

ORIGINAL DOCUMENTS IN SAFE

Case No. 188

Date of filing 9 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: Reason for Absence

Date _____ 52 pages in English. ____ pages in Farsi.

of Signature

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CASE NO. 188

CHAMBER TWO

AWARD NO. 61-188-2

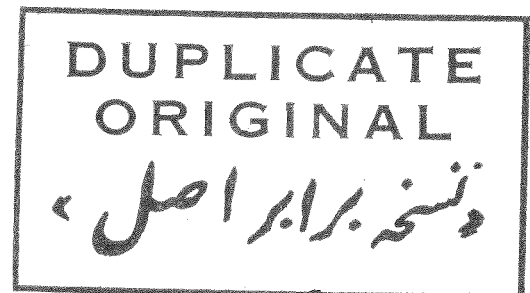
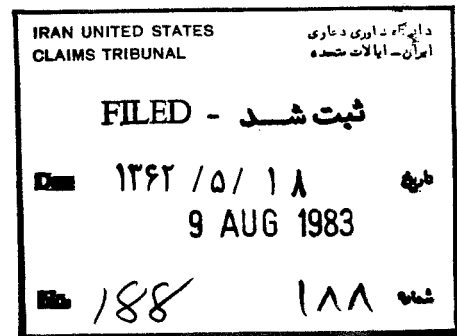
GRUEN ASSOCIATES, INC.,

Claimant,

and

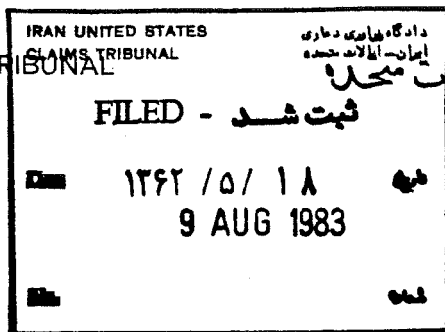
IRAN HOUSING COMPANY,
MINISTRY OF HEALTH AND SOCIAL
WELFARE and
GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,

Respondents.



REASON FOR ABSENCE OF SIGNATURE

OF MR. SHAFIE SHAFEIEI



دیوان داوری دعاوی ایران - ایالات متحدہ

THE REASONS WHY MY SIGNATURE DOES NOT APPEAR AT
THE END OF THE SO-CALLED "AWARDS" NOS. 58-449-3,
59-220-2, 60-83-2, AND 61-188-2, WHICH HAVE
BEEN ILLEGALLY RENDERED BY MR. GEORGE ALDRICH
AND MR. BELLET:

The recording of the name of an arbitrator at the bottom of an award signifies that he participated in the making of that award -- that is, that he participated in the Chamber hearings and in completely democratic discussions and deliberations, in taking a decision, in preparing the draft award, in studying it and, finally, in preparing the final award and signing it. I have had absolutely no part or role in the formulation of the present Awards, nor have I been present therein. Everything has been carried out in my absence and even without my knowledge. Therefore, it would have been appropriate for Mr. George Aldrich and Mr. Bellet to explain just why they have recorded my name. Throughout the month of July, I availed myself of my annual leave in order to take a much needed rest and to complete some backlogged Chamber work; and this was entirely permissible and justified. But meanwhile, Mr. Bellet and Mr. Aldrich held

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formal Chamber meetings on a two - member basis and rendered the present Awards.

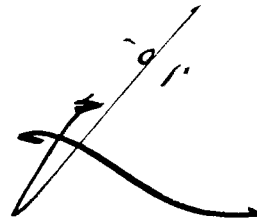
If these gentlemen had refrained from recording my name at the end of those Awards, I could at least have praised their frankness. However, these gentlemen wrote my name, along with making certain presentations. I call this action by Mr. Bellet, the former Chief Justice of the Supreme Court of France, and Mr. George Aldrich, the American arbitrator, as prevarication, duplicity, and hypocrisy.

Pursuant to the terms of the Claims Settlement Declaration signed on 19 January 1981 by the two Governments of Iran and the United States, meetings of the Tribunal's Chambers must be attended by both of the two arbitrators appointed by their respective Governments and by the jointly-appointed arbitrator. Under no circumstances may a Chamber meeting be convened in the absence of either of the two arbitrators appointed by their respective Governments, even with respect to urgent administrative matters. The action by Mr. Bellet and Mr. Aldrich constitutes a flagrant and intentional violation of the Algiers Declarations and other regulations governing the Tribunal.

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Today, it is clearer than ever before that the Government of Iran has become a victim of breach of trust because of the existence of the Security Account, which has induced this Chamber to engage in blatant, intentional violations of the Algiers Declarations and the Tribunal Rules.

At any event, nothing can justify, or diminish the odiousness of, these illegal acts by the above-mentioned gentlemen-- particularly in light of the fact that this illegal behaviour has been engaged in by someone who was for years a guardian of the law as Chief Justice of the Supreme Court of France. In addition, the lies, hypocrisy and duplicity involved here further heighten the responsibility of these arbitrators with whom I was, and am, condemned to work. In my memos to Mr. Lagergren, dated 5 and 8 August 1983, I have explained in detail why my signature does not appear at the end of the aforementioned Awards. It appears appropriate to attach the said memos hereto.



-- Dr. Shafei Shafeiei

5 August 1983

Dear Judge Lagergren:

You are well aware of what transpired in Chamber Two throughout the month of July in my absence. Having returned to the Tribunal today, the 2nd of August, and seen the awards rendered in my absence, I hereby proceed to write you this Memo. The issuing of these awards in my absence constitutes an extremely flagrant instance of betrayal of trust and of ultra vires. As such, the matter makes me most regretful and yet, at the same time, highly pleased.

I was on leave throughout the month of July. Mr. Bellet was fully informed of this fact, yet he spread the rumor, contrary to the truth, that I had suddenly "disappeared." In my absence, he held regular two-member Chamber deliberations with the American arbitrator, and those two rendered arbitrary decisions on cases which had not been subjected to the least discussion.

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In the memo which I shall shortly write you, I shall iterate the whole course of events and discuss the correspondence which passed between Mr. Bellet and me. Now, even supposing, in arguendo, that I have unjustifiably failed to perform my functions-- and it is of course possible that an arbitrator might, like any other human being, either die, resign, or fail to act-- clear provision has been made for such exigencies in Article 13, Paragraph 2 of the Tribunal Rules. At any event, each of the Chambers of the Tribunal must, by virtue of Article 3, Paragraph 1 of the Claims Settlement Declaration, be made up of 3 arbitrators. NOthing has vested Mr. Bellet and Mr. Aldrich with the authority to hold official two-member Chamber meetings and two-member deliberative sessions, or to issue two-member decisions and sign two-member awards.

