

DUPLICATE
ORIGINAL
«نسخه برابر اصل»

CASE NO. 276
CHAMBER THREE
AWARD NO. 426-276-3

ARTHUR J. FRITZ & CO.,
Claimant,

and

SHERKATE TAVONIE SHERKATHAYE
SAKHEMANIE (Cooperative Society
of Construction Companies) and
THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL
داوان داورى دعاوى ایران - ایالات متحده

ثبت شد - FILED

Date 30 JUN 1989

تاریخ ۱۳۶۸ / ۴ / ۹

AWARD

Appearances:

For the Claimant:

Mr. Stewart Abercrombie Baker,
Mr. Wolfram Anders,
Mr. Hamid Sabi,
Attorneys;
Mr. Lynn Fritz,
President of Arthur
J. Fritz & Co.

For the Respondents:

Mr. Mohammad K. Eshragh,
Agent of the Government of
the Islamic Republic of
Iran,
Mr. Ali H. Nobari,
Deputy to the Agent of the
Government of the Islamic
Republic of Iran,
Mr. Nemat Mokhtari,
Legal Advisor to the Agent
of the Government of the
Islamic Republic of Iran,
Mr. Ali Ghassemi,
Legal Assistant to the
Agent of the Government of
the Islamic Republic
of Iran,
Mr. Mohammad Rangchian,
Attorney for Sherkate
Tavonie Sherkathaye
Sakhtemanie,
Mr. Sirous Honari,
Managing Director of
Sherkate Tavonie
Sherkathaye
Sakhtemanie.

Also present:

Mr. Timothy E. Ramish,
Agent of the Government
of the United States of
America,
Mr. Michael F. Raboin,
Deputy Agent of the
Government of the United
States of America.

I. INTRODUCTION AND FACTUAL BACKGROUND

1. The Claimant, ARTHUR J. FRITZ & CO., is a corporation organized under the laws of the State of California. It has filed its claim as successor in interest to Arthur J. Fritz & Co., a Texas corporation (each corporation hereinafter referred to as "Fritz"). Fritz is engaged in the freight forwarding business.

2. The Respondents are SHERKATE TAVONIE SHERKATHAYE SAKHTEMANIE (Cooperative Society of Construction Companies) ("STSS") and THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran"). STSS is a cooperative of Iranian construction companies formed for the primary purpose of providing goods and supplying services to its members.

3. Fritz claims an amount of U.S.\$1,157,166.64 plus interest and costs for demurrage incurred under a contract concluded with STSS. It alleges the following facts in support of its claim.

4. In February 1975, Fritz was contacted by Mr. Bahman Azarmi to arrange for the shipment to Iran of a substantial number of trucks which STSS ordered from J. Craig Ayers-Ford Chevrolet, Inc. ("Ayers"), an Oklahoma truck dealer. Azarmi represented to Fritz that, through his company, B&M International Trading Company ("B&M") of Oklahoma, he was acting as agent for STSS. Agreement was reached upon both the purchase and the shipment of the trucks at a meeting held on 18 March 1975, at which both Azarmi and Mr. Y. Azizian, then Managing Director of STSS, were present.

5. In view of delays in unloading to be expected in Iranian ports around that time, Fritz raised the issue of payment of possible demurrage charges. On 20 March 1975, acting as agent for STSS, Azarmi wrote to Fritz stating, inter alia: "Demurrage [sic] for the vessel will be paid daily to the Charterers of vessel involved by S.T.S.S. in U.S. Currency." On 21 April 1975, Fritz' parent

corporation, then Fritz Management Corporation, detailed the precise C. & F. shipping arrangements in a letter to all parties involved, including B&M and STSS. The arrangements included the following: "[D]emurrage, if any, at Khorramshar will be charged at \$6,000.00 per day" Having received no objection, Fritz proceeded to charter the necessary vessels to ship the trucks. Ayers then received a letter from STSS, signed by Mr. Azizian and dated 9 June 1975, which states in part: "Only the demurrage charges of the vessel are for our account which we accpted [sic] to pay."

