

257-78
۲۵۷-۷۸

ORIGINAL DOCUMENTS IN SAFE

Case No. 257

Date of filing: 8 May 84

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

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

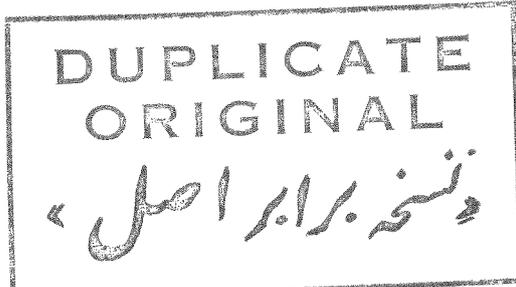
** CONCURRING OPINION of Mr. Holtzmann
- Date 8 May 84
4 pages in English _____ pages in Farsi

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

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

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi



THE DOW CHEMICAL COMPANY,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN, THE NATIONAL
INDUSTRIES ORGANISATION OF IRAN,
Respondents.

CASE NO. 257
CHAMBER ONE
AWARD NO. 127-257-1

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاری ایران - ایالات متحدہ
ثبت شد - FILED	
Date	۱۳۶۳ ۱۲/۱۸ 8 MAY 1984
No.	257

CONCURRING OPINION OF HOWARD M. HOLTZMANN

The Claimant in this case is Dow Chemical Company ("Dow") and the Respondents are the Government of the Islamic Republic of Iran and its National Industries Organisation. The transactions which are the basis of the claim also involved an Italian subsidiary of Dow, known as Gruppo Lepetit S.p.A. ("Lepetit"). Evidence before the Tribunal establishes that Dow owns 92% of the voting stock of Lepetit.

All of the Parties in this case have agreed to settle their dispute and have jointly requested the Tribunal to issue an Award on Agreed Terms.

As part of the settlement arrangements Dow agreed to provide to the Tribunal "a letter from Gruppo Lepetit S.p.A. stating that Dow has the authority to represent and bind Gruppo Lepetit S.p.A." on matters pertaining to the settlement. (That agreement is contained in Article 5 of the Addendum to the Settlement Agreement.) Dow promptly fulfilled its agreement by filing on 27 April 1984 the required letter.

There is no reason to doubt the authenticity or binding effect of the letter. It is on the letterhead of Lepetit. It is signed by an official, identified below his signature as "Regional Counsel." A copy of the letter was served by the Registry on the Agent of the Islamic Republic of Iran in the usual manner. Neither he nor any representative of the Respondents has raised any question concerning it. Nothing in the agreements of the Parties requires that the letter be signed only by a particular official of Lepetit, such as the managing director, or that any specified corporate formalities be followed to authorize the signing. Indeed, by providing a notarization of the signature Dow went beyond its obligations. We note that Regional Counsel appear to be responsible officials in the Dow organization who typically act for it in matters of this sort; thus, for example, the Statement of Claim in this case was also signed by a Regional Counsel.

The Tribunal, after carefully considering the matter, concluded that the letter fulfills the undertaking of Article 5 of the Addendum to the Settlement Agreement. The Award on agreed terms contains a specific holding to that effect, and a copy of the letter is attached to the Award.

Moreover, there can be no doubt that both Dow and Lepetit are legally bound by the letter. Dow could not escape the legal consequences of the letter by contending that a document which it itself filed was not authentic. Lepetit could hardly argue in these circumstances that it was not bound by the letter.

It is thus obvious that the interests of all Parties are fully and equally protected. In these circumstances, there is no ground whatsoever for the Tribunal sua sponte to refuse the joint request of the Parties to issue the Award on agreed terms.

Finally, I note with deep regret the tone and content of the statement made by Judge Kashani in explanation for his refusal to sign the Award on agreed terms. It appears that this refusal to sign is a pretext again to cast aspersions on the fairness of the Tribunal generally -- for, surely, no circumstances exist which warrant such an attack.

As was said in Case A/18, "libelous and baseless invective has no place in an international arbitral tribunal, and merits no reply." See "Concurring Opinion of Members Holtzmann and Aldrich" (filed 9 April 1984).

Dated, The Hague
8 May 1984



Howard M. Holtzmann