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** AWARD - Type of Award _____
 - Date of Award _____
 _____ pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
 _____ pages in English _____ pages in Farsi

** CONCURRING OPINION of Messrs. Holtzman, Aldrich, & Scalet
 - Date 4. May 87
5 pages in English _____ pages in Farsi

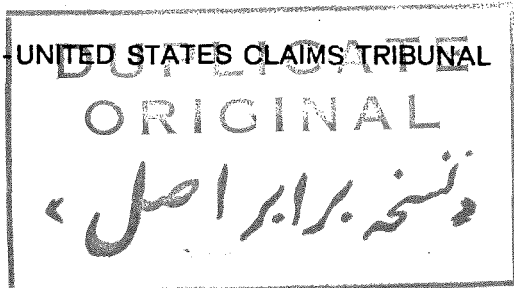
** SEPARATE OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

 - Date _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL



THE ISLAMIC REPUBLIC OF IRAN,
Claimant,
and

THE UNITED STATES OF AMERICA,
Respondent.

850
دیوان داوری دعوی ایران - ایالات متحدہ

CASE NO. A15 (I:G)

FULL TRIBUNAL

AWARD NO. 306-A15(I:G)-FT

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	4 MAY 1987 تاریخ
	۱۳۶۶ / ۲ / ۱۴
No.	A15 شماره

CONCURRING OPINION OF HOWARD M. HOLTZMANN,
GEORGE H. ALDRICH, AND CARL F. SALANS

This Partial Award implements an earlier Interlocutory Award in this Case from which all three American members of the Tribunal disagreed for the reasons set forth in their Dissenting Opinion.¹ We concur in today's Partial Award, however, because we recognize that it is inappropriate to re-open issues previously decided by majority vote and which are not before the Tribunal in this phase of the Case. Moreover, given the majority's conclusion in the Interlocutory Award that funds are to be transferred from the Federal Reserve Bank to Iran and that thereupon the United States and the Federal Reserve Bank shall be completely released, the Partial Award effectively implements that decision.

¹Dissenting Opinion of Judges Holtzmann, Aldrich, and Brower, Award No. ITL 63-A15(I:G)-FT (20 August 1986). Judge Aldrich and Judge Holtzmann continue to maintain the views set forth in their Dissenting Opinion. Judge Salans did not take part in the earlier phase of this Case which resulted in the Interlocutory Award.

We write separately in order to emphasize the legal and factual foundation for the release, discharge, and indemnity stated in the Partial Award. The legal basis for the Tribunal's inclusion of the release in the Award is Iran's binding undertaking to provide it. As the Award properly holds, Iran, by virtue of its commitments to the United States made before this Tribunal, has completely released the United States from any liability for its conduct in connection with the administration of the \$3.667 billion Fund established pursuant to the arrangements agreed to by Iran and the United States in the Algiers Accords. The release or "clean ticket" promised by Iran at the Hearing upon return of its money to its control encompasses, as the Tribunal has noted in the Award (paras. 20-22), an express waiver of any claims, a release and discharge of any liability, and an agreement to indemnify the United States and the Federal Reserve Bank or both should they nevertheless incur any liability in connection with claims brought against them by Iran or third parties. There is no necessity that Iran sign a separate release agreement, as requested by the United States, because, to borrow words from the International Court of Justice: "having found that [Iran] has assumed an obligation as to conduct, . . . no further judicial action is required." Nuclear Tests (Australia v. France), 1974 I.C.J. Reports 253, 271 (Judgment of 20 December 1974); Nuclear Tests (New Zealand v. France), 1974 I.C.J. Reports 457, 477 (Judgment of 20 December 1974).

The formal declarations Iran made before this Tribunal at the Hearing and in its submission of 2 March 1987 (both quoted at paragraph 20 of the Award) are binding unilateral commitments under international law.² These declarations

²See, e.g., Fiedler, Unilateral Acts in International
(Footnote Continued)

were publicly made to the United States and to this Tribunal in order to induce the transfer of the funds and were manifestly intended to be effective upon transfer of the funds. Nothing compelled Iran to undertake the obligations expressed in these declarations. The statement made at the Hearing invoked the authority of the Government of Iran and Bank Markazi, the Central Bank of Iran. The Agent of Iran and the representative of Bank Markazi were both present when the statement was made and neither indicated the slightest disagreement with its content. The submission of 2 March 1987 was signed by the Agent of the Government of the Islamic Republic of Iran. By virtue of these declarations, Iran has waived any rights or claims it may have had with respect to the conduct of the United States or the Federal Reserve Bank in connection with the funds received by the Federal Reserve Bank for the payment of Iran's syndicated debts pursuant to the Algiers Accords. It has also released and discharged them from any liability. Finally, it has committed itself to indemnify them for any liability incurred in the future.

