IRAN-UNITED STATES CLAIMS TRIBUNAL

ایالات متحده [redacted] دیوا

ORIGINAL DOCUMENTS IN SAFE

Case No. 78 Date of filing: 13 Jan 86

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

** DECISION - Date of Decision _____
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** CONCURRING OPINION of Mr. Brower

- Date 13 Jan 86
4 pages in English _____ pages in Farsi

** SEPARATE OPINION of _____

- Date _____
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** DISSENTING OPINION of _____

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

CASE NO. 78
CHAMBER THREE
AWARD NO.209-78-3

TRANSOCEAN GULF OIL COMPANY,
Claimant,

and

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

CONCURRING OPINION OF CHARLES N. BROWER

I believe it appropriate to record certain considerations leading to my concurrence in the Awards on Agreed Terms in Cases Nos. 73 and 78.

The two Claims Settlement Agreements of the Parties note in their preambular recitations that "by another separate agreement [i.e., additional to the ones by which they settle the instant Cases] of even date", National Iranian Oil Company ("NIOC"), Chevron U.S.A. Inc. (formerly Gulf Oil Corporation), Transocean Gulf Oil Company and Chevron Corporation "have agreed to settle certain counterclaims of NIOC." When read together with the provisions in the Claims Settlement Agreements that the proceeds of these Awards on Agreed Terms be paid directly to London bank accounts of the Claimants, these recitations raise the possibility that such proceeds (or a portion

thereof) may ultimately be used to pay a NIOC counterclaim asserted in one of these two Cases.[1] Should that in fact be so, concern could arise as to whether the Tribunal, in issuing these Awards, and not requiring that all such counterclaims be netted against the claims, is condoning a dissipation of the Security Account for the benefit of an Iranian Counterclaimant in disregard of the Tribunal's duty to ensure, as provided in Paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria ("General Declaration"), that such Account be "used for the sole purpose of securing the payment of, and paying, claims against Iran."

I conclude, for the following reasons, that such concern would not be well founded and that these Awards are consistent with the Algiers Accords. Iran and United States, DEC. 8-A1-FT, at 13 (17 May 1982), reprinted in 1 Iran-U.S. C.T.R. 144, 153.

First, the total awarded to each of the Claimants, $57,500,000, is well within their respective demands in these Cases of $265,774,858 (Case No. 73) and $265,784,304 (Case No. 78), exclusive of interest and costs.

Second, the record currently before the Tribunal suggests that one "counterclaim" asserted in Case No. 78 reflects a genuine indebtedness[2] which demonstrably is

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[1]The Claimants in both Cases appear now to be under the common ownership of Chevron Corporation.

[2]The apparent validity of NIOC's demand is evidenced by the admitted issuance to NIOC by Gulf Overseas Trading Inc. of three documentary letters of credit:

Bank	L/C No.	Date	Amount	Expiry
Bank of America	32395	25.10.79	$ 54,000,000	29.1.80

(Footnote Continued)

outside our jurisdiction. That counterclaim was asserted against Gulf Overseas Trading Inc. in the amount of $101,926,132.75, plus accrued interest thereon, as payment for seven deliveries of oil between 31 October 1979 and 7 November 1979 pursuant to a contract dated 10 April 1979. As that company is not a claimant in that (or any other) Case, the Tribunal plainly lacks jurisdiction over that counterclaim. Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims By the Government of the United States of America and the Government of the Islamic Republic of Iran ("Claims Settlement Declaration"), Art. II(1); American Bell International Inc. and the Government of the Islamic Republic of Iran, Award No. ITL 41-48-3, at 13-14 (11 June 1984). Moreover, the fact that the counterclaim is based on a 10 April 1979 agreement, rather than the 1954 and 1973 agreements underlying the claim, suggests that jurisdiction is lacking because the counterclaim is not one "which arises out of the same contract, transaction, or occurence that contitutes the subject matter of" the claim as required by Article II(1) of the Claims Settlement Declaration. Morrison-Knudsen Pacific Ltd. and The Ministry of Roads and Transportation, Award No. 143-127-3, at 53 (13 July 1984).

(Footnote Continued)
(New York)

Bank of Tokyo, Ltd. (New York Agency)	110-LCI982420	5.11.79	$ 5,000,000	4.1.80
Bankers Trust Co.	W-70363	9.10.79	$ 45,000,000	29.1.80
		Total	$104,500,000	

(See Exhibit 3 to the Statement of Defense of the United States in Case No. A15/I-A.) Indeed, the Islamic Republic of Iran has asserted in Case No. A15/I-A that payment of these letters of credit (and those of other American oil companies for similar purchases) was prevented by acts of the American Government.

That counterclaim therefore need not be taken into account in any Award on Agreed Terms. Iran and United States, DEC. 8-A1-FT, at 12 (17 May 1982), reprinted in 1 Iran-U.S. C.T.R. 144, 152.

Third, the Agent of the United States in his letter of 6 January 1986 to the Tribunal commenting on the two Claims Settlement Agreements has stated that each "comports with the requirements of the Algiers Accords." Accordingly, there appear to be no considerations relating to the integrity of the Security Account in accordance with the provisions of Paragraph 7 of the General Declaration presently militating against granting these Awards.

Fourth, the Tribunal has rejected the Parties' request that the Claims Settlement Agreements be considered "as confidential" and thus all documents filed with the Tribunal as the basis for these Awards are public.

Thus I am satisfied that these Awards on Agreed Terms reflect a correct exercise of our jurisdiction and I concur in their issuance.

Charles N. Brower

Charles N. Brower