

A21-25

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CLAIMS TRIBUNAL

دیوان داری دعاری ایران - ایالات متحدہ

25

ORIGINAL DOCUMENTS IN SAFE

Case No. A21

Date of filing: 18. 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 \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* SEPARATE OPINION of Ms, Bahrami and Mostafaei  
- Date 18. May 87  
3 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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In the Name of God

CASE NO. A21

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	18 MAY 1987
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	شماره

SEPARATE OPINION OF HAMID BAHRAMI-AHMADI AND MOHSEN MOSTAFAVI  
WITH RESPECT TO CASE NO. A21

It is the opinion of the present writers that in its Decision, the Tribunal has in reality accepted Iran's premise that the United States is obligated to satisfy awards of this Tribunal [against its nationals], because:

1. In paragraph 14, the Tribunal holds that the United States has a duty to implement the Algiers Declarations in good faith. It also states that the United States Government must respect the Tribunal's jurisdiction and comply with its awards, and then concludes that the awards of the Tribunal must be treated as valid and enforceable in the national jurisdiction of each State.

2. Paragraph 15 of the Decision states:

"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 then concludes that the procedures for enforcing Tribunal awards in the United States "must be available on a basis at least as favorable as that allowed to parties who seek recognition or enforcement of foreign arbitral awards." In the opinion of the present writers, good faith compliance with Decision No. A21 by the United States would require that the said Government extend to the Government of Iran its full cooperation in enforcing Tribunal awards, and that where necessary, it pass the relevant internal legislation.

3. In the course of adjudicating this claim -- as well as from the contents of the Parties' submissions -- the Tribunal has ascertained that there is no precedent for [enforcement of] Tribunal awards through the US courts; and that unforeseeable problems might thus arise in practice. In paragraph 15 of its Decision, the Tribunal states that any undue delay in enforcing these awards would constitute a violation of the Algiers Declarations. The present writers therefore believe that the Tribunal has indirectly made the United States responsible for the prompt enforcement of Tribunal awards through its municipal courts. Compliance with this obligation would require monitoring whether such awards were being properly enforced in the United States; whereby it would be appropriate for the Agents of the two Governments to commence consulting and cooperating with one another, with respect to what legal measures might be taken in connection to means for enforcing the said awards in the United States.

4. In light of the foregoing, it is our opinion that paragraph 17, whereby the Tribunal has denied Iran's request, is inconsistent with the Tribunal's own arguments. This is because the Tribunal has in reality indirectly agreed to Iran's request; and in paragraphs 14 and 15 of the Decision, it has held the United States

Government responsible for any failure by Iran to obtain an order for the enforcement of Tribunal awards through the US courts. Finally, in paragraph 16, the Tribunal states that

"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 [United States] municipal law are adequate."

In view of the above, we believe that paragraph 17 of the Decision should read as follows:

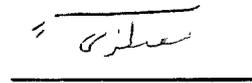
"Accordingly, Iran's request that the Tribunal find that 'the United States is responsible for the satisfaction of awards rendered by this Tribunal in favor of Iran and against nationals of the United States' may be entertained by this Tribunal if and when the United States courts refuse to enforce the said awards, or where there is an undue delay in the enforcement thereof."

Dated, The Hague

18 May 1987



Hamid Bahrami-Ahmadi



Mohsen Mostafavi