IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

Case No. 148 148-71 Date of filing: 28-12-1993

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

** DECISION - Date of Decision 28 Dec 1993
15 pages in English 18 pages in Farsi

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

** SEPARATE OPINION of _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL
«نسخه برابر اصل»

CASE NO. 148
CHAMBER ONE
DECISION NO.D•E•C•118-148-1

IRAN-UNITED STATES CLAIMS TRIBUNAL
دیوان داوری دعاوی ایران - ایالات متحده
FILED ثبت شد
DATE 28 DEC 1983
تاریخ ۱۳۶۲/۱۰/۷

RAM INTERNATIONAL INDUSTRIES, INC.,
UNIVERSAL ELECTRONICS, INC.,
GENERAL AVIATION SUPPLY, INC.,
GALAXY ELECTRONICS CORP.,
Claimants,

and

THE AIR FORCE OF THE ISLAMIC
REPUBLIC OF IRAN,
Respondent.

DECISION

I. PROCEDURAL HISTORY

1. On 1 August 1991, the Agent of the Government of the Islamic Republic of Iran ("the Agent") filed a submission entitled "Request for Requiring the Claimants in Case No. 148 to Return to the Security Account or Iran the Fund Awarded to Them on the Basis of False Documents and Assertions" ("the Request"). In the Request the Agent contends that the Tribunal in Case No. 148, Ram International Industries, Inc., et al. and Air Force of the Islamic Republic of Iran, Award No. 67-148-1 (19 Aug. 1983), reprinted in 3 Iran-U.S. C.T.R. 203, awarded Universal Electronics, Inc. and General Aviation Supply, Inc.[1] U.S.$273,556.46, plus interest, on the basis of false documents and assertions.

2. On 5 September 1991, a letter was received from counsel for the original Claimants, requesting that the Tribunal deny the Request.

3. On 13 September 1991, the Agent, on behalf of the Air Force, filed an Affidavit of Mr. R.H. Moghadam in support of the Request.

4. In its Order signed on 30 December 1991 and filed on 6 January 1992, the Tribunal invited the original Claimants to file by 2 March 1992 a response to both the Request and the said

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[1] The original Claimants in Case No. 148 were Ram International Industries, Inc., Universal Electronics, Inc., General Aviation Supply, Inc. and Galaxy Electronics Corp. (collectively "the original Claimants"). However, only the claims of Universal Electronics, Inc. and General Aviation Supply, Inc. prevailed; in the Award it is stated that "[t]he claim...relating to Galaxy Electronics and Ram International, not having been pursued, is dismissed." Ram International Industries, Inc., et al. and Air Force of the Islamic Republic of Iran, Award No. 67-148-1, p. 6 (19 Aug. 1983), reprinted in 3 Iran-U.S. C.T.R. 203, 206.

In light of the above, and taking into account that the original Respondent in this Case was the Air Force of the Islamic Republic of Iran, the Tribunal deems it proper to consider THE AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN ("the Air Force"), UNIVERSAL ELECTRONICS, INC. ("Universal Electronics") and GENERAL AVIATION SUPPLY, INC. ("General Aviation Supply") as proper Parties to the present proceedings.

Affidavit. The original Claimants filed their response on 21 February 1992 (Doc. 61). They contend that the Request is baseless and ask that the Tribunal deny it.

5. By its Order of 10 March 1992, the Tribunal invited the Air Force to file by 12 May 1992 its comments on the response submitted by the original Claimants. On 12 August 1992, after having been granted an extension of time, the Agent, on behalf of the Islamic Republic of Iran and the Air Force, filed a "Reply to Claimants' Document No. 61," as well as Affidavits of Messrs. Abolghasem Sadighi and Azad Imani. In this submission it is requested that Messrs. Marvin Charter and Richard Graham, as sole shareholders of the Claimant corporations and as ultimate beneficiaries of the money previously awarded, also be joined in these proceedings and in any liability to repay the money received by Universal Electronics and General Aviation Supply.

