IRAN-UNITED STATES CLAIMS TRIBUNAL

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Case No. 11875 Date of filing: 9 Feb 84

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** AWARD - Type of Award _____

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** DECISION - Date of Decision _____

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** CONCURRING OPINION of Mr Holtzmann in part

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** SEPARATE OPINION of _____

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- Date 9 Feb 84

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IRAN-UNITED STATES CLAIMS TRIBUNAL

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CASE NO. 11875

CHAMBER ONE

AWARD NO. 102-11875-1

THE GOVERNMENT OF THE UNITED STATES OF AMERICA, on behalf and for the benefit of SHIPSIDE PACKING COMPANY, INC.,

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,

Respondent.

[redacted]

OPINION OF HOWARD M. HOLTZMANN CONCURRING IN PART AND DISSENTING IN PART FROM AWARD ON AGREED TERMS

I concur in the substantive provisions of the Award on Agreed Terms in this case. I dissent, however, from the decision to shroud in secrecy the Settlement Agreement which is an integral part of the Award.

I. Concurring Views on Substance

It is public knowledge, and therefore does not breach the secrecy imposed by the Award, that Claimant, Shipside

Packing Company, Inc. ("Shipside") is engaged in the business of operating storage warehouses and packing goods for overseas shipment. It reveals no trade or military secrets to state, generally, that this case involved a claim for alleged unpaid storage charges.

The amount of the settlement which has been recorded as an Award on Agreed Terms is somewhat greater than the amount of the claim originally filed in 1981 because it now includes continuing storage charges accrued through 1983. The question thus arises of whether an Award can include not only alleged unpaid storage charges up to 19 January 1981, but also continuing charges thereafter. This is a significant question because only claims "outstanding" on 19 January 1981 are within the jurisdiction of the Tribunal. Claims Settlement Declaration, Article II, paragraph 1. As the Full Tribunal held in Case A/1, an Award on Agreed Terms cannot be made unless the Tribunal has determined that it has jurisdiction.[1]

The Tribunal has been informed by a letter from the Agent of the United States,[2] dated 11 January 1981, that the property stored by Shipside "is subject to a statutory

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[1] Decision, Case A/1 (Issue II), 1 Iran-U.S. C.T.R. 144, 152 (dated 14 May 1982, filed 17 May 1982).

[2] Because the claim in this case is for less than U.S. $250,000 it was presented by the Government of the United States, in accordance with the Claims Settlement Declaration, Article III, paragraph 3. It appears that Shipside elected to have its own counsel in this case who conducted the settlement negotiation and signed the Settlement Agreement.

warehouseman's lien under Maryland law as well as under the terms of the warehouse receipts issued by Shipside." The letter of the Agent of the United States further advises us that

> By the terms of Maryland law, as supported also by the terms of the warehouse receipts, the warehouseman lien covers all storage charges, insurance, labor, or charges present or future in relation to the goods, and expenses necessary for preservation of the goods .... Thus, there is a single lien which includes accruing storage charges, constituting a single claim. In the case of Shipside, this lien arose prior to January 19, 1981 as did the respondent's default. Therefore, the United States believes that the claim was outstanding as of 19 January 1981 and properly includes storage charges embraced by the lien, including charges through December 31, 1983. (Emphasis in original).

The letter of the Agent of the United States also states that

> The Agent for Iran joined with the U.S. Deputy Agent in signing the joint request for an award on agreed terms in this case.... [I]t appears that the United States and Iran are in agreement on the proper interpretation of the "outstanding" claim requirement as applied to this and any similar cases. Under applicable legal principles of treaty interpretation, this shared view by the United States and Iran on interpretation of the requirements of the Claims Settlement Agreement should be accorded considerable if not conclusive weight. See, for example, Article 31(3)(a) of the Vienna Convention on the Law of Treaties.

I agree with the reasoning which underlies this Award that the Tribunal has jurisdiction with respect to continuing storage charges after 19 January 1981. I am persuaded that the agreement of the Agents of the two Governments on the interpretation of the Claims Settlement Agreement, as reflected in their signing of the Joint Request for an Award

on Agreed terms, must be given great weight. Accordingly, I concur in including in the Award storage charges accrued after 19 January 1981, and in directing payment of such charges from the Security Account. I note, by way of analogy, that payment from the Security Account of continuing storage charges after 19 January 1981 is akin to paying continuing interest accrued after that date -- something which the Tribunal has awarded in a number of cases.

I also note that the parties have carefully and correctly provided that various charges for packing and transportation needed to carry out the Settlement Agreement are to be paid for from fresh funds and not from the Security Account.

II. Dissenting Views On Secrecy

I must dissent from the action of the majority of the Chamber in granting a request of the parties[3] that the Award on Agreed Terms be kept secret. As I have pointed out in other cases,[4] the Tribunal Rules permit confidential treatment only for military and trade secrets. Article 32, paragraph 5.

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[3] The Deputy Agent of the United States, who also signed the Joint Request, did not join in the request that the Settlment Agreement be granted secret treatment.

[3] See e.g., Opinion of Howard M. Holtzmann re Three Awards on Agreed Terms; Concurring as to Case No. 19 and 387; Dissenting as to Case No. 15 (Part I)(filed 20 June 1983); Pan American World Airways, Inc. and The Government of the Islamic Republic of Iran, Case No. 488, (Dissenting Opinion of Howard M. Holtzmann to Award on Agreed Terms) (filed 9 February 1983).

In this case, the Tribunal has mistakenly granted secrecy to a Settlement Agreement which contains nothing even remotely resembling a trade or military secret -- and the parties have not pointed to any confidential material or otherwise offered any reason for secrecy.

Sound considerations of policy point to the desirability of making public this entire Award on Agreed Terms, including the Settlement Agreement which is included by reference as part of it. The example of the mechanisms agreed to by the parties might be helpful in structuring settlements in other cases. Here secrecy hides a good example, as it hides a bad one in the Pan American Award on Agreed Terms.[4] I therefore dissent from the portion of the Award which provides that the Settlement Agreement be kept secret.

Dated, The Hague
9 February 1984

Howard M. Holtzmann

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[4] Pan American World Airways, Inc. and The Government of the Islamic Republic of Iran, Case No. 488 (Dissenting Opinion of Howard M. Holtzmann to Award on Agreed Terms) (filed 9 February 1983).