

ORIGINAL DOCUMENTS IN SAFE

Case No. 498

Date of filing: 9 Feb 1984

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

\*\* DECISION - Date of Decision \_\_\_\_\_  
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\*\* CONCURRING OPINION of \_\_\_\_\_  
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\*\* SEPARATE OPINION of \_\_\_\_\_  
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\*\* DISSENTING OPINION of Mr Howard U. Holtzmann to award  
agreed terms  
 - Date 9 Feb 1984  
6 pages in English \_\_\_\_\_ pages in Farsi

\*\* OTHER; Nature of document: \_\_\_\_\_  
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- Date \_\_\_\_\_  
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DUPLICATE  
ORIGINAL

نسخہ برابر اصل

CASE NO. 488

CHAMBER ONE

AWARD NO. 96-488-1

PAN AMERICAN WORLD AIRWAYS, INC.,  
and PAN AMERICAN WORLD SERVICES,  
INC.,

Claimants,

and

THE GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF IRAN, THE AIR FORCE  
OF IRAN, IRAN AIRCRAFT INDUSTRIES,  
BANK MELLI IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحدہ
فیلڈ - ثبت شد	
۱۲۶۲ / ۱۱ / ۲۵	
9 FEB 1984	
488	

DISSENTING OPINION OF HOWARD M. HOLTZMANN  
TO AWARD ON AGREED TERMS

I regret that I must dissent from the Award on Agreed Terms in this case which permits a potential abuse of the Security Account and which improperly cloaks the matter in secrecy.

I.

As stated in the Award on Agreed Terms, the parties have "certain reciprocal obligations." The particulars of these obligations are set forth in the Settlement Agreement and the Memorandum of Understanding which have been granted secret treatment by the majority of the Chamber. It reveals no trade or military secret to state, generally, that the

parties have agreed that the funds are to be paid from the Security Account to an escrow agent mutually chosen by them. The escrow agent merely acts as a conduit; it is to pay the funds over to the Claimants (herein collectively called "Pan American") upon delivery by Pan American of specified goods. The arrangement recognizes, however, that there is a possibility that, in certain circumstances, Pan American might not deliver the goods. In that event, the funds from the Security Account are to be paid by the escrow agent to the Ministry of Defense of the Islamic Republic of Iran.

The proper procedure would be that if the basis of the settlement fails because Pan American does not deliver the goods, any money from the Security Account would be returned by the escrow agent to the Security Account. In contrast, the arrangement of the parties which permits funds to pass from the Security Account to the Iranian Ministry of Defense violates the wording and purpose of the Algiers Declarations. Thus, for example, paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria, dated 19 January 1981, explicitly requires that "All funds in the security account are to be used for the sole purpose of securing the payment of, and paying, claims against Iran in accordance with the claims settlement agreement." The arrangement permitted by the Award on Agreed Terms in this case is plainly inconsistent with that treaty requirement governing the Tribunal.

II.

An additional source of my concern is that while the Settlement Agreement and Memorandum of Understanding provide for Pan American to deliver certain goods, it is impossible to determine from the information before the Tribunal whether those goods are covered by a claim arising before 19 January 1981, or whether they are new purchases which should be paid for by fresh funds rather than with money from the Security Account. As I stated in my dissent in the VSI Case,

[P]arties who propose a settlement which poses the type of questions which arise in this case must reasonably demonstrate by explanation and evidence that the transaction is appropriately within the framework of the Algiers Declarations.

Opinions of Howard M. Holtzmann re Three Awards on Agreed Terms, supra, (part II).

Accordingly, I would have required the parties to submit additional evidence. As I wrote in a similar case, it may be that such evidence

would have satisfactorily resolved the questions ... raised, in which event the Tribunal could have approved the settlement with confidence. Without such further information, however, the Award on Agreed Terms constitutes an unsupported and unwarranted withdrawal of funds from the Security Account.

The majority of the Chamber concluded that it was unnecessary to secure the additional information necessary to resolve the questions which the settlement poses. I think that was a serious mistake of principle and procedure ....

Dissenting Opinion of Howard M. Holtzmann to Award on Agreed Terms, Case No. 136 (filed 10 October 1983).

III.

It must be emphasized that in dissenting from what I consider to be improper withdrawals from the Security Account, I do not express any view as to whether the Security Account is sufficient to pay all Awards which might be made by the Tribunal, nor do I imply any belief that the Islamic Republic of Iran might fail to fulfill its treaty obligations to replenish the Security Account if that becomes necessary. I simply state that the Security Account is exactly what its name implies, an account which provides tangible funds as security for a broad class of thousands of claimants, large and small. The Security Account is thus in effect a trust fund; the Tribunal is the guardian of that fund, with a duty to ensure that it is used only for purposes that are "appropriate in view of the framework provided by the Algiers Declaration." Decision, Case A/1 (Issue II), 1 Iran-U.S. C.T.R. 144, 153 (dated 14 May 1982, filed 17 May 1982).

IV.

Finally, I must comment on the action of the majority of the Chamber in approving the request of the parties that the Settlement Agreement and Memorandum of Understanding attached to the Award on Agreed Terms be kept "strictly confidential".

The Tribunal Rules require that all Awards, including Awards on Agreed Terms, "shall be made available to public" unless the Tribunal exercises its discretion to delete portions containing trade or military secrets. Article 32, paragraph 5. In this case, the parties have not asserted that the Settlement Agreement or the Memorandum of Understanding contains trade or military secrets. Rather, they have asked that the full text of the documents be kept secret. That is not permitted under the Tribunal Rules.

As I have written in an earlier opinion, the requirement of the Tribunal Rules that Awards on Agreed Terms, together with all annexed documents which are integral parts of them, be made public "is a wise and proper policy:"

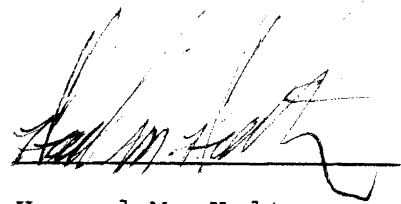
A primary purpose of Settlement Agreements is to provide for payment of settlements from the Security Account established by the Algiers Declarations. Any withdrawals from the Security Account affect the interest of parties in all cases. It is therefore highly inappropriate that a Settlement Agreement annexed to an Award which triggers such a withdrawal of funds should be cloaked in secrecy.

Opinions of Howard M. Holtzmann re Three Awards on Agreed Terms; Concurring as to Case Nos. 19 and 387; Dissenting as to Case No. 15 (part I) (filed 20 June 1983).

For the reasons explained above, I am disappointed that the parties have presented to us a settlement in this form. I am dismayed that the Tribunal has approved it, and that the settlement has been shrouded in secrecy. Therefore, I dissent from the Award on Agreed Terms.

Dated, The Hague

9 February 1984

A handwritten signature in dark ink, appearing to read 'H. M. Holtzmann', is written over a horizontal line.

Howard M. Holtzmann