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IRAN - UNITED STATES CLAIMS TRIBUNAL

دادگاه داری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

Case No. 165

Date of filing 14 June 1983

☒ AWARD. Date of Award 13 June 1983

25 pages in English. — pages in Farsi.

☐ DECISION. Date of Decision _____

_____ pages in English. _____ pages in Farsi.

☐ ORDER. Date of Order _____

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☐ CONCURRING OPINION of _____

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☐ OTHER; Nature of document: _____

Date _____ pages in English. _____ pages in Farsi.

DUPLICATE
ORIGINAL

نسخہ برابر اصل

CASE NO. 165
CHAMBER ONE
AWARD NO.55-165-1

ECONOMY FORMS CORPORATION,

Claimant,

and,

THE GOVERNMENT OF THE ISLAMIC REPUBLIC
OF IRAN; THE MINISTRY OF ENERGY; DAM & WATER
WORKS CONSTRUCTION CO. ("SABIR"); SHERKAT
SAKATEMANI MANI SAHAMI KASS ("MANA"); and
BANK MELLAT (formerly BANK OF TEHRAN),

Respondents.

AWARD

APPEARANCES:

For the Claimant:

William J. Koehn
Davis, Hockenberg,
Wine, Brown & Koehn
Attorney for Claimant
Ralph Jennings
Chairman of the Board
Economy Forms Corp.

For the Respondents:

A.F. Kashan
Agent of the Islamic
Republic of Iran
Parviz Ansari
Legal Adviser to
the Agent
H. Moadi
Attorney for
Bank Mellat and Mana
Mr. Shojaie
Representative of
Mana

Also present:

Jamison M. Selby
Deputy Agent of the
United States

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	۱۳۶۲ / ۲ / ۲۴
14 JUN 1983	
No.	165
سند	۱۶۵

I. Facts and Contentions

In 1934 Allen Jennings of Des Moines, Iowa, U.S.A. developed a system consisting of metal panels, ties and clamps for use in forming concrete. He began production in his basement as Economy Forms Corporation, a corporation organized under the laws of the State of Iowa. In time, managed at first by himself and later by his sons, Economy Forms developed significant domestic as well as overseas markets, including Iran. This claim arises out of certain transactions entered into with Respondents Mana and Sabir. Sabir is a construction company a number of whose shares are owned by the Ministry of Energy of the Islamic Republic of Iran; Mana Construction Co. is a company 100% of whose shares are owned by the Industrial Development and Renovation Organization, all of whose shares are in turn owned by the Government of the Islamic Republic of Iran, and by a few governmental organizations.

Claimant's Contentions

Beginning in 1975 representatives of Economy Forms travelled to Iran and obtained orders for concrete forming materials. These materials were then shipped to the clients by Economy Forms. Typically, the customer in Iran would

consult at the construction site with the Economy Forms field representative and arrive at an agreed list of materials based on the special needs of a given project. The contents of that list would either be telexed or hand-carried back to Economy Forms' home office in Iowa for confirmation and approval which was then recorded on what was called a "Pro-Forma Invoice". The Pro-Forma Invoice would then be sent to the customer in Iran, as the basis for opening a letter-of-credit to secure payment under the agreement. Barring receipt of an objection to the Pro-Forma Invoice from the customer within a reasonable time, Economy Forms would begin manufacture of the materials in order to meet the shipping schedules referred to in that Invoice. In order to meet those schedules, and at the customer's request, manufacture was begun prior to receipt of advice of any letters-of-credit which might be opened. The Iranian customer never objected to any Pro-Forma Invoice -- either in the transactions involved in this case or any earlier ones.

On 29 August 1978, in accordance with the above-described pattern, Economy Forms confirmed through a Pro-Forma Invoice an order by Mana for \$297,567.15 worth of concrete construction materials, for use in building the foundations of a steel mill in Bandar Abbas. Payment was to be made under a letter-of-credit issued in Economy Forms' favor by the Bank of Tehran at Mana's request on 20 September 1978.

