

ORIGINAL DOCUMENTS IN SAFE

Case No. 71

Date of filing 22 Feb 1983

AWARD. Date of Award 18 Feb 1983

6 pages in English. — pages in Farsi.

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VI-E.

DECISION. Date of Decision \_\_\_\_\_

\_\_\_\_\_ pages in English. \_\_\_\_\_ pages in Farsi.

ORDER. Date of Order \_\_\_\_\_

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CONCURRING OPINION of \_\_\_\_\_

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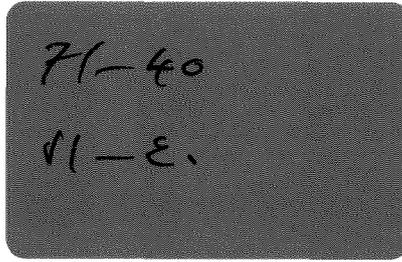
DISSENTING OPINION of \_\_\_\_\_

Date \_\_\_\_\_ pages in English. \_\_\_\_\_ pages in Farsi.

OTHER; Nature of document: \_\_\_\_\_

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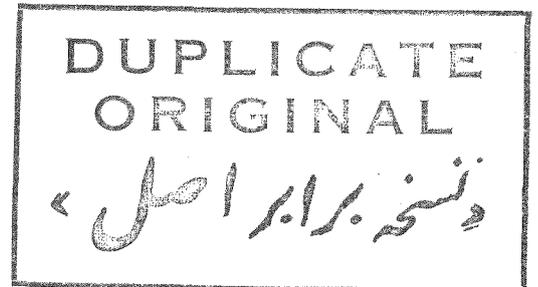
IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعوی ایران - ایالات متحده
ثبت شد - FILED	
Date	۱۳۶۱ / ۱۲ / ۲
22 FEB. 1983	
No.	71 VI



CASE NO. 71  
CHAMBER ONE

AWARD NO. 25-71-1

LILLIAN BYRDINE GRIMM,  
Claimant,  
and  
THE GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF IRAN,  
Respondent.



AWARD

Appearances: Mr. Edward R. Leahy,  
Steptoe & Johnson,  
Representative for the Claimant

Mr. Allahayar Mouri,  
Representative for the Respondent.

Also present: Mr. Mohammad K. Eshragh, Agent of the Islamic  
Republic of Iran,  
Mr. Arthur W. Rovine, Agent of the United  
States of America.

I

On 17 November 1981 Mrs. Lillian Byrdine Grimm ("Claimant") filed a claim against the Government of the Islamic Republic of Iran ("Respondent") for damages in the amount of \$1,900,000 which she alleged to have suffered as a result of the assassination of her husband, Mr. Paul Grimm, in Ahwaz, Iran, on 23 December 1978. Later, on 3 June 1982 by way of an amendment to the claim Claimant increased the amount of the claim to \$3,040,000 plus interest, costs and fees. Out of this sum \$2,040,000 represented compensation for loss of support from her husband and \$1,000,000 punitive damages for mental anguish, grief and suffering as a result of the assassination of her husband. Mr. Grimm was the Managing Director and General Manager of the Oil Service Company of Iran ("OSCO"), owned by a consortium of multinational oil companies which operated under a Sale and Purchase Agreement and a Service Contract for the National Iranian Oil Company. Claimant based her claims on an alleged breach by Respondent of its responsibility under international law to exercise due diligence in affording protection to her husband, who was an alien in Iran. Claimant asserted that the Tribunal had jurisdiction over the claim since she was a United States national and her claim arose before the entry into force of the Algiers Declarations and resulted from "measures affecting property rights" as required in Article II, paragraph 1, of the Claims Settlement Declaration.

Respondent contended that the Tribunal had no jurisdiction over the claim essentially for two reasons. Firstly, Respondent argued that the claim arose out of events related to "injury to the United States nationals or their property as a result of popular movements in the course of

the Islamic Revolution in Iran." Consequently, the claim was excluded from the Tribunal's jurisdiction under paragraph 11 of the Algiers Declaration of 19 January 1981 and Article II, paragraph 1, of the Claims Settlement Declaration. Secondly, Respondent also argued that the claim did not arise from "debts, contracts, expropriations or other measures affecting property rights" as required in Article II, paragraph 1, of the Claims Settlement Declaration.

