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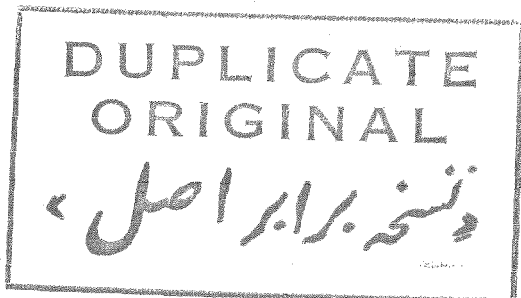
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داری دعوی ایران - ایالات متحدہ



CASE NO. 828

CHAMBER ONE

WARD NO. 522-828-1

GENERAL PETROCHEMICALS CORP.,
Claimant,
and

THE ISLAMIC REPUBLIC OF IRAN,
KARKHANEJAT TOWLIDI TEHRAN
and GOROUH TOWLIDI TEHRAN,
Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داری دعوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	21 OCT 1931
	تاریخ ۱۳۲۰ / ۷ / ۲۹

AWARDAppearances:

For the Claimant :

Mr. Stanley S. Getzoff,
Counsel,
Mr. Hamid Sabi,
Co-Counsel,
Mr. Joachim Englander,
Representative,

Mr. Eric Somer,
Mr. Raffie Aryeh,
Mr. Habibollah Rezvani
Yousef,
Mr. Abdul Moqet Yousefzai
Mr. Massoud Asherian
Mr. Peter Croggon,
Witnesses.

For the Respondents :

Mr. Ali H. Nobari,
Agent of the Government
of the Islamic Republic
of Iran,
Dr. Ali Akbar Riyazi,
Mr. Mohsen Mir Mohammad
Sadeghi,
Legal Advisors to the
Agent,

Mr. Abbas Ejtehaid,
Legal Assistant to the
Agent,
Mr. Heidari Malayer,
Managing Director KTT
Mr. Hossein Tabaii,
Representative of GTT.

Mr. Maurice E.F. Fitzmaurice,
Mr. Samad Diba,
Ms. Mino Salimi,
Mrs. Badri Delkhor,
Mr. Richard D. Gaines,
Mr. Vrij Torossian
Witnesses.

Also present

:

Ms. Lucy F. Reed,
Agent of the Government
of the United States of
America,
Mr. Michael F. Raboin,
Deputy Agent.

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I. PROCEDURAL HISTORY

1. On 19 January 1982, the Claimant GENERAL PETROCHEMICALS CORP. ("the Claimant") filed a Statement of Claim against the ISLAMIC REPUBLIC OF IRAN ("Iran"), KARKHANEJAT TOWLIDI TEHRAN ("KTT") and GROUH TOWLIDI TEHRAN ("GTT"). The Claimant is seeking an award in the amount of US\$6,590,592.95¹, representing \$6,525,339.55 as the principal amount of alleged wrongfully dishonored bills of exchange and \$65,253.40 for a one percent protest charge paid by Bankers Trust A.G., Zürich,² to Bank Saderat and Bank Dariush upon the alleged dishonour of the Bills of Exchange and reimbursed to Bankers Trust by the Claimant. In addition, the Claimant seeks an award of other bank charges, appropriate interest, and costs. The Respondents contest the claims and raise counterclaims in the amounts of \$9,770,848.07; DM 105,625.17; Belgian Francs 125,453; French francs 20,192.34 and Rials 603,179,922. A Hearing took place on 10-12 December 1990. After the Hearing, on 13 February 1991, the Claimant filed an application for a rehearing of the case citing Article 29, paragraph 2, of the Tribunal Rules which permits the Tribunal to reopen the Hearing if it considers that necessary due to exceptional circumstances. In the application, the Claimant also requested the Tribunal to suspend any further deliberations in this Case pending the determination of its application. The application was not accompanied by any documentation. Subsequently, on 24 May 1991, the Claimant filed a submission entitled "Claimants Memorial in support of its

¹All references to dollars in this Award are to United States dollars.

²In its Hearing Memorial filed on 3 May 1989, the Claimant increased the relief sought to \$10,354,000.- allegedly representing the \$6,590,592.95 originally claimed plus 57.1% as adjustment for inflationary losses suffered due to the passage of time.

application for Re-hearing under Article 29.2 of the Rules." On 8 August 1991, the Respondents filed a Reply to this application, requesting the Tribunal to dismiss the Request. The Tribunal will address the application infra, see paras. 36-41.

II. FACTS AND CONTENTIONS

2. The Claimant, in support of its assertion that it is a United States national as defined in Article VII, paragraph 1, of the Claims Settlement Declaration ("CSD"), explains that in 1975 the late Mr. Jakob Englander filed with the County Clerk of New York County a Certificate of Doing Business Under an Assumed Name, for the purpose of operating a business as "General Petrochemicals". Thereafter, he conducted this business under that name from offices at 1 East 53rd Street, in the County and State of New York. The Claimant asserts that Jakob Englander, who was born in Germany, was granted United States citizenship on 11 May 1954 and was issued a Certificate of Naturalization on that date. Jakob Englander allegedly was also known as Jakob Jack Englander, Jakob Joachim Englander, and Jack Englander. The business was allegedly later managed with his nephew, Joachim Englander, who allegedly is also known as Joachim Jack Englander and Jack Englander. A corporation, General Petrochemical Ltd., was formed on 13 July 1979, but since it had, as the Claimant asserts, errors in its name due to the omission of "s" after the word "Petrochemical", a certificate of Amendment of the Certificate of Incorporation was filed with the New York Department of State on 25 July 1979 that corrected the name to "General Petrochemicals Corporation". The Claimant further asserts that on 18 July 1979, Jakob Englander, received two hundred shares in consideration for his assignment to General Petrochemicals Corp. of all of his title and interest in and to the assets of his individual proprietorship General Petrochemicals. On 20 July 1979, Jakob Englander, allegedly in recognition of

the contributions of his nephew Joachim, transferred to Joachim one hundred shares of his stock in General Petrochemical Ltd. On 3 August 1979, these shares were exchanged for one hundred shares in General Petrochemicals Corp., and the remaining shares in the company were transferred to Joachim. The Claimant asserts that Joachim was born in the Netherlands, became a naturalized United States citizen on 16 December 1957 and is allegedly the sole owner of the stock of the Claimant from the time the claim arose until the conclusion of the CSD. The Claimant filed certain documentary evidence purporting to support its contentions.