6. The trucks were shipped to Iran in separate consignments aboard the vessels M/S Olympic Phaethon, M/S Harfleur and M/S Tokyo Venture. According to their timesheets, upon their arrival in Khorramshahr in June, August and September 1975, respectively, these ships incurred the following demurrage, respectively: 6 days, 6 hours, 10 minutes; 58 days, 20 hours, 30 minutes; and 127 days, 18 hours. With one minor exception, these periods have been confirmed as accurate on behalf of the shipping line.

7. Fritz and STSS exchanged several communications relating to the responsibility for payment of the demurrage charges, STSS denying any such responsibility. The final correspondence in the record is STSS' response of 19 April 1976 to an invoice dated 7 April 1976 sent by Fritz Companies, Inc. (formerly Fritz Management Corporation) ("FCI") in the amount of U.S.\$1,157,166.64. It states, in relevant part:

We do not recognize any demurrage charges to be payable by us for the statement you have made in your above mentioned letter.

B&M International Trading Inc. has never been authorized by us to act as our agent or to make any undertaking on our behalf whether for demurrage or otherwise.

8. Proceedings were subsequently initiated in the United States District Court for the Western District of Oklahoma, and process was served on STSS in Iran on 6 April 1977. On 13 December 1978 a default judgment was rendered against STSS in the sum claimed, plus U.S.\$25,000 attorneys' fees, together with costs and interest. Prior to the effective date of the Claims Settlement Declaration, however, Fritz was unable to enforce this judgment.

II. PROCEDURAL HISTORY

9. On 14 January 1982 the Claimant filed a Statement of Claim, in response to which the Respondents submitted Statements of Defense on 15 June 1982. On 23 May 1984 Fritz filed replies thereto, following which the Respondents filed responses on 10 July 1984.

10. On 1 September 1986 the Claimant submitted its Memorial. STSS' Memorial, filed on 2 March 1987, was limited to the issue of the Tribunal's jurisdiction. On 19 March 1987 the Respondents requested the Tribunal to rule on this issue as a preliminary matter, to which request the Claimant objected on 6 May 1987.

11. On 19 June 1987 the Claimant filed its Memorial in Rebuttal. The Respondents filed their Memorial in Rebuttal on the same date, this time also addressing the merits of the Case. On 15 July 1987 Fritz requested that parts of STSS' Rebuttal Memorial be stricken or that Fritz be given an opportunity for further rebuttal on the grounds that the document, by raising new issues and allegations unrelated to the proceedings, exceeded the permissible limits of rebuttal filing.

12. By its Order of 4 August 1987 the Tribunal authorized the Claimant to submit an additional Rebuttal Memorial, the corrected version of which the Claimant filed on 12 October

1987. On 29 January 1988 STSS informed the Tribunal that it would not respond thereto.

13. On 28 January 1988 the Claimant filed a "Request for Leave to Submit Additional Rebuttal Evidence," to which two exhibits are attached. Upon the Respondents' objection on 2 February 1988 to the introduction of these documents, the Tribunal by its Order of 12 February 1988 indicated that it would consider their admissibility at the Hearing. On 14 April 1988 STSS filed a "Reply to Claimant's Request for Leave To Submit Additional Rebuttal Evidence." Subsequently, STSS filed a "Reply to Claimant's New Rebuttal Evidence" on 14 June 1988.

14. A Hearing was held on 15 June 1988.

15. At the Hearing, the Tribunal reaffirmed its practice not to accept unauthorized filings made only a few days before a hearing in order to avoid prejudice to other parties in the case. The Tribunal therefore decided not to accept the Respondents' submission of 14 June 1988. With respect to the Claimant's submission of 28 January 1988 the Tribunal reserved its decision.

