

IN THE NAME OF GOD

CASE NO. A/15 (I:G)

FULL TRIBUNAL

AWARD NO. ITL 63-A15 (I:G) -FT

THE ISLAMIC REPUBLIC OF IRAN,

Claimant,

and

THE UNITED STATES OF AMERICA,

Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	20 AUG 1986 تاریخ
	۱۳۶۵/۵/۲۹
No.	A15 شماره

SEPARATE OPINION OF MOHSEN MOSTAFAVI,
CONCURRING IN THE INTERLOCUTORY AWARD

For the purpose of arriving at a majority, I concur in the present Award. I concur with the finding that the Respondent, the United States of America, committed itself pursuant to General Principle A of the Declaration of the Government of the Democratic and Popular Republic of Algeria, to

"ensure the mobility and free transfer of all Iranian assets within its jurisdiction..."

I also concur that

"Pursuant to General Principle A of the General Declaration, the United States committed itself to 'restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979.' It is evident that the financial position of Iran would not be restored 'in so far as possible' if the Iranian

assets were not returned to Iran... The United States will not have fully fulfilled its obligations as long as it has not caused the return of those assets."

I further concur that the silence of the Algiers Declarations in connection with the monies in Dollar Account No. 1

"cannot be considered as having left Dollar Account No.1 in a legal vacuum."

I also concur that

"... a sizeable percentage of the funds presently available in Dollar Account No.1 will not, in any case, be needed for the purpose for which this Account was established. Therefore, in so far as Iran performs its own obligations in conformity with the Algiers Accords, no legal foundation can be found for keeping in this Account funds that are not needed, when the United States, ultimately responsible for this Account, undertook in General Principle A 'to restore the financial position of Iran, in so far as possible.'"

Finally, I concur in the conclusion arrived at, that "the remaining balance of funds shall be immediately transferred to Iran."

On the basis of this argument, I also believe that the Tribunal should not consent to a continuation of this possession of the funds, regardless of how brief its duration, since there is certainly no justification for keeping these monies, which exceed the amount of [Iran's] liabilities. The available evidence in the case and the clarifications made in the Hearing conference clearly demonstrate that only a small part of those liabilities are in dispute and still unresolved. Therefore, since the Tribunal knows for a fact that sizeable sums remain in the possession of the Respondent without any justification, it could have protected the rights of the Claimant without prejudicing the rights of the Respondent with respect to recovery of any part still remaining on

its claims, by determining the exact amount of the latter and issuing a partial award ordering the restitution of the monies in excess of the amount demanded, just as the Claimant has requested; for there no longer remains any justification for those funds remaining in the possession of the Respondent. The Tribunal could have determined the said sum without any difficulty. The banks which are themselves the claimants to these monies have approximately determined their amount. Therefore, what is certain is that no claim for more than that amount can possibly be involved. Furthermore, in the Hearing conference counsel for Iran expressly states that the Claimant has released the Respondent from any claims which might possibly exist with respect to the manner in which the funds in question have been maintained and the debts paid. Thus, it would have been proper for the Tribunal first to issue an award directing restitution of the monies in excess of the outstanding liabilities and then to issue an order directing that negotiations be held for the purpose of resolving the remaining issues, which would have been confined solely to the extent of the outstanding debts.

The Hague,

Dated 29 Mordad 1365/ 20 August 1986



Mohsen Mostafavi