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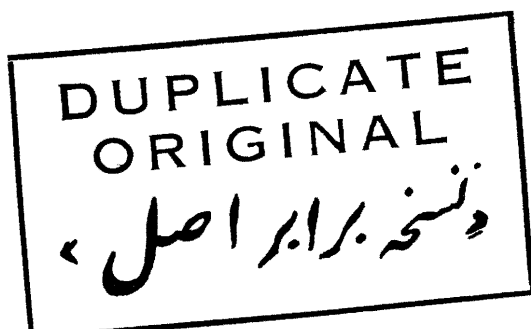
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CASE NO. 134

CHAMBER ONE

AWARD NO. ITL 54-134-1

HYATT INTERNATIONAL CORPORATION,
HYATT MANAGEMENT, INC.,
INTERNATIONAL PROJECT SYSTEMS, INC.,

Claimants,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN, BANK MELLAT
(formerly known as Bank Omran),
ALAVI FOUNDATION, FOUNDATION FOR
THE OPPRESSED, IRAN TOURING AND
TOURISM ORGANIZATION,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحده
ثبت شد - FILED	
Date	17 SEP 1985 تاریخ
	۱۳۶۴ / ۹ / ۲۶
No.	134 شماره

INTERLOCUTORY AWARD

Appearances:

For the Claimants:

Mr. M. Ball,
Mr. D.H. Maccoby,
Attorneys-at-Law
Mr. L.M. Johnson,
of Counsel
Mr. A.M. Turner,
Mr. J. Beltrame,
Claimants' Representatives

For the Respondents:

Mr. Mohammad K. Eshragh,
Deputy Agent of the
Islamic Republic of Iran
Mr. A. Ghaemi,
Legal Adviser to the Agent
of the Islamic Republic of
Iran
Mr. H. Moadi,
Attorney of the Islamic
Republic of Iran and ITTO
Mr. H. Ayoubi,
Mr. M.R. Talebi,
Assistants to the Attorney
of the Islamic Republic of

Iran

Also present:

Ms. Jamison M. Selby,
Deputy Agent of the United
States of America
Ms. Frances A. Armstrong,
Legal Adviser to the Agent
of the United States of
America.

I. Facts and contentions

This case involves claims in connection with the management of three hotels in Iran by HYATT INTERNATIONAL CORPORATION ("Hyatt International"), a United States corporation incorporated under the laws of the State of Delaware, and its alleged subsidiaries during the years 1971 through 1979. Various claims based on breach and repudiation of contract, expropriation of contract rights and unjust enrichment are brought by Hyatt International and INTERNATIONAL PROJECT SYSTEMS, INC. ("IPS"), also a Delaware corporation, against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, BANK MELLAT, THE ALAVI FOUNDATION, THE FOUNDATION FOR THE OPPRESSED and IRAN TOURING AND TOURISM ORGANIZATION ("ITTO"). During the Hearing HYATT MANAGEMENT, INC., one of the original Claimants in this case, requested to withdraw since it did not assert any claim.

Both the Alavi Foundation and the Foundation for the Oppressed did not present a defence in this case. In a letter filed on 15 June 1982, the Agent of the Islamic Republic of Iran stated that "[t]he other entities, named as Respondents in this case, have not submitted any defences for reason of irrelevance of the claim to them." This position was repeated in the Government of Iran's Statement of Defence,

filed on 26 August 1982, which also asserted that the two foundations are "non-government charity foundation[s]."

1. Factual background

Hyatt International is a corporation engaged in the planning, designing and managing of hotels in the United States and other countries. In Iran, Hyatt International or its subsidiaries concluded three agreements for such services, as well as a supplementary agreement. Relevant provisions of these contracts, performance under them and events leading to their termination are summarized below.

a) Hyatt Caspian

On 17 January 1971, Hyatt International and BANK OMRAN entered into a "Management Agreement for the Regency Hyatt-Caspian Hotel" at Namak-Abroud, on the Caspian Sea. Also on 17 January 1971, Hyatt International assigned "its right, title and interest" in this Agreement to HYATT OF HONG KONG LIMITED ("Hyatt Hong Kong"), a Hong Kong corporation and a wholly-owned subsidiary of HYATT INTERNATIONAL CORPORATION (DELAWARE), which in turn is a wholly-owned subsidiary of Hyatt International and is incorporated in Delaware. However, Hyatt International continued to be liable under the Agreement as though such assignment had not been made. On 10 May 1975, Hyatt Hong Kong assigned all of its rights under the Agreement to its wholly-owned subsidiary HYATT HOTEL MANAGEMENT LIMITED ("HHML"), also a Hong Kong corporation.

The Regency Hyatt-Caspian Hotel is presently known as the Revolution Hotel. For purposes of convenience the hotel is referred to herein as the "Hyatt Caspian".

Under the Agreement, Bank Omran was "prepared to finance, build, furnish and equip" a "modern and outstanding hotel,

operated under standards comparable to those prevailing in [Hyatt International] hotels throughout the world". Hyatt International agreed to "render assistance in the planning, building, furnishing, equipping and decorating of such a hotel and its preparation for operation", and it further agreed to manage and operate the hotel in accordance with Hyatt standards.

The Agreement provided for the following payments to Hyatt International for the various services which it was to render. For technical assistance services Hyatt International was to receive \$60,000. During the operating term it was entitled to a "basic management fee" of 5 percent of the hotel's revenue, as well as an "incentive fee" of 10 percent of the hotel's gross operating profit. Hyatt International, or its assignee, was to be reimbursed for costs allocated to the Hyatt Caspian which were incurred in rendering so-called "group services and benefits", and for other operational costs and expenses incurred on the hotel's behalf.

The operating term of the Agreement expired on 31 December of the 20th full calendar year after the formal opening of the hotel, and Hyatt International could, under certain conditions, extend the contract at its sole option three times for periods of ten years each. The hotel opened on 11 March 1976.

After having operated from March 1976 on, the Hyatt Caspian was first closed on 3 January 1979 due to the revolutionary situation. By the end of April 1979, the hotel was re-opened, operating under personnel appointed by representatives of Hyatt International. Later, after the Alavi Foundation assumed ownership of the Hyatt Caspian, it wrote a letter to Hyatt International dated 27 December 1979, stating that the Agreement was "terminated" and "considered nullified." There is a dispute between the Parties as to

the justification and the consequences of this termination of contract.

