[43] "Guinea requests that the Tribunal's decision on costs be annull
because it has failed to state the reasons on which its award of US$?75,000 i
costs of the ICSID arbitration was based.
[44] "The award of costs is not pax of the award of damages on account
profits foregone. The amount of costs claimed by MINE was contested
Guinea on the ground rhat it included costs incurred in the attempted measu
of constraint in execution of the MA award. The Tribunal apparently took t
argument into account and awarded a lower amount. Art. 61(2) of t
Con~entionp'~ro vides that the Tribunal shall decide how and by whom t
costs of proceedings including the expenses incurred by the parries, the fees
expenses of the members of the Tribunal and the charge for the use of
facilities of the Centre shall be paid. The Article confers a discretionary pow
on the Tribunal which was in particular under no obligation to state reasons f
9. "The pnnirs exchanged lengthy aigumcnrr in rhcii piesenrarionr to ihe Tribund znd r
Commirrceananorhcrconrenrion ofGuinco'r,viz..rhnr MINE hnd fziicd to
mirigcciirdamag
when ir refused Guinea's offer ro let MlNe sharc half rhc hfrobuik agreement. In view of
Commioer'r decision to annul rhc damrger ponion ofrhc Awzid. it docs nor find it ncc
to dcii wirh rhc question wherher rhe Tribund'r dirporirian of Guinn's conrcnrion rnigh
furnished an indepcndcnr ground ior annulmenr."
10. An. 61 of the lcsl~C onvcnrion rezdr in relevant pair:
"(2) In the case of arbirrzrion proceedings the Tribunal shall, exccpr si rhe oihc
rgiec,jsrcsr rhc expenses incurrcd by rhc p i n i n in connecrion wirh rhc pioc~edingrz,
nd
decidc how and by whomrhoseexpenser, the fecr md erpcnrcr oi the membersoirheTrib
2nd rhc ~ h l r g tfro rth< UIC of rheiacilirier of ihc centre rhdl be p i d . Such decision ~
h df l
p ~ofn rh c =ward."
52 ~ ~ ~~ ~ bX~'V"I(I b ~

warding costs against the losing party. Guinea his not alleged that the
ribuna! abused its discretion.
"The award of costs can nevertheless nor remain in existence since its
is, viz., char Guinea was the losing p a q , has disappeared as a result of the
ulment of the portion of the Award relating to damages. The award of costs
nor survive the annulment of that portion of the Award with which it is
tricably linked. The Committee rhcrcfore finds rhm the award of costs
st be annulled in consequence of the annulment of the damages portion of
k Comrn. ~ r b ' nX Y~(1 991)

Adriano Gardella S.p.A. v. Côte d'Ivoire (ICSID Case No. ARB/74/1), Award, 29 August 1977

Published in: English translation of French original in 1 *ICSID Reports*, (*ICSID Rep*.) 283 (1993) (excerpts).

ADRIANO GARDELLSAP A v. THE GOVERNMEONFT T HE REPUBLIOCF THE IVORYC OAST

29 August 1977*

(Arbitration Tribunal: Mr Pierre Cavinl, President;
r Jacques Michel GrossenZ and Mr Dominique Poncet, Members)

MARY: The facts: - On 25 April 1967 Adriano Gardella SpA
"), an Italian company, entered into an agreement ("the 1967
")with the Government of the Republic of the Ivory Coast (the
ernment") for the conversion and cultivation of 20,000 hectares of
and for the construction of a textile factory. Part of the hemp was to be
ed to the factory for manufacture into finished goods for export and
ronology of the proceedings in this case is set out at p. xi.
inted in April 1976 after fhc death of Mr Andre Panchaud.
inted in August 1975 after the death of Mr Edouard Zellweger.

the rest of the hemp was to be sold externally as raw fibre. The Agreement provided for the formation of a jointly owned limited I company through which the farming and industrial business wo realized. Gardella was to supply the technical and commercial expertls undertook to negotiate the loans necessary for the capitalization project with Italian financial institutions. The loans were to be gudr by the Government. The 1967 Agreement also provided for an exper phase in which studies would be conducted to ascertain the profita the proposed farming and industrial venture and to assess conditions.

A codicil to the 1967 Agreement was entercd into on 10 August 19 Codicil") which provided, inter alia, that the company to he formed upon receiving Government approval, proceed to order the ne equipment and materials for the project from Gardella once the stud been completed and showed the possibility of profit.

