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CLAIMS TRIBUNAL

دیوان داری دعاوی ایران - ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

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Case No. A21

Date of filing: 4. May 87

\*\* AWARD - Type of Award \_\_\_\_\_  
- Date of Award \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DECISION - Date of Decision 4. May 87  
13 pages in English 13 pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
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\*\* SEPARATE OPINION of \_\_\_\_\_  
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\*\* DISSENTING OPINION of \_\_\_\_\_  
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THE ISLAMIC REPUBLIC OF IRAN

and

THE UNITED STATES OF AMERICA

CASE NO. A21

FULL TRIBUNAL

DECISION NO. DEC.62-A21-FT

IRAN UNITED STATES CLAIMS TRIBUNAL		ایران - ایالات متحدہ	
ثبت شد - FILED			
Date	4 MAY 1987	تاریخ	
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No.	A21	شماره	

Request for interpretation by the Full Tribunal of the Algiers Declarations with respect to whether the United States is obligated to satisfy promptly any award of this Tribunal rendered in favor of Iran against nationals of the United States.

DECISION

Appearances:

For the Islamic  
Republic of Iran:

Mr. Mohammad K. Eshragh,  
Agent of the Islamic  
Republic of Iran,  
Professor François Rigaux,  
Professor Charles Lipton,  
Attorneys,  
Dr. Ali Akbar Riyazi,  
Dr. Nasser-Ali Mansourian,  
Legal Advisers to the  
Agent,  
Mr. Sohrab Rabiee,  
Legal Assistant to the  
Agent.

For the United  
States of America:

Mr. John R. Crook,  
Agent of the United  
States of America,  
Ms. Lucy Reed,  
United States Department  
of State,  
Professor Richard Lillich.

I. THE PROCEEDINGS

1. On 19 July 1985, the Islamic Republic of Iran filed a request for interpretation by the Full Tribunal of the provisions of the Algiers Declarations "concerning the commitment of the United States to promptly satisfy any award of this Tribunal rendered in favour of 'Iran' against the nationals of the United States." The request invoked the provisions of Paragraph 17 of the General Declaration, as well as Article II, paragraph 3, and Article VI, paragraph 4, of the Claims Settlement Declaration, as the basis of the Full Tribunal's jurisdiction to interpret the Declarations.

2. In its request, Iran contended that the United States was obligated to satisfy awards rendered by the Tribunal in favor of Iran against nationals of the United States. It cited an exchange of letters between the Agents of the respective Governments to demonstrate how the dispute had arisen on this issue. In a letter to the Agent of the United States dated 28 January 1985, the Agent of the Islamic Republic of Iran had listed, inter alia, five monetary awards or orders rendered by the Tribunal in favor of Iran against United States nationals, either granting counterclaims or awarding costs of arbitration, which remained unpaid. Iran requested the "prompt compliance" of the United States with respect to such awards. In his reply dated 30 January 1985, the Agent of the United States denied that the United States was obligated either by the Algiers Declarations or by any principle of customary international law to satisfy awards rendered against its nationals.

3. On 18 October 1985, the United States filed its Reply to Iran's request. On 15 May 1986, Iran filed a further Memorial. The United States filed its Response on 4

September 1986. A hearing took place on 3 December 1986 at which both Governments presented oral argument. Mr. Carl F. Salans participated in the deliberations in this Case as a substitute arbitrator in the place of Mr. Charles N. Brower. See Presidential Order No. 51 of 2 February 1987.

4. In its written pleadings, Iran argues that the "final and binding" nature of the Tribunal's awards, as this term is used in Article IV, paragraph 1, of the Claims Settlement Declaration<sup>1</sup> and Article 32, paragraph 2, of the Tribunal Rules,<sup>2</sup> imposes an obligation on the United States to satisfy such awards. Iran seeks to sustain this proposition by reference both to the Algiers Declarations themselves and to the principles of customary international law in the light of which the Declarations must be interpreted. It asserts that the Algiers Declarations establish a "reciprocal system of commitments" that obligates the United States to pay awards if its nationals fail to do so. Relying on the "international" character of the Tribunal, Iran contends that the United States has espoused the claims of its nationals, and that this carries with it the obligation to satisfy Tribunal awards against such nationals. It further asserts that the principles of customary international law require the commitment of a government to satisfy awards rendered by an international tribunal established by a treaty to which it was party.

