

11135-97

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CLAIMS TRIBUNAL

دیوان داوری دعاری ایران - ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

Case No. 11135

Date of filing: 29. July 87

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

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

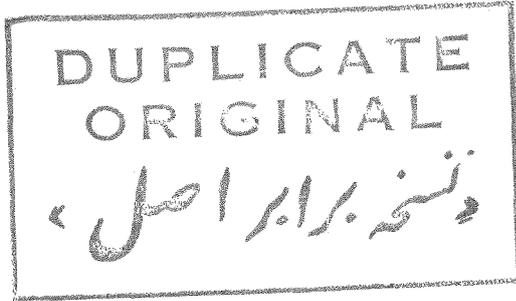
** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
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** DISSENTING OPINION of Correction of Judge Brower's
- Date _____
1 pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

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CASE NO. 11135
 CHAMBER THREE
 AWARD NO. 312-11135-3

ALFRED L.W. SHORT,
 a claim of less than US\$ 250,000
 presented by the UNITED STATES OF AMERICA,
 Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
 Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحدہ
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CORRECTION TO DISSENTING OPINION OF JUDGE BROWER

The following corrections should be made to the English version of my Dissenting Opinion filed in this Case on 14 July 1987:

1. Page 3, line 16: Delete the word "expressly."
2. Page 4, line 1: The name "Pellonpää" should be spelled "Pellonpää."
3. Page 10, line 23: The word "that" should be replaced by the word "than."

Copies of the corrected pages are attached.

Charles N. Brower
 Charles N. Brower

removal, or forcibly") can be fulfilled in exceptional cases even where the alien leaves the country without being directly and immediately forced or officially ordered to do so. Such cases would seem to presuppose at least (1) that the circumstances in the country of residence are such that the alien cannot reasonably be regarded as having any real choice, and (2) that behind the events or acts leading to the departure there is an intention of having the alien ejected and these acts, moreover, are attributable to the State in accordance with the principle of state responsibility.

Id. at 14 (citing Goodwin-Gill, International Law and the Movement of Persons Between States 201 (1978)). In this respect the instant Award, by adopting this dictum (para. 30), has met the first challenge presented by this Case.²

3. In consequence the Tribunal rightly has proceeded to consider the facts of this Case within the framework of the basic principles regarding a State's expulsion of aliens. They are provided by the Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3853, 8 U.S.T. 899 ("Treaty of Amity"), Articles II(1), (2), (3) and (4), IV(3) and V(1),³ supplemented as necessary by resort to

²The concept of constructive expulsion seems no less applicable to a mass expulsion than to a distinctly individual one. In fact it is more likely to arise in the former context.

³Numerous awards of this Tribunal have established that the Treaty of Amity is applicable to cases such as the present one. See, e.g., Amoco International Finance Corporation and Islamic Republic of Iran, Award No. 310-56-3 at paras. 88-100 (14 July 1987); Sedco, Inc. and National Iranian Oil Company, Award No. ITL 59-129-3 (27 March 1986); Phelps Dodge Corp. and Islamic Republic of Iran, Award No. 217-99-2 (19 March 1986); INA Corporation and Islamic Republic of Iran, Award No. 184-161-1 (13 August 1985).

customary law. See generally M. Pellonpää, Expulsion in International Law (1984). Of particular relevance here are the customary law prohibition against "collective" or "mass" expulsions of groups of aliens, see Draft Declaration on the

(Footnote Continued)

Article II provides, inter alia, as follows:

1. Nationals of either High Contracting Party shall be permitted, upon terms no less favorable than those accorded to nationals of any third country, to enter and remain in the territories of the other High Contracting Party for the purpose of carrying on trade

2. Nationals of either High Contracting Party within the territories of the other High Contracting Party shall, either individually or through associations, and so long as their activities are not contrary to public order, safety or morals: (a) be permitted to travel therein freely and reside at places of their choice

3. The provisions of paragraphs 1 and 2 of the present Article shall be subject to the right of either High Contracting Party to apply measures which are necessary to maintain public order, and to protect public health, morals and safety, including the right to expel, to exclude or to limit the movement of aliens on the said grounds. . . .

4. Nationals of either High Contracting Party shall receive the most constant protection and security within the territories of the other High Contracting Party. . . .

Article IV provides, inter alia, as follows:

3. The dwellings, offices, warehouses, factories and other premises of nationals and companies of either High Contracting Party located within the territories of the other High Contracting Party shall not be subject to entry or molestation without just cause.

Article V provides, inter alia, as follows:

1. Nationals and companies of either High Contracting Party shall be permitted, within the territories of the other High Contracting Party . . . (c) to dispose of property of all kinds by sale, testament or otherwise. . . .

inception, the Islamic Revolution saw the forces of world oppression, led by the United States, as its true foe . . . [T]he Shah was not the revolution's major problem." 8 Foreign Broadcast Information Service Daily Report, South Asia, at I-3 (4 Nov. 1986). Another broadcast a few days later reviewed the Ayatollah's speeches from as far back as 1962 attacking the "world-devouring United States . . . as the cause of all the difficulties facing the country," noting that "the watchword was 'Death to America' from the very beginning." 8 Foreign Broadcast Information Service, Daily Report, South Asia, at I-3 (10 Nov. 1986).⁷

⁷It is noteworthy, too, that the Minister of Foreign Affairs of Iran, communicating officially with the International Court of Justice on 9 December 1979 and 16 March 1980, referred to "more than 25 years of continual interference by the United States in the internal affairs of Iran, the shameless exploitation of our country, and numerous crimes perpetrated against the Iranian people, contrary to and in conflict with all international and humanitarian norms." United States Diplomatic and Consular Staff in Tehran (United States v. Iran), 1980 I.C.J. 3, 9, 19 (Judgment of 24 May 1980).

The 9 December 1979 communication added:

. . . [T]he whole political dossier of the relations between Iran and the United States over the last 25 years . . . includes, inter alia, all the crimes perpetrated in Iran by the American Government, in particular the coup d'état of 1953 stirred up and carried out by the CIA, the overthrow of the lawful national government of Dr. Mossadegh, the restoration of the Shah and of his régime which was under the control of American interests, and all the social, economic, cultural and political consequences of the direct interventions in our internal affairs, as well as grave, flagrant and continuous violations of all international norms, committed by the United States in Iran.

Id. at 19.