On30 October 1967, pursuant to the 1967 Agreement and the Cod Soci6t6 Ivoirienne Agricole et Industriel du Kbnaf ("SIVAK' incorporated by the parties at Abidjan as the company through whi project was to be realized. The production studies were commenced a clearing of the land began.

In a supplementary agreement dated 6 August 1970 ("the Agreement") Gardella acknowledged that the necessary financing had obtained, that the cultivation trials had been successful and that SIVA therefore ready t o proceed with the project. The 1970 Agrecm provided for certain amendments to the structure of the parties' asso Article IX of the 1970 Agreement provided for the submission of dis relating to the project to ICSID arbitration.

At the end of September 1970 Gardella presented to the Governm document entitled the "Brown Dossier" which contained, inter a

description of the equipment and materials necessary for the realiz
of the project. The Brown Dossier was initialled by the Ministe
Economics and Finance ("the Minister") and returned to the Gar
representative.
On 13 November 1971 the parties signed a further suppleme
agreement ("the 1971 Agreement") in which the Government underto
send the necessary letters to ensure that the Italian financing was in p
the beginning of January 1972. The clearing and cultivation of the la
to commence in accordance with the following schedule:
1. Delivery by August 1972 of materials required for production of 3
T of fibres for export;
2. 3,000 T of fibre for export to be produced by May 1973 and deliv
materials required for production of 8,000 T to be complet
August 1973;
3. 8,000 T of fibres for export to be produced by May 1974 and delive
materials required for production of 16,000 T to be complete
August 1974;
4. Construction of the factory to be carried out from June 1975 to
1976;

If, after two years the envisioned tonnages had not been met, the
Government reserved the right to terminate the rest of the supply
order.
1971 Agreement provided that failure to adhere to the schedule would
ult in a shift in the timetable until the results provided for had been
n 10 December 1971 Gardella submitted invoices to SIVAK for the cost of
ials supplied under the agreements. The invoices were endorsed by the
mment's representative and returned to Gardella with the notation
Id authorize payment. However, problems arose
delay by the Government in transmitting for signature the
s relating to the interbank financing agreement between the
utonome d'Amortissement ("the CAA") and the Instituto Mobiliare
o ("the IMI"), the relevant lvoirian and Italian banking institutions.
13 July 1973 Gardella presented an expert report, the "Yellow
ern, to the Government. This report set out changes which had
ed in the international circumstances which warrantedmodification of
greement, revised certain data relating to the exportable portion of the
e cost of the project, and proposed a reduced
me compared to that provided for in the
y 40% of the production of this project
be of exportable quality. It was therefore necessary to use the
in order to accomplish this the factory would
o be constructed immediately.
13 September 1973 the Board of Directors of SIVAK met and Mr

Ila, acting on behalf of Gardella, presented the findings of the Yellow
er stating that if the Government did not accept the renewed
ediate commissioning of the factory then his
a partner in SIVAK but would continue
pplier only. The representatives of the
ese proposals, considering further reflection
as asked to put his company's position in
ardella wrote via SIVAK to the Minister attaching ten
r amounts covering the balance which Gardella alleged to be owing to
erials for the first portion of the project. Gardella
e authorized and endorsed by the Government for
tation to the IMI for payment. The letter referred to Gardella's
tion as technical expertladvisor but did not specifically reiterate the
ken at the meeting of the Board of Directors.
della's further request for action on the part of the Government of 20
ember and 13 December 1973 went unheeded. On 30 January 1974
della wrote to the Minister advising him that if the bills were not
with the CAA for transmission to the IMI by 15
would proceed to initiate arbitration
submitted an application for arbitration to
overnment had terminated the agreements
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between the parties by failing to pay Gardella for the services and materi
supplied and by delaying the completion of the necessary formalit1
between the IMI and the CAA for the signature of the interbank agreeme
thereby breaching its obligations under the agreements. Gardella sou
payment of the amounts outstanding, damages for lost profits due to
failure of the project and interest thereon, damages for injury to
reputation and credit rating and costs and expenses. It requested t
appointment of an expert to determine the amount of lost profits and
determine the amount of profits which SIVAK would have made had
project been realized, 50% of which would have gone to Gardella. Gard
also claimed reimbursement of all expenses and loans which it incu
relating to the establishment of SIVAK.
The Government rejected Gardella's arguments on the basis that
were ill-founded and inadmissible and filed a counterclaim against Gar
for damages arising from Gardella's termination of the agreement.
Government also raised a preliminary objection to the jurisdiction of
Tribunal arguing that Gardella's action was against SIVAK and not
Government which was therefore erroneously before the Tribunal.
Held: -TheTribunal had jurisdiction over the dispute and both the cl
and the counterclaim were rejected.
(1) The objection raised by the Government did not relate to
competence of the Tribunal but was, rather, a dispute relating to the rig