3. The Claimant asserts that GTT and KTT are entities controlled by Iran as defined in Article VII, paragraph 3, of the CSD.

4. Explaining the background of this Case, the Claimant asserts that before the issuance of the 23 bills of exchange that are the subject of the claim, there was a close working relationship between the unincorporated General Petrochemicals (whose assets were later allegedly assigned to the Claimant) and KTT and GTT. General Petrochemicals allegedly procured raw materials from all parts of the Western World, resold them to KTT and GTT, and financed some of those transactions. The offices of General Petrochemicals at 1 East 53rd Street in New York were available to all of the officers of the respondent companies, and in particular to their Chairman of the Board of Directors, President and Managing Director, Mr. Raffie Aryeh.

5. Turning to the immediate history of the present claim, the Claimant asserts that during the period 1977 to 1978, General Petrochemicals sold goods consisting of raw materials to KTT and GTT, for use in the manufacturing of plastics and textiles. The Claimant further asserts that these materials were delivered to the said companies and conformed to the specification of the parties; KTT and GTT

agreed to pay for the goods and to honor drafts drawn in connection with them. To obtain payment for the goods, General Petrochemicals therefore allegedly drew 23 bills of exchange on KTT and GTT payable through Bank Saderat or Bank Dariush in Tehran, requiring KTT and GTT, for value received, to pay the amounts indicated to the order of Bankers Trust A.G., Zürich, Switzerland for collection for the account of General Petrochemicals. The bills are identified as follows:

<u>Collection No.</u>	<u>Acceptance</u>	<u>Date Accepted</u>	<u>Due Date as extended</u>	<u>Amount in U.S. \$</u>
A. <u>Bank Saderat</u>				
23,215731	KTT	Jan. 6, 1978	May 23, 1979	687,500.00
23,240404	KTT	June 28, 1978	June 18, 1979	1,161,000.00
23,240465	KTT	Sept 13, 1978	June 23, 1979	748,120.00
23,240507	KTT	Oct. 5, 1978	June 24, 1979	107,000.00
23,240531	KTT	Oct. 19, 1978	June 28, 1979	67,067.55
23,240532	GTT	Oct. 20, 1978	July 28, 1979	31,065.66
23,240533	KTT	Oct. 20, 1978	July 24, 1979	12,680.00
23,240529	GTT	Nov. 2, 1978	Aug. 5, 1979	64,288.95
23,215489	KTT	July 28, 1977	May 27, 1979	116,375.00
23,215517	KTT	Aug. 11, 1977	May 25, 1979	192,750.00
23,240487	KTT	Sept.13, 1978	July 1, 1979	12,774.40
23,240488	KTT	Sept.13, 1978	June 2, 1979	32,125.00
23,240416	KTT	July 20, 1978	June 20, 1979	212,000.00
23,240530	GTT	Nov. 2, 1978	Aug. 13, 1979	35,516.25
B. <u>Bank Dariush</u>				
4,6557	KTT	July 21, 1977	June 1, 1979	132,000.00
4,6841	KTT	Nov. 4, 1977	June 2, 1979	1,141,956.75
4,6871	KTT	Nov. 17, 1977	May 23, 1979	128,500.00
4,6870	KTT	Nov. 17, 1977	May 23, 1979	137,500.00
4,6946	KTT	Dec. 19, 1977	June 8, 1979	592,500.00
5,7351	KTT	April 3, 1978	June 20, 1979	295,463.70
5,7572	KTT	June 2, 1978	May 27, 1979	288,978.90

5,7573	KTT	June 2, 1978	May 24, 1979	288,978.00
4,6556	KTT	June 20, 1978	June 6, 1979	79,200.00

The signature of the drawer on the bills is "J. Englander". Copies of the bills of exchange, together with invoices and a certain number of bills of loading, have been presented in evidence. The bills were made available for inspection by the Respondents and also presented to the Tribunal at the Hearing.

6. The Claimant alleges that KTT and GTT accepted the bills of exchange and agreed they would pay the amount of each bill on the initial maturity date. It claims that the acceptance was effected by authorized corporate directors and the acceptance was approved and certified by either Bank Saderat or Bank Dariush. Most of the bills bear a number on their reverse side which was placed there by the appropriate Iranian Bank after it procured an acceptance of the bills from KTT or GTT. The Claimant further alleges that at the request of KTT and GTT the 23 bills of exchange were extended or "rolled over" for prolonged periods. Upon the extension of the due dates, each of the respondent companies allegedly re-accepted the bills and their acceptance was allegedly again verified by the appropriate Bank. The Claimant states that various stamp duty taxes were levied and collected by the appropriate governmental agencies. On the extended maturity dates, the Claimant asserts, the bills were presented for collection by Bankers Trust A.G., Zürich. The Claimant argues that Bankers Trust, a wholly owned subsidiary of Bankers Trust, a New York corporation, was acting as its collecting agent in accordance with established banking practice. The bills were dishonoured upon presentation. Protest was made by the Iranian Banks and Bankers Trust, and General Petrochemicals paid a protest fee of one per cent of the total face value of the bills, which went through the Central Bank of Iran to the Iranian Treasury General. Subsequently, on 7 December 1979,

allegedly at the request of General Petrochemicals Corp., Bankers Trust endorsed each of the 23 bills to the Claimant and delivered the bills to it for the purpose of enabling it to commence an action in the United States District Court for the Southern District of New York in an effort to obtain payment. The Claimant argues that it has at all times owned and been the holder of the dishonoured bills.

