

ORIGINAL DOCUMENTS IN SAFE

Case No. 11135

Date of filing: 14 July 87

** AWARD - Type of Award Final
- Date of Award 14 July 87
15 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 _____
- Date _____
_____ pages in English _____ pages in Farsi

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

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi



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	دیوان دآوری دعاوی ایران - ایالات متحدہ
FILED - ثبت شد	
Date	14 JUL 1987 تاریخ
	۱۳۶۶ / ۴ / ۲۲
No.	11135 شماره

AWARD

Appearances

For the Claimant:

Mr. John R. Crook,
Agent of the United States
of America;
Prof. Richard Lillich,
Counsel;
Mr. Michael F. Raboin,
Deputy Agent and Presenter;
Ms. Lucy Reed,
Adviser to the Agent.

For the Respondent:

Mr. Mohammad K. Eshragh, Agent of
the Government of the Islamic
Republic of Iran;
Mr. Nozar Dabiran,
Legal Adviser to the Agent;
Mr. Sohrab Rabie,
Legal Assistant to the Agent.

I. PROCEDURAL HISTORY

1. On 19 January 1982 the United States filed a Statement of Claim which presented the claim of less than US\$250,000 of Alfred L.W. Short (the "Claimant") against the Islamic Republic of Iran ("Iran" or the "Respondent"). The Claimant sought \$236,041.87 plus interest and costs for loss of employment income and benefits and of personal property allegedly resulting from the Respondent's wrongful acts or omissions which compelled him to leave Iran.

2. The Case was assigned to Chamber Three on 16 December 1983 and the Respondent was ordered to file its Statement of Defence by 15 March 1984. Following a request by the Respondent for further particulars of the Claim, the Claimant was ordered on 6 April 1984 to file a Supplementary Statement of Claim.

3. The Supplementary Statement of Claim was filed on 9 October 1984, together with a submission styled "Factual Memorial Concerning Anti-Americanism During the Islamic Revolution in Iran" (the "Factual Memorial"), two volumes of Exhibits and a Memorial of Law.

4. On 9 October 1984, the United States filed a "Request for an Interlocutory Award" ("Request").¹ This Request was submitted

on behalf of approximately fifteen hundred U.S. claimants who left Iran during the period from October 1978 through February 1979

and requested the Tribunal

¹Similar requests were also filed in Case Nos. 10199, 10729 and 10913.

to issue an Interlocutory Award holding that the Government of Iran is liable for the collective wrongful expulsion of all Americans who left Iran from October 1978 through February 1979.

It was also requested that the Interlocutory Award

further hold that Iran is required to compensate Claimants for injury they sustained to their tangible personal property and intangible property rights as a result of their expulsions, losses which are described in details in the individual supplemental statements of claim.

5. The Respondent filed on 19 July 1985 a petition for the dismissal of the Request and on 18 February 1986 a memorial in opposition to the Request. On 26 February 1986 the Respondent filed its Statement of Defence.

6. Following the exchange of further written pleadings, including copies of the Respondent's Statement of Defence in Case No. 10729 which it submitted for filing also in the present Case, a Hearing in this Case was held on 8 December 1986.

II. JURISDICTION

7. The Claimant asserts that he is a national of the United States by birth, and that the Respondent is clearly within the definition of "Iran" as contained in Article VII, paragraph 3, of the Claims Settlement Declaration. The Claimant asserts that the Claims are for injury to his tangible personal property and intangible property rights "which arise out of debts, contracts . . . expropriations or other measures affecting property rights" within the meaning of Article II, paragraph I, of the Claims Settlement Declaration.

8. The Respondent does not contest the Claimant's nationality or its status as a Respondent but argues that the

alleged expulsion which forms the basis of the claim is tortious in character and that claims arising therefrom are outside the jurisdiction of the Tribunal.² The Respondent further argues that the claim does not arise out of "debts, contracts . . . expropriations or other measures affecting property rights" as required by Article II, paragraph 1 of the Claims Settlement Declaration.