of SIVAK and to whether the Government or SIVAK would be responsible
the debts. This argument related to the merits of the case and
interpretation of the 1970 and 1971 Agreements. It was therefore not a
to the jurisdiction of the Tribunal (pp. 287).
(2) It had not been established that either party had failed to perfor
obligations incumbent on them prior to the autumn of 1973. Furthermor
no time until the opening of the arbitration proceedings had Gard
availed itself of the delays of the Government as a ground for terminati
the agreement. Rather, it had continued to express a desire to carry on
project as modified. Gardella was therefore estopped from claim
damages for non-performance by the Government (pp. 288-9).
(3) The Government was under no obligation to give effect to Garde
letter of 3 October requesting the authorization and endorsement of
bills. Gardella had repudiated the agreements binding on the parties a
meeting of the Board of Directors and the letter, while not confirming
repudiation, had in no way weakened it. Gardella could not, therefore, r
on agreements whichit had already renounced to hold the Government t
obligations thereunder (pp. 289-92).
(4) The Government had made no attempt to hold Gardella acconnta
to perform its contractual obligations and had itself, shown little alacrit
carrying out the project. It had thereby manifested its own willingne
renounce the continuation of the joint venture and could not hold Gar
responsible for any damages arising therefrom (pp. 293).
(5) The Tribunal had no jurisdiction to order the dissolution or win
AWARD 287
was therefore unable to calculate or divide up the assets of
VAK between the parties (pp. 294).
(6) The parties would each bear all their own costs of the proceedings and
e half of the costs and expenses of the Tribunal and the Centre
is a translation from the French of that portion of the Award
ich has been released for publication:
IV
THE LAW
As to the Objection to the Jurisdiction of the Tribunal Raised by the
ant to Article 9, paragraph 4 of the Protocol of Agreement of 6
ust 1970, Gardella is entitled to take action, in the present arbitration
against the Government of the Ivory Coast and to formulate
on the aforesaid agreement. The submissions put forward by
ella have all been directed against the Government of the Ivory Coast;
are based on the supplementary agreement of 6 August 1970 as
the supplementary agreement of 13 November 1971. These
issions thus fall within the framework of the dispute submitted,
gh the common will of the parties, to the present arbitration.
lity, the argument raised by the respondent does not deal with

mpetence of the Tribunal to give a ruling on those submissions. It is better characterized as a dispute over an active or passive justification parties, of rights which, according to the respondent were given to K as of right or of debts for which that company would be solely untahle, to the exclusion of the Government of the Ivory Coast. This es to disputing the rights to which the claimant would not be contesting that the Government should be responsible for the s of which the only debtor would be SIVAK. This argument relates to the se. It will be examined with the meritsif necessary. Therefore bjection to the competence of the Tribunal is rejected.

s to the Merits:

. Both parties admit that their agreement is governed by the law of the Coast. Gardella has pleaded, it is true, that the law of the Ivory Coast to apply, in this case, within the framework and in the context of ional law. However, Gardella has not drawn any other lusion from that argument than that it is necessary to have regard to the "pact sunt servanda" and to the principle of good faith, principles which qually recognized by the law of the Ivory Coast as well as by French law.

4.4. By their agreements of 25 April and 10 August 1967 and 0 August 1970, the parties agreed to pool their resources and their ski1 with a view to sharing the profits resulting from their cooperation. agreement qualifies as a contract of partnership according to Article of the Civil Code of the Ivory Coast. Such a contract implies, by its natu and its object, a collaboration between the parties, consistent with t goal which they have assigned themselves and in conformity with t means which they have mutually agreed upon. An essential element this agreement was the formation of a joint-stock limited li company organized under the law of the Ivory Coast, S~VAKIvoirian Agricolc et Industriel du Kenaf at Abidjan, as the instrument the realization of their joint venture.

