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CASE NO. A15 (I:G)

FULL TRIBUNAL

AWARD NO. 306-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	4 MAY 1987 تاریخ
	۱۳۶۶ / ۲ / ۱۴
No.	A15 شماره

Request by the Islamic Republic of Iran relating to the balance remaining in the Fund held by the Federal Reserve Bank of New York pursuant to the Algiers Accords.

PARTIAL AWARD

I. THE PROCEEDINGS

1. On 15 January 1987, the Islamic Republic of Iran ("Iran") submitted a Request relating to the implementation of Interlocutory Award No. ITL 63-A15(I:G)-FT filed in this Case on 20 August 1986. On the same day, the United States of America ("the United States") filed a Request concerning the negotiations held between the Parties pursuant to that Interlocutory Award.

2. In an Order filed on 21 January 1987, the Tribunal invited the Parties to comment on each other's submissions by 20 February 1987. Both Parties submitted Comments on that date. On 27 February 1987, the United States also filed a letter contending that Iran had raised several new issues in its Comments and requesting that the Tribunal allow the Parties to submit "Responsive Comments". On 2 March 1987, Iran filed a letter objecting to this proposal. Mr. Carl F. Salans participated in the deliberations in this Case as a substitute arbitrator in the place of Mr. Charles N. Brower, pursuant to the procedure provided for in Article 13, paragraph 2, of the Tribunal Rules.

3. Following deliberations of the Full Tribunal, on 5 March 1987 the President of the Tribunal orally invited the Agent of the Government of the Islamic Republic of Iran and the Agent of the United States of America to comment on possible arrangements for the transfer of funds to Iran and on the specific language of a release and discharge of the Federal Reserve Bank of New York ("Federal Reserve Bank") and the United States in the administration of Dollar Account No. 1. Both Parties submitted their Replies on 19 March 1987. On 3 April 1987, the United States filed a letter to the President in response to Iran's Reply.

II. FACTS AND CONTENTIONS

4. In paragraph 70(b) of its Interlocutory Award of 20 August 1986, the Tribunal determined that "the two Parties shall immediately enter into negotiation and negotiate in good faith with a view to arrive at an agreement on:

- (i) the determination of the claims which are still presently pending against Dollar Account No. 1 and of the amount which should consequently be kept in this Account in order to pay such claims;
- (ii) the amount of the funds presently held in Dollar Account No. 1 which is not needed to pay the remaining claims pending against this Account; and
- (iii) the terms of a reconciliation of accounts leading to a release and discharge of the United States in the administration of Dollar Account No. 1."

5. During their negotiations, the Parties held three meetings; the first started on 30 October 1986, the last ended on 31 December 1986. The United States provided Iran with a set of drafts and documents relating to a number of points at issue. In particular, it submitted a comprehensive listing of claims allegedly pending against Dollar Account No. 1. The information concerning these claims is based on bank submissions received in response to a notice published in the Federal Register, an official publication of the United States, on 23 October 1986, which required the registration of all claims against the balance remaining in Dollar Account No. 1 by 17 November 1986. Part A of the listing relates to "non-January interest claims" and shows a total amount of U.S.\$29,367,966.54. Part B dealing with "January interest claims" lists a total of U.S.\$27,334,434.54. Thus, the total face value of all claims registered amounts to U.S.\$56,702,401.08. In addi-

tion, in order to cover "negative carry" (the alleged difference in interest rates provided in the underlying loan agreements and those earned by the investment of the funds in Dollar Account No. 1), the United States increased this amount, as of 30 September 1986, to a total of U.S.\$63,000,000. The Tribunal notes that, according to information supplied by the United States in its submission filed on 19 March 1987, the balance of Dollar Account No. 1 shown on the books of the Federal Reserve Bank as of 13 March 1987 was \$514,473,470.18.

6. Iran denies that any of the claims listed by the United States are payable out of Dollar Account No. 1. Nevertheless, in spite of its objections and in order to achieve the immediate transfer of the remaining amount, Iran accepts the United States' proposal that the amount of U.S.\$63,000,000 (as of 30 September 1986) should be allocated for the full and final settlement of all pending claims.

7. The Tribunal also notes that the Parties were unable to reach an agreement on the text of a release and discharge of the United States in the administration of Dollar Account No. 1.

8. In its submission of 20 February 1987, Iran requests that the Tribunal "order the United States to immediately transfer to Iran, through Bank of England, the excess fund as of 30.9.1986 (balance of Account No. 1 as of 30.9.1986 less \$63 million) plus interest until the date of transfer" and subsequently to declare "that the claims made against Dollar Account No. 1 . . . are not payable out of the said account, and to order the United States to immediately transfer to Iran, through the Bank of England, the entire balance of Dollar Account No. 1 plus interest up to the date of transfer."