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<sup>1</sup>Article IV, paragraph 1, of the Claims Settlement Declaration provides that "[a]ll decisions and awards of the Tribunal shall be final and binding."

<sup>2</sup>Article 32, paragraph 2, of the Tribunal Rules provides that "[t]he award shall be made in writing and shall be final and binding on the parties." Iran acknowledges that in this context the term "parties" refers to "arbitrating parties", i.e., the particular claimant and respondent in any case. See Tribunal Rules, Introduction and Definitions, paragraph 3(c).

5. At the hearing, Iran advanced further arguments. It contends that the obligation on the United States is, by nature, one of result -- the result being the assured enforcement of Tribunal awards rendered against its nationals, without the need for Iran to take any action to secure enforcement. It suggests that a number of alternative means are open to the United States to satisfy this obligation. In Iran's view, the United States might elect to pay such awards directly, and thereby assume the right to enforce them against the nationals concerned; or it could enact special legislation enabling the enforcement of Tribunal awards on a "full faith and credit" basis as it has done in the case of awards rendered pursuant to the ICSID Convention.<sup>3</sup> Iran argues that the failure of the United States to take any such steps has exposed Iran to the risk that the Tribunal's awards would not be found to be enforceable in the United States, even by means of proceedings under the New York Convention.<sup>4</sup> Such uncertainty is, Iran contends, inconsistent with the "reciprocal system of commitments" embodied in the Algiers Declarations.

6. The United States denies that it is obligated to satisfy awards rendered against its nationals. First, the

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<sup>3</sup>Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270, T.I.A.S. No. 6090, 575 U.N.T.S. 159 (1966). Pursuant to the legislation implementing the ICSID Convention in the United States, pecuniary obligations imposed by an award rendered pursuant to the Convention "shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States." 22 U.S.C. §1650a.

<sup>4</sup>United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 3, (effective Dec. 29, 1970).

United States argues that Iran has not presented an interpretative dispute over which the Tribunal has jurisdiction under Article II, paragraph 3, or Article VI, paragraph 4, of the Claims Settlement Declaration because the Algiers Declarations contain no express or implied provision requiring the United States to enforce such awards. Second, the United States argues that even if Iran has presented an interpretative issue, the Tribunal lacks jurisdiction because no outstanding dispute exists on this issue since the Tribunal has in all relevant cases rendered awards against a named United States national, not against the United States. Third, the United States argues that, even if the Tribunal has jurisdiction, Iran's request fails on the merits. In particular, the United States argues that the very fact that an award against a United States national is "final and binding" does not endow the Tribunal or the United States with responsibility for paying such an award. Finally, the United States argues that the Algiers Declarations do not relieve Iran of the necessity to seek enforcement in the United States or other national courts in the event that a United States national fails voluntarily to satisfy such an award, and notes that Iran has failed to do so to date.

## II. REASONS FOR DECISION

### A. Jurisdiction

7. The question raised by Iran involves an examination not only of the express terms of the respective Algiers Declarations, but of the totality of those instruments in the context of general principles of international law. The

obligation Iran is seeking to establish is not to be found in the express words of the Declarations. However, this fact alone does not remove the present dispute from the ambit of Article VI, paragraph 4, of the Claims Settlement Declaration: it remains a "question concerning the interpretation or application" of that agreement, and as such it is properly brought before the Tribunal.

B. The Merits

8. The task of the Tribunal is to ascertain the nature and content of the obligations undertaken by the respective States Parties to the Algiers Declarations. The means to be employed in the process of interpretation of an international agreement of this nature are set out in the Vienna Convention on the Law of Treaties.<sup>5</sup> Article 31, paragraph 1, of the Convention provides:

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

9. In its written pleadings and oral argument, Iran has focused principally on the interpretation of the words "final and binding" as they appear in Article IV, paragraph 1, of the Claims Settlement Declaration, which provides that "[a]ll decisions and awards of the Tribunal shall be final and binding." Iran invests these words with particular significance because, it argues, they reflect the statement in General Principle B of the General Declaration that:

"It is the purpose of both parties, within the framework of and pursuant to the provisions of the two Declarations . . . to terminate all litigation as between the government of each party and the nationals

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<sup>5</sup>Vienna Convention on the Law of Treaties, May 23, 1969, U.N. Doc. A/CONF.39/27, 8 I.L.M. 679 (1969).



of the other, and to bring about the settlement and termination of all such claims through binding arbitration."

