

60-428

ORIGINAL DOCUMENTS IN SAFECase No. 60Date of filing: 30/5/91

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision 30/5/91
9 pages in English 10 pages in Farsi

** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

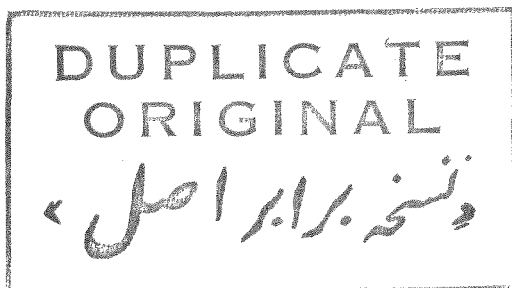
** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعاوی ایران - ایالات متحدہ



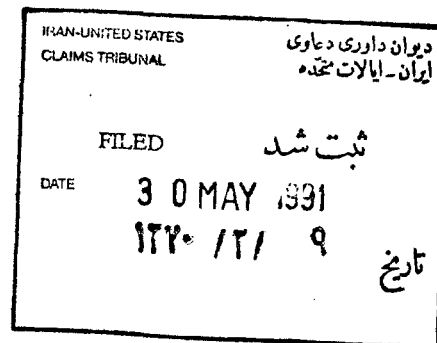
CASE NO. 60

CHAMBER THREE

DECISION NO. DEC 98-60-3

DEVELOPMENT AND RESOURCES CORPORATION,
Claimant,

and



THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
THE KHUZESTAN WATER AND POWER AUTHORITY,
THE STATE ORGANIZATION FOR ADMINISTRATION
AND EMPLOYMENT,
THE MINISTRY OF ENERGY,
THE MINISTRY OF AGRICULTURE,
THE NATIONAL IRANIAN OIL COMPANY,
THE MINISTRY OF ECONOMY, and
BANK MARKAZI,

Respondents.

DECISION

I. INTRODUCTION

1. The Claimant DEVELOPMENT AND RESOURCES CORPORATION filed its Statement of Claim on 17 November 1981, naming as Respondents THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, THE KHUZESTAN WATER AND POWER AUTHORITY, THE STATE ORGANIZATION FOR ADMINISTRATION AND EMPLOYMENT, THE MINISTRY OF ENERGY, THE MINISTRY OF AGRICULTURE, THE NATIONAL IRANIAN OIL COMPANY, as successor in interest to THE OIL SERVICES COMPANY OF IRAN, THE MINISTRY OF ECONOMY, and BANK MARKAZI.

2. The Parties submitted pleadings on all issues in this Case. A Pre-Hearing Conference was held on 26 April 1984 and a Hearing was held on 27 and 28 February 1986. The Parties made various submissions and requests that raised procedural issues.

3. The Tribunal signed and filed the Award in this Case in English on 25 June 1990. The Award was filed in Persian on 15 October 1990. Development and Resources Corporation and The Islamic Republic of Iran, et al., Award No. 485-60-3 (25 June 1990) (the "Award").

4. Subsequent to the filing of the Award, three of the Respondents, The Ministry of Agriculture ("MOA"), The Ministry of Energy ("MOE") and the State Organization for Administration and Employment ("SOAE"), filed documents with the Tribunal's Registry commenting on the Award.

II. COMMENTS ON THE AWARD FILED BY RESPONDENTS

A. The Ministry of Energy

5. On 12 November 1990, MOE filed a document entitled "Comments of Iran's Ministry of Energy on Award No. 485-60-3 of June 25, 1990." With reference to Articles 32(2) and 37

of the UNCITRAL Rules, MOE requests the Tribunal (i) to clarify and explain certain matters in the Award, and (ii) to issue an order dealing with certain issues that MOE allegedly brought to the attention of the Tribunal but that are not dealt with in the Award. Furthermore, without making a specific request to the Tribunal, MOE states that the Tribunal "has not given any opinion for justifying its rejection of [MOE's request for a second Hearing] in the Award."

