

261-203

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Case No. 261Date of filing: 13 Jan 1989**** AWARD**

- Type of Award

- Date of Award

6 pages in English76 pages in Farsi*Decision and**Correction To Partial award**30 Dec 88***** DECISION - Date of Decision** _____

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**** CONCURRING OPINION of** _____

- Date _____

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**** SEPARATE OPINION of** _____

- Date _____

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**** DISSENTING OPINION of** _____

- Date _____

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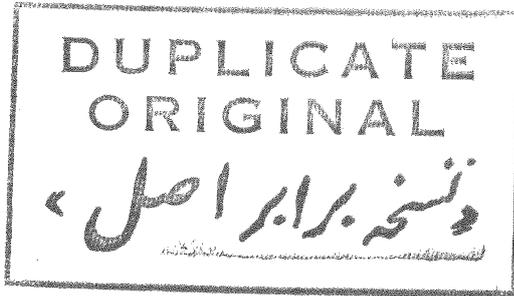
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- Date _____

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CASE NO. 261
CHAMBER THREE
AWARD NO. 377-261-3

AVCO CORPORATION,
Claimant,

and

IRAN AIRCRAFT INDUSTRIES,
IRAN HELICOPTER SUPPORT AND RENEWAL COMPANY,
NATIONAL IRANIAN OIL COMPANY
AND THE ISLAMIC REPUBLIC OF IRAN,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحدہ
فیلد شد - ثبت	
Date	13 JAN 1989
	۱۳۶۷ / ۱۰ / ۲۳ تاریخ

DECISION AND CORRECTION TO PARTIAL AWARD

I. DECISION

A. Introduction

1. Partial Award No. 377-261-3 was filed by the Tribunal in English on 18 July 1988 and in Persian on 19 October 1988. The Respondents filed on 14 November 1988 a "Motion ... to correct the Award and to render a complementary Award" pursuant to Articles 36 and 37 of the Tribunal Rules.

2. Article 36, paragraph 1 of the Tribunal Rules states that a 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." Article 37, paragraph 1 provides for either party to request the arbitral tribunal to make "an additional award as to claims presented in the arbitral proceedings but omitted from the award."

B. Request for Correction

3. The Respondents' request for correction consists of three elements:

a. First, the Respondents make certain assertions regarding the computation of interest in the Partial Award. In particular, their assertions include:

i. A statement that interest on the sums awarded to IRAN HELICOPTER SUPPORT AND RENEWAL COMPANY ("IHSRC") in paragraph 139 of the Partial Award "should have been computed as of 10 October 1978";

ii. A statement that interest on the sums awarded to the Claimant against IRAN AIRCRAFT INDUSTRIES ("IACI") in paragraph 135 of the Partial Award

"should have been taken as starting from January 1, 1979";

- iii. A statement to the effect that the interest awarded in paragraph 136 of the Partial Award on the balance of IACI's advance payments made to the Claimant should be calculated from December 1978;
- iv. A statement that IACI has "not so far received the invoices or the goods" in respect of which payment is awarded to the Claimant and on which interest is awarded in paragraph 135 of the Partial Award; and
- v. A statement that, with respect to interest on the sums awarded to IACI in paragraph 136 of the Partial Award, "the date of July 1, 1979 should have [been] taken as the basis for calculation."

With respect to the statements described in paragraphs 3.a.ii - 3.a.iv, supra, IACI requests that "the Tribunal reconsider the amount of U.S.\$1,640,886.44 calculated as the interest in favor of AVCO, because the said amount should not have been calculated in favor of AVCO alone from October 1978 up to 11 October 1980."

b. Second, IACI states that "on the basis of calculations made by the Respondent, AVCO Corporation should be condemned to pay an amount of U.S.\$2,705,511.24 instead of [U.S.]\$886,127 for principal and interest thereon."

c. Third, IACI refers to "certain errors in the figures ... of paragraph 2 ... of the Award" and requests correction thereof.

4. IACI's requests detailed in paragraphs 3.a and b, supra, relate to the dates selected in paragraphs 135, 136

and 139 of the Partial Award for calculating interest on various elements of the award made to both the Claimant and to the Respondents. The rationale for choosing the relevant dates is explained fully in the Partial Award and the Tribunal notes that there is no inaccuracy in any of paragraphs 135, 136 or 139. Tribunal precedent is clear:

Insofar as the Request constitutes an attempt ... to reargue certain aspects of the Case and to disagree with the conclusions of the Tribunal in its ... Award, there is no basis in the Tribunal's Rules of Procedure or elsewhere for review of an Award on such grounds.

Paul Donin de Rosiere, et al., and The Islamic Republic of Iran, et al., Decision No. DEC 57-498-1, para. 4 (10 Feb. 1987), quoted in SEDCO, Inc. and National Iranian Oil Company, et al., Decision No. DEC 64-129-3, para. 6 (29 Sept. 1987). See also American Bell International, Inc. and The Islamic Republic of Iran, et al., Decision No. DEC 58-48-3, para. 3 (19 Mar. 1987), reprinted in 14 Iran-U.S. C.T.R. 173. The Tribunal finds that the request to change the dates from which interest is awarded does not fall within the scope of Article 36, paragraph 1. The Tribunal therefore denies this portion of the Request.

