

346-165
۲۴۹-۱۶۵

CASE NO. 346
CHAMBER THREE
AWARD NO. 71-346-3

ALAN CRAIG;
Claimant,

and

MINISTRY OF ENERGY OF IRAN; WATER
ENGINEERING SERVICE (MAHAB);
KHUZESTAN WATER AND POWER AUTHORITY
(KWPA); KHADAMAT IRAN-ZEMIN ENGINEER-
ING CONSULTANT SERVICES COMPANY (KIZ),
Respondents.

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|---------------------------------------|--|
| IRAN UNITED STATES CLAIMS TRIBUNAL | دادگاه داورى دعاوى ایران - ایالات متحده |
| ثبت شد - FILED | |
| ۱۳۶۲ / ۶ / ۱۷ | تاریخ |
| 8 SEP 1983 | |
| No. 346 | شماره ۲۴۹ |

DUPLICATE
ORIGINAL
نسخه برابر اصل

CONCURRING OPINION OF RICHARD M. MOSK

NOTIFICATION OF CORRECTION

Attached are corrected pages 1 and 2 of the English version of the attachment to the Concurring Opinion of Richard M. Mosk, filed 2 September 1983.



The Co-Registrars

Additional Comments Concerning the
Reasons for the Absence of Signature

I have concurred in the statement concerning the absence of a signature of one of the members of the Tribunal. Article 32, paragraph 4, of Tribunal Rules.

There is ample authority for the proposition that the Tribunal may proceed with its work despite the circumstances concerning Judge Mostafa Jahangir Sani's purported departure. See Sabotage Claims (U.S. v. Ger.) 8 R. Int'l Arb. Awards 458 (Decision of Roberts, Umpire) and 238-41 (Opinion of Garnett, Commissioner) (1939); Decisions 21 and 22, French-Mexican Claims Commission, 5 R. Int'l Arb. Awards 510-14 (1936); Columbia v. Cauca Co., 190 U.S. 524, 47 L. Ed. 1159 (1902); Interpretation of Peace Treaties With Bulgaria, Hungary and Romania (Second Phase), Advisory Opinion, [1950] I.C.J. Repts. 221, 229; see also Lena Goldfields Ltd. v. Union of Soviet Socialist Republics, reprinted at 36 Cornell L.Q. 42 (1930). Legal scholars have also suggested that the Tribunal can proceed under conditions similar to those present in the instant case. See 2 Hyde International Law 1629 (1945); 1 J. Voet, The Selective Voet 749 (Gane ed. and trans. 1955); 3 Phillimore, Commentaries on International Law 4 (1885); A. Merignhac, Traité theorique et pratique de l'Arbitrage international 276-77 (1895).

In his Report on Arbitration Procedure to the International Law Commission, Georges Scelle wrote:

Spontaneous withdrawal [of an arbitrator] is inadmissible. The arbitrator was not bound to accept the task entrusted to him; but he can no more give up his functions once they have been conferred upon him than an officially installed magistrate can insist on resigning. Municipal law is categorical on this point [W]ithdrawal of an arbitrator cannot prevent the tribunal from acting nor from rendering a binding award whenever it is materially able to do so.

U.N. Doc. A/CN.4/18 at 32-33 (21 March 1950).

Among municipal law provisions consistent with this position are those of Iran and the United States. The Civil Procedure Code of Iran (Sabi trans. 1972) provides as follows:

Article 649

After accepting to act as arbiters, the arbiters do not have the right to resign, except where they have a plausible excuse such as a sojourn or sickness and so on

Note 1 - Where one of the arbiters of choice resigns during the last third part of the period of arbitration his resignation shall be treated as null and void and he shall be regarded as abstaining.

. . . .

Article 660

Where one of the arbiters after he has been informed, does not appear in the session held for proceedings or consultations, or he appears but refuses to give award, the award given by the majority of votes shall be valid even if unanimity of votes has been a condition in the agreement for arbitration. Non-appearance or refusal of arbiter to give an award or signing the same shall be recorded in the award.