7. At the Hearing, Mr. Peter Croggan, an international banking expert, stated as a witness introduced by the Claimant that as far as he could judge, the bills of exchange in dispute were on their face in conformity with those normally used in international trade. A former member of the Board of Directors of KTT and GTT, presently domiciled outside Iran, Mr. Habibollah Rezvani Yousef, also gave testimony as a witness. He confirmed his statements in an affidavit to the effect that he recognised his signature as an acceptor on the bills, as well as the signatures of other Board members including Mr. Saeed Keyvanshad and Mr. Nematollah Faghih Nassiri. There is an affidavit in the record by Mr. Keyvanshad to the same effect. At the Hearing, the Claimant also presented as a witness Mr. Massoud Asherian, a former manager of KTT and GTT, who had been working in the import documentation office of those companies from 1975 through 1979. Mr. Asherian stated that the goods that related to the 23 bills of exchange had been correctly imported to Iran. The Claimant further presented Mr. Raffie Aryeh, formerly the majority shareholder of KTT and sole owner of GTT, as a witness at the Hearing. Regarding the Claimant's statement in the written pleadings that at times it had purchased goods from raw materials suppliers and had arranged for those purchases to be made through the Swiss bank account of T&T enterprises, Mr. Aryeh gave information as to T&T's identity. He stated that T & T stands for Technology and Trade, and that he had owned the majority of its stock. He added that due to health problems, he had transferred the stock to his children.

8. Since the Respondents are, in the Claimant's view, responsible for the payment of the bills of exchange, the Claimant requests the Tribunal to award it \$6,590,592.95 together with interest and costs incurred in the presentation of the claim.

9. In the alternative, the Claimant argues that it is entitled to recovery under the theory that payment is due on account of "goods sold and delivered". It alleges that its claim for goods sold and delivered to KTT and GTT is supported by invoices or other documentary proof.

10. Further, in the alternative, the Claimant argues that it is entitled to recovery under the theory of unjust enrichment. In support of its argument, the Claimant refers to the Tribunal's finding in Benjamin R. Isaiah and Bank Mellat (as successor to International Bank of Iran), Award No. 35-219-2 (20 March 1983), reprinted in 2 Iran-U.S. C.T.R. p. 232-240, in which an unjust enrichment claim was also based on unpaid negotiable instruments.

11. The Respondents contest the Claimant's allegations both concerning its locus standi and ownership of the claim and concerning the substance of its claim. They argue that the claimant company and the Claim are owned by Mr. Raffie Aryeh. Further they argue that the 23 bills of exchange were not issued, accepted and extended on the alleged dates in the years 1977 and 1978; rather, they were fraudulently prepared in early 1979, when Mr. Aryeh realised that he could not operate in Iran any longer.

12. Concerning the Tribunal's jurisdiction, the Respondents argue that the documentary evidence on which the Claimant relies has not demonstrated that a United States national ever held an interest in General Petrochemicals, General Petrochemical Ltd. or General Petrochemicals Corp., equivalent to fifty per cent or more of its capital stock, as required by Article VII, paragraph 1 of the CSD. The

Respondents dispute the credibility of the certified copy of the business certificate, forming part of the Claimant's evidence, that states that Jakob Jack Englander conducted business under the name of General Petrochemicals. In this respect, the Respondents rely on the affidavit dated 7 December 1989 of Mr. James N. Rosetti, the Deputy County Clerk for the county of New York. Mr. Rosetti states that in 1975 a business certificate was filed for an unincorporated business called "General Petrochemical", but that the original certificate and all of the documents for General Petrochemical

... have been removed, lost, misplaced or stolen from our files. In addition, the page in the County Clerk's Minute Book containing the name General Petrochemical and the name of General Petrochemical's owner has been ripped out of the Minute Book.

Mr. Rosetti concludes that accordingly he could not establish or verify the contents of the original business certificate. The Respondents draw attention to the fact that Mr. Rosetti's affidavit concerns an entity called "General Petrochemical", whereas the certified copy of the business certificate relied on by the Claimant relates to General Petrochemicals with the letter "s" at the end.

13. According to the Respondents, the circumstances of this Case also render the copy of the business certificate in question inadmissible. They assert that Jakob Jack or Jack Englander never owned the unincorporated General Petrochemicals; instead, the true identity of the owner of the business was Mr. Raffie Aryeh, who is attempting to make the Tribunal believe that General Petrochemicals was an enterprise operated by a United States national.

14. In support of their contention that General Petrochemicals was not owned by Jakob Jack Englander, the Respondents also rely on the statement made by Mr. Lee H. Miller in a deposition dated 9 August 1979, concerning litigation, in

the United States courts, between KTT and Diamond Shamrock Corporation in which General Petrochemicals and Mr. Aryeh were third-party defendants. Mr. Miller, the brother-in-law of Mr. Aryeh, was at that time an officer of Eximpco, a company that was using the same office as General Petrochemicals at 1 East 53rd Street New York. He states that General Petrochemicals was associated with Mr. Aryeh and "was a name under which we solicited price information ... 'we', meaning myself, probably Elizabeth [Rosenzweig, Mr. Miller's Secretary], perhaps the people at KTT." The Respondents draw attention to the fact that Mr. Miller shows considerable familiarity with General Petrochemicals' operations and yet never mentions any role of Jakob Jack Englander. In this respect, the Respondents refer to a number of documents, presented in evidence and showing the signature of Mr. Aryeh on behalf of General Petrochemicals. In some of these documents Mr. Aryeh asked the addressees to deposit certain amounts owed to General Petrochemicals to accounts bearing his name. The Respondents also refer to the fact that in their review of the entire record in this Case they could not find one letter signed by a Jack Englander, or by either of the two Englanders involved in this Case.

15. With respect to the evidence provided by the Claimant concerning the identity of the two Englanders, the Respondents assert that these identity documents show that the two Englanders had two distinct first names. The death certificate of Mr. Englander who died on 30 December 1980 shows that his first name was Jakob, while the naturalization certificate and the photocopy of the passport of the other Englander show that his first name is Joachim. Therefore, the Respondents argue, the person named Jakob Jack or Jack Englander, the alleged owner of the Claimant, is neither of those two Englanders.

16. The Respondents submit that Jakob and Jack Englander must be two different persons. They present in evidence

copies of the "Business Certificate for Partners" and a "Certificate of Discontinuance of Business as Partners" concerning Alcote Bag, another alleged business of Jakob Englander, that contain Jakob Englander's signature. The Respondents pointed out that the signature appearing on these Certificates bears no resemblance to Jack Englander's signature on General Petrochemicals' Business Certificate or the signature on the bills of exchange.

