

I. THE PROCEEDINGS

1. On 18 November 1981, GMC filed a Statement of Claim with the Tribunal against the Respondents THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and PARS KHODRO, CO. (formerly GENERAL MOTORS IRAN LIMITED).

2. On 28 August 1984, the Tribunal rendered a Partial Award on agreed terms, Award No. 147-94-1 recording and giving effect to a Settlement Agreement dated 7 June 1984 between the Parties to this Case. The Settlement Agreement provided for certain reciprocal obligations of the Parties, and was stated to be in "complete, full, and final settlement of all claims and all counterclaims asserted or which could have been asserted by Claimants and Respondents with the Tribunal, including those set forth in Case No. 94, except that Claimants and Respondents expressly exclude from this Settlement Agreement the counterclaim filed by the Islamic Republic of Iran Railways ("I.R.I.R") in Case No. 94."

3. The Partial Award on agreed terms thus disposed of the entire Case with the exception of the counterclaim filed on 16 August 1982 by IRIR, which is the subject of the present Award. In that counterclaim, IRIR seeks damages of US \$114,442,700 against GMC arising out of the latter's alleged failure to ship spare parts for locomotives. The counterclaim purports to be based on a series of contracts

entered into between GMC and Iran State Railways for the sale of 376 diesel railway locomotives. IRIR contends that pursuant to certain commitments undertaken by GMC in addition to those contracts, and in conformity with international trade practice and the previous course of dealings between the parties, GMC was under an obligation to deliver certain spare parts requested by IRIR. GMC failed to do so, causing, it is claimed, extensive operating losses on the part of IRIR.

4. GMC has denied liability throughout on the grounds that the counterclaim falls outside the Tribunal's jurisdiction as it does not arise out of the same contract, transaction or occurrence as the claim; and that there was in any event no obligation to deliver spare parts beyond a reasonable time after the performance of the sales contract.

5. On 18 December 1984, IRIR filed a submission requesting the Tribunal to proceed to adjudicate the counterclaim.

6. In an Order filed on 30 April 1985, the Tribunal invited the Government of the Islamic Republic of Iran to file a memorial addressing the issue of whether the counterclaim of IRIR was within the jurisdiction of the Tribunal. GMC was invited to file a submission in response. In the same Order the Tribunal stated its intention to decide the issue of its jurisdiction over the counterclaim of IRIR on the basis of the documents before it.

7. On 20 December 1985, the Government of the Islamic Republic of Iran filed a Memorial in which it contended that the contractual relationship existing between IRIR and GMC was such as to establish a jurisdictional basis for IRIR's counterclaim as required by Article II, paragraph 1 of the Claims Settlement Declaration.

8. GMC filed a Memorial in response on 17 March 1986 in which it reiterated its request for the counterclaim to be dismissed for lack of jurisdiction.

9. Finally, in Case No. B-46, an official claim before Chamber Three of the Tribunal, Iran State Railways, the Claimant in that Case, had raised a claim against the Government of the United States of America and GMC, as Respondents, which was identical in substance to the counterclaim of IRIR in the present Case. In an Order filed on 28 June 1985, Chamber Three noted that the Claimant in Case No. B-46 had indicated its willingness to withdraw that claim provided such withdrawal did not "impair its rights in Case No. 94 in Chamber One", and that the Respondents had consented to the termination of the Case. Accordingly, Chamber Three terminated the proceeding in Case No. B-46 without prejudice to the adjudication of the counterclaim of IRIR in Case No. 94.

## II. REASONS FOR AWARD

10. In order for a counterclaim to fall within the jurisdiction of the Tribunal, it must, in the words of Article II, paragraph 1, of the Claims Settlement Declaration, "arise out of the same contract, transaction or occurrence that constitutes the subject matter" of the principal claim.

11. Only one of the claims raised by GMC in its Statement of Claim relates to IRIR. Claim X sought \$96,390 in payments due from Iran State Railways under a loan agreement entered into between GMC, the Export-Import Bank of the United States and Iran State Railways to finance 51 of the 376 locomotives which GMC had contracted to sell to Iran State Railways. Under the loan agreement GMC advanced the amount of \$642,600 on behalf of Iran State Railways to finance the cost of transportation of the locomotives. GMC

alleged in its Statement of Claim that IRIR had failed to make three of the payments, each of \$32,130, due under the loan agreement on 15 February 1980, 15 August 1980 and 15 February 1981, respectively. The claim thus arose out of the loan agreement, and not out of the underlying contract for the sale of the locomotives.

12. IRIR has contended that its counterclaim arises out of the same contracts which gave rise to GMC's claim, and that the sale contracts formed an "inseparable and integral" part of the Parties' contractual relationship. The Tribunal cannot accept this argument. GMC's claim arose out of a loan agreement which was entirely separate and distinct from the contracts for sale. It related only to the financing of the purchase of only 51 of the 376 locomotives to which the counterclaim relates, and it involved a different party, the Export-Import Bank of the United States. The obligations which it engendered were independent of those created by the sale contracts. On the other hand, IRIR's counterclaim for damages for failure to supply spare parts could have arisen only out of the sale contracts. The alleged obligation on GMC to continue to supply spare parts under the sale contracts, and the obligation incumbent on IRIR to make payments under the loan agreement, are thus entirely separate and cannot be said to derive from the same contract, transaction or occurrence. The counterclaim of IRIR is therefore dismissed as it is outside the jurisdiction of the Tribunal.

### III. AWARD

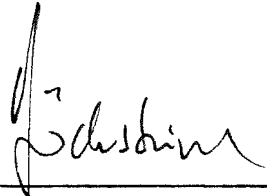
For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

- a) The Counterclaim of ISLAMIC REPUBLIC OF IRAN RAILWAYS against GENERAL MOTORS CORPORATION is dismissed for lack of jurisdiction.

b) Each Party shall bear its own costs of the arbitration.

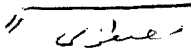
Dated, The Hague  
17 December 1986



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Karl-Heinz Böckstiegel  
Chairman  
Chamber One

In the Name of God



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Mohsen Mostafavi  
Concurring in the result  
on the ground that based  
on provisions of the  
Contract, Iranian Courts  
have competence.



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Howard M. Holtzmann