IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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** DECISION - Date of Decision _____

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** CONCURRING OPINION of Mohsen Aghahossein

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** SEPARATE OPINION of _____

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

In His Exalted Name

CASE NO. A28
FULL TRIBUNAL
DECISION NO. DEC 130-A28-FT

THE UNITED STATES OF AMERICA and
THE FEDERAL RESERVE BANK OF NEW YORK,

Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN and
BANK MARKAZI IRAN,

Respondents.

CONCURRING OPINION OF
MOHSEN AGHAHOSSEINI

This is a Case in which the Claimant United States of America requests an order by the Tribunal directing the Respondent Islamic Republic of Iran (Iran) to replenish the Security Account established pursuant to paragraph 7 of the General Declaration. It requests, additionally, that for as long as Iran has not replenished the Security Account to the minimum level of U.S. $ 500 million, as required by the said paragraph 7, the United

States be authorized to satisfy any future Tribunal award in favour of Iran by paying the awarded sum to the Security Account. The Tribunal denies both requests, and I agree.

In support of this denial, however, the Tribunal refers to "the present circumstances",[1] and to the Tribunal's expectation that Iran, having been found in non-compliance with its replenishment obligation, "will comply".[2] I believe that only the first of these two grounds should have been invoked, with the second one discarded, not only because it is utterly unjustified, but also because it is incompatible with the first. This must be briefly explained.

What the Tribunal means by "the present circumstances" is clear enough. It is true of course that back in 1981 Iran agreed to establish a security account and to maintain in it a minimum balance of U.S. $ 500 million. But it did so for "the sole purpose" of paying and securing the payment of claims of the United States and its nationals against Iran,[3] at a time when there existed hundreds, if not more, such claims with the total relief sought of billions of dollars.

All that has long changed. Today, at any rate, there is only one such claim before the Tribunal,[4] with the balance in the Security Account more than sufficient to meet not only the true worth, but also the face value, of that claim. It is this fact which leads the Tribunal to state that it "understands the reasons why Iran presently considers replenishment of the Security Account unnecessary as a practical matter ..."[5]

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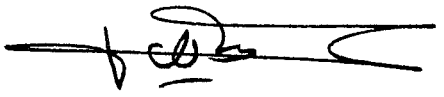
[1] The Decision, paragraph 93.
[2] *Ibid*, paragraph 95 (B).
[3] Paragraph 7 of the General Declaration.
[4] The United States has in this connection also referred, albeit very briefly, to its counterclaim in Case No. B1. But as the Tribunal correctly concludes, the issues concerning that counterclaim, including the disputed point of whether or not it is within the jurisdiction of this Tribunal, "must be addressed in proceedings in that Case, not in the present one". (The Decision, paragraph 62)
[5] The Decision, paragraph 90.

Such being "the present circumstances", the Tribunal rightly refuses to grant the United States' requests. It could not have done otherwise. Whatever the true nature or extent of Iran's obligation under paragraph 7 of the General Declaration, any order by the Tribunal for further replenishment of the Account, now that this is no longer needed, requires the broadening of the obligation such as to lead to a manifestly unreasonable, if not absurd, result. And we know of course that the law, correctly reflected in Article 32(b) of the Vienna Convention on the Law of Treaties (1969), does not permit such a result, even where the clear purport of the text so requires.[6]

It is in the light of these that I find the reference in the Decision to the Tribunal's expectation of future compliance by Iran wholly unwarranted. Where the Tribunal, taking note of "the present circumstances", itself declines to issue an order for the replenishment of the Account by Iran, it cannot, *a pari ratione*, justifiably expect Iran to do so of its own volition.

Dated, The Hague

19 December 2000



Mohsen Aghahosseini

[6] It must be noted here, lest it might be confused, that the Tribunal's unfavourable treatment of some of Iran's arguments based on the present circumstances -- such as the current sufficiency of the Security Account and hence the absurdity of its further replenishment -- relates exclusively to the Tribunal's interpretation of Iran's paragraph 7 obligation. It has thus nothing to do with the wholly distinct issue of whether or not a replenishment order by the Tribunal is called for, with regard to which the Tribunal itself invokes "the present circumstances".