It is important to specify, in this regard, that the contract of partner concluded by the parties could not be assimilated to an agreement bet two shareholders on the exercise of their ri-rh t to vote in a ioint-st company, any more than SIVAK could be considered as a "comm subsidiary".

4.5. Despite the grievances put forward by each party, it has not b established that, up to the beginning of autumn of 1973, any of the pa had failed to fulfil their obligations.

Without doubt, on severa~occasionsb, efore the autumn of 1973, Ga had complained of the dilatoriness of its partner. Gardella raises the ' attributing the delays which it blames on the Government of the Ivory to the influences of representatives of interests opposed to the enterpr Whether these grievances do not appear devoid of all appearanc

foundation and whether the Tribunal holds that the authorities of the I
Coast showed little alacrity in their cooperation with Gardella, the clai
has not supplied proof of either deliberate delays or of an indisputable
of diligence.
Moreover, and this is decisive, at no moment until the opening o
present proceedings, did Gardella avail itself of the delays of
Government of the Ivory Coast as a ground for termination of the contr
The agreement of 13 November 1971, which instituted a new timeta
did not contain any such reservation.
Without doubt, the timetable provided for in that agreement wa
respected, but, in the terms of the agreement itself, the non-respect o
anticipated schedule involved a simple modification in the timetable.
Moreover, it has not been established that the delay suhsequen
November 1971 could be attributable to the fault of the Government.
financing agreement, a condition precedent to the bringing into operati
the agreement, was signed on 17 November 1972 without the delay i
signing of the loan being imputable to the Government of the Ivory C
except for the period running from the end of August to November 1972
IMr having transmitted the text of the contract to the CAA on 24 Au
Moreover, and this is also determinative, in September and October 1
while certainly complaining of the slowness of its partner, Gardella
avail itself o i a delay by its partner as a ground-for termination. On
contrary, still at the end of September 1973, Gardelfa made manifes
AWARD
resolve to carry on the joint venture according to the terms which had been
modified as a result of the changes in the economic conditions.
The Tribunal therefore does not find any complaint prior to September
973 which justifies the claim by Gardella to damages for the nonvernment
of the Ivory Coast of its obligations.
entially avails itself of the refusal of the Government
e effect to its letter of 3 October 1973 in which the
vernment was invited to endorse ten bills of exchange in the amount of
986,070,000 Italian Lira and to authorize SIVAK to accept those hills.
rdella maintains that this refusal constitutes a faulty non-performance of
agreements binding upon the parties. Accordingly, it claims full
mpensation for the damage which it says it has suffered because of the
hat damage comprising the
instance, on the claimant to
ahlish that in regard to the obligations assumed by the Government, it
rcise thereof that the Government give effect to
s, based on the conclusions of a
e Government (the "Brown
sier"), had as their object the cultivation of 20,000 hectares of hemp, the
hlishment of a factory with the annual production capacity of 6,000

rticles, the commercialization on the foreign
rkets of processed goods, as well as that of fibre not processed on the spot
otocol of 25 April 1967, Article I). Article IV(4) of the agreement of 6
gust 1970, confirms that the production of the factory was conceived to be
entially for export. The study carried out by Gardella predicted that the
e plant ought to produce:
during a first period, 4,000 tonnes of fibres for export;
during a second period, 8,000 tonnes of fibres for export;
during a third period, 16,000 tonnes of fibres, part of which was
destined for export and the rest for use in the textile factory, which
ought, in 1975-76 (3rd period) to have produced around 6 million bags
per year ("Brown Dossier", annexe 115 of the economic sub-dossier).
alculated at around US $450,000.
lements of the agreement between the parties,
h were not affected by the supplementary agreemcnt of 13 November
73, Gardella communicated to its partner a
cia1 study dated July 1973 (called the "Yellow
arried out on its bchalf by experts whose
this report confirms, in the essential elements, the previous technical
ancial conclusions are, on the other hand,
om this new study that the economic conditions had
riorated. It was proposed to reduce from 20,000 to 12,000 hectares the
of the plantations, in order to produce 9,600 tonnes per year, of which
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approximately 3,500 tonnes would be exportable at advantag
conditions; the balance "which does not have the possibility of profi
sale", would have to be converted into manufactured products, that
"approximately 6 millions bags per year, of which the market in the I
Coast has a need" (Yellow Dossier, Exh. XI1 of Gardella, p. 19).
production of other products (string, rope, etc.) was eliminated due to t
competition of synthetic fibres. The consequence was the necessity
proceed without delay with the construction of the factory.
The conclusions of this study led Gardella to present new proposals t
partners, consisting, essentially, of limiting the production to 8,000
10,000 hectares and to constructing the textile factory immediately.
On this last point, among others, the proposal differed from t
agreement of 1971, which provided for the commencement of the operat
of the textile factory as from September 1974, in parallel with a produc
of 16,000 tonnes of fibres - even though in 1973 the area under cultivat
was still at a level of 600 hectares.
Gardella laid stress on the evolution of the situation, only about 40Y
the hemp being exportable, the rest would have to be processed; it no
that the 1971 timetable had been overrun, that the evolution of the mar
was such that one could no longer take account of that timetable, that