6. On 24 August 1992, the Tribunal invited the original Claimants to file by 22 October 1992 a response to the Reply (Doc. 65). The Tribunal also indicated that after having received this response, it intended to decide the Request of 1 August 1991 on the basis of the documents submitted. On 19 October 1992, the original Claimants filed a "Memorandum in Response to Respondents' Document No. 65" together with "Certifications" of Messrs. Marvin Charter and Richard Graham. In addition, on the same date, Affidavits of Messrs. Anthony Liotti and George Murphy, originally prepared for and filed in Case No. 147 (para. 9, infra) were also received by the Registry for filing in the present proceedings. These Affidavits were distributed by the Registry with copies to the Agents of both Governments. The Tribunal considers these Affidavits as properly filed because they have been submitted timely in both official languages and were served on all the Parties to the Case and were provided to the arbitrators as well.

II. CONTENTIONS

A. The Air Force's Contentions

7. The Air Force requests the Tribunal to require Universal Electronics and General Aviation Supply as well as Messrs. Marvin Charter and Richard Graham, by whatever legal mechanism the Tribunal deems applicable, to return to the Security Account or to Iran, as the Tribunal may consider appropriate, the money and interest received under Award No. 67-148-1. The Air Force contends that the Award in Case No. 148 relied on forged documents and perjurious testimony. The Air Force also contends that its Request is not precluded by either the Algiers Declarations or the Tribunal Rules and that applicable principles of national and international law favor the admissibility of the Request. In addition, the Air Force denies the argument adduced by Universal Electronics and General Aviation Supply that the Air Force has waived its rights and should be estopped from asserting any claim for refund of the monies.

8. The Air Force argues that the Tribunal in Case No. 148 based its Award on two false grounds. First, the Air Force asserts that the Award was based on the assumed authenticity of a letter of 15 February 1978, from the Imperial Iranian Air Force Logistics Support Center in New York to Mr. Marvin Charter, purportedly signed on behalf of the Air Force by Colonel Sadighi, in which the Air Force agreed to extend the delivery dates of the goods at issue in Case No. 148. Second, the Air Force contends that the Award relied on the original Claimants' false assertion that these goods had been delivered to Behring International, Inc. ("Behring"), the Iranian Air Force's Freight-Forwarder in the United States.

9. With regard to the first ground of the Request, the Air Force notes that in Case No. 147, Ram International Industries, Inc., et al. and Islamic Republic of Iran, et al., Award No. 511-147-1 (9 May 1991), reprinted in 26 Iran-U.S. C.T.R. 228, it

contested the authenticity of the letter apparently bearing Colonel Sadighi's signature and that it, the Air Force, produced evidence to support this contention, including an Affidavit from Colonel Sadighi in which he stated he had not signed the letter in question. The Air Force contends that based on this evidence the Tribunal in Case No. 147 found that the Sadighi letter, in the words of the Air Force, "was not authentic and that, accordingly, it could not be relied on as a basis for granting the claim."

10. As to the second ground of the Request, the Air Force asserts that following the filing of the Award in Case No. 147, the Air Force discovered that, contrary to the original Claimants' assertion in Case No. 148, the items underlying the claim in Case No. 148 were never delivered to the Behring warehouse. The Air Force states that an inventory of the defense articles delivered to the warehouse during the few months before the Iranian Revolution was made available to it as a result of Chamber Three's Orders of 22 February and 16 April 1985 and its Interim Award in Behring International, Inc. and Islamic Republic of Iran Air Force, et al., Interim Award No. ITM 46-382-3 (22 Feb. 1985), reprinted in 8 Iran-U.S. C.T.R. 44. The inventory was prepared by a Swedish Expert, Mr. Sigfrid Akselson, who had been appointed by Chamber Three, and was reviewed and examined by a technical adviser of the Air Force, Mr. R.H. Moghadam. Mr. Moghadam states in his Affidavit that when he examined the inventory list prepared by Mr. Akselson in connection with Case No. 382, Mr. Moghadam could find no trace of the items for which compensation had been sought in Case No. 148. The Air Force has also submitted an Affidavit to the same effect by another of its employees, Mr. Azad Imani of its Accounting Department, in which in addition he testified that the goods in question had not arrived in Iran. The Air Force contends that all this establishes that the said items never were duly delivered. The Air Force therefore concludes that the inventory drawn up by the Tribunal-appointed Expert in Case No. 382 shows the falsity both of Mr. Charter's testimony and of Universal Electronics' and General

Aviation Supply's other documentary evidence submitted in Case No. 148 to prove delivery.

