

Case No.

143

Date

10 Dec 82

ORIGINAL DOCUMENTS IN SAFE

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- Award; No. of pages

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CASE NO. 143

CHAMBER ONE

AWARD NO. 17 -143-1

THE CONTINENTAL CORPORATION,

Claimant,

- and -

ISLAMIC REPUBLIC OF IRAN,

CENTRAL INSURANCE OF IRAN

(BIMEH MARKAZI IRAN),

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داورى دعاوى ايران - ايالات متحده
ثبت شد - FILED	
Date	۱۳۶۱/۹/۱۹ تاريخ 10 DEC. 1982
No:	143 143 شماره

AWARD ON AGREED TERMS

APPEARANCES:

For Claimant : Mr. Geoffrey D. C. Best,
Le Boeuf, Lamb, Leiby & MacRae,
New York, N.Y.

Mr. Fred Andrew Levine,
Associate Counsel,
The Continental Corporation

For Respondents : Mr. M. K. Eshragh,
Agent of the Islamic Republic of Iran

Mr. Parviz Ansari,
Legal Adviser to the Agent of the
Islamic Republic of Iran

Mr. Hossein Safai,
Legal Adviser to the Agent of the
Islamic Republic of Iran

Mr. Khashayar,
Assistant to the Agent of the
Islamic Republic of Iran

Mr. Mehrdad Bagheri,
Deputy Director General of Central
Insurance of Iran

Mr. Jabbari,
Technical Adviser,
Central Insurance of Iran

DUPLICATE
ORIGINAL

دستخبره برابر اصل

AWARD ON AGREED TERMS

THE CONTINENTAL CORPORATION ("Claimant") and THE ISLAMIC REPUBLIC OF IRAN and CENTRAL INSURANCE OF IRAN ("Respondents"), filed with the Tribunal on 30 September 1982 a Settlement Agreement dated 10 September 1982. A copy of that Settlement is annexed hereto.

In the Settlement Agreement the Parties agreed to inter alia the Tribunal's entry of an award in the amount of Rials 30,780,000, according to the Agreement equivalent to U.S. \$360,000, to be paid out of the Security Account in the amount of U.S. \$360,000.

The Parties have submitted the Settlement Agreement to the Tribunal for recording as an Award on agreed terms.

The Tribunal has satisfied itself that it has jurisdiction in this matter within the terms of the Declaration of the Democratic and Popular Republic of Algeria concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, dated 19 January 1981.

The Tribunal accepts the Settlement Agreement in accordance with Article 34 of the Provisionally Adopted Tribunal Rules.

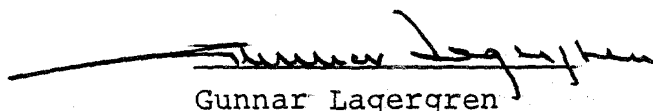
Based on the foregoing,

THE TRIBUNAL MAKES THE FOLLOWING AWARD:

The Settlement Agreement is hereby recorded as an Award on agreed terms, binding upon the Parties. Consequently, the Respondents, THE ISLAMIC REPUBLIC OF IRAN and CENTRAL INSURANCE OF IRAN, are obligated to pay the Claimant, THE CONTINENTAL CORPORATION, the total sum of Three Hundred Sixty Thousand United States Dollars (\$360,000) which obligation shall be satisfied by payment out of the Security Account, established pursuant to paragraph 7 of the Declaration of the Democratic and Popular Republic of Algeria, dated 19 January 1981.

The Tribunal hereby submits this Award to the President for notification to the Escrow Agent.

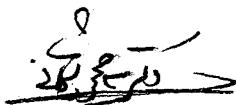
Dated, The Hague,
9 December 1982



Gunnar Lagergren

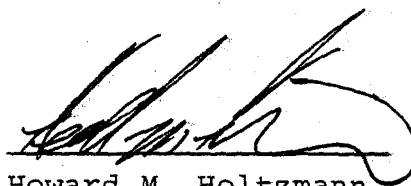
Chairman

Chamber One



Mahmoud M. Kashani

Concurring in part and
dissenting in part; see
separate opinion



Howard M. Holtzmann

IRAN-UNITED STATES CLAIMS TRIBUNAL

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحده
FILED - ثبت شد	دادگاه داری دعاوی ایران - ایالات متحده
Date ۱۳۶۱/۹/۱۹ 10 DEC. 1982	تاریخ
No. ۱۴۳	شماره ۱۴۳

Case No. 143

9 December 1982

SEPARATE OPINION OF MAHMOUD M. KASHANI ON THE ISSUE OF THE
AWARD ON AGREED TERMS, CONCURRING IN PART AND DISSENTING IN PART

The Parties' representatives in this case reached settlement on all their claims and possible counterclaims and made mutual undertakings detailed in their Settlement Agreement. They jointly submitted the settlement and requested the arbitral tribunal to accept and record their settlement as an award on agreed terms, whereby terminating the proceedings in the case.

