

A3-103

ORIGINAL DOCUMENTS IN SAFECase No. A3Date of filing: 22 Nov '91

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

** DECISION - Date of Decision #100 22 Nov '91
6 pages in English _____ pages in Farsi

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

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

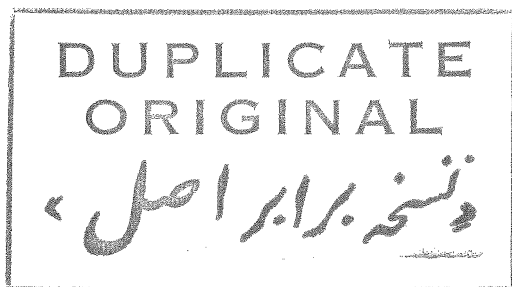
** DISSENTING OPINION of _____
- Date _____
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- Date _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داورى دعاوى ایران - ایالات متحدہ



CASES NOS. A3 and A8

FULL TRIBUNAL

DECISION NO. DEC 100-A3/A8-FT

MINISTRY OF NATIONAL DEFENCE
OF THE ISLAMIC REPUBLIC OF IRAN,
Claimant,

and

THE UNITED STATES OF AMERICA and
BELL HELICOPTER TEXTRON CO.,
Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	22 NOV 1991
	تاریخ ۱۳۷۰/۹/۱۱

DECISION

1. Factual Background

1. By a submission filed on 18 September 1991 by the Agent of the Government of the Islamic Republic of Iran, the Claimant sought to withdraw its Claims against Bell Helicopter Textron Co. ("Bell").

2. By its Order filed on 26 September 1991, the Tribunal informed the Parties that it intended to terminate the proceedings in these Cases against Bell, unless Bell by 11 October 1991 raised justifiable grounds for objection in accordance with Article 34 of the Tribunal Rules.

3. On 11 October 1991, Bell filed a Response to the Tribunal's Order and a Renewed and Supplemental Request for Costs. Bell states, inter alia, that it "has no objection to Iran's proposal to withdraw these cases, so long as the Tribunal conditions termination on Iran's payment of BHT's costs of \$17,842.45." Bell explains its view that an award of costs is compelled to compensate it "for the burden of defending cases brought and pursued frivolously by Iran for almost ten years in the full knowledge that the Tribunal lacked jurisdiction over them."

4. On 6 November 1991, the Claimant filed a Reply to Bell's Request for Costs. The Claimant requests that Bell's request for costs be dismissed and that the proceedings be terminated as requested by the Claimant. In the Claimant's opinion, the costs sought by Bell are unreasonable and unacceptable, for the reason inter alia, that Bell failed to participate in the proceedings until 1984 and that Bell only filed one short submission and a few brief letters. The Claimant asserts that it filed its Statement of Claim in these Cases before the Tribunal rendered its decision on jurisdiction referred to by Bell.

2. Reasons

5. The Tribunal must determine whether Bell's objection to the termination of these Cases unless it is paid its costs,

is justified. In "A-Cases", i.e., disputes concerning the interpretation and performance of the Algiers Declarations, it is the Tribunal's practice to let each of the Government bear its own costs. While the present Cases have proceeded as "A-Cases", Bell is a private party that has been named by the Claimant as one of the Respondents.

6. In Cases Nos. B59 and B69, which involved not interpretive disputes but claims based on contractual arrangements between the Governments, the Tribunal awarded costs to a private United States party which had been named as a respondent, and in this respect the situation was similar to the present issue. In other respects, the situation in those Cases was different, however. In Cases Nos. B59 and B69, the private United States respondent was awarded costs in an award which decided the Tribunal's jurisdiction on the basis of the documents. The Ministry of National Defence of the Islamic Republic of Iran and Government of the United States of America, et al., Award No. 247-B59/B69-1 (15 Aug. 1986). The private United States respondent had filed a Statement of defence, a counterclaim and a response to a brief and evidence by the claimant. It had also participated in a pre-hearing conference held on 29 August 1983. The pre-hearing conference in which that respondent had to take part, took place after the Tribunal had rendered its decision in Case No. A2 on 26 January 1982, in which it held that it had no jurisdiction over direct claims by a Government against a national of the other State. The costs claimed by the United States respondent in Cases Nos. B59 and B69 were \$55,153.04 of which the Tribunal awarded an amount of \$25,000.