On 8 July 1983, a settlement agreement was drawn up by the Parties in Case No.449 and submitted to the Tribunal, wherein it was requested that an award be rendered upon its basis. On principle, this case falls within the purview of Chamber Three, not Chamber Two. Furthermore, it does not, basically, have any urgency; the Parties have merely requested "the Tribunal to--

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if at all possible-- issue an award on agreed terms based on the settlement agreement with amendatory addendum..."(emphasis added).

It appears, on the basis of Article 3, Paragraph 1 of the Claims Settlement Declaration, that the authority and duty to assign cases to the various Chambers rests with the President of the Tribunal. Pursuant to Presidential Order No. 10, transfer of cases is possible only in the event of requests for interim measures and urgent matters. Nonetheless, in violation of the said Presidential Order, Mr. Bellet himself transferred the instant case from Chamber 3 to Chamber 2. In my absence during July, and with the agreement of the American arbitrator, he convened 2-member Chamber meetings, established the Tribunal's jurisdiction, wrote the Award, and then sent my office a memo on 13 July solely as a formality, inviting me to be present and to sign the Award on 14 July-- even though he was fully aware that I was on leave and could not be present-- and then he and Mr. Aldrich precipitously proceeded to sign the said Award. It is interesting to note that Mr. Bellet did not, in that memo, also invite me to participate in the Chamber meeting or in the discussions and deliberations on this subject. Those two completed everything together and then,

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purely as a formality, sent my office a memo inviting me to sign the Award, which, finally, they signed. In that Award, Mr. Bellet and the American arbitrator have, essentially, failed to explain how, basically prior to signing the Award, they held 2-member Chamber meetings and proceeded to deliberate upon the subject at hand and to render a decision and issue the Award. According to information which I have received, this Award, which was written in so completely illegal a fashion, was sent to you in Stockholm by Mr. Mosk, another of the American arbitrators, for notification; and you also issued instructions for payment, despite the fact that you were fully apprised of the illegality of the proceedings.

Mr. President, please allow me the liberty of being entirely candid. What was occurred constitutes no less than a betrayal of trust, an abuse of authority, a blatant violation of the Algiers Declarations and of the Tribunal Rules, and an illegal payment of monies out of the Security Account. Moreover, notwithstanding the great respect in which I have always held you, you have unfortunately become a party to these illegal acts yourself.

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The situation with respect to the other awards issued recently is identical. Apparently Mr. Bellet decided, knowing full well that I was on leave throughout July, to render decisions in violation of the Tribunal Rules. I have played no role in, and have been neither present at nor involved with, the present case or the others, and so I fail to fathom why Mr. Bellet and Mr. Aldrich have recorded my name at the end of those awards. If Mr. Bellet had had the integrity to refrain from recording my name, I would at least have praised his moral courage. However, he unfortunately recorded my name at the end of those awards and also made certain prevaricating presentations therein. For perhaps two hours, I have been pondering what was written about me at the end of the Award in Case No.188, and I have been reflecting upon how utterly lamentable are these prevarications and falsifications of fact by the former Chief Justice of the Supreme Court of France and by the American arbitrator. With regard to the merits of the case, even moral integrity has not been accorded due respect--fully aware of the situation, this is how I label these persons with whom I was, and am, condemned to work. In this case, Mr. Bellet and Mr. Aldrich have thereby, without justification, decided that the sum of \$500,000 dollars shall be paid the

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American Claimant. It is regrettable that the Respondent has been blatantly deprived of its right to a defence. I stand ashamed and disconcerted before the Respondent, but what alternative was there? All of the events and circumstances in this case demonstrate that Mr. Bellet and Mr. Aldrich had intended from the beginning to award the Claimant payment of monies out of the Security Account.

On the other hand, I am exceedingly pleased with all that has transpired. Had it not, I could never have demonstrated the true nature of this Tribunal, particularly of Chamber Two.

It is now entirely manifest that the Islamic Republic of Iran has been made the victim of a blatant injustice-- specifically, the victim of a betrayal of trust. The Security Account is what particularly prompts the Tribunal to violate the law. If this fund did not exist, and if you did not order awards to be paid upon in this illegal and slipshod manner, then at least the interests of the American claimants themselves would demand that law and judicial procedure be properly observed in the issuing of awards, for illegal awards will in that case certainly encounter difficulties at the

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enforcement stages. Therefore, I do not think that Mr. Bellet and Mr. Aldrich demonstrated any particular temerity in violating the law and the Algiers Declarations; rather, the confidence which they had in the Tribunal's policy and as a result in payment of the award, has led them to commit flagrant violations of related rules and regulations. It is worth noting that in meeting with the Agent of the Islamic Republic of Iran, Mr. Bellet himself has stated that he intended to render the awards in my absence, and that the Islamic Republic of Iran could appeal those awards in the Netherlands courts. That is-- and this is highly shameful-- Mr. Bellet was himself aware that he was acting in violation of the provisions of the Algiers Declarations.

Mr. President, you yourself bear a major share of the responsibility for this illegal action, and for this blatant violation of the Algiers Declarations. Originally, an award was illegally rendered by Mr. Bellet and Mr. Aldrich in respect of Case No.449 and, notwithstanding the fact that you had full knowledge of the illegality of this decision and award, you instructed it to be paid out of the Security Account.

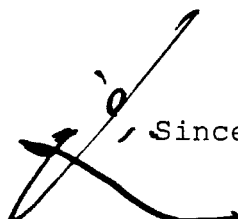
Now it is, after all, the duty and prerogative of the Agent of the Islamic Republic of Iran to study the issues relating to betrayal of trust, ultra vires, and illegal withdrawal from the Security Account. Perhaps these acts also have ramifications in penal law. It is also the duty of the Agent of the Islamic Republic of Iran to study the subject of criminal prosecution of arbitrators who have violated the law, and to take appropriate action.

Once more, I draw your attention to the awards in Case Nos.188 and 220. I played no role in those cases, and I was neither present nor involved therein. Everything was carried out on a two-member basis. These awards are not "Tribunal awards" but rather arbitrary decisions by two arbitrators violating the law.

