

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASES NOS. A3, A8, A9, A14 AND B61

FULL TRIBUNAL

DECISION NO. DEC 135-A3/A8/A9/A14/B61-FT

THE ISLAMIC REPUBLIC OF IRAN,
 Claimant,
 and
 THE UNITED STATES OF AMERICA,
 Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحده
FILED	ثبت شد
DATE: - 1 JUL 2011	
۱۳۹۰ / ۴ / ۱۰	تاریخ

DECISION

I. INTRODUCTION

1. On 17 July 2009, the Tribunal rendered Award No. 601¹ (“Partial Award No. 601”) in Cases Nos. A3, A8, A9, A14, and B61 (hereinafter referred to as “Case No. B61” or “this Case”). At issue in that Award was, *inter alia*, a claim brought by the Islamic Republic of Iran (“Iran”) for compensation from the United States of America (“United States”) for losses that Iran alleged it had suffered as a result of the United States’ refusal, on 26 March 1981, to allow the export of certain export-controlled properties allegedly owned by Iran and located in the United States or otherwise subject to the jurisdiction of the United States on 19 January 1981, when the Algiers Declarations² were concluded.

2. During the proceedings leading to Partial Award No. 601, Iran also referred to, and relied on, the additional holding by the Tribunal in Award No. 529 in Case No. A15 (II:A)³ (“Partial Award No. 529”) that certain Treasury Regulations issued by the United States on 26 February 1981⁴ were inconsistent in certain respects with the obligations of the United States under the

¹ *Islamic Republic of Iran and United States of America*, Award No. 601-A3/A8/A9/A14/B61-FT (17 July 2009), reprinted in 38 IRAN-U.S. C.T.R. 197.

² Declaration of the Government of the Democratic and Popular Republic of Algeria (General Declaration), 19 Jan. 1981, reprinted in 1 IRAN-U.S. C.T.R. 3, and Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (Claims Settlement Declaration), 19 Jan. 1981, reprinted in 1 IRAN-U.S. C.T.R. 9 (collectively, “the Algiers Declarations”).

³ *Islamic Republic of Iran and United States of America*, Award No. 529-A15-FT (6 May 1992), reprinted in 28 IRAN-U.S. C.T.R. 112. At issue in Case No. A15 (II:A) is the United States’ obligation under the Algiers Declarations to arrange for the transfer to Iran of certain tangible properties within the United States jurisdiction. While Iran’s claims in Case No. B61 primarily involve export-controlled properties, Iran’s claims in Case No. A15 (II:A) primarily involve non-export-controlled properties.

⁴ 31 C.F.R. § 535.333 (1981). Treasury Regulations § 535.333 defined, in Subsection (a), the “properties” subject to the transfer direction contained in Paragraph 9 of the General Declaration (*see infra*) as all “uncontested” properties and stated, in Subsection (c), that properties “may be contested if the holder thereof reasonably believes that a court would not require the holder, under applicable law to transfer the asset by virtue of the existence of a defense, counterclaim, set-off or similar reason.” Treasury Regulations § 535.333, in Subsection (b), stated: “Properties are not Iranian properties or owned by Iran unless all necessary obligations, charges and fees relating to such properties are paid and liens against such properties (not including attachments, injunctions and similar orders) are discharged.” As a result of these provisions, any holder of Iranian property who reasonably believed that Iran owed him money for storage, repair, breach of contract, expropriation, or any other reason was not compelled by the Treasury Regulations to return the property to Iran. *See also* Partial Award No. 529, para. 44, 28 IRAN-U.S. C.T.R. at 127-28.

Paragraph 9 of the General Declaration provides:

Commencing with the adherence by Iran and the United States to this Declaration and the attached Claims Settlement Agreement and the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will arrange, subject to the provisions of U.S.

General Declaration and, to that extent, violated those obligations (“unlawful Treasury Regulations”).⁵

3. In Partial Award No. 601, the Tribunal held that the unlawful Treasury Regulations applied, not only to Iranian non-export controlled properties, as decided in Case No. A15 (II:A), but also to Iranian export-controlled properties.⁶ It further held that the unlawful Treasury Regulations warranted an award of compensation in favor of Iran for damages whenever it is proved that they caused Iran to suffer damages.⁷

4. While dismissing on the merits part of Iran’s claim,⁸ in Partial Award No. 601, the Tribunal authorized further proceedings in this Case, *inter alia*, with respect to the unlawful Treasury Regulations. In this connection, it stated:

During the proceedings in this Case, there was limited discussion of the Treasury Regulations at issue, including the question whether they may have caused damages, and, if so, to what extent. In these circumstances, the Tribunal defers its determination of all issues concerning those unlawful Regulations in this Case, including whether damages were caused by those Regulations, and what was the nature and extent of any such damages, pending receipt of briefings by the Parties on those issues.⁹

law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs.

