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AC9-18V

ES CLAIMS TRIBUNAL

دیوان داری دعاری ایران - ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

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Case No.

829

Date of filing:

19. Sep 88

** AWARD

- Type of Award _____

- Date of Award _____

_____ pages in English

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** DECISION

- Date of Decision _____

_____ pages in English

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** CONCURRING OPINION of _____

- Date _____

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** SEPARATE OPINION of _____

- Date _____

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** DISSENTING OPINION of

Mr Khalilian ~~to~~ Decision

- Date

19. Sep 88

2 pages in English

2 pages in Farsi

** OTHER; Nature of document: _____

- Date _____

_____ pages in English

_____ pages in Farsi

147

IRAN UNITED STATES CLAIMS TRIBUNAL	داوری دعوی ایران - ایالات متحدہ
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In the Name of God

CASE NO. 829

CHAMBER TWO

DECISION NO. DEC.84-829-2

LOCKHEED CORPORATION,
Claimant,

and

THE GOVERNMENT OF IRAN,
THE IRANIAN MINISTRY OF WAR,
and THE IRANIAN AIR FORCE,
Respondents.



DISSENTING OPINION OF SEYED KHALIL KHALILIAN

I dissent to the instant Decision because I find that the majority has, through an unfair laxness, ignored the existence of an undeniable fact which could have served as the basis for issuance of an additional award.

In paragraph 7 of the Decision, the majority invokes Article 37, paragraph 1 of the Tribunal Rules in admitting the possibility that the Tribunal should issue a supplementary or additional award if a claim has not been disposed of in the award or, in other words, if a claim has been omitted from the award. It then ignores the fact that the Respondent had brought a claim seeking return of the items at

issue, with respect to whose cost of repairs the Tribunal has awarded in favor of the Claimant. In order to discern the deficiencies in the Award with respect to this issue, see the Dissenting and Concurring Opinion of Seyed Khalil Khalilian, paragraphs 37-45 and 50. At any rate, in paragraph 8 of the Decision, the majority, denying that the Respondent ever made such a request of the Tribunal, states that:

"... the Tribunal notes that the counterclaims filed by the Respondent consistently requested damages on the basis that the parts had not been returned to it but not the physical delivery of the parts which are the subject matter of the requests."

This, however, is not the truth of the matter, and as proof we need simply to refer to the Respondent's submissions. Now, note the following statements, quoted from the Respondent's submissions:

"Secondly, according to the enquiries made, apart from the parts claimed earlier, another 76 parts too were deassembled from C-130 aircraft under No. 5-8530 and 5-8531 for repairs, but these have not been returned to Iran so far. Claimant's Letter dated 17 May 1977 has been submitted along with the list of the parts in question as Exhibit 6 to our earlier submission (Document No. 89). Therefore, Claimant must, apart from returning the said 107 parts, also restore the 76 parts at issue." (emphasis added) Respondent's submission, Document No. 117, p. 26, para. 37 (English version)

"(ii) Further examinations demonstrated that, in addition to the items claimed earlier, 76 items were disassembled from 5-8530 and 5-8531 Aircraft for reparation, so far not returned to Iran. In this connection, Lockheed's letter dated 17 May 1977, together with the list of the items in reference are appended hereto as Exhibit 6. Also in addition to the 107 items referred to, the 76 items in question must likewise be returned." (emphasis added) Respondent's submission, Document No. 89, pp. 20-21, para. 22 (English version)

Therefore, isn't the majority's Decision based on a distortion of the facts of the matter?

Dated The Hague,

28 Sahrivar 1367/19 September 1988



Seyed Khalil Khalilian