Mr. President: It is natural for the Claimant to attempt in its memorials to catch the Respondent off-guard and to resort to lies and falsification of fact. But it is unnatural of the members of this Tribunal itself to attempt as well to deprive the Respondent of its right to a defence. In a brief period of time, hundreds upon hundreds of cases have been

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notified to a country which is in a state of war, revolution, and disarray. However, and worst of all, what is entirely unprecedented in the history of arbitration is that the members of this Tribunal have been subjecting their Iranian colleagues to unjustifiable pressure, engaging in breaches of regulations, and writing lies. In this way, this Tribunal will most certainly bring about the corruption of the arbitral system far into the future and will cause great damage to the moral and legal system of the host country, the Netherlands. I request that you await a more detailed memo from me.



, Sincerely,

Dr. Shafei Shafeiei

8 August 1983

To the Honourable Judge Lagergren:

Following up on the memo which I sent you on 5 August 1983, I shall now elaborate upon the reason for my absence. However, I must add at the outset that whatever the cause of my absence, Mr. Bellet and Mr. Aldrich were on no grounds authorized to hold Chamber meetings and deliberative sessions and to render awards on a two-member basis. The actions by those gentlemen constitute a flagrant breach and violation of the Algiers Declarations and the Tribunal Rules.

I. From the very start of the Tribunal's operations, we observed that the United States Department of State and the American arbitrators were of the opinion that this Tribunal had been established solely and exclusively in order to examine the hundreds upon hundreds of statements of claim by American claimants. The prejudgement had also already been made that the Government of the Islamic Republic of Iran was indubitably indebted to those companies and that the Security Account had been provided for and created for distribution among American nationals and that it was,

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= = therefore, necessary to examine those statements of claim, and pay each American claimant its share out of the Security Account, as quickly as possible. Efforts are being made, covertly and overtly, to convert the Tribunal into a machine for churning out awards against Iran; in particular, the American arbitrators have been constantly striving to give the Tribunal the impression that Iran and the Iranian arbitrators are preventing the Tribunal from examining cases, thwarting its work, and slowing down its operations. It must be accepted that the American arbitrators have been successful in this attempt. Within a short space of time, the Tribunal has sent Iran notice to file defences in hundreds of cases, scheduled preliminary hearing conferences and hearings, and inequitably placed a country which is in a state of war, revolution, and internal disarray under great pressure. In the face of this attempt and this inequitable pressure, we Iranian arbitrators have only been striving -- unremittingly-- to protect Iran's right to a defence. We deeply and honestly believe that this protection is completely justified and just. Unlike you, we understand what the internal situation is in our country. We know full well how difficult it is for the Iranian organizations to prepare these defences, translate them into English, and make appearances before the Tribunal-- in particular, under Iran's present circumstances. Unfortunately this Tribunal is, owing to its completely Western

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structure, unfamiliar with Iran and its political, social and administrative situation; therefore, it cannot-- or does not want to-- understand Iran's problems. We are continuing with our efforts to safeguard Iran's right to a defence. I acknowledge that we want to prevent this Tribunal from being transformed into an internal "claims commission" of the United States Department of State. Certainly the two Governments which established the Tribunal can always make some other arrangement for settling the claims, but so long as this place is called the "Tribunal," proper judicial proceedings and all the requisite arrangements for ensuring the right to a defence must be observed. On the other hand, Iran must be given the opportunity to devote some measure of its time and its material capabilities upon its own cases and statements of claim.

Unfortunately, our efforts in this Tribunal, and especially in Chamber Two, have remained fruitless. Not only has Iran been subjected to undue pressure, but so has the Tribunal exerted pressure upon the Iranian arbitrators. Therefore, with matters going on as they are, the Tribunal shall lose its judicial and intellectual standing altogether and will at last be converted to just such a claims commission.

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Mr. President, surely you agree with me regarding how onerous is the workload of the Tribunal, particularly the arbitrators as a whole. The burden upon us Iranian arbitrators is far greater yet, owing to language problems. Ever since the Tribunal was established, we Iranian arbitrators have been working a minimum of twelve to fourteen hours per day. We are busy working and studying these cases at the Tribunal premises well into the night every night, even on Fridays, Saturdays and Sundays. Under such conditions, I permitted myself, with full justification, to take a one-month summer leave. This is nothing abnormal or unnatural; my own colleague, Mr. George Aldrich, previously did the same. When Mr. George Aldrich stated that he intended to go on annual leave, the matter seemed entirely ordinary and natural. Nonetheless, when I stated as much, Mr. Bellet stated that I had "disparaître" and declared it a case of "surprise."

The matter began as reported below:

In its 72nd session, the Full Tribunal took up the subject of the Tribunal's summer vacation. It set the summer vacation for a period of five weeks, from 11 June through 17 July, but also determined that in practice would continue through July, or rather into the first ten days of August.

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None of the Chambers made any provision for prehearings, hearings, or even Chamber meetings during this period. Mr. George Aldrich stated that he was taking his vacation from 27 May until the end of June. This matter met with no objection or opposition whatsoever; it is an entirely natural matter. The American and Iranian arbitrators are not, after all, staff employed by the American Department of State or the Iranian Foreign Ministry, respectively. An arbitrator should not be subjected to duress; moreover, annual leave is a natural and legitimate right. All of the workers, including staff members, of the Tribunal have been taking avail of it as well. In Mr. Aldrich's absence, and nearly to the 23rd of June, I continued working in cooperation with Chamber Two. During this period, decisions were taken solely on such Tribunal matters as were administrative or urgent in nature (e.g. extensions). Even though we felt confident of Mr. Aldrich's implicit consent in respect to them, we refrained from deliberating upon and taking decisions on important issues upon which Mr. Aldrich held an independent opinion; I myself particularly insisted that such matters should be discussed in the presence of Mr. Aldrich.

I decided to take several weeks' rest during the month of July. Such was absolutely necessary, especially in light of the weather, the month of Ramadan, and my utter exhaustion

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owing to the excessive pace of the Tribunal's workload. I think the last date on which I participated with Mr. Bellet in a Chamber meeting was 23 June, and in that meeting I expressly informed him that I needed to avail myself of my annual leave, for the sake of my health. There was no doubt or ambiguity. Suddenly it came to my mind that I had better state the details in writing as well. On principle, I am opposed to such a procedure, for the relations between the arbitrators of a single Chamber ought not be so mechanical and impersonal as to require them to send one another memos on such matters; however, it is Mr. Bellet himself who instituted just such a policy in this Chamber. I too followed that policy, against my personal wishes and beliefs. The text of my memo follows:

"Monsieur le président

Nous avons continué à travailler pendant le mois de juin pour régler les problèmes administratifs de notre Chambre, bien que la période du 10 juin au 30 juillet corresponde à celle de vacances du Tribunal et les autres Chambres ne fonctionnent pas. Etant fortement épuisé du travail de ce Tribunal, je dois profiter de quelques semaines de vacances qui me restent d'ici fin juillet. Je vous prie de bien vouloir ne pas tenir, Chamber meeting en mon absence. Je vous prie d'autre part d'agréer, monsieur le président, l'expression de mes sentiments distingués.

