

# Starrett Housing Corporation v. Iran

Starrett Housing Corporation, Starrett Systems, Inc. and others v. The Government of the Islamic Republic of Iran, Bank Markazi Iran and others IUSCT Case No. 24

**Type of case:** Iran-US Claims

**Date of introduction:** Unknown

**Status of the case:** Concluded (non-ISDS case)

**Claimant's Country of Origin:** United States

**Respondent:** Iran

**Institution:** IUSCT (Iran-US Claims Tribunal)

**Applicable Treaties:**

1955 Treaty of Amity  
(/en/document/treaty/en-treaty-of-amity-between-the-united-states-of-america-and-iran-1955-1955-treaty-of-amity-monday-15th-august-1955)  
Algiers Declaration (1981...  
(/en/document/treaty/en-declaration-the-government-of-the-democratic-republic-of-algeria-general-declaration-1981-algiers-declaration-1981-monday-19th-january-1981)  
Algiers Declaration (Clai...  
(/en/document/treaty/en-declaration-the-government-of-the-democratic-republic-of-algeria-concerning-the-settlement-of-claims-by-the-government-of-the-united-states-of-america-and-the-government-of-the-islamic-republic-of-iran-claims-settlement-1981-algiers-declaration-claims-settlement-1981-monday-19th-january-1981)

**Source(s) of the information:**

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## Documents of the case

**Interlocutory Award (Award No. ITL 32-24-1) - 19 Dec 1983**  
(/en/document/decision/en-starrett-housing-corporation-starrett-systems-inc-and-others-v-the-government-of-the-islamic-republic-of-iran-bank-markazi-iran-and-others-interlocutory-award-award-no-itl-32-24-1-monday-19th-december-1983#decision\_4012)

Concurring Opinion of Howard M. Holtzmann (/en/document/opinion/en-starrett-housing-corporation-starrett-systems-inc-and-others-v-the-government-of-the-islamic-republic-of-iran-bank-markazi-iran-and-others-concurring-opinion-of-howard-m-holtzmann-monday-19th-december-1983#opinion\_2161)


Dissenting Opinion of Mahmoud Kashani (/en/document/opinion/en-starrett-housing-corporation-starrett-systems-inc-and-others-v-the-government-of-the-islamic-republic-of-iran-bank-markazi-iran-and-others-dissenting-opinion-of-mahmoud-kashani-monday-19th-december-1983#opinion\_2162)

**Final Award (Award No. 314-24-1) - 14 Aug 1987**  
(/en/document/decision/en-starrett-housing-corporation-starrett-systems-inc-and-others-v-the-government-of-the-islamic-republic-of-iran-bank-markazi-iran-and-others-final-award-award-no-314-24-1-friday-14th-august-1987#decision\_4011)


Concurring Opinion of Judge Holtzmann (/en/document/opinion/en-starrett-housing-corporation-starrett-systems-inc-and-others-v-the-government-of-the-islamic-republic-of-iran-bank-markazi-iran-and-others-concurring-opinion-of-judge-holtzmann-friday-14th-august-1987#opinion\_2159)

Statement of Mr. Ameli (/en/document/opinion/en-starrett-housing-corporation-starrett-systems-inc-and-others-v-the-government-of-the-islamic-republic-of-iran-bank-markazi-iran-and-others-statement-of-mr-ameli-thursday-20th-august-1987#opinion\_2160)


Additional Statement by Judge Holtzmann Concerning Judge Ameli's Refusal to Sign the Final Award (/en/document/opinion/en-starrett-housing-corporation-starrett-systems-inc-and-others-v-the-government-of-the-islamic-republic-of-iran-bank-markazi-iran-and-others-additional-statement-by-judge-holtzmann-concerning-judge-amelis-refusal-to-sign-the-final-award-friday-14th-august-1987#opinion\_2158)

**Mahmoud Kashani**   
(/en/p/mahmoud-kashani)

Appointed by the respondent

**Howard M. Holtzmann**   
(/en/p/howard-m-holtzmann)

Appointed by the claimant

**Gunnar Lagergren**   
(/en/p/gunnar-lagergren)

President

**Source(s) of the information:**

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**Lawyers, other representatives, expert(s), tribunal's secretary** ▼

# Interlocutory Award (Award No. ITL 32-24-1)

## I. Introduction

- [1]. This Interlocutory Award is made for the purpose of deciding certain jurisdictional questions and whether there has been a taking of the Claimants' property by the Government of the Islamic Republic of Iran, and, if so, to appoint an expert to express his opinion as to the value of the property taken and to establish the expert's term of reference in that regard.

## II. Facts and Contentions

- [2]. Starrett Housing Corporation is the parent company of a group of subsidiary corporations engaged in construction and development projects. Starrett Housing Corporation ("Starrett Housing") and two of its allegedly wholly-owned subsidiaries, Starrett Systems, Inc., and Starrett Housing International, Inc., have asserted claims on their own behalf and on behalf of foreign corporations controlled by them against the Respondents for damages alleged to have been suffered due to events which occurred in the course of the development of a large housing project in Iran. (Starrett Housing and its subsidiaries are hereafter referred to collectively as "Starrett").
- [3]. The Claimants' involvement in Iran began in 1974, when Starrett Housing agreed to participate in a program to construct a residential community on then-unimproved land adjacent to northwest of Tehran. The area, known as Farahzad, consisted of about 1500 hectares of land, a portion of which would be developed by Starrett Housing, and other portions by other firms.
- [4]. In a series of agreements between Starrett and Bank Omran, an Iranian development bank, entered into between 2 November 1974 and 18 October 1975, Starrett undertook to purchase parcels of land at Farahzad, to develop and construct on these parcels and to market condominium apartments, i.e., individual apartment units, the title to which would be conveyed to separate purchasers.
- [5]. Starrett undertook to construct a total of 6000 apartment units in three phases of which only Phase I is at issue in this case. This Phase comprised 1600 such apartment units, grouped in eight, 26-story buildings. This apartment complex -- named "Zomorod" by the Claimants -- also included swimming pools, tennis courts, and other amenities.
- [6]. The first of the agreements regarding this project was entered into on 2 November 1974 by Starrett Housing and Bank Omran. To this agreement was annexed the text of another more detailed agreement (the "Basic Project Agreement"). The 2 November agreement obligated Starrett Housing to create a foreign subsidiary or affiliate to execute the Basic Project Agreement, the performance of which would be guaranteed by Starrett Housing.
- [7]. Accordingly, Starrett Housing created a Swiss subsidiary, Starrett, S.A., which executed the Basic Project Agreement on 18 December 1974.
- [8]. In view of certain requirements for foreign nationals to secure permits to own land and after consultations with officials of Bank Omran, Starrett S.A. on 18 October 1975 assigned the Basic Project Agreement to an Iranian subsidiary, Shah Goli Apartment Company ("Shah Goli"). That corporation then executed a supplementary agreement with Bank Omran. Pursuant to this supplementary agreement, Shah Goli and six other Iranian companies assumed all the rights and obligations of Starrett, S.A. under the Basic Project Agreement, with certain amendments. However, as far as these seven companies were concerned only Shah Goli seems to have been involved in the Zomorod Project. The supplementary

agreement was also accompanied by a guarantee of performance executed by Starrett Housing on 16 October 1975 according to which Starrett Housing, Shah Goli and the six other Iranian companies jointly and severally guaranteed to Bank Omran their obligations under the Basic Project Agreement.

- [9]. The Basic Project Agreement defines the "Project" as referring to the entire operations, the plans, the construction and the sale of apartments, or other types of construction subject to the approval of Bank Omran, to be carried out by Starrett on the two parcels of land at Farahzad. The term "Project" is hereinafter used in the same sense.
- [10]. Starrett Housing owned 79.7% of Shah Goli through Starrett systems, Inc., and Starrett Housing International, Inc., and through the latter's wholly-owned subsidiary, Starrett Housing GmbH, a company incorporated in the Federal Republic of Germany. Of the balance 20% was owned by Iranian nationals and 0.3% by others.
- [11]. Starrett Housing also organized another Iranian corporation, Starrett Construction Company Iran ("Starrett Construction"), which was formed to perform certain management functions relating to the Project. Starrett Housing owned 100% of Starrett Construction. Under the terms of a separate agreement Starrett Construction received 11 3/4% of the cash proceeds from the sales of the apartments as a management fee. Starrett Housing intended that a part of its profit on the Project would be received through Starrett Construction's management fee.
- [12]. Pursuant to the Basic Project Agreement and the supplements thereto (hereinafter referred to as the "Basic Project Agreement"), Shah Goli purchased two tracts of land belonging to the former Pahlavi Foundation (now the Alavi Foundation), Sites 809 and 1175, comprising an aggregate of 110,000 square metres. Shah Goli further agreed to pay 15% of the cash proceeds from the sale of the apartments to the seller's account in Bank Omran as the price for the land. Shah Goli undertook that regardless of the actual apartment sales, it would pay a minimum of \$18 million for the land. At the commencement of the contract \$5 million was paid to the bank as a down payment towards the total land price. Based on the estimated sales price of the apartments the Pahlavi Foundation in fact expected to receive between \$33 and \$36 million for the land. The two tracts of land were in due course deeded to Shah Goli. As security for the price of the land Shah Goli undertook to mortgage the tracts of land to the bank. The bank undertook to release the said mortgage pro-rata with respect to each apartment unit sold by Shah Goli and to fully release the mortgage when the entire amount due under the Basic Project Agreement had been paid to the bank. This mortgage arrangement was eventually entered into by Shah Goli. The mortgage covered "all buildings and structures, fixtures and installations which are affixed to the mortgaged property and according to the laws of Iran are considered to be immovable property".
- [13]. In the Basic Project Agreement, the parties agreed to fulfill their obligations in good faith to bring about the efficient completion of the Project. The Agreement also provided that it would be governed by Iranian law.
- [14]. Pursuant to the Basic Project Agreement Shah Goli was to:
- complete all of the 6,000 apartment units within 5 years from the date of beginning of construction as provided for in the Agreement;<sup>1</sup>
  - develop a Master Plan to be approved by Bank Omran and the Municipality of Tehran;
  - prepare the detailed architectural and structural plans for the buildings;
  - supply the building materials, products, equipment, machinery, etc. necessary for construction and to stockpile such supplies that would enable its contractors to perform according to the schedule;
  - construct and equip the apartment buildings in a workmanlike manner as expected from highly qualified international contractors;
  - pay suppliers, contractors' bills, consultants' fees and all the expenses concerned with the Project;
  - pay for materials and labour;

- sell the apartments in advance of, during of after the construction, and to deposit all such sales proceeds with Bank Omran, who, after deducting the amounts due to it according to the terms of the Agreement, would transfer the balance as instructed by Shah Goli, based on a monthly accounting by the bank.