5. Although IACI has not specified clearly the nature of the alleged errors in the figures in paragraph 2 of the Partial Award, the Tribunal notes certain inconsistencies in the figures recited in this paragraph with those elsewhere in the Partial Award. The Tribunal determines that paragraph 2 of the Partial Award contains a clerical error which should be corrected, pursuant to Article 36, paragraph 1 of the Tribunal Rules.

C. Request to Render a Complementary Award

6. IACI states that "it had been provided that the amount of U.S.\$1,245,406.74 due by IACI to AVCO for repair items, should be paid to AVCO at a time when the related goods had been shipped and delivered to Iran and the fact had been

confirmed by IACI." Thus IACI requests the Tribunal "to issue an additional order that the amount of U.S.\$1,245,406.74 be paid from the Escrow Account to AVCO only when the items in question are received by IACI, their perfectness is confirmed and the required certificate has been duly issued."

7. The Tribunal notes that it has specifically addressed the issues of payment for and delivery of the goods in question in the Partial Award. The Tribunal held in paragraph 69 of the Partial Award that Avco is entitled to receive the amount of U.S.\$1,245,406.74. The Tribunal also held in paragraphs 79-84 that, although Avco was relieved of its obligation to ship the goods to IACI, it still has a basic obligation to return such goods. The Tribunal therefore invited the Parties to meet and negotiate an agreement as to the final disposition of the goods. The Partial Award also provides that, should the Parties fail to reach an agreement on this point, either Party may apply to the Tribunal for the resolution of any issues not settled by the Parties. Finally, the Tribunal notes that as the amounts awarded under the relevant claims and counterclaims resulted in a net balance due to IACI, there is, in any event, no payment to be made to AVCO out of the Security Account.

8. As noted, Article 37, paragraph 1 of the Tribunal Rules permits an additional award only with respect to "claims presented in the arbitral proceedings but omitted from the award." The Tribunal concludes that no claims or counterclaims were so omitted from the Partial Award. Accordingly, no basis exists at this time for an additional award under the Tribunal Rules. The request of IACI therefore is denied.

II. CORRECTION

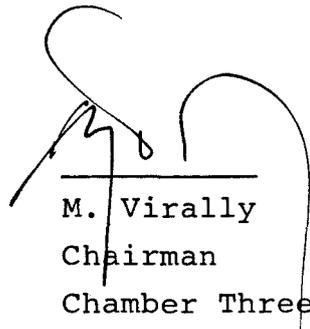
9. For the foregoing reasons, the following correction is hereby made to the Partial Award in this Case:

Paragraph 2 of the Partial Award is amended to read as follows:

"2. The Respondents filed Statements of Defense and raised counterclaims. IACI, IHSRC and NIOC assert counterclaims in excess of U.S.\$395,000,000 plus Rls. 178,309,000. The counterclaim raised by Iran is unquantified. In addition, IACI and IHSRC seek an Award directing Avco to return IACI's and IHSRC's parts and equipment in Avco's custody."

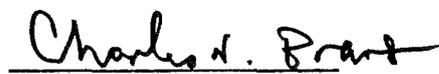
A copy of the corrected page is attached.

Dated, The Hague,
30 December 1988



M. Virally
Chairman
Chamber Three

In the Name of God



Charles N. Brower
Charles N. Brower



Parviz Ansari Moin
Parviz Ansari Moin

See Separate Opinion
filed on 21 November 1988

I. PROCEDURAL HISTORY

1. On 14 January 1982 the Claimant, AVCO CORPORATION, ("Avco") filed a Statement of Claim against IRAN AIRCRAFT INDUSTRIES ("IACI"), IRAN HELICOPTER SUPPORT AND RENEWAL COMPANY ("IHSRC"), NATIONAL IRANIAN OIL COMPANY ("NIOC") and THE ISLAMIC REPUBLIC OF IRAN ("Iran"). The claim consists of five different components originally totalling U.S.\$21,365,741.11. During oral proceedings, Avco amended some of its claims, leaving a resulting total amount claimed of U.S.\$20,950,541.11. The first and second claims arise out of the alleged breach by IACI of two different contracts for the sale and servicing of engines, plus interest and storage costs, for which Avco claims U.S.\$19,052,982. The third claim, originally for U.S.\$1,737,243, including interest and storage costs, was subsequently increased to U.S.\$1,746,775, arises out the alleged breach by IHSRC of a series of contracts for sale and repair of aircraft engines. The fourth claim arises out of the alleged failure by NIOC to pay an amount of U.S.\$81,695.55 for services allegedly rendered by Avco. The fifth claim, in the amount of U.S.\$69,088.56, is directed against Iran and based on the alleged confiscation of cash and property owned by Avco and its employees. In addition, Avco claims interest, attorneys fees and costs of arbitration on all claims.

2. The Respondents filed Statements of Defense and raised counterclaims. IACI, IHSRC and NIOC assert counterclaims in excess of U.S.\$395,000,000 plus Rls. 178,309,000. The counterclaim raised by Iran is unquantified. In addition, IACI and IHSRC seek an Award directing Avco to return IACI's and IHSRC's parts and equipment in Avco's custody.

3. On 11 April 1983 IACI requested the Tribunal to issue an Order, as an interim measure, preventing the sale by Avco of certain properties owned by IACI, the return of which it is claiming in its counterclaim. On 11 May 1983 Avco stated in response that "claimant has made no arrangements for the