The letter-of-credit was issued in the amount of \$357,070.15, representing the price of the goods plus \$59,503 for cost and freight to Iran. Economy Forms began manufacture of the materials -- much of it specified in metric dimensions -- sometime prior to its receipt of advice of the letter of credit on 10 October 1978. Manufacture was completed by December 1978, and the goods were crated and dispatched to the port of Baltimore. They were there delivered to the shipping agent Arya National Shipping Lines, S.A., on 18 December 1978, destination Iran, 2 days prior to the deadline for that delivery. Although Economy Forms presented the required shipping documents to the Bank of Tehran's correspondent bank in New York for payment under the letter-of-credit, it was informed that payment could not be effected due to the unavailability of funds in the Bank of Tehran's account. However, subsequent to the issuance of an on-board Bill of Lading, the goods were refused for shipment by the master of the ship to which they had been consigned, due to uncertainties with respect to the availability of necessary port unloading facilities in Iran. By late January 1979, after failing to obtain payment, Economy Forms judged it prudent to retrieve the goods from Baltimore upon surrender of the Bill of Lading and return them to Iowa. There they now are, in protective storage.

On 15 September 1978 Economy Forms similarly confirmed an order of forming materials for Mana's use in building a

steel mill in Esfahan, in the amount of \$861,166. No letter-of-credit was ever issued to secure payment of this amount. The goods were duly manufactured by Economy Forms, but were never shipped due to internal difficulties in Iran. They too remain in storage in Iowa. The same pattern obtains with respect to a 21 October 1978 Pro-Forma Invoice to Mana in the amount of \$175,900, a 10 November 1978 Pro-Forma Invoice to Mana in the amount of \$208,882, and a second 10 November 1978 Pro-Forma Invoice to Mana in the amount of \$98,877.10.

On 17 February 1979 Economy Forms received a request from Sabir for the shipment of a quantity of accessories to forming materials previously delivered to Sabir, for a dam building project, and necessary to the use of those materials. There was an indication that the identical materials shipped with the main order had been lost somewhere between Iowa and Iran. Economy Forms was able to ship the accessories to Iran on 20 June 1979, with payment requested in the amount of \$4,256.82. The accessories were ultimately received in Iran but were never paid for.

Economy Forms' claims, filed on 18 December 1981, are for the invoiced amounts of the forming materials, plus the cost and freight charges covered by the letter-of-credit issued with respect to the 29 August 1978 Pro-Forma Invoice, special handling charges in connection with that same order,

ordinary handling charges on all orders, plus storage charges and interest. The claim against Bank Mellat is based on the theory that its predecessor, Bank of Tehran, failed to effect payment under a letter-of-credit despite presentation of the necessary shipping documents to its correspondent bank in New York.

In summary, Economy Forms' claimed the following amounts:

The 29 August 1978 Pro-Forma Invoice

Contract price:	\$357,070.15
Special handling charge:	\$30,000.00
Handling charge:	\$35,707.00
Storage charge of \$7.93 per day or \$2,856.00 per year and	
interest in the amount of \$148.78 per day or \$53,560.52 per year from 12 December 1978.	

The 15 September 1978 Pro-Forma Invoice

Contract price:	\$861,166.00
Handling charge:	\$86,116.60
Storage charge of \$19.14 per day or \$6,889.33 per year and	
interest in the amount of \$358.82 per day or \$129,174.90 per year from 15 November 1978.	

The 21 October 1978 Pro-Forma Invoice

Contract price: \$175,900.00
Handling charge: \$17,590.00
Storage charge of \$3.90 per day or \$1,407.20 per year
and
interest in the amount of \$73.29 per day or \$26,385.00
per
year from 21 December 1978.

The first 10 November 1978 Pro-Forma Invoice

Contract price: \$208,882.00
Handling charge: \$20,888.20
Storage charge of \$4.64 per day or \$1,671.06 per year
and
interest in the amount of \$87.03 per day or \$31,332.30
per
year from 10 January 1979.

