

39-393

CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ

393

ORIGINAL DOCUMENTS IN SAFE

Case No. 39

Date of filing: 14-july 89

\*\* AWARD - Type of Award \_\_\_\_\_  
- Date of Award \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

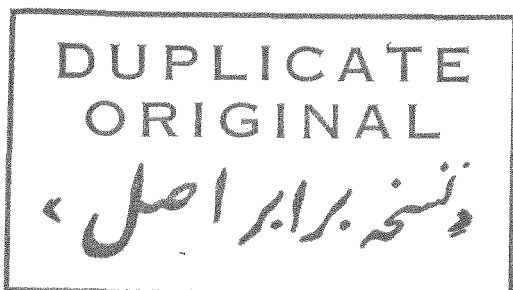
\*\* DECISION - Date of Decision \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* SEPARATE OPINION of Mr. Brimer  
- Date 14-july 89  
8 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



CASE NO. 39

CHAMBER TWO

AWARD NO. 425-39-2

PHILLIPS PETROLEUM COMPANY IRAN,  
Claimant,  
and

THE ISLAMIC REPUBLIC OF IRAN,  
THE NATIONAL IRANIAN OIL COMPANY,  
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	14 JUL 1989
	تاریخ
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SEPARATE STATEMENT OF MR. BRINER, CHAIRMAN OF CHAMBER TWO

I have taken cognizance of the "Statement by Judge Khalilian as to why it would have been premature to sign the Award" filed in this Case on 30 June 1989 (Doc. 391).

For the sake of the record I consider it necessary to make the following observations.

The Hearing in this Case took place two and a quarter years ago, that is from 30 March to 3 April 1987. The Chamber began its deliberations on 22 September 1987 and continued those deliberations on several occasions prior to the resignation of Mr. Bahrami in late 1987. When Mr. Khalilian replaced Mr. Bahrami on 1 January 1988, the Tribunal turned to hearings in other cases on the understanding that those hearings would be completed before Ramadan, so that the summer months would be available for the Members of the Chamber to prepare themselves for continued deliberations in the present Case beginning in September 1988. To that end, the Parties were notified on 15 April 1988 that Mr. Khalilian had succeeded Mr. Bahrami as a Member of the Tribunal for this Case despite the provisions of Article 13, paragraph 5, of the Tribunal Rules.

In late September 1988, at Mr. Khalilian's request, the Chamber agreed to defer further deliberations until December. The Chamber also agreed to hold no hearings in the interim. In fact, the Chamber held no hearings for nearly one calendar year to give its Members, and particularly Mr. Khalilian, its newest Member, ample time to work on Case No. 39.

Deliberations in Case No. 39 were held in December 1988, and in January, February and March 1989, and numerous notes, comments, and other papers were exchanged among the Members. On 10 March 1989, I circulated for review by my colleagues a draft of the Award from the beginning through the liability section of the merits. On 29 March, I circulated a draft of

the Award section on standard of compensation. On 14 April, the draft Award section dealing with the counterclaims (except for one counterclaim) was circulated. And finally, on 28 April 1989, I circulated the draft Award sections dealing with valuation and the remaining counterclaim. In my accompanying note, I stated among other things the following:

"this therefore completes the draft of the Award . . . . I should appreciate having your comments on the whole draft by 26 May 1989. Obviously, remarks already made in previous notes need not be repeated and a mere reference thereto is sufficient."

On 22 May 1989, Mr. Aldrich submitted a twenty page Memorandum containing comments on the draft, to the other Members of Chamber Two.

On 29 May 1989, Mr. Khalilian addressed a note to me in which, other than pointing out the workload with respect to other cases before Chamber Two, he wrote the following:

"I am writing to inform you of the times by which I will be able to distribute my comments on the various sections of the Drafts Award in the above-mentioned Case [Case 39].

As indicated to you during our recent discussions, I have so far been unable to spend sufficient time on the Draft Award due to the workload which we have been experiencing as a result of the successive Hearings and deliberations which we have been recently holding.

. . .

This workload does not leave much room for me to spend on Case 39. Nevertheless I am intending to devote as much efforts as possible to Case 39 in July and I am hoping to distribute my first batch of comments covering Chapters I through IV (A) of the Draft Award by the end of August, i.e. within 10 days after my return from Summer holidays.

. . .

Considering the above-mentioned workload during just the few coming months, I cannot specify a definite time for preparation of each batch of my following comments, but I will do my best to submit them as much regularly as possible."

This Memorandum of 29 May 1989 was discussed at great length during a meeting of the Members on 31 May 1989. Furthermore, I had a long discussion on these matters with Mr. Khalilian on 30 May 1989. During these discussions I also clearly informed the other Members of what I felt were the proper figures to be inserted in the dispositive which for discretion purposes had been left blank.

I thereupon on 1 June 1989 I circulated a further draft to the Members and I stated at the end of my cover note:

"I would appreciate to receive your final comments not later than 21 June 1989."

On 2 June 1989, Mr. Khalilian addressed a note to me in which he stated among other things:

"I continue, owing to the Chamber and Tribunal workload, to maintain my remarks made in memo dated 29 May 1989. I re-emphasize that my comments will be fully distributed before the end of October 1989 at the latest."

