

ORIGINAL DOCUMENTS IN SAFE

Case No. 192

Date of filing: 9/12/1992

192-102

** AWARD - Type of Award AWARD
- Date of Award 9 DEC 1992
16 pages in English 18 pages in Farsi

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

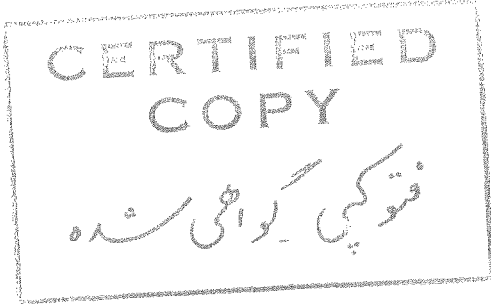
** CONCURRING OPINION of _____
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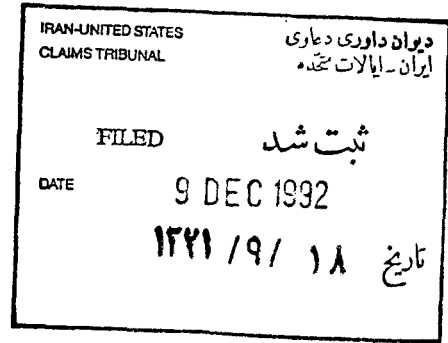
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TCHACOSH COMPANY, INC.,
 SIPOREX COMPANY, INC.,
 GASHTAWAR COMPANY, INC.,
 Claimants,
 and
 THE GOVERNMENT OF THE
 ISLAMIC REPUBLIC OF IRAN,
 THE IRANIAN PARLIAMENT (THE MAJLIS),
 Respondents.

CASE NO. 192
 CHAMBER ONE
 AWARD NO. 540-192-1



AWARD

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1. This Award concerns whether the Claimant Siporex Company, Inc. has fulfilled the jurisdictional requirements defined in Article VII, paragraph 2 of the Claims Settlement Declaration ("CSD")¹. It is issued pursuant to paragraph 4 of the Tribunal's Order filed on 14 March 1991, in which the Tribunal stated that it "intends to take a decision regarding its jurisdiction on the basis of the evidence before it...." Before issuing the Tribunal's decision, however, it is appropriate to describe the procedural history of this Case and to deal with some requests relating to procedure that were filed during the course of the proceedings in this Case.

I. THE PROCEEDINGS

2. On 6 January 1982, the Claimants TCHACOSH COMPANY, INC., ("TCHACOSH"), SIPOREX COMPANY, INC. and GASHTAWAR COMPANY, INC. ("GASHTAWAR") filed a Statement of Claim against the ISLAMIC REPUBLIC OF IRAN and the ISLAMIC REPUBLIC OF IRAN, HOUSE OF CONGRESS (sic). In the Statement of Claim, the Claimants sought damages in the amount of U.S.\$570,573,000², together with interest, as compensation for the alleged expropriation of their assets in Iran on or about 25 June 1979. The Claimants contend that the expropriated assets were in part owned by Siporex

¹Article VII, paragraph 2 of the CSD states in relevant part:

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

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

Company, Inc. (Iran) (hereinafter referred to as "Siporex Iran"), a private joint-stock company that was allegedly established in Iran in 1972; Siporex Iran operated, as the Claimants assert, under a license granted by Siporex Company, Sweden to produce certain building materials. On 31 January 1983, the Respondent the Government of the Islamic Republic of Iran ("Iran"), filed a Statement of Defense, contesting the Claim both with respect to jurisdiction and to the merits. On 3 October 1985, the Claimants filed a submission entitled "Partial Reply of Claimant Siporex Company, Inc. to Statement of Defense". On 20 February 1987, the Respondents filed a "Motion for a Ruling to Dismiss the Case and Supplementary Rejoinder."