17. In support of their contention that Jakob Englander, the uncle, was not involved in the business conducted by General Petrochemicals, the Respondents rely on an affidavit of Mrs. Esther Yeger, Jakob Englander's daughter, dated 10 October 1989. She states

I was very familiar with my fathers business activities prior to his death. He owned a small bag business. However, due to illness, he did not work for over five years immediately preceding his death... My father never had any interest in or worked for a company named General Petrochemical Corporation in New York City... My father died without a will... Because my father died without any assets of significance, his estate was not formally probated.

However, in a later affidavit, dated 29 December 1989, presented by the Claimant, Mrs. Yeger stated that because she had been estranged from her cousin, Jack Englander, her father had not informed her of his business relationship with his relative,

because I believe that having known that I was estranged from this relative, I would disapprove of his business relationship between my father and Jack Englander. ... it appears that he kept the above noted business relationship between himself and Jack Englander secret from myself.

18. The Respondents also argue that the fact that Mr. Jakob Englander became seriously ill in the mid 1970's, as stated by his daughter Mrs. Yeger in both her affidavits, casts serious doubt on the claim that Jakob Englander embarked

then on a multimillion business operation, such as General Petrochemicals. In further support of their argument that Jakob Englander was not involved in General Petrochemicals, the Respondents allege that it is inconceivable that he transferred the shares in a multimillion dollar company to his nephew, but died without any assets of significance, according to Mrs. Yeger's first affidavit.

19. Also, the Respondents submit that the certified copy of the business certificate for General Petrochemicals presented by the Claimant shows an inconsistency about which Englander allegedly owned General Petrochemicals. Mr. Eric Somer, a notary public, states in his affidavit dated 1 June 1990, that it was Jakob Joachim, also known as Jack, Englander who signed the business certificate. However, the name appearing on that certificate is Jakob Jack Englander.

20. In a related argument concerning the identity and nature of the unincorporated General Petrochemicals and General Petrochemicals Corp., the Respondents assert that General Petrochemicals doing business at 1 East 53rd Street, New York, was in fact a representative office of General Petrochemicals Anstalt, incorporated in Liechtenstein. They refer to an affidavit of Mr. Raffie Aryeh dated 3 June 1980, filed in the litigation between KTT and Diamond Shamrock Corp. before the United States District Court for the Southern District of New York, in which Mr. Aryeh stated that

General Petrochemicals, 1 East 53 Street, New York
... was then a Representative Office of General
Petrochemicals Anstalt, Aeulenstrasse 74,
Lichtenstein, Vaduz.

Similarly, a stipulation in the same litigation, dated 19 May 1981, between Mr. Joseph Mandell, attorney for General Petrochemicals Anstalt, on the one hand, and the attorneys for KTT, on the other, stated that General Petrochemicals Anstalt is also known as General Petrochemicals. The

Respondents further refer to a Notice of Claim filed in the same litigation, in which General Petrochemicals Anstalt, Liechtenstein, demanded the proceeds of that lawsuit that involved the same 23 bills of exchange that are at issue in this Case. The Notice is signed by the same Mr. Mandell. Furthermore, in an Amended Complaint in another lawsuit before the United States District Court for the Southern District of New York instituted against ICD Corporation and Union Carbide Corporation by KTT, in which General Petrochemicals was an additional Defendant, the Court stated:

Upon information and belief, additional defendant General Petrochemicals is a corporation incorporated under the laws of the nation of Liechtenstein.

21. Furthermore, in support of the argument that the Claimant was only an office of General Petrochemicals Anstalt, the Respondents refer to the letters of the law firm of Dr. Kordestani and Associates in Tehran, dated 20 May 1979 and addressed to Bank Dariush and Bank Saderat. The letters state that the bills of exchange that are the subject matter of this dispute were drawn by General Petrochemicals Anstalt. Mr. Virj Torossian, a partner in Mr. Kordestani's law firm, testified as a rebuttal witness at the Hearing that he was familiar with these bills of exchange. He stated that he believed the drawer of the bills to be General Petrochemicals Anstalt because he had received a telex from an attorney Dr. Hans Hussy asking him to present the bills of exchange, and to protest any non-payment on behalf of General Petrochemicals Anstalt. He also stated that the signature appearing on the letters to the two Banks, dated 20 May 1979, was his.

22. The Respondents also contest the Claimant's assertion as to its incorporation, first as General Petrochemical Ltd, on 13 July 1979, and then later in the same month as General Petrochemicals Corp. The Respondents argue that the

Claimant's evidence presented in this respect establishes that the share certificates were not issued on the alleged dates, and that they were, therefore, fabricated.

23. The Respondents present another jurisdictional argument; they argue that Bankers Trust A.G., Zurich, owned the bills of exchange when the claims arose and that the Claimant has not proved that the bank is a U.S. national. In this respect, they note that in accordance with Article VII, paragraph 2 of the CSD the Tribunal has no jurisdiction unless a United States national owned the claim from the time the claim arose until 19 January 1981. First, they dispute that Bankers Trust A.G. should be characterized as a collecting bank and therefore an agent of the Claimant. The Respondents thus argue that at the time the claim allegedly arose -- when the 23 bills of exchange were dishonoured in the period between 23 May 1979 and 13 August 1979 -- Bankers Trust A.G. owned the bills; the bills were not endorsed to the order of General Petrochemicals Corp. until 7 December 1979. To the extent that Bankers Trust A.G. owned the claim at any time during the relevant time period, its nationality becomes relevant to the issue of jurisdiction. The Respondents argue that the Claimant has produced virtually no evidence to prove that Bankers Trust A.G. is a United States national within the meaning of the CSD and therefore the case should be dismissed.

