

ORIGINAL DOCUMENTS IN SAFE

Case No. 382Date of filing: 26 June 85

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

\*\* DECISION - Date of Decision \_\_\_\_\_  
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\*\* CONCURRING OPINION of \_\_\_\_\_  
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\*\* SEPARATE OPINION of \_\_\_\_\_  
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\*\* DISSENTING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* OTHER; Nature of document: Notification of correction  
to FTL/ISM

- Date 25 June 85  
6 pages in English \_\_\_\_\_ pages in Farsi

DUPLICATE  
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CHAMBER THREE

CASE NO. 382

AWARD NO. ITM/ITL 52-382-3

BEHRING INTERNATIONAL, INC.,

Claimant,

and

ISLAMIC REPUBLIC IRANIAN AIR FORCE,  
IRAN AIRCRAFT INDUSTRIES and THE  
GOVERNMENT OF IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	26 JUN 1985 ۱۳۶۴ / ۴ / ۵
No.	382

NOTIFICATION OF CORRECTION  
TO INTERIM AND INTERLOCUTORY AWARD NO. 52-382-3

The following corrections, reflected in the attached revised pages, are hereby made to the Interim and Interlocutory Award:

Page 24:

line 15: substitute "reasoning.<sup>23</sup>" for "reasonin<sup>23</sup>";

Page 53:

note 41, line 15: substitute "rules" for "rule";

Page 55:

add the following as the last line of text:


"transfer of the goods within Claimant's warehouse, from";

Page 58:

delete the last line of text.

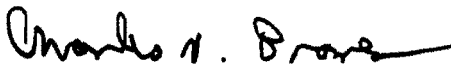
Dated, The Hague

25 June 1985



Nils Mangård  
Chairman  
Chamber Three

In The Name of God



Charles N. Brower



Parviz Ansari Moin

provisions of the Claims Settlement Declaration vesting jurisdiction in the Tribunal over claims arising on or before 19 January 1981 did not apply to Claimant. Claimant urged

(1) that its demand for payment was not a claim outstanding as of January 19, 1981; (2) that the choice of forum clause in the original contract vitiated the effect of the [Claims Settlement] Declaration and Executive Order; and (3) that Behring falls within a special exception for warehousemen.

Behring Int'l, Inc. v. Imperial Iranian Air Force, 699 F.2d 657, 661 (3d Cir. 1983). The Court of Appeals rejected each of these contentions and affirmed the ruling of the District Court, though it used different reasoning.<sup>23</sup>

After apparently depleting the Trust Account, Claimant, on 16 November 1982, applied to OFAC for a license authorizing the sale of all or part of Respondents' property. See 31 C.F.R. § 535.540 (47 Fed. Reg. 31,682, 22 July 1982). Claimant, on 28 February 1983, provided the United States with an agreement indemnifying the United States in the event that this Tribunal should hold the United States liable to Iran for damages attributable to the issuance of such a license and OFAC issued a license (No. IR-1568), on 23 May 1983, authorizing Claimant to conduct a public sale on 15 August 1983. As noted in the preceding section, Claimant filed a notice of such sale with the Tribunal only on 7 July 1983. The purpose of the sale was to satisfy a

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<sup>23</sup>The appellate court held Behring's claims to be barred "not by a withdrawal of jurisdiction . . . but by a change in substantive law." Behring Int'l, Inc. v. Imperial Iranian Air Force, 699 F.2d 657, 666 (3d Cir. 1983).

The Tribunal also notes that Respondents appealed that portion of the District Court's decision authorizing Behring to draw on the Trust Account to satisfy its claim for storage charges accruing after 19 January 1981. The Third Circuit, however, did not reach the merits of Respondents' contention because their appeal had not been timely filed. Id. at 661.

In addition to this expressly granted power, the Full Tribunal has ruled that the Tribunal has "an inherent power to issue such orders as may be necessary to conserve the respective rights of the Parties and to ensure that this Tribunal's jurisdiction and authority are made fully effective." E-Systems, Inc. and Government of Islamic Republic of Iran, Interim Award 13-388-FT at 10 (4 Feb. 1983), 2 Iran-U.S. C.T.R. 51, 57.<sup>41</sup> Applying these standards, the Tribunal determines that the conservation of both the goods and the rights of the Parties requires that the Respondents' property be transferred to an alternate location. Accordingly, we grant the request for interim measures, subject to the conditions set forth below.