Iran contends that the effect of these provisions is to commit the United States to ensure the satisfaction of Tribunal awards in Iran's favor against United States nationals. The term "final and binding", Iran argues, means that no further proceedings are required in order to obtain satisfaction of such Tribunal awards, and the consequence of this is that the United States bears a direct responsibility to pay awards when its nationals fail to do so.

10. The Tribunal notes at the outset that the Algiers Declarations contain no express provision obligating the United States to pay a Tribunal award made against one of its nationals. Indeed, in all the awards at issue, the dispositif obligates named United States nationals -- not their Government -- to make payments. Moreover, no obligation of the United States can be implied, as Iran contends, from the inclusion in the Declarations of the words "final" and "binding". The terms "final" and "binding", when used in instruments relating to international arbitration, do not ordinarily mean that an award is self-enforcing. Rather, as is generally recognized, a "final" and "binding" award is one with which the parties must comply and which is ripe for enforcement. Thus, when a party fails to comply voluntarily with a final and binding arbitral award, the other party is free to seek enforcement of the award through municipal court procedures. The Tribunal considers that these terms as used in the Algiers Declarations should be given this ordinary and generally recognized meaning.

11. Nor can the Tribunal agree with Iran's argument that the Algiers Declarations establish a "reciprocal system of commitments" that automatically obligates the United

States to step in and pay awards against its nationals in the event that those nationals do not do so voluntarily. The principle of reciprocity applies to the agreement taken as a whole; furthermore, it cannot override the specific terms of a treaty freely entered into. Iran's construction would ignore the express provisions of the Declarations which, in establishing a Security Account as the source for payments of awards against the Government of Iran and its controlled entities and in not imposing an identical obligation of payment upon the United States, clearly contemplated something other than parity of treatment of the two States Parties as regards enforcement mechanisms. Further, the Tribunal notes that the Algiers Declarations contain express provisions that carefully define the circumstances in which the two Governments are responsible for paying Tribunal awards. Thus, Article IV, paragraph 3, of the Claims Settlement Declaration provides that awards rendered "against either government shall be enforceable against such government in the courts of any nation in accordance with its laws." On its face, this provision excludes any reference to awards against nationals of either State. In addition, Paragraphs 16 and 17 of the General Declaration relate only to the responsibility of the two Governments concerning fulfilment of their respective obligations under the Declaration; they do not impose a duty to pay the obligations of nationals. The inclusion of specific provisions in both the Claims Settlement Declaration and the General Declaration describing the limited instances in which the two Governments are obligated to satisfy Tribunal Awards is a strong indication that no such obligation exists in other circumstances that are not mentioned, except in the event that a breach of a treaty obligation were to be found, giving rise to liability in damages.

12. Iran also contends that the United States has espoused the claims of its nationals and that this carries with it the obligation for it to pay Tribunal awards against those nationals. However, as the Full Tribunal has previously stated:

"[T]his Tribunal is clearly an international tribunal . . . [I]t is the rights of the claimant, not of his nation, that are to be determined by the Tribunal. This should be contrasted with the situation of espousal of claims in international law . . . . Moreover, the object and purpose of the Algiers Declarations was to resolve a crisis in relations between Iran and the United States, not to extend diplomatic protection in the normal sense. (Emphasis added.) (Decision No. DEC. 32-A18-FT, pp. 18-19 (6 April 1984))"

Tribunal awards uniformly recognize that no espousal of claims by the United States is involved in the cases before it. Thus, all Tribunal awards requiring payment by nationals of the United States are directed against specifically named nationals, not against their Government. Indeed, all of the counterclaims and requests for costs by Iranian parties are similarly directed against particular nationals of the United States.

13. In view of the conclusions set forth above, the Tribunal cannot find that any obligation of the United States to satisfy Tribunal awards against its nationals flows from the "international" character of the Tribunal, or from any principle of customary international law based on the United States having been a party to the treaty that established the Tribunal.