On 15 February 1980, Hyatt International sent a letter to Bank Omran, the ROYAL ESTATES ADMINISTRATION (REA), the Alavi Foundation, and the Foundation for the Oppressed, notifying them as the respective "owner or owners" that they were in default with respect to the Hyatt Caspian (and Hyatt's two other hotels in Iran), and requesting them to cure the defaults. Subsequent attempts to negotiate a settlement of Hyatt International's claims did not mature.

On 18 February 1980 the Revolutionary Council of the Islamic Republic of Iran enacted an "Act concerning the purchase of the hotels of the Alavi Foundation, affiliated with the Foundation for the Oppressed, by the Iran Touring and Tourism Organization", which authorized ITTO to purchase and manage the hotels of the Alavi Foundation. In the fall of 1980, ITTO took over the management of the Hyatt Caspian and retained it thereafter.

b) Hyatt Mashhad

On 7 December 1972, Hyatt Hong Kong concluded a "Management Agreement for the Mashhad Hyatt Hotel" with Bank Omran. On 10 May 1975, Hyatt Hong Kong assigned "its right, title and interest" in this Agreement to HHML, but continued to be liable under the Agreement as though such assignment had not been made. The Agreement provided for substantially the same rights and obligations as the management agreement for the Hyatt Caspian. Hyatt Hong Kong was to provide technical assistance for the development of the hotel and would subsequently manage it. A technical assistance fee of \$25,000 was agreed upon, with an additional \$30,000 to be paid to Hyatt Hong Kong in case additional technical assistance would be required by Bank Omran.

The Mashhad Hyatt Hotel is presently known as the Qods (Jerusalem) Hotel. For purposes of convenience the hotel is referred to herein as the "Hyatt Mashhad".

During the operating term Hyatt Hong Kong was entitled to a basic management fee of 4 percent of the hotel's revenue and an incentive fee of 8 percent of the hotel's gross operating profit. It, or its assignee, was to be reimbursed for costs allocated to the Hyatt Mashhad which were incurred in rendering group services and benefits, as well as for other operational expenses incurred on the hotel's behalf.

The operating term of the Agreement expired on 31 December of the 20th full calendar year after the formal opening of the hotel, and Hyatt Hong Kong could, under certain conditions, extend the contract at its sole option three times for periods of ten years each. The hotel opened in November 1973.

After having operated from November 1973 on, the Hyatt Mashhad was first closed in mid December 1978 due to the revolutionary situation.

By the end of April 1979, the hotel was re-opened, operating under personnel appointed by representatives of Hyatt International. As in the case of the Hyatt Caspian, the Alavi Foundation assumed ownership of the Hyatt Mashhad and terminated the management agreement for that hotel by a letter of 27 December 1979. Hyatt International's letter of 15 February 1980, by which it notified the hotel owners of their default, also referred to the Hyatt Mashhad, and the management of this hotel was likewise taken over by ITTO in the fall of 1980.

c) Hyatt Tehran

On 24 May 1976, HYATT TECHNICAL SERVICES COMPANY LIMITED

("HTSC"), a Hong Kong corporation and a wholly-owned subsidiary of Hyatt Hong Kong, entered into a "Continuing Technical Assistance Agreement" with REA, which provided for technical assistance and management of the Hyatt Crown Tehran Hotel, and which followed in most respects the form of the standard agreement used for the other two Hyatt hotels in Iran. In contrast to the two other contracts, HTSC was to receive in compensation for its services during the operating term a "continuing technical assistance fee" equivalent to 19.5 percent of the hotel's gross operating profit and a royalty fee equivalent to 0.5 percent of the hotel's gross operating profit for the use of the names "Hyatt" and "Hyatt Regency". The provisions for the reimbursement of the costs of group services and benefits and of other operational expenses were the same as in the other two management agreements.

The Hyatt Crown Tehran Hotel is presently known as the Freedom Hotel. For purposes of convenience the hotel is referred to herein as the "Hyatt Tehran".

The operating term of this Agreement expired on 31 December of the 20th full calendar year after the "formal opening" of the hotel, and HTSC could extend the contract twice for periods of ten years subject to REA's agreement. The hotel opened partially on 1 September 1978.

On 16 February 1977, HTSC entered into a "Supplementary Agreement" with REA which provided that HTSC make available to REA the services of a particular person in connection with the "Continuing Technical Assistance Agreement" for the Hyatt Tehran. Under the Supplementary Agreement, REA undertook to pay all costs and expenses, including salary, of that person. It was understood that the total of such salary and expenses would not exceed \$100,000 per year.

On 15 October 1978, REA informed Hyatt International that it had appointed Bank Omran as its trustee on all matters concerning the hotel, and on 23 December 1978 Bank Omran confirmed that it had been assigned responsibility for the Hyatt Tehran in the same way as for the Hyatt Caspian and the Hyatt Mashhad. Having become "responsible for settlement of all former Royal Estates accounts" after the liquidation of all former Royal offices, the Alavi Foundation, in February 1979, succeeded REA in the ownership of the Hyatt Tehran. As in the case of the Hyatt Caspian and the Hyatt Mashhad, the management agreement for the Hyatt Tehran was terminated by the Alavi Foundation's letter of 27 December 1979. Hyatt International's letter of 15 February 1980, by which it notified the hotel owners of their default, covered also the Hyatt Tehran, and the management of this hotel was likewise taken over by ITTO in the fall of 1980.

2. Contentions of the Parties

The Parties agree on a number of facts with regard to the management of the three Hyatt hotels in Iran, such as the dates when the respective management agreements were concluded and their contents.¹ They do not dispute the closure of the Hyatt Caspian and the Hyatt Mashhad at the indicated times, nor the fact that all three agreements were finally

¹ The only possible reference in the Respondents' pleadings that could be interpreted as disagreement with the copies of the agreements filed by the Claimants is a mention in a written Statement of the former Assistant Managing Director of Bank Omran, Sirus Mostowfi, submitted after the Hearing. The Statement says that the parties to the Hyatt Mashhad agreement agreed to sign the contract only for a period of five years, and that, as far as Mr. Mostowfi was aware, no other contract was signed after five years. This point was not pursued by the Respondents themselves at the Hearing or in any of their written submissions. The Claimants in response asserted that Mr. Mostowfi's Statement was "erroneous" in this respect.

terminated in December 1979. Different accounts are given, however, of performance under the contracts by Hyatt International and its subsidiaries, of events which occurred while the contracts were in force, and of the effects which such performance and events had on the rights and obligations of the Parties.

a) As to the Tribunal's jurisdiction

In response to the Claimants' contention that the Tribunal has jurisdiction over the claims the Respondents assert that the Claimant Hyatt International has not proved its United States nationality. Concerning the claims which arise out of the management agreement for the Hyatt Tehran, the Respondents assert that Hyatt International is not entitled to bring such claims for the following reasons: Hyatt International has not itself been a party to that contract; it has not proved its ownership of HTSC, the contracting party; insofar as these claims are brought by Hyatt International as indirect claims for HTSC, they are not admissible because, under the Claims Settlement Declaration, United States claimants are not allowed to bring claims on behalf of foreign subsidiaries; and HTSC's rights have not been assigned to Hyatt International.