B. The Contentions of Universal Electronics and General Aviation Supply

11. Universal Electronics and General Aviation Supply contend that the Air Force's Request is untimely. They state that no indication has been given by the Air Force of any efforts made, prior to the Award in Case No. 148, to locate Colonel Sadighi or to dispute the legitimacy of the contentions presented by the Claimants in that Case. They further allege that, assuming that the Air Force was aware of evidence to rebut the authenticity of the letter of 15 February 1978 by July 1985, the date of Colonel Sadighi's Affidavit submitted in Case No. 147, its conduct in waiting for an additional period of six years before making the present Request is alone sufficient reason for the Tribunal to decline consideration of it. Also, Universal Electronics and General Aviation Supply contend that the Air Force, through its behaviour during the Hearing in Case No. 148 and thereafter, has waived its rights and should be estopped from asserting any claim for refund of monies.

12. Universal Electronics and General Aviation Supply further state that the Algiers Declarations and the Tribunal Rules do not allow the relief that the Air Force is seeking. They also state that the return of the money at this time would represent a substantial hardship to the companies. In addition, Universal Electronics and General Aviation Supply contend that there is no basis to order the individual shareholders of the corporations to refund the money awarded.

13. Replying specifically to the first ground of the Request, Universal Electronics and General Aviation Supply assert that the Tribunal's Award in Case No. 147 did not establish that the letter of 15 February 1978 was fraudulent. Nor, they contend, did the Tribunal in that Award find any improper or fraudulent

conduct upon the part of the original Claimants with regard to the submission of that letter. Further, Universal Electronics and General Aviation Supply state that the letter was only one of a number of relevant factors upon which the Tribunal based its Award in Case No. 148. They emphasize that, in view of the fact that the goods were delivered and accepted, the Tribunal could well have decided in favor of the original Claimants in Case No. 148, even if the letter was not considered authorized or authentic.

14. With respect to the second ground of the Request, Universal Electronics and General Aviation Supply emphasize that the Air Force did not dispute at the time Case No. 148 was originally decided that the goods were delivered to Behring, which the Air Force admitted was an authorized agent to receive the goods. Furthermore, Universal Electronics and General Aviation Supply state that they produced at the Hearing in Case No. 148 originals of all appropriate documents showing that they had performed the conditions of the contracts in question and allege that payment had been approved by authorized officials acting on behalf of Iran. According to the Affidavit of Mr. Liotti, "[the] orders were never cancelled for being late or otherwise." As regards the Affidavits of Messrs. Moghadam and Imani, Universal Electronics and General Aviation Supply assert that they did not control what was in the warehouse at the time of the inventory made by Mr. Akselson and that, anyhow, the warehouse's contents at the time of the inventory do not establish whether the goods were previously delivered. They further state that it was only required that the goods be delivered to Behring in the United States, not that they arrive in Iran, so that any failure of the goods to arrive in Iran would not constitute a breach of the agreement set forth in the contracts.

III. REASONS FOR THE DECISION

15. At the outset the Tribunal notes that both the Claims Settlement Declaration and the Tribunal Rules provide for finality of the awards rendered by the Tribunal. Article IV, paragraph 1 of the Claims Settlement Declaration provides that "[a]ll decisions and awards of the Tribunal shall be final and binding." Similarly, Article 32, paragraph 2 of the Tribunal Rules states that an award rendered by the Tribunal "shall be final and binding on the parties." A few exceptions to the principle of finality expressed in these Articles are created by Articles 35, 36 and 37 of the Tribunal Rules.[2] However, the Air Force's Request is not based on any of the circumstances covered by these Articles. Rather, the Air Force makes a request to return to the Security Account or to Iran the amount awarded to Universal Electronics and General Aviation Supply. In effect, such a request seeks to have the Tribunal reopen and reconsider a case on the merits after an award has been rendered, an action that is not explicitly within the scope of the Tribunal Rules.