14. On the other hand, the act of entering into a treaty in good faith carries with it the obligation to fulfil the object and purpose of that treaty -- in other words, to take steps to ensure its effectiveness. In this respect, the Algiers Declarations impose upon the United States a duty to implement the Algiers Declarations in good

faith so as to ensure that the jurisdiction and authority of the Tribunal are respected. The Parties to the Algiers Declarations are obligated to implement them in such a way that the awards of the Tribunal will be treated as valid and enforceable in their respective national jurisdictions. Such a conclusion is inescapable if one examines the totality of the reciprocal obligations embodied in the Declarations in the light of their stated "object and purpose", as the Vienna Convention requires. General Principle B of the General Declaration expressly states that the purpose of the Tribunal is "to bring about the settlement and termination" of claims between the nationals of one State and the government of the other through "binding arbitration". That purpose is fulfilled and implemented by specific provisions in both Declarations governing the manner in which such arbitration is to be carried out, including the characterisation of the Tribunal's awards as "final and binding".

15. This good faith obligation leaves a considerable latitude to the States Parties as to the nature of the procedures and mechanisms by which Tribunal awards rendered against their nationals may be enforced. The Tribunal has no authority under the Algiers Declarations to prescribe the means by which each of the States provides for such enforcement. Certainly, if no enforcement procedure were available in a State Party, or if recourse to such procedure were eventually to result in a refusal to implement Tribunal awards, or unduly delay their enforcement, this would violate the State's obligations under the Algiers Declarations. It is therefore incumbent on each State Party to provide some procedure or mechanism whereby enforcement may be obtained within its national jurisdiction, and to ensure that the successful Party has access thereto. If procedures did not already exist as part of the State's legal system they would have to be established, by means of

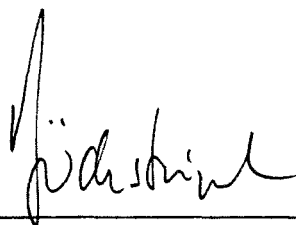
legislation or other appropriate measures. Such procedures must be available on a basis at least as favorable as that allowed to parties who seek recognition or enforcement of foreign arbitral awards.

16. The Tribunal finds no grounds on which to conclude that the United States has failed in its obligation in this respect. To date, Iran has made no attempt to avail itself of the procedures which exist for the enforcement of arbitral awards in United States courts. It is thus premature to make any pronouncement as to whether the mechanisms currently existing in municipal law are adequate. Only if it were to be established that recourse by Iran to the mechanisms or systems existing in the United States had not resulted in the enforcement of awards of this Tribunal against United States nationals would the question arise as to what further measures, if any, the United States might be required to take in order to ensure the "effectiveness" of the Algiers Declarations. A request to the Tribunal as to the "application" of the Algiers Declarations pursuant to Article VI, paragraph 4, of the Claims Settlement Declaration would be appropriate at that stage. However, that is not the question before the Tribunal at the present time.

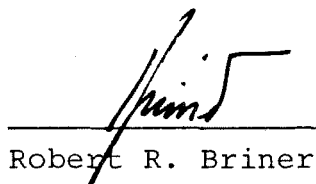
17. Accordingly, Iran's request that the Tribunal find that "the United States is responsible for the satisfaction of awards rendered by this Tribunal in favour of Iran and

against nationals of the United States" cannot be granted  
and is therefore denied.


Dated, The Hague  
4 May 1987



Karl-Heinz Böckstiegel  
President

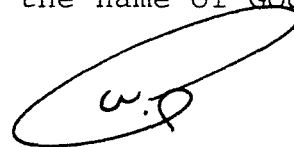


Robert R. Briner



Michel Virally

In the name of God

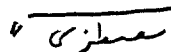


Hamid Bahrami-Ahmadi  
Separate Opinion

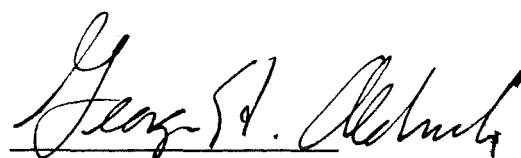
In the name of God



Howard M. Holtzmann



Mohsen Mostafavi  
Separate Opinion

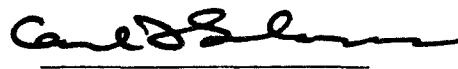


George H. Aldrich

In the name of God



Parviz Ansari Moin  
Separate Opinion



Carl F. Salans