ORIGINAL DOCUMENTS IN SAFE

Case No. 368 368-95 Date of filing: 19/11/1993

~~** AWARD - Type of Award _____~~

- Date of Award _____

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** DECISION - Date of Decision _____

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** CONCURRING OPINION of _____

- Date _____

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** SEPARATE OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: Statement of Mr Aghahossieini

_____

- Date 19 Nov 1993

3 pages in English _____ pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

IN THE NAME OF GOD

Case No. 368
Chamber Three
Award No. 551-368-3

UNIDYNE CORPORATION,
Claimant,

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

A Statement in Case No. 368
by Mohsen Aghahosseini

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1. In a "Supplemental Opinion"[1] filed in the present Case, the Majority assert that Members of the Tribunal "rarely" respond to dissenting opinions. In this they apparently find a good enough excuse not to say a word about all that was said in my Dissenting Opinion of 12 November 1993. They do say, however, that every argument raised in the said Dissent has been carefully considered by them.

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[1] The very title of the Majority's release is bewildering. As a "Supplement" to their Opinion, is this intended to form part of the Majority's Award?

One would have expected the Majority, now that they have at any rate written in response, to tell their readers not of their "consideration" of those arguments, but of why and how a nonexisting claim was nevertheless fashioned and granted. In all fairness, though, what was there to tell?

2. If there is nothing to tell in respect of the relevant issue, and silence is thought unwise, there are always other subjects to fill the vacuum. Hence, the Majority's concern for the rule of confidentiality of arbitral deliberations. Without citing any instance, they assert that the Dissenting Opinion violates the rule. As it happens, in this, too, they are wrong, both factually and legally.

They are wrong factually, because the Dissent simply does not disclose the substance of any deliberation. All that it does say in this respect-- and this is in order to demonstrate that the assumed claim had never been before the Chamber-- is that neither in the oral deliberations nor in the three Draft Awards which were subsequently prepared, had there been any trace of such a claim. A reference to what had not been before the Chamber-- and hence had not formed part of the deliberations-- cannot, by any stretch of imagination, be taken as constituting a disclosure of the substance of what was deliberated upon.

They are wrong legally, because not everything can be done under the protective shield of the sanctity of deliberations. This procedural rule, like any other rule of law, is to protect what is just and nothing else: Lex est sanctio sancta, jubens honesta, et prohibens contraria. One cannot simply fashion a claim, of which there has been no trace either in the pleadings or in three years of oral and written exchanges after the Hearing, and then seek to bury this irregularity under the rubble of the "salutary effect" of the rule of confidentiality. Where a correct reflection of facts demands, all other considerations must give away: Necessitas vincet legem; legum vincula irridet.

3. A glance at the Dissenting Opinion will readily show that what has troubled the Majority in there is not a general reference to what has not been deliberated upon[2], but a reasoned demonstration of how an assumed claim, of which there has been no trace in the pleadings, has been fully granted. That is a fact which no arbitrator, faithful to his mandate, can possibly fail to mention in his version of the events; and that is a fact in respect of which the majority, continuing their intimate joint efforts, have failed to challenge.

4. The Award, the Dissenting Opinion, and the Majority's "Supplemental Opinion" are now before the reader. No doubt he will form his view of the real issue in these exchanges. It is now for him to judge whether the claim in question had ever been presented to the Chamber; whether there had been any justification of whatever nature for the granting of the assumed claim; whether by referring, in general terms, to what had not been discussed in the deliberations, the "sin" of disclosing the deliberations has been committed; and finally, whether the rule of the confidentiality of deliberations should be extended to cover every type of irregularity.

Dated, The Hague,
19 November 1993

Mohsen Aghahosseini

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[2] The degree of the Majority's respect for the rule of confidentiality is revealed by their reference to the wholly irrelevant fact that I have, at some point after the first deliberative meeting, declined to further participate in the Chamber's oral deliberations, opting instead for written exchanges. What they fail to add, incidently, is the fact that this, too, was the result of a highly irregular conduct by the Chamber's Chairman, which conduct fully convinced me of the absolute futility of further oral deliberations.