3. On 5 August 1987, the Claimants filed a "Reply to the Respondents' Motion and Rejoinder". In this brief, the Claimants submit that Claimant Siporex Company, Inc. is a company incorporated in California on 15 April 1980 (hereinafter referred to as "Siporex California" or "the Claimant"); further, that from its inception until the present, Mr. Armen Ashot Saginian, a United States national who is admittedly also a national of Iran, has been a majority shareholder of Siporex California, owning 570 of its 1000 authorized shares, representing a 57% interest. Three copies of stock certificates purporting to prove the ownership of 570 shares by Mr. Saginian in Siporex California are presented as evidence. In addition, the Claimants submit that Mr. Saginian acquired 57% ownership of the stock of Siporex Iran in 1977; and that since 1977, Mr. Saginian allegedly has continuously held such principal interest in Siporex Iran. As evidence of this, Siporex California presents one of the unregistered bearer shares in Siporex Iran said to be owned by Mr. Saginian, as an example of the total of 14,250 shares allegedly held by him.

4. Subsequently, on 1 September 1987, the Respondents filed a submission entitled "A Summary of the Case and its Procedural Events and Repeating the Motion for Dismissal of the Claim". On 3 January 1990, Claimant Siporex California filed a submission entitled "Claimant's Brief in Support of Right to Relief and

Recovery of Damages - Request for Hearing". In this brief Siporex California states that it suffered damages amounting to \$352,065,000, and adjusted the amount of the relief sought accordingly. Siporex California is claiming interest at the rate of 10% per year on this amount. The brief also seeks to add as a Respondent to the proceedings the Iran National Industries Organization on the ground that evidence contained in that brief allegedly shows that Siporex Iran, and all its assets, have been taken over by said organization. As to the question of "control" over Siporex Iran by the Government of Iran, Siporex California refers to the Tribunal's findings in Rexnord, Inc. and The Islamic Republic of Iran, et al., Award No. 21-132-3 (10 Jan. 1983), reprinted in 2 Iran-U.S. C.T.R. 6. In response to the brief of Siporex California, Iran filed a submission on 21 February 1991, entitled "Request to Dismiss the Case on Ground of Res Judicata, or to Decide Jurisdiction as a Preliminary Issue". In this submission, Iran referred to the Tribunal's decision to dismiss the claim asserted in Case No. 454, Jonathan Ainsworth and The Islamic Republic of Iran, et al., Award No. 350-454-3 (29 Feb. 1988), reprinted in 18 Iran-U.S. C.T.R. 92 ("Ainsworth"), in which the Tribunal dismissed the claim on jurisdictional grounds. Iran, in particular, argues that since Case No. 454 dealt with the same subject matter as the present Case, i.e., the alleged expropriation of the three Iranian corporations, Siporex Iran, Tchacosh Iran and Gashtawar Iran, the Tribunal's findings in Case No. 454 constitute res judicata and therefore bar litigation of the same issues in the present Case.

5. Regarding the claims asserted by Tchacosh and Gashtawar the Tribunal notes that they have not been pursued since the filing of the Statement of Claim.

6. On 14 March 1991, the Tribunal ordered the Claimants to file a brief on the jurisdictional issues in this Case. In pertinent part, the Tribunal also invited the Claimants to file:

- a) evidence of the number of shares of capital stock of Siporex Company, Inc., Tchacosh Company, Inc. and

Gashtawar Company, Inc. issued and outstanding from the date the claim allegedly arose until 19 January 1981 ("the relevant period");

- b) evidence regarding the date of incorporation of Tchacosh Company, Inc. and Gashtawar Company, Inc.;
- c) evidence regarding the ownership of Siporex Iran, not limited to copies of any unregistered shares;
- d) all evidence that the Claimants wish the Tribunal to consider in determining (i) whether 50% or more of the shares of their capital stock was continuously owned during the relevant period by natural persons who were citizens of the United States of America, including official documentation of such citizenship, and (ii) the dominant and effective nationality of such persons;
- e) any comments on the Award in Jonathan Ainsworth and The Islamic Republic of Iran et al., Award No. 350-454-3, filed on 29 February 1988.
- f) any comments on whether Claims are still being asserted by Tchacosh Company, Inc. and Gashtawar Company, Inc.

In addition to providing the Respondents with an opportunity to comment on the Claimants' submission filed pursuant to the Order, the Tribunal stated that "it intends to take a decision regarding its jurisdiction on the basis of the evidence before it, and will decide on the Respondents' request for a Hearing on jurisdictional issues."

