

IRAN-UNITED STATES CLAIMS TRIBUNAL

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحده
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In the Name of God

CASE NO. 93

CHAMBER ONE

DECISION NO. DEC 59-93-1

FORD AEROSPACE & COMMUNICATIONS
CORPORATION,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
BANK MARKAZI IRAN,

Respondents.

DUPLICATE
ORIGINAL

نسخه برابر اصل

DISSENTING OPINION OF MOHSEN MOSTAFAVI
WITH RESPECT TO DECISION NO. DEC 59-93-1

My opinion with respect to the military goods worth \$9,574,050 and remaining in the Claimant's possession is set forth in paragraph 3 of my Dissenting Opinion of 29 January 1987, and I thus do not concur in the present Decision. Admittedly, in its written submissions the Respondent has not expressly demanded these goods; moreover, the demand made on page 116 of Memorial No. 207 relates only to those goods which the Respondent furnished itself and made available to the Claimant, and does not extend to the other goods, which were furnished by the Claimant at the expense of the Respondent. However, the general presentation made by counsel for the Respondent at

the Hearing conference in connection with the demand for the goods cannot be regarded as meaning that its right to those goods has been waived, or as relating solely to the goods furnished by the Respondent. To accept such a position, one would have to predicate it upon the assumption that the Respondent has knowingly waived a part of its claim and remedy sought; whereas such a waiver, if any existed, would have to be stated expressly. In addition, such an assumption would be unjustified, because there would be no reason for the Respondent to request the Tribunal to leave the case open so as to retain its jurisdiction over disposition of the goods which the Respondent furnished and made available to the Claimant, and yet give up its claim to the other goods for no reason.

The present Decision describes Document No.223, wherein the Claimant admits to retaining possession over the said goods, only as "Back-Up Financial Data," and it concludes that it "does not constitute properly introduced pleadings or evidence." In view of the fact that the Claimant has submitted the said document to the Tribunal in order to substantiate its claim, it is not possible to accept only that portion of the document which serves to establish the Claimant's claim, and yet to treat the remainder thereof as invalid. In previous proceedings, this Chamber has treated such documents, which it has termed "back-up documents," as admissible in evidence (see: Award No.180-64-1, Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran (Air Force), page 29 (pages 25-26 of the English version)). Therefore, either this document should be regarded as valid in the instant case as well, or else it should be ruled that such documents cannot be relied upon as evidence. If the Tribunal regards such a document as inadmissible since it was not introduced in the ordinary course of exchange of memorials, then it can surely have no reservation with respect to the validity of Document No.227, which was submitted prop-

erly in the course of exchange of memorials. As I have stated in my Dissenting Opinion, the Claimant implicitly confirms in the footnote to page 12 of the said document, that only a part of those goods have been sold, and that it retains possession of the remainder (Farsi text, page 11; English text, page 13). However, the majority has unfortunately essentially disregarded this document and not addressed it in its Decision.

In light of both the foregoing and the points set forth in detail in my Dissenting Opinion, I remain strongly convinced-- since according to the Claimant's documents quantities of goods worth \$9,574,050 and furnished at the expense of the Respondent remain in the possession of the former-- that the Tribunal has the duty to issue an Order for their restitution to the Respondent.

The Hague,
Dated 4 May 1987



Sayyed Mohsen Mostafavi