

39-397

ORIGINAL DOCUMENTS IN SAFE

Case No. 39

Date of filing: 15.Sep89

** 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 _____
- Date _____
_____ pages in English _____ pages in Farsi

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

** OTHER; Nature of document: Addendum to the second
Supplemental statement
Mr Khalilian
- Date 15.Sep89
4 pages in English _____ pages in Farsi

397

In the Name of God



CASE NO. 39

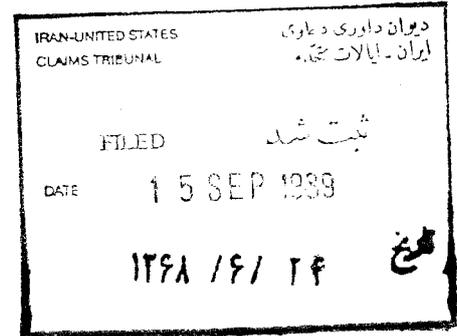
CHAMBER TWO

AWARD NO. 425-39-2

PHILLIPS PETROLEUM COMPANY IRAN,
Claimant,

and

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



Addendum to the Second Supplemental
Statement of Seyed Khalil Khalilian

1. I am issuing this addendum with a view to clarifying two particular points discussed in my Second Supplemental Statement filed on 6 September 1989. The first point deals with the large discrepancy between the claimant's estimate of oil reserves in its report to the Securities and Exchange Commission of the United States (the SEC Report), on the one hand, and the estimate it produced for the purpose of litigation in Case 39, on the other. The second point concerns the interrelation between the Award and the secret computations exchanged between Mr. Briner and Mr. Aldrich.

A. The SEC Report

2. In his supplemental statement, Mr. Aldrich attempts to cast suspicion on the validity of the Claimant's estimate of the oil reserves in the SEC Report in order to muddle up the large discrepancy (32 million barrels) between the SEC Report and "the Award". It has also been suggested that Phillips might have understated its oil reserves in the SEC Report for tax reasons. It should, however, be noted that:

- a) The estimate in the SEC report relates to unrecovered reserves (i.e. reserves remaining under the ground to be produced over the next 20 years). It cannot therefore, be imagined that Phillips would have been taxed on oil reserves which it has not as yet recovered or included in its income. Indeed, pages 4 and 7 of section 2 of the SEC Reports filed with the Tribunal make it clear that no consideration was given by Phillips to income taxes in estimating the future net revenues. It is not realistic to suggest that a company would be taxed on the basis of its estimate of future revenues.
- b) It would have been inappropriate for Phillips to understate its oil reserves and, thus, mislead its shareholders or potential investors who would usually place extensive reliance in the SEC Reports;
- c) There is no reason to speculate that Phillips might have understated the oil reserves in the SEC Report. On the contrary, contemporaneous evidence indicates that in its fictitious scenario produced for the purpose of the litigation in Case 39,

Phillips deliberately quadrupled those reserves in the hope of raking in a windfall.

- d) This Tribunal has been relying upon similar SEC Reports in reaching its decisions on a number of occasions.

B. Interrelation between the Secret Computation and the Award

3. In paragraph 27 of my Second Supplemental Statement, I produced an analysis demonstrating the link between the compensation amount of \$65 million previously inserted in the final version of the Draft Award and the range of values arrived at in the secret computations. It should be added in this connection that the secret computations had been based on Mr. Aldrich's initial estimate of oil reserves amounting to over 318 million barrels and oil prices amounting to 15% less than those suggested by the claimant. Mr. Briner, however, subsequently adjusted the estimate of oil reserves to a range of 280-290 million barrels, i.e. approximately 11% less than Mr. Aldrich's previous estimate in the secret computations. Taking into account this modification, Mr. Briner used all the elements in the secret computations as the basis for arriving at the compensation amount. Thus, the figure of \$79 million arrived at in the secret computations was adjusted by 11% to \$70 million from which an amount between \$4-\$5 million had to be deducted for the past debts owed by Phillips referred to in para. 156 of the Award. This left Mr. Briner with a figure of \$65 million which was inserted in the final version of the Draft Award, on 22

June 1989¹. Mr. Aldrich, reluctantly agreed with this adjustment of 11% to the oil reserves in order to form a majority. This point is confirmed in his memorandum of 16 June 1989 in which he was still insisting on the previous estimates included in the secret computations, as referred to in paragraph 27 of my Second Supplemental Statement. It is therefore quite evident that the secret computations did in fact form the basis of "the Award" issued by Mr. Briner and Mr. Aldrich. Indeed, the secret computations refer, in a number of places to the Tribunal's determinations and also to the matters contained in Mr. Aldrich's written comments which were subsequently incorporated into "the Award", and also in his Concurring Opinion.

The Hague, 15 September 1989/24 Shahrivar 1368



Seyed Khalil Khalilian

¹ This figure of \$65 million had been decided upon by Mr. Briner prior to 22 June and was disclosed to the members some time earlier. Thereafter, Mr. Aldrich commented upon this figure in his memorandum of 16 June 1989 and the same amount was subsequently confirmed and inserted in the final version of the Draft Award which Mr. Briner distributed attached to his memorandum of 22 June 1989.