factory ought to be completed simultaneously with the first availabilit raw material - and not with the last period.
These proposals, were presented by MI Adriano Gardella, actin behalf of Gardella, at the meeting of the Board of Directors of SIVAK o September 1973, which was attended by, in particular, Messrs Aka An and Lazare Y&bou&, the Government's representatives on the Boar Directors.
The representatives of the Government of the Ivory Coast on the Boar Directors were unable to accept these new proposals, in particular, as the immediate construction of the factory was concerned.
Nevertheless, Mr Gardella persisted in his opinion, presentin submissions as "final", excluding all other solutions, declaring, accor the minutes of the meeting, the accuracy of which he admitted du testimony, that if these proposals were not accepted "his group will no any longer as a partner, but in the capacity of an expert. It will be nec to consider its role as that of supplier and no longer as that of a par SIVAK" (Minutes, p. 16).
As for the Government of the Ivory Coast, the proposal was envisage the construction of the factory as soon as the plantation ha of 3,000 hectares, whereas the timetable established by the agreement o November 1971 provided for this construction once production had rea 16,000 tonnes of fibres.
This compromise proposal was not accepted by Mr Gardella, who cle and repeatedly argued that the decision to immediately construct the fa was a condition of maintaining his cooperation as a partner.
At the end of the meeting, Mr Gardella was asked to clarify the positio his group in writing, to which he did not object.
One would have expected that after this meeting Mr Gardella would
AWARD 291
larified his position, whether he confirmed it, or whether he envisaged an termediate solution, such as his partners had suggested.
Instead, his letter of 3 October 1973 to the Minister of Economics and inance, cited in paragraph 2.19,1'1 which referred paradoxically "to the reements made at the last meetings of the Board of Directors of SIVAK", not make any mention of the fundamental disagreement which had anifested itself at that meeting and addressed, as though nothing had ppened, the issue of the endorsement of the bills by the Government and be signed by SIVAK.
That letter does not weaken the categorical declarations presented as the pression of an irrevocable decision, declarations according to which if the overnment did not accept his proposal, Gardella would cease to be a tner and its role would become simply one of supplier. The letter is biguous in that the bills presented for endorsement by the Government responded to the costs of clearing the land foreseen for the second

iod, 8,000 hectares, the area of which, in its last proposals, Gardella had
ited its partner to limit the exploitation of. These indications could have
the Government to believe that Gardella was maintaining the position
ich it had taken at the meeting of the Board of Directors of 13 September
.7. Gardella was not entitled, under the agreements, to demand of its
tner a complete change of the agreed conditions of exploitation. It did
constitute, in fact, a simple "updating", provided for in the agreement as
adjustments relating to execution deadlines and prices and
itated by the evolution of the economic conditions, but an essential
cation of the fundamental bases of the agreement: the areas to be
'ted were reduced by a half; the intended destination of the products,
'ally for export under the terms of the agreement, was totally
ed; the processing of the fibres became the primary goal and was to
cide with "the first availability of raw material", while according to the
ement the processing would not occur until the last period which was to
at the end of the programme. Moreover, under the terms of the
ement of 6 August 1970, the readjustments relating to the factory had to
pproved by the Government.
ardella could only obtain such a modification to the basic terms of the
nership agreement with the consent of its partner. But it could not
ose this. Without doubt, in view of the conclusions of the Yellow
sier, it was entitled, in the absence of any agreement, having regard to
tides 1865(5) and 1869 of the Civil Code, to put an end to the partnership
eement. Such renunciation could not amount to bad faith: the execution
he project had singularly dragged on and, in the meantime, the economic
nditions had deteriorated. Gardella was especially entitled to avail itself
his fact as, by the agreement of 6 August 1970, it had assumed rather
vy responsibilities and had accepted considerable risks, in particular by
ranteeing the total disposal of the production for a long period of time,
ontracting to cover all losses, and by givingits shares in SIVAK as security.
his part of the decision has not been not released for publication.]