The Tribunal first finds that Respondents' property must be removed from its present location in the annex portion of Claimant's Edison, New Jersey warehouse facility in order to prevent unnecessary damage and/or deterioration. The conditions under which the goods are presently stored are inadequate to conserve and protect them and irreparable prejudice to Respondents' asserted rights may result if they

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<sup>41</sup>On the inherent power of international tribunals to indicate interim measures of protection, see also Northern Cameroons Case (Preliminary Objections) (Cam. v. U.K.) 1963 I.C.J. 15, 103 (Judgment of 2 Dec.) (separate opinion of Fitzmaurice, J.) ("Although much (though not all) of this incidental jurisdiction [inter alia, to decree interim measures of protection] is specifically provided for in the Court's Statute, or in Rules of Court which the Statute empowers the Court to make, it is really an inherent jurisdiction, the power to exercise which is a necessary condition of the Court -- or any court of law -- being able to function at all"); Gramophone Co. Ltd. v. Deutsche Grammophon AG and Polyphonwerke AG, 1 Trib. Arb. Mixtes 857 (1922) (ordering interim measures without express authorization in Tribunal's rules of procedure); J. Elkind, Interim Protection: A Functional Approach 162-63 (1981); B. Cheng, General Principles of Law as Applied by International Courts and Tribunals 269 (1953); cf. E. Dumbauld, Interim Measures of Protection in International Controversies 143-44, 181 & n.1 (1932). But see J. Sztucki, Interim Measures in the Hague Court 61-67 (1983).

Secondly, a transfer is necessary to enable the Tribunal's expert to perform his assigned tasks.<sup>43</sup> As noted, the expert has advised the Tribunal that he cannot perform such tasks with the goods in their current location. The Tribunal deems the prompt completion by the expert of his inventorying and inspection functions important to a proper resolution of this case and determines interim measures to be appropriate to define and confine the dispute.<sup>44</sup>

Having concluded in its Interim Award of 22 February 1985 that a transfer of the goods from Claimant's warehouse annex was necessary, which conclusion is reaffirmed above, the Tribunal sought, at Claimant's urging, to arrange a transfer of the goods within Claimant's warehouse, from

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<sup>43</sup>In various submissions, Claimant has objected to the Tribunal's decision appointing an expert. In one filing, Claimant "respectfully submitted that the appointment of an expert was ultra-vires and without adequate notice, totally unnecessary, ill-conceived, without precedent, and without any regard for Behring's rights whatsoever." Submission of 25 April 1984 at 5. The Tribunal, however, notes that the Tribunal Rules authorize the Tribunal to appoint experts "to report to it, in writing, on specific issues to be determined by the Tribunal," Article 27(1), and the Tribunal has appointed experts in other cases. The Tribunal further notes that, pursuant to Article 27(3) and (4) and the expert's terms of reference, Claimant will have an opportunity to comment on both the expert's preliminary report and his final report.

<sup>44</sup>The International Court of Justice has, on numerous occasions, indicated interim measures ordering parties to disputes before it, inter alia, not to take any action which might "aggravate or extend" the dispute submitted to the Court. E.g. Nuclear Tests Cases (Austral. v. Fr.), 1973 I.C.J. at 106 and (N.Z. v. Fr.), 1973 I.C.J. at 142 (Interim Protection Orders of 22 June); Fisheries Jurisdiction Cases (U.K. v. Ice.), 1972 I.C.J. at 17 and (W. Ger. v. Ice.), 1972 I.C.J. at 35 (Interim Protection Orders of 17 Aug.). See also J. Elkind, supra note 41 at 224-30 (concluding that interim protection should be available generally to prevent the aggravation or extension of a dispute); E. Dumbauld, supra note 41 at 27-28 (listing "[t]o facilitate the conduct of proceedings" as a type of measure pendente lite).

special handling, involving daily management decisions for which the Tribunal cannot assume responsibility. Moreover, the use of a third party conservator is unnecessary in this case as Respondents' title to the goods and eventual right to possession as between the Parties is undisputed.<sup>47</sup>

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A conclusion that a transfer of the goods is warranted, however, does not mean that Claimant's asserted rights with respect to the goods should go unprotected. Although Respondents' ownership of the goods is uncontested, the record in this case suggests that Claimant nonetheless may assert a possessory security interest in the goods. Specifically, Claimant has contended in the past that it has a warehouseman's lien on the goods. Such lien, under New Jersey law, which would govern any rights and responsibilities of Claimant as a warehouseman, secures "charges for storage or transportation . . . , insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods . . . ." N.J. Stat. Ann. 12A:7-209(1). In effect, the statutory lien confers a security interest for such charges. If Claimant in fact qualifies for such lien, his security interest might be defeated by any transfer of the goods because the lien is possessory. N.J. Stat. Ann. 12A:7-209(1) and (4). Respondents, however, argued before United States courts that Claimant did not qualify for the lien.

The Tribunal should not rule definitively on the existence of the lien, especially because the lien would not be necessary to secure any charges at issue in this case.

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<sup>47</sup>While Article 26(1) of the Tribunal Rules refers to ordering deposit of goods forming the subject-matter of the dispute with a third person as a potential interim measure, such measure does not purport to be an exclusive remedy, see Sanders, Commentary on UNCITRAL Arbitration Rules, II Y.B. Com. Arb. 172, 196 (1977), and, for the reasons discussed in the text, is found not to be an appropriate measure in this case.