- [15]. Bank Omran was to:
- carry out all infrastructure development and installations required, including the supply of water, electricity, telephone and roads for the area;
  - transfer to Shah Goli the tracts of land required;
  - secure the necessary building permits, licenses and any other governmental or municipal permissions required for implementation of the Project upon request by Shah Goli;
  - render assistance to Shah Goli in securing import licenses for all construction machinery and material with all exemptions within the laws and regulations granting privileges for highrise buildings, in securing all necessary visas, work permits or other permissions required for the expatriates necessary to work on the Project, and in obtaining, if required, necessary decrees authorizing the acquisition of land, investment, construction and sale of apartments thereon by Shah Goli;
  - charge Shah Goli at customary rates for all banking services, to transfer moneys due to Shah Goli within or out of the country free of taxes, levies or duties of any kind within the applicable laws and regulations;
  - collect all bills to the apartment purchasers against a fixed fee;
  - provide adequate local commercial facilities and local schools within the immediate pertinent areas, and to provide Shah Goli with the use of the facilities of the Farahzad sales office at comparable rates.
- [16]. Under the Basic Project Agreement the construction work was to begin within nine months after completion of certain closing transactions, provided that Bank Omran had supplied adequate power and water on the site to allow construction to proceed at the required rate. The closing transactions comprised approval of the Master Plan by Bank Omran, issuance of all building permits and documentation of land deeds, mortgages and the making of the down payment. Construction work began in January 1976 with Site 809 and in September 1977 with Site 1175.
- [17]. The Basic Project Agreement contains in Items 10 (c) and 12 the following provisions regarding default by a party:
10. Liquidated Damages:
- c) Either Party not in default, even after notice of default to the defaulting party, may elect to proceed to complete the Project without waiving said default or its claims for provable damages consequent thereon.
12. Notice of Default and Termination:
- If any party to this Agreement does not fulfill its obligations as herein mentioned, the other party shall send a notice of default to such defaulting party and allow 30 days to rectify the situation. If the defaulting party, after having received the notice, does not rectify the situation, then the other party shall have the right to refer the case to arbitration in the manner hereinafter mentioned. The arbitration proceedings shall not affect the continuance of the work, and the work may be continued and completed even without the participation and cooperation of the defaulting party.
- [18]. The Basic Project Agreement made express provision with respect to force majeure. Item 11 of the Agreement, as amended, provides:
- Force Majeure: It is understood and agreed by the Parties hereto that if performance hereunder by the Parties of their respective obligations is unduly delayed due to force majeure such as acts of God, insurrection, riots, fires, wars and warlike operations, explosions, accidents, governmental acts, acts of the public enemy, epidemics, and laws or regulations or restrictions of the Government of Iran or the United States of America, then and in such case the Parties shall be excused from meeting the time schedules and deadlines contained herein after giving due notice in writing of cause for the delay to the other party. In such event both Parties shall use their best efforts to remove or correct the cause for the delay and agree on a new time schedule.

- [19]. If it appears that further performance hereunder is impractical or impossible for either or both Parties by reason of governmental acts, laws, regulations or restrictions of the Government of Iran, then this Agreement and the Project shall be forthwith terminated and a final settlement shall be made so that Starrett shall recover from the Bank all of its downpayment made less any amount already amortized and any actual costs incurred by it for the Project and the Bank shall recover title to the Tract or Tracts of Land referred to herein together with all improvements made thereon. In all other cases of force majeure which prevents performance of this Agreement, the Parties shall be relieved of their obligations to proceed with the implementation of the Project and shall seek to reach agreement on an equitable solution in consideration of all work performed up to that date; but if the Parties are unable to reach agreement within a reasonable time, either Party may refer the matter to arbitration pursuant to Item 13 hereunder.
- [20]. Furthermore, the Claimants assert that Bank Omran in February 1976 furnished Starrett Housing with a guarantee (the "Bank Omran Guarantee"). The Claimants contend that the Bank Omran Guarantee provided that, in the event of expropriation or insurrection directly affecting the Project, Bank Omran would pay all loans made and properly and actually spent for the Project, as well as interest accrued for such loans. Upon the payment of such loans and interest, Bank Omran would be entitled only to the "loan rights" previously held by the lender. The Claimants assert that the Guarantee is authentic and legally binding upon Bank Omran. Although the Claimants state that the original appears to have been left behind in Iran, they point out that a copy with xeroxed signatures was presented in evidence and that other contemporaneous circumstances confirm the existence of the document. Claimants state that the Guarantee was well-known and no objection to its form or substance was ever raised before this litigation, even after Bank Omran was nationalized.
- [21]. Shah Goli intended to obtain a portion of the funds it needed to finance construction of the Zomorod Project by selling apartments in advance of construction, based on its design plans. By May 1976 all of the apartments in Site 809 had been sold. By March 1977 virtually all the apartments in Site 1175 had been sold or reserved for particular buyers. Under the standard terms of sale, the purchasers paid 30% of the base price in cash on signing a purchase agreement, and at the same time executed 24 promissory notes for an additional 15% of the base price, payable without interest over the next 24 months. The balance of the purchase price became due as of the date of delivery of the apartment. As a result of these advance sales, Shah Goli received approximately \$88.5 million which it allegedly expended for the Project.
- [22]. The standard Apartment Purchase Agreement also contained an escalation clause which provided that the base price would be adjusted by a percentage equal to the percentage of the increase in construction costs during a twelve months period beginning as of the date on which the base price had been determined. However, the escalation clause limited the adjustment to 10% of the base price.
- [23]. The standard Apartment Purchase Agreement further contained the following provisions regarding completion of construction work and default by Shah Goli.
- Article 5. Completion of Construction Work
- The date for completion of construction of the Apartment is estimated to be approximately 24 months after the date of execution of this Agreement, but in the event that any event constituting force majeure, or a shortage of construction supplies and materials should occur as confirmed by the consulting engineers referred to in Article 2 above said period shall be extended accordingly.
- Article 10. Default of the Company
- In the event the Company does not fulfil its commitments under this Agreement, the Purchaser may send a written notice to the Company and if the Company within sixty days from the date of receipt of such written notice shall fail to take action that would cure the default within a reasonable period of time, the Purchaser shall have the right to cancel this Agreement and shall be entitled to a refund of all sums paid hereunder, with interest at the rate of 7% per annum calculated from the date such money has been received by the Company.

- [24]. The Claimants contend that in order to obtain the additional funds required for construction, Starrett Housing and its subsidiaries arranged a series of loans to Shah Goli for expenditure on the Project. The loans were made in various forms. Two loans were made by Starrett Housing International to Shah Goli under separate loan agreements for \$3 and \$5 million. The Claimants further contend that the \$3 million was spent on design fees and other project start-up costs, and that the \$5 million was used as the down payment to Bank Omran for the land. A third loan for \$14,600,000 was made to Shah Goli by Starrett GmbH, the wholly-owned Starrett subsidiary in Germany; the Claimants contend that the proceeds of that loan were spent on construction costs. In addition, the Claimants state that Starrett Housing and certain of its subsidiaries transferred \$9,171,009 to Shah Goli by means of deposits to Shah Goli's bank account in New York; they further made \$3,543,750 in direct payments to subcontractors on Shah Goli's behalf. The Claimants likewise contend that this \$12,714,759 million was expended on Zomorod's construction. It is further asserted that Starrett Construction made a loan to Shah Goli in the principal amount of \$5,277,162. The funds loaned by Starrett Construction to Shah Goli were said to have been derived from the management fee paid by Shah Goli to Starrett Construction up to 30 September 1978. The Claimants contend that these loans, with interest accrued to 30 September 1981, total \$68,888,808. All of these loans were legally made and are binding obligations upon Shah Goli. They were regularly recorded on the books of Starrett. The firm of independent public accountants which regularly audited the books of the Claimants and of Shah Goli certified that the loans were made and the proceeds used for the Project.
- [25]. The Claimants contend that the Project was well-designed following extensive studies of local conditions, that it met all local requirements and that it was properly constructed. They state that by 30 September 1978 the Project was approximately 75% complete, calculated on the percentage-of-completion basis as audited by independent certified public accountants. The Claimants assert that construction came to a halt when employees were later forced to leave Iran, but even after that Starrett maintained a few executives in Iran who, although unable to continue construction, remained as long as possible in order to be immediately available in the event conditions improved.
- [26]. The Claimants have asserted three alternative claims in this case:
1. Claims primarily be Starrett Housing and Starrett Housing International in the sum of \$112,672,613 against the Government of Iran based on unlawful expropriation and other acts in breach of international obligations with respect to their property rights in the Project and in Shah Goli. In respect of this claim the Claimants contend that acts of insurrection and other events of force majeure prevented Starrett from completing the Project and that the Islamic Republic of Iran authorised, approved and ratified acts, conduct and policies which deprived Starrett of the effective use, control and benefits of the Project and that this expropriation was later formalised in governmental decrees that made no provisions for any compensation.
  2. Claims primarily by Starrett Housing and Starrett Housing International against Bank Mellat, Bank Markazi Iran and the Government of Iran as successors to and fully responsible for the contractual obligations and liabilities of Bank Omran, based on the force majeure provisions of the Basic Project Agreement. In respect of this claim the Claimants allege that they in accordance with those provisions are entitled to \$112,672,613 as "an equitable solution in consideration of all work performed" or, at least should recover all costs actually incurred by Starrett for the Project, including accrued interest, in the amount of \$68,888,808 (i.e. \$59,991,121 + \$8,897,687).
  3. Claims primarily by Starrett Housing in the sum of \$68,888,808 against Bank Mellat, Bank Markazi Iran and the Government of Iran as successors to Bank Omran, based on the Bank Omran Guarantee Agreement. Starrett Housing asserts that under the Bank Omran Guarantee it is entitled to recover its actual costs expended for the Project, and its loans to the Project, including accrued interest, but not lost profit.
- [27]. The Claimants have stated that the claims based on unlawful expropriation and other acts in breach of international obligations are their primary claims. The Claimants state that their claims are not contradictory and that pleading in the alternative is customary in international litigation. The Respondents have not been denied the right to defend against all three claims, and, in fact, have presented full defenses as to all of them.