24. The Respondents also contest the claim on its merits. They argue that the bills of exchange are not actionable because of fraud. They dispute that the bills were issued and accepted in the regular course of business during 1977 and 1978, as alleged by the Claimant, and assert that all 23 bills were made up in early 1979 at the time of the Iranian Revolution when Mr. Raffie Aryeh thought that he could not continue to own KTT and GTT. According to the Respondents, this explains why the Claimant has not been able to produce any relevant correspondence in support of its claim, whereas

the Claimant has asserted that all such documents must be in the hands of the Iranian Banks and the Respondents.

25. The Respondents assert that the bills were first made in May 1979 somewhere outside Iran, then carried to Iran by Mr. Abdul Moqueet Yousefzai, at that time a director of KTT and GTT, and Mr. Leuba, an employee of Bankers Trust A.G. Zürich. They presented the bills to Mrs. Khajenassiri, Mr. Aryeh's secretary, to obtain the necessary signatures from the authorized company officials. After the signatures had been procured, the drafts were submitted to the law firm of Mr. Kordestani to be presented to Bank Dariush and Bank Saderat. The Respondents allege that, contrary to the Claimant's allegations, the banks' seals, reference number, and duty stamps, which appear either on the face or on the reverse of the bills, were put there after the banks had received them on 20 May 1979. In support of their contention, the Respondents refer to the affidavit of Mr. Mohammad Ebrahim Tajvidi, a Certified Accountant who was retained by KTT and GTT in the years 1986 through 1989 to provide them with expert advice with respect to their foreign legal claims.

26. Mr. Tajvidi gives a report in his affidavit of his investigations with respect to the bills of exchange and their underlying transactions. He states that he had great difficulty tracing in the files of KTT and GTT any documents pertaining to the underlying transactions, so he decided to meet with two ex-officers of KTT and GTT, Mr. N. Faghih Nassiri and Mr. Yousefzai. He states that Mr. Nassiri, who confirmed that he had signed for acceptance in early 1979 only on the face of the bill, denied that he had signed the back of the bills and emphasized that his signature at the back of the bills as re-acceptance must have been forged. There is a separate affidavit of Mr. Nassiri in the record to the same effect. Mr. Yousefzai told Mr. Tajvidi that the bills were drawn by himself and Mr. Aryeh sometime in early 1979 and that the invoices had been backdated. Mr.

Yousefzai also stated that Mr. Aryeh had signed the bills in the name of J. Englander.

27. In response, the Claimant introduced Mr. Yousefzai as a witness. He claimed that most of his statements contained in Mr. Tajvidi's report were not correct, particularly those relating to the ownership of General Petrochemicals Corporation and to the fraudulent nature of the bills of exchange. He alleged that he had made the statements after having been promised payment of money by KTT and GTT as part of an arrangement to provide assistance to those companies in their foreign lawsuits and to locate their properties and to collect receivables outside Iran, an arrangement which has not been implemented.

28. In further support of their argument that the bills of exchange are fraudulent, the Respondents note that Mr. Kevanshad and Mr. Nassiri, former directors of KTT and GTT, in their affidavits relied upon by the Claimant, state that they had signed the bills as authorised directors, but they fail to state when they signed the bills. In another affidavit relied upon by the Respondents, Mrs. Badri Delkhor, Deputy Manager of the Foreign Exchange Department of Bank Mellat (the successor to Bank Dariush), states that according to the records of the Bank, the bills were sent to Bank Dariush for the first time through Dr. Kordestani's law firm on 20 May 1979. Mrs. Delkhor appeared as a witness at the hearing and confirmed the accuracy of her statements in the affidavit. At the Hearing, Mr. Samad Diba, an employee at the Foreign Exchange Department of Bank Dariush, also testified as a witness that the bills came from Dr. Kordestani's law firm only on 20 May 1979. Furthermore, Ms. Mino Salimi, an employee of Bank Saderat's International Department, testified at the hearing that not until 20 May 1979 were 9 bills of exchange received by Bank Saderat through a letter of Dr. Kordestani's law firm and a letter of Bankers Trust Zürich.

29. The Respondents object to the Claimant's reliance on the theories of unjust enrichment and "goods sold and delivered". They argue that they present new bases of the claim introduced only in the Hearing Memorial filed on 3 May 1989 and therefore constitute inadmissible amendments. At any rate, the Respondents argue that the remedy of unjust enrichment is not available when another cause of action exists, as it does in the present Case.

30. Concerning the Claimant's theory that payment is due to it on account of "goods sold and delivered", the Respondents dispute that sales contracts had been concluded between the parties. They note that the Claimant has produced no purchase orders issued to it by the Respondents or other documents showing the Claimant's offer and the Respondents' acceptance regarding the goods that relate to the 23 bills of exchange. Further, the Respondents assert that the Claimant has failed to prove that it was the seller or the financier of the goods. The Respondents presented documentary evidence purporting to show that at the time purchase orders for the same goods were placed with other suppliers with whom different terms of payment, namely letters of credit, were agreed upon. Evidence is also presented indicating that payments were made to those suppliers.

31. Moreover, according to the statements of two of General Petrochemicals' officers, presented as evidence by the Respondents, General Petrochemicals did no more than solicit price quotations on behalf of KTT and GTT. In this respect, the Respondents rely in particular on the statements in a deposition of Mr. Lee M. Miller in the litigation between KTT and Diamond Shamrock Corp., see supra, para. 14, and statements in a deposition of Mrs. Elizabeth J. Rosenzweig in the same litigation.

32. Concerning the transactions allegedly underlying the bills of exchange, Mr. Maurice E.F. Fitzmaurice, an

international banking expert called as a witness by the Respondents, testified at the Hearing. He stated that upon examination of the documentary evidence in this Case, he had concluded that General Petrochemicals Corp. had never purchased the materials. He agreed with the views expressed by Mr. Tajvidi in his affidavit that General Petrochemicals Corp. in fact played no role in the transactions between KTT and GTT, on the one hand, and the suppliers of raw materials, on the other. He also stated that he had seen no evidence indicating that the bills of exchange existed at the time that they purportedly were drawn.

33. The Respondents conclude that the claim is inadmissible because of lack of jurisdiction and is, at any rate, without merit. They request the claim to be dismissed on account of its fraudulent nature. They also request the Tribunal to award them reasonable legal fees and costs incurred in defending the Claim.