9. In its Request filed on 15 January 1987, the United States referred to "recent statements by high-ranking Iranian officials", not involved in the negotiations, which

have "created a situation in which U.S. compliance with the Tribunal's order would be regarded by some as a surrender by the U.S. to Iran's improper demands" in relation with the U.S. hostages in Lebanon. The United States requests that "the Tribunal declare that the implementation of the A/15 (I-G) Award (and all other Tribunal decisions) may not be linked to the unlawful taking and detention of hostages, and that no action in the context of issues before the Tribunal (including the transfer of funds in Dollar Account No. 1) may be made, directly or indirectly, a precondition to the taking of reasonable measures to assist in the release of such hostages." In its submission filed on 19 March 1987, the United States explained that this is necessary "so that there can be no implication that the United States or the Tribunal is yielding to unlawful or improper pressures in the transfer of funds in this case." The United States further requests "that the Tribunal order Iran to clarify for the record its understanding and acceptance of the above, and to explain the statements of its high ranking officials referred to above." Moreover, the United States requests the Tribunal to direct that, following "the resolution of the technical issues which are the subject of the ongoing negotiations", including the granting of a release, "the Iranian funds remaining (after sufficient amounts are reserved for outstanding claims) be transferred to a suitable trust account, to be disposed of on the specific further order of the Tribunal." Finally, in its submission of 20 February 1987, the United States requests the Tribunal to deny the request of Iran for an immediate transfer of funds and to direct the Parties to resume negotiations.

10. Iran also requests that the Tribunal dismiss the United States' Request as inadmissible and irrelevant to the proceedings and the issues in this Case.

III. REASONS

11. The Tribunal recalls that the negotiations between the Parties were instituted in implementation of the Interlocutory Award filed on 20 August 1986. These negotiations were to resolve the three issues determined by the Tribunal in the Interlocutory Award quoted in paragraph 4 above. Their purpose was to implement the obligations of the Parties under General Principle A of the General Declaration. The negotiations, therefore, were to be conducted within this very specific legal framework. Furthermore, in order to prevent either Party from delaying agreement indefinitely by postponing discussions or by introducing new questions, the Interlocutory Award provided that the Parties, either individually or jointly, could apply to the Tribunal in order to resolve the remaining difficulties, if no agreement was reached within the four months following the issuance of that Award.

12. The Tribunal notes that Iran fully and unequivocally recognized the legal framework in which the negotiations were to be confined in its submissions of 20 February and 2 March 1987, notably by quoting the following declaration made by the Prime Minister of the Islamic Republic of Iran after a Cabinet meeting on 21 January 1987:

"The issue of hostages has no relation with the debts due to us from the United States and the assets which must be returned to us. As stated earlier, the issue of U.S. hostages in Lebanon relates to groups inside Lebanon and the United States' Middle East policies. It has no relations whatsoever with our rights acquired under international law."

Iran also cited a statement of the Majlis Speaker made at a press conference on 28 January 1987 at which he said that "the matters which are being dealt with at the Hague Tribunal have nothing to do with the problems of Lebanon or the hostage-takings." He added "I address clearly, both the Hague Tribunal and the United States, that the events in progress at the Hague have their own special nature and will

have no relation whatsoever with political issues or the issue of hostages."

13. Taking into consideration the procedural history of this Case and the statements quoted above, the Tribunal deems that there can be no room for any doubt that this Case and, in particular, the implementation of the Interlocutory Award have no relation or link whatsoever to the issue of hostages held in Lebanon or any other political matter, as both Parties have declared. Moreover, since the Parties have applied to the Tribunal, it now has the duty to decide, in conformity with the Interlocutory Award, upon the issues which were referred to negotiations between the Parties and remain unresolved. It will deal seriatim with the three issues defined for negotiation and the related requests of the Parties.

A. The Amount to be Retained

14. The Tribunal has already noted that, in order to achieve the immediate transfer of the excess amount, the Parties have reached agreement that the amount of U.S.\$63,000,000 provisionally should be kept in the Account for the full and final settlement of the pending claims.

15. In its submission of 19 March 1987, the United States confirmed that the figure of U.S.\$63,000,000 is accurate as of the date it was calculated, namely 30 September 1986. It noted that the actual amount to be retained should include earnings on the sum of U.S.\$63,000,000 since 30 September 1986 "to cover a portion of the interest on the underlying claims the U.S.\$63,000,000 is intended to satisfy."

16. The Tribunal decides that the amount which is to be kept in Dollar Account No. 1 to pay the claims still pending against this Account is U.S.\$63,000,000 plus the interest

earned on this amount since 30 September 1986.