General Declaration Para. 9, 1 IRAN-U.S. C.T.R. at 6.

⁵ In Partial Award No. 529, the Tribunal held that those Regulations were inconsistent with the obligations of the United States under the General Declaration to the extent that they excluded from the transfer direction in Paragraph 9 of the General Declaration (*see supra* note 4) tangible properties which were owned solely by Iran but as to which Iran’s right to possession was contested by the holders of such properties on the basis of any liens, defenses, counterclaims, set-offs, or similar reasons. Partial Award No. 529, paras. 53-54, 77(d) (*dispositif*), 28 IRAN-U.S. C.T.R. at 131-32,140. *See also id.* paras. 48-52, 28 IRAN-U.S. C.T.R. at 129-31.

⁶ Partial Award No. 601, para. 176, 38 IRAN-U.S. C.T.R. at 265.

⁷ *Id.*

⁸ *Id.* para. 183 (g), 38 IRAN-U.S. C.T.R. at 267.

⁹ *Id.* para. 177, 38 IRAN-U.S. C.T.R. at 265.

Accordingly, the Tribunal determined that “the Parties should be given an opportunity to submit briefs and evidence relevant to” the remaining issues relating to the unlawful Treasury Regulations.¹⁰

5. By Order of 17 July 2009, in which it scheduled further proceedings in this Case, the Tribunal requested that Iran submit, *inter alia*, “its brief and evidence with respect to all issues concerning the unlawful Treasury Regulations in this Case, including whether damages were caused by those Regulations and the nature and extent of any such damages.” In its Order the Tribunal further stated that it would schedule the United States’ brief and evidence in response after the submission of Iran’s brief and evidence.

6. On 3 August 2009, Iran submitted a “Request for Revision of Partial Award No. 601” (“Request for Revision”).¹¹

7. On 17 August 2009, together with its comments on Iran’s Request for Revision, the United States presented a request, pursuant to Article 37 of the Tribunal Rules of Procedure (“Tribunal Rules”), that “the Tribunal issue an additional award dismissing any claim of Iran relating to the February 26, 1981 Treasury Regulations” (“Request for an Additional Award” or “Request”).

8. On 18 November 2010, Iran submitted its comments on the United States’ Request for an Additional Award.

9. On 7 January 2011, the United States submitted its response to Iran’s submission of 18 November 2010.

10. On 7 February 2011, Iran submitted its response to the United States’ 7 January 2011 submission.

¹⁰ *Id.* para. 179, 38 IRAN-U.S. C.T.R. at 265.

¹¹ The Tribunal ruled on Iran’s Request for Revision in a separate Decision filed today.

II. CONTENTIONS

A. *The United States*

11. The United States contends that Iran's claim that it suffered losses resulting from the unlawful Treasury Regulations was presented during the proceedings in Case No. B61 but was omitted from Partial Award No. 601.

12. The United States alleges that Iran presented its evidence and arguments with respect to the unlawful Treasury Regulations in the written and oral proceedings leading up to Partial Award No. 601. Indeed, the United States asserts, both Parties have submitted extensive briefing and evidence in this Case, and every issue that they have considered important has been fully briefed and argued. According to the United States, the record shows that, during the Hearing in this Case, all aspects of Iran's claim in support of Iran's losses have been addressed exhaustively, and that the Treasury Regulations were central throughout the proceedings. During the hearing, the Parties also had the opportunity to respond to several specific questions from the Tribunal on any potential impact of the unlawful Treasury Regulations; not once did either side request an additional opportunity to submit evidence or argument on that issue.

13. The fact that Iran was unable to establish any losses caused by the unlawful Treasury Regulations, the United States asserts, was a result of its failure to prove its case, rather than any unresolved question of merit.

14. Accordingly, the United States contends, there is no basis for the Tribunal's conclusion in Partial Award No. 601 that further submissions with respect to the unlawful Treasury Regulations are required. In the United States' view, such conclusion fundamentally prejudices the United States.

15. The United States argues that the Tribunal, where a claim was presented in the proceedings but not resolved in the Tribunal's award, may exercise its discretion to issue an additional award under Article 37, paragraph 1, of the Tribunal Rules. This provision is designed to ensure the efficient and effective disposition of the dispute and protect the due-process rights of the parties.

16. Because in its view Iran's claim for damages relating to the unlawful Treasury Regulations was presented during the proceedings but omitted from Partial Award No. 601, the United States requests that the Tribunal issue an additional award denying Iran's claim with respect to those Treasury Regulations on the basis of the record before it.

B. Iran

17. Iran claims that the United States' Request for an Additional Award was provoked by Iran's Request for Revision of Partial Award No. 601. Iran points out that, under Article 37 of the Tribunal Rules, an additional award may only be issued when the Tribunal omitted a claim from its award. The United States, however, failed to demonstrate that the Tribunal indeed omitted from Partial Award No. 601 Iran's claim relating to the unlawful Treasury Regulations. According to Iran, the United States incorrectly focuses on whether that claim was "finally decided" in that Partial Award, rather than on whether it was omitted from it.