The arbitral tribunal having become satisfied of its jurisdiction in this case accepted the settlement and recorded it as an award on agreed terms. But in so doing the majority apparently condemned one of the arbitrating parties, declared it obligated to pay Claimant a sum of money and requested the President of the Tribunal to order the Escrow Agent to make that payment to Claimant.

I concur with the majority in acceptance and recording of the settlement in the case. But I dissent from the majority as to the format of the Award on Agreed Terms in this case and to the provision for its enforcement.

1. As to its format the settlement decree has been transformed into a contentious resolution of the disputes by the majority. It has condemned one of the arbitrating parties in favour of the other. In principle, where parties choose conciliation and settlement in the course of the arbitral proceedings, they intend to avoid continuation of contested proceedings and issuance of contested awards. They have several motives for this and the

mutual undertakings that they make in the settlement. Our contested proceedings "is simply an alternative to the direct settlement of such disputes between the parties."*

The Provisionally Adopted Tribunal Rules Article 34(1) also points to duality of the procedures in contested and settlement cases. The Article provides for no action by the arbitral tribunal but recording of the settlement if accepted and issuance of a settlement decree.**

In his commentary on UNCITRAL Arbitration Rules with regard to Article 34 which has been maintained unchanged in our Provisionally Adopted Tribunal Rules, Sanders states that "(a)s a rule, however, the arbitrators will be prepared to incorporate

* Free Zones, (1929) P.C.I.J. Series A, No. 22 at 13; see also Adede, Settlement of Disputes Arising under the Law of the Sea Convention, 69 Am. J. Int'l L. 798 (1975).

** Iranian Code of Civil Procedure Articles 629 and 630 under Chapter 7, Settlements, provide for the same procedure, which as a proper measure is notable:

Article 629:

Where a compromise is reached outside the court and the deed of compromise is unofficial, the parties are required to appear in the court and verify its authenticity. Verification of the parties shall be recorded in a proces-verbal and signed by the judge of the court as well as by the parties.

In case of non-appearance of the parties in the court without mentioning a plausible excuse, the court shall, without any regard to the purport of the said deed of compromise, continue the court proceedings.

Article 630:

Contents of the deed of compromise made according to the foregoing two Articles shall be valid and applicable to the parties and their heirs and successors, and shall be executed like the judgments of a court of justice whether the subject of compromise was related particularly to the case under consideration or it included other suits or matters.

the settlement into an award signed by them. To this award on agreed terms paras. 4 to 7 of Article 32 apply, as well as the provisions of para. 2: the award is final and binding on the parties and will be carried out by them without delay. If not carried out voluntarily, the settlement incorporated in the award on agreed terms can be enforced like any other arbitral award."*

Article 34(1) further provides that "(t)he arbitral tribunal is not obliged to give reasons for such an award."

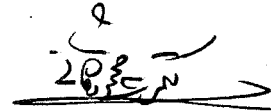
Nevertheless, in formulation of the settlement decree, the arbitral tribunal has applied the form of a contested award, presented its holding by stating: "Based on the foregoing, THE TRIBUNAL MAKES THE FOLLOWING AWARDS:...." and thereby practically refused the provision of Article 34(1) referred to above and in the operative part condemned "the Respondents, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and CENTRAL INSURANCE OF IRAN (as) ... obligated to pay to the Claimant, THE CONTINENTAL CORPORATION, the total sum of Three Hundred Sixty Thousand United States Dollars (U.S. \$360,000.00)...." Such a resolution is wholly outside the mutual intention of the parties wishing to avoid issuance of a contested award by recourse to settlement procedure.

