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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاری ایران - ایالات متحدہ

DUPLICATE
ORIGINAL

نسخہ برابر اصل

CASE NO. B1 (Claim 4)

FULL TRIBUNAL

DECISION NO. DEC 85-B1-FT

THE ISLAMIC REPUBLIC OF IRAN,
Claimant,

and

THE UNITED STATES OF AMERICA,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دائرة داوری دعاری ایران - ایالات متحدہ
ثبت شد - FILED	
Date	18 MAY 1989
۱۳۶۸ / ۲ / ۲۸	

Motion for an Interim Measure to Prevent
the United States From Selling Items
Subject of Award No. 382-B1-FT if it
Disagrees with Iran's Valuation

DECISION

I. The Background

1. On 31 August 1988, the Tribunal rendered a Partial Award in this Case, relating to the items listed in Exhibits III and V to the Parties' Joint Report submitted to the Tribunal on 5 March 1986. See Islamic Republic of Iran and United States of America, Partial Award No. 382-B1-FT (31 Aug. 1988). In relevant part, the Partial Award: (i) dismissed the request by the Islamic Republic of Iran for return of those items; (ii) determined that the United States of America is liable to compensate the Islamic Republic of Iran for the full value of those items as of 26 March 1981; and (iii) deferred the determination of the amount of the compensation until such time as the Parties have submitted further pleadings and evidence on this issue. The Tribunal noted that it intends to issue its Partial Award on compensation on this part of Claim 4 on the basis of the documents submitted by the Parties.

2. Pursuant to Orders scheduling the further submissions envisaged in Partial Award No. 382-B1-FT, the Islamic Republic of Iran, on 14 February 1989, filed its "Brief and Evidence on the Amount of Compensation and Interest Subject of Award No. 382-B1-FT." Further submissions on the amount of compensation are due from the United States of America by 14 August and 13 December 1989, and from the Islamic Republic of Iran by 13 October 1989.

3. On 12 January 1989, the United States filed its "Notice of Intent to Sell Military Equipment" ("Notice of Intent"). In that document, the United States stated that, "[i]n view of the Tribunal's ruling" in Partial Award No. 382-B1-FT, it will, after 1 February 1989, "commence the sale of property identified in Exhibits III and V to eligible purchasers."

4. On 30 January 1989, the Islamic Republic of Iran filed a Response to the United States' Notice of Intent. The primary request stated therein was for the United States to give certain clarifications regarding the Notice of Intent.

5. On 8 February 1989, the United States filed "Comments on Iran's Response to the United States Notice to Sell." The United States stated therein its general position that it "considers itself authorized to dispose of the property." In this regard, the United States argued that: (i) the sale of the equipment will not interfere with the Tribunal's consideration of the value in 1981; (ii) that inspection of the items now will not materially assist the Tribunal in determining their value as of 26 March 1981; and (iii) the Tribunal generally has considered it unnecessary to inspect physical equipment or facilities at issue in other cases and instead has determined value on the basis of written presentations. The United States further stated that it "is in the process of disposing of the equipment, commencing February 1, 1989, as stated in [its] previous Notice of Intent."

6. On 17 February 1989, the Islamic Republic of Iran filed a "Motion for an Interim Measure to Prevent the United States from Selling Items Subject of Award No. 382-B1-FT if it Disagrees with Iran's Valuation" ("the Motion"). Iran stated therein that, should the United States "not accept Iran's approach for valuation, the sale of the items can impair the proper consideration of the contentious issue by the Tribunal", since the equipment would not be available for inspection should the Tribunal deem this necessary. Iran further asserted that "in the interest of a due process and in order not to prejudice the rights of the parties, and to avoid diluting the effectiveness of the Tribunal's jurisdiction and authority, the United States must refrain from selling the equipment as long as the Tribunal has not disposed of the issue of valuation presently under consideration."

7. Pursuant to the Tribunal's Order of 22 February 1989, the United States, on 14 March 1989, filed a "Memorandum in Opposition to Iran's Motion for an Order to Prevent the Sale of Items which Are the Subject of Award No. 382-B1-FT." The United States requested that Iran's Motion be denied. It stated that since 1981 it had periodically

proposed to sell the property at issue but had deferred such sale pending the Tribunal's determination of Iran's claim for return of the property. The United States asserts that, by selecting the date of 26 March 1981 as the valuation date for the property, the Tribunal effectively placed the risk of subsequent loss in value on the United States, and further that "[i]mplicit in the Tribunal's reasoning is the notion that the United States may take action it deems appropriate with respect to the property after that 1981 date." The prompt sale of the property is considered necessary to mitigate damages from depreciation in its value due to obsolescence and deterioration and from mounting storage and administrative costs. The United States further maintains that "inspection of the equipment by Iran and/or the Tribunal would be neither feasible nor appropriate in the circumstances of this case."

8. The United States advances five specific arguments to support its position. First, inspection costs would be very high for a variety of reasons. Second, except in extraordinary circumstances, inspections performed now would not assist in determining the value of items in 1981. Third, inspection by outside experts would be contrary to the very national security interests of the United States to which the Tribunal deferred in refusing to order return of the property to Iran. Fourth, inspection of the property would likely complicate the Tribunal's proceedings and be very time consuming. Finally, the United States states that "[i]f the Tribunal were to inhibit the United States' sale of any of the equipment at issue here, fundamental fairness would require that it take steps to assure that the burdens of future equipment deterioration and obsolescence be shifted to Iran."