III. REQUEST FOR LEAVE TO SUBMIT ADDITIONAL REBUTTAL EVIDENCE

16. In its Request for Leave to Submit Additional Rebuttal Evidence, the Claimant requests the Tribunal to accept into evidence a communication dated 28 September 1987 from the Planning and Budget Organization of Iran ("PBOI"). The Claimant asserts that this communication casts doubt on prior submissions of STSS regarding the number of member companies under government control. In connection with this document the Claimant has submitted a translation of the Law of Management and Ownership of Shares of Contracting and Consulting Engineering Companies and Institutes from the 11

May 1980 issue of the Official Gazette of the Islamic Republic of Iran.

17. Although the Claimant's submission is not in response to an order of the Tribunal, it is noted that the submission does not raise any new arguments or present information previously available to the Claimant. The Claimant submitted it in rebuttal to statements made by STSS. It is further noted that, since the document was prepared by PBOI, an agency controlled by the Iranian government, the information contained therein has been available to Iran since the date the document was issued. Given these facts and the fact that the submission was made four and a half months prior to the Hearing, the Respondents would not appear to suffer prejudice by its admission into evidence. On balance, therefore, the Tribunal finds no reason to exclude the submission from evidence and thus admits it.

IV. JURISDICTION

A. The Claimant

18. The Claimant states that it is the successor in interest to Arthur J. Fritz & Co., the Texas corporation which acted as plaintiff in the suit brought against STSS in Oklahoma. The Claimant further states that it is a corporation organized and existing under the laws of the State of California whose shares are held by another California corporation, FCI, and that the latter is owned by United States nationals.

19. In support of the foregoing, Fritz submits, among other evidence: a certificate dated 13 December 1984 from the Secretary of State of the State of California showing Fritz was incorporated on 30 December 1953; another such certificate dated 29 November 1983 showing FCI was incorporated as Fritz Management Corporation on 8 January 1970; a statement dated 9 February 1976 by Olive M. Reynolds, Secretary of FCI, setting out, inter alia, the ownership of FCI's and

Fritz' stock; photocopies of relevant pages of United States passports of the three persons listed as owners of FCI's common stock and the listed majority owner of its preferred stock; and an affidavit dated August 1986 of Lynn C. Fritz, president of both Fritz and FCI.

20. While not contesting Fritz' position as successor in interest, Iran contends that the United States nationality "of the natural persons who were the shareholders of the Claimant Company" has not been proved sufficiently. Furthermore, it notes that, while the Claimant alleges that FCI has three shareholders, it has submitted proof of the nationality of four.

21. As the affidavit and the passport copies cover all of FCI's shareholders in any case, the Tribunal finds it of no relevance that -- to the extent that the Claimant did not intend only to address the issue of ownership of FCI's common stock -- a discrepancy may exist between the statement contained in the Claimant's Memorial and the Reynolds statement.

22. On the basis of the Claimant's supporting documents and in the absence of evidence to the contrary, the Tribunal is satisfied that the Claimant has established that natural persons holding at least fifty percent of the capital stock of the Claimant's sole direct shareholder were United States citizens during the relevant period. Although the Claimant has not provided details of its alleged succession in interest, the Tribunal need not further address this issue in light of the Claimant's submissions, including the evidence relating to the ownership of the Texas corporation Arthur J. Fritz & Co. The Tribunal holds that Fritz' claim meets the requirements of Article VII, paragraph 2, of the Claims Settlement Declaration.

B. STSS as a Controlled Entity

1. Contentions of the Claimant

23. The Claimant asserts that STSS is an entity controlled by the government of Iran within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration. Such control, it argues, is evidenced by: the presence in STSS from July 1979 until September 1981 of a Revolutionary Public Prosecutor; Iran's control of a significant number of the Society's members; and the way in which certain trucks were requisitioned from STSS by the Iranian Ministry of Roads and Transportation.