The Government did not have the right to demand that, in spite of the
economic conditions, Gardella should persevere in its cooperation in
particularly heavy conditions to which it had agreed in August 1970.
Gardella appears to have been aware of this situation. Its position at
meeting of 13 September was perfectly clear and explicit: if its partner
not agree to its proposals, Gardella would cease to be a partner and wo
remain as a supplier only. As the representatives of the Government refu
to accept those proposals and, in particular, firmly declared that it was o
the question to commission the immediate construction of the factor
particular, it can only be concluded that Gardella renounced the partners
agreement. Its position could be interpreted as a renunciation of
partnership agreement, addressed to the representatives of the Governm

of the Ivory Coast, validly putting an end to the partnership agreemen
It is, however, not necessary to decide this issue. It is sufficient, i
to establish, for the purposes of Gardella's claims to damages,
position taken by Gardella, on 13 September 1973, which was
contradicted by its letter of 3 October, deprives such claims
foundation. Gardella could not pretend, by relying on the agreem
1967 and 1970, that the Government should carry out obligations arls
from agreements which Gardella had announced, a few days previ
that if its proposals were not accepted - and they were not -, would ce
be binding upon it, that Gardella would no longer act as a partner.
Certainly, Gardella had declared that it would continue its role as su
and expert. But it could not disassociate its obligations towa
Government, which was bound by the partnership agreement which
whole and is not divisible. At no time had the Government envis
assuming sole responsibility for the venture and to act as manager o
factory, reducing Gardella's role to that of entrepreneur and tech
consultant, as witnessed by a reading of the aforementioned clauses
agreement of August 1970, according to which Gardella guaranteed t
of the products and took under its charge the eventual losses.
In short, by refusing to abide by the contract, Gardella could not, u
the terms of the same contract, demand of the Government
endorsement of the bills of exchange and its agreement to their accepta
by SIVAK.
The claimant therefore cannot invoke the non-performance by its pa
of its obligations and, accordingly, cannot claim damages.
It is unnecessary, therefore, to examine whether its claim won
doomed to failure for other reasons, argued at length by the par '
particular, the validity of the orders with regard to Article 40
Companies Act of 20 July 1867, the regularity of the summons, and
conformity of the amount of the bills with the parties' agreement.
Finally, one cannot isolate the letter of 3 October 1973 and consid
without taking the declaration of Gardella at the meeting of 13 Septem
into account. If the claimant, by that letter, had intended to go back
declarations of 13 September, if it intended to place its demand to ha
bills signed and endorsed within the scope of the agreement, with whlc
had the intention of strictly complying, it was incumbent on i
AWARD
quivocally retract its remarks of 13 September. The Tribunal is,
ever, convinced that that was not the intention of Gardella.
.8. The Government of the Ivory Coast, for its part, appears to have
pted well to the situation created by Gardella.
did not respond to the letter of 3 October and remained in a state of
ectancy. It did not express any objection or the least reservation. It left
nswered Gardella's communications of 13 December 1973 and 30