The second 10 November 1978 Pro-Forma Invoice

Contract price: \$98,877.10
Handling charge: \$9,887.70
Storage charge of \$2.20 per day or \$791.02 per year and
interest in the amount of \$41.20 per day or \$14,831.57
per
year from 10 January 1979.

The Sabir claim

Invoiced price: \$4,256.82
interest at the rate of \$2.30 per day or \$835.52 per
year
from 30 June 1979.

Economy Forms has indicated that it had calculated the
damages as follows: determination of contract price for

manufacture and sale of the goods, standard handling charge of ten percent of the contract price for the concrete construction forms and accessories, the standard storage charge of eight tenths of one percent of the contract price for the concrete construction forms and accessories per year and interest at the annual interest rate of 15% per year.

Respondents' Contentions

Bank Mellat contended that it fulfilled all of its obligations as the issuing bank on the letter-of-credit covering the 29 August 1978 Pro-Forma Invoice. The Bank further contended that it properly cancelled the letter-of-credit on 29 July 1979 at Mana's request. Mana also denied any liability on the 29 August 1978 order due to Economy Forms' failure to ship the goods. Mana further denied liability with respect to the 15 September, 21 October and the two 10 November 1978 Pro-Forma Invoices on the theory that no contracts were ever formed. Instead, Mana contended that the Pro-Forma Invoices constituted no more than bids from Economy Forms submitted for Mana's consideration.

Sabir denied liability for the shipment of accessories, based largely on Economy Forms' alleged failure to fulfill an obligation to dispatch a field representative. Sabir has also presented a counterclaim arising out of this transaction in the amount of \$14,347 for delays in construction at the same project alleged to have been suffered

due to the failure of Economy Forms to comply with the request from Sabir to send a field representative on site in mid-1979.

The hearing in this case was held on 15 February 1983.

II. Jurisdiction

The Tribunal concludes that it has jurisdiction over Economy Forms' claim as the claim of a United States national within the meaning of Article VII, paragraphs 1 and 2 of the Claims Settlement Declaration. Although no underlying documents to establish the citizenship of the holders of more than 50% of the voting stock in Economy Forms were produced, the statement at the hearing of Ralph Jennings with respect to that citizenship is a sufficient basis for the Tribunal's conclusion. He stated that of the voting stock of Economy Forms, 65% is held by the "Jennings Second Trust", the trustees of which are all three of Allen Jennings' sons, and his one son-in-law. The beneficiaries of the trust are presently Allen Jennings' widow and his sons, one of whom is Ralph Jennings. On Mrs. Jennings' death, the trust will split into four parts, one for each of the trustees. The income from the trust, however, will go to the children of the trustees. Ralph Jennings affirmed on the basis of his personal knowledge that both the trustees

and the beneficiaries of the Jennings Second Trust are citizens of the United States.

With respect to the Tribunal's jurisdiction, Respondents have denied that Mana and Sabir are entities controlled by the Government of Iran. The Tribunal notes first that no jurisdictional objection on this ground was set forth in the Statements of Defence. Instead, the objections were first raised at the hearing. Nevertheless, because there was a full airing of the parties' positions at that time, the Tribunal is able to conclude that in fact both Mana and Sabir are "entit[ies] controlled by the Government of Iran" within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration.

It is admitted by Respondents that the shares of Mana are 100% owned by the Industrial Development and Renovation Organization, all of whose shares in turn are owned by the Government of Iran and a few governmental organizations, and that a number of Sabir's shares are owned by the Ministry of Energy. The Tribunal notes in this connection that the stationery used by Sabir bears the heading: "Ministry of Energy" below which is written "Dam and Water Construction Company", and then "SABIR". The stationery further bore the logo of the former Imperial Government of Iran.

