

ORIGINAL DOCUMENTS IN SAFE

368-103

Case No. 368

Date of filing: 9/3/1998

\*\* AWARD - Type of Award \_\_\_\_\_  
 - Date of Award \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

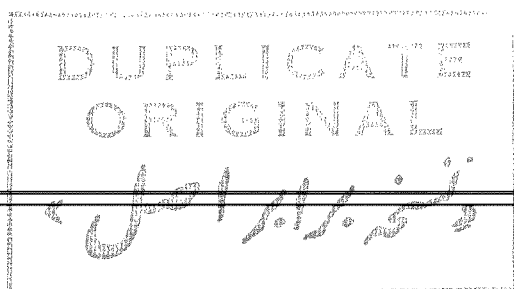
\*\* DECISION - Date of Decision 9 Mar 1998  
5 pages in English 6 pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
 - Date \_\_\_\_\_  
 \_\_\_\_\_ 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: \_\_\_\_\_  
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 - Date \_\_\_\_\_  
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CASE NO. 368

CHAMBER THREE

DECISION NO. DEC 122-368-3

UNIDYNE CORPORATION,  
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN  
acting by and through  
THE NAVY OF THE ISLAMIC  
REPUBLIC OF IRAN,  
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دآوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	9 MAR 1994
	تاریخ ۱۲۷۲ / ۱۲ / ۱۸

DECISION

1. On 10 November 1993, the Tribunal filed Award No. 551-368-3 (the "Award") which decided the claims and counterclaims arising out of a contract between the parties pursuant to which the Claimant was to develop a system of scheduled "Maintenance and Material Management" for a number of the Respondent's vessels.

2. On 21 January 1994, the Agent of the Islamic Republic of Iran, ~~on behalf of the Ministry of Defense of the Islamic Republic of Iran (the "Navy")~~, filed a Request for Correction of the Award and Issue of an Additional Award in Case No. 368.

3. The Request of 21 January 1994 was submitted in reliance upon Articles 36 and 37 of the Tribunal Rules. Requests under these Articles must be made "[w]ithin thirty days after the receipt of the award." The Persian version of the Award was filed on 22 December 1993. Accordingly, the Tribunal finds that the Request was timely filed. See Hood Corporation and Islamic Republic of Iran, et al., Decision No. DEC 34-100-3, pp. 1-2 (1 March 1985), reprinted in 8 Iran-U.S. C.T.R. 53, 54.

4. The Request contains two sections. In Section A of the Request, the Agent states that

[t]he Defense Ministry believes that the Award, particularly that part of it related to the amount of \$176,304.02 which Claimant is allegedly entitled to for PMS Development Bandar Abbas, discussed in paragraphs 43 through 49 of the Award, has no contractual basis in light of the facts and documentary evidence submitted in this Case by the Parties. Claimant, too, has made no claim in that respect.

5. Article 36 permits a party to request the Tribunal to correct in the award "any errors in computation, any clerical or typographical errors, or any error of similar nature." The request for correction is not made on any such grounds.

6. With regard to the request for a correction to the award concerning the amount of \$176,304.02 awarded for work performed for the PMS Development at Bandar Abbas, Tribunal precedent is clear. Insofar as the request constitutes an attempt to reargue certain aspects of the Case, to disagree with the conclusions of

the Tribunal in its Award, or to request the Tribunal either to review its Award or further to explain its reasons for the Award, there is no basis in the Tribunal Rules for a request of this kind on such grounds. See Paul Donin de Rosiere, et al. and Islamic Republic of Iran, et al., Decision No. DEC 57-498-1, para. 4 (10 Feb. 1987), reprinted in 14 Iran-U.S. C.T.R. 100, 101; Norman Gabay and Islamic Republic of Iran, Decision No. DEC 99-771-2, para. 8 (24 Sept. 1991), reprinted in 27 Iran-U.S. C.T.R. 194, 195. Therefore, the Tribunal rejects the Respondent's Request for a Correction to the Award with respect to the claims for work performed at Bandar Abbas.

7. Section B of the Agent's request is for "an additional award compelling Claimant to deliver the items belonging to the Navy or the value thereof plus interest."

8. Article 37 of the Tribunal Rules permits the Tribunal to "make an additional award as to claims presented in the arbitral proceedings but omitted from the award."

9. Paragraph 31 of the Award in its enumeration of the counterclaims of the Respondent, explicitly mentions "c. failure to deliver all materials."

10. Paragraphs 76-82 of the Award deal with the Parties' contentions regarding, inter alia, the Navy's counterclaim based on its allegation of non-completion of the contract. Paragraph 77 addresses the Navy's contention that Unidyne "failed to deliver the MRC cards, the PMS Work Centre Mannual [sic] books as well [as] the Cycle Quarterly and Weekly prepared tables" and "failed to install, deliver, test and rectify the system." The same paragraph refers to the assertion by the Navy of the gravity of Unidyne's alleged failure to complete "delivery and installation of the software and hardware." Paragraph 80 reflects the response of the Claimants to the Respondent's counterclaim based on unfinished work, that it was due to force majeure conditions prevailing in Iran at the time.

11. Paragraph 90 again refers to the Respondent's claim that Unidyne "refused to remit to the Navy the balance of the materials still to be delivered under the contract."

12. Paragraphs 91 et seq. detail the Tribunal's finding that the events in Iran in November 1979, and the Executive Orders issued by the United States imposing restrictions on dealings with Iran (the "Freeze Orders"), ~~had the effect of barring further~~ shipments of materials under the contract to the Navy. In Paragraph 97, the Tribunal concludes that the above situation amounted to force majeure for the Claimant, preventing it from continuing to "send [] such materials under the circumstances ...."

13. Paragraph 100 concludes that the Claimant should not be held liable for the non-completion of the Contract, as such non-completion resulted from circumstances beyond its control, and concluded that item c of Paragraph 31, (i.e., the counterclaim for "failure to deliver all materials"), inter alia, should be dismissed.

14. By these findings, the Award dismissed on the merits the Navy's counterclaim for delivery of materials. In view of the foregoing, the Tribunal finds that the counterclaim for delivery of materials was not "omitted from the award" such that there is a basis under Article 37 for making the additional Award requested. Accordingly, the Respondent's Request for an Additional Award is rejected.

15. For the foregoing reasons:


THE TRIBUNAL DECIDES AS FOLLOWS:

The requests filed on 21 January 1994 by the Agent of the Government of the Islamic Republic of Iran on behalf of the Ministry of Defense, are denied.

Dated, The Hague  
9 March 1994

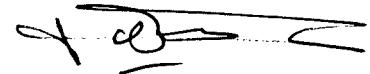


Gaetano Arangio-Ruiz  
Chairman  
Chamber Three



Richard C. Allison

In the name of God



Mohsen Aghahosseini  
The present request by the Respondent provided the Majority with yet another opportunity to set right a very grave injustice (See my Dissenting Opinion of 12 November 1993). It is regrettable that they, resorting to technical niceties, have failed to seize it.