16. In the absence of an express grant of authority to the Tribunal to reopen and reconsider cases on the merits after the issuance of an award, the question has been posed as to the existence of an inherent power to do so "under exceptional circumstances", at least where an award "was based on forged documents or perjury." See, e.g., Henry Morris and Government of the Islamic Republic of Iran, et al., Decision No. DEC 26-200-1, p. 2 (16 Sept. 1983), reprinted in 3 Iran-U.S. C.T.R. 364, 365; Mark Dallal and Islamic Republic of Iran, et al., Decision No. DEC 30-149-1, p. 2 (12 Jan. 1984), reprinted in 5 Iran-U.S. C.T.R. 74, 75; Dames & Moore and Islamic Republic of Iran, et

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[2] Following issuance of an award, the arbitrators may, in accordance with these Articles, give an interpretation of their award (Article 35), or correct "any errors in computation, any clerical or typographical errors, or any errors of similar nature" (Article 36), or "make an additional award as to claims presented in the arbitral proceedings but omitted from the award" (Article 37).

al., Decision No. DEC 36-54-3, pp. 18-21 (23 Apr. 1985), reprinted in 8 Iran-U.S. C.T.R. 107, 117-18; World Farmers Trading Incorporated and Government Trading Corporation, et al., Decision No. DEC 93-764-1, para. 3 (3 Oct. 1990), reprinted in 25 Iran-U.S. C.T.R. 186, 187; Gloria Jean Cherafat, et al. and Islamic Republic of Iran, Decision No. DEC 106-277-2, paras. 19-21 (25 June 1992), reprinted in ____ Iran-U.S. C.T.R. ___.

17. In these Cases the Tribunal specifically reserved its position as to whether it has inherent or implied power to revise an award under certain circumstances. The Tribunal's first effort to ascertain the views expressed in judicial decisions and by learned writers on revision of awards has been undertaken in Dames & Moore, supra, p. 18. Below follows a further inquiry. Special attention will be given to courts and tribunals similar to our Tribunal and operating for protracted periods.[3]

18. Article 55 of the 1899 Hague Convention for the Pacific Settlement of International Disputes, as well as Article 83 of the 1907 Hague Convention of the same name, provide:

> The parties can reserve in the "Compromis" the right to demand the revision of the award.
>
> In this case, and unless there be an agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence on the award, and which, at the time the discussion was closed, was unknown to the Tribunal and to the party demanding the revision. (emphasis added)

Similar preconditions for revision were set by the rules of procedure of several mixed arbitral tribunals established after

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[3] Article V of the Claims Settlement Declaration provides that "[t]he Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances."

the two World Wars.[4] Despite the provision for finality, revision is also expressly provided for in the Statute and Rules of the International Court of Justice. According to Article 61 of the Statute

> [a]n application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

A similar provision is to be found in Rule 58 of the Rules of Court of the European Court of Human Rights. See also Article 39 of the International Law Commission's Model Draft on Arbitral Procedure of 1958.

19. Also, in the absence of such a provision, and, at times, even despite the presence of provisions qualifying the awards as final and binding, similar conditions for revision have been resorted to in the practice of international tribunals.[5] Such

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[4] See, e.g., Art. 91 of the Rules of Procedure of the Anglo-Austrian Mixed Arbitral Tribunal, reprinted in 1 Recueil des décisions des Tribunaux arbitraux mixtes 622, 635 (1922); Art. 79 of the Rules of Procedure of the Franco-German Mixed Arbitral Tribunal, id. 44, 55; Art. 76 of the Rules of Procedure of the Belgo-German Mixed Arbitral Tribunal, id. 33, 43; Art. 48(a) of the Rules of Procedure of the Arbitral Tribunal and the Mixed Commission for the Agreement on German External Debts, reprinted in K. Oellers-Frahm and N. Wühler, Dispute Settlement in Public International Law 772, 779-780 (1984); Rule 68 of the Rules of Procedure of the Arbitral Commission on Property, Rights and Interests in Germany, reprinted in Bundesgesetzblatt 230, 249 (1957). See also J. Gillis Wetter, II The International Arbitral Process: Public and Private 557 (1979).