- [28]. In respect of all these claims the Claimants have declared that they would be satisfied to receive a joint award in favour of all three Claimants.
- [29]. The alleged losses for which the Claimants seek compensation in this case fall into two general groups: first, losses which they had already suffered, amounting to \$97,621,253 as of 30 September 1978; and second, profits of at least \$15,051,360 which they would have earned after 30 September 1978 had they not been prevented from completing the Project. In addition the Claimants contend that Bank Omran failed to supply electric power to the building site in accordance with the provisions of the Basic Project Agreement and that Starrett as a result thereof had to incur extra costs. The Claimants further contend that Starrett would have recovered about \$3.7 million from sale of heavy duty construction equipment upon completion of the Project, but was prevented from doing so.
- [30]. These claims, with interest calculated as of 30 September 1981, are as follows:
- Starrett's unrecovered loans, with interest (excluding Starrett Construction) \$59,991,121
  - Starrett Construction's unrecovered loans, with interest 8,897,687
  - Losses resulting from unremitted and unrecovered profit earned, recognized and reported by 30 September 1978 22,579,220
  - Losses from unrecovered interest on Starrett's deposits with Bank Omran 6,153,225
- 
- Subtotal of losses suffered \$97,621,253
- Profit Starrett would have earned after 30 September 1978 had it not been prevented from completing the Project 8,763,618
  - Increased profit Starrett would have earned in the absence of Bank Omran's failure to supply electric power as required by the Basic Project Agreement 2,500,000
  - Monies Starrett would have recovered from the sale of heavy duty construction equipment after completion of the Project 3,787,742
- 
- Subtotal of profit which would have been earned after 30 September 1978 upon Completion of the Project 15,051,360
- 
- Total \$112,672,613

EN



I. INTRODUCTION	
II. FACTS AND CONTENT	
▶ III. JURISDICTIONAL ISSUES	
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V. VALUATION	
VI. FINAL REMARKS	

- [31]. The Respondents object to the jurisdiction of the Tribunal for the following reasons:
- [32]. (i) The claims are not "claims of nationals" of the United States within the meaning of Article VII of the Claims Settlement Declaration.
- The Claimants have to submit proper documentation to prove that nationals of the United States have continuously owned more than 50% of the shares in Starrett Housing from the date when the claim arose to the date of the final award. They have submitted only a certificate by Starrett Housing's corporate secretary, indicating the names of a number of shareholders alleged to hold in the aggregate more than 50% of the shares of the corporations, and the number of shares held by each of these shareholders. However, a certificate by the corporate secretary cannot be admissible as evidence, because the secretary is an officer of the corporation, is on the payroll of the corporation and is acting under the corporation's instructions. Moreover, Starrett Housing has not sufficiently established the number of shares issued and outstanding during the period 1979-1982 so as to allow a conclusion whether or not the number of shares held by the persons indicated in the certificate by the corporate secretary represents more than 50% of the capital stock. Further, the Claimants have not submitted sufficient evidence to prove their allegation that Starrett Systems, Inc., and Starrett Housing International, Inc., are wholly-owned subsidiaries of Starrett Housing. In particular, the evidence submitted to demonstrate the number of shares issued and outstanding in Starrett Systems, Inc., is ambiguous and contradictory.

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The certificate by the corporate secretary contains the names of several persons as "trustees". Although the Claimants have provided copies of some of the trust agreements, they have not established whether the "trustees" shall be considered as owners, and not as beneficiaries, under the relevant state law of the United States, and whether the trustees are United States citizens.

- [33]. (ii) Increase of the Claimants' claim as compared to their claim before the U.S. District Court for the Southern District of New York.

It follows from General Principle B of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981 that the Tribunal is entitled to decide only claims that previously have been brought before a court in the United States and that the Tribunal is obligated to decide such cases "within the limits of their original characteristics." In support of this contention the Respondents have referred to the provision in General Principle B according to which the United States has agreed to terminate "all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to prohibit all further litigation based on such claims... and to bring about the termination of such claims through binding arbitration." The Respondents allege that the words "such claims" refer solely to litigations that have been instituted before United States courts and subsequently terminated as a result of the Algiers Declarations.

Since a claim originally brought before the U.S. District Court for the Southern District of New York for \$38,365,000, was much lower than the amount of the claim before the Tribunal the Respondents consequently contend that the difference between the relief sought in the United States and in the instant case should be dismissed "without further judicial investigation".

The Claimants respond, inter alia, that in an Amended Complaint filed in the United States District Court on 11 July 1980, and served on the Respondents' authorized attorneys, the amount of the complaint was stated to be \$93,905,419 as of 30 June 1980, exclusive of interest and costs since that time.

- [34]. (iii) The Tribunal is not a proper forum for this case.

Under the Algiers Declarations Shah Goli does not have standing to sue the Government of Iran and other Iranian Respondents before the Tribunal, because Shah Goli is an Iranian corporation organized, registered and existing under the laws of Iran. The Iranian nationality of Shah Goli had been the principal reason for assignment of the Basic Project Agreement to it from Starrett, S.A., a Swiss corporation with a branch office in Tehran, in view of the legal prohibition of land ownership by foreigners in Iran. The 18 October 1975 assignment of the Basic Project Agreement provided that:

WHEREAS, because [Starrett, S.A.] is an expatriate corporation and cannot own land in Iran and build and sell high rise apartment dwellings thereon as contemplated by the Agreement of the Parties expressed in Exhibit II and therefore cannot perform its obligations under Exhibit II, and

WHEREAS, [Shah Goli] (being Iranian joint stock company) can perform the obligations undertaken by [Starrett, S.A.] in Exhibit II.

Only a portion of Shah Goli's shares of stock belong to a West German corporation while the rest of its stock belongs to Iranian nationals. Such a corporation is an Iranian national according to the Iranian Commercial Code as amended, and according to the Claims Settlement Declaration nationals of Iran may not sue the Government of Iran before the Tribunal. The Algiers Declarations refer to the Tribunal only claims of nationals of one State against

the other. Shah Goli has been organized and is existing under the laws of Iran and 20% of its shareholders are Iranian nationals. Shah Goli has extensive financial and legal relationships with Iranian nationals, who bought the apartments in advance and made significant advance payments, with Iranian banks, who made loans to Shah Goli, and with Iranian and other non-United States subcontractors. Shah Goli as a juridical person of private law is subject to the laws of Iran and has in no way the standing to sue the Government of Iran before an international tribunal. Nor may the Claimants sue Respondents under the Basic Project Agreement as concluded between Shah Goli and Bank Omran due to lack of privity of contract. Under Item 13 of that Agreement, any claim related to the Project must be referred to the International Chamber of Commerce for arbitration in London, not to courts in the United States or to this Tribunal.



- [35]. (iv) Bank Mellat, Bank Markazi yiran and the Government of Iran are not properly Respondents in the case.

Bank Mellat as Bank Omran's successor is not liable for any of the claims asserted by Claimants. The claims are attributable to the Pahlavi Foundation as the owner of the tracts of land sold to Shah Goli. Bank Omran was involved in the transactions only as a representative of the Pahlavi Foundation. Bank Markazi Iran through its approval of the sufficiency of foreign exchange reserves for the loans or otherwise is not responsible for Bank Omran's obligations and liabilities. The claims are not attributable to the Government of the Islamic Republic of Iran on the ground that the Government did not expropriate Shah Goli's assets, the Project or the Pahlavi Foundation.

Respondents object that contradictory causes of action cannot be maintained. If the claim is based on the expropriation of Shah Goli, Claimants may not also make a contractual claim against Bank Omran and other Respondents based on the force majeure provisions of the Basic Project Agreement between Shah Goli and Bank Omran. Also, neither of these causes of action may stand if the claim is based on the alleged Bank Omran guarantee. The existence of one of those causes of action excludes the existence of the others. Moreover, Claimants have not specified in what capacity, on what cause of action and for which claim each of them is suing each of the Respondents. Claimants have no contractual relationships with the Respondents, nor any property rights in Shah Goli. The only contractual relationships are those of Shah Goli with Bank Omran and the apartment purchasers. Proceeding with the case before clarification of these issues deprives Respondents of their right of defence and their right to substantiate their counterclaims.

- [36]. The Respondents make the following contentions with respect to the claims:

- [37]. (i) The Government of Iran did not expropriate Shah Goli or its property rights. The actions taken by Shah Goli's managers during the relevant period prove the contrary. In late January 1980 when it became certain that Shah Goli's managers would not return to Iran and other managers would not be appointed to take care of the company, the Government appointed a Temporary Manager on the basis of Bank Omran's request. This temporary measure for the caretaking of Shah Goli's interests and for prevention of stoppage of work and lay-off of the workers during the Embassy incident until arrival of the company's managers and their assumption of responsibility for its affairs must not be considered as an expropriatory action against Shah Goli or the Project. In spite of continuous demands of Bank Omran and the Government since November 1979 that the American managers return or appoint persons of their choice to take charge of Shah Goli, the managers have refused to do so or even to appoint persons of the nationality of the 79.7% shareholders in Shah Goli, i.e. Starrett Housing GmbH of West Germany.