Dr. S. Shafeiei"

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You will note that I stated the issue to Mr. Bellet with the greatest of candor and truthfulness, explicitly and without ambiguity. Moreover, I was present at the Tribunal premises until the end of June. Mr. Bellet did not speak to me at all; only on 29 June, I learned that he had written a formal memo to me and had most unkindly left it with the guard to be delivered to me. The text of his letter is as follows:

"Cher Monsieur et ami,

Miss Everard m'a remis lundi 27 juin votre mot daté du 23 juin 1983 qui m'a beaucoup surpris.

Vous m'aviez dit que vous désiriez vous reposer pendant la semaine du 27 juin au 3 juillet, et bien que cela me gênât beaucoup, j'en ai pris note.

Mais il n'a jamais été question que vous partiez jusqu'à fin juillet et je suis très étonné que vous ne m'en ayez pas parlé alors.

Vous savez depuis l'ordonnance présidentielle du 15 juin 1983 que la chambre II est "de garde" jusqu'au 31 juillet 1983.

Vous savez, depuis plusieurs mois, que je dois quitter ce Tribunal le 31 juillet, et que plusieurs affaires en délibère devant nous doivent être résolues avant cette date.

Vous ne pourrez pas irrégulièrement vous absenter, et je vous invite à revenir dès le 5 juillet après les quelques jours de repos que vous aurez pris.

Bien à vous. Mr. Bellet"

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I noticed that the contents of this memo failed to conform to the facts. In my conversation with him on 23 June, I had made it clear that I intended to avail myself of my annual leave for several weeks during the month of July. There was no ambiguity, and the issue of whether the leave was to be several days or a week in duration was not discussed. Therefore, I was exceedingly unhappy about the statements which Mr. Bellet had made in the memo, and which were so contrary to fact, and so endeavored to get in contact with him by telephone. I believe that he was in Spain during the last days of June, and so I was therefore unable to speak with him by telephone. Because he had statements in his memo which were contrary to the facts, it was absolutely incumbent upon me to respond. My letter dated 1 July 1983 is as follows:

"Monsieur le Président

Votre lettre du 29 juin 1983, qui m'a été adressée, contient certaines affirmations qui ne correspondent pas à la réalité. J'ai constaté, mais avec un grand regret, que même certaines ordonnances que vous rendez au nom du Tribunal, contiennent parfois des déclarations inexactes.

En effet, la période de vacances du Tribunal a été fixée du 10 juin jusqu'au 30 juillet. Monsieur Aldrich notre collègue américain s'est réservé d'un mois de vacances du 27 mai au 27 juin, période pendant laquelle j'ai continué à travailler pour régler

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les problèmes administratifs et urgents de notre Chamber. Pour ma part, contrairement à ce que vous déclarez dans votre lettre du 29 juin 1983, je vous ai explicitement exprimé ma décision de prendre mes vacances au mois de juillet 1983.

Certes je sais depuis fort longtemps que votre mission prend fin le 31 juillet mais cela ne peut me priver de mes vacances annuelles. Rien, d'autre part, ne nous oblige à décider, au cour d'une dé-libération accélérée et anormale, toutes les affaires pendant dont certaines sont très volumineuses et compliquées.

Vous faites aussi allusion à l'ordonnance présidentielle du 15 juin 1983, à laquelle vous n'attachiez au départ aucune importance, je dois à cet égard souligner que cette ordonnance, à l'occasion de laquelle monsieur Président ne m'a nullement consulté, vise uniquement des cas très urgents, comme "Les mesures provisoires" ou les "Settlements" qui sont par ailleurs très rares. Monsieur Président Lagergren aussi au cours d'une conversation téléphonique m'a indiqué que son ordonnance vise les cas exceptionnels et dans la mesure où je suis présent. Il est souvent arrivé, dans la passé que vous décidiez seul mais au nom du Tribunal, sur les problèmes administratifs de la Chamber, ce qui n'est pas autorisé par le règlement du Tribunal. Il me semble donc nécessaire d'indiquer que vous ne devez pas irrégulièrement tenir the Chamber meeting pendant la période des vacances du Tribunal et en mon absence.

Je vous prie d'agréer, monsieur le Président, l'expression de mes sentiments distingués.

Dr. Shafei Shafeiei"

This was our final exchange of correspondence. Prior to departing on leave, perhaps on the last day of June, I succeeded in speaking to him by telephone in order to bid

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him farewell. Unfortunately, his tone on the telephone was extremely cool, as well as somewhat legalistic and preemptory, something which I find very hard indeed to accept. I also visited and spoke with Mr. Aldrich before going on leave. I expressly reminded him that I intended to go on leave and discussed the current cases with him in particular. I stated that we were in the process of examining and deliberating upon four cases: three of those cases absolutely required further hearings and in the fourth a decision should by all means be rendered, a task that we would surely carry out in the first week of August, in the presence of the new arbitrator; and we would by all means reach an agreement on this basis. Mr. President, you will observe, on the basis of the preceding, how unjustified and unfair the terms "disparaître" and "surprise," which Mr. Bellet applied and spread in my absence, are. At the end of the Award, Mr. Bellet writes,

"...Nevertheless after a further exchange of notes, Mr. Shafeiei has absented himself..."

I am not in the least troubled by such expressions; Mr. Bellet and Mr. Aldrich could speak about their colleague in any manner they chose-- even insult him. However, why do these gentlemen resort to lies in

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their capacity as international arbitrators? This is what troubles me. It is necessary to discuss a further matter as well. For many reasons, which need not be described here, the Government of the Islamic Republic of Iran was concerned that a hearing be scheduled as early as possible in Case No.280. This was truly a matter of urgency and necessity for Iran. Various dates in the beginning, middle and latter part of July were proposed, and Mr. Kashan, the Agent of the Islamic Republic of Iran, insisted on this matter with me on several days. Yet I did not accept any date in July, expressly stating that I would be on leave during the month of July. Mr. Bellet was involved in the whole course of these events, and he himself set 13 August as the date for the final hearing in Case No.280. Therefore, the statement by the former Chief Justice of the Supreme Court of France, to wit that I had originally stated that I would be away on leave for one week and subsequently disappeared suddenly and by way of "surprise," is an unadulterated lie. I do not know whether I have succeeded in convincing you or not. However, at least on this mundane world, Mr. Bellet and I know that his statement was a lie. Moreover, I do not know what Mr. Bellet meant by a "further exchange of notes..." The memo dated 1 July is our final exchange of correspondence.