9. The Respondent further contends that the claim is based on injury allegedly incurred as "a result of popular movements in the course of the Islamic Revolution of Iran" as described in paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981 ("General Declaration") and is thus excluded from the jurisdiction of the Tribunal by Article II, paragraph 1 of the Claims Settlement Declaration.

10. The Tribunal is satisfied that the Claimant is a national of the United States and that the Government of Iran is a proper Respondent to this claim.

11. The Tribunal's jurisdiction is strictly limited by the Claims Settlement Declaration to claims which "arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights," but its jurisdiction extends to all acts which fall under such a definition. The fact, however, that an act or conduct constituting an expropriation or another measure affecting property rights, in the meaning of Article II, paragraph 1, just referred to, may be characterized as a tortious act or

²The Respondent refers in support to Lillian Byrdine Grimm and Islamic Republic of Iran, Award No. 25-71-1 (22 February 1983) reprinted in 2 Iran-U.S. C.T.R. 78; Manuchehr Hadadi and United States, Award No. 162-763-3 (31 January 1985).

conduct is of no effect upon the Tribunal's jurisdiction. In any event, in view of the Tribunal's findings upon the imputability of the facts complained of by the Claimant, the Respondents' objection referred to in para. 8, supra, does not apply in the present Case.

12. As regards the Respondent's contention that the injury complained of is excluded from the Tribunal's jurisdiction by paragraph 11 of the General Declaration, the Tribunal notes that what that provision excludes are claims arising out of injuries "as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran." (Emphasis added.) The Claimant does not attribute his injuries to acts of popular movements but to actions of individuals or groups that he alleges are attributable to the Government of Iran. Paragraph 11 of the General Declaration therefore has no relevance in the instant Case.

13. The Tribunal is consequently satisfied that it has jurisdiction over the claim.

III. THE MERITS

A. Facts and Contentions of the Parties

1. The Claimant

14. On 11 April 1977 the Claimant began employment in Iran with Lockheed Aircraft Service Company ("Lockheed") pursuant to a two year contract of employment as the Director of the Aircraft Engine Management Division in Iran. He commenced this employment intending to renew his contract and stay in Iran for at least five years.

15. Although he was initially satisfied with life in Iran, the Claimant alleges that the onset of the Islamic Revolution in late 1978 and the subsequent declaration of martial law he was virtually under house arrest, living with progressively increasing stress caused by vehement threats against the lives of Americans, shooting in the streets, firebombing of American homes and automobiles, and other violence propagated by revolutionaries against Americans.

16. On 1 December 1978 a letter was allegedly found posted on Lockheed bulletin boards stating that American personnel and their dependants were being given one month to leave Iran and that any remaining employees would be considered as enemies and fought with categorically. The letter had further stated that lists of addresses of foreigners were being made in preparation "for struggle."

17. It is alleged that in response to the anti-American exhortations of Ayatollah Khomeini and other religious leaders and as a result of the U.S. Government's support for the Shah, Americans were singled out in the course of the Islamic Revolution and threatened, harassed, beaten and in the most tragic cases, murdered, by the followers of Ayatollah Khomeini. American homes were subjected to attacks and their property stolen. Hostility towards the United States and Americans living and working in Iran was a major driving force of the Revolution, and anti-Americanism a central feature within it. Affidavits of American workers, contemporaneous reports of the media, and bulletins issued by American companies that were operating in Iran, including Lockheed, are relied upon to support these allegations.

18. During this period buses transporting American workers to their workplaces are alleged to have been frequently attacked by "pro-Khomeini activists" with rocks and firebombs. Americans walking the streets or travelling to

work are also alleged to have been stoned by strikers and demonstrators. The Claimant alleges that on one occasion a friend of his while walking to the Claimant's residence had noticed a group of Iranian men rapidly approaching him from behind and fearing that he might become yet another victim of the frequent attacks on Americans ran the last block to the Claimant's residence.