It is Respondents' position, however, that because their shares are not owned directly by the Government, but indirectly through one of its Ministries or other governmental organizations, Mana and Sabir are not themselves "controlled" by the Government of Iran. The Tribunal rejects that position. First, no distinction is made in Article VII, paragraph 3, between direct and indirect control by the Government. Second, the separate juridical status of an entity two or more levels removed from the Government itself is not a sufficient basis from which to conclude that the entity conducts its operations free of the control of the Government. The Tribunal therefore holds that it has jurisdiction over both Mana and Sabir as controlled entities.

III. Reasons

1. Applicable law

It is a generally accepted principle of private international law that the formation of and the requirements as to the form of a contract are governed by that law which would be the proper law of the contract, if the contract was validly concluded. See 2 Dicey & Morris, The Conflict of Laws Rule 146 at 775 and Rule 148 at 784 (10th ed. 1980); O. Lando, Contracts, in III International Encyclopedia of Comparative Law, Chapter 24 at 102-103.

The goods were to be manufactured in Iowa by Economy Forms and delivery and payment had also to be made in the United States. In view of these circumstances the Tribunal holds that United States law governs the contract, since the centre of gravity of these business dealings was in the United States, that being the test under general principles of conflicts of law. Consequently, the law applicable to the contract, including its formation, is the Uniform Commercial Code, enacted e.g. as Iowa Code §§ 554.1101-09 by the Iowa legislature, 1965, (61 G.A.) c.413 (effective 4 July 1966; hereinafter "UCC").

2. Formation of the Contracts

Under UCC §2-204 a contract may be formed in any manner sufficient to show agreement, including conduct by the parties that recognizes the existence of such a contract. A widely accepted corollary of this general principle is that a series of communications between parties may together constitute a contract between them.

The evidence before the Tribunal indicates that Mana and Economy Forms carried out business from 1977 through the period covering the five transactions which constitute the largest portion of this claim by means of: (1) discussions between representatives of Mana and Economy Forms at a Mana construction site in Iran, leading to the formulation of a

list specifying Mana's requirements at that site; (2) communication of this list of requirements to Economy Forms in Des Moines; and (3) dispatch by Economy Forms to Mana of a document termed "Pro-Forma Invoice" containing the list of equipment with technical corrections as necessary and certain additional terms.

Steps 2 and 3 of this process are illustrated by the communications that lead to the issuance of the Pro-Forma Invoice of 29 August 1978. A telex from Mana to Economy Forms submitted at the hearing contains a list of requirements comprising a specification of items, unit costs and total costs. Economy Forms responded in a letter that opens "Thank you for your order of EFCO Forms for Bandar Abbas. We are enclosing the Proforma Invoice for this EFCO equipment. We have taken the liberty to correct a few minor typographical errors and show the correct total cost." The letter goes on to call attention to supplementary terms contained in the Pro-Forma Invoice, dealing with the method of payment and the shipping terms. Economy Forms then manufactured and dispatched the goods listed by Mana.

Since Mana denies that any contract was concluded with respect to the 15 September, 21 October and the two 10 November 1978 Pro-Forma Invoices, a threshold question in connection with these invoices is whether a contract was

formed at any point during the series of communications between the parties.

Economy Forms' unconventional use of the term "Pro-Forma Invoice" presents the Tribunal with a certain ambiguity as to the legal interpretation of the various steps in the series of communications between the parties. However, the process described above in connection with the August 29 Pro-Forma Invoice, which the parties do not dispute created a contract, leads the Tribunal to conclude that in their subsequent dealings the parties understood Mana's lists of requirements to be orders, and Economy Forms' "Pro-Forma Invoices" to be acceptances of those orders. This process further demonstrates that the parties understood that Economy Forms in its acceptances would make necessary technical corrections to the lists of requirements, and would add shipping and payment terms. The conduct of the parties indicates that no reply to these corrections and additions was expected unless Mana had some objection to them. With respect to the five transactions at issue here, no such objection ever occurred. See UCC 2-207 (1) and (2).