24. In presenting these arguments, Fritz relies to a large extent upon the 1985 Report to the 15th Annual Assembly of STSS (the "Report"). This Report includes the following references by STSS' Board of Directors to the involvement of the Prosecutor:

In the month of Shahrivar 1360 (August/September 1981) when the Board of Directors assumed its responsibilities, as a result of what transpired (as reported earlier), nearly all the inventory of the Society had been sold under the supervision of the representatives of the Revolutionary Public Prosecutor and the creditor banks to pay part of the debt owed to the group of commercial banks and the Iran and Germany Bank. No sale was made without the approval of the representative of the Islamic Revolutionary Public Prosecutor.

. . .

As a result of a series of negotiations with the representative of the Islamic Revolutionary Public Prosecutor in the first days of our appointment, the management of the Society assumed direct charge of the affairs of the Society and consequently of its sales.

. . .

As advised to you in the reports of the previous years, after the events that led to the taking control of the assets of the Cooperative Society by the representative of the Islamic Revolutionary Public Prosecutor, the Society was beset by

problems in discharging its liabilities to various banks.

25. Although not contesting the private structure of STSS, Fritz argues that the Report makes clear that STSS' assets were managed entirely by the government, which interfered with STSS' day-to-day operations to the point where any acts of consequence required its approval. Fritz contends that the Prosecutor took an active part in the sale of STSS' assets and actively advanced the interests of the creditors controlled by the government of Iran to the detriment of STSS' other creditors, including the Claimant.

26. Iran's de facto control is further evidenced, the Claimant asserts, by the Ministry's 1980 takeover of 79 of STSS' trucks. Based on the Report's account of this event, Fritz concludes that this was a unilateral decision by the government and that, when the government later sold the trucks, it applied their proceeds to STSS' debts to government banks.

27. The Claimant asserts that STSS is also under government control as a result of its ownership structure. It has submitted an affidavit of Abdol Majid Aalam, the former chairman of STSS' Board of Directors, according to which "many of the major companies that constituted STSS were assigned to the Poor People's Foundation," itself a controlled entity. The Claimant has also submitted the letter referred to in paragraph 16, supra, through which the Planning and Budget Organization of Iran appointed liquidators for certain contracting firms taken over by Iran pursuant to the Law of Management and Ownership of Shares of Contracting and Consulting Engineering Companies and Institutes. Fritz asserts that this communication, because it mentions two companies that the Respondents did not identify as government controlled, suggests that the 1986 list of controlled members filed by STSS is inaccurate and incomplete. Fritz furthermore argues that, even if Iran controlled only a minority of STSS' members, it in fact still

dominated STSS' affairs through its command of the vote of that block.

2. Contentions of the Respondents

28. The Respondents challenge the Tribunal's jurisdiction on the ground that STSS is not a controlled entity and that the claim is not attributable to Iran for lack of involvement. Iran relies by reference upon all arguments and evidence presented by STSS.

29. STSS states that it is a cooperative society whose members are construction companies and that it is a private company officially incorporated and registered as such. It asserts that it was formed in 1971 pursuant to the Act of Cooperative Companies and that it has always been managed in conformity with its Articles of Association, a copy of which it has submitted.

30. According to these Articles, the General Assembly is STSS' highest authority. Its powers include "determining the company program and policy" and appointing the Board of Directors. Article 24 provides that each member, regardless of its number of shares, has one vote in the Assembly, while Article 44 designates the Board of Directors as the company's lawful representative.

31. STSS contends that it has always been run by directors elected by the Assembly and that these have never included representatives of government-owned or government-controlled member companies. Moreover, STSS asserts that "a majority of the members of STSS have constantly been Private companies never affiliated to or controlled by the Government." In support of this contention it submits an affidavit of STSS' Managing Director, as well as a list according to which as of November 1986 49 out of a total of 237 members were government-controlled.