2. As to its enforcement procedure the settlement decree is also of serious defect, for it has mixed the acceptance and recording of the settlement with that of its enforcement, which are two different matters. Decisions of judicial authorities in the form of contested judgments create rights for one party against the other, but in settlement decrees the duty of the Tribunal is merely acceptance of settlement of the parties and declaration of its binding nature. At no time may a judicial authority on its own motion provide for enforcement of its decisions. Enforcement stage of a decision entirely differs

* Sanders, Commentary on UNCITRAL Arbitration Rules, 1977 Yearbook, Commercial Arbitration 172,212.

from its stage of making and issuance. Enforcement has its own separate rules and formulations envisaged in codes of civil procedures of all countries. With regard to arbitral awards also there exist particular procedures. Provisionally Adopted Tribunal Rules Article 32(7) in that respect provides for compliance by the arbitral tribunal with requirements of arbitration law of the country where the award is made. Article 34(3) of the same Rules has restated such requirement for awards on agreed terms. The Claims Settlement Declaration Article IV(3) requires enforcement of "any award ... against either Government" by recourse to "the courts of any nation in accordance with its laws." (Emphasis added). The procedure under the Dutch arbitration law is depositing of the award with the court local to the place of arbitration. And in order that the award be enforced, in case one of the arbitrating parties refuses voluntary enforcement, is obtaining of an exequatur from that local court according to the Dutch Code of Civil Procedure Article 642. Considering the existence of such provisions for enforcement of arbitral awards, the arbitral tribunal is principally relieved from enforcement procedures for its awards, and such matters must be left to the arbitrating parties or the authorities competent for enforcement of the awards. Based on the foregoing, the dispositive part of the award where it states that "THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and CENTRAL INSURANCE OF IRAN, are obligated to pay to the Claimant, THE CONTINENTAL CORPORATION the total sum of Three Hundred Sixty Thousand United States Dollars (U.S. \$360,000.00) which obligation shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria, dated 19 January 1981. The Tribunal hereby submits this Award to the President for notification to the Escrow Agent", is outside the competence and duties of the arbitral tribunal. Therefore in spite of my agreement with acceptance and recording of this

settlement in the form of an award on agreed terms I dissent
from the majority decision as to these defects.

A handwritten signature in dark ink, appearing to be 'Mahmoud M. Kashani', with a horizontal line drawn underneath it.

Mahmoud M. Kashani

Iran-United States Claims Tribunal

The Hague.

Chamber No. 1

Case No. 143

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه دادرسی مطالبات ایران - ایالات متحده
FILED - ثبت شد		
Date	1161 / Y / 1	تاریخ
30 SEP 1992		
No.	143	شماره

THE CONTINENTAL CORPORATION, domiciled at 80 Maiden Lane,
New York N.Y., 10038
United States of America

Claimant,

and

ISLAMIC REPUBLIC OF IRAN,
CENTRAL INSURANCE OF IRAN
(BIMEH MARKAZI IRAN), domiciled at 149 Ayatollah Taleghani Ave.,
Tehran, Iran.

Respondents.

SETTLEMENT AGREEMENT

The undersigned hereby agree to settle all claims they may have against one another on the following basis:

- (1) the Parties agree to the Tribunal's entry of an award in the amount of 30,780,000 rials, equivalent to \$ 360,000, which award shall be paid out of the Security Account in the amount of 360,000 U.S. dollars when awarded;
- (2) the Parties renounce and release all claims, actions and proceedings in any forum in the world, known or un-

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known, any of the Parties may have against the other, on its own behalf or that of its subsidiaries, affiliates, agencies, instrumentalities or other entities, including any claim arising out of nationalization and/or arising out of the reinsurance treaties between the Continental Corporation or any of its subsidiaries, affiliates or other entities, and the whole Iranian insurance market;

- (3) this agreement will be subject to the approval of the Islamic Republic of Iran;
- (4) it is the understanding of the undersigned that the necessary governmental approvals will be secured and this settlement agreement will be submitted to the Tribunal for entry as an award within three weeks of the date hereof.

The Hague,
10 September 1982

By: Ted Chen Lim, Associate Counsel
On behalf of The Continental Corporation,
Claimant,

in the ^{name} of God
accordance with telex No. 1418 date 29 Sep 82
By: M. K. Eshragh
On behalf of the Islamic Republic of Iran,
Respondent,

By: Ali Bayani V.P. PRESIDENT BIMEH MARKBI
On Behalf of Central Insurance of Iran,
Respondent,