The subsequent actions of the parties confirm that each considered itself contractually bound. In each transaction Economy Forms commenced its work on the materials ordered shortly after dispatching its acceptance. In proceeding so quickly Economy Forms admittedly risked Mana's rejection of

its corrections and additions. It is inconceivable, however, that Economy Forms would have proceeded in this manner if it had not believed that a contract was created through the communication of Mana's list of requirements and Economy Forms' Pro-Forma Invoice. Mana, likewise, acted as if a binding contract had been formed for the materials that were the subject of its orders. For example, Mana placed no orders with any alternative suppliers for the materials that were admittedly necessary for the completion of its ongoing projects, but awaited delivery of the materials ordered from Economy Forms. Indeed, so far as the evidence indicates, Mana did not even solicit alternative bids for the same materials from other suppliers. See UCC 2-207 (3).

Following the formation of the contracts, it was Mana's obligation to see to the issuance of letters-of-credit as security for payment to Economy Forms. In one case such a letter-of-credit was opened, in four others not. Mana's compliance or not with that obligation had no bearing on the formation of the underlying contract, but was simply an additional obligation for securing payment thereof.

The Tribunal therefore concludes that the contracts at issue in this case were concluded between Economy Forms and Mana.

With respect to the sixth, separate transaction involving the shipment of certain accessory materials to Sabir, there is no issue that the goods were sold and delivered pursuant to Sabir's request, and that a contract was formed as to that sale. See UCC §2-206 (1) (b).

3. Liability and Damages Under the five Mana Contracts

a. Liability under the 29 August 1978 Pro-Forma Invoice

According to the 29 August 1978 Pro-Forma Invoice the goods covered by this invoice were sold C & F Iranian port. Economy Forms was thus obligated to provide and pay for transportation to such a port. The evidence in the case shows that Economy Forms manufactured the goods and made arrangements to ship them prior to the deadline for delivery provided in the contract. Indeed, Economy Forms received both a Forwarding Agents's Receipt and an on-board Bill of Lading certifying that the goods were en route from the port of Baltimore loaded on board a named vessel. The Tribunal therefore holds that Economy Forms at the time of the deadline for delivery had made all reasonable efforts to fulfill its obligation to provide for transportation.

The sequence of events which then occurred is somewhat unusual. As stated before, when Economy Forms presented the

shipping documents to the Bank of Tehran's correspondent bank in New York, it was informed that payment could not be effected under the letter-of-credit due to the unavailability of funds in the Bank of Tehran's account. Subsequently, Economy Forms learned that the goods had never been shipped. As Mr. Jennings put it at the oral hearing: "The goods were still sitting on the docks in Baltimore". According to the Claimant's own allegation the goods had in fact not been loaded on board the ship, despite the fact that an on-board Bill of Lading had been issued.

There can be no doubt that Economy Forms, once it had learned that the goods were not shipped, in principle was under an obligation promptly to make new arrangements for the shipment of the goods to Iran. However, at that time Economy Forms had already been informed by the Bank of Tehran's correspondent bank in New York that no funds for the time being were available for payment. Consequently, Mana was in breach of the obligation under the contract to provide for payment in the United States through a letter-of-credit, and Economy Forms had no obligation to attempt further shipments as long as the breach continued. On 30 January 1979 Economy Forms was eventually informed by the correspondent bank that no payment was going to be made under the letter-of-credit. Mana's breach of the contract was then finally established, and Economy Forms acted prudently in retrieving the goods from Baltimore upon surrender of the Bill of Lading and returning them to Iowa.

The evidence produced shows that the shipping documents presented to the Bank of Tehran's correspondent bank in New York did not accurately reflect the state of affairs in Baltimore. The New York bank approved the documents as the basis for payment but since the Tribunal has the benefit of the full story, it is clear that the obligation of the Bank of Tehran to pay under the letter-of-credit cannot now be engaged by Economy Forms in respect of goods which it has retrieved upon surrender of the Bill of Lading. Accordingly, Economy Forms cannot now recover as against Bank Mellat.

b. Liability under the remaining four Mana Contracts

The existence of valid contracts between Mana and Economy Forms entitled Economy Forms to continue and complete manufacture of the forming materials. The manufactured goods were then designated by Economy Forms as the goods to which the various contracts referred. Since no letters of credit were ever opened with respect to the remaining four contracts, Economy Forms was justified in treating those contracts as having been breached by Mana. Therefore, Economy Forms had no obligation to attempt shipments, and acted prudently in not doing so.