19. The Claimant alleges that he and his family also encountered hostility from his landlord, who claimed to be an advocate of the formation of the Islamic Republic. In conversations Claimant had with him the landlord clearly expressed his alignment with the Revolutionary Guards and their anti-American sentiments. This, the Claimant alleges, added further uncertainty to his family's continued stay in Iran.

20. On 4 January 1979 the Claimant was informed by his employer that his dependents would be evacuated from Iran the next day. His family was accordingly evacuated on 5 January 1979. The Claimant, however, remained in Iran and continued his employment with Lockheed. On 13 January 1979 the Claimant was offered an extension of his assignment by the Senior Vice President of Iranian Operations of Lockheed. The Claimant accepted an extension of his employment for an indefinite period of time subject to the ability of his dependents to return to Iran. This acceptance was confirmed by Lockheed in a letter dated 22 January 1979.

21. With the departure of the Shah in January 1979 the attacks on foreigners and particularly Americans are said to have increased. On 17 January 1979 while he was on his rear balcony the Claimant heard a burst of machine gun fire which seemed to have originated within one hundred feet. He immediately dropped to the floor and shielded himself. On the morning of 28 January 1979, on arriving at the point where he was usually picked up to be transported to his

workplace the Claimant observed a man in a black overcoat approaching him. At that moment his bus arrived and the Claimant boarded it without incident. The Claimant states that this was the first time in almost two years that he had seen anyone at this place so early in the morning, and claims that he had heard of attacks on other Lockheed employees by a similarly dressed person. The Claimant alleges that this same man appeared daily thereafter and being suspicious of his motives the Claimant began to wait until the bus arrived to leave his apartment.

22. The situation became worse daily and on 4 February 1979 the Claimant was notified by Lockheed to pack his personal belongings and be ready to be evacuated from Iran on 6 February 1979. In fact scheduled flights were cancelled and he was evacuated by the United States Air Force on 8 February 1979.

23. The Claimant's employment with Lockheed was terminated effective 9 February 1979. The Claimant alleges that this termination was without cause on his part and solely due to his forced evacuation. The Claimant alleges that his departure amounts to a wrongful expulsion from Iran, for which Iran is liable. After his departure from Iran he was unsuccessful in obtaining gainful employment in the United States until April 1981. As his contract of employment with Lockheed was for an indefinite period of time, he claims \$222,209.27, the amount he would have received from Lockheed had he been permitted to remain in Iran until he found employment in April 1981.

24. The Claimant's departure was made in such haste and within such severe shipping weight and size limitations that he was unable to take with him part of his personal property. He claims \$855.42 as the replacement cost of the property, which he contends is the appropriate measure of its value.

2. The Respondent

25. The Respondent contends that from October of 1978, following strikes in the oil industry, customs, banks and ports and the closure of factories and businesses, the foreigners employed in or affected by these institutions began to evacuate from Iran "voluntarily," upon the recommendation or instruction of their employers or governments. The Respondent alleges that the departure of Americans was not exceptional, since during this period most other foreign nationals including Europeans and Asians had also left the country. The Respondent submits that, in view of the fact that there was no need for the continuation of the Claimant's work, the Claimant departed from Iran voluntarily on the instructions of his employer.

26. The Respondent contends that it took no action that could be construed as the expulsion of nationals of the United States and argues that the causes of the U.S. nationals' departure from Iran cannot be attributed to the Government of Iran. The Respondent submits that there is no evidence to support the allegation that the former Government of Iran, the leaders of the revolution, or the Provisional Government of the Islamic Republic failed to protect, threatened, or harassed the Claimant or any other United States national in Iran. The Respondent submits that there is no evidence showing that the Government of Iran generated conditions which resulted in the expulsion of U.S. nationals from Iran.

