IRAN - UNITED STATES CLAIMS TRIBUNAL

دادگاه داوری دعاوی ایران - ایالات متحده

برای انتشار نیست

Not For Publication

CASE A/1

DISSENTING OPINION OF PRESIDENT LAGERGREN ON THE ISSUE OF THE DISPOSITION OF INTEREST EARNED ON THE SECURITY ACCOUNT.

The Tribunal has been requested to decide whether the interest accruing on the $1 billion deposited in the Security Account in the N. V. Settlement Bank should be remitted to Iran, or credited back into that Account.

There is a gap, or at least an ambiguity on that point in the various agreements between the High Contracting Parties.

Failing any provision authorizing the Escrow Agent to give instructions with respect to the disposition of interest, the Parties knew, or should have known, that there could be no other solution than a supplementary agreement between them or, in lieu thereof, a decision rendered by this Tribunal.

The Parties conducted extensive negotiations in 1981 on the issue in question, without success. They now seek a resolution of the matter by the Tribunal. The Tribunal should not escape its duty finally to settle this issue.

According to the Parties, the principles applicable to our decision would be those provided by Article V of the Claims Settlement Declaration, that is to say "on the basis of respect for law, ... such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances." Article V, however, is not necessarily applicable to a dispute concerning the interpretation, performance, or application of the Algiers

Declarations themselves. Instead, general principles of interpretation of treaties ought to be applied here.

Under Article 31, paragraph 1 of the Vienna Convention on the Law of Treaties, a treaty "shall be interpreted in good faith, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

I agree with the majority that there was no common intention of the Parties on the point at issue, and that a solution must be found in the agreements themselves. I also agree that standard banking usages are not applicable to so unique a case as this. I am in further accord with the majority view that the agreements are premised on maintaining equilibrium between the Parties, and that the so-called rule of "restrictive interpretation" should not be applied so as to restrict the obligations of one sovereign State to the detriment of the treaty benefits provided to another sovereign State. The balance found by the Parties in order to resolve their conflicting positions, and embodied in the structure of the agreements themselves, should govern our decision in this case.

There are a number of provisions specifically setting forth the nature of this structure. For example, in Article VI of the Claims Settlement Declaration the Parties agreed that the expenses of the Tribunal should be borne equally by the two Governments. In addition, it is to be noted that Clause 1(b)(iv)(B)(2) of the Technical Agreement with the Depositary Bank provides that Bank Markazi Iran and the Federal Reserve Bank of New York shall equally reimburse the Escrow Agent for any reasonable costs incurred by it in making certain valuations of bank securities.

These are amongst the reasons why the Tribunal has decided to

require the fees due to the Depositary Bank to be paid equally by each Government (Issue III). The Tribunal has similarly decided that the two Governments shall have equal responsibility under the indemnification provisions of the Technical Agreements (Issue IV).

I note further that in the same Paragraph 7 which created the Security Account, it was stipulated that as funds were received by the Central Bank authorized to hold the Security Account, the Escrow Agent would direct that Central Bank "to (1) transfer one-half of each such receipt to Iran and (2) place the other half" in the Security Account itself, until the $1 billion level was reached. Again, a balance was established between the ownership rights of Iran and the security interests of United States claimants.

Finally, the two Governments must in this case - in the absence of any conclusive evidence to the contrary - be deemed equally responsible for the lacuna in the texts.

For these reasons, it seems to me to be in harmony with the structure of the agreements, as well as fair and equitable, to decide that the interest on the Security Account be shared in equal parts, as it accrues, one-half being added to the Security Account and the other returning to Iran, so long as Iran fulfills its obligations to replenish the Account. 1

(Text continues next page)

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1 Compare the flexible interpretation of an ambiguous treaty stipulation which the International Court of Justice applied in the Case concerning rights of nationals of the United States of America in Morocco. The Court stated:

> "In these circumstances, the Court is of the opinion that Article 95 (of the General Act of Algiceras of 1906; added here) lays down no strict rule on the point in dispute. It requires an interpretation which is more flexible than either of those which are respectively contended for by the Parties in this case." (Judgment of August 27th, 1952: I.C.J. Reports 1952, p. 211)

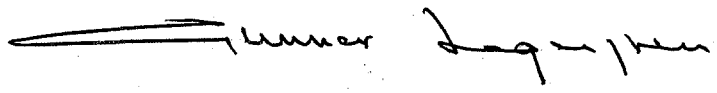
It might be added that the minority concluded that the text presented no ambiguity (Op. cit., p. 229).

Consequently, in my opinion:

1. the interest which has accrued and will accrue in the Security Account should be divided into two equal parts of which one part should be transferred to Iran and the other be credited to the Security Account for the payment of Tribunal awards in favour of United States claimants;

2. whenever the balance in the Security Account would fall below $500 million, the total amount of the interest accruing should then be credited to the Security Account and remain in that Account until the minimum balance of $500 million has been restored.

The Hague,
Signed, 2 August 1982
Rendered, 3 August 1982



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Date 3 Aug 1982

ORIGINAL DOCUMENTS IN SAFE

- Award; No. of pages

✓ - Decision; No. of pages 13 