

ORIGINAL DOCUMENTS IN SAFE

Case No. 428

Date of filing 26 Jan 1983

☒ AWARD. Date of Award 26 Jan 1983

4 pages in English. 4 pages in Farsi.

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☐ DECISION. Date of Decision _____

_____ pages in English. _____ pages in Farsi.

☐ ORDER. Date of Order _____

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☐ CONCURRING OPINION of _____

Date _____ pages in English. _____ pages in Farsi.

☐ DISSENTING OPINION of _____

Date _____ pages in English. _____ pages in Farsi.

☐ OTHER; Nature of document: _____

Date _____ pages in English. _____ pages in Farsi.

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K. HAJI-BAGHERPOUR,

Claimant,

and,

THE GOVERNMENT OF THE UNITED STATES
OF AMERICA,

Respondent.

CASE NO.428

CHAMBER TWO

AWARD NO.23-428-2

AWARD

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه داورى دعاوى ايران - ايالات متحده	
ثبت شد - FILED			
Date	1361 / 11 / 6	تاريخ	
26 JAN. 1983			
No	428 428	شماره	

APPEARANCES:

For the Claimant:

Mr. Mir Mohammad Mousavi
Representative of the Claimant

Mr. M.K. Eshragh
Deputy Agent of the
Islamic Republic of Iran

Mr. Y. Madavi
Legal Adviser to the
Deputy Agent

For the Respondent:

Ms. Jamison Selby
Deputy Agent of the
United States of America

Mr. M. Reboin
Legal Adviser to the
Deputy Agent

DUPLICATE
ORIGINAL

نسخه برابر اصل

I. CONTENTIONS OF THE PARTIES

The Claimant, Mr. K. HAJI-BAGHERPOUR, filed this claim on 18 January 1982 against the GOVERNMENT OF THE UNITED STATES OF AMERICA seeking the recovery of U.S. \$428,571.00 as compensation for damages allegedly suffered when a tanker truck purportedly owned by him was destroyed by United States military personnel.

The Claimant alleges that on the night of 24 April 1980, while transporting kerosene on the road between Yazd and Meshed in the Province of Yazd, Iran, the tanker truck was fired upon by armed forces of the United States resulting in the burning and total destruction of the vehicle. The Claimant contends that, as the owner of the truck, he is entitled to compensation in the amount stated for the value of the truck, the value of the truck's contents, lost income, and "spiritual and moral damages" and costs of arbitration.

In its Statement of Defence filed on 7 July 1982 the Respondent United States admitted that in the course of an unsuccessful military operation aimed at the rescue of the fifty-two U.S. nationals detained in Iran, its armed forces fired upon and destroyed a kerosene tanker at the place and time alleged, but generally denied all other factual allegations and legal conclusions made in the Statement of Claim. Furthermore, the Respondent contends that the Tribunal lacks jurisdiction to hear the claim.

First, the United States argues that, since the actions complained of occurred during the course of a military operation aimed at rescuing the fifty-two United States nationals who were being detained in Iran, claims arising out of those actions are excluded from the jurisdiction of the Tribunal under Article II, paragraph 1, of the Claims Settlement Declaration.

Second, the United States argues that, even if the claim is not thus expressly excluded, it does not fall within any of the

categories of claims for which the Tribunal was established in Article II, paragraph 1, as it does not arise out of debts, contracts, expropriations or "other measures affecting property rights."

With respect to the merits, the United States denies liability under customary international law for damages to the property of Iranian nationals that was incidental to military operations against Iran which it considers to be lawful.

A Hearing was held on 10 January 1983 at which both Parties were represented.

II. CONCLUSIONS

Article II, paragraph 1, of the Claims Settlement Declaration excludes from the Tribunal's jurisdiction "claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of actions of the United States in response to the conduct described in such paragraph ..." (Emphasis added). Paragraph 11 refers, in relevant part, to:

any pending or future claim of the United States or a United States national arising out of events occurring before the date of this Declaration related to (A) the seizure of the 52 United States nationals on November 4, 1979 or (B) their subsequent detention...

It was undisputed at the Hearing that the act of firing upon the tanker truck occurred in the course of the aborted rescue operation. Nor was it disputed that the rescue attempt itself was in response to the seizure and detention of United States nationals. The Claimant contends, however, that the act of firing upon

the tanker truck was not in response to the detention of the fifty-two Americans as it did not occur at or near the place where they were held. The Tribunal is unable to accept this contention.

The damage suffered by the Claimant occurred because he chanced to come upon the staging area for the rescue operation while the American armed forces were there. They would not have been there and would not have destroyed his truck if the fifty-two U.S. nationals had not been seized and detained. The cause and effect relation is clear. There may be cases where the Tribunal will face difficult questions in interpreting the exclusionary clause in Article II, paragraph 1, of the Claims Settlement Declaration but about the present case there can be no doubt.

Therefore, the Tribunal holds that this claim is excluded from its jurisdiction as a claim arising out of actions of the United States in response to the conduct described in paragraph 11 of the General Declaration.

In view of this holding, the Tribunal does not need to address any of the other arguments raised by the parties. Furthermore, in view of all the circumstances of the case and in accordance with Article 40(1) of the Tribunal Rules, the Tribunal finds that it would be reasonable to apportion the costs of arbitration in such a way as to leave each Party to bear its own costs.

III. AWARD

The Tribunal awards as follows:

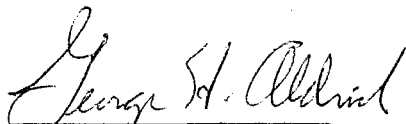
The Claim of K. HAJI-BAGHERPOUR against the GOVERNMENT OF THE UNITED STATES OF AMERICA is hereby dismissed for lack of jurisdiction.

Each of the Parties shall bear its own costs of arbitrating this Claim.

Dated, The Hague
26 January, 1983



Pierre Bellet
Chairman



George H. Aldrich

In the name of God,



Shafie Shafeiei