The jurisprudence of the Permanent Court of International Justice contains several examples of the legal effects of declarations made before international tribunals. In the Mavrommatis Jerusalem Concessions Case, a declaration was made on behalf of the British Government that it would not expropriate certain concessions held by Mr. Mavrommatis. The Court observed that the binding character of such a declaration was beyond question. 1925 P.C.I.J., Ser. A, No.

(Footnote Continued)

Law, 7 Encyclopedia of Public International Law 517-22 (1984); 1 P. Guggenheim, Traité de Droit international public 279-82 (2d ed. 1967); G. Schwarzenberger, International Law as Applied by International Courts and Tribunals 548-54 (3d ed. 1957); M. Hudson, The Permanent Court of International Justice: 1920-1942, at 633-34 (1943); E. Suy, Les actes juridiques unilatéraux en Droit international public 127-32, 148-52 (1962).

5, at 37-38. Similarly, the Court confirmed in the German Interests in Polish Upper Silesia Case that declarations made on behalf of the Polish Government of its intention not to proceed with certain expropriations were binding on that government. 1926 P.C.I.J., Ser. A, No. 7, at 13. During the oral proceedings in the Free Zones Case, the Swiss Agent declared on behalf of his government that if the free zones in Upper Savoy and the District of Gex were maintained by the Court, the Swiss Government would, if France so desired, agree to settlement of the terms of an exchange of goods between the zones and Switzerland by experts -- with binding effect and without the need for ratification. Although France expressed doubts as to the binding character of this declaration in view of the Swiss constitution, the Court held that it was a binding international obligation. 1932 P.C.I.J., Ser. A/B, No. 46, at 169-70.

The binding nature of unilateral declarations made before international tribunals was confirmed in a broader context by the International Court of Justice in the Nuclear Tests Cases, supra, where the Court observed that:

It is well recognized that declarations made by way of unilateral acts, concerning factual or legal situations, may have the effect of creating legal obligations. . . . When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind, if given publicly, and with the intent to be bound, even though not made within the context of international negotiations, is binding. . . .

Of course, not all unilateral acts imply obligation; but a State may choose to take up a certain position in relation to a particular matter with the intention of being bound -- the intention is to be ascertained by interpretation of the act. . . .

. . . .

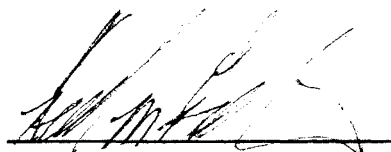
. . . Just as the very rule of pacta sunt servanda in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration. Thus interested States may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected.

Nuclear Tests Cases, supra, at 267-68; 472-73.

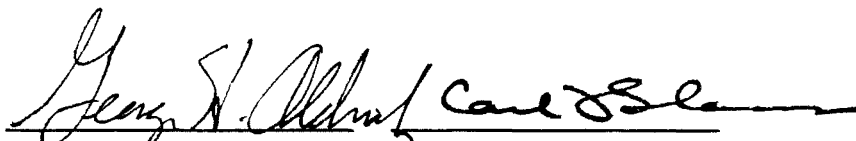
Iran has clearly indicated its position, and this Tribunal and the United States, including the Federal Reserve Bank, have relied on it.³ Iran has waived any claim it might have had and has released and discharged the United States and the Federal Reserve Bank from any liability. Should any liability be incurred by the United States or the Federal Reserve Bank or both in connection with Dollar Account No. 1, by Iran or some third party, then Iran has undertaken the obligation to indemnify them.

Dated, The Hague

4 May 1987



Howard M. Holtzmann



George H. Aldrich Carl F. Salans

³Indeed, as noted in the Award (para. 20), Iran suggested that its release of the United States be declared by the Tribunal in the Award, rather than expressed in a separate document signed by Iran. Accordingly, quite apart from being bound by its undertakings, Iran is clearly precluded from ever acting inconsistently by denying the validity of this release, including the indemnity. See Bowett, Estoppel Before International Tribunals and its Relation to Acquiescence, 33 British Yearbook of International Law 176-202 (1957).