## II

A crucial question in this case is whether the alleged failure to provide protection for Mr. Grimm is a measure "affecting property rights" of Mrs. Grimm.

It would perhaps be possible to accept that the words "other measures" may cover both acts and failures to act and that for Mrs. Grimm "property rights" have arisen or are involved in this case. However, to hold in the context of Article II, paragraph 1, that such "property rights" were affected by the alleged failure to protect Mr. Grimm is far from the natural understanding of the circumstances that this failure just affected the life and safety of Mr. Grimm. Furthermore, compensation for mental anguish, grief and suffering can obviously not be a property right that was affected by the alleged failure to provide adequate protection for Mr. Grimm. The right to such compensation, if any, arose out of the assassination; it did not even exist prior to the assassination and could not be affected by the failure to provide protection.

Moreover, under the well-known principle of ejusdem generis the words "other measures" in Article II, paragraph 1, ought to be, especially in the context of "debts and

contracts", construed as generically similar to "expropriations" and the alleged failure to provide protection is in no way similar to expropriations.

This conclusion is also supported by the fact that the Government of the United States in Case No. 428 before Chamber Two of this Tribunal has argued in favour of a similar interpretation of Article II, paragraph 1, of the Claims Settlement Declaration, although in a slightly different context. In that case an Iranian citizen claimed compensation for damages to his tanker truck which was fired upon and destroyed by armed forces of the United States in the course of the military operation apparently aimed at the rescue of the 52 United States nationals detained in Iran. The United States argued in its Statement of Defence that destruction of property of a tortious character did not generically come within the listed measures and was not intended by the Parties to the Claims Settlement Declaration to come within the Tribunal's jurisdiction. The Chamber dismissed the case for lack of jurisdiction, although not addressing the issue at hand. Haji-Bagherpour vs. The United States of America, Award No. 23-428-2.

The Tribunal further points out that it is generally recognized that a provision which establishes the scope of the jurisdiction of an arbitral tribunal should be given a restrictive interpretation.

If the Governments had intended to bring damages to surviving dependents within the ambit of the Tribunal's jurisdiction, it can be assumed that they would have done so by incorporating express language to that effect.

Thus, the language used in the United States - Mexican General Claims Convention and the United States - Mexican Special Claims Convention, both of 1923, and in the (Berlin)

Treaty of Peace of 25 August 1921 between the United States and Germany all expressly refer to damage suffered by persons as distinct from damage to property.

The Convention establishing the United States - Mexican General Claims Commission stated in Article 1: "All claims...for losses or damages suffered by persons or by their properties...shall be submitted to a Commission consisting of three members for decisions in accordance with the principles of international law, justice and equity." The relevant section of the Treaty of Versailles, which was incorporated by reference in the (Berlin) Treaty of Peace also provided:

Compensation may be claimed from Germany under Article 232 above in respect of total damage under the following categories:

(1) Damages to injured persons and to surviving dependents by personal injury to or death of civilians caused by acts of war, including bombardments or other attacks on land, or sea, or from the air, and all the direct consequences thereof, and of all operations of war by the two groups of belligerents wherever arising....

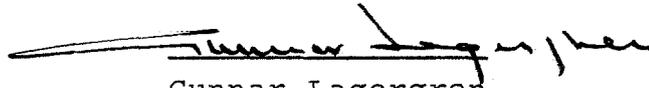
Treaty of Versailles, Part VIII (Annex I), June 28, 1919.

III

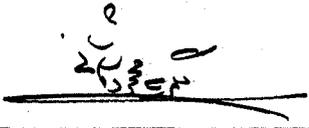
For the foregoing reasons,

THE TRIBUNAL dismisses the claim of Mrs. Grimm for lack of jurisdiction.

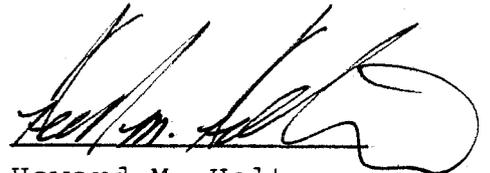
Dated, 18 February 1983,  
The Hague,



Gunnar Lagergren  
Chairman



Mahmoud M. Kashani



Howard M. Holtzmann  
(Dissenting Opinion)