32. STSS denies that the Prosecutor's involvement amounted to government control of the Cooperative. It explains that in mid-1979 the Prosecutor attached STSS' assets because STSS failed to settle its debts to certain government-owned banks, mainly Bank Tejarat. On 16 March 1980 STSS informed the Prosecutor that the "delay in the reopening of the premises has caused difficulties for our member Construction Companies from the view point of construction and road building materials and machinery" and requested him to "issue instructions for withdrawal of the aggression from the Company's warehouse and workshop." As indicated in its letter of 18 March 1980 to the Prosecutor, Bank Tejarat supported the request for lifting the attachment so that the assets could be sold to pay off the Cooperative's debts.

33. By order dated 21 April 1980 the Prosecutor appointed two representatives to head a committee to arrange for the sale of the assets. Thus, STSS argues, "the only cause for the presence of the representative of the Revolution [sic] Public Prosecutor was to supervise over the sale of the properties of STSS in order to pay its debts to the banks." In further support of this argument, STSS submits correspondence with and between various of its creditors containing similar descriptions of the Prosecutor's role.

34. To demonstrate that its members retained control, STSS points out that: following the attachment STSS' members appointed a new Board of Directors in November 1979; they approved the 1979 financial statements and directors' report in the August 1980 General Assembly; and the "General Assembly has been held every year in accordance with the law and its Articles of Association."

35. Moreover, STSS contends that, even if the Prosecutor's intervention constituted government control, the Tribunal would lack jurisdiction on the ground that such intervention ceased in the course of 1981. STSS claims that for jurisdiction to exist under the Claims Settlement Declaration control must have continued from a date prior to the signing

date of the Claims Settlement Declaration to the date of the award.

36. As to the takeover of 79 of STSS' trucks, STSS relies on the wording of the 1985 Board of Directors Report to demonstrate that such transfer was based on a decision taken by its Board of Directors.

3. The Tribunal's Findings

37. The question here to be decided by the Tribunal is whether STSS is an entity controlled by Iran within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration. As held in DIC of Delaware, Inc., et al. and Tehran Development Corp., et al., Award No. 176-255-3, p. 15 (26 Apr. 1985), reprinted in 8 Iran-U.S. C.T.R. 144, 155, this issue is one of fact. Consequently, the issue is not whether the entity existed in private form, see id., or whether it was in effect nationalized or expropriated, see Rexnord Inc. and The Islamic Republic of Iran, et al., Award No. 21-132-3, p. 8 (10 Jan. 1983), reprinted in 2 Iran-U.S. C.T.R. 6, 10. Rather, it is relevant, inter alia, whether the company was managed by its registered Board of Directors and whether the shareholders were in a position to exert their rights and to fulfill their duties as shareholders. See Raygo Wagner Equipment Company and Star Line Iran Company, Award No. 20-17-3, pp. 5-6 (15 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 411, 413.

38. Before determining whether STSS was a controlled entity, the Tribunal first will address STSS' assertion, unsupported by arguments, that control must exist up to the date of an award. According to Tribunal precedent the question of control does not apply to a date later than the date of the Claims Settlement Declaration, 19 January 1981. See, e.g., Eastman Kodak Company, et al. and The Government of Iran, et al., Partial Award No. 329-227/12384-3, para. 44 (11 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 153, 165. STSS' assertion is therefore without merit.

39. Based on STSS' Articles of Association, its members formally control the company through their rights of setting company policy and naming its directors. Since government control can be established indirectly through the proprietary interests of government-controlled instrumentalities, see Phelps Dodge International Corp. and The Islamic Republic of Iran, Award No. 218-135-2, para. 29 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 157, 166-67, the first question is whether Iran owned or controlled construction companies which in turn represented a majority of STSS' members.

40. In addition to the list of controlled members as of November 1986, STSS has submitted a schedule setting out its total number of members, new members and departed members during the period from 1978 through 1986. Given the figures submitted, it is unlikely that, of those members who left STSS between 1981 and 1986 and of those who remained and were privately held in 1986, a sufficient number would have been government-controlled in 1981 to contribute to a majority, even if it is assumed that all those listed as controlled in 1986 were already so controlled in 1981.