The Respondents further argue that the Tribunal's jurisdiction is excluded by a clause in the contracts which provides that the agreements are governed by the laws applicable in Iran, and that therefore Iranian courts have sole jurisdiction over contract disputes.

The Tribunal's jurisdiction over the Government is denied on the ground that the Government has not been a party to the management agreements, nor has it been "involved in subsequent matters arising out of the Contract". The Government also disputes the Tribunal's jurisdiction over the Alavi Foundation and the Foundation for the Oppressed asserting

that they are not entities controlled by the Government. Exception is taken by ITTO to the attributability of the claims to it, since ITTO has not been a party to any of the agreements.

b) As to the merits of the claims

aa) Claims based on breach of contract

The Claimants contend that the Iranian parties to the three hotel management agreements and their successors have not paid debts owed to the Claimants under the agreements, that they have breached these agreements by a number of actions in 1978 and 1979, that they repudiated them on 27 December 1979 and that they are therefore liable for the resulting damages. The following types of breaches occurred with respect to each of the three contracts, the Claimants allege.

The Claimants assert that various services were rendered to the hotel owners as provided under the contracts. Payments were requested, but neither the Iranian contract parties nor their successors paid all of the amounts.

Moreover it is claimed that all the hotels' bank accounts had been blocked by Bank Omran from mid-February until spring 1979. The hotel owners and their successors failed to provide the hotels with operating capital as required under the contracts; in the case of the Hyatt Caspian beginning in late 1978, in the case of the Hyatt Tehran from February 1979 on. In 1979, Hyatt International and its subsidiaries had as a result to use all incoming revenues to pay the hotels' expenses, with the consequence that no funds were left to pay Hyatt's management fees.

The Claimants allege that, as a result of civil disturbances, the number of guests decreased and the three hotels'

business declined in the last months of 1978. Various incidents involving demonstrations in front of the hotels which threatened to destroy them and the destruction of hotel equipment by demonstrators taking over the Hyatt Mashhad are asserted by the Claimants, leading to the closing, on the instruction of Bank Omran, of the Hyatt Mashhad on 10 December 1978 and of the Hyatt Caspian on 3 January 1979. On 12 February 1979, the Hyatt Tehran was attacked by Revolutionary Guards, resulting in extensive damage and occupation of the hotel by the Guards. Nevertheless, the Hyatt Tehran was not closed at that time.

The Claimants allege that in the beginning of February 1979 Bank Omran agreed to Hyatt's expatriate staff (including all the hotel managers) leaving Iran temporarily since their safety was not guaranteed any more. Hyatt-trained Iranian personnel remained to manage the hotels until the expatriates would return. The expatriates were prevented from returning to Iran since they were refused work and residence permits. Hyatt International maintains that it was nevertheless able to continue managing the Hyatt Tehran, as well as the Hyatt Caspian and the Hyatt Mashhad after their re-opening in April 1979, with Hyatt-trained Iranian personnel. The hotel names were changed and, as requested by the owners, no more alcoholic beverages were served.

The Claimants further contend that the Alavi Foundation succeeded REA as owner of the Hyatt Tehran in February 1979, and succeeded Bank Omran as owner of the Hyatt Caspian and the Hyatt Mashhad in April 1979. They assert that, following increasing interferences by the Alavi Foundation in the actual management of the three hotels, the Foundation took full operational control of the Hyatt Mashhad in June 1979 and of the Hyatt Caspian and the Hyatt Tehran in November 1979, thereby materially breaching the respective management agreements. The express repudiation of the contracts is

contained in the Alavi Foundation's letter of 27 December 1979 to Hyatt International and in its telex of 14 January 1980 to Hyatt Hong Kong. The Claimants have chosen 27 December 1979 as the date of the repudiation or expropriation of their contract rights in order to avoid any dispute over the earlier dates.

Only ITTO has responded in its written submissions to the merits of the claims. However, at the Hearing, the Government adopted ITTO's assertions. Should the Tribunal find that it has jurisdiction to deal with the merits of the claims notwithstanding the Respondents' exceptions,² ITTO and the Government contend that the Iranian contracting parties and their successors did not breach the hotel management agreements which they regard as one-sided and in contravention of equity principles. Rather, the contracts were breached when Hyatt's managers willfully abandoned their working places, leaving the hotels without adequate management and thereby causing substantial losses to the hotel owners. When Hyatt's managers left the Hyatt Mashhad on 21 November 1978 and the Hyatt Caspian on 3 January 1979, their safety was not threatened. This is confirmed, e.g., by the fact that, before leaving, they withdrew the latest management and incentive fees due from the Hyatt Mashhad and that the hotel was re-opened on Bank Omran's and the Alavi Foundation's request.

In ITTO's and the Government's views, the real reason why the expatriate managers appointed by Hyatt International abandoned the hotels and left Iran is that they realised that, under the revolutionary changes in Iran, hotels like Hyatt's were no longer profitable. But neither the hotel

² In addition to these exceptions as to jurisdiction, ITTO raised in its Statement of Defence certain other preliminary objections, but these were not pursued.

owners nor the Claimants were responsible for the decline in the hotel business caused by the revolution.

ITTO and the Government contend that Hyatt International and its subsidiaries had further breached the management agreements by serving alcoholic beverages and by using parts of the hotels for acts of immoralities in contravention of contract provisions which required operation of the hotels "in accordance with local character and traditions"; this held especially true for a religious city like Mashhad. In addition, the expatriate managers manipulated hotel ledgers and transferred large amounts of money to unknown foreign individuals. Further losses were inflicted on the hotel owners through the mismanagement of Mr. Lewis Johnson, a lawyer, who was appointed to run the hotels after the foreign managers had left, but who had no experience in this field, and who also left Iran on 9 November 1979.

ITTO and the Government assert that the Alavi Foundation, as the successor to the original Iranian contracting parties, was entitled to terminate the agreements on the basis of the contract provision which defines as default "the voluntary abandonment of the Hotel by [Hyatt International]", after the foreign managers had unilaterally and without justification left their working places. Notice of such alleged default was given in the Alavi Foundation's letter of 27 December 1979 to Hyatt International and telex of 14 January 1980 to Hyatt Hong Kong.

