

IN HIS EXALTED NAME

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	23 JUN 1997
	تاریخ ۱۳۷۶ / ۴ / ۲

CASES NOS. A4, A7 AND  
A15 (I:F AND III)  
FULL TRIBUNAL  
DECISION NO. DEC129-A4/A7/A15  
(I:F and III)-FT

THE ISLAMIC REPUBLIC OF IRAN,  
Claimant,

and

THE UNITED STATES OF AMERICA,  
Respondent.

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CONCURRING OPINION OF A. NOORI, K.H. AMELI  
AND M. AGHAHOSSEINI

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1. Although we concur with the present Decision, we deem it necessary to write separately to pronounce our views on certain points of relevance, not properly dealt with in the Decision.

2. These cases concern the Iranian diplomatic and consular properties and assets under the control of the United States, and

the specific issue raised in Iran's present Request relates to the Iranian diplomatic and consular premises within the United States. The United States has admittedly taken control and custody over these premises since April 1980, when diplomatic relations between the Islamic Republic of Iran (Iran) and the United States of America were severed. Iran submits that since the United States has, under the Algiers Declarations, undertaken to return to Iran all the Iranian properties and assets within its jurisdiction, the premises at issue should have been released and given to Iran or its representative in the United States immediately after the Declarations were adhered to by the two Governments on 19 January 1981.

3. Iran filed the Request at hand upon learning that the United States had leased two of the Iranian diplomatic premises in Washington D.C. for the first time to foreign powers, the Governments of Turkey and Romania. The Request invites the Tribunal to:

order the United States, upon a prior requirement of full disclosure of facts, to take all necessary measures, as the Tribunal deems appropriate, including but not limited to termination of the unauthorized executed leases, so that Iran's right, the full effectiveness of the Algiers Declarations and the Tribunal's jurisdiction and authority may be conserved.

4. This shows, quite clearly, the existence of two motions in Iran's Request: one for an order by the Tribunal requiring the United States to disclose all the facts relevant to the leasing of the premises in question; and another for the taking of whatever measures, including the termination of leases, which the Tribunal may deem appropriate for the conservation of "Iran's right, the full effectiveness of the Algiers Declarations and the Tribunal's jurisdiction and authority."

5. The Decision, however, heavily concentrates on the second at the cost of the first:

The fundamental issue raised by Iran's Request is whether the United States should be ordered to terminate the leases of Iran's official property in Washington, D.C. . (paragraph 10 of the Decision)

Based on this interpretation of Iran's Request, the Decision proceeds, in paragraphs 11 and 12, to apply the criteria on which the Tribunal has in its recent decisions relied in order to determine whether or not to grant interim measures of protection; and coming to the conclusion that the Request does not meet those criteria, it declines to take any steps in that direction. The other motion, i.e. the motion for the disclosure of relevant facts by the United States, is then lightly treated for being insufficiently specified.

6. We believe that both motions could have been more appropriately dealt with. As to the motion for the taking of appropriate steps by the Tribunal, it may hardly be denied that the leasing of the properties in question is an act capable of aggravating or extending the Parties' dispute; something which should be avoided in any international dispute, particularly so where, as in here, the Parties have voluntarily established a mechanism for the settlement of their disputes, and where the very dispute at issue is under negotiation for a possible out of court settlement. See, Electricity Company of Sofia and Bulgaria (interim measure of protection), (Belgium v. Bulgaria), 1939, P.C.I.J., Series A/B, No. 79, 194, 199 (Order of 5 December 1939). It is also to be noted that the action of the United States will not change the legal situation of the dispute before the Tribunal. As the Tribunal held in its recent Decision in Cases Nos. A15(IV) and A24, Decision No. DEC 116-A15(IV)&A24-FT, 18 May 1993, para. 27, quoting the holding of the International Court of Justice in Case Concerning Passage Through Great Belt (Finland v. Denmark) 1991, I.C.J. 12, 19 (Order of 29 July):

"[N]o action taken pendente lite by a State engaged in a dispute before the Court with another State 'can have any effect whatever as regards the legal situation which the Court is called upon to define' (Legal Status of the

South-Eastern Territory of Greenland, P.C.I.J., Series A/B, No. 48, p. 287), and such action cannot improve its legal position vis-à-vis that other State[.]"

7. We agree, nevertheless, that the United States' action in leasing the premises can best be dealt with when the Tribunal comes to examine the merits of the present Cases and to determine the possible damages incurred by Iran. The written pleadings have been completed a long time ago and the Hearing has been postponed at the request of both Parties pending the outcome of the settlement negotiations. These are the reasons why we feel able to concur with the Decision in holding that no action is necessary at this stage.

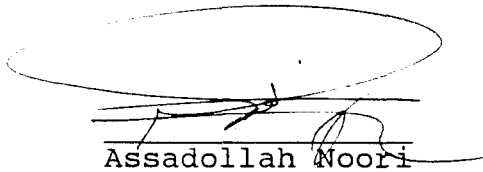
8. We do not believe, however, that the conclusion not to act at this stage should have been based on a detailed discussion of what circumstances warrant the ordering of interim measures of protection. Iran has not requested any specific interim measures of protection. It has, rather, informed the Tribunal of the United States' action, expressing its belief that the action is wrong, and inviting the Tribunal to take whatever measures it deems appropriate. To regard this as a motion for concrete protective measures, and then to dismiss it for failing to meet the required conditions, is not, we suggest, a fair treatment of the issue before the Tribunal.

9. Though the Decision fails to grant Iran's motion for information, it does express the hope, in paragraph 14, that the Parties would keep each other informed of the facts relevant to these Cases. Since these Cases involve, as noted above, the Iranian diplomatic and consular properties and assets in the United States or under the control of the United States, and since the United States has no similar claim before this Tribunal for its diplomatic and consular properties and assets in Iran, this implied invitation by the Tribunal is to be taken as exclusively addressed to the United States. It is to be hoped that the United States would, in the specific circumstances of

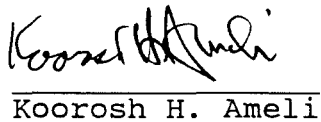
the present Cases where it admittedly exercises exclusive control over the information in question, favourably respond to this invitation.

10. This encouraged cooperation in furnishing Iran with the information it needs to present its claim for damages is, we believe, by far preferable to the alternative of a fresh and more specific request by Iran, which in any event is open to it under the Tribunal Rules and practice.

Dated, The Hague  
23 June 1997



Assadollah Noori



Koorosh H. Ameli



Mohsen Aghahosseini