7. In Cases Nos. A3 and A8 the Statements of Claim were filed on 15 January 1982, a few days before the decision in Case No. A2 was rendered. In these Cases, the Claimant withdrew the Claims against Bell "[w]ith special attention to the Interim Award of July 29, 1991, of the ICC, Zurich". While Bell here also had to take part in the proceedings for a number of years, its participation mainly consisted of the submission of a short brief on jurisdiction, and subsequent-

ly the filing of one two page and two one page letters which contained procedural requests and sought costs.

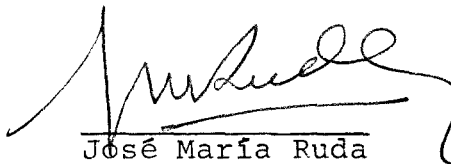
8. Based on the above, the Tribunal does not deem it reasonable to deviate in these Cases from its practice not to award costs in cases involving disputes as between the two Governments. The Tribunal considers that no justifiable objections have been raised against the termination of these Cases against Bell.

9. For the above reasons,

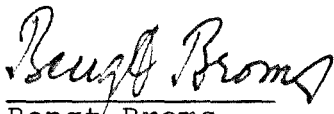
THE TRIBUNAL DETERMINES AS FOLLOWS:

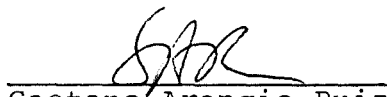
- (a) The proceedings in Cases Nos. A3 and A8 against Bell Helicopter Textron Co. are hereby terminated.
- (b) Bell Helicopter Textron Co. shall bear its own costs of arbitration.

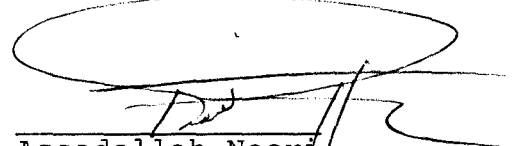
Dated, The Hague
22 November 1991


José María Ruda
President

In the Name of God

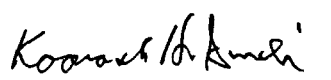

Bengt Broms

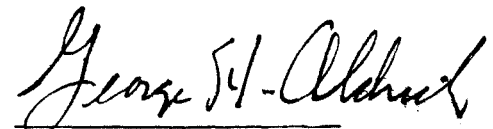

Gaetano Arangio-Ruiz


Assadollah Noori

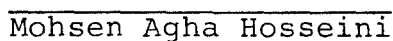
In the Name of God

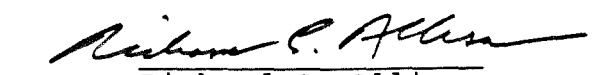

Howard M. Holtzmann

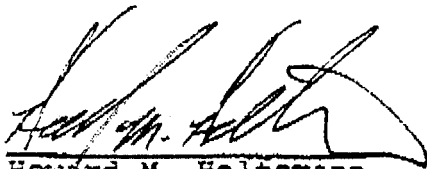

Koorosh H. Ameli


George H. Aldrich
Dissenting Opinion

In the Name of God


Mohsen Agha Hosseini


Richard C. Allison
Dissenting. See Joint Dissenting
Opinion of Howard M. Holtzmann and
Richard C. Allison

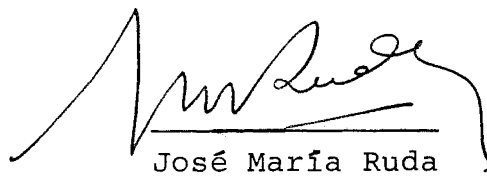
A handwritten signature in dark ink, appearing to read "Howard M. Holtzmann", with a stylized flourish at the end.

Howard M. Holtzmann
Dissenting. See Joint
Dissenting Opinion of
Howard M. Holtzmann and
Richard C. Allison.

Reason for the Absence of Mr. Mohsen Agha Hosseini's Signature

Although Mr. Agha Hosseini has conveyed his vote for joining in the Decision, the Tribunal has been unable to obtain his signature from Tehran within the time limit required by the Parties for the issuance of this Decision. He therefore agrees that in the circumstances the Tribunal should not await his signature.

Dated, The Hague
22 November 1991



José María Ruda
President