According to the four Pro-Forma Invoices the times for delivery were to be calculated from the date of the opening of the letters-of- credit, but the terms of the contract did

not contain any time limit within which Mana had to open the letters-of-credit. However, the contracts must be deemed to imply that Mana was obligated to open the letters-of-credit within a reasonable time after the conclusion of the contract. See UCC 2-309 (1). The Tribunal therefore concludes that Mana's breach also of these contracts finally occurred during the early part of 1979.

c. Calculation of the Damages

Mana has not asserted that Economy Forms failed to manufacture the goods, and it is consequently not an issue in the case that the goods were manufactured in accordance with the specifications laid down in the Pro-Forma Invoices. These specifications show that portions of the goods consisted of generally usable materials while the major part was tailored for the requirements of a given construction project. The goods were further in large part manufactured in metric specifications, and thus resalable only if purchasers for these specially-made goods could be found in any of Economy Forms' overseas markets.

Mr. Jennings stated at the hearing that he at some later stage was in communication with Mana who at that occasion declared that they wanted Economy Forms to resell the goods since they were not interested in taking delivery due to changed circumstances.

The Claimant has not presented any evidence regarding its efforts to resell the goods, apart from a statement by Mr. Jennings at the hearing that he made efforts to resell the goods following the above-mentioned communication with Mana, but was unable to do so. However, based on the evidence available the Tribunal finds that it has been proved that the goods were at least in part difficult to resell. Mana has not contended that its inability to take delivery was due to force majeure. The Tribunal therefore concludes that Economy Forms is entitled to damages due to Mana's breach of the contracts.

Under UCC § 2-709(1)(b) Economy Forms would be entitled to recover the agreed price from the buyer, Mana, "together with any incidental damages ... of goods identified to the contract if [it] is unable after reasonable effort to resell them at a reasonable price...." Such incidental damages may include storage costs. Id. at § 2-710. The evidence shows, however, that the portions of the orders consisting of generally usable materials manufactured without regard to metric specifications have a considerable residual value to Economy Forms in contrast to some of the specially ordered metric materials. The Tribunal therefore believes it fair to adjust the invoiced amounts in such a way as to reflect this residual value, since the goods will remain at Economy Forms' disposal without the need to account to Mana.

In order to determine accurately what that residual value is, the Tribunal would have required of the Claimant evidence of possible resale prices and resale opportunities in the near future, potential scrap value, costs of resale efforts, etc. Economy Forms, however, produced only general testimony on these questions which was unsatisfactory for precise computation of damages. The Tribunal must accordingly determine equitably the damages to be awarded, taking into account the potential differences in resale value of metric and nonmetric materials, and reasonable storage charges.

The Pro-Forma Invoices do not provide for any handling charges to be paid, except for handling costs at the port of loading for which no claim has been made. The Claimant has not provided any evidence as to the character of the claim for handling charges, but in the absence of any articulate objection from Mana the Tribunal finds it appropriate to award Economy Forms reasonable compensation also for handling costs.

The amount of the 29 August 1978 Pro-Forma Invoice for which Economy Forms claims compensation includes costs and freight to Iranian port. Since these goods were never shipped from Baltimore, and Economy Forms has not submitted any evidence to show that the freight and other costs

relating to the ocean transport from Baltimore actually has been paid or, if paid, that Economy Forms was unable to recover such freight and costs, the Tribunal finds it appropriate to award compensation only for the inland freights.

Economy Forms is also entitled to interest on the compensation to be awarded. Since the evidence does not permit the Tribunal to determine the exact amount due to Economy Forms in respect of each one of the Pro-Forma Invoices, the Tribunal finds it appropriate to award interest in the form of a lump sum to be determined within the exercise of the Tribunal's discretion. The Tribunal holds that interest shall be calculated on the compensation for materials as from a date reflecting the date of the breach, while interest shall be awarded on the handling and storage charges from the date of filing by Economy Forms of its claim, because those charges could not be ascertained from the contracts themselves.