B. The State Organization for Administration and Employment Affairs

6. On 12 November 1990, SOAE filed a document entitled "Comments of the State Organization for Administration and Employment Affairs in connection with Award No. 485-60-3. With reference to Articles 32 and 35 of the UNCITRAL Rules, SOAE requests "restitution of lawful rights and provision of evidence on behalf of [SOAE]." This request is based on SOAE's general allegation that the Award does not provide sufficient explanation for the Tribunal's finding of liability and specifically that certain arguments raised in SOAE's Statement of Counterclaim were not sufficiently dealt with in the Award.

C. The Ministry of Agriculture

7. On 15 November 1990, MOA filed a document entitled "Comments of Iran's Ministry of Agriculture on Award No. 485-60-3" in which it requests the Tribunal to "amend and supplement" the Award. With reference to Articles 36 and 37 of the Tribunal Rules, MOA seeks to present to the Tribunal additional evidence allegedly establishing that pursuant to a settlement between the Parties the Claimant was only entitled to U.S.\$70,000 and not the amount awarded by the Tribunal.

III. THE TRIBUNAL'S FINDINGS

8. As a matter of principle, the Claims Settlement Declaration and the Tribunal Rules do not allow for the reopening or reconsideration of awards once rendered. Article IV, Paragraph 1, of the Claims Settlement Declaration states that "[a]ll decisions and awards of the Tribunal shall be final and binding." Likewise, Article 32(2) of the Tribunal Rules provides that the "award shall be made in writing and shall be final and binding on the parties."¹ However, once a final award has been rendered, the Tribunal Rules explicitly allow for (i) a request by one or more of the parties to the relevant case that the Tribunal give an interpretation of the award (Article 35²), (ii) a request that the Tribunal make an additional award as to claims presented in the arbitral proceedings but omitted from the award (Article 37³), and (iii) a request that the

¹Article III, Paragraph 2, of the Claims Settlement Declaration provides inter alia that the "Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the Parties or by the Tribunal to ensure that this Agreement can be carried out." Article 32(2) of the Tribunal Rules adopted on 3 May 1983 is unchanged from Article 32(2) of the UNCITRAL Rules. However, the note added to Article 32(2) of the UNCITRAL Rules points out that "the term 'parties' means the arbitrating parties."

²The full text of Article 35 is as follows:
"1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 32, paragraphs 2 to 7, shall apply."

³The full text of Article 37 provides as follows:
"1. Within thirty days after the receipt of the award,
(Footnote Continued)

Tribunal correct errors in computation, clerical or typographical errors, or any errors of a similar nature (Article 36⁴). Each of these requests has to be made within thirty days of the receipt of the Award.

9. In view of the above, before deciding on the merits of any request the Tribunal must first decide whether the submissions of MOE, MOA and SOAE fall within the parameters set by the Tribunal Rules and -- if so -- whether all procedural requirements are met.

A. The Ministry of Energy

10. MOE refers in its submission to Articles 32(2) and 37 of the UNCITRAL Rules.⁵ Article 32(2) merely confirms the

(Footnote Continued)

either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.

3. When an additional award is made, the provisions of article 32, paragraphs 2 to 7, shall apply."

⁴The full text of Article 36 is as follows:

"1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 7, shall apply."

⁵Article 37 of the Tribunal Rules adopted on 3 May 1983 is unchanged from Article 37 of the UNCITRAL Rules. However, the note added to Article 37 of the Tribunal Rules points out that "the term 'party' means the arbitrating party."

binding nature of awards. See supra para. 8. MOE makes reference to Article 32(2) in connection with its request that the Tribunal provide additional explanation and clarification concerning the basis for one of its holdings; the Tribunal assumes therefore that MOE intended to refer to Article 32(3) of the Tribunal Rules, which requires the Tribunal to state "the reasons upon which the award is based."⁶

11. The holding that seems to have given rise to MOE's first request dealt with the Claimant's claim of \$517,239.66⁷ in arbitration costs. See Award at paras. 385, 386. The Award granted \$45,000 towards these costs. In this connection, MOE requests that the Tribunal "clarify the basis of issuance the said Award" as well as to "specify the portion of [MOE] in the judgment debt." The Award's decision to grant arbitration costs makes reference to the Parties' contentions, specific Tribunal rules authorizing the payment of costs, as well as Tribunal precedents interpreting those rules. See Award at paras. 386, 387 (f). The Tribunal finds that sufficient explanation has been given in the Award as to the exercise of its authority under Tribunal

⁶Paragraph 3 of Article 32 of the Tribunal Rules reads as follows:

"The arbitral Tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given. Any arbitrator may request that his dissenting vote or his dissenting vote and the reasons therefor be recorded."