B. Reasons for Award

1. The Request for an Interlocutory Award

27. At the outset, the Tribunal notes that it is able to decide all issues in this Case in this Award and hence that the request for an Interlocutory Award is moot. In any

event, although the Award in this Case might provide useful guidance to parties dealing with other cases presenting similar issues, the allegations made in each claim have to be evaluated individually in taking into account the circumstances particular to the case. No generalization, therefore, can be made on the basis of the facts appertaining to a specific case, and it would be contrary to the jurisdictional function of the Tribunal to make such a generalization. It is up to the parties in similar cases to draw from the present Award the conclusions that they consider to be valuable for their own case. The request for an Interlocutory Award is therefore refused.

2. The Merits

28. The Tribunal recognizes that the course of the Islamic Revolution presented unusual disruptions and difficulties to foreigners in Iran, as documented in the materials submitted by the Parties in this Case. The Tribunal notes, however, that it is not infrequent that foreigners have had to leave a country en masse by reason of dramatic events that occur within the country. It was often the case during this century, even since 1945. A number of international awards have been issued in cases when foreigners have suffered damages as a consequence of such events. See, e.g., British Property in Spanish Morocco (Spain v. U.K.), 2 R. Int'l Arb. Awards 615, 642 (1925); Georges Pinson Case (France v. Mexico), 5 R. Int'l Arb. Awards 327, 352 (1928); Bolívar Railway Company Case (U.K. v. Venezuela), 9 R. Int'l Arb. Awards 445 (1903); Dix Case (U.S. v. Venezuela), 9 R. Int'l Arb. Awards 119 (1903). Although these awards are rather dated, the principles that they have followed in the matter of State international responsibility are still valid and have recently been confirmed by the United Nations International Law Commission in its draft articles on the law of State responsibility. See Draft Articles on State Responsibility, adopted by the International Law Commission on First

Reading, notably articles 11, 14 and 15. 1975 Y.B. Int'l L. Comm'n, Vol. 2 at 59, U.N. Doc. A/CN.4/SER.A/1975/Add.1 (1975).

29. In light of these principles the preliminary issue that has to be decided is whether the facts invoked by the Claimant as having caused his departure from Iran are attributable to Iran, either directly, or indirectly as a result of its deliberate policies, or whether they reveal a lack of due diligence in meeting Iran's international duties towards the Claimant.

30. In the classical case the expulsion of an alien is effected by a legal order issued by the State authorities obligating the alien to leave the host country or otherwise be forcibly removed. An expulsion can also be the result of a forcible action of the police or other state organ not authorized by a legal order issued by the competent authorities. Finally, an alien may also be considered wrongfully expelled in the absence of any order or specific state action, when, in the circumstances of the case, the alien could reasonably be regarded as having no other choice than to leave and when the acts leading to his departure were attributable to the State. The common thread is that the international responsibility of a State can be engaged where the circumstances or events causing the departure of the alien are attributable to it. On the other hand, to assume that all the departures of all aliens of a certain nationality from a country, during a certain period of political turmoil, would be attributable to the State, unless the State is able to demonstrate the contrary, would contradict the principles and rules of the international responsibility of States.

31. In examining whether the Claimant's departure from Iran was due to acts or circumstances attributable to the Respondent, the Tribunal has to take into account the existence of

a revolutionary situation in Iran during the period under consideration. The reports that many thousands of Iranians lost their lives in the course of these revolutionary events is an indicator of the magnitude of the turmoil associated with the Revolution. As a result of this turmoil, the successive governments appointed by the Shah lost control over events and the last of them was eventually overthrown. While the revolution was directed against the Shah's regime the revolutionaries believed that the American government was responsible for maintaining him in power. The strong anti-American sentiment documented in the Claimant's Factual Memorial was the consequence of this belief, and gave to Americans present in Iran reason to believe that their lives were in danger. This also explains why the American Ambassador in Tehran and U.S. employers in Iran strongly urged dependants of U.S. employees and other non-essential Americans to leave Iran.

32. During the period of the revolution strikes, fuel shortages and other economic factors, as well as risks to the safety of their personnel, presented many American companies in Iran with a "force majeure" situation requiring them to suspend their operations. Some employees were also evacuated for this reason. In the Claimant's case, Lockheed began a force reduction program in January 1979 because of the revolutionary conditions and decided to evacuate the Claimant in February 1979.