7. On 14 June 1991, Siporex California filed a brief and evidence in response to the Order of 14 March 1991. In the brief, it requested permission to amend its Statement of Claim pursuant to Article 20 of the Tribunal Rules by adding Mr. Armen Ashot Saginian as a Claimant in this Case. Siporex California alleges that in an effort to raise capital to expand Siporex Iran's operations, Mr. Hashemi, the original owner, sold in 1977 a 57% interest of the company's shareholding to Mr. Saginian. Siporex California presents as evidence a contract in the form of a notarized document for the sale of securities to Mr. Saginian for a total purchase price of \$20,000,000. Also presented as evidence are letters from Bank Shahriar allegedly

evidencing the transfer of funds from Mr. Saginian's account to Mr. Hashemi's account for a total of \$20,000,000, as asserted by Siporex California. Siporex California alleges that from December 1977 until the present day, Mr. Saginian has continuously owned all of the shares representing a 57% interest in Siporex Iran. Siporex California adds that between approximately 1977 and April 1980, Mr. Hashemi and Mr. Saginian were partners in an operation setting up a company in the United States to manufacture the same products Siporex Iran was producing. Siporex California states, however, that it was not incorporated under the laws of the State of California until 15 April 1980.

8. On 5 February 1992, Iran filed its comments in response to Siporex California's submission of 14 June 1991. In its brief, Iran reiterates its request to dismiss the claim for lack of jurisdiction and objects to Siporex California's proposed amendment, on the ground that permitting the proposed amendment would be inconsistent with the Tribunal's precedents. See paras. 16 and 17, infra. Iran raises various jurisdictional objections. In view of the Claimants' recent contention that the party pursuing the claim from the inception of the proceedings is Mr. Saginian (as majority shareholder of Siporex California) and not Siporex California, Iran argues that Siporex California has no real interest in the claim and thus lacks standing to sue. Alternatively, Iran argues that Siporex California has not presented sufficient proof, as required under Article VII, paragraph 1 of the CSD, that United States nationals owned 50% or more of Siporex California's capital stock during the relevant period. In this respect, Iran submits that the share certificates purportedly issued to Mr. Saginian have been fabricated.

9. In challenging the authenticity of Mr. Saginian's share certificates, Iran states that Mr. Saginian's claim of 57% ownership of Siporex California conflicts with Mr. Ainsworth's account of the facts in Case No. 454, Ainsworth, see para. 4, supra. In that Case, Iran submits, Mr. Ainsworth alleged that Siporex California was wholly owned by him from the time of its

incorporation until it was assigned to another of Mr. Ainsworth's companies, a company named Petru International Corporation, on 15 April 1980. Iran argues that contrary to both Mr. Ainsworth's and Mr. Saginian's assertions, Siporex California is in fact the creation of Mr. Hashemi, an Iranian national. Iran asserts that this claim was designed in an attempt to permit the claim of an Iranian national to be heard by the Tribunal, disguised as one belonging to a United States national.

10. Iran contends that there is no foundation for Mr. Saginian's assertion that he was a shareholder in Siporex Iran. It disputes the authenticity of a notarized document, presented in evidence by Siporex California, purportedly transferring 57% of the capital stock of Siporex Iran from Mr. Hashemi to Mr. Saginian in November 1976. In support of its allegation that the document is inauthentic, Iran relies in part on a document which it contends is an original document that was subsequently used to produce the document introduced by the Claimant as a "notarized document". Iran also disputes the authenticity of the copies of seven letters from Bank Shahriar presented by Siporex California as evidence that Mr. Saginian had paid Mr. Hashemi all his debts as recorded in the notarized document and that Mr. Saginian had taken delivery of all the shares on 30 December 1977. In support of its argument that these documents lack authenticity, Iran relies particularly on the Affidavit of Mr. Tajeddin Kaviani, Chief Notary Public No. 75, in the Registration District of Tehran, and on a letter dated 10 September 1991 by Bank Tejarat (as successor to Bank Shahriar).

11. Iran submits that Mr. Saginian's claim also is contradicted by Siporex Iran's corporate records, which indicate that Mr. Saginian has never been a shareholder of the company. Documentary evidence purporting to support this assertion was presented by Iran. By a separate letter filed on 5 February 1992, Iran withdrew its request for a hearing on jurisdictional issues due to "the transparent lack of foundation of the Claimant's Case...." On 22 June 1992, Siporex California on its own

initiative filed a submission entitled "Claimant's Reply to Respondent's Submission filed February 5, 1992". In the submission, Siporex California requested a hearing on jurisdictional issues and repeated its request to amend the claim by adding Mr. Saginian as a Claimant. Also, on its own initiative, Iran on 9 July 1992 filed a brief in which it responded to Siporex California's latest submission.