ITTO and the Government further argue that the management agreements were frustrated by the revolution in Iran, the war with Iraq and other factors and their consequences for the hotel business: this fundamental change in circumstances for which neither the hotel owners nor the Claimants are responsible led to a sharp decline in the revenues of deluxe hotels like Hyatt's and neither party may claim compensation for the resulting losses.

The Claimants deny that they withdrew the final management and incentive fees due from any of the hotels before leaving Iran; rather they assert a claim for these. They further state that the Respondents have not provided any evidence to support the allegations that Hyatt did not operate the hotels in accordance with local character and traditions, that it used the hotels for immoralities, or that Mr. Johnson mismanaged the hotels, and the Claimants deny these allegations. In addition, although the Claimants agree that the Revolution led to a temporary decline in revenues for the Hyatt hotels, they deny that the decline was permanent but rather assert that the hotels have recovered and are very busy.

With respect to their claims based on breaches of contract, the Claimants seek a total of \$24,520,083.40³ plus interest. The major part of that amount, \$22,579,000, is alleged to arise from the premature termination of the hotel agreements depriving the Claimants of future management and incentive fees which they otherwise would have earned from 1 January 1980 until the respective expiration dates of the contracts. The Claimants submitted a report prepared for Hyatt International by Standard Research Consultants, an outside firm of financial and economic analysts, setting forth a valuation of these rights to future payments. The same report was also submitted in support of the Claimants' alternative theory of expropriation, and the contentions of the Parties concerning its validity are discussed below under the heading "Expropriation claims". As further damages for breach of contract, the Claimants seek \$40,000 for technical assistance fees, \$96,169.57 for group services and benefits,

³ In their Statement of Claim, the Claimants had originally sought the aggregate amount of \$65,984,076.28, plus interest, but, as shown in their "Pre-Hearing Summary of Evidence", the claim was reduced to the figure stated above.

\$198,059.43⁴ for reimbursement of expenses, \$1,579,000 for hotel management fees for 1979 and \$27,854.40 for reimbursement of amounts paid to hotel employees as compensation for stolen personal property.

Insofar as the claims arise out of the management agreements for the Hyatt Caspian and the Hyatt Mashhad, Hyatt International makes these claims under Article VII, paragraph 2, of the Claims Settlement Declaration as the owner of HHML, Hyatt International's wholly-owned Hong Kong subsidiary to which the rights under these agreements had been assigned. The claims in connection with the Hyatt Tehran agreement are also made under Article VII, paragraph 2, of the Claims Settlement Declaration by Hyatt International as the owner of HTSC, a Hong Kong corporation and the original contracting party.

The Claimants request that the following Respondents should be held jointly and severally liable for their contract claims:

- Bank Mellat as the successor to Bank Omran, which had been the contracting party to the Hyatt Caspian and the Hyatt Mashhad agreements and which had been appointed trustee for REA, the contracting party to the Hyatt Tehran agreement. Having been nationalized on 11 June 1979, Bank Mellat is an entity controlled by the Government of Iran under Article VII, paragraph 3, of the Claims Settlement Declaration.

- The Alavi Foundation as the successor in ownership to Bank Omran and REA. The Claimants assert that the Alavi Foundation is a controlled entity since it has no

⁴ This figure includes \$44,077.65 allegedly due under the Supplementary Agreement with REA.

separate existence from the Foundation for the Oppressed which in turn is controlled by the Government. The Government argues on behalf of the Alavi Foundation that the latter is a charity organization, not controlled by it. It further contends that Bank Omran had never owned the Hyatt hotels, but had only held them as trustee for the Pahlavi Foundation, the predecessor of the Alavi Foundation.

- The Foundation for the Oppressed, which, according to Hyatt International, took control of the Alavi Foundation in October 1979. In this connection, the Government also asserts that the Foundation for the Oppressed is a non-Governmental charity organization.

- ITTO, a part of the Ministry of Islamic Guidance, which was authorized by a decree of the Revolutionary Council of 18 February 1980 to purchase and manage the hotels of the Alavi Foundation, and which later in 1980 took over the management of the three Hyatt hotels accordingly. ITTO asserts that it took over the hotels in order to prevent further losses in the hotels, and that such action did not interfere with the Claimants' contractual rights because it was in conformity with a Revolutionary Council decree and therefore was consistent with the provision in each management agreement which stipulates that the "agreement shall be declared invalid by the final and unappealable order, decree or judgment of any court".

- The Government as a successor to the hotel owners with which Hyatt International contracted. The Claimants assert that the Government, through the Alavi Foundation and ITTO, has succeeded to the rights and obligations of the original Iranian contracting parties and is therefore liable for debts arising under the

agreements and for damages for breach of those contracts.

bb) Expropriation claims

As an alternative to its contract claim for lost future management and incentive fees, Hyatt International claims compensation from the Government for the expropriation of these contract rights under the three management agreements. It claims \$22,579,000 plus interest, the same amount sought under the contract theory.

It contends that, by taking over the management of the hotels and by repudiating the management agreements through its agencies and instrumentalities, the Government expropriated, no later than 27 December 1979, Hyatt International's rights under those contracts and is under the Treaty of Amity between Iran and the United States and under general principles of international law obligated to pay compensation to Hyatt International.

The Government disputes any expropriation or confiscation of Hyatt International's contract rights. It has not been a party to the management agreements, and it asserts that it has not been involved in the events leading to the termination of the contracts. The termination was justified under the agreements because of Hyatt International's breaches of the contracts. Furthermore, neither the Alavi Foundation, nor the Foundation for the Oppressed are entities controlled by it and their actions can therefore not be attributed to the Government. ITTO had only taken over the management of the hotels in order to prevent further losses after the foreign managers had left. It has not, however, become owner of the hotels, which are still owned by the Alavi Foundation.

The property rights which Hyatt International asserts were expropriated are its alleged contractual rights for future management and incentive fees under the hotel agreements. It seeks the same amount as sought under the alternative theory of breach of contract. The Standard Research Consultants Report, mentioned above, values those rights based upon its view of the "fair market value" that a willing buyer would pay to purchase the right to receive such future fees.

ITTO and the Government assert that the report of Standard Research Consultants proceeds from a number of wrong assumptions and can therefore not form a valid basis for the calculation of expected fees. The projections are based on the hotels making profit well into 1979, whereas, at least since the beginning of 1979, they were incurring losses. The situation in the business of hotels like Hyatt's would never be the same as it used to be before the revolution, and all de luxe hotels are sustaining losses since no tourists are coming to Iran. These Respondents contend that alcoholic beverages, cabarets, night clubs and casinos accounted for nearly 70 percent of the revenues of the Hyatt hotels, whereas such revenues could not be taken into account for the determination of future fees.