33. Where a revolution leads to the establishment of a new government the State is held responsible for the acts of the overthrown government insofar as the latter maintained control of the situation. The successor government is also held responsible for the acts imputable to the revolutionary movement which established it, even if those acts occurred prior to its establishment, as a consequence of the continuity existing between the new organization of the State and the organization of the revolutionary movement. See Draft

Articles on State Responsibility, supra, Commentary on Article 15, paras. 3 and 4, 1975 Y.B. Int'l L. Comm'n, Vol. 2 at 100. These rules are of decisive importance in the present Case, since the Claimant departed from Iran on 8 February 1979, a few days before the proclamation on 11 February of the Islamic Revolutionary Government. At that time, the revolutionary movement had not yet been able to establish control over any part of Iranian territory, and the Government had demonstrated its loss of control.

34. The Claimant relies on acts committed by revolutionaries and seeks to attribute responsibility for their acts to the government that was established following the success of the Revolution. He is unable, however, to identify any agent of the revolutionary movement, the actions of which compelled him to leave Iran. The acts of supporters of a revolution cannot be attributed to the government following the success of the revolution just as the acts of supporters of an existing government are not attributable to the government. This was clearly recalled by the International Court of Justice in United States Diplomatic and Consular Staff in Tehran (United States v. Iran), 1980 I.C.J. 3, 29, para. 58 (Judgment of 24 May 1980). The Court found that the conduct of the militants when they executed their attack on the U.S. Embassy and seized its personnel as hostages "might be considered as itself directly imputable to the Iranian State only if it were established that, in fact, on the occasion in question, the militants acted on behalf of the State, having been charged by some competent organ of the Iranian State to carry out a specific operation."

35. The Claimant's reliance on the declarations made by the leader of the Revolution, Ayatollah Khomeini, and other spokesmen of the revolutionary movement, also lack the essential ingredient as being the cause for the Claimant's departure in circumstances amounting to an expulsion. While these statements are of anti-foreign and in particular

anti-American sentiment, the Tribunal notes that these pronouncements were of a general nature and did not specify that Americans should be expelled en masse. On this issue also it is worthwhile to quote the International Court of Justice in the judgment just referred to. The Court recognized that prior to the attack against the U.S. Embassy "the Ayatollah Khomeini, the religious leader of the country, had made several public declarations inveighing against the United States as responsible for all his country's problems." The Court went on to quote a specific message of the Ayatollah Khomeini declaring on 1 November 1979 that it was "up to the dear pupils, students and theological students to expand with all their might their attacks against the United States and Israel, so they may force the United States to return the deposed and criminal Shah, and to condemn this great plot." 1980 I.C.J. at 29, para. 59. Nevertheless, the Court found that "it would be going too far to interpret such general declarations . . . as amounting to an authorization from the State to undertake the specific operation of invading and seizing the United States Embassy." Id. at 30, para. 59. Similarly, it cannot be said that the declarations referred to by the Claimant amounted to an authorization to revolutionaries to act in such a way that the Claimant should be forced to leave Iran forthwith. Nor is there any evidence that any action prompted by such statements was the cause of the Claimant's decision to leave Iran. In these circumstances, the Tribunal is of the view that the Claimant has failed to prove that his departure from Iran can be imputed to the wrongful conduct of Iran. The claim is therefore dismissed.

IV. COSTS

36. Each Party shall bear its own costs of arbitrating this claim.


V. AWARD

37. For the foregoing reasons:

THE TRIBUNAL AWARDS AS FOLLOWS:


- a) The claim of ALFRED L.W. SHORT is dismissed.
- b) Each party shall bear its own costs of arbitration.

Dated, The Hague
14 July 1987




Michel Virally
Chairman
Chamber Three

In the name of God



Charles N. Brower
Dissenting Opinion



Parviz Ansari Moin
Concurring