[5] See, e.g., George Moore v. Mexico Case (26 July 1871) (U.S.-Mexican Mixed Claims Commission) reprinted in 2 J.B. Moore International Arbitrations 1357 (1898) (reconsidering a final award on the basis of a new document and holding that "[w]henever the evidence produced on a motion for a rehearing before the commission is of a certain and conclusive character, such as ought undoubtedly to produce a change in the minds of the commissioners and convince them of petitioner's right to an award, we are disposed to grant the motion and award according to public law, equity, and justice. If there be an exception to this practice, it must be where there has been some gross laches of the claimant, or where, to allow the motion, at the time and under the circumstances, injustice would probably be done to the

conditions have furthermore been accepted as sound in legal studies and writings discussing the circumstances under which revision can be sought.[6] It has also been considered that discovery of fraud by a witness or by a party is embraced within the concept of a new fact which might justify revision.[7]

20. On the basis of the foregoing review, it might possibly be concluded that a tribunal, like the present one, which is to adjudicate a large group of cases and for a protracted period of

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government defending."); Effect of Awards of Compensation made by the U.N. Administrative Tribunal (Advisory Opinion of 13 July 1954), 1954 I.C.J. Reports 47, 55 (a rule that a judgment is final and without appeal "cannot...be considered as excluding the Tribunal from itself revising a judgment in special circumstances when new facts of decisive importance have been discovered...."); Opinion of Mr. Justice Roberts, Umpire, concerning the petition for rehearing on the ground of fraud and collusion in Lehigh Valley Railroad (United States) v. Germany ("The Sabotage Cases") (15 Dec. 1933) (U.S.-German Mixed Claims Commission), reprinted in 8 U.N. Reports of International Arbitral Awards 160. But see, Opinion of Sir Edward Thornton, Umpire, concerning the petition for rehearing in the Benjamin Weil and the La Abra Silver Mining Co. Cases (20 Oct. 1876) (U.S.-Mexican Mixed Claims Commission), reprinted in Moore, supra 1324, 1329 (holding that he was debarred from exercising a power of revision despite presentation of "evidence which, if not refuted by the claimant, would certainly contribute to the suspicion that perjury has been committed and that the whole claim is a fraud"); for different decisions by Umpire Thornton in other situations, see Moore, supra 1357-1358.

[6] J. Simpson & H. Fox, International Arbitration 242 (1959); W. Reisman, Nullity and Revision 208-212 (1971); K. Carlston, The Process of International Arbitration 57-58, 224-228, 232 (1972); D. Sandifer, Evidence before International Tribunals 426 (1975); E. Lauterpacht, Aspects of the Administration of International Justice 100 (1991).

[7] J. Simpson & H. Fox, supra fn. 6, 244-245; K. Carlston, supra fn. 6, 237-238; D. Sandifer, supra fn. 6, 455-456. Cf., "The Sabotage Cases", supra fn. 5, 189 - 190. ("The Commission is not functus officio. It still sits as a court. To it in that capacity are brought charges that it has been defrauded and misled by perjury, collusion, and suppression. No tribunal worthy its name or of any respect may allow its decision to stand if such allegations are well-founded. Every tribunal has inherent power to reopen and to revise a decision induced by fraud. If it may correct its own errors and mistakes, a fortiori it may, while it still has jurisdiction of a cause, correct errors into which it has been led by fraud or collusion.")

time would by implication, until the adjournment and dissolution of the tribunal, have the authority to revise decisions induced by fraud.[8] However, in view of what follows, this question does not need to be fully pursued and decided for the purpose of the present Case. On the other hand, one requirement, namely, that an application for revision of an award "may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor" follows closely the language of all reviewed legal provisions, judicial decisions and views of learned writers. Therefore, the Tribunal holds that for the purpose of a revision the new fact has to be decisive, in the sense that when placed alongside the other facts of the case, earlier assessed, it seriously upsets the balance, and consequently the conclusions drawn by the tribunal.[9]

21. Turning, next, to explore the grounds for the Air Force's Request, the Tribunal first notes that the issue of the authenticity of the letter of 15 February 1978 would not be of such a nature as to be a decisive factor in the sense that, had it been determined at the time of the Award, it would have influenced the dispositif in the Award. In the Award No. 67-148-1 it is noted that "[t]here was no dispute in the case that electronic goods covered by these contracts were delivered to Behring International, Inc. in New Jersey, admittedly the Air Force's agent for receipt of goods...." The letter of 15 February 1978 was not evidence of the deliveries but of their timeliness. However, even if there was a delay in the deliveries, there is no contemporaneous evidence indicating that the Air Force availed itself of the general conditions of its purchase orders, which in relevant parts read as follows:

> Material must be delivered within [a specified number of] days from the date of this order unless there are reasons beyond your control, in which case, the new delivery date

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[8] Cf., Carlston, supra fn. 6, 224-225.