uary 1974, which insisted that effect should be given to its letter of 3
ober. It did not deem it necessary to clarify the situation. Finally, at no
, did the Government put Gardella on notice to perform its obligations
onformity with the agreements of 1967,1970 and 1971.
o useful deduction can be drawn from the copy of a letter, whose
atory is unknown, written on SIVAK letterhead and addressed to the
ector of SIVAK (Exh. 76 of the respondent).
n attempt to reconcile the parties made in 1974- at the time the present
ton was started - by the former ambassador of Italy to Abidjan, Mr
lasco, was cut short. Mr A. Gardella, who hadcome expressly to Abidjan
he request of Mr Bolasco, was informed, upon his arrival, that the
uncil of Ministers had decided not to pursue that matter any further.
he Government, which in the course of the preceding years had already
little eagerness in carrying out the project, had, therefore,
sted its willingness to renounce, on its part, the continuation of the
ccordingly, the Government cannot claim damages for the nonormance
by its partner of a partnership agreement, which, moreover,
osing that it had not done so on 13 September 1973, Gardella was
led in law to renounce.
inally there is no reason to hold the annulment of the contract against
of the parties to an agreement, the performance of which neither party
nded to carry on, each party having expressed its will to renounce the
uit, on the agreed conditions, of the joint venture. The company
stituted by these agreements between the parties was, therefore,
olved in any event, by the will of both parties from March 1974 at the
.9. The counterclaim (2) presented by the Government of the Ivory
st in its Counter-Memorial seeks a declaration "that the provisions of
cle VIII of the Protocol dated 24 April 1967 relating to the recovery of
goods F.O.B. by Gardella are applicable".
clause aims at the hypothesis in which the results of the trials would
themselves to be inferior to the predictions. Now it has not been
by the arguments that the results of the trials, by which the
derstands the cultivation trials, were lower than the expectations
ies. The counterclaim must therefore be rejected.
Tribunal has considered whether some of the claims submitted
each side could be awarded not as damages for the non-performance of
agreement, the conditions for which were not, in its opinion, fulfilled,
rather in respect of the settlement of the partner's accounts. Could one
ermine the amount of the respective contributions to be brought into the

liquidation account of the company formed by the parties, would that, in t
application of the rules of the company, allow the Tribunal to order one
the parties to restore the equality of the contributions, in conformity w~t
the Protocol of 6 August 1970?

However, the company having been dissolved, these are transactio
which must take place within the framework of the division of the prope
insofar as the assets, after payment of debts, do not permit the restoration
the equality of the contributions.
This would lead, therefore, to the liquidation of the company, that is
the division between the partners within the meaning of Article 1872 oft
Civil Code, a matter with which the Tribunal is not seized. Furthermore, t
settlement between the partners assumes that what should first be dissolve
and liquidated is SIVAK, the organization in which the two partn
combined their resources and skills. It is through the intermediary of srv
that the transactions involved in the execution of the agreements betwe
the parties occurred, to the exclusion of any direct contributions
payments between the partners.
Moreover, unless the parties reach an agreement on the fate of SIVAKt,
issue of whether one partner will remain the debtor of the other will res
from the liquidation of SIVAK.
Now the Tribunal does not have the jurisdiction either to order
dissolution or to originate the liquidation of SIVAK.
4.11. It is fitting, therefore, to reject all the submissions of the parti
C. Cost of the Arbitration
4.12. Article 61(2), of the Convention for the Settlement of Investm
Disputes provides that, in the absence of an agreement between the parti
the Tribunal shall assess the expenses incurred by the parties in connect'
with the proceedings and shall decide the methods of division and
payment of the said expenses, the costs and expenses of the members of
Tribunal and the amounts due for the use of the facilities of the Centre. T
decision is an integral part of the award.
Neither the above mentioned Convention, nor the Arbitration Rul
impose any rules on arbitrators as to the distribution of costs.
The distribution is therefore left to the discretion of the arbitrators.
The submissions of the two parties are entirely rejected.
Without doubt, the submissions of the claimant appear more substan
than the counterclaim - the latter not having been examined at this st
the proceedings - and have given rise to the greater part of the argu
Nevertheless, in view of the circumstances of the case, the Tr'
considers it equitable that each party should bear its own costs and expen
incurred in connection with the proceedings and that the costs and expen
of the Tribunal, as well as the charges for the use of the facilities of
Centre should he divided equally between the parties.
It is therefore not necessary to assess the expenses incurred by the part
in connection with the proceedings.
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The costs and expenses of the members of the Tribunal and the sums due

for the use of the facilities of the Centre, including the cost of transcription of he arguments, are calculated at SF 246,865.96.
For these reasons,
The Arbitration Tribunal, having deliberated fully and behind closed doors, deciding unanimously,
As to the Objection to Jurisdiction:
The objection to jurisdiction raised by the respondent is rejected.
As to the Merits:
All the submissions of the parties, including the counterclaim, are
. As to the Costs of the Arbitration and the Costs of the Parties:
1. Each party will bear its own costs of the proceedings.
2. Each party will bear one half of the costs and expenses of the Tribunal and the dues due for the use of the facilities of the Centre, assessed at 246,865.96 Swiss Francs.