According to Hyatt International, no such revenues have been assumed in its calculation of expected fees. Using a high discount rate in its discounted cash flow analysis of the value of its projected fees, Hyatt International maintains to have sufficiently taken into consideration the impact of the Iranian revolution. Neither events subsequent to the date of the expropriation, nor the effects of the expropriatory acts should be taken into account when determining the value of expropriated property rights. Should such events be considered nevertheless, they would only show that the hotel business has recovered.

cc) Unjust enrichment

During the Hearing, the Claimants asserted that, as an alternative cause of action for claims other than for future management and incentive fees, they seek compensation on the principle of unjust enrichment.

The Respondents the Government and ITTO objected to any procedure in which the Tribunal would consider alternative theories of relief. While they do not dispute that such parallel causes of action might be permitted under United States law, they are certainly not under Iranian law, and they see no reason for the Tribunal to apply United States law in this respect.

dd) Interest

In the Statement of Claim, the Claimants asked for interest on their claims from the time when the various claims arose to the date of the payment of the award. In a calculation of interest through 30 June 1983, they claimed interest through that date in the amount of \$12,786,425.90.

With respect to technical assistance fees totalling \$40,000, past due under the agreements for the Hyatt Caspian and the Hyatt Mashhad, they claim interest at the rate of 6 percent as provided for in these two contracts.

With respect to all other amounts claimed, interest is calculated at the average prime interest rate in the United States during the period for which interest is claimed.

ee) Costs

The Claimants request costs in the amount of \$425,231.20 to be included in an award to them.

c) Counterclaims

ITTO and the Government brought Counterclaims against Hyatt International, Hyatt Management, Inc. and IPS, jointly and severally, for damages and losses arising out of breaches of the three hotel management agreements by the Claimants, should the Tribunal find that it has jurisdiction to deal with the merits of the claims notwithstanding the Respondents' exceptions. During the Hearing it was asserted that the Counterclaims were brought on behalf of the Alavi Foundation, the present owner of the hotels.

The breaches of contract forming the bases of the Counterclaims are alleged to be that Hyatt's foreign managers and Hyatt-appointed personnel abandoned the hotels contrary to their contractual obligations, and that the Hyatt-appointed personnel mismanaged the hotels during the year 1979.

For the Hyatt Mashhad damages in the amount of Rials 348,494,501 plus delay and inflation charges are claimed. They comprise Rials 45,083,684 for delay in the payment of insurance premiums, taxes, dues and telex charges; Rials 25,000,856 in connection with unpaid services to members of the royal family; Rials 4,000,000 due to the non-creation of reserves for termination pay; payment of Rials 1,862,000 to an individual not employed by the hotel; losses of Rials 270,830,410 as a consequence of the abandonment of the hotel by the managers and its resulting temporary closure; and Rials 1,717,551 for taxes due on management fees, but not paid. In addition, a counterclaim seeks an unspecified amount for losses due to manipulations in accounting.

For the Hyatt Caspian damages in the amount of Rials 319,776,279 plus "damages including delayed payment charges" are claimed. They comprise Rials 9,147,461 for delay in payment of insurance premiums and other charges; Rials 924,239 in unjustified payments to non-employees; losses of

Rials 199,204,579 as a result of the abandonment of the hotel by the managers; and Rials 100,000,000 arising out of the mismanagement by the Hyatt-appointed managers.⁵

For the Hyatt Tehran damages are claimed in the amount of Rials 185,657,468. It consists of losses sustained from 1 September 1978 through 31 December 1979, and the amounts are specified in a report by the independent auditors Raziran Auditing & Management Consulting Co. which covers this period and which was filed by ITTO.

ITTO asks for costs in an amount to be determined by the Tribunal.

The Counter-Respondents deny any liability for damages or losses sustained by the Counter-Claimant. They contend that their expatriate managers were forced to leave the country by threats to their safety, and that the Counter-Claimant interfered with and ultimately took over the hotels, ousting the remaining Hyatt managers. They state that the Counter-Claimant has offered no evidence to support its allegations of mismanagement.

The Hearing took place before the Tribunal on 18 and 23 May 1983. Various Post-Hearing Memorials and evidence were filed.

II. Reasons and conclusions on jurisdiction and certain preliminary matters

1. Since Hyatt Management, Inc., which was mentioned as a Claimant in the Statement of Claim, has not asserted any

⁵ The Tribunal notes that the sum of these figures is Rials 309,276,279 rather than the amount of Rials 319,776,279 claimed.

claim in this case, it is stricken as a Party, notwithstanding that ITTO on behalf of the Alavi Foundation has presented Counterclaims against, inter alia, Hyatt Management, Inc. Consequently, ITTO's Counterclaims remain only against the other Claimants.

2. a) The remaining Claimants have submitted evidence to prove their United States nationality. They have submitted certificates of Secretaries of State attesting to the dates of incorporation and the continued existence of Hyatt International, its subsidiary Hyatt International Corporation (Delaware) and IPS. They have further submitted relevant pages from the proxy statements of Hyatt International's annual meetings for the relevant periods until 19 January 1981, showing that 51.5 per cent of all outstanding shares of Hyatt International stock were at those times beneficially owned by members of one family.

Copies of the United States birth certificates of those persons have been submitted. Their ownership interests in Hyatt International were and are held by trusts, the agreements for which have been submitted by the Claimants, as well as proof of the trustee's United States nationality. Finally, the Claimants have submitted a certificate of a Certified Public Accountant attesting that IPS at the relevant periods was a wholly owned subsidiary of Hyatt International Corporation (Delaware), which in turn was a wholly owned subsidiary of Hyatt International. Based on this evidence, the Tribunal is satisfied that the requirements laid down in the Claims Settlement Declaration to establish the United States nationality of the Claimants are fulfilled.

b) The Tribunal is also satisfied, on the basis of the evidence, that Hyatt International Corporation, through its wholly owned subsidiary Hyatt International Corporation (Delaware), during the relevant periods was the beneficial

owner of 100% of the capital stock of Hyatt of Hong Kong Limited (a Hong Kong corporation) which, in turn, was the beneficial owner of 100% of the capital stock of Hyatt Hotel Management Limited (a Hong Kong corporation) and Hyatt Technical Services Company Limited (likewise a Hong Kong corporation). Accordingly, Hyatt International Corporation is entitled to assert the claims of said Hong Kong corporations before the Tribunal pursuant to the Claims Settlement Declaration.