Respondents have raised this demand which became their primary counter-claim for specific performance against Starrett Housing based on the latter's performance guarantee of Shah Goli's obligations. But having left Shah Goli with deficits of several million dollars, including debts owed to private Iranian and non-Iranian persons, the American managers and Claimants have ignored this "basic demand" and counter-claim and allege that the Government has expropriated Shah Goli.

- [38]. (ii) The force majeure conditions in Iran, if any, do not relieve Shah Goli from its obligations. The active presence of Shah Goli's American managers in Iran during and after the Revolution until late October 1979, their continuation of the Project until that time – also reflected in the letter of the Chairman of the Board of Directors of Shah Goli and Starrett Housing, Henry Benach, of 6 September 1979 to the then Ministry of Foreign Affairs of the Islamic Republic of Iran – and receipt of several loans from the Alavi Foundation and Bank Omran months after victory of the Islamic Revolution are ample admissions by the American managers and Starrett that the Revolution, conditions, laws and regulations in Iran, including the Bill for Appointing Temporary Managers of July 1979, did not result in force majeure as regards Shah Goli and Starrett. The American managers left Iran prior to the Embassy incident and after realizing that even under the most conservative assessments and with the availability of all necessary facilities and an additional loan of \$14 million from the Alavi Foundation and Bank Omran, the Project would be destined to bankruptcy by a loss of at least \$50 million and 27 months further construction work for completion as of September 1979, i.e. a two year project would take seven years to complete. If, as admitted by the American managers of

Shah Goli and Starrett, the United States Government regulations including those severing diplomatic relations with Iran barred the American managers from returning to Iran, the alleged force majeure is attributable to their own Government. In any case such regulations did not relieve Shah Goli, an Iranian company, from its obligations. At most, since Shah Goli was 79.7% owned by a West German corporation, the German shareholder could readily appoint German managers, or managers of whatever nationality, that could do the job. There were many incomplete projects with German, French, Italian, Japanese and other contractors whose construction work successfully progressed after the Revolution and during the Embassy incident in Iran. The Embassy incident was a political issue not related to the social life and activities of ordinary United States nationals. The Iranian Government and people did no harm to ordinary United States nationals and in fact clearly distinguished them from the Government of the United States during the Embassy incident.

- [39]. (iii) The alleged Bank Omran guarantee must be disregarded. It is not genuine. Claimants have failed to present the original for proof of its authenticity despite several requests. Moreover, it lacks the characteristics of a bank guarantee as regards the form and substance. It is in contravention of the Iranian Civil Code provisions and beyond the authority of the issuer. A guarantee may not be called upon by the principal obligor but by the beneficiary. Although unknown, the beneficiaries are banks and entities other than Starrett Housing and its subsidiaries and affiliates. Realization of the guarantee conditions has not been established. Further, its Rial provision is not changed to Dollar simply because the funds securing the payment of the Tribunal awards in favour of United States Claimants are in Dollars. The claim based on the guarantee is in any event not attributable to Bank Markazi Iran and the Government of Iran and must accordingly be dismissed with respect to them.
- [40]. Respondents contend that the construction work performed by September 1979 physically had progressed no more than 56%, based on an assessment carried out at the time. Based on a technical expert's report the work performed was also of mediocre quality from a technical point of view. The scope of geotechnical studies was inappropriate for the Project. The buildings' safety against earth-quake loads is questionable and requires further studies. The architectural design does not comply with the relevant Tehran regulations; in particular, the escape-stairs design in some buildings greatly reduces safety against fire. The interior design does not comply with the regional conditions. A proper Project feasibility study was not carried out. The numerous construction deficiencies greatly reduce the durability of the buildings and indicate that the construction was not carried out on the basis of proper design and working drawings.
- [41]. As to the loans, Respondents contend that Shah Goli, which had a 35% paid-in capital of Rials 350,000 (about \$12,000), undertook to import all necessary funds for implementation of the \$220 million construction Project as the owner, builder and seller of the apartments. But Shah Goli neither imported the required capital nor obtained further capital contributions. The alleged loan agreements are invalid. They were concluded by the directors and officers who were common to Shah Goli and Starrett, in contravention of the provisions of Article 129 of the 1968 Iranian Commercial Code on Joint Stock Companies. That Article requires authorization of such transactions by Shah Goli's Board of Directors, voting without the common directors. Also under that Article, Shah Goli's independent inspector was required to submit a detailed report to the Board and to the next shareholders' meeting. In addition to its failure to meet the requirements of Article 129, Shah Goli could not have signed the first and second loan agreements on behalf of four other Iranian companies that were completely dormant at the time. However, assuming their validity, not more than one-fifth of the sums actually received and properly expended could be attributed to Shah Goli. In the absence of a loan agreement the alleged payment of \$9,171,009 in cheques by Starrett Housing and certain of its subsidiaries to Shah Goli's New York bank account is only indicative of payment of their prior debts to Shah Goli, assuming actual receipt of the amount. A priori, in the absence of particular express authorizations by Shah Goli, the alleged direct payment of \$3,543,750 by Claimants to the subcontractors is not a loan to Shah Goli and at any rate it does not entitle them to a claim before this Tribunal. Claimants have presented no proof of any valid underlying contracts on the basis of which they made payments out of Shah Goli's New York bank account for Project expenditures. As to the \$5,277,162 loan by Starrett Construction to Shah Goli there is no record to indicate the authorization or receipt of such loan

by Shah Goli; at any rate the Tribunal lacks jurisdiction over a claim based on that loan. Claimants can not seek double recovery for both the loans to and the assets of Shah Goli. Shah Goli's deposits with Bank Omran were in current accounts, which do not accrue interest; Shah Goli owed the Bank more than \$14 million on those accounts prior to their freeze; therefore the \$6,153,225 claim for interest on those accounts is without merit. The heavy duty construction equipment, if existent, belongs to Shah Goli and its value has depreciated over time; thus the unsubstantiated claim for \$3,787,742 must be dismissed. The lost profit claims of \$22,579,220, \$8,763,618 and \$2,500,000 and the loan claims must be dismissed for several reasons including the fact that Shah Goli and the common directors and officers assumed that risk by failing to qualify for the Iranian foreign investment protection approval and by failing to obtain the OPIC investment risk insurance referred to in Items 5(a) and (d) and 8(e) (2) of the Basic Project Agreement. Moreover, in 1976 Bank Markazi Iran refused to approve in advance the repatriation of such profits. Shah Goli's financial statements and tax declarations for all preceding years show significant losses rather than reflecting the alleged profits. By late 1978, the valuation of the Project, based on internationally accepted accounting principles, required taking into account the events casting serious doubts as to the viability of the Project. These events did not constitute expropriation or other governmental measures interfering with the management of Shah Goli or the Project.

[42]. Further, assuming the Tribunal's jurisdiction, the Respondents have asserted counter-claims against Starrett Housing based on, inter alia, Starrett Housing's guarantee for the performance of Shah Goli's obligations under the Basic Project Agreement. As their primary counter-claim they have sought specific performance against Starrett Housing for fulfilling Shah Goli's obligations under said guarantee. The other counter-claims which aggregate over \$118 million are as follows:

1. Claims in the amount of \$19,142,857, plus \$291,519 in promissory notes, for unrecovered loans to Shah Goli by 21 September 1981.

The Claimants contend that no more than \$15 million was outstanding in unpaid loans from Bank Omran of which \$10 million was collateralized by mortgage of 177 apartments and \$5 million by purchasers' promissory notes. They also allege that the force majeure conditions in Iran and the expropriation prevented them from collecting the balance of the proceeds from apartment sales and that they consequently are excused from re-payment of the bank loans. They further contend that the amounts sought under this counter-claim, if paid, would constitute amounts expended on the Project, for which the Claimants are entitled to compensation under the force majeure provision of the Basic Project Agreement and under the Bank Omran Guarantee.

2. Claims in the amount of \$20,907,811 plus 12% contractual interest for the balance of the price of the land under the Basic Project Agreement and related agreements according to which Shah Goli was to pay 15% of the apartment sales prices, and to secure which obligations Shah Goli had mortgaged the land, the buildings and the improvements thereon.

The Claimants deny liability for payment of the balance, firstly because the force majeure conditions in Iran prevented the delivery of any more apartments and the receipt by Shah Goli of any additional cash proceeds from purchasers, and secondly, because the land and the buildings have been expropriated. They further contend that the amounts sought under this counter-claim, if paid, would constitute amounts expended on the Project, for which the Claimants are entitled to compensation under the force majeure provision of the Basic Project Agreement and under the Bank Omran Guarantee.

3. Claim in the amount of \$16,927,718 for liabilities to apartment purchasers arising from delay in completion of the Project. This claim is based on Articles 5 and 10 of the standard Apartment Purchase Agreements according to which the purchasers in case of non-delivery of the apartments within 24 months from the conclusion of the Agreements are entitled to cancel the Agreements and to recover the down payments plus 7% interest from the date of payment.

The Claimants contend that the Tribunal lacks jurisdiction over this counter-claim, because it does not arise out of the same contract, transaction or occurrence as does the claim. They also contend that liabilities to apartment purchasers constitute claims of nationals of Iran against a national of the United States, over which the Tribunal lacks jurisdiction. The Claimants further contend that under the Apartment Purchase Agreement a purchaser is required to demand any refund in writing, and that Respondents have submitted no proof that such written

demands have been made. Finally, the Claimants invoke Article 10 of the Apartment Purchase Agreement, which provides for extension of the delivery schedule in case of force majeure.

4. Claims in the amount of \$5,470,820 for Shah Goli's liability to certain subcontractors, including the Claimants in cases Nos. 288 and 819 before this Tribunal. The Respondents assert that Starrett's claims duplicate the claims by these subcontractors. Alternatively, the Respondents argue that the claims by the subcontractors shall be included among the debts within the framework of the valuation of Shah Goli.