41. It is the Claimant's burden to disprove this inference and to establish that the government indeed controlled enough of STSS' members. Although the Claimant questions the reliability of the list submitted by STSS, it has not proved majority control. Likewise, without more, the fact that a minority of STSS' members attended its Assembly meetings does not compel the conclusion that government-controlled members exercised inordinate authority over STSS at those meetings.

42. The Tribunal now, therefore, turns to Fritz' contention that the Prosecutor's involvement transferred control of STSS from the duly appointed Board of Directors and the General Assembly. In so doing, the Tribunal notes that much of the evidence presented to it is of a circumstantial nature. Moreover, in view of the references to the

Prosecutor contained in the 1985 Report and the minutes of the September 1981 Assembly meeting, the Tribunal's assessment of the facts would be facilitated had STSS' directors' reports over the period from 1979 through 1984 been submitted to the Tribunal. Although it did not preclude it from introducing the 1985 Report, the Claimant must be regarded as having been at a disadvantage in attempting to obtain such documents. As suggested by the Respondents' submission of the 1986 directors' report and meeting minutes for the years 1979 through 1987, it is likely that the Respondents were in a position to produce these reports. The Tribunal notes that it is an accepted principle that an adverse inference may be drawn from a party's failure to submit evidence likely to be at its disposal. In weighing the evidence before it, the Tribunal must therefore take into account the Respondents' omission to produce the directors' reports.

43. The starting point for the Tribunal's assessment of the evidence is the attachment of STSS' assets in mid-1979. STSS' letter dated 18 February 1980, Bank Tejarat's letter dated 18 March 1980, the Prosecutor's order of 21 April 1980 and the 1985 Report indicate that the attachment was the first step in a process aimed at STSS' discharging its liabilities. The 18 March 1980 letter establishes that these included a debt of Rls. 1,464,979,584 to the "member banks" of Bank Tejarat. Correspondence concerning Deutsch-Iranische Handelsbank on record shows this bank to have been among STSS' creditors. In February 1980 STSS asked Bank Tejarat to have the attachment removed and to have its assets sold in order to satisfy STSS' debts. A similar request was later sent to the Prosecutor, who, following a letter from Bank Tejarat, on 21 April 1980 appointed two representatives for the sale of STSS' materials, the proceeds of which were to be used to pay its debts, especially to Bank Tejarat.

44. It is not disputed that most of the assets that had been the object of the attachment had been sold by September

1981. The Claimant makes no attempt to prove government control beyond that date. Indeed, there is no evidence on record of any further activity on the part of the Prosecutor. This suggests that his presence may have been a temporary measure, thus reinforcing the pattern emerging to some extent from the events described in the preceding paragraph, i.e., that the thrust of the Prosecutor's actions may have been the resolution of STSS' debt problems rather than the transfer of control.

45. The Tribunal also finds the notion of transfer of control somewhat difficult to reconcile with the involvement that, as further examination of the facts reveals, persons other than the Prosecutor apparently continued to have in STSS' affairs during the period at issue. Several months after the attachment, STSS' members appointed a new Board of Directors at their Assembly meeting of 25 November 1979. At the Meeting of 5 September 1981, at which a new Board was elected, a directors' report for 1980 and financial statements for that year were presented and approved. Its letter of 18 February 1980 indicates that STSS requested the sale of the assets involved, and that it first directed such request to its major creditor and not to the Prosecutor. The latter, in his order of 21 April 1980, instructed the asset sale to be handled by a committee composed of, among others, representatives of STSS and of its main creditor.