3. Article II, paragraph 1, of the Claims Settlement Declaration provides that claims are excluded from the Tribunal's jurisdiction if they arise "under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts" (emphasis added). Because the Iranian law clause of the agreements at issue in this case does not constitute a specific reference to Iranian courts, it does not exclude the Tribunal's jurisdiction.

4. In order to determine whether the Tribunal has jurisdiction over the Foundation for the Oppressed, which is named as a Respondent in this case, it is necessary to consider whether it is an agency, instrumentality or entity controlled by the Government of Iran (Claims Settlement Declaration, Article VII).

The "Legal Bill concerning the Articles of Association of the Foundation for the Oppressed (Bonyad Mostazafan) as approved by the Revolutionary Council of the Islamic Republic of Iran," dated 12 July 1980⁶, states that the

⁶ See Official Gazette of the Islamic Republic of Iran, 16 July and 10 August 1980. The Foundation was established on 4 March 1979. The Articles of Association set out in the cited Bill supersede an earlier version adopted on 29 June
(Footnote Continued)

Foundation was established "by the order of Imam Khomeini and the approval of the Revolutionary Council." This is confirmed by Article 6 of the Foundation's Articles of Association, which states:

The Foundation is established upon the approval of the Revolutionary Council as ordered by Imam Khomeini, who shall appoint the members of the Central Council.

Article 2 of the Foundation's Articles of Association defines the objectives of the Foundation to include, inter alia,

Centralization in the Foundation with the purpose of management and utilization, of all liquid funds, shares, securities, movable and immovable assets of the Pahlavi family and the wealth of all natural and legal persons who through affiliation with the above family have illegally accumulated fortunes, whether in Iran or abroad, [as to which] the Revolutionary Court has issued or will issue orders for their restitution or temporary management, and the acquisition thereof by the oppressed.

Article 2 of the Articles of Association further states that, in pursuing its objectives, the Foundation

can proceed with the use of tribunals, Komitehs (Revolutionary Committees), Revolutionary Guards, Local and State Police and all other bailiffs and the Revolutionary Courts and Tribunals for the discovery, seizure, removal, maintenance, inventory taking, assessment,

(Footnote Continued)

1979. See Articles of Association, Article 39. The Articles of Association are translated into English in G. Vafai, VIII Commercial Laws of the Middle East, Iran, Book 2 at 5 (1982). In addition to an English translation provided by the Claimants in this case, the Chamber has a translation provided by the Foundation for the Oppressed as an Exhibit to its Rejoinder in Case No. 18, filed on 19 December 1983. Both translations have substantially the same meaning. The Tribunal has, for the purposes of this Interlocutory Award, adopted the translation submitted in Case No. 18 by the Foundation itself.

change for the better, operation and every other action required for the management of the properties.

Pursuant to Article 10, the Central Council of the Foundation, which serves as its overall governing body, "shall consist of five trustworthy and qualified members selected and appointed by the Imam." Pursuant to Articles 11 and 12, the Central Council of the Foundation must submit its choice for Head or President of the Foundation to the Imam; the Imam then confirms this nomination and appoints the nominee to the position of Head or President.

Under Article 13 of the Articles of Association, the President appointed by Imam Khomeini has broad authority over the direction of the Foundation and the enterprises managed by it:

The President of the Foundation shall be the highest executive authority of the Foundation. . . . The President or the Head of the Foundation shall be authorized to appoint, in consultation with the Central Council, qualified managers to head the financial, administrative, commercial, industrial, agricultural and other affairs of the Foundation, and shall, at all times, be authorized to appoint and dismiss such managers. The scope of powers and functions of each of the managers shall be defined and their remunerations and bonuses shall be fixed by the President in accordance with the regulations approved by the Central Council.

Pursuant to Article 36 of the Articles of Association, the Central Council may dissolve the Foundation. In the event of dissolution Article 36 specifies that the assets of the Foundation are to be delivered to the Government:

The Liquidation Board shall, within the shortest possible time, examine the accounts, settle all debts and commitments of the Foundation, collect its claims, deliver the proceeds to the Government for public utility and announce the termination of the liquidation.

Pursuant to Article 38 of the Articles of Association, the Foundation "shall be excluded from the provision of General Accounts Law and its relevant Regulations." Evidence shows that the special status conferred by this provision entails supervision of the Foundation's affairs by the Majlis (National Consultative Assembly) and by the office of the Prime Minister. Thus, a report in the 11 August 1982 edition of the newspaper Ettelaat states:

Yesterday the weekly meeting of the Foundation for the Oppressed was held in the Prime Ministry under the chairmanship of the Deputy Prime Minister in charge of Islamic Revolutionary Institutions At this meeting the report of the Accounting Division of the Foundation for the Oppressed, which included the auditing of 160 industrial and commercial companies' accounts, was reviewed. Then the issue of provision for spare parts and basic material and other necessities for the various factories of the Foundation for the Oppressed was discussed as well as establishment of communication with the most important industrial sectors of the Foundation for the Oppressed and different sectors of the Ministry of Industries.

Similarly, the following text was published in the 3 October 1982 edition of Keyhan, under the heading "Special Discussion of Keyhan With Mahmoud Karimi Nouri, Supervisor of the Foundation for the Oppressed":

We made enquiries to the Supervisor of the Foundation for the Oppressed about his regular meetings with the Prime Minister.

Karimi Nouri says: The purpose of the meetings with the Prime Minister and more often with his assistants are and were for solving the problems of the Foundation.

* * * *

We ask: What is the method of the supervision of the Government over the Foundation?

Karimi answers: You know that the representative of the Religious Leader [Imam Khomeini] i.e., his excellency, Engineer Mousavi, the Prime Minister, is responsible for the Foundation and that his supervision is considered as the supervision of the cabinet over the

work and operation of the Foundation for the Oppressed. In the meantime, the auditing firm of the Foundation operates under the supervision of the Prime Minister.

Pursuant to a law passed by the Majlis on 26 December 1983, the Foundation's accounts are to be audited by the governmental Auditing Organization.

