

39-409

ORIGINAL DOCUMENTS IN SAFE

Case No. 39

Date of filing: 19 Jan 1990

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

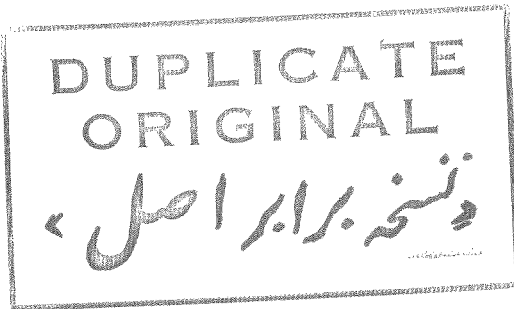
** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

** 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: Separate Statement
of George H. Abulmad
- Date 17 Jan 1990
3 pages in English 3 pages in Farsi



CASE NO. 39

CHAMBER TWO

AWARD NO. 461-39-2

PHILLIPS PETROLEUM COMPANY IRAN,
Claimant,

and

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

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	19 JAN 1990
	تاریخ ۲۹ / ۱۰ / ۱۳۶۸

SEPARATE STATEMENT OF GEORGE H. ALDRICH

In order to avoid any misunderstanding as to the status of Award 425-39-2 in light of the issuance of this Award on Agreed Terms, I believe it important to point out that that earlier Award, which was rendered by the Tribunal on 29 June 1989 in English only, was an Award by the Tribunal which Article IV, paragraph 1, of the Claims Settlement Declaration, declares to be "final and binding". The Respondents in Case No. 39 acknowledged this in their Memorial in Case A25 by stating (at page 3) that they do not seek an appeal of Award 425-39-2, as they "understand Article IV(1) of the Claims Settlement Declaration, which provides that 'all decisions and awards of the Tribunal shall be final and binding', as precluding such appeals."

The fact that the Persian version of the Award has not been filed does not affect the status of the Award. While Note 2 to Article 17 of the Tribunal Rules understandably

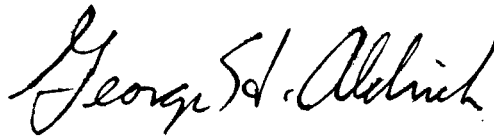
specifies that both official languages of the Tribunal shall be used for "all oral hearings, decisions and awards", the practice has been well established by the Tribunal that any documents may be filed in only one of the languages whenever so decided by the Tribunal or by its Chairman. All three Chambers have filed awards in English only from time to time, and separate opinions have often been filed by the Iranian Members in Persian only and by the American Members in English only. In all such cases, it is clear that the version filed first is definitive and, with respect to awards, immutable (except for the possibility of technical corrections made in accordance with Article 36 of the Tribunal Rules) and that the version filed subsequently in the other language is merely a translation.

In Case No. 39, the Tribunal decided to file its Award in English only when the Award was signed on 29 June 1989. Given the length of the Award, the Tribunal's language staff estimated that two to three months would be required to prepare the Persian text. While that text was in preparation, the Respondents in this Case applied to the Full Tribunal for the annulment of the Award. That application was given the number A25. In view of the pendency of that application, the Chairman of the Chamber decided to refrain from filing the Persian text of the Award and, as President of the Tribunal, decided to refrain from notifying the Escrow Agent of the Award for purposes of payment from the Security Account.

In the event, the Parties concluded a settlement, apparently also resolving certain issues not within the jurisdiction of the Tribunal. As part of that settlement, the Respondents agreed to withdraw their application in Case A25, and all Parties agreed to waive their rights under that Award (to be effective only after the requested Award on Agreed Terms is issued and notification is sent to the Escrow Agent). This, of course, they were free to do. As the Tribunal had not completed the ministerial actions

required of it with respect to the Award, its proceedings in Case No. 39 were not completed, and the Tribunal accordingly concluded that it was able to accept that settlement for incorporation into an Award on Agreed Terms and to request the President to notify that Award, rather than Award 425-39-2, to the Escrow Agent for purposes of payment out of the Security Account. Those actions, however, cannot change the fact that Award 425-39-2 is the Award that was rendered by the Tribunal following its prolonged deliberations, and it remains the definitive statement of the Tribunal's conclusions and reasoning with respect to this Case.

Dated, The Hague
17 January 1990

A handwritten signature in cursive script, reading "George H. Aldrich". The signature is written in dark ink and is positioned above a horizontal line.

George H. Aldrich