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On 13 July, one day prior to the signing of the Award in Case No.449, Mr. Bellet sent a memo to me, although he knew very well that I was on leave. This memo did not reach me at all, but a xerox copy was given to Mr. Khashayar, my legal assistant, and is at present before me. The test of this memo is as follows:

"Le 13 juillet 1983

"Cher Monsieur et ami

"J'ai regretté de ne point vous voir ces jours-ci.

J'ai consulté les minutes du Tribunal. Il résulte du procès-verbal du 72 meeting, que des vacances n'ont été prévues que jusqu'au 17 juillet 1983, mais pas après cette date.

Mr. Aldrich nous a prévenus il y a plusieurs mois, sans aucune contestation de quique ce soit, qu'il partirait de la fin mai à la fin juin.

Il a été alors entendu entre nous trois, que nous discuterions des affaires encore pendantes, dès son retour, et vous avez même insisté à ce moment, pour qu'on reporte à juillet 1983, la délibération de l'affaire I.T.T., depuis résolue.

J'ai donc été très surpris, d'abord quand, subitement, vous avez demandé une première semaine de repos, du 27 juin au 4 juillet, puis quand vous m'avez informé, par lettre du 23 juin, que vous partiez pour plus longtemps, pendant un nombre indéterminé de jours.

Il fallait nous en aviser bien plus à l'avance, pour que je puisse prendre, en qualité de président

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de la 2e. Chambre, les dispositions nécessaires à la solution des affaires en suspens, avant mon départ de ce Tribunal.

Aussi bien, le Président de ce Tribunal a signé le 15 juin 1983, une ordonnance qui sous-entend que nous soyons toujours disponibles, en juillet 1983. Je vous demande donc amicalement mais très fermement, d'assister jusqu'à fin juillet, à toutes nos réunions, pour délibérer avec nous, notamment des affaires INTREND, GRUEN, HOFFMAN et CHAS. T. MAIN, et procéder ensuite à la signature des sentences.

Si vous ne veniez pas, force serait pour M. Aldrich et moi, de procéder, sans vous.

Je vous remercie à l'avance.

Très fidèlement vôtre.

P. Bellet"

Several points in this memo are worthy of note: apparently for the first time, after having perused the minutes to the 72nd session of the Full Tribunal, Mr. Bellet has finally become aware of the days set aside by the Tribunal for annual leave!

I shall grant that Mr. Bellet hoped, and had perhaps made the inference, that I had given up my annual leave and was going to continue with him in carrying out my excessive and exhausting workload in the Tribunal, even through the months of Ramadan and July. Nonetheless, I

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was under no compulsion or obligation, and had even made no moral commitment, to give up my annual leave. For his part, Mr. George Aldrich did not give up his annual leave, and he even scheduled his leave for two weeks earlier than the period scheduled by the Full Tribunal. Unfortunately, Mr. Bellet employs the words "subitement" and "surprise" anew in this memo. There is no need for me to elaborate further on this point; his statements are contrary to fact. As for the I.T.T. case to which Mr. Bellet referred, the facts of the matter are altogether different. A number of cases, inter alia INTREND and I.T.T., were ready for deliberations during the months of April and May. The INTREND case was more or less simple and related to a single uninfluential American corporation. What I had insisted upon was that this case be taken up for deliberations and rendering of a decision first, and Mr. Bellet agreed to this idea. As for the I.T.T. case, it concerned an influential American corporation which subjected the Tribunal to a great deal of pressure; Mr. Bellet unfortunately capitulated, and work on this case came to a hasty conclusion.

Mr. Bellet has also referred to your Order dated 15 June 1983, and has stated that it was your intent and understanding in that Order, Mr. President, that Chamber Two should be prepared to work during the month of July. Subsequent to the above Order, I spoke to you by telephone to

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remonstrate with you for not having consulted with me before issuing that Order. I also told you that I intended to go on leave and to travel to Poland. You stated that this Order covered only exceptional cases, and as such only to the extent that I was present in The Hague. After this telephone conversation, I immediately sent you, via the Secretary-General of the Tribunal, a copy of my letter to Mr. Bellet, in which I stated that I intended to avail myself of my annual leave during July. It is also absolutely necessary to mention that Mr. Bellet and Chamber Two were under no obligation whatever to subject all of the cases in whose final hearings Mr. Bellet had taken part to final examination and deliberations prior to the expiration of his term of office. You will recall that following Mr. Bellet's announcement of resignation, the issue of setting the effective date of his resignation was raised. The American arbitrators insisted, moreover, that he be given jurisdiction and authority enabling him to examine all those cases in whose preliminary hearing conferences and hearings he had taken part. This was not agreed to, and it was announced that his term of office would come to an end on the final day of July 1983. On the other hand, even had I been present at the Tribunal during July, it would have been impossible for me anyway to subject four cases, some of which are in fact extremely difficult and voluminous, to exami-

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nation and deliberations in the space of a single month. Nor do I know how Mr. Aldrich and Mr. Bellet managed to study and deliberate upon these cases in a mere four weeks. At the end of his memo dated 13 July 1983, Mr. Bellet explicitly states that

"Si vous ne veniez pas, force serait pour Mr. Aldrich et moi, de procéder sans vous..."

The two arbitrators did precisely this; they examined a number of cases, took up deliberations into them, took decisions and signed them, all on a two-member basis and in my absence. I had hoped that, having displayed so much bravado, they would openly state at the end of the awards that the said awards had been prepared and signed on a two-member basis and in my absence. However, refraining from stating the facts through want of moral courage, they recorded my name at the end of the awards and made statements there which were contrary to fact.