46. Unfortunately, the Parties' submissions are not particularly helpful in enabling the Tribunal to judge in the context of the attachment the extent of the Prosecutor's authority. The letter dated 7 October 1980 by Deutsch-Iranische Handelsbank suggests that the Prosecutor reacted to a request from this bank. On the other hand, in its letter of 8 April 1981 the same bank credits the Prosecutor's "awareness and attentiveness" in connection with the attachment and sale. It should also be noted that it has been stated in Bank Tejarat's letter of 18 March 1980 that repayment of the creditors would serve to prevent the embezzlement of the Islamic Treasury's funds. The Tribunal

observes, however, that, while the extent of the Prosecutor's authority remains unclear, no evidence has been presented of any action not directly related to the attachment and the sale. This underpins the inference that can be derived from the facts set out in paragraph 45, supra, that there is insufficient evidence in support of the argument that STSS was not managed by its registered Board of Directors and that its members were not able to exert their rights.

47. In making its argument the Claimant relies heavily upon the 1985 Report. While the wording of parts thereof raises questions about several of STSS' contentions, the Tribunal finds these doubts, coupled with the Respondents' omission to produce other directors' reports, insufficient from which to draw an adverse inference regarding the control of STSS. The Report does not contradict the observations set out in paragraphs 43 through 46, supra. Furthermore, the effect of the quotations used by the Claimant is reduced, if not offset, by other passages suggesting a more active role by STSS itself -- according to the Report, it was the Society which was engaged in "discharging its liabilities to various banks," and the sale of assets took place "under the supervision" of the Prosecutor's representative.¹ Likewise, the description of the takeover of the 79 trucks, the workshop, tools and spare parts as contained in the 1985 Report -- the sole source of information on this subject -- invites more than a single interpretation. Based on these considerations, the Tribunal determines that the 1985 Report, in the absence of further evidence, does not satisfy the Claimant's burden of proof.

¹A similar suggestion is contained in a letter dated 1 December 1981, in which the same board that was responsible for the Report described the sale as follows: "[T]he Cooperative Company decided to sell its goods and in order that proper implementation of the work may be ensured, the selling was processed in the presence of the Public Prosecutor's representative."

48. Based on the foregoing, the Tribunal finds that insufficient evidence has been presented that on 19 January 1981 STSS was an entity controlled by Iran as required by the Claims Settlement Declaration. Consequently, the Tribunal dismisses the claim against STSS for lack of jurisdiction.

V. CLAIM AGAINST IRAN

49. In its Statement of Claim Fritz appears to assert a claim against Iran, distinct from the one asserted against STSS, and describes it as arising "out of measures of the Government of Iran and of the Government of the Islamic Republic of Iran affecting property rights." Because little further attention is given to this claim in the Claimant's memorials, it is unclear whether Fritz intended to assert against Iran a separate and distinct claim from that asserted against STSS. In a portion of its memorial discussing whether STSS was controlled by Iran, however, Fritz indicates that Iran is an appropriate respondent in the present action allegedly because "the Government, rather than STSS, made decisions concerning which of STSS' creditors should be paid." In particular, Fritz asserts that the government sold assets of STSS, including 79 trucks and its workshop, and applied the sale proceeds to STSS' debts to a number of government banks rather than return them to STSS.

50. The Claimant has not specified the way in which it has been injured by the alleged actions. The Tribunal therefore dismisses Fritz' claim against Iran for lack of proof. See Training Systems Corporation and Bank Tejarat, et al., Award No. 283-448-1, para. 40 (19 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 331, 340-41.

VI. COSTS

51. The Tribunal holds that each Party shall bear its own costs of arbitration.

VII. AWARD

52. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. The claim against the Respondent SHERKATE TAVONIE SHERKATHAYE SAKHTEMANIE (Cooperative Society of Construction Companies) is dismissed for lack of jurisdiction.
- b. The claim against the Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is dismissed on the merits.
- c. Each Party shall bear its own costs of arbitration.

Dated, The Hague,
30 June 1989



Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison
Dissenting Opinion



Parviz Ansari Moin