II. REASONS FOR THE AWARD

1. Procedural Issues

i. Withdrawal of Claims by Tchacosh and Gashtawar

12. In response to the Tribunal's Order of 14 March 1991, Siporex California in its brief of 14 June 1991 stated that it was not asserting any claim for either Tchacosh or Gashtawar and withdrew any and all claims on behalf of them. The Tribunal has no reason to doubt that Siporex California was authorized to withdraw the claims of Tchacosh and Gashtawar. The fact that as noted in para. 5, supra, neither Tchacosh nor Gashtawar has submitted any documents since the Statement of Claim indicates their choice not to participate in the proceedings in this Case. Moreover, it appears from submissions filed with the Tribunal that the lawyer who signed the Siporex California brief that announced the withdrawals was also the lawyer for Tchacosh and Gashtawar. Noting that the Respondents did not object to the withdrawals, the Tribunal, pursuant to Article 34, paragraph 2 of the Tribunal Rules, terminates with prejudice the proceedings with respect to the claims asserted by Tchacosh and Gashtawar.

ii. Request for Amendment

13. As noted above, see para. 7, supra, Siporex California in its brief of 14 June 1991 requested pursuant to Article 20 of the

Tribunal Rules permission to amend the Statement of Claim by adding Mr. Saginian as a Claimant. Siporex California contends that, as required by Article 20, the proposed amendment would not change the legal or the factual basis of the claim or prejudice the Respondents because Mr. Saginian has been sufficiently identified in the "Claimant's Reply to Respondent's Motion to Dismiss and Supplementary Rejoinder" filed on 5 August 1987 as the owner of a 57% stockholding interest in the expropriated company, Siporex Iran. In this respect, Siporex California argues that Mr. Saginian could have been named as the original Claimant since he is a United States citizen and since his interest in Siporex Iran is evidenced by his ownership of its stock. Siporex California further argues that throughout the relevant period, i.e., the period between the time the claim arose, in June 1979, and the date of the conclusion of the Algiers Accords, on 19 January 1981, Mr. Saginian has been a 57% owner in the venture that was formed between himself and Mr. Hashemi, in 1978. The venture allegedly had been capitalized by Mr. Saginian's 57% interest in Siporex Iran and, in April 1980, took the form of what is now Siporex California. However, Siporex California emphasizes in the same brief of 14 June 1991 that Mr. Saginian never transferred nor assigned his alleged interest in Siporex Iran to anyone. As to the delay that the proposed amendment might cause to the proceedings, Siporex California argues that such delay should be excused in the light of the facts; it contends that it reasonably relied on its attorneys for the presentation of the Claim and on Mr. Hashemi, because he, as Managing Director, was more familiar with Siporex Iran.

14. In support of its contentions, Siporex California refers to the Tribunal's decision in American International Group, Inc. and The Islamic Republic of Iran, et al., Award No. 93-2-3 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 96 ("AIG"). In that case, the Tribunal permitted an amendment to add a claimant that had been mentioned in an exhibit to the original Statement of Claim.

15. Iran objects to the proposed amendment. Particularly, it draws attention to the fact that until 1987 the present Case was pursued by Mr. Hashemi, the Iranian Managing Director of Siporex Iran, who had signed the Statement of Claim. As asserted by Iran, only years after the expiration of the deadline established by the CSD for the submission of claims did Mr. Saginian file a new claim.

16. Iran further argues that permitting the proposed amendment would be inconsistent with the Tribunal's precedents. In this respect, Iran cites Harrington and Associates, Inc. and The Islamic Republic of Iran, Award No. 321-10712-3 (27 Oct. 1987), reprinted in 16 Iran-U.S. C.T.R. 297, and St. Regis Paper Company and The Islamic Republic of Iran, Award No. 291-10706-1 (29 Jan. 1987), reprinted in 14 Iran-U.S. C.T.R. 86 ("St. Regis"). Iran submits that the present Case is distinguishable from AIG for various reasons.