The Claimants deny that they are seeking double recovery and assert that the subcontractors' claims now are obligations of the Government of Iran as a result of the expropriation of Shah Goli. The Claimants also assert that the Tribunal lacks jurisdiction over counter-claims based on alleged debts to Iranian nationals, and that such debts in any event would be characterized as actual costs of the Project, for which the Claimants are entitled to compensation under the force majeure provision of the Basic Project Agreement and under the Bank Omran Guarantee.

5. Claims in the amount of \$38,364,437 for unreasonable project costs resulting from overpricing of inter-company services to the Project, such as charging 20% of the proceeds of the apartment sales instead of the allegedly normal rate of 3%, and payments made for services by Starrett Construction and Iranian companies owned by officers and shareholders of Shah Goli. The Respondents assert that the principal portion of these services was rendered by Shah Goli's own Technical Bureau.

The Claimants contend that the total fee paid to Starrett Construction was \$10 million of which \$5.3 million was loaned back to Shah Goli to cover Project expenditures; that the fees paid to other Iranian companies were for a multitude of services; and that normal rates have been paid for the services.

6. Claims in the amount of \$1,651,416.60 for employer's insurance premiums and allowances and for compensation to be paid in respect of dismissal of personnel.

The Claimants contend that the Tribunal lacks jurisdiction over this counter-claim, because it does not arise out of the same contract, transaction or occurrence as does the claim. They also contend that this counter-claim constitutes a claim on behalf of nationals of Iran against a national of the United States, over which the Tribunal lacks jurisdiction.

The Claimants deny any liability for these claims and allege that they are excused from payment of such charges because of the force majeure situation in Iran. They further contend that the Government of Iran is liable for such charges, if any, as a result of the alleged expropriation of the company. The Claimants further contend that in any event such charges would be characterized as actual costs of the Project, for which they would be entitled to compensation under the force majeure provision of the Basic

Project Agreement and under the Bank Omran Guarantee.

7. Claims in the amount of \$32,597,998.60 for corporate income tax regarding the years 1977 and 1978 plus applicable charges for late payment as from July 1980, based on the \$27,856,382 profit as contended in the Statement of Claim. The Respondents further seek payment of \$587,289 in taxes withheld by Shah Goli on subcontractors' remunerations and employees' salaries for the Ministry of Finance.

The Claimants deny liability for any taxes and allege that tax holiday provisions in the Iranian tax laws are applicable in respect of the Project.

8. Claims in the amount of \$7,380,976 for approximate transportation charges and seven years of space rents for a plot of land, belonging to the bank, on which plot 534,000 cubic metres of soil excavated from Sites 809 and 1175 had been left by Shah Goli contrary to instructions by the Municipality of Tehran.

9. Claims in the amount of \$4000,000 for space rents and demolition charges in respect of concrete production workshops and construction material warehouses set up by Shah Goli and Arenco, a company solely owned by shareholders of Shah Goli, on a plot of land belonging to the bank.

10. Claims in the amount of \$12,859,000 as compensation for investments the Respondents have made in accordance with the Basic Project Agreement in providing infrastructure and installations, including supply of sewage, water, electricity, telephone, roads and local commercial facilities such as stores, supermarkets, shopping-centre and health clinic for residents of 6000 apartment units.

11. Claims under Items 10(c) and 12 of the Basic Project Agreement for damages caused by Shah Goli's failure to complete and deliver 1539 apartment units, including damages for increased costs resulting from this delay and due to the inflation of the construction costs in Iran which allegedly has raised the net cost per square metre of apartment construction from 42,000 Rials in 1977 to 81,376 Rials in 1983.

- [43]. As to the counter-claims mentioned under items 8 through 11, the Claimants argue that these counter-claims have been submitted too late since they were presented first in Part Two of the Respondents' Rejoinder and, in any event, the Claimants deny liability for these counter-claims.

### **III. Jurisdictional issues**

#### **(i) Whether the claims are "claims of nationals" of the United States within the meaning of Article VII of the Claims Settlement Declaration.**

- [44]. Each of the three Claimants was a corporation organized and existing under the laws of a State of the United States continuously from the earliest date a claim in this case arose through at least 19 January 1981.
- [45]. Starrett Housing is a corporation whose shares are publicly-traded on the New York Stock Exchange.
- [46]. Although it is a publicly-traded corporation, Starrett Housing is able to identify a relatively limited group of persons who hold, in the aggregate, more than 50% of its shares of outstanding shares of stock. Because of this, Starrett Housing did not follow the Chamber's guidelines for the proof of corporate nationality as set forth in its Orders in *Flexi-Van Leasing, Inc. and Iran*, Case No. 36, and *General Motors Corporation and the Government of Iran*, Case No. 94. Instead, Starrett Housing submitted certificates of a certified public accounting firm and of its corporate secretary concerning its outstanding shares of stock as well as passport or other evidence proving the United States citizenship of persons who own more than 50% of its outstanding shares in their own names, or in connection with trust agreements or as members of a partnership which owns shares. The Tribunal considers that the evidence submitted is sufficient to prove that the Tribunal has jurisdiction over Starrett Housing's claim as the claim of a United States national within the meaning of Article VII of the Claims Settlement Declaration.
- [47]. Starrett Systems, Inc. is authorized to issue 1,000,000 shares of common stock, pursuant to its Amended Certificate of Incorporation. The Secretary of Starrett Systems has certified that only 100 shares of the authorized stock are issued and outstanding. A copy of a Share Certificate has been submitted showing Starrett Housing to be the owner of these 100 shares of stock.
- [48]. Starrett Housing International is, according to its Certificate of Incorporation, authorized to issue 1000 shares of common stock. A copy of a Share Certificate has been submitted showing that Starrett Systems, Inc. is the owner of 1000 shares of stock in Starrett Housing International. The Secretary of Starrett Housing International has certified that 1000 shares of the authorized stock are issued and outstanding.
- [49]. Since Starrett Housing International is owned by Starrett Systems, and Starrett Systems by Starrett Housing, the Tribunal also has jurisdiction over the claims of these two subsidiaries within the meaning of Article VII of the Claims Settlement Declaration.

## **(ii) Increase of the Claimants' claim as compared to their claim before the U.S. District Court for the Southern District of New York.**

- [50]. It is clear from the text of the Algiers Declarations that the words "such claims" in General Principle B are modified by the language of Article II, paragraph 1, of the Claims Settlement Declaration, which expressly lays down that the Tribunal has been established for the purpose of deciding such claims as are indicated in that paragraph, "whether or not filed with any court". The words "such claims" refer to litigation as between the Government of one of the States and nationals of the other. There is no language supporting the view that all claims not previously filed with United States Courts are barred from the jurisdiction of the Tribunal. Neither is there any language to support the view that claims before the Tribunal are barred from jurisdiction to the extent they go beyond claims previously filed with United States Courts. See Interlocutory Award in Case 39, Phillips Petroleum Company, Iran, and The Islamic Republic of Iran et al. ITL-11-39-2, (30 December 1982).
- [51]. For these reasons the objections raised by the Respondents on this point are rejected.

## **(iii) Whether the Tribunal is a proper forum for this case.**

- [52]. The Respondents contend that Shah Goli has no standing to sue the Government of Iran and other Iranian Respondents in this case. Having regard to the conclusions as to the expropriation issue, the Tribunal concludes that from the date of the taking Shah Goli - through the Claimants - has no locus standi in this case.
- [53]. The provision for arbitration in London which is contained in the Basic Project Agreement is not a forum selection clause which ousts the jurisdiction of the Tribunal. See Interlocutory Award in Case No. 293, Stone & Webster Overseas Group, Inc., and National Petrochemical Company et al. ITL 8-293-FT, Part III, (5 November 1982).

## **(iv) Whether Bank Mellat, Bank Markazi Iran and the Government of the Islamic Republic of Iran are properly Respondents in this case.**

- [54]. As stated in the Tribunal's Order of 8 December 1982, the claims based on expropriation and other acts in breach of international obligations are directed exclusively against the Government of the Islamic Republic of Iran. There can be no doubts that these claims are attributable to the Government. That Order also stated that Bank Mellat was a proper Respondent in this case. The Tribunal does not in this Interlocutory Award have to address the question whether Bank Markazi Iran is properly a Respondent in the case, since this Award is confined to the questions of taking and valuation.

## **(v) Late filing of counter-claims.**

- [55]. In accordance with Article 19, paragraph 3, of the Tribunal Rules the Tribunal decides to accept the counter-claims mentioned under items 8 through 11 above although they were not included in the Statement of Defence.
- [56]. Starrett Housing is requested to file with the Tribunal on or before 29 February 1984 an Answer regarding these counter-claims.

## IV. The expropriation claim

### (a) Background

[57]. The Claimants contend that their property interests in the Project have been unlawfully taken by the Government of Iran which has deprived them of the effective use, control and benefits of their property by means of various actions authorizing, approving and ratifying acts and conditions that prevented Starrett from completing the Project.

[58]. In support of their expropriation claim, the Claimants introduced evidence by Deloitte, Haskins & Sells, certified public accountants, to show that the Project was profitable until alleged Revolutionary events and Government acts deprived them of their property rights to manage and control it. They asserted that they had been financially able to provide sufficient funds for completion of the Project and had done so prior to the Revolution and even afterwards. Certain loans had been sought in Iran only after Bank Omran, under Government control, had wrongfully frozen Shah Goli's bank accounts and breached its obligations to provide electricity and other infrastructure -- conditions which made it unreasonable further to increase loans from outside Iran.

[59]. Claimants introduced evidence to show that the Project was properly designed, well constructed and was proceeding on schedule at the time they were deprived of control. They pointed out that after the expropriation Shah Goli had sold apartments at prices higher than those charged under Claimants' management, a fact which they noted was uncontradicted and which further confirmed that the buildings were highly desirable.

[60]. The Claimants asserted that they had not left Iran because of financial problems, but only because conditions forced them and all other United States nationals to do so.

