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دیوان داوری دعاوی ایران - ایالات متحدہ

۲۳ - الف ۲۱

ORIGINAL DOCUMENTS IN SAFE

Case No. A21

Date of filing: 15. May 87

\*\* 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 \_\_\_\_\_  
- Date \_\_\_\_\_  
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\*\* SEPARATE OPINION of Ansari  
- Date 15. May 87  
4 pages in English 9 pages in Farsi

\*\* DISSENTING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* OTHER; Nature of document: \_\_\_\_\_  
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- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

In the name of God

CASE NO. A/21

FULL TRIBUNAL

DECISION NO. DEC.62-A21-FT

THE ISLAMIC REPUBLIC OF IRAN

and

THE UNITED STATES OF AMERICA

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	15 MAY 1987 ۱۳۶۶ / ۲ / ۲۵
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	تاریخ
	شماره

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SEPARATE OPINION OF JUDGE PARVIZ ANSARI

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INTRODUCTION

1. In the present Opinion, I do not intend to reiterate the points set forth in the Tribunal's Decision. Rather, I am more concerned here with shedding light on the ramifications of that Decision with respect to the United States Government's responsibility in connection with the enforcement of awards and decisions rendered in favor of Iran against U.S. nationals.

To this end, I shall begin by discussing the Tribunal's continuous jurisdiction in connection with the United States' responsibility arising out of the failure to enforce awards and decisions issued in favor of Iran, following which I shall turn to the

DUPLICATE  
ORIGINAL  
دو نسخه برابر اصل

situation regarding the United States' municipal regulations pertaining to enforcement of arbitral awards.

#### THE TRIBUNAL'S CONTINUOUS JURISDICTION

2. Paragraph 17 of the Algiers Declaration ("General Declaration"), and Article VI, paragraph 4 of the Claims Settlement Declaration, constitute the basis for the Tribunal's jurisdiction over interpretation or application [of the Algiers Declarations]. Referring to Article VI, paragraph 4 of the Claims Settlement Declaration in paragraph 7 of its Decision, the Tribunal holds that it has jurisdiction over Iran's Request regarding enforcement of awards rendered in favor of that State, and declares that the said request is a "question concerning the interpretation or application" of the Claims Settlement Declaration.

3. Because the Tribunal's jurisdiction over interpretation and application is continuous in nature, being independent of any particular time or instance, the Tribunal rules in paragraph 16 of its Decision that:

"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..."

It has thereby been established that the Tribunal has a continuous jurisdiction over any and all instances of enforcement of awards, or over any and all stages of enforcement thereof, which are confronted by barriers within the jurisdiction of the United States. It will, moreover, apply to any violation by the United States regarding enforcement of awards rendered in favor of Iran, as well as to any damages arising from such a violation.

THE SITUATION REGARDING UNITED STATES MUNICIPAL REGULATIONS  
PERTAINING TO ENFORCEMENT OF ARBITRAL AWARDS

4. In its Decision, the Tribunal considers it unnecessary to examine how United States municipal regulations deal with the enforcement of awards rendered in favor of Iran. In the first place, this is because the "final and binding" nature of awards, as reflected in Article IV, paragraph 1 of the Claims Settlement Declaration, constitutes an obligation upon the United States to ensure the enforcement of such awards and decisions; moreover, any impediment in United States municipal law, such as a bar to enforcement of awards due to the statute of limitations, etc., does not do away with the requirement to enforce such awards. In the second place, the United States is obligated to implement the Algiers Declarations in good faith by General Principle "B" of the General Declaration, which Principle states that it is the purpose of both of the States Parties to the Declarations to "bring about the settlement and termination of all such claims through binding arbitration," and also by the peremptory nature of the principle of "good faith" in implementing the Algiers Declarations.

Apart from any enforcement mechanism which may or may not be available in the United States, as a consequence of this obligation awards and decisions rendered in favor of Iran must be enforced promptly and properly within the United States' jurisdiction. And the result of this obligation, as reflected in paragraph 15 of the Decision, shall be that if:

- (a) there is no enforcement procedure available in the United States, or if
- (b) recourse to such procedure results in a refusal or frustration of enforcement, or  
if
- (c) there is an unconscionable or undue delay in enforcement,

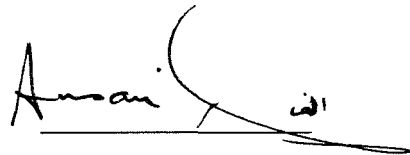
this shall constitute a violation by the United States of its obligations as set forth in the Algiers Declarations; it shall also, as a result, entitle Iran to any damages arising

therefrom.

CONCLUSION

5. While in my opinion the United States Government has the responsibility to enforce awards and decisions rendered in favor of Iran directly, the Decision by the Tribunal in the instant Case does, at any rate, constitute a step in the direction of expediting and ensuring enforcement of awards and decisions rendered in favor of Iran. Moreover, in terms of ensuring both the validity and binding nature of Tribunal awards and decisions, and the right of the prevailing party to have the award or decision enforced within the jurisdiction of the United States, the present Decision also merits careful scrutiny and consideration.

Dated, The Hague,  
15 May, 1987

A handwritten signature in black ink, appearing to read 'Ansari' followed by a flourish and a small mark.

Parviz Ansari