Apparently Mr. Bellet wrote several other memos to me as well, some of which he left with the guard and others of which he sent to my office. These memos and folios are apparently the very memos and draft awards to which Mr. Bellet alludes. Mr. Khashayar, the legal assistant, endeavored to assure

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Mr. Bellet that these memos had not yet reached me, and with this intention he wrote the following memo to Mr. Bellet on 18 July:

"To: Judge Bellet
From: K. Khashayar
Date: 18 July 1983

"Having regard to the fact that you were formally and explicitly informed by Mr. Shafeieei that he would be on annual leave during the Tribunal's summer recess in July 1983, and considering that you are well aware of the fact that Mr. Shafeieei's absence will last until the end of July 1983, there is no point in sending to Mr. Shafeieei's office or the Guard letters and draft awards which are addressed to him. Please find all these unopened materials enclosed with this letter.

cc. Mr. Aldrich

cc. Mr. Pinto, Secretary-General"

This memo should have decisively convinced Mr. Bellet that the memos which he had sent to me via the guard were all unknown to me and had failed to reach me. Nonetheless, it should be observed that Mr. Bellet and Mr. Aldrich state once again, at the end of an award, that

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"The Chairman has had all the successive drafts of this award since Mr. Shafeieei's departure deposited in his office in due time so that, if he had been present, he could have read and commented upon them, but no comments have been received."

It is especially worth noting that Mr. Bellet still adds in the award, despite Mr. Khashayar's statements in this regard in his memo of 18 July, that

"The Chairman also deposited in Mr. Shafeieei's office on 20 July 1983 a letter informing him of the place and time of signature. Mr. Shafeieei failed to attend the signing."

I absolutely fail to understand how and why Mr. Bellet persisted in depositing letters in my office. On 20 July I was in Berlin, and on 27 July, when the awards were signed, I was in Warsaw.

On the other hand, the fact that an arbitrator's signature appears at the end of an award signifies that he has participated in and been present at the making of that award-- that is, in the holding of Chamber meetings, in completely free and democratic deliberations and discussions,

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in rendering a decision, in preparing the draft award, and, finally, in preparing the final award. But what need was there to invite me to sign the instant award, and that too in such a manner, when I had no participation or role in it whatsoever? Therefore, you will observe that what Mr. Bellet and Mr. Aldrich have recorded at the end of the award under my name is devoid of all truth and honesty; moreover, this is what I label falsification of facts, prevarication and hypocrisy. I regret that international arbitrators should act in such a way, yet I am pleased as well, because these events make it possible to reveal the nature and legal style of this Tribunal, especially Chamber Two. But I also ask myself whether the style of this Tribunal is not in fact part and parcel of that of the whole arbitral system.

II. My departure on annual leave was completely justifiable and natural; what was unnatural is the request by Mr. Bellet, who expected that I devote the month of July to work at the Tribunal after one year of excessive and exhausting work. Even if we assume, in arguendo, that as Mr. Bellet believes, an understanding had been reached several months before that I would continue with my work at the Tribunal through the month of July, in any case I

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= = was unable to work during July because of my physical condition and the state of extreme exhaustion from which I was suffering. Of course, it might also be assumed, in arguendo, that I was under a legal obligation to serve the Tribunal during July; that I had, in violation of that obligation, failed to carry out my duties; and that I had, as Mr. Bellet states, suddenly absented myself by way of "surprise," leaving behind no address or telephone number or other trace. In this case, what is the duty of the other two impartial arbitrators? Article 13, Paragraph 2 of the Tribunal Rules has very simply and clearly made provision for such a situation:

" 2. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding articles shall apply."

It is also a certain and decisive fact that, pursuant to Article III, Paragraph 1 of the Claims Settlement Declaration, each of the Chambers of this Tribunal must be made up of three members, in the manner set forth in this Article.

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In its fifteenth session, the Full Tribunal decided that

"If the Plenary Tribunal found it necessary to vote on any administrative issue in the absence of a member appointed by a High contracting Party, one of the members appointed by the other High contracting Party (chosen by consultation among themselves) should not take part in the vote..." (See paragraphs 3 and 4)

This decision is concerned with the Full Tribunal and relates to urgent administrative matters, whose carrying out is also subject to special conditions. The Chambers of this Tribunal are not able, under any circumstances, to hold meetings except in the presence of both of the two arbitrators appointed by the two Governments, respectively. Therefore, it was completely illegal for Chamber Two to hold judicial meetings, deliberate, render decisions, and sign awards in my absence. The actions by Mr. Bellet and Mr. Aldrich constitute blatant and conscious violations of the Algiers Declarations and the Tribunal Rules.

The Tribunal is the guarantor that the provisions of the Algiers Declarations will be properly carried out by each of the two Governments and the parties to claims. But

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== what guarantee exists that the Algiers Declarations will actually be carried out, when even the judges of the Tribunal themselves violate the provisions of the Algiers Declarations and the Tribunal Rules? It is interesting to note that one of the cases before this Tribunal is Iran's claim that the Government of the United States of America has engaged in violations of the provisions of the Algiers Declarations. This case is supposed to be examined by the judges of the Tribunal. Now, the question arises: are these same culpable judges competent to examine this case? And can the Government of Iran entertain hopes that it will conduct a fair investigation?

III. It seems appropriate to make a brief examination of the awards rendered in my absence as well.

A. CASE NO.449: This case belongs to Chamber Three of the Tribunal. On 8 July, the Parties to the claim drew up a Settlement Agreement and submitted it to the Tribunal. It was stated in the said Settlement Agreement that

"The fiscal year of National Airmotive Corporation ('NAC') ends on July 31. This circumstance makes it highly desirable for NAC to receive payment under

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the award requested before July 31, 1983.

For the reasons stated above, the parties request the Tribunal to-- if at all possible-- issue an award on agreed terms based on the settlement agreement with amendatory addendum in time for NAC to receive payment out of the security account before July 31, 1983."

This settlement agreement is not urgent in nature. Of course it is highly to be desired that this settlement agreement be converted to an award on agreed terms prior to 31 July, and that payment be made upon it. Nonetheless, failure to carry out the above would not result in damages which cannot be compensated for. At any event, Mr. Bellet took this matter to be urgent in nature and to be covered by the Presidential Order. My two colleagues convened a two-member Chamber meeting and wrote as follows in the award:

"Chamber Two has determined that it may act in the matter in lieu of Chamber Three pursuant to the authority accorded by Presidential Orders Nos.9 and 10.

"The Tribunal has satisfied itself that it has jurisdiction in the case and finds that an Award on Agreed Terms may be issued upon the submissions before it, in accordance with Article 34 of the Tribunal Rules and the standards applicable thereto."