[9] Cf., Baron de Neuflize v. Diskontogesellschaft, Deutsche Bank, S. Bleichroeder et Etat allemand Case (29 July 1927) (Franco-German Mixed Arbitral Tribunal), reprinted in 7 Recueil des décisions des Tribunaux arbitraux mixtes 629, 633.

> must be approved by [Imperial Iranian Air Force's Purchasing Mission].
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> * * *
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> The Imperial Iranian Air Force and/or its agents, reserves the right to cancel all or part of this order if deliveries have been delayed 30 days after the specified delivery date without a justifiable reason.

However, Iran failed to avail itself of its right to object to any deliveries it considered untimely. Since the goods were accepted without objection, Universal Electronics and General Aviation Supply were entitled to receive the amounts of the respective invoices covering such goods, plus interest.[10]

22. The second ground of the Air Force's Request is the argument that the goods which were the subject matter of the Claim were never delivered to Behring's warehouse. This contention is only supported by the Affidavits of Messrs. Moghadam and Imani. The Tribunal finds that these Affidavits do not overcome the proof of deliveries that is in the record of this Case, including warehouse receipts signed by Behring officials acknowledging their receipt of the goods. The conclusions in the Affidavits rely solely on the inventory carried out during the period from 24 September to 22 November 1985, i.e., years after the deliveries. In accordance with the terms of reference for the Expert, set forth in Behring International, Inc. and Islamic Republic Iranian Air Force, et al., Decision No. DEC 27-382-3, p. 5 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 89, 92, the Expert was to "inventory the items of property...being stored in

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[10] Houston Contracting Company and National Iranian Oil Company, et al., Award No. 378-173-3, paras. 73 and 184 (22 July 1988), reprinted in 20 Iran-U.S. C.T.R. 3, 24-25, 58 ("In the practice of this Tribunal, it has repeatedly been held that in the absence of contemporaneous objections or disputes invoices or payment documents presented during the course of the contract are presumed to be correct."). See also Collins Systems International, Inc. and Navy of the Islamic Republic of Iran, Award No. 526-431-2, para. 71 (20 Jan. 1992), reprinted in __ Iran-U.S. C.T.R. __.

Behring's warehouse...." Taking further into consideration the Expert's findings in his Final Report, dated 31 January 1986,[11] this inventory cannot be regarded as a reliable account of the items delivered to the warehouse more than six years earlier.

23. For the foregoing reasons the Tribunal concludes that in the present Case the required preconditions for a revision as set out in para. 20, supra, have not been met.

24. Because the Tribunal rejects the Air Force's Request for the reasons stated above, it need not consider whether the Request meets other preconditions for justifying reopening and reconsidering this Case, such as, for example, the restriction that the ignorance of the new fact was "not due to negligence" of the requesting party or that the request be timely made.

25. In light of the above, the Tribunal also need not decide whether Messrs. Charter and Graham can appropriately be made parties to this proceeding or could be required to share in any liability to repay the money received by Universal Electronics and General Aviation Supply.

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[11] The Expert reports, inter alia, that in the warehouse where the items from the Behring's warehouse had been transferred to and where the inventory was carried out, there were "packages which had been opened earlier -- probably at the Behring warehouse." He further notes that "[o]ne box was found empty and with all identifications removed, except it was stamped, 'contains delicate electronic equipment.'" The Expert also states that since "[p]ackages from many smaller companies had no shipping lists or other identification included at all", full description of the items on the Inventory Sheets was not possible. Finally, he points out that he is unable to account for certain numbered Inventory Sheets which might contain information relevant to the inventory but which were not available at the time of compiling the report.

IV. DECISION

26. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

The "Request for Requiring the Claimants in Case No. 148 to Return to the Security Account or Iran the Fund Awarded to Them on the Basis of False Documents and Assertions" is denied.

Dated, The Hague
28 December 1993

Gunnar Lagergren
Chairman
Chamber One

In the Name of God

Assadollah Noori

Dissenting as to the dispositif

Howard M. Holtzmann

Joining in the dispositif (para. 26) and the reasons supporting it. Concurring that the Tribunal need not in this Case decide whether it has inherent power of revision (para. 20), and respectfully noting that the discussion of inherent powers is therefore inappropriate because it is neither necessary nor "fully pursued" (id.).