

ORIGINAL DOCUMENTS IN SAFE

Case No. 156

Date of filing 19 Aug 1983

AWARD. Date of Award _____

_____ pages in English. _____ pages in Farsi.

DECISION. Date of Decision _____

_____ pages in English. _____ pages in Farsi.

ORDER. Date of Order _____

_____ pages in English. _____ pages in Farsi.

CONCURRING OPINION of _____

Date _____ pages in English. _____ pages in Farsi.

DISSENTING OPINION of _____

Date _____ pages in English. _____ pages in Farsi.

OTHER; Nature of document: Note by Arb. Shafieei

Date _____ 6 pages in English. 4 pages in Farsi.

regarding the concurring opinion of Arb. Ardubich.

156-81
109-11

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Case No. 156

Chamber Two

Award No. 47-156-2

ITT INDUSTRIES; INC.

CLAIMANT,

and

THE ISLAMIC REPUBLIC OF IRAN,

RESPONDENT,

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران-ایالات متحدہ
ثبت شد - FILED	
Date	۱۳۶۲ / ۵ / ۲۸
	19 AUG 1983
No.	156 156

NOTE BY DR. SHAFIE SHAFEIEI REGARDING THE
"CONCURRING OPINION OF GEORGE H. ALDRICH"

DUPLICATE
ORIGINAL
نسخه برابر اصل

NOTE BY DR. SHAFIE SHAFEIEI REGARDING THE
"CONCURRING OPINION OF GEORGE H. ALDRICH"

The Parties in the instant case concluded a Settlement agreement on 25 May 1983 (4 Khordad 1362) by reason of their economic relations, and therein reached a settlement concerning all of their claims and potential claims, and assumed certain mutual obligations. By a joint request, the above Parties asked that the Tribunal record the above-mentioned Settlement in the form of an Award on agreed terms, pursuant to Article 34, paragraph 1 of the Tribunal Rules, and that it thereby terminate the proceedings in the instant case.

The Tribunal accepted the Settlement agreement and recorded it in the form of an Award on agreed terms on 26 May 1983. Somewhat later, I found that the American arbitrator had filed certain presentations under the title of the "Concurring Opinion of George H. Aldrich," wherein he addressed himself to certain matters in conflict with the principles of arbitration.

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In the defence of justice, I find myself obliged to raise the following matters.

a) We were concerned that the Tribunal treat all of the American companies equally, apportioning its time and material resources equitably among them all. Unfortunately, on several occasions the efforts of the Iranian arbitrators to prevent the exercise of influence by large, influential multinational corporations have been to no avail, and I.T.T. benefitted from an expediting of the judicial proceedings. Subsequent to the hearing conference, the Chamber continued its deliberations and set 25 May 1983 as the date for signing the Award. Now, it can be seen from the contents of the letter of 20 June 1983 from the Agent of the Government of Iran to the Secretary-General of the Tribunal, that the Parties in the case were willing to resolve their differences through negotiations and settlement because of their economic relations. At the time of the negotiations, the Iranian Respondent became aware that the American Claimant was fully informed as to the date of signing and substance of the Award. The negotiations continued and the Parties ultimately arrived at an agreement, but it is inevitable that under these circumstances the negotiations were concluded under pressure. Certainly, had the Claimant not been informed as to the date

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of signing and the substance of the Award, the Settlement would have been concluded under terms which were more favorable for the Respondent, and at a lower monetary amount, in view of the fact that at any rate the Claimant was anxious to enter into settlement negotiations and to resolve its differences with the Respondent amicably, because of their economic relations. It is now an established fact that Tribunal secrets have been divulged in violation of the principles of impartiality, and fully in violation of the interests of one of the Parties to the claim, and that as a result the Respondent incurred damages. In his letter dated 8 August 1983 to the Agent of the Government of Iran, the Secretary-General of the Tribunal gave assurances that the Tribunal staff had not disclosed the Tribunal's confidential matters.

b) In my opinion, it is entirely inappropriate to label the presentations filed by Mr. Aldrich as his "Concurring Opinion"; moreover, by treating the issues discussed therein he has basically made a prejudgement.

On principle, a "concurring opinion" applies when one member of the Tribunal concurs with the other members of the Tribunal in regard to the conclusion arrived at, but does not

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concur with its reasoning. In reality, he arrives at the same conclusion as that reached by the other members of the Tribunal, but by a different line of reasoning. Naturally, in this event an arbitrator who concurs only with the award's conclusion will proceed to set forth his own arguments. However, in the case of awards rendered on the basis of a settlement-- and in particular in the instant case-- there is no argumentation. After a settlement agreement is submitted by the parties to the Tribunal, the Tribunal either accepts it and records it in the form of an Award on agreed terms, or else refrains from accepting it. Once the Tribunal has agreed to record a settlement in the form of an Award on agreed terms, there is no place for a "concurring opinion " on the issues which are not discussed in the Award.

In this regard, Article 34, paragraph 1 of the Tribunal Rules provides that

"If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award."

In the instant case, the Tribunal accepted the Settlement and recorded it in the form of an Award on agreed terms,

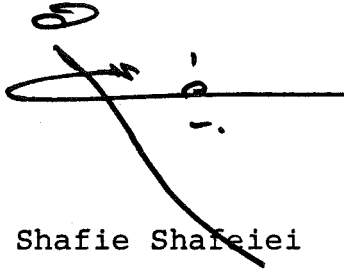
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without giving reasons, inasmuch as it would have been superfluous for it to present arguments. Therefore, the "Concurring Opinion" of Mr. George Aldrich is meaningless and a misnomer. Instead, the fact is that Mr. Aldrich proceeded to state his opinions on the merits under the guise of submitting a "Concurring Opinion," and that he thereby condemned the Respondent in favor of the American Claimant. There Mr. Aldrich gives his opinion on such issues as expropriation, control and the method of valuation, all which are matters at issue in other cases. This act is in violation of the interests and defences of the Respondent, and in fact constitutes prejudgement. Because of this prejudgement, Iranian respondents no longer entertain any hope of, and have no reason for, defending their positions on these issues before Mr. Aldrich as an "impartial" member of this Tribunal. I believe that Mr. Aldrich has made himself subject to disqualification by virtue of this prejudgement regarding issues which have not yet been deliberated upon or decided by the Tribunal. Furthermore, with respect to expropriation and the problem of valuation, Mr. Aldrich has presented certain matters as being general principles of international law. Possibly these opinions reflect the United States' idiosyncratic interpretation of these matters, but they should not be presented as recognized principles of international law. This Tribunal should subject these issues to separate examination and decision after it has heard the respondents'

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defences in the light of the special circumstances and conditions involved in each case, and with complete impartiality.

Nonetheless, I do not deem it necessary to discuss or elaborate upon these issues here. I shall discuss the views of the majority of the international community on the issues of nationalization and methods of valuation at the appropriate time, and in the light of all relevant circumstances and conditions.

A handwritten signature in black ink, consisting of a horizontal line with a loop on the left and a long, sweeping stroke extending downwards and to the right.

-- Dr. Shafie Shafeiei