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The following question remains unanswered: what meaning does "Chamber Two" or "the Tribunal" have, in the absence of the third arbitrator? In accordance with the Algiers Declarations, on the basis of which this Tribunal was established, the "Tribunal"-- i.e. Chamber Two-- must be formed of three members; ergo, two arbitrators do not constitute "Chamber Two," or the "Tribunal." At all events, after the draft award was written, on 13 July a memo was written to me, a copy of which was sent to Mr. Khashayar. In the memo, I was invited to sign the award on 14 July, but because it was impossible for Mr. Khashayar to send me the said memo, he informed Mr. Bellet of the situation immediately, as follows:

"13 July 1983

To: Judge Bellet

From: K. Khashayar

"I am in receipt of the copies of your two letters dated July 13, 1983, addressed to Mr. Shafeiei. I would like to bring to your attention that because of the Tribunal's summer recess Mr. Shafeiei is on his vacation, and for the time being there is no way for me to reach him.

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"Therefore I am sorry that no action can be taken on my part in this respect."

At all events, on the following day Mr. Bellet and Mr. Aldrich signed the award in a two-member Chamber meeting, without regard for the above. They also recorded my name, stating under it that

"Having been notified to be available to participate in Chamber deliberations and proceedings during the period from 6 July to 31 July 1983, Mr. Shafeiei has absented himself and has failed to inform the Chamber of any address or telephone number where he can be reached. The Chairman of the Chamber has delivered to Mr. Shafeiei's office on 13 July a letter enclosing the draft award, informing Mr. Shafeiei of the place and time of signature and inviting him to attend. Mr. Shafeiei failed to attend the signing."

I played no role and had no part in this award, nor was I present.

B. CASE NO. 83: This case belongs to Chamber Two itself. A settlement agreement was drawn up by the Parties to the claim, and it was filed with the Tribunal on 30 June 1983; on 27 July 1983, an award was rendered in respect to

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it by a two-member Chamber.

C. CASE NO.188: The final hearing in this case was held on 26 May 1983. This was precisely one day prior to Mr. Aldrich's departure on leave. From 27 May until the end of June, Mr. George Aldrich was absent and away on leave (whether justified or not). Throughout July, I too was absent and away on leave (whether justified or not), and as Mr. Bellet states, he had at his disposal neither an address nor a telephone number where I might be reached. Naturally, then, I neither attended nor played any kind of part or role in the deliberative session, or in the discussions, reaching of a decision, preparation of the draft award, drawing up of the final award, or the signing of same. Everything was absolutely carried out in my absence and without my knowledge, and in a two-member session-- in violation of the Algiers Declarations and the Tribunal Rules. The term "Tribunal" employed in this award is devoid of all meaning and validity; on page 21 of the Award, for instance, it is set forth that

"The Tribunal awards as follows:

"The Respondent Iran Housing Company is obligated to pay the Claimant, Gruen Associates, Inc.,

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U.S. \$500,000, which obligation shall be satisfied by payment out of the Security Account established by paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981."

Yet this "Tribunal" is not the same as that intended and meant by the Algiers Declarations and the Tribunal Rules; in reality, it is a personal decision by Mr. Bellet and Mr. Aldrich. The two gentlemen made a private request of Mr. Lagergren, the President of the Tribunal, that the sum of \$500,000 be withdrawn from the funds of the Iranian nation in order to pay an American corporation. It has also been recorded under my name at the end of this award that

"Following the Hearing in this case, which was held on 26 May 1983 (5 Khordad 1362), the three arbitrators of the Chamber agreed to commence deliberative sessions toward the end of June."

This allegation is in fact a lie. The hearing in this case was held on the final day prior to Mr. Aldrich's departure on leave; the fact is also still fresh in my memory that the hearing was convened after noon as well and may have continued until 7 p.m., and that Mr. Aldrich was pressed for time. In the course of the hearing, it was felt necessary to request the Parties to file further memorials

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and clarifications. On this ground, deliberations and rendering of a decision were carried out during the hearing itself, and no special meeting was held after the hearing, therefore, and no decision was made that deliberations into this case would commence in the latter part of June.

D. CASE NO.220: This case is similar to the one preceding. Under my name, Mr. Bellet and Mr. Aldrich wrote that "the deliberations relating to this case commenced shortly after the hearing dated 19 April 1983. In these deliberations, which lasted until the end of May, all three arbitrators took part fully." The case is not correctly set forth. As I explained above, it was decided, and I myself particularly insisted, that deliberations on this case commence. All of us arbitrators took up study and investigation of the points of contention and a beginning was also being made on deliberations. However, the deliberations into this case were unfortunately not carried out, because as I have stated above, Case No.156, which concerns an influential American corporation, took the place of the former case. At any event, Mr. Bellet's memo dated 13 July fully reveals the fact that deliberations had not earlier been completed in this case and, that the relevant deliberations had all been carried out during the month of July, in two-member Chamber meetings. In any case, I was not

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present, and played neither part nor role, in the deliberative session, discussions, rendering of a decision, preparation of the draft award, drafting of the final award, and signing of same. Everything was done in my complete absence, and without my knowledge, in a two-member meeting held in violation of the Algiers Declarations and the Tribunal Rules. The term "Tribunal" is, as employed in this award, devoid of meaning or validity. For example, on page 14 it has been written that

"AWARD

The Tribunal awards as follows:

The Respondent, the IRANIAN AIR FORCE, is obligated to pay the Claimant, INTREND INTERNATIONAL, INC. the following amounts:

U.S. \$83,304.27, plus interest at the rate of 12% from 15 September 1977 to the date on which the Escrow Agent instructs the Depository Bank to pay the Award; and

U.S. \$124,959.24, plus interest at the rate of 12% from 14 September 1978 to the date on which the Escrow Agent instructs the Depository Bank to pay the Award."

These terms "Award" and "Tribunal" do not signify what is

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intended by the Algiers Declarations or the Tribunal Rules, because pursuant to the Algiers Declarations the "Tribunal" means a Chamber of the Tribunal composed of three members. Mr. Bellet and Mr. Aldrich have here written a private letter to Mr. Lagergren, requesting him to issue an order for payment of a specific amount from the funds of the Iranian nation in favour of an American corporation.

Mr. President, Mr. Bellet and Mr. Aldrich forgot when they issued and signed these awards that these awards and this behaviour shall be recorded by history, and that they will be subjected to particular judgement by the nations of the Third World.

On 1 December 1982, Mr. Bellet announced his resignation, wherein he stated that

"My efforts are becoming pointless, and, at the end of my moral and physical tether, I consider that I cannot continue, at the risk of endangering my health and my family life."

