

39-153

39-154

CASES NOS. 39 AND 55

CHAMBER TWO

PHILLIPS PETROLEUM CO. IRAN

Claimant,

AWARDS NOS. ITL 11-39-2 AND

ITL 12-55-2

- and -

THE ISLAMIC REPUBLIC OF IRAN,

NATIONAL IRANIAN OIL COMPANY,

Respondents,

and

AMOCO IRAN OIL COMPANY,

Claimant,

- and -

THE ISLAMIC REPUBLIC OF IRAN,

NATIONAL IRANIAN OIL COMPANY,

IRANIAN OFFSHORE OIL COMPANY,

IRANIAN OIL COMPANY,


Respondents,

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعای ایران - ایالات متحدہ
ثبت شد - FILED	
Date	۱۳۶۲ / ۶ / ۲۸ 19 SEP 1983
No.	39-      شماره

DISSENTING OPINION OF DR. SHAFIE SHAFEIEI

NOTIFICATION OF CORRECTION

Attached are the corrected pages 31 and 32 of the English version of the Dissenting Opinion of Mr. Shafie Shafeiei, filed on 2 September 1983.

  
The Co-Registrars

To : Co-Registrars

From: Dr. Shafie Shafeiei

Re: Corrigendum to Dissenting Opinion of  
Dr. Shafeiei in Interlocutory Awards  
Nos. 11-39-2 and 12-55-2

Please substitute the attached correction pages for  
the present pages 31 and 32 in the text of the above  
referenced Dissenting.

"The jurisdiction of this Tribunal is thus very broad."

However, the fact is that this conclusion conflicts with the rules of international law on interpretation of treaties, which require that international tribunals must interpret treaties restrictively so as to avoid unduly limiting the sovereignty and independence of States.

In an attempt to support its findings, and by the same method of broad interpretation, the majority goes on to state:

"In this connection, it should be noted that the preamble of the General Declaration states that it was the purpose of the two Governments 'to terminate all litigation as between the Government of each party and the nationals of the other.'"

Firstly, however, it is suprising that the majority has taken notice of the preamble of principle "B" and yet intentionally passed over the whole content of principle "B" which defines the intention of the parties, by qualifying principle "B" as preamble of the Declaration! Secondly, it is entirely manifest, considering the circumstances in which the Declarations were drawn up and the arguments set forth in the preceding discussion, that the text of that portion of principle "B" cannot vest the Tribunal with the extensive and definitive jurisdiction assumed by the majority. After all, it is obvious that certain claims cannot be so qualified as to fall within the jurisdiction of the Tribunal. There can

be no doubt, for example, that this Tribunal lacks jurisdiction over those claims by American or Iranian nationals arising after the conclusion of the Declarations. Thirdly, the majority failed to take into consideration the term "litigation," which appears in the preamble of principle "B" bearing a signification identical to that of the same terms "such claims" and "legal proceedings" used in the whole context of Principle "B," and which thereby supports the contentions of NIOC and the statements by Mr. Nabavi in his Affidavit.

D. 2. b) The Nullified Oil Agreements Claims Did Not Fall within the Jurisdiction of the Tribunal from the very Beginning

So far as the Declarations are concerned, claims are to be divided into two general categories: (1) claims which from the outset did not fall within the Tribunal's jurisdiction; and (2) claims which fall within the Tribunal's jurisdiction unless specifically excluded or excepted.

In this respect, it is NIOC's contention that the claims arising out of the Nullified Oil Agreements do not fall within the jurisdiction of the Tribunal, and that therefore, any argument set forth in the so-called Interlocutory Awards with the intention of defining and determining exceptions to the Tribunal's jurisdiction so narrowly as to permit the adjudication of the Nullified claims is irrelevant here. This contention by NIOC is fully supported by Mr. Nabavi's Affidavit and by the circumstances in which the Algiers Declarations were concluded; nonetheless, the majority has not taken it into account.