The language of this paragraph conforms to the text of paragraph 3 of the UNCITRAL Rule 32, except for the last sentence of this paragraph which was added to the language of the UNCITRAL Rule in accordance with Article III, Paragraph 2, of the Claims Settlement Declaration. Also, a note was added to Article 32 stating that the term 'parties' as used in this Article means the 'arbitrating parties.'

⁷All references to dollars in this Decision are to United States Dollars.

Rules 38 and 40 to award reasonable costs of arbitration and that there is no need for it to apportion the amount of costs awarded. The Tribunal notes further that the Rules do not provide for the right of an arbitrating party to exchange views with the Tribunal as to the question whether the Tribunal has -- to the satisfaction of such arbitrating party -- complied with Article 32(3), nor do the Rules provide for appeal or reconsideration of an award.

12. MOE's second request refers to the Tribunal's holding that MOE is to pay an amount of \$260,903.50 (plus interest) to the Claimant. See Award at paras. 333, 335, 387(c). MOE refers to certain arguments that were made in its written submissions as well as at the Hearing, but that were not considered persuasive by the Tribunal. The specific arguments referred to by MOE were not explicitly rejected in the Award. However, the Tribunal's ruling on the claim at issue clearly indicates that the Tribunal was not convinced by these arguments. MOE now repeats these arguments and concludes that it "duly established the basis for the dismissal of the claim at issue." Furthermore, MOE requests that the Tribunal "issue an order, in implementation of Article 37 of the UNCITRAL Rules to take necessary action for safeguarding [MOE's] rights."

13. As noted above, Article 37 of the Tribunal Rules gives the arbitrating parties the right to request the Tribunal to make an additional award as to claims presented to the arbitral proceedings but omitted from the award. In this case, however, the Award rules unequivocally on the claims brought by the Claimant against MOE, as well as MOE's counterclaims against the Claimant. No claim was omitted. Therefore, MOE's request cannot be based on Article 37 of the Tribunal Rules. Although presented as a request for an additional award, MOE's request essentially is an appeal or a request to reconsider the Award. As noted above, however, the Tribunal Rules do not provide for any appeal or

reconsideration of an Award. The Tribunal denies MOE's second request.

B. The State Organization for Administration and Employment

14. Although SOAE makes reference in its request to Articles 32(3) and 35 of the UNCITRAL Rules, SOAE's submission simply reargues its position and requests "restitution of [its] lawful rights and provision of evidence on behalf of [SOAE]." SOAE's request, in fact, is for the Tribunal to reopen a case already concluded by award. As the Tribunal Rules do not provide for such reopening of a case, the Tribunal is unable to grant SOAE's request.

C. The Ministry of Agriculture

15. MOA states that its request is based on Articles 36 and 37 of the Tribunal Rules. MOA does not, however, make a request for correction of the award, as provided for in Article 36, nor does it make a request for an additional award, as provided for in Article 37 of the Tribunal Rules. Instead, MOA seeks to reargue certain aspects of the case and to submit additional evidence, in the form of an alleged Settlement Agreement, dated 18 December 1981. The Tribunal finds that MOA has had ample opportunity to present all arguments and submit all evidence it considered relevant. The Tribunal Rules do not provide for additional arguments and evidence after a case has been concluded by Award. The arguments and evidence contained in this filing are therefore rejected.

IV. DECISION

16. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

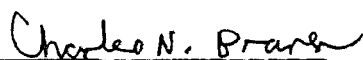
The requests by the Respondents THE MINISTRY OF ENERGY, THE STATE ORGANIZATION FOR ADMINISTRATION AND EMPLOYMENT and THE MINISTRY OF AGRICULTURE contained in their submissions of 12 and 15 November 1990 concerning Award No. 485-60-3 are denied.

Dated, The Hague,
30 May 1991



Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the name of God



Charles N. Brower



Parviz Ansari Moin
See my Dissenting and
Concurring Opinion
filed on 18 January 1991