17. In addition, Iran argues that the request for amendment should, in accordance with the Tribunal's precedents, be rejected on grounds of undue delay and prejudice to the Respondents.

18. The Tribunal has held that in considering a proposed amendment to add or to substitute a party, it must determine whether the proposed amendment is "an attempt to introduce a new claim after the deadline presented in Article III, paragraph 4 of the Claims Settlement Declaration", (see The Austin Company and Machine Sazi Arak, et al., Award No. 257-295-2 (30 Sept. 1986), reprinted in 12 Iran-U.S. C.T.R. 288), or simply the clarification of the true identity of the proper Claimant. See Refusal to Accept the Claim of Raymond International (U.K.) Ltd., Decision No. DEC 18-Ref-21-FT, p.3 (8 Dec.1982), reprinted in 1 Iran-U.S. C.T.R. 394. The Tribunal notes in particular that in AIG, a case referred to by both Parties, the original Claimant was a proper Claimant before the amendment and the amendment merely added a Claimant that had already been mentioned in an Exhibit to the Statement of Claim and transferred part of the

Claim to it. See also Refusal to file Claim of AMF Overseas Corporation, Decision No. DEC 17-Ref.20-FT (8 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 392.

19. In the present Case, however, there is no mention in the Statement of Claim, or in any exhibit to it, of Mr. Saginian. Indeed, the first mention of Mr. Saginian is in a brief filed by the Claimants five and a half years later, and even that document does not seek to add him as a Claimant. The Statement of Claim is by a California corporation for 100% of the value of allegedly expropriated property, while the requested amendment, without abandoning that claim, seeks to add a claim by an individual for 57% of that property on the basis of alleged share ownership that was not referred to in the Statement of Claim. Thus, the claim of Mr. Saginian is not merely a clarification of the Statement of Claim; it is a new claim in this proceeding. The claim of Mr. Saginian is barred because it was not filed by the deadline established by Article III, paragraph 4 of the CSD and is therefore outside the jurisdiction of the Tribunal.

iii. Request for hearing on jurisdiction

20. Moreover, although the request was barred on the above ground, it may be added that in so far as the proposed alternative of considering it as an amendment is concerned, Article 20 of the Tribunal Rules provides that the Statement of Claim cannot be amended if the Tribunal finds it "inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances." As to delay, the Tribunal notes that the request to amend was made more than nine years after the Statement of Claim. The Tribunal is not persuaded by the explanation for this delay made by Siporex California, which rests largely on excuses of neglect by Mr. Saginian and the two firms of lawyers that represented him at various times. The Tribunal cannot accept that Mr. Saginian did not inform himself for so long of a claim so large, or that

counsel for the Claimants were so unmindful of the Tribunal's rules and practices. Further, the Tribunal must conclude that allowing the requested amendment would result in prejudice not only to the other party but also to the orderly procedures of the Tribunal. See, e.g., Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985), p.39, reprinted in 8 Iran-U.S. C.T.R. 298, at 326. The proposed amendment would introduce at a very late date issues relating to Mr. Saginian's dominant and effective nationality, because he alleges that he is a dual national. See Case No. A18, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251. Such issues would require briefing by the Respondents that would prolong the Case and add to Respondents' costs. Therefore, the Tribunal determines that permitting the proposed amendment would be "inappropriate".

21. As noted above, see para. 11, supra, Iran withdrew its earlier request for a hearing on jurisdictional issues by its submission filed on 5 February 1992. As noted also in para. 11, Siporex California requested in its submission filed on 22 June 1992 "a formal hearing and the presentation of evidence since the respondents have criticized and slandered the evidence presented on behalf of the claimant in support of its claim contending it is unreliable and fabricated". This request for hearing must be denied. More than a year before Siporex California requested a hearing, the Tribunal had, by Order filed on 14 March 1991, informed the Parties that it "intends to take a decision regarding its jurisdiction on the basis of the evidence before it...." The Tribunal notes that the Claimant was free at that time to request a hearing, but it chose not to do so. Instead, it and the Respondents filed extensive pleadings within the framework of the Tribunal's Order, without any mention of a request for a hearing. In the circumstances, the request for a hearing was not made at an appropriate time. Although Article 15, paragraph 2, of the Tribunal Rules states that a party may request a hearing at "any stage of the proceedings", the Tribunal has previously held that "such provision should be interpreted,