B. The Amount to be Transferred

17. As there is no controversy between the Parties on this point, the Tribunal decides that the amount to be transferred shall be the excess of U.S.\$63,000,000 (plus the interest earned on this amount since 30 September 1986) in Dollar Account No. 1 on the date of transfer.

C. The Release and Discharge of the United States

18. In its submission of 19 March 1987, the United States suggested wording for a release to be included in the Award. It further requested that, in addition to the inclusion of such wording in the Award, a release and discharge, including an indemnification, should also be signed and forwarded to an intermediary by Iran before the transfer of the funds.

19. In its submission of the same day, Iran also proposed specific wording for a release to be included in the Award, but which includes a reservation as to any miscalculation of interest by the Federal Reserve Bank. It also suggested a procedure to deal with possible disputes relating to such miscalculations. The United States objected both to the terms of Iran's proposed release and to the proposed dispute settlement procedure.

20. The Tribunal notes that paragraph 67 of the Interlocutory Award recorded that the Claimant was prepared to "give a complete release regarding the administration of Dollar Account No. 1 by the United States and the Federal Reserve Bank of New York." The Tribunal also noted its understanding that "this release would mean a waiver of any

challenge to such administration." These conclusions were based on the following statement made by a representative of Iran at the Hearing:

"I am authorized by Bank Markazi, by the Islamic Republic of Iran, to say that If the United States or the New York Fed or both will return to Iran the money they now concede they have, which is somewhere between 479 million as of March 12 [1986], and probably \$500 million today, Iran will give the New York Fed and the United States a release If the New York Fed needs indemnification, we would agree to indemnify it. In other words, we offer the United States and the New York Fed Reserve Bank a clean ticket. There will be nothing for them to say they need to negotiate, discuss, adjudicate, try, or subject to any other proceeding. Give us back our money; we will give you a release."

Moreover, Iran suggested in its submission of 2 March 1987 that:

"the Tribunal can declare in advance that upon the receipt of the funds by Iran, the United States shall be released from any liability thereto; and that, save with respect to those claims allegedly pending against Account No. 1, Iran shall have no claim against the United States in this respect."

21. Having duly considered the views of the Parties and the aforementioned declarations of Iran, the Tribunal declares that, upon transfer to Iran of the amount determined in this Award, the United States and the Federal Reserve Bank shall be released and forever discharged from any claims, counterclaims, setoffs, liabilities, rights, obligations, demands, and causes of action, whether in rem or in personam or otherwise, past, present or future, known and unknown, and from any other matters which Iran, including its agencies, instrumentalities, entities under its control, and their successors and/or assigns, or any third persons, has raised, could have raised, or may in the future raise in connection with, related to, or arising out of payments from, investment of, or any other actions taken in the course of the administration by the Federal Reserve Bank of

New York of Dollar Account No. 1, except for payments from, investment of, or any other actions taken after the date of the transfer referred to above in the administration of the funds remaining in the Account. The Tribunal further notes that in the statement at the Hearing quoted in paragraph 20 above, Iran agreed to indemnify the United States and the Federal Reserve Bank from any liability that may result from claims brought against the United States or the Federal Reserve Bank in connection with the payment from, investment of, or any actions taken in the course of the administration of Dollar Account No. 1.

22. In view of the declarations made by Iran and recalling that, pursuant to Article IV, paragraph 1, of the Claims Settlement Declaration, "[a]ll decisions and awards of the Tribunal will be final and binding", the Tribunal holds that the United States and the Federal Reserve Bank are fully protected by the release and discharge recorded in this Award. The Tribunal does not consider it necessary to make any reservation for errors of calculation.

D. The Transfer of Funds to Iran

23. Iran requests the transfer of the funds in the amount determined by the Tribunal to Bank Markazi's Dollar Account with the Bank of England. The Tribunal does not consider it necessary to address the issue, raised by the United States, that such transfer may require an agreement including the bank to be involved. It is up to Iran, as the interested Party, to cause the Bank of England actually to accept the funds. Once the United States has transferred the funds to the Bank of England for the account of Bank Markazi, the

place of transfer designated by Iran as owner of the funds, it has fully implemented its obligations. Furthermore, the Tribunal does not consider it necessary to grant the request of the United States that the funds be transferred under some escrow arrangement, subject to the Tribunal's further instruction, particularly since the condition of the release and discharge of the United States and the Federal Reserve Bank is satisfied by this Award.

24. Accordingly, the United States shall cause the Federal Reserve Bank of New York to transfer immediately the amount of the funds presently held in Dollar Account No. 1 in excess of the sum determined in paragraph 17 above to Bank Markazi Jomhuri Islami Iran's Dollar Account at the Bank of England.