34. KTT and GTT assert Counterclaims against General Petrochemicals Corp. and Mr. Raffie Aryeh, who the Respondents claim are jointly and severally liable for damages inflicted on the two companies. Mr. Aryeh is included as a Counter-Respondent on the ground that he is allegedly the owner of General Petrochemicals Corp. The amount of the Counterclaims is specified in the submission filed on 12 December 1990 and totals \$9,770,848.07, plus DM 105,652.17, Belgian francs 125,453, French francs 20,192.34 and Rials 603,179.922. The Counterclaim is based on the alleged overpricing by the Counter-Respondents of goods involved in transactions previously concluded, reimbursement of amounts allegedly paid into Mr. Aryeh's account in Germany as compensation for damage to goods, and repayment of Mr. Aryeh's alleged debt to KTT and GTT and some other items. In support of their claim, the Counter-Claimants refer to KTT and GTT's audit reports for the fiscal year ending on 20 March 1980, presented in evidence by the Claimant.

III. REASONS FOR THE AWARD

1. Procedural Issues

35. After the time limits set for the exchange of written pleadings had expired, the Claimant sought permission to file additional submissions. The Respondents objected to the admissibility of such submissions. By Orders filed on 26 September 1990 and 18 October 1990, the Tribunal allowed the distribution of the late-filed documents, stating that it would decide on their admissibility after the Hearing. The Tribunal in those Orders requested the Respondents to comment on the Claimant's submissions at the Hearing, either orally or in writing. The late-filed submissions of the Claimant consisted of a "Supplement to Rebuttal and Additional Documentary Evidence", filed on 8 October 1990; a submission entitled "Index to Documents previously omitted and additional documents to which the Claimant will refer at the Hearing of this Claim" filed on 18 October 1990; and some additional documents, filed on 9 November 1990, stated to be referred to in the Claimant's Supplemental Rebuttal. At the Hearing, the Respondents presented to the Tribunal a submission entitled "Comments on the Claimant's late-filed documents in compliance with the Tribunal Orders [stated above]". It was filed on 12 December 1990. The Tribunal notes that both Parties agreed at the Hearing to accept the late-filed documents on both sides as part of the record in this Case.

36. As noted above, see para. 1, the Claimant filed on 24 May 1991, more than five months after the Hearing was closed, a Memorial requesting a re-hearing. Before turning to the other issues of this Case, the Tribunal will consider whether to grant the Claimant's motion in light of Tribunal Rules and practice. In its Memorial the Claimant argues that the exceptional circumstances of this Case justify a re-hearing in accordance with Article 29, paragraph 2 of the Tribunal Rules. That provision reads as follows:

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

37. The Claimant's initial claim of exceptional circumstances is based on its belief that the Respondents have misled the Tribunal by their allegations of fraud, which centered on the assertion that the claim based on the bills of exchange was fraudulent. In support of this contention, the Claimant attached as exhibits to its Memorial an affidavit of Mr. Nematollah Faghih Nassiri, see supra, paras. 7 and 26, allegedly prepared outside Iran on Mr. Nassiri's departure from Iran in January 1991. Moreover, the Claimant requests leave to submit additional documents concerning the ownership and nationality of General Petrochemicals Anstalt that it states were found in the files of attorney Joseph Mandell. The Claimant also requests the Tribunal to order the Parties to file further submissions in light of the new evidence presented by it.

38. In answer to the Claimant's request, the Respondents filed a reply on 8 August 1991 and stated that the Claimant has not been able to prove that any of the documents presented by the Respondents were false or any other exceptional circumstances justifying the motion to reopen the Hearing. As to the documents related to the status of General Petrochemicals Anstalt, the Respondents refer to the fact that most of the documents submitted by the Claimant with its request, especially the evidence concerning the incorporation and dissolution of General Petrochemicals Anstalt, had been filed previously by the Respondents. The Respondents refer also to Mr. Faghih Nassiri's affidavits presented by the Respondents as part of their evidence, and the Respondents submit that the statements made therein were not denied by the affiant in his newly submitted affidavit. Further, the Respondents filed two affidavits in support of their arguments: one by Mr. Abbas Shirin-Bayan, an in-house counsel for the Foundation of the Oppressed, and one by Mr.

Fereydon Momeni, the Director in charge of the Algiers Declarations Department of the Bureau of the International Legal Services of the Government of the Islamic Republic of Iran.

39. The Tribunal turns first to the Claimant's request that the Hearing be reopened to consider the allegations in Mr. Nassiri's affidavit that the Respondents misled the Tribunal on matters related to the merits of the case. For the reasons set forth in paras. 42 - 52, infra, the Tribunal concludes that the claim must be dismissed for lack of jurisdiction. Therefore, the Tribunal does not need to reach any issues related to the merits, including the alleged fraudulent nature of the claim and therefore also the Claimant's request to reopen the Hearing on the basis of the allegations in Mr. Nassiri's affidavit, all of which relate solely to the merits.

40. The second ground for the Claimant's request to reopen the Hearing is to enable the Tribunal to consider documents submitted after the close of the Hearing that purport to show that General Petrochemicals Anstalt was owned and controlled by either of the Englanders. The issue of General Petrochemicals Anstalt's relationship to the claim was raised by the Respondents in submissions filed well before the Hearing, so that the Claimant was aware before the Hearing of the relevance and importance of any documents that would shed light on the ownership of that corporation. The documents that the Claimant belatedly asks the Tribunal to consider are either documents already available in the record of this Case, such as the Company Registry, see para. 44, infra, or are said to have come from the files of Joseph Mandell, an attorney who the record shows has long been involved in matters related to the transactions that are the basis of the claim, see para. 20, supra. Moreover, the evidence shows that Mr. Mandell acted as counsel both for General Petrochemicals Corp. and General Petrochemicals Anstalt. See paras. 46 and 51, infra. There is no indication that Mr. Mandell's files have not been available to the

Claimant at all times in its preparation of this Case. Significantly, the Claimant's Request to reopen the Hearing offers no explanation whatsoever as to why documents available in one of its own attorney's files were not timely submitted. Moreover, the Tribunal notes that the new documents have no relevance to the Tribunal's decision as to its jurisdiction in this Case. Whatever the status of General Petrochemicals Anstalt, it is General Petrochemicals Corp., the New York corporation, that has been the Claimant throughout the proceedings before the Tribunal from the time the Statement of Claim was filed on 19 January 1982, and not General Petrochemicals Anstalt, the Liechtenstein Corporation nor one of the Englanders. Nor has it been alleged by the Claimant that General Petrochemical Anstalt at any time has been the owner of the claim.