9. On 28 March 1989, the Islamic Republic of Iran filed a sua sponte submission entitled "Some Brief Observations on United States Doc. No. 657" in which Iran reiterated its Motion. In that document, Iran raises five arguments in support of its Motion. Initially, Iran observes that the United States has not responded to the issue which consti-

tuted the "raison d'être" of its Motion, that is, whether or not the United States agrees with Iran's valuation of the items in question. In the event the United States agrees with this valuation, Iran's Motion would be moot. Second, concerning the costs of a possible inspection, Iran finds it inconceivable, as has been asserted by the United States, that such costs would exceed the value of the items which Iran's most recent brief on this issue asserts is U.S. \$221,663,589. Moreover, Iran argues that the United States has charged Iran for the required services, therefore, the items must be considered repaired or serviced and no tests would be required to determine their serviceability. Third, Iran maintains that the United States cannot rely on its domestic laws to excuse it from its international obligations. Fourth, Iran asserts that the Tribunal should draw adverse inferences from the United States' position concerning sale of the items should "Iran decide . . . to rely on inspection as evidence to resolve the disputed value of an item." Iran refutes the United States' assertion that, should the Tribunal prevent the sale of the items, the burden of further deterioration should be shifted to Iran. Iran argues that this would amount to a counterclaim which, it asserts, is not admissible.

II. The Tribunal's Decision

10. The issue raised by Iran's request for interim relief in this Case is whether the United States should be prevented from selling the property which is the subject of Partial Award No. 382-B1-FT, the value of which is disputed, until such time as the Tribunal decides the value of such property as of 26 March 1981. Under Tribunal precedent, such interim relief can be granted only if it is "necessary either to protect a party from irreparable harm or to avoid prejudice to the jurisdiction of this Tribunal." Boeing Company, et al. and Government of the Islamic Republic of Iran, et al., Interim Award No. ITM 34-222-1, p. 4 (17 Feb. 1984), reprinted in 5 Iran-U.S. C.T.R. 152, 154 (hereinafter "Boeing Company"). The Tribunal has applied this standard

in previous cases when deciding requests by one of the Governments for interim measures. See Order of 18 January 1984 in Government of the Islamic Republic of Iran and Government of the United States of America, Cases Nos. A4 and A15(III), Full Tribunal, reprinted in 5 Iran-U.S. C.T.R. 112; Government of the Islamic Republic of Iran and Government of the United States of America, Interlocutory Award No. ITL 33-A-4/A-15(III)-2 (1 Feb. 1984), reprinted in 5 Iran-U.S. C.T.R. 131; Islamic Republic of Iran and United States of America, Decision No. DEC 52-A15(II:A and II:B)-FT (24 Nov. 1986), reprinted in 13 Iran-U.S. C.T.R. 173.

11. In its Partial Award in this Case, the Tribunal held that the United States is not required to return the Iranian property at issue, but rather that it must compensate Iran for the "full value of that property as of 26 March 1981." Although the sale of such property by the United States would have impaired its return to Iran, the Tribunal does not find that such a sale at this time would cause irreparable harm to Iran's right to compensation. The Tribunal previously has held that injury that can be made whole by monetary relief does not constitute irreparable harm. See Boeing Company, Interim Award No. ITM 34-222-1 at p. 4, reprinted in 5 Iran-U.S. C.T.R. at 154. For these reasons, Iran has not established that prohibiting the sale of the property for which compensation is owed in this Case is necessary to prevent either irreparable harm to Iran or impairment of the jurisdiction of the Tribunal. The motion for interim relief, therefore, cannot be granted.

12. For the foregoing reasons,

THE TRIBUNAL DECIDES

that the Motion of the Islamic Republic Republic for an Order to prevent the sale of items which are subject of

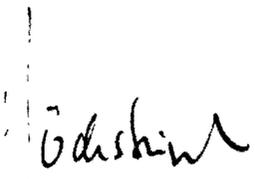
Award No. 382-B1-FT cannot be granted.

Dated, The Hague
18 May 1989

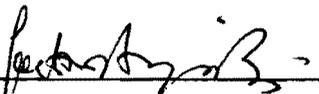


Robert Briner
President

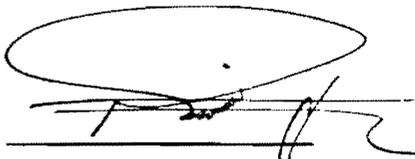
In the Name of God



Karl-Heinz Böckstiegel

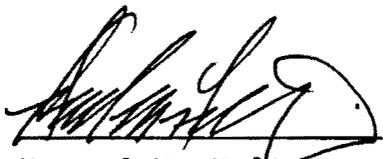


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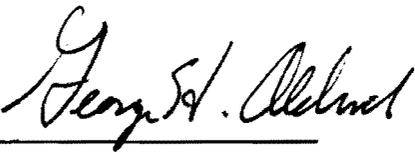
In the Name of God



Howard M. Holtzmann

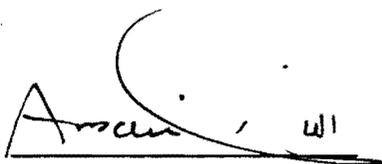


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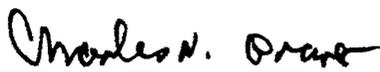


George H. Aldrich

In the Name of God



Parviz Ansari Moin
Separate Opinion



Charles N. Brower