IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

IN THE NAME OF GOD

CASES NOS. 44, 46, and 47
CHAMBER THREE
AWARD NO. 560-44/46/47-3

SHAHIN SHAINE EBRAHIMI,
CECILIA RADENE EBRAHIMI,
CHRISTINA TANDIS EBRAHIMI,
Claimants,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

CORRECTION TO THE SEPARATE OPINION OF MOHSEN AGHAHOSSEINI

The following corrections are made to the English text of the Separate Opinion of Mohsen Aghahosseini filed in these Cases on 9 February 1995:

1. Page 5, line 6: The word "exulted" should read: "exalted"

2. Page 9, line 14: The phrase: "...as a factor is determining..." should read "...as a factor in determining..."

Copies of the corrected pages are attached hereto.

Dated, The Hague,
9 March 1995.

Mohsen Aghahosseini

What, then, the advocates of never-less-than-full-compensation must justify is not their simple respect for, or even their fascination with, property-- with capital-- but the developing of this into an obsession of such magnitude as to deny the possible effects of all other principles, of all other considerations, however pertinent, on this exalted and canonized right of property.

After many years of ceaseless efforts exerted by very many States, it has now been long established, for instance, that nations are sovereign over their natural resources and have the right to dispose of them in accordance with their interest. It has long been demonstrated, again, that international community is in need of new principles governing international economic relations; that nationalizations, at times, are absolutely necessary for social purposes. Now, what must be justified by the opponents of the flexible approach is not that the ownership of property should be respected, but why these considerations should have no place in the determination of compensation for a taken property. And on this, of course, no justification is provided.

The assertion with regard to the Treaty of Amity, that its provisions as lex specialis in the relations between the parties require full compensation whatever the dictate of customary international law, is equally misplaced. Assuming, for the sake of argument only, that the Treaty does apply to claimants of dual Iran- United States nationality, and assuming, further, that the relevant terms of the Treaty required at the time of conclusion the payment of full compensation in cases of taking, its present application to the parties at hand mandates the observance of a flexible standard only. This is because of the necessity to take note, when interpreting the Treaty, of the emergence of the

circumstances-- brings me to one such circumstance, the presence or absence of fault on the part of a respondent.

In his capacity as the International Law Commission's Special Rapporteur on State Responsibility, the Chairman of this Chamber has told us of the importance, in the Commission's Provisional Draft Articles, of fault as a necessary condition of State liability:

> According to our understanding, particularly in view of the presence of Article 31... and of the commentary thereto, the Commission seemed rather to believe that fault was a sine qua non condition of wrongfulness and responsibility.[12]

Next, he has told us of his own view of the importance at any rate of fault or lack of it as a factor in determining the consequences of an international wrong --the degree of required compensation, for instance.

> Whether or not there are cases in which responsibility is attributed regardless of the absence of any degree of fault, there is no doubt, in our opinion, about the relevance of fault with regard to the specific determination of the consequences of an internationally wrongful act. One thing would be to say that the presence of fault is not essential for an act to cross the threshold separating the lawful from the unlawful. Another thing is to say that the legal consequences of an act which has passed that threshold are the same whether or not any fault (dolus included) is present in any degree.[13]

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[12] Gaetano Arangio-Ruiz, Special Rapporteur, Second Report on State Responsibility, Addendum, U.N. Doc. A/CN.4/425/Add.1, par. 163, p. 3 (22 June 1989).

[13] Id. at 3-4. Others, including the current President of the International Court of Justice, have come to the same conclusion:

> ...[T]he element of fault should play an important part in any examination of the consequences (reparation, satisfaction, or sanctions) of the