[61]. As regards the acts and conditions that prevented Starrett from completing the Project, the Claimants have referred to a comprehensive account of events and conditions in Iran from early 1978 to the beginning of 1980. Out of this description the Claimants emphasize the following events and effects of the Islamic Revolution, which in their view prevented completion of the Project and amounted to unlawful taking of Starrett's property interest in the Project. In respect of these events and effects the Claimants contend:

(i) Reduction in the Project work force.

By the end of 1978 and the beginning of 1979 conditions in Iran made it necessary for most of Starrett's 150 American supervisors to leave Iran (by the end of 1978 only 10-12 remained). At this time American and other foreign sub-contractors for the Project left, including employees of the Otis Elevator Company who were responsible for the installation of the required elevators. Also American sub-contractors responsible for the plumbing work and the installation of heating, ventilation and air-conditioning units left as well as European nationals responsible for electric work, plaster work, tile work and the installation of windows and window railings. By January 1979 the project work force was reduced to no more than 200.

(ii) Strikes and shortages of materials.

Recurrent strikes and work stoppages had a devastating impact on securing building materials and carrying on construction at the Project, in particular a customs strike at Iranian ports in 1978, repeated strikes by oil workers which resulted in fuel shortages and the complete closing of the Tehran Bazaar between November 1978 and February 1979.

(iii) Collapse of the banking system.

During the latter part of 1978 all major Iranian banks, including Bank Omran, were frequently closed, and it became impossible to conduct even the most ordinary commercial transactions. The intermittent opening of the banks lead to a frantic effort by depositors to withdraw their money. After the victory of the

Islamic Revolution, the Revolutionary Council imposed strict limitations on the amounts that could be withdrawn from bank accounts and the amounts that could be paid as salaries to corporate employees.

(iv) Changes in control of Bank Omran.

Pursuant to a 28 February 1979 decree all assets and property of the Pahlavi Foundation, including Bank Omran, were confiscated. Bank Omran was thereupon placed under the control of the Alavi Foundation and, later, the Foundation for the Oppressed. In June 1979 Bank Omran was also declared nationalized under the Bank Nationalization Law, enacted by the Revolutionary Council.

(v) Freeze of Shah Goli's bank accounts.

Also in July 1979, at the time when Shah Goli began to deliver apartments and receive amounts paid by purchasers, Bank Omran, then under Government control, froze the bank accounts into which those payments were required to be deposited pursuant to the Basic Project Agreement. Shah Goli was not permitted to draw on these accounts to pay for continued work on the Project.

(vi) Harassment of Starrett personnel.

In February 1979 four men armed with machine guns entered the offices of Shah Goli at the project site and announced that, since the Project had been owned by the former Shah, it now belonged to and was under the control of the new Islamic Republic. Arthur Radice, a Starrett executive in Iran, was taken to the headquarters of the Revolutionary Guard in Tehran; upon his release he left the country. He returned some weeks later but had to leave Iran again in April 1979 following seizure of his passport by the Iranian authorities; he returned a few weeks later but left Iran finally in September 1979.

In July 1979, when Shah Goli attempted to invoke its rights under the 10% escalation clauses contained in all Apartment Purchase Agreements, armed Revolutionary Guards entered Shah Goli's offices, detained personnel in one room, cut off the electric power, the water supply and telephone service and threatened to hold the employees until Shah Goli revoked the escalation of price. Shah Goli thereupon agreed to forego its contractual right to escalation, which amounted to over \$22 million with respect to the apartments already sold.

(vii) Further official measures of the Islamic Republic of Iran confirming its deprivation of Starrett's property interests in the Project.

The further official measures to which the Claimants refer are as follows:

- On 7 January 1980 the Revolutionary Council of the Islamic Republic of Iran approved a Bill concerning Protection of Buyers' down-payments for Incomplete Housing Units ("Apartment Purchasers Bill"). This Bill provided that all down-payments by purchasers to construction companies for townships or building complexes with more than ten units must be deposited in an account with Bank Maskan (the Housing Bank) in the name of the company concerned. The Bill further provided that the Bank, by taking into consideration the progress of the construction activities, should pay the companies as they proceeded and made progress in their construction activities and that no construction company should have right to directly receive payments from the advance purchasers.

- On 27 January 1980 the Revolutionary Council approved a Bill concerning the Completion of Construction Works in Housing Cities and Housing Complexes which have remained incomplete ("Construction Completion Bill"). This Bill directed the Ministry of Housing to locate all unfinished housing projects in Iran and to prepare detailed plans for the completion and operation of those projects. The Bill provided that such plans should include a construction work schedule and a procedure for the distribution of the housing units, taking into account the interests of the public, the availability of government resources and the legitimate rights of the owners.

It further contained in Article 2 the following provision regarding the execution of such plans:

The Revolutionary Council shall consider the plan and after a decision is reached on how to secure the required resources, it shall authorize the Ministry of Housing and Planning and Bank Maskan (the Housing Bank) to proceed with the implementation of the Plan either as project operators, purchasers or lenders in cooperation with the executing agency, i.e., the Revolutionary Housing Foundation, or the former owner if he is willing to participate and pay the expenses.

- On 30 January 1980 the Ministry of Housing appointed Mr. Erfan as Temporary Manager of Shah Goli to direct all further activities in connection with the Project on behalf of the Government. Mr. Erfan's appointment was made pursuant to a decree of the Revolutionary Council, adopted on 14 July 1979, entitled "Bill for



Appointing Temporary Manager or Managers for the Supervision of Manufacturing, Industrial, Commercial, Agricultural and Service Companies, either private or public." This Bill provides in Article 2:

The selection of Manager or Board of Directors or supervisors will be done with an official letter of appointment by the ministry concerned.

With the issuance of the above mentioned letter of appointment for Manager or Board of Directors and upon notification of the same to the said company, the previous Managers and others having responsibilities for running that company shall cease to have any authority in the company.

Article 3 defines the powers of the Directors appointed by the ministry concerned as follows:

The Manager or Board of Directors are in every sense the legal substitute for the original Managers of the units and companies mentioned in Article 1, except that they have no right to delegate their authority to someone else. They have every necessary authority for running the day-to-day business of the company. They do not require special permission from the original managers or owners of said company.

Article 5 requires the Directors appointed in accordance with the Bill to report to the relevant ministries and Article 6 states further that as long as a company is subject to the law "there shall be no legal action to close them down or to delay their work".

[62]. Some of the defenses of the Respondents are summarized above and others are set forth in the paragraphs which follow. In response to these various defenses, the Claimants, in addition to the contentions referred to above, made the following further statements: (i) the telexes demanding that Claimants return to Iran were sent by Respondents during the crisis following the seizure of the United States Embassy, when it was notorious that United States nationals could no longer safely work in Iran; (ii) it was not feasible for Starrett Housing's German subsidiary to undertake construction of the Project because Starrett's management staff was largely American, and the German subsidiary held the stock of Shah Goli only for reasons of corporate convenience and did not perform operational functions; (iii) the projections of the costs, time for completion and anticipated losses of the Project made by Farrokh Neghabat which are referred to by the Respondents were made many months after the Revolution on the basis of inaccurate calculations which Claimants had not approved; (iv) the allegations of mismanagement and financial difficulties made by the Azarnia brothers which Respondents cite were groundless, self-serving assertions by hostile former associates made in an effort to gain control of the valuable Project for themselves; (v) unjust charges against Mr. Radice resulting in the seizure of his passport also stemmed from hostile actions of the Azarnia brothers, and he was later found not guilty; Mr. Radice was permitted to recover his passport and depart from Iran only after Bank Omran arranged for the bail which the authorities demanded; (vi) although Project buildings were not damaged by the Revolutionary riots in Tehran, numerous events impeded construction and threatened the safety of employees; (vii) Bank Omran was established by the former Shah, was owned by the Pahlavi Foundation and its management came under Government control as part of the confiscation of all Pahlavi properties by decree in February 1979; and (viii) there is no evidence to support Respondents' allegations that Bank Omran was legally justified in impeding and eventually freezing Shah Goli's access to its bank accounts or that the Bank expressed any legal justification when it took that action.

[63]. The Government of Iran denies that it has expropriated Shah Goli or prevented it from completing the Project. Taking of a company whose only purpose is construction of an apartment complex, whose apartments have all been sold to third parties in advance of the construction, and whose land with all the improvements thereon is mortgaged to the Alavi Foundation is inconceivable, for the company owns nothing other than obligations and liabilities. The Government contends that the lack of adequate financial resources, the deficit producing nature of the Project and the mismanagement and lack of a proper schedule of work were the basic reasons for Starrett's abandonment of the Project. These problems were known to Shah Goli and Starrett since October 1976. The Azarnia brothers, minority shareholders and directors of Shah Goli, by their telex of 3 October 1976 to Starrett noted the delay in construction work of site 809 and that Starrett's inability to provide the required funds and the high costs and rate of interest had endangered the feasibility of the Project. However, the problems persisted; the Azarnias' telex of 20 December 1978 to Starrett noted the chaos and further delay

in delivery of the apartments, the non-compliance with the terms of the purchase agreements, the application by a group of advance purchasers to the Tehran Prosecutor's Office for delivery of the apartments, and that all were the result of Shah Goli's mismanagement and inability to continue the Project. The telex stated that it was a fact that Shah Goli could not continue this Project due to financial problems and that the American managers by abandoning the Project and leaving the company with no supervision had taken advantage of the socio-economic situation of Iran, blaming it as the excuse for non-delivery of the apartments. By their telex of 15 July 1979, the Azarnias further notified Starrett of the total negligence and failure of the latter to act diligently towards the Project; that such inactions had resulted in gross financial failures and dangers not only for the apartment purchasers but also for the shareholders; that, as repeatedly warned by the Azarnias over the prior two years, such financial deficiencies were one of two major reasons for total collapse of the Project, the other being its continuous mismanagement; and that Starrett's breach of its obligation to complete the Project had created a cost over-run of \$224,000,000 and had made the completion of the Project an economic disaster for Starrett and everyone involved. In the July 1979 telex the Azarnias particularly referred to Shah Goli's unauthorized sale of equipment and essential materials of the Project at much reduced prices as another example of the mismanagement of the Project, characterizing Starrett's acts as abuses of the revolutionary conditions of the country in order to justify Starrett's failures of the years 1976-79, and as proof that Starrett Housing's intentions were those of an "opportunistic and financial conspirator."