Thus, the Foundation was established at the direction of Imam Khomeini, with the approval of the Revolutionary Council. Its President and Central Council are appointed by Imam Khomeini. Its functions include the holding of properties confiscated by the Government and the management of those properties for public purposes, particularly for the provision of housing and other needs of the poor. The Foundation itself plays an investigative or prosecutorial role in the discovery and seizure of properties eligible for confiscation, and is empowered to call upon governmental agencies and institutions for aid in this pursuit. If the Foundation is dissolved, its assets are to be delivered to the Government. The Foundation's financial and business affairs are supervised by the office of the Prime Minister. In its establishment, governance, and objectives the Foundation thus appears to be an instrumentality of the Government of Iran.⁷

The governmental status of the Foundation is confirmed by publications of the Government. In Achievements of the

⁷ The Tribunal is aware of an Iranian newspaper article that suggests that the Foundation may consider itself indebted for taxes. It is not clear from this article whether the Foundation itself is a taxable entity or whether the taxes relate to the businesses that have been seized. But in any event, even if the Foundation were a taxable entity that is a matter of internal Iranian law and would not mean that the Foundation is not an instrumentality controlled by the Government.

Islamic Revolution of Iran, published in 1982 by the Ministry of Islamic Guidance of the Islamic Republic of Iran, the Foundation is described as follows:

This organization is a creation of the Revolution. It is responsible for recovering the plundered property of the revolutionary and deprived Iranian people. The property which has been pillaged over the years by plunderers and capitalists. This institution exploits the regained properties and capital according to a calculated program and in favor of the deprived.

Id. at 56. A similar, but more detailed, description of the role of the Foundation is found in M. Muhajeri, Islamic Revolution -- Future Path of the Nations, published in 1982 by Jihahd - e- Sazandegi (Reconstruction Crusade). That work lists and describes a group of "revolutionary organizations." Included under this heading are the Islamic Revolutionary Guards Corps, the Islamic Revolutionary Tribunals, and the Foundation for the Oppressed. Id. at 78. Muhajeri describes the genesis and operation of the Foundation as follows:

On the victory of the Islamic Revolution . . . plunderers and usurpers fled and their possessions were confiscated and became public property. This property was such that processing them necessitated a separate agency or institution. The establishment of the Mustaz'afin Foundation was for the purpose of undertaking the supervision of this property

The Mustaz'afin Foundation is responsible for protecting and managing confiscated property and companies and the respective income earned is spent by this Foundation for the benefit of the society's deprived and oppressed stratum Through the confiscation of property, distributing it among the oppressed and utilizing the income accumulated from this property for the welfare and cultural growth of the deprived, the Mustaz'afin Foundation gives valuable services to the society and the oppressed.

Id. at 95.

In addition, the Government of Iran has treated the Foundation as a controlled instrumentality in a variety of laws and decrees. As noted, the Foundation's accounts are audited by the governmental Auditing Organization. Also, pursuant to Council of Ministers' Decree No. 30496, dated 19 July 1984, the Foundation enjoys, along with Government Ministries and certain other public entities, expedited customs treatment and waiver of certain customs deposits. Most recently, the Majlis on 26 June 1985 ratified a Law of Presidential Elections of the Islamic Republic of Iran, which in Article 68 places restrictions on campaign activities of Government employees and bars the use in campaigning of the equipment and facilities of "[government] ministries and offices, government companies and those affiliated to the government, [and] organs and institutions utilizing [the] public budget." A Note to this article provides that it applies to "[i]nstitutions and entities whose property is of public title, such as the Foundation for the Oppressed (Bonyad Mostazafan)."

The Agent of the Islamic Republic of Iran has stated in many cases before the Chamber, that Imam Khomeini, in establishing the Foundation and appointing its Council and President, has acted not in his governmental capacity but in his capacity as a religious leader. Thus, it is argued, these facts cannot serve to establish the Foundation's status as an instrumentality of the Government. It is to be noted in this regard that the establishment of the Foundation was undertaken with the approval of the Revolutionary Council, which thus gave the Government's sanction to this act. Moreover, the Foundation can proceed to discover, seize and manage "illegally accumulated fortunes" and other confiscated properties, including "all ... assets" of the Pahlavi family -- all functions that must be regarded, in the context of Article VII, paragraph 3, of the Claims Settlement Declaration, as being governmental in nature.

It does not appear that the religious and governmental powers of Imam Khomeini can for present purposes be readily segregated in the manner suggested by the Agent of the Islamic Republic of Iran. Thus, for example, the "General Principles" set forth in the first Articles of the Constitution of the Islamic Republic of Iran⁸, particularly Articles 1 through 5, indicate the intertwining of religious and secular authority.

Of particular relevance to this question of intertwining is the position of Imam Khomeini as set out in Article 107 of the Constitution:

Whenever one of the fugaha⁹ possessing the qualifications specified in Article 5 of the Constitution is recognized and accepted as marja' and leader by a decisive majority of the people --¹⁰as has been the case with the exalted marja'-i taglid¹⁰ and leader of the revolution, Ayatullah al-Uzma Imam Khomeini -- he is to exercise governance and all the responsibilities arising therefrom.

As the faqih recognized as "leader", Imam Khomeini's authority extends to the most fundamental powers of the State. Under Article 110 of the Constitution these include inter alia: the supreme command of the armed forces; the appointment of the supreme judicial authority; and appointment of the fugaha on the Council of Guardians.

This last enumerated power encompasses ultimate control of the legislative power of the Islamic Republic of Iran.

⁸ All references are to the translation of H. Algar (1980). All definitions of terms are drawn from the glossary accompanying that translation.

⁹ Plural of "faqih", a scholar of the Islamic religious sciences, especially jurisprudence.

¹⁰ A mujtahid (religious scholar) whose authoritative guidance is followed in matters of Islamic practice and law.

Pursuant to Article 94 of the Constitution, all legislation passed by the Majlis (National Consultative Assembly) must be reviewed by the Council of Guardians, "with a view to ensuring its compatibility with the criteria of Islam and the Constitution." Pursuant to Article 96 of the Constitution, "[t]he determination of whether legislation passed by the National Consultative Assembly is compatible with the ordinances of Islam depends on a majority vote by the fugaha on the Council of Guardians." Thus, the six fugaha -- religious scholars -- appointed by Imam Khomeini to the Council of Guardians must rule on the religious acceptability of all legislation enacted by the National Consultative Assembly. In addition, pursuant to Article 96 these six fugaha vote together with the six lay members of the Council of Guardians on the compatibility of legislation with the Constitution.

The above-quoted constitutional provisions demonstrate that the religious and secular powers exercised by Imam Khomeini are, for the purposes of Article VII, paragraph 3, of the Claims Settlement Declaration, not readily separable. It is apparent that under the regime established by the Constitution an exercise of "religious" authority may also constitute an exercise of "governmental" authority.

