129-435
۱۲۹-۴۳۵

IMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

435

Case No. 129 Date of filing: 10 June 86

** AWARD - Type of Award Corrections to ITL
- Date of Award 27 Mar 86
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
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** OTHER; Nature of document: _____
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- Date _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 129
CHAMBER THREE
AWARD NO. ITL 59-129-3

SEDCO, INC.,

Claimant,

and

NATIONAL IRANIAN OIL COMPANY
and the ISLAMIC REPUBLIC OF IRAN,

Respondents.

CORRECTION OF AWARD

Pursuant to Article 36 of the Tribunal Rules, the Tribunal hereby corrects Award No. ITL 59-129-3 as follows:

1. Page 5, line 14, "(b)" should be changed to "(2)."

2. Page 6, line 25, a comma should be inserted after "(19 March 1986)".

3. Page 10, line 11, insert a comma after "resolutions".

Copies of the corrected pages are attached.

Dated, The Hague,
10 June 1986

Nils Mangård
Chairman
Chamber Three

In the name of God

Charles N. Brower
Separate Opinion

Parviz Ansari Moin
Dissenting Opinion

force at the time of the expropriation and continues to be in force today.

Alternatively, SEDCO claims to be entitled to full ("prompt, adequate and effective") compensation by virtue of customary international law. SEDCO contends that in the case of an ongoing business enterprise like SEDIRAN the full market value means going concern value including not only net assets but also good will and anticipated future earnings.[3]

Noting that in any event "unlawful takings are subject to the strictest compensation requirements," Claimant argues further that the expropriation of SEDIRAN was unlawful on three grounds: (1) because Iran failed to pay compensation, (2) because consequently it violated the Treaty of Amity, and (3) because Iranian law was incorrectly applied to SEDIRAN.

Respondents deny the applicability of the Treaty of Amity as a result of (1) the changes in U.S.-Iranian relations since the Iranian Revolution, (2) the signing of the Claims Settlement Declaration and (3) the fact that the

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(Footnote Continued)

SEDCO also claims interest computed from the date of the taking.

Claimant originally valued the property as of 30 June 1979, the last day of the last financial year for which SEDIRAN's accounting records are fully available. After the Tribunal found that the expropriation took place on 22 November 1979, Claimant submitted on 13 December 1985 a new balance sheet adjusted to reflect the situation on the date of the taking. No adjustments have been made, however, to the alleged value of the oil rigs as of 30 June 1979. In addition to adjustments reflecting the finding concerning the date of expropriation, Claimant purported to make certain modifications (an increase of $4,602,072) to its earlier calculation of damages. These other changes were rejected as untimely in the Tribunal's Order of 6 January 1986.

[3] But see note 2 supra.

Treaty of Amity's protections allegedly do not extend to non-U.S. nationals. Moreover, Respondents argue, the reference to "just compensation" to be found in the Treaty of Amity "embodied nothing but the prevailing principles and rules of international law and that international law has experienced a lot of evolutions so far, and therefore the 'just compensation' notion evolved along with the international law and, above them all, in line with U.N. Resolutions." The standard of "full" (or "prompt, adequate and effective") compensation in fact has never been the standpoint of international law, Respondents assert. Customary international law, according to Respondents, requires "appropriate" compensation to be measured in the light of all the circumstances of the case, and assessed with "unjust enrichment" as the guiding principle. Should any enrichment on the part of Respondents entitling Claimant to compensation be found, such compensation should be calculated according to the net book value of the company, a valuation basis allegedly widely used in compensation settlements in the oil industry.

III. CONCLUSIONS OF THE TRIBUNAL

The Parties disagree on the applicability of the Treaty of Amity to this Case. The Tribunal notes, however, that in Phelps Dodge Corp. and Islamic Republic of Iran, Award No. 217-99-2 (19 March 1986), the Tribunal held that Article IV (2) of the Treaty was "clearly applicable to [the investment at issue in that Case] at the time the claim arose" and that "whether or not the Treaty is still in force today, it is a relevant source of law on which the Tribunal is justified in drawing in reaching its decision."[4] We find the reasons set

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[4]The only objection raised in this Case not addressed by the award in Phelps Dodge, namely the application of the Treaty of Amity to non-U.S. nationals, is no longer relevant given the holding in the previous Interlocutory Award in this Case that the claim concerning the expropriation of SEDIRAN is a direct shareholder claim of SEDCO.

international law or can contribute - among other factors - to the creation of such law. See, e.g., de Aréchaga, "International Law in the Past Third of a Century", 159 Recueil des Cours 1, 30-34 (1978); Akehurst, "Custom as a Source of International Law," 47 Brit. Y.B. Int'l L. 1, 5-7 (1974-75); I. Brownlie, Principles of Public International Law 14-15, 696-697 (1979).

There is considerable unanimity in international arbitral practice and scholarly opinion that of the resolutions cited above, it is Resolution 1803, and not either of the two later resolutions, which at least reflects, if it does not evidence, current international law. See Texaco Overseas Petroleum Company/California Asiatic Oil Company and Libyan Arab Republic ("TOPCO") (Dupuy arb., Award of 19 January 1977), paras. 86-88, reprinted in 17 Int'l Legal Mat'ls 1, at 30 (1978); AMINOIL, supra, para. 143, 21 Int'l Legal Mat'ls at 1032; Chilean Copper Case (L.G. Hamburg 1973), reprinted in 12 Int'l Legal Mat'ls 251, 276 (1973); Separate Opinion of Judge Lagergren in INA Corporation and Islamic Republic of Iran, Award No. 184-161-1 (15 August 1985); I. Brownlie, Principles of Public International Law 14-15 (1979); R. Dolzer, Eigentum, Enteignung und Entschädigung im Geltenden Völkerrecht 53-54 (1985).

The pertinent part of Resolution 1803 provides:

> Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication . . . . (Emphasis added.)