The Tribunal determines that Economy Forms is entitled to compensation from Mana for materials and for handling and storage charges during a reasonable period of time from the date of breach in the sum of \$1,500,000, including interest computed as above.

4. The Sabir Contract

The particular goods here in question were necessary to the use of other, more expensive components of the Economy Forms system. The evidence indicates that Sabir by the time of receipt of the goods had already become familiar with the Economy Forms systems. Sabir has not submitted any evidence to substantiate its allegation that the goods could only be used with special instruction. There is thus no basis for Sabir's defence that the goods were of no use to it without the presence of an Economy Forms field representative.

A telex from Economy Forms to Sabir in the beginning of May 1979 proves that Economy Forms was willing to send a field representative to Sabir's building site in Iran, provided that Mana made an advance payment of the airfare for a round trip to Iran. Sabir accepted these terms in a subsequent telex to Economy Forms but it is undisputed that no payment of this airfare was ever received by Economy Forms. No damage may therefore be claimed from Economy Forms arising out of delays occasioned by any failure to send a field representative to Iran. Economy Forms is therefore entitled to \$6,000 recoverable against Sabir. Since the invoice regarding these goods does not contain any condition for payment, the Tribunal finds it appropriate to include the interest as part of the lump sum recoverable from Sabir.

5. Other Questions

The Claimant has not invoked any ground on which the Government of Iran or the Ministry of Energy can be held liable in this case.

In view of the circumstances in this case the Tribunal finds it appropriate not to award Economy Forms compensation for legal fees in connection with this claim.

IV. Conclusion

The Tribunal awards as follows:

(1) The claims against the Government of the Islamic Republic of Iran and the Ministry of Energy and the counter-claims against Economy Forms are dismissed.

(2) Sherkat Sakatemani Mani Sahami Khass (Mana) is obligated to pay Economy Forms, Inc. One Million Five Hundred Thousand United States Dollars (U.S.\$1,500,000).

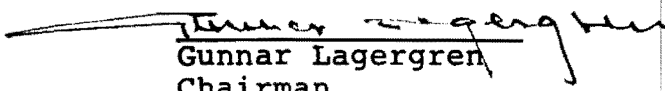
(3) Dam & Water Works Construction Co. (Sabir) is obligated to pay Economy Forms, Inc. Six Thousand United States Dollars (U.S. \$6,000).

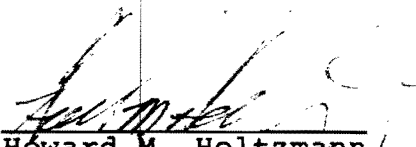
Economy Forms, Inc. is entitled to compensation for costs in the amount of Ten Thousand United States Dollars (U.S.\$10,000), recoverable against Mana.

The above obligations shall be satisfied by payment 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.

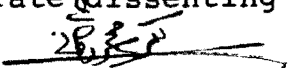
The Award is submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated: The Hague
13 June 1983


Gunnar Lagergren
Chairman
Chamber One


Howard M. Holtzmann
Concurring Opinion

I dissent from the majority not only on jurisdiction and nationality but also on the merit of an award which is contrary to the domestic and international trade law, which has considered as contract a number of pro formae, whose value is even less than an offer and which unjustly has condemned the Respondents to pay \$1.5 million for the goods they did not receive. General principles of law and justice have been so transgressed by this award that has left no security for the Government of Iran in this Tribunal. Moreover while regarding interest, Case A/19 is pending before the Full Tribunal of nine members, on the request of the Government of Iran any kind of decision as to that issue in the chambers is prejudgment and against the law. Detailed and reasoned defences of the Respondents, which are not reflected in the award, will be discussed in my separate dissenting opinion.


Mahmoud M. Kashani