[64]. The Government states that, in spite of the above, pursuant to negotiations in May 1979, three months after establishment of the Provisional Government, the Alavi Foundation provided Shah Goli \$3 million as a loan to go ahead with its American management and to complete the Project. In the summer of 1979 Shah Goli sought a second loan of \$14 million as to which the Alavi Foundation and Bank Omran required a careful financial and technical assessment of the Project. The study carried out by Farrokh Neghabat, the construction management expert appointed by the Foundation, in close cooperation with Stanley Davis, then Executive Manager of Shah Goli, on 7 September 1979 revealed that the Project, with the availability of all requisite funds and all necessary facilities, would take 26 months as of 23 August 1979 to complete and would be destined to bankruptcy by a loss of Rials 669 million (about \$50 million) even without repayment of the loans allegedly received from Starrett Housing's subsidiaries, based on the critical-path and cash-flow budget assessments also approved by Stanley Davis. On 1 September 1979 the Alavi Foundation, Bank Omran and Shah Goli entered into an agreement whereby the Foundation and Bank Omran would loan to Shah Goli Rials 1 billion (about \$14 million) on a gradual basis, in accordance with a schedule prepared by the West Tehran Development Organization and approved by Shah Goli. However, the new Executive Manager, Louis M. Johnson, unsuccessfully sought a loan from another Iranian bank, Bank Melli Iran, stating in his letter of 22 October 1979 that his specialists had estimated Rials 1,500,000,000 and 36 months were required in order to complete the Project, greatly increasing Neghabat's most conservative assessments. But the Shah Goli managers having for the first time clearly realized that after completion and delivery of the apartments the company would face a loss of at least Rials 668 million (about \$50 million) under the most conservative estimates, finally refused to follow the Alavi Foundation - Bank Omran loan provisions and admitted that only a miracle could save Henry Benach. It is during this period that Starrett took advantage of the Embassy incident and the recalling of the United States nationals from Iran by the President of the United States as the miracle it had talked about, and abandoned the bankrupt and failed Zomorod Project.

[65]. The Respondents answer Claimant's allegations as follows:  
(i) Reduction in the Project work force was not due to the conditions in Iran.

The reduction was due to financial problems of Shah Goli in meeting its past-due obligations of Rials 700 million (about \$8 million) during late 1978 and early 1979. In that period Shah Goli was unable to pay the salaries of the many foreign workers it had hired for unspecialized work. In order to meet the payroll it resorted to selling the wooden molds, generators and construction machinery. Otherwise, work on the Project did not stop more than a week during the Revolution, according to Arthur Radice in a letter of 7 April 1979 to Bank Omran. Throughout the uprising not a single window was broken and in fact during the strikes, Starrett only missed two or three days of construction according to Henry Benach in an interview with New York Post in early 1979.

(ii) Strikes did not affect the Project and the shortage of materials, if any, was due to mismanagement of Shah Goli and lack of a proper schedule of work.

Owing to the abundance of cement Shah Goli could not afford to store it. Irregular purchases and resale of construction materials resulted in resales of such materials; for example, a resale of 3,000 tons of steel took place in 1978. A short port and customs strike and a short closing of the Tehran Bazaar were not the devastating factor, as alleged by the Claimants, in the securing of materials for carrying on the construction. Lack of a proper schedule of work, prepared long in advance and followed closely, resulted in day-to-day programmes prepared by the Executive Manager. For example, Arenco, in charge of concrete production for the Project, attempted but never succeeded in receiving a schedule of Shah Goli's daily concrete requirements at least a week in advance. At Shah Goli no control existed over the warehousing and inventory system. Incoming and outgoing equipment and materials were not recorded at all.

(iii) Collapse of the banking system, if any, did not adversely affect Shah Goli.

Shah Goli's statements of accounts at Bank Omran show that it conducted its daily banking activities during the six months of November 1978 - April 1979 with no difficulty. Records also show that Shah Goli took advantage of its dollar account with Chase Manhattan Bank and engaged in illegal sales of foreign currency for Iranian Rials at much higher than official rates at least during January - March 1979. Any alleged Revolutionary Council Regulations restricting payment of salaries to Shah Goli's employees are denied.

(iv) Change in control of Bank Omran was not attributable to the 28 February 1979 decree but to the June 1979 Banks Nationalization Law and that change did not affect Shah Goli or the Project.

The Pahlavi Foundation and Bank Omran were not owned by the Pahlavi dynasty and were not covered by said decree. The Foundation was and is an endowment in which the donor has no ownership rights under Iranian law, and its change of name to Alavi did not change its status. Nationalization of Bank Omran did not affect its relationship with Shah Goli. With respect to Shah Goli, Bank Omran only acted as representative of the Foundation and under specific powers of attorney. The Foundation for the Oppressed did not control either the Alavi Foundation, Bank Omran or Shah Goli.

(v) Freeze of Shah Goli's accounts with Bank Omran was not aimed at preventing Shah Goli from continuing the Project.

Shah Goli repeatedly issued overdrawn cheques (at least 14) on its accounts, and through court proceedings by some checkholders Arthur Radice was taken to court. Repayment of \$15,000,000 on Shah Goli's overdraft facilities had also become due, while there was only \$150 in one of those accounts to cover such indebtedness. Therefore by virtue of a Revolutionary Council Regulation providing for temporary closure of the accounts of natural and juridical persons who owed the banks large amounts of money pending thorough investigation by the authorities, the Bank closed those accounts pending termination of the investigations.

However, in order to release Arthur Radice from prosecution over the overdrawn cheques, Bank Omran arranged with the authorities two bail bonds in the aggregate of Rials 42,000,000 (about \$600,000), without having any obligation to do so.

(vi) Harassment of Shah Goli personnel by the Revolutionary Guards is denied.

When faced with continuous demands of the purchasers of the apartments, whose delivery had been delayed two years beyond the delivery date, Shah Goli's American managers contacted individual purchasers in order to collect the remainder of the prices at considerable discounts in exchange for delivery of incomplete apartments, without procurement of the required certificate of completion and confirmation of the Architect, in contravention of the contractual provisions, rather than ameliorating the mismanagement, serious financial problems and numerous construction deficiencies of the Project.

In addition to advance purchasers, local suppliers which had cheques drawn by Arthur Radice, had sued him before the Public Courts and had him arrested for prosecution a number of times; in one instance Bank Omran arranged bail for him.

The above instances have been misrepresented as pressure allegedly exerted by the Revolutionary Guards on Shah Goli personnel to lower the prices.

(vii) Official measures of the Government of Iran did not amount to expropriation of Shah Goli.

The Apartment Purchasers' Bill was for protection of advance purchasers' rights, which were abused by a number of constructors and advance sellers in the circumstances before and after the Revolution, who collected large amounts of money and left the country without building and delivering the apartments. The Bill provided for depositing of further instalments on such purchase agreements with the Housing Bank in an account in the name of the construction company concerned, so that payment to the company would be made with due regard to the progress of the construction. Therefore the Bill should not be considered to have had any expropriatory effect, but regulated the payment procedure in the interest of the advance purchasers.

The Construction Completion Bill, which provided for locating unfinished construction projects, for preparation of a "detailed construction plan" and for identification of financial resources for them, was never enforced because the plan was not prepared, the plan was not approved by the Council of Revolution and the Council did not determine in which capacity the Ministry of Housing had to deal with hundreds of construction projects: i.e. as an operator, purchaser or lender. Therefore no enforcement measure under that law was taken which might have had an adverse impact on Shah Goli and its construction Project.

The Bill for Appointment of Temporary Managers that was passed in July 1979 was not applied to Shah Goli so long as its American managers were in Iran and in charge of the construction Project. When the American managers realized that under the most conservative assessment Shah Goli would be destined to bankruptcy by a loss of at least Rials 668 million (about \$50 million), they did not accept the Rials 1 billion loan of the Alavi Foundation and Bank Omran to be paid pro rata with the progress of work under an agreed upon schedule, did not raise the required funds from other sources, but left the country in late October - early November 1979, leaving the company with no immediate supervision and the advance purchasers, who had paid approximately \$88.5 million, with no positive answer to their demands. Bank Omran, after several attempts to persuade the American managers to return to Iran or to appoint others to complete the Project (Bank Omran telexes of 12 November 1979 and 11 December 1979), by its telex of 6 January 1979 notified the American managers that if they did not resume the work by 15 January 1980, Shah Goli would be considered as an unmanaged unit whose managers have left the country, and that under the Bill for Appointment of Temporary Managers, Bank Omran would seek such appointment for continuation of the work under items 10 (c) and 12 of the Basic Project Agreement, and that such appointment must not be regarded as expropriation of Shah Goli or the Project. Considering that the American managers by their telex of 11 January 1980 responded that due to the United States Department of State's advisory not to travel to Iran and due to the prevailing political situation in Iran it would be impossible for them to continue with the Project, and considering that they did not appoint a qualified non-American manager to perform their obligations, the Ministry of Housing, based on the request of Bank Omran, appointed Mr. Erfan as the Temporary Manager for Shah Goli, but Bank Omran and the Government of Iran did not give up their attempts to obtain the return of the American managers and performance of their obligations, including in the Statement of Defence, Statement of Counter-claim, Rejoinder and the Hearing, as the Respondents' basic demand against Starrett Housing, a demand under its letter of guarantee, in which it guaranteed performance of all obligations of Shah Goli under the Basic Project Agreement.

The government control under the Bill does not amount to dominion over the company. Appointment of Temporary Managers for preventing shut-down of economic and industrial units and lay-off of workers or appointment of receivers and liquidators in case of insolvency, are not unusual under the laws of many countries, particularly in the context of the third world and socialist countries, such as the 1964 Iranian Law concerning Protection of Industries and Prevention of the Closure of the Country's Factories. The Temporary Manager under Article 4 of the 1980 Bill has the status and obligations of an attorney to his client with regard to the company and is considered as a trustee. As such Mr. Erfan's appointment must not be considered expropriation of Shah Goli or the Project.