18. Iran alleges that its claim relating to the unlawful Treasury Regulations was not omitted from Partial Award No. 601. In that Partial Award, rather, the Tribunal (i) decided on the application of those Treasury Regulations to Iranian export-controlled properties located in the United States and (2) envisaged further proceedings to deal with the remaining issues, including Iran's damages.

19. For all the above reasons, Iran asks that the Tribunal deny the United States' Request.

III. REASONS FOR THE DECISION

20. Article 37, paragraph 1, of the Tribunal Rules provides that, "[w]ithin thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award."

21. Thus, Article 37 of the Tribunal Rules permits a party to make a request for an additional award only "as to claims presented in the arbitral proceedings but omitted from the award."

Article 37 is not applicable in cases where the Tribunal has deliberately elected not to decide a certain claim or deal with a certain question in its award and has given reasons for not doing so.¹²

22. The United States' Request for an Additional Award is premised on the contention that the Tribunal omitted from Partial Award No. 601 Iran's claim for damages relating to the unlawful Treasury Regulations. The Tribunal cannot agree with this position. Partial Award No. 601, which found that the unlawful Treasury Regulations also applied to Iranian export-controlled properties, plainly determined (1) that during the proceedings in Case No. B61 there had been limited discussion of the question of the unlawful Treasury Regulations, including the question whether they may have caused damages to Iran¹³ and (2) that therefore the Parties should be given an opportunity to submit briefs and evidence relevant to all issues relating to those Treasury Regulations.¹⁴ Hence, Partial Award No. 601 expressly deferred the Tribunal's decision of the matter pending receipt of further briefing by the Parties.¹⁵ Accordingly, the "subject matter" of the United States' Request "was not omitted from the award" but rather "discussed in detail" in paragraphs 176 through 179 "and is also referred to in the dispositif."¹⁶ In these circumstances, there is no basis under the Tribunal Rules for making the additional award that the United States requests.

¹² See also STEWART ABERCROMBIE BAKER & MARK DAVID DAVIS, THE UNCITRAL ARBITRATION RULES IN PRACTICE – THE EXPERIENCE OF THE IRAN-UNITED STATES CLAIMS TRIBUNAL 197 (1992) ("[I]f the arbitrators intentionally elected not to deal with an issue and gave reasons for their decision, there would be no point in pressing them to rectify their omission."); United Nations Commission on International Trade Law (UNCITRAL), 9th Sess., Summary Record of 12th Meeting of the Committee of the Whole (II), U.N. Doc. A/CN.9/9/C.2/SR.12, para. 25 (22 Apr. 1976) (remarks of Mr. Pirrung, Federal Republic of Germany: Article 37 "should be limited to cases in which an additional award was designed to correct an unintentional omission.").

¹³ Partial Award No. 601, para. 177, 38 IRAN-U.S. C.T.R. at 265. See also *supra* para. 4.

¹⁴ *Id.* para. 179, 38 IRAN-U.S. C.T.R. at 265. See also *supra* para. 4.

¹⁵ *Id.* paras. 178-79, 183 (k) (*dispositif*), 38 IRAN-U.S. C.T.R. at 265-66.

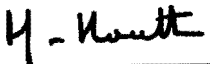
¹⁶ *Harris International Communications, Inc. and Islamic Republic of Iran, et al.*, Decision No. DEC 73-409-1 (26 Jan. 1988), reprinted in 18 IRAN-U.S. C.T.R. 76, 77.

23. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

The Request for an Additional Award submitted by the United States on 17 August 2009 is denied.

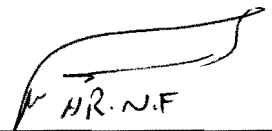
Dated, The Hague, 1 July 2011


Hans van Houtte
President


In the Name of God

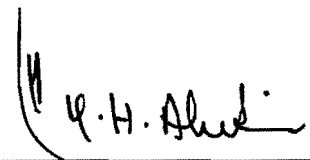

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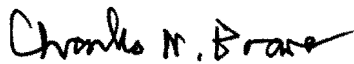

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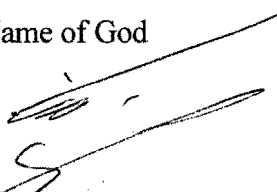
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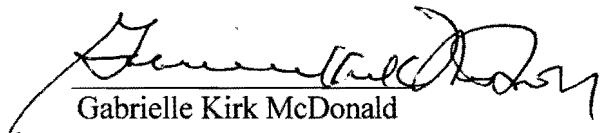

George H. Aldrich


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In the Name of God


Charles N. Brower


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Gabrielle Kirk McDonald