When I next met Mr. Khalilian on 15 June 1989, I pointed out to him that his Memos did not correctly reflect what had transpired and I informed him that he had had the necessary opportunity to fully comment on the drafts he had received between 10 March and 28 April 1989 (the 1 June 1989 draft being basically identical to the 28 April draft) and that it was my intention that the Chamber sign the Award before the end of June 1989 as I felt that the deliberation of all issues had been completed and that the Members of the Chamber had had adequate time to consider the drafts submitted by me. I furthermore indicated that I would until

21 June 1989 be prepared to consider whatever comments he might wish to make.

On 23 June 1989, I circulated the following Memo to the Members:

"By 28 April 1989 all chapters of the draft Award in this Case had been circulated and I asked for comments by 26 May 1989. I received comments from Mr. Aldrich on 22 May 1989. A complete draft was thereupon circulated on 1 June 1989, asking for final comments not later than 21 June 1989. On 31 May 1989 I had indicated the figures which I felt appropriate and which for understandable reasons had been left blank in the draft.

I received two Memos from Mr. Khalilian dated 29 May 1989 and 2 June 1989 respectively, which, however, did not address the issues of this Case but dealt only with procedural matters.

I discussed these at long length with Mr. Khalilian on 15 June 1989 pointing out that his Memos did not correctly reflect what had transpired.

As I have repeatedly stated, I consider that the deliberation of all issues has been completed and the Members of the Chamber have had adequate time to consider all matters and the drafts submitted.

. . .

I am herewith enclosing the final version of the Award. I have marked in the margin the changes made as compared to the 1 June draft. Further non-marked modifications only pertain to the citation format of Tribunal Awards.

I therefore invite you to my office on Thursday 29 June 1989 after the close of the Hearing in Case 12458 for the signature of this Award which will thereupon be filed in English and sent to translation for the Persian version which will be signed in due course."

On 23 June 1989 I received a communication from Mr. Khalilian which reads as follows:

"This is to inform you that I have serious reservations about various aspects of the above-mentioned Draft Award, including the elements entering into the valuation of the Claimant's interest which I would like to discuss with you.

However, as you are aware, there are complex issues involved particularly in the valuation section of the Award. I have therefore decided to put my comments forward in writing and expect you to respond to them likewise in writing so that we avoid wasting time in lengthy verbal discussions. At this stage I am sending you enclosed a discussion paper on the issue of the discount rate which you have decided to apply in this Case. I expect to receive your response to this discussion paper before I would be in a position to issue further comments. Your co-operation will facilitate and accelerate the process of commenting on, and finalizing, the Draft."

To this was annexed an eight-page document entitled "Discussion Paper on Discount Rate".

Next came an attempt by Mr. Khalilian to reach me by telephone in Geneva, described in para. 4 of his Statement. It is correct that he did try to contact me both at home and at my office. He, however, omits to mention that I had a telephone conversation on 28 June 1989 with one of his Legal Assistants who asked me for some clarifications. I specifically mentioned to the Legal Assistant that I had received the message to call Mr. Khalilian, but he told me that in view of my conversation with him it was no longer necessary for Mr. Khalilian to talk to me.

On 26 June 1989, I submitted the following note to Mr. Aldrich and Mr. Khalilian:

"Further to my note to you of 23 June 1989 regarding the award in Case 39 I should like to invite you to my office on Thursday 29 June 1989 at 12.30pm for the signing of such award.

I intend to be at the Tribunal the same day not later than 8.30am and I am, of course, free for any discussions that morning."

On 27 June 1989, the Members received from Mr. Khalilian two documents regarding the valuation issue, one of 9 pages with 12 pages of annexed schedules, the other consisting of 2 pages with 23 pages of computations annexed thereto.

At the end of the afternoon of 27 June 1989, the Members of Chamber Two received from Mr. Khalilian a further document of some fifty-five pages entitled "Case 39 Comments on Draft Award" which for all practical purposes is identical with Annexes 3, 4, 5 and 6 to Mr. Khalilian's Statement.

Shortly before 6p.m. on 28 June 1989, Mr. Khalilian distributed to the Members and tried to submit to the Registry for filing what now constitutes Annex 8 to his Statement. The Registry refused to accept this filing as the text clearly violates Note 2 to Article 31 of the Tribunal Rules regarding the secrecy of the deliberations. I have given the necessary response to the Members of Chamber Two regarding the matter dealt with by Mr. Khalilian in his submission and I do not think that this public Statement is the proper place for discussion of this internal matter.

In the morning of 29 June 1989, the Chamber met and discussed at some length various issues concerning the Award, and not unimportant changes were still made to the Award.


In the fifty-six pages of remarks submitted on 27 June 1989 which is also annexed to Mr. Khalilian's Statement, a number of interesting points are raised. It is only regrettable that Mr. Khalilian did not feel it necessary to submit these documents at an earlier stage or even to mention earlier that he was in the process of preparing these documents and would submit them by a date on which one would probably have been able to agree.



Regarding Mr. Khalilian's remarks in para. 3 of his Statement, I must confess that I am at a total loss to understand how the deliberations of Chamber Two in this Case and my schedule for receiving comments from the other Members as well as the envisaged date of signature could in any way be considered as "exerting extreme pressure on the Iranian Government".

Last, but not least, I must mention that I find it regrettable that Mr. Khalilian once more feels it necessary not only to criticize the substance of the Award (to which he is, of course, entitled) but also and mainly to indulge in a personal attack on me. I do not consider it proper to respond to these invectives as I trust that the public record of my activity at this Tribunal, as reflected in the Awards rendered by Chamber Two under my chairmanship, constitutes the proper answer to an objective observer.

Dated, The Hague  
14 July 1989

  
Robert Briner  
Chairman  
Chamber Two