

CASE NO. B36
 CHAMBER TWO
 DECISION NO. DEC 126-B36-2

THE UNITED STATES OF AMERICA,
 Claimant,
 and
 THE ISLAMIC REPUBLIC OF IRAN,
 Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	17 MAR 1997
	تاریخ ۱۳۷۵ / ۱۲ / ۲۷

DECISION

Introduction

1. On 3 December 1996, the Tribunal rendered Award No. 574-B36-2 (the "Award") in Case No. B36 between the United States of America ("United States") and the Islamic Republic of Iran ("Iran"). The Award, while dismissing a claim of the United States arising out of a 1945 sales agreement for lack of jurisdiction, held that, under a 1948 sales agreement (the "1948 Contract"), Iran was obligated to pay to the United States the sum of U.S.\$21,389,845.47, plus interest.

Request by Iran

2. On 3 January 1997, the Agent of Iran, on behalf of the Government of Iran, submitted a request (hereinafter the "request")

to correct the Award not only because the Award, in one sense, involves a question of the computation of the [United States'] remedy and, thus, falls under the ambit of Article 36 of the Tribunal Rules, but on account of the Tribunal's inherent power to avoid through revision or other recourse[] not specifically provided for in the Tribunal Rules the circulation of erroneous awards.

3. In a letter filed on 7 February 1997, the Agent of the United States submitted that the request did not fall within the terms of Article 36 of the Tribunal Rules or of Tribunal precedent related to correction of awards but rather that Iran was seeking to reargue the Case.

4. The request asserts, in substance, that the Tribunal failed to consider certain arguments and evidence presented by Iran and aims at the reconsideration of the Award. A summary of Iran's reasons for the request follows.

5. Iran takes issue with paragraph 43 of the Award which concludes that "there is no dispute that the equipment purchased [under the 1948 Contract] was in fact delivered." It submits that this position does not find support in the evidence on record and claims that the Award fails to mention Iran's argument regarding this issue. The request also asserts that, at the Hearing, Iran's legal counsel argued that the delivery of the purchased items had not been proved and demonstrated that Iran had objected in a timely manner to the non-delivery of the goods.

6. Iran further objects to the finding in paragraph 44 of the Award. The relevant part of that paragraph holds that "[t]here is no evidence that Iran ever objected to the accuracy of [billings for debts incurred under the 1948 Contract], or seriously disputed the existence of the debts." Iran asserts that this conclusion was reached also without examining Iran's arguments and evidence. Iran contends that it never accepted the debt under the 1948 Contract and that the United States did not intend that Iran pay the said billings. It additionally asserts that the issuance of billings is not proof of performance or an entitlement to receive the billed amount.

7. The Award's computation of interest is another point raised in the request. Iran argues that the Tribunal has calculated interest from the date the goods were delivered without any proof of delivery as contractually required.

8. Finally, Iran states that the Tribunal disregarded concessions made by United States officials in the course of negotiations with Iranian officials and that those concessions were evidenced by documents on the record. According to Iran, United States officials in those negotiations indicated that their government did not expect payment under the post-war agreements in question and did not consider itself entitled to receive interest thereon.

Request pursuant to Tribunal Rules

9. The Tribunal will deal first with that part of the request which is based on Article 36 of the Tribunal Rules. Iran submits that its request falls under Article 36 because the requested correction of the Award "involves a question of the computation of the [United States'] remedy."

10. Award No. 574-B36-2 was served on both the Agent of Iran and the Agent of the United States on 4 December 1996. Thus, the request, in so far as it was made pursuant to Article 36, paragraph 1, of the Tribunal Rules, was submitted within thirty days after the receipt of the Award as procedurally required. Accordingly, the Tribunal finds that this part of the request was made in a timely manner.