41. Furthermore, the orderly processes of the Tribunal require that evidence be submitted in a timely manner to assure fairness and to prevent possible prejudice to other parties. The Claimant points to no exceptional circumstances -- indeed, to no circumstances at all -- that would permit the Tribunal to reopen the Hearing pursuant to Article 29, para. 2 of the Tribunal Rules to consider the above-mentioned documents from Mr. Mandell's files. Accordingly, the Claimant's Request for reopening the Hearing on this ground must also be denied. This decision accords with the recent Award Vernie Rodney Pointon and Mary Lou Pointon and The Government of the Islamic Republic of Iran Award No. 516-322-1 (filed on 23 July 1991) para. 6, in which the Tribunal noted that its general practice is to refuse to consider unauthorized post-hearing submissions in order to preserve the fairness and orderliness of its proceedings and to avoid possible prejudice to other parties.

2. Jurisdiction

42. The Tribunal notes at the outset that the Claimant has failed to demonstrate that it fulfils the jurisdictional requirement that a claim be continuously owned by a national of the United States, embodied in Article VII, paragraph 2, of the CSD. That provision reads as follows:

'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 ...

43. The Tribunal finds that compelling evidence has been presented in this Case demonstrating that the entity called "General Petrochemicals" that signed the bills of exchange in dispute was General Petrochemicals Anstalt, a company incorporated in Liechtenstein. Further, that same entity owned the claim at the time it arose, namely, when the 23 bills of exchange were allegedly dishonoured. Because the maturity dates of the 23 bills of exchange fall within the period 23 May 1979 through 13 August 1979, the Tribunal assumes for the purpose of determining jurisdiction that the claim arose during that period. In the following paragraphs the Tribunal will provide an examination and analysis of the documentary evidence on which its jurisdictional holding is based.

44. First the Tribunal notes that there is substantial evidence in the record showing the existence of General Petrochemicals Anstalt. The Respondents produced as evidence the Company Registry of General Petrochemicals Anstalt, incorporated on 29 July 1976 in Liechtenstein. This corporation was put into liquidation on 18 October 1983, and the process was completed on 16 March 1987. During the period of its existence, certain persons were listed as Directors (Verwaltungsrat) with the power to sign on behalf of the corporation. From 14 February 1976 until 6

November 1979, a Jack Englander had the power to sign for the corporation alone. In addition, an attorney, Dr. Dr. Batliner, could also sign as long as his signature was accompanied by Jack Englander's signature. The Claimant stated at the Hearing that this Jack Englander was Jakob Englander, the elder of the Englanders. On 6 November 1979, the signatory designation was changed so that a Jack Englander Jr., was listed as the Director, able to sign alone on behalf of the corporation. Dr. Dr. Batliner was no longer listed as a signatory. The Claimant stated that this Jack Englander is Joachim Englander, who attended the Hearing. At the Hearing, Joachim Englander stated that he had no information about General Petrochemicals Anstalt. Later, he added that it was his understanding that the corporation had been formed by his uncle Jakob. Mr. Raffie Aryeh testified at the Hearing that he had heard the name of General Petrochemicals Anstalt and that he was under the impression that it was a corporation in which Jakob Englander had a certain interest.

45. The two letters sent from the law firm of Dr. Kordestani to Bank Dariush and Bank Saderat constitute important documentary evidence in this Case. In the letters, through which the bills of exchange were sent to Dr. Kordestani's firm, it is stated that the originals of the bills of exchange were enclosed, as well as a letter from Bankers Trust, and it is requested that the bills be presented to the drawee. In the case of non-payment, the banks were instructed to protest and to advise Bankers Trust. It is stated in the letters that the drawer of the bills of exchange was General Petrochemicals Anstalt, Vaduz. Mr. Torossian, a partner in Dr. Kordestani's law firm, testified at the Hearing, see supra, para 21, and stated that he was familiar with the bills of exchange in dispute and that he had signed the two letters. He confirmed that he believed the drawer of the bills of exchange to be General Petrochemicals Anstalt because he had received a telex from Dr. Hans Hussy asking him to present the bills of

exchange and to protest any non-payment on behalf of General Petrochemicals Anstalt. Further, telexes from Mr. Torossian responding to Dr. Hussy and discussing the legal matter as the one relating to General Petrochemicals Anstalt have been presented in evidence.

46. The Respondents produced several documents pertaining to a lawsuit brought by KTT against Diamond Shamrock Corp., see supra, para. 20. These documents refer frequently to General Petrochemicals Anstalt. As noted above, New York attorney Joseph Mandell, acting as representative of "General Petrochemicals Anstalt and General Petrochemicals" filed a Notice of Claim on 26 February 1981 in the suit. The Notice asserts a claim on behalf of "General Petrochemicals Anstalt, Aeulenstrasse, Vaduz, Liechtenstein, also known as General Petrochemicals having its office at One East 53rd Street New York City". It demands that "payment be made to General Petrochemicals Anstalt, also known as General Petrochemicals or its undersigned attorney." Furthermore, a Stipulation in that lawsuit has been presented in evidence. This document is signed by Mr. Mandell, who characterized himself as the "attorney for General Petrochemicals Anstalt."

47. Finally, the Respondents have produced two exhibits containing documents in a lawsuit unrelated to this arbitration. These documents, an attachment, dated 30 April 1980, and an arbitral award, dated 7 July 1983, list as the creditor seeking attachment "General Petrochemicals Anstalt", located at Aeulenstrasse 74. Significantly, one of those documents lists Dr. Hans Hussy, the attorney who communicated with Dr. Kordestani's office, as the representative of that entity, see supra, para. 45.