in the light of the particular circumstance of each case, to mean that Hearings are to be held upon the reasonable request of a party made at an appropriate stage of the proceedings". See World Farmers Trading Inc. and Government Trading Corporation, et al., Award No. 428-764-1 (7 July 1989), para. 16, reprinted in 22 Iran-U.S. C.T.R. 204, at 209. Further, it is clear from its request that the Claimant seeks a hearing in order to present evidence in connection with the authenticity of certain documents that Iran asserts were fabricated. However, no hearing for that purpose is needed because, for reasons stated below, see paras. 22 - 26, infra, the Tribunal decides that it has no jurisdiction in this Case regardless of the Parties' dispute on the authenticity of those documents.

2. Jurisdiction

22. The Tribunal notes that Siporex California has failed to demonstrate that it has satisfied a crucial jurisdictional requirement, specifically, that it owns the Claim. Article VII, paragraph 2, of the CSD provides, in relevant part:

"Claims of nationals" of Iran or the United States, as the case may be, means claims owned continuously from the date on which the claim arose to the date on which this Agreement enters into force, by nationals of that state ... (emphasis added).

23. The Tribunal notes that Siporex California alleges that it was "capitalized" by Mr. Saginian's 57% interest in Siporex Iran, but there is no evidence that Siporex California ever became the owner of any interests whatsoever in Siporex Iran. Indeed, Siporex California has asserted that Mr. Saginian has never transferred or assigned his alleged 57% interest in Siporex Iran to anyone. In light of this assertion by Siporex California that no interests in Siporex Iran was ever transferred to it, the Tribunal must conclude that Siporex California has not demonstrated that it owned any property right in Siporex Iran from the date the Claim allegedly arose until 19 January 1981. As the

Claim rests on an alleged expropriation of Siporex Iran, Siporex California's failure to demonstrate its ownership of any property right in the allegedly expropriated entity, or in any claim relating to it, leads to the conclusion that it did not own the Claim during the relevant period. As a result, the Claim must be dismissed as being outside the Tribunal's jurisdiction.

24. Since the Claimant has not proved that it meets the jurisdictional requirement that the claim be owned by the Claimant, as required by Article VII, paragraph 2, of the CSD, the claim is dismissed for lack of jurisdiction without the need to reach the other contested issues, including the authenticity of certain documents.

3. Costs

25. The Respondent, the Government of the Islamic Republic of Iran, in its pleadings requested the Tribunal to award it costs incurred in defending the claim in the total amount of \$25,300. In view of the circumstances of the Case, the Tribunal finds it reasonable to award the Respondent costs of arbitration in the amount of \$15,000.

III. AWARD

26. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a) the Claims asserted by TCHACOSH COMPANY, INC. and GASHTAWAR COMPANY, INC. are terminated pursuant to Article 34, paragraph 2, of the Tribunal Rules;
- b) the Claim asserted by SIPOREX COMPANY, INC. is dismissed for lack of jurisdiction;

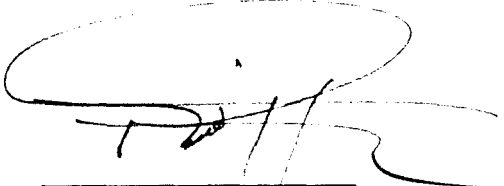
c) the Claimant SIPOREX COMPANY, INC. is obligated to pay the Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN costs of arbitration in the amount of \$15,000.

Dated, The Hague
9 December 1992

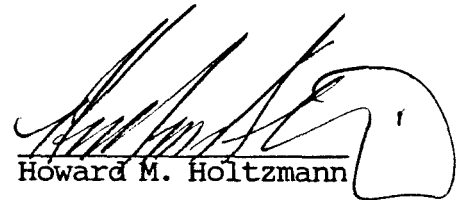
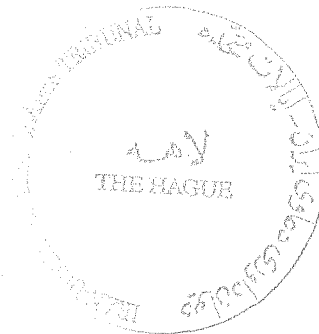


Bengt Broms
Chairman
Chamber One

In the Name of God



Assadollah Noori



Howard M. Holtzmann