E. The Remaining Balance of Funds

25. In paragraph 70(e) of the Interlocutory Award of 20 August 1986, the Tribunal decided that:

"The settlement of the claims presently pending against Dollar Account No. 1 shall be pursued with due diligence. After they are resolved and appropriate payment has been made, the remaining balance of funds shall be immediately transferred to Iran."

This decision remains in effect. Accordingly, the Tribunal does not find it necessary to consider the requests by Iran that the Tribunal declare that the claims pending against Dollar Account No. 1 are not payable out of the said Account and order the transfer of the amount being kept in the Account in order to pay such claims. If Iran believes that the United States does not pursue the settlement of pending claims with due diligence, and is unable to resolve the matter through negotiations with the United States, it may apply to the Tribunal to determine what further action may

be required.

IV. AWARD

26. In view of the foregoing,

THE TRIBUNAL DETERMINES AS FOLLOWS:

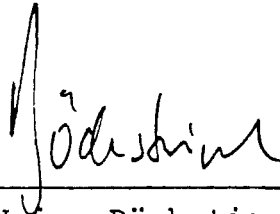
- (a) The amount which shall be kept in Dollar Account No. 1 with the Federal Reserve Bank of New York in order to pay the claims pending against this Account is Sixty Three Million United States Dollars and No Cents (U.S.\$63,000,000.00), plus the interest earned on this amount since 30 September 1986.
- (b) The amount not needed to pay the claims pending against Dollar Account No. 1 is the excess in Dollar Account No. 1 of Sixty Three Million United States Dollars and No Cents (U.S. \$63,000,000.00), plus interest earned on this amount from 30 September 1986 up to and including the date of transfer.
- (c) The Respondent THE UNITED STATES OF AMERICA shall cause the Federal Reserve Bank of New York to transfer immediately the amount of the funds determined in subparagraph (b) to the Dollar Account of Bank Markazi Jomhuri Islami Iran at the Bank of England.
- (d) Upon transfer of the amount stipulated in (b), the United States and the Federal Reserve Bank shall be released and forever discharged from any claims, counterclaims, setoffs, liabilities, rights, obligations, demands, and causes of action, whether in rem or in personam or otherwise, past, present, or future, known and unknown, and from any other matters which

Iran, including its agencies, instrumentalities, entities under its control, and their successors and/or assigns, or any third persons, has raised, could have raised, or may in the future raise in connection with, related to, or arising out of payments from, investment of, or any other actions taken in the course of the administration by the Federal Reserve Bank of New York of Dollar Account No. 1, except for payments from, investment of, or any other actions taken after the date of the transfer referred to in subparagraph (c) in the administration of the Account.

- (e) The settlement of the claims presently pending against Dollar Account No. 1 shall be pursued with due diligence. After they are resolved and appropriate payment has been made, the remaining balance of funds shall be immediately transferred to Iran. If Iran believes that the United States does not pursue the settlement of pending claims with due diligence, and is unable to resolve the matter through negotiations with the United

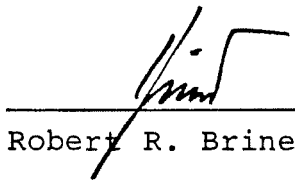
States, it may apply to the Tribunal to determine what further action may be required.

Dated, The Hague,
04 May 1987

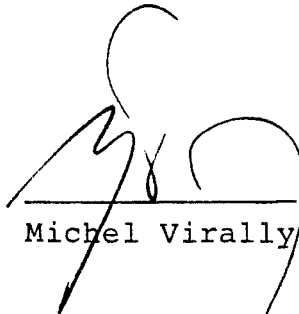


Karl-Heinz Böckstiegel
President

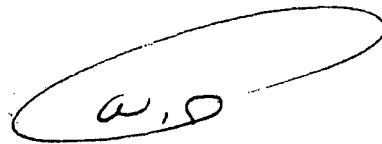
In the name of God



Robert R. Briner



Michel Virally

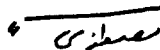


Hamid Bahrami-Ahmadi

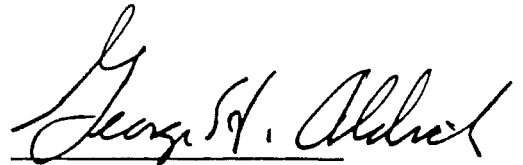
In the name of God



Howard M. Holtzmann
Concurring Opinion

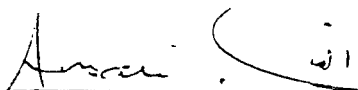


Mohsen Mostafavi



George H. Aldrich
Concurring Opinion

In the name of God



Parviz Ansari Moin



Carl F. Salans
Concurring Opinion