In view of the circumstances of its establishment and mode of governance, and in view of the functions it fulfills, the Tribunal concludes that the Bonyad Mostazafan, or Foundation for the Oppressed, has been and continues to be an instrumentality controlled by the Government of the Islamic Republic of Iran.¹¹

¹¹ In Case No. 299, Geo. J. Meyer Manufacturing Division of Figgie International, Inc. and Zam Zam Bottling Company, the Tribunal on 23 May 1985 accepted a Settlement Agreement between the Parties and filed an Award on Agreed Terms.

(Footnote Continued)

5. In considering the Tribunal's jurisdiction over the Alavi Foundation, it is first to be noted that it is successor to the Pahlavi Foundation. The Chamber has been repeatedly told by Iranian respondents in this and other cases that the change from Pahlavi Foundation to Alavi Foundation was in essence a change in name only.

It would appear from its Articles of Association that the Pahlavi Foundation from its inception was controlled by the former Shah with the assistance of members of his Government.¹² In any case, the 28 February 1979 "Decree of Imam Concerning Confiscation of the Pahlavi Properties" provided for the confiscation of "all movable and immovable properties of the Pahlavi Dynasty, its branches, agents and

(Footnote Continued)

Award No. 178-299-1. The Claimant in that case had asserted that the Respondent Zam Zam Bottling Company was a controlled entity because it was controlled by the Foundation for the Oppressed. In an Order filed on 22 March 1984 in that case, the Tribunal had previously found that "it appears that the Foundation for the Oppressed is an agency, instrumentality or entity controlled by the Government of Iran, and that the Foundation, in turn, controls the Respondent."

¹² The Pahlavi Foundation was established in 1958. The Tribunal has before it a copy of the Articles of Association of the Pahlavi Foundation from which it appears that the Foundation was directed by the former Shah, the Prime Minister and other Government officials. Thus, the Articles of Association required that the Board of Trustees be appointed "through his Majesty's Decree," and that its members be five high Government officers, headed by the Prime Minister, and two other "trusted individuals as selected by his Majesty." Article 10. The Managing Director also was required to be appointed "by his Imperial Majesty's Decree." Article 11. Decisions of the Board were to be effective "on approval of His Majesty." Article 15. Reports of future plans were to be reported to the former Shah and required not only approval of the Trustees but also "receipt of the Royal Assent." Article 9. Finally, the control exercised by the former Shah was emphasized by a provision that "only the person of His Imperial Majesty, the grand founder of the Foundation, may revise any of the Articles of this articles of incorporation." Article 15.

affiliates." The Pahlavi Foundation and its properties clearly came within the ambit of that Decree. It was at this time that the name of the Pahlavi Foundation was changed to Alavi Foundation.

In the course of the post-Revolutionary reorganizations which took place in Iran, the Government of Iran chose to concentrate ownership of confiscated properties in the Foundation for the Oppressed. That was accomplished by the above-mentioned Act of the Revolutionary Council of the Islamic Republic of Iran on 12 July 1980. The Act established the Articles of Association of The Foundation for the Oppressed,

Article 29 of which provides:

All the property and real estate, factories, farms, installations, etc. confiscated shall belong to and come under the rules and management of The Foundation. Thus, the Alavi Foundation and similar bodies shall cease to be separate entities. (Emphasis added.)

If the Alavi Foundation had considered that anything in the text of its Charter or that other evidence would prove that it was not an entity controlled by the Government of Iran, it had ample opportunity to submit such evidence, but has not done so. Indeed, the Alavi Foundation chose not to present any defence at all in this case on the ground, inter alia, that it is not an entity controlled by the Government.

The Tribunal is satisfied, on the basis of the foregoing, that the Alavi Foundation has been an entity controlled by the Government of Iran at least since the Decree of the Imam of 28 February 1979 and that it has continued as such an entity since the Act of 12 July 1980, whether it operates under the control of the Foundation for the Oppressed, or is in essence a part of that Foundation.

6. Based on the evidence submitted, the Tribunal is satisfied that the copies of the three hotel management agreements filed as Exhibits 9, 15 and 26 in the Claimants' Submission of Evidence of 23 March 1983 represent agreements as they were concluded by the parties thereto and which are at issue in this case.

7. a) The original Iranian party to the "Continuing Technical Assistance Agreement" for the Tehran hotel was the Royal Estates Administration.

While it is not clear from the evidence whether the "Management Agreements" for the Hyatt Caspian and the Hyatt Mashhad were concluded by Bank Omran on its own behalf or as agent for the Pahlavi Foundation, this question need not be decided, since in 1979 all three hotels came into the hands of the Alavi Foundation as the successor to the rights and obligations of the previous owners of all three hotels.

For these reasons Bank Mellat (formerly known as Bank Omran) is stricken as Respondent.

It is recalled that the Royal Estates Administration has never been named a Respondent in this case.

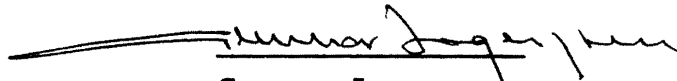
- b) It appears that ITTO began to manage the three hotels, allegedly for the Alavi Foundation, at least in 1981.

8. The Tribunal concludes from the evidence submitted that the Alavi Foundation's letter of 27 December 1979 and telex of 14 January 1980 (Exhibits 78 and 79 in the Claimants' Submission of Evidence of 23 March 1983) relates to the management agreement for the Hyatt Tehran as well as to the agreements for the Hyatt Caspian and the Hyatt Mashhad.

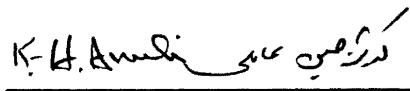
III. Merits

The Tribunal reserves its decision on the merits, which will be issued in due course. This Interlocutory Award on several major contested issues relating to jurisdiction and evidentiary matters is filed immediately for the information of the Parties and, particularly, in the event that any settlement discussion may be carried on.

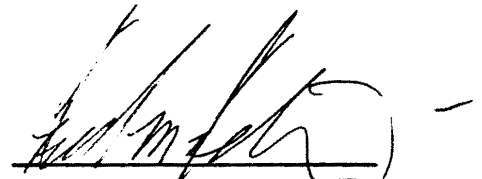
Dated, The Hague,
17 September 1985


Gunnar Lagergren
Chairman
Chamber One

In the name of God



Koorosh-Hossein Ameli
Concurring as to part II,
paragraphs 1, 2.a), 3, 7.a)
and b), 8; dissenting as to
part II, paragraphs 2.b), 4,
5 and 6; see Separate Opinion.


Howard M. Holtzmann