11. Article 36 of the Tribunal Rules allows the correction in an award of "any errors in computation, any clerical or typographical errors, or any errors of similar nature." The Tribunal has previously held that the type of correction envisaged by this provision "does not constitute any revision of the award, in the sense of a change in a substantive holding" and that it simply provides for "an elimination of what in law does not form part of the award; it is a restoration of the award's proper contents as adopted by the Tribunal." Harold Birnbaum and Islamic Republic of Iran, Decision No. DEC 124-967-2, para. 10 (14 Dec. 1995) (hereinafter "Birnbaum"). Efforts to reargue certain aspects of a case or to review conclusions in awards rendered by the Tribunal find no basis in the Tribunal Rules. See, e.g., Collins Systems International, Inc. and Navy of the Islamic Republic of Iran, Decision No. DEC 104-431-2, para. 6 (16 Jun. 1992), reprinted in 28 Iran-U.S. C.T.R. 195, 196; and Birnbaum, paras. 12-13.

12. The Tribunal has examined the Award, in particular, the figures and calculations used to compute the amount payable to the United States. No error in computation or error of similar

nature has been detected. For this reason, the Tribunal denies the request in so far as it is based on Article 36 of the Tribunal Rules.

13. However, as Iran's request is much broader than a request based on Article 36, the Tribunal turns to consider that broader basis.

Tribunal's inherent power of revision

14. Apart from the reference to Article 36 of the Tribunal Rules, see supra, paras. 8-12, Iran's request is based on what it calls "the Tribunal's inherent power" to reconsider its awards. The Tribunal's ability, without an express grant of authority, to reconsider its conclusions on the merits after the issuance of an award has been the subject of extensive analysis. See Dames and Moore and Islamic Republic of Iran, et al., Decision No. DEC 36-54-3 (23 Apr. 1985), reprinted in 8 Iran-U.S. C.T.R. 107, 117; Ram International Industries, Inc., et al. and Air Force of the Islamic Republic of Iran, Decision No. DEC 118-148-1, paras. 15-20 (28 Dec. 1993) (hereinafter "Ram"); and Birnbaum, paras. 14-21.

15. In its Decision in Ram, the Tribunal observed that "it might possibly be concluded that a tribunal, like the present one . . . would by implication . . . have the authority to revise decisions induced by fraud." Id at para. 20 (footnote omitted). The Tribunal also referred to another possibility: the discovery of a new fact which "has to be decisive, in the sense that when placed alongside the other facts of the case, earlier assessed, it seriously upsets the balance, and consequently the conclusions drawn by the tribunal." Id. With regard to the discovery of a new fact, the matter does not end there. Certain other preconditions must be present in order to justify reopening and reconsidering a case. Ram mentions, for example, "the restriction that the ignorance of the new fact was 'not due to

negligence' of the requesting party or that the request was timely made." Id at para. 24.

16. The Tribunal similarly noted in Birnbaum that it did "not exclude that, apart from fraud, a similar exceptional and serious ground or grounds might possibly constitute the basis for an application for the revision of its Awards." Id at para. 19.

17. In its present request, Iran does not allege fraud or perjury or submit decisive new evidence. Iran's submissions are far removed from such instances which might possibly give rise to the revision of an award. Iran contests the reasoning by which the Tribunal arrived at its conclusions. The Tribunal is not persuaded by Iran's assertions. Moreover, the request fails to cite any evidence which was not on the record at the time the Tribunal deliberated this Case. Absent any exceptional ground upon which the request is made, the Tribunal need not decide whether it has an inherent or implied power to revise its Award in the present Case.

Conclusion

18. In view of the foregoing considerations, the Tribunal finds that the request made by Iran should be denied.

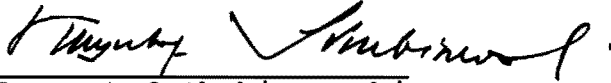
19. For these reasons:

THE TRIBUNAL DECIDES AS FOLLOWS:

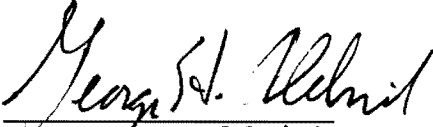
The request submitted on 3 January 1997 by the Agent of the Government of the Islamic Republic of Iran, on behalf of

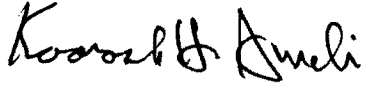
the Government of the Islamic Republic of Iran, is denied.

Dated, The Hague
17 March 1997


Krzysztof Skubiszewski
Chairman
Chamber Two

In The Name of God


George H. Aldrich


Koorosh H. Ameli