48. Not only does this evidence prove that an entity called General Petrochemicals Anstalt was incorporated in Liechtenstein, but the court documents concerning the Diamond Shamrock case referred to supra, paras 46 and 47,

also establish that General Petrochemicals Anstalt did business as "General Petrochemcials" in New York.

49. In that litigation, Mr. Raffie Aryeh, at that time the major shareholder and Chairman of the Board of KTT, filed an affidavit informing the United States District Court for the Southern District of New York about a settlement agreement between KTT and General Petrochemicals. He stated:

In accordance with an agreement between KTT and General Petrochemicals Anstalt in the fall of 1978 for an extension granted to KTT to pay its indebtedness to General Petrochemicals, the Board of Directors of KTT in October 1978 signed an assignment of KTT's claim in the above case to General Petrochemicals, 1 East 53 Street, New York, New York. I as Chairman of the Board, approved, ratified and countersigned this said assignment in favor of General Petrochemicals, 1 East 53 Street, New York, which was then a Representative Office of General Petrochemicals Anstalt, Aeulenstrasse 74, Liechtenstein, Vaduz."

The affidavit indicates that in 1978 General Petrochemicals Anstalt was, at least for some purposes, acting as or through, General Petrochemicals, New York. Mr. Aryeh confirmed at the Hearing that the Agreement between KTT and General Petrochemicals Anstalt concerned the bills of exchange at issue in the proceedings before the Tribunal.

50. Lastly, the Tribunal concludes that the entity that owned the 23 bills of exchange and any related claims was General Petrochemicals Anstalt. The Claimant has presented the assignment of KTT's right, title and interest in the Diamond Shamrock case to General Petrochemicals as part of its evidence. (The Tribunal notes that also the authenticity of this document has been contested by the Respondents.) The document shows that the interest in the lawsuit was assigned in return for a twelve-month extension of the payment dates of the 23 bills of exchange at issue, plus related costs. Consequently, the Tribunal notes that whatever entity subsequently asserted any right, title or

interest in the Diamond Shamrock claim would be the entity with the power to extend those bills of exchange, that is, the owner of those disputed bills.

51. The entity that did file a Notice of Claim in the Diamond Shamrock lawsuit was General Petrochemicals Anstalt, also known as General Petrochemicals New York, see supra, para. 45. The Tribunal is convinced that it was General Petrochemicals Anstalt that exercised the rights to the lawsuit. First, the Notice of Claim expressly identifies the Liechtenstein corporation as the one filing the Notice. Second, at the time the Notice of Claim was filed on 24 April 1981, the New York General Petrochemicals allegedly had been incorporated. According to Joachim Englander in his statements at the Hearing, the attorney who did all the legal work involved in the incorporation was Joseph Mandell. Thus, Mr. Mandell was well aware of the existence of the New York corporation. However, when he drew up the Notice of Claim in the Diamond Shamrock litigation, he did not submit the claim on behalf of this corporation; instead, acting as the "representative of General Petrochemicals Anstalt, also known as General Petrochemicals", he asserted the claim for General Petrochemicals Anstalt. For the reasons mentioned in paras. 42-50, and those stated in this paragraph, the Tribunal is convinced that the General Petrochemicals that signed the bills of exchange was General Petrochemicals Anstalt.

52. Furthermore, as stated above, see supra, para. 43, the claim arose in the period 23 May 1979 through 13 August 1979, when the 23 bills of exchange became allegedly due. It has been conclusively established that those bills of exchange and any claim related to them were, at least during the relevant period, owned by General Petrochemicals Anstalt. The record is completely silent on the nationality of the ownership of this business entity that was incorporated in Liechtenstein. Consequently, the Claimant has not proved that it meets the jurisdictional requirement that the

claim was owned continuously by a United States national, as provided in Article VII, paragraph 2 of the CSD. The claim must therefore be dismissed for lack of jurisdiction. Accordingly, the Tribunal need not reach a decision on the remaining contested issues of jurisdiction and merits.

53. Since the claim is dismissed for lack of jurisdiction, it follows that the counterclaims asserted by KTT and GTT are also dismissed for lack of jurisdiction. See, e.g., International Products Corporation, et al., and The Government of the Islamic Republic of Iran, et al., Partial Award No. 186-302-3 (19 Aug. 1985), at pp. 42, 43, reprinted in 9 Iran-U.S. C.T.R. 10, 38.

3. Costs

54. The Respondents in their pleadings requested the Tribunal to award them their costs incurred in defending the claim. A specification of the costs has not been submitted. In view of the circumstances of the Case, the Tribunal finds it reasonable that each Party shall bear its own costs.

IV. AWARD

55. For the foregoing reasons

THE TRIBUNAL AWARDS AS FOLLOWS:

- a) The claim of GENERAL PETROCHEMICALS CORPORATION against THE ISLAMIC REPUBLIC OF IRAN, KARKHANEJAT TOWLIDI TEHRAN and GOROUH TOWLIDI TEHRAN is dismissed for lack of jurisdiction.
- b) The counterclaims asserted by KARKHANEJAT TOWLIDI TEHRAN and GOROUH TOWLIDI TEHRAN against GENERAL PETROCHEMICALS CORPORATION are dismissed for lack of jurisdiction.

c) Each Party shall bear its own costs of arbitration.

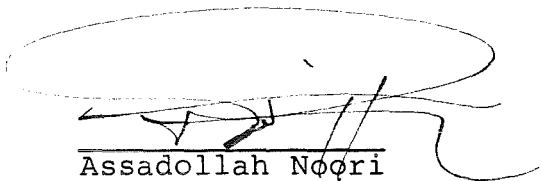
Dated, The Hague

21 October 1991

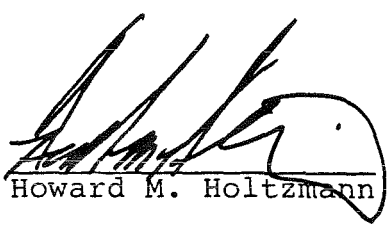


Bengt Broms
Chairman
Chamber One

In the Name of God



Assadollah Noori



Howard M. Holtzmann