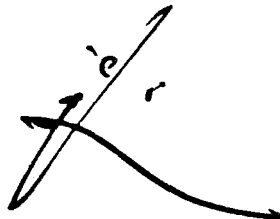
Nonetheless, the American arbitrators compelled him to continue with his services through the end of July. On the other hand, perhaps I shall explain to you in another

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memo how enmitous a policy Mr. Bellet pursued with respect to Iran. This situation ultimately compelled him to display unnatural behaviour.

Mr. President, you have been appointed as a trustee and responsible agent over payment of awards by the Tribunal out of the funds of an oppressed nation. These prerogatives have been vested in you under special circumstances and conditions. However, now that reliance has been placed upon you and you have become a trustee, the Government of Iran must not become a victim of misplaced reliance. You have been given authority to direct that payment be made on awards by the Tribunal, but only those awards are payable which have been rendered, at least prima facie, on the basis of respect for law and the Algiers Declarations. The illegal character of the present awards is altogether obvious. Before signing them, ponder a bit; and in availing yourself of your authority, take note of what is right and consider the verdict of history and the nations of the Third World.

With my respect,



Dr. Shafei Shafeiei

Attachments

to Mr. Shafeieei's letter of 8 August 1983

to Mr. Lagergren

To: Mr. Bellet
From: Dr. Shafeiei

23 June 1983

= = Mr. President,

We have continued our work through the month of June to take care of the administrative problems in our Chamber, although the period between 10 June and 30 July corresponds with the Tribunal's annual recess, and the other Chambers are not functioning.

Being extremely tired by the amount of work this Tribunal offers, I need to take advantage of the few holiday weeks that are left between now and the end of July. I request you kindly not to hold any Chamber Meetings in my absence.

Respectfully yours,

Dr. Shafeiei

The Hague

29 June 1983

To: Mr. Shafeiei

Dear Sir and Friend,

On Monday 27 June, Miss Everard gave me your note dated 23 June 1983, which very much surprised me.

You had informed me of your desire to take some rest during the week of 27 June to 3 July, and although that did cause problems for me, I accepted it.

However, it has never been mentioned that you would leave until the end of July, and I am very much astonished that you have not informed me of this before.

You are aware of the Presidential Order of 15 June 1983, pursuant to which Chamber Two is "in function" until 31 July.

You are aware of the fact, since several months, that I must leave this Tribunal by 31 July 1983, and that several cases are being deliberated by us, which must be decided before that date.

You cannot be irregularly absent, and therefore I invite you to be present here again as of the 5th of July, after the days of rest you will have taken.

Best regards,

P. Bellet

To: Mr. Bellet, Chairman

1 July 1983

From: Dr. Shafeiei

Mr. President,

Your letter of 29 June 1983, addressed to me, contains certain statements which do not correspond to reality. I have established with great regret that also some of the Orders which you issue in the name of the Tribunal, sometimes contain incorrect declarations.

In fact, the annual recess of the Tribunal has been fixed at 10 June to 30 July. Mr. Aldrich, our American colleague, has taken a month's holiday between 27 May and 27 June, during which period I have continued my work in regard to the administrative and urgent matters presenting themselves to our Chamber. On my part, contrary to what you state in your letter of 29 June 1983, I have explicitly informed you of my decision to take my holidays in the month of July.

Naturally I am aware since a long time that your mission will end on 31 July, but that circumstance cannot deprive me of my annual holidays. On the other hand, nothing obligates us to decide, through accelerated and abnormal deliberations, all these cases, of which some are extremely voluminous and complicated.

You also mention the Presidential Order of 15 June 1983, which, from the start, you did not consider to be of any importance. In that regard I have to emphasise that this Order, on which Mr. President has never consulted me, only sees to very urgent matters, such as Provisional measures or Settlements, which on the whole are very rare. Mr. President Lagergren has also indicated to me, during a telephone conversation, that his Order is valid for exceptional matters and to the extent in which I am present.

cont/...

Cont....

It has often happened in the past that you have made decisions by yourself, but in the name of the Tribunal, on administrative matters, which conduct is not permitted under the Tribunal Rules. I therefore find it necessary to point out to you that you may not irregularly hold a Chamber Meeting during the Tribunal's annual recess and during my absence.

Respectfully Yours,

Dr. Shafie Shafeiei

The Hague 13 July 1983

URGENT

Mr. Shafeiei

Dear Sir and Friend,

I regret very much not to have seen you at all these days.

I have consulted the Full Tribunal Minutes. It shows on the record of the 72nd meeting that the annual recess extends only until 17 July, and not after that date.

Already several months ago Mr. Aldrich has informed us that he would be absent between the end of May to the end of June, without any objection brought against this by anyone.

Therefore it was understood between the three of us, that we would discuss the cases that are still pending as soon as he had returned, and you yourself have insisted, on that occasion, that the deliberations in the ITT Case, since resolved, be deferred to July 1983.

Therefore, I was very surprised: first when, suddenly, you asked for a first week of rest, from 27 June to 4 July, and then when you informed me by your letter of 23 June, that you would leave for a longer period, during an indefinite amount of days.

You should have advised us of this in advance, so that I, as the Chairman of the Second Chamber, could have taken the appropriate measures for the solution of the pending cases, before my leaving the Tribunal.

Cont...

Moreover, the President of this Tribunal has signed on 15 June 1983 an Order which implies that we ~~should~~ be available at any time during July 1983.

Therefore, amiably but firmly, I ask you to be present, until the end July, at all our meetings, to deliberate with us, especially on the cases of INTREND, GRUEN, HOFFMAN and CHAS T. MAIN, and then to proceed to the signing of the awards.

In case you do not come, Mr. Aldrich and I will have to proceed without you.

Thanking you in advance, I am

faithfully yours,

P. Bellet

Copy for information

..... (not readable)

13 July 1983

To: Judge Bellet

From: K. Khashayar



I am in receipt of the copies of your two letters dated July 13, 1983, addressed to Mr. Shafeiei. I would like to bring to your attention that because of the Tribunal's summer recess Mr. Shafeiei is on his vacation, and for the time being there is no way for me to reach him.

Therefore I am sorry that no action can be taken on my part in this respect.

MEMORANDUM

To: Judge Bellet

From : K. Khashayar

Date: 18 July 1983

Having regard to the fact that you were formally and explicitly informed by Mr. Shafeiei that he would be on annual leave during the Tribunal's summer recess in July 1983, and considering that you are well aware of the fact that Mr. Shafeiei's absence will last until the end of July 1983, there is no point in sending to Mr. Shafeiei's office or the Guard letters and draft awards which are addressed to him. Please find all these unopened materials enclosed with this letter.

cc. Mr. Aldrich

cc. Mr. Pinto, Secretary - General