## **(b) Reasons**

- [66]. It is undisputed in this case that the Government of Iran did not issue any law or decree according to which the Zomorod Project or Shah Goli expressly was nationalized or expropriated. However, it is recognized in international law that

measures taken by a State can interfere with property rights to such an extent that these rights are rendered so useless that they must be deemed to have been expropriated, even though the State does not purport to have expropriated them and the legal title to the property formally remains with the original owner.

- [67]. In one respect the situation in this case is comparatively simple. There can be little doubt that at least at the end of January 1980 the Claimants had been deprived of the effective use, control and benefits of their property rights in Shah Goli. By that time the Ministry of Housing had appointed Mr. Erfan as Temporary Manager of Shah Goli to direct all further activities in connection with the Project on behalf of the Government. This appointment was made pursuant to the decree of the Revolutionary Council, adopted on 14 July 1979, called Bill for Appointing Temporary Manager or Managers for the Supervision of Manufacturing, Industrial, Commercial, Agricultural and Service Companies, either private or public. The succinct language of this act makes it clear that the appointment of Mr. Erfan as a Temporary Manager in accordance with its provisions deprived the shareholders of their right to manage Shah Goli. As a result of these measures the Claimants could no longer exercise their rights to manage Shah Goli and were deprived of their possibilities of effective use and control of it.
- [68]. It has, however, to be borne in mind that assumption of control over property by a government does not automatically and immediately justify a conclusion that the property has been taken by the government, thus requiring compensation under international law. In this case it cannot be disregarded that Starrett has been requested to resume the Project. The Government of Iran argues that it would have been possible for Starrett to appoint managers from any country other than the United States, but the evidence does not in other respects indicate on what conditions Starrett has been afforded any possibility to resume the Project. The completion of the Project was dependent upon a large number of American construction supervisors and subcontractors whom it would have been necessary to replace and the right freely to select management, supervisors and subcontractors is an essential element of the right to manage a project. Further, given the contents of the Construction Completion Bill it must be taken for granted that Starrett can only resume the Project subject to the provisions of that Bill, which entail far-reaching restrictions in the right of former owners to manage housing projects. Indeed, the language of that Bill seems to indicate that the right to manage such projects ultimately rests with the Ministry of Housing and Bank Maskan. Lastly, nothing in the evidence submitted in the case gives reason to believe that Starrett would be offered compensation for any reduction in the value of its shareholding and contractual rights caused by the managers appointed by the Government.
- [69]. It has therefore been proved in the case that at least by the end of January 1980 the Government of Iran had interfered with the Claimants' property rights in the Project to an extent that rendered these rights so useless that they must be deemed to have been taken.
- [70]. There is an allegation that Starrett abandoned the Project for economic reasons. The Tribunal does not go into this issue because it is notorious that at least after 4 November 1979, the date when the hostage crisis began, all American companies with projects in Iran were forced to leave their projects and had to evacuate their personnel. Therefore, at least as regards the situation subsequent to that date the Government of Iran cannot possibly rely on any withdrawal of personnel as a justification for the appointment of a new manager. In fact, the evidence shows that Starrett maintained staff in Iran longer than most other American companies, obviously in an attempt to secure future possibilities to complete the Project.
- [71]. However, in this case the Claimants assert that the effects of what is referred to as "virulent anti-American and other policies and actions of the Revolutionary Group and the Islamic Republic" - both before and after the establishment of the new Government - rendered it impossible for Starrett to continue operations at the Project and that this amounted to an unlawful expropriation under general principles of international law and under the Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran of 15 August 1955.
- [72]. Thus the Claimants' argument is that they were deprived of the effective use,

control and benefits of its property rights in the Project much earlier than by the end of January 1980.

- [73]. There is no reason to doubt that the events in Iran prior to January 1980 to which the Claimants refer, seriously hampered their possibilities to proceed with the construction work and eventually paralysed the Project. But investors in Iran, like investors in all other countries, have to assume a risk that the country might experience strikes, lock-outs, disturbances, changes of the economic and political system and even revolution. That any of these risks materialized does not necessarily mean that property rights affected by such events can be deemed to have been taken. A revolution as such does not entitle investors to compensation under international law. Therefore, when considering the events prior to January 1980 to which the Claimants have referred, the Tribunal does not find that any of these events individually or taken together can be said to amount to a taking of the Claimants' contractual rights and shares. The Tribunal therefore concludes that 30 January 1980 must be considered as the date of the taking. However, for ease of accounting the Tribunal decides that 31 January 1980 shall be considered as the date of the taking. The next question for the Tribunal is to determine the exact nature of the property rights that were taken. The Claimants contend that it was neither the land and the buildings only nor their shares in Shah Goli that were taken. The Claimants assert that the expropriated rights comprised the assets and contractual rights and the other property of, in the first instance, Shah Goli as a controlled subsidiary of Starrett Housing. The Claimants define the principal assets of Shah Goli as the buildings and the principle contractual rights as including the rights to complete the Project and to earn reasonable profits which Starrett anticipated, and to recover the funds which it loaned and which were used to build the Project.
- [74]. There is nothing unique in the Claimants' position in this regard. They rely on precedents in international law in which cases measures of expropriation or taking, primarily aimed at physical property, have been deemed to comprise also rights of a contractual nature closely related to the physical property. In this case it appears from the very nature of the measures taken by the Government of Iran in January 1980 that these measures were aimed at the taking of Shah Goli. The Tribunal holds that the property interest taken by the Government of Iran must be deemed to comprise the physical property as well as the right to manage the Project and to complete the construction in accordance with the Basic Project Agreement and related agreements, and to deliver the apartments and collect the proceeds of the sales as provided in the Apartment Purchase Agreements.

## V. Valuation

- [75]. The Parties have submitted extensive written and oral evidence in support of their contentions regarding the valuation. This evidence shows that the valuation involves complex accounting matters. The Tribunal therefore considers that advice from an accounting expert is needed. The Tribunal appoints Mr. Lennart Svensson, Revisionsfirman Lennart Svensson & Co., Regementsgatan 35, S-21753, Malmö, Sweden, as an accounting expert in this case.
- [76]. The Tribunal sets forth the following as the terms of reference for the expert:
1. The expert shall give his opinion on the value of Shah Goli as of 31 January 1980, including the value of the Project in Shah Goli's hands, considering as he deems appropriate the discounted cash flow method of valuation.
- The expert shall mention in his report as he deems appropriate the items, if any, referred to in the counter-claims which his investigation shows are liabilities of Shah Goli or the Project.
- Any substantial items relating to the claims or counter-claims which require further substantiation or determination by the Tribunal of legal issues shall be noted in the report by footnote or other suitable means.
- The expert shall examine the counter-claims with a view to including in his valuation such liabilities mentioned therein which are related to Shah Goli or the Project, recognizing that the Tribunal has not yet made any legal determinations concerning the counter-claims.

2. The expert shall also give his opinion as of 31 January 1980 on the net profit of the Project, if any, Starrett Housing would reasonably have received through the management fees paid to Starrett Construction.

3. The expert shall give his opinion as to how the amount of compensation, if any, to which the Claimants are entitled shall be reduced to accurately reflect the 20.3% interest in Shah Goli not owned by the Claimants.

4. The expert shall also give his opinion as of 31 January 1980 on the proper method for taking into account loans made to Shah Goli for the purposes of the Project, as defined in the Basic Project Agreement. In this connection, his report shall include:

a) The amount of principal and accrued interest of each such loan, identifying as to each the lender and the borrower;

b) The extent to which the proceeds of each such loan were expended for the purposes of the Project.

5. The expert shall investigate to which corporation the heavy duty construction equipment, which is referred to in Claimants' Exhibit 34, belonged, and to make an estimation as to the value of that equipment as of 31 January 1980.

The expert shall be entitled to hear any person with knowledge of the Project, if he deems it appropriate and if the Parties have been duly invited to attend such meeting.

The expert shall also be entitled to obtain from any Party all documents which he deems necessary for his investigation. Each Party shall without delay give the other Party a copy of any documents which it gives to the expert; if a Party arranges for the expert to inspect documents without giving him a copy, the other Party shall be invited to inspect such documents.

Before beginning the performance of his duties, the expert shall make the declaration required by Note 2 to Article 27 of the Tribunal Rules. The Declaration may be made orally before the Tribunal or may be submitted in writing signed by the expert.

In the event the expert in the course of his investigation forms the opinion that modification of the foregoing terms of reference would be necessary to permit a proper valuation, or if any other difficulty arises, the expert shall be allowed to refer to the Tribunal for modification, clarification or resolution.

[77]. The Tribunal further decides, in accordance with Article 41, paragraph 2, of the Tribunal Rules that the Claimants and Respondents shall deposit an aggregate amount of \$80,000 as advances for the costs of expert advice. The Claimants, having previously paid \$2,000 in compliance with the Tribunal's Order of 16 September 1982, are requested jointly to deposit \$38,000 and the Islamic Republic of Iran the remainder, \$40,000. These amounts shall be deposited within two months from the date of this Award. These advances shall be remitted to account number 24.58.28.583 at Pierson, Heldring and Pierson, Korte Vijverberg 2, 2513 AB The Hague, in the name of the Secretary-General of the Iran-United States Claims Tribunal (Account No. 24 58 28 583; dollar account). The account is administered by the Secretary-General of the Tribunal. The Tribunal further may request from the arbitrating Parties such other amounts as may be necessary from time to time in connection with the expert's work.

## VI. Final remarks

[78]. While waiting for the opinion of the expert, the Tribunal intends to determine further disputed issues in this case. The Tribunal, furthermore, deems it appropriate now to invite the Parties to engage in settlement negotiations and in that connection also to discuss and agree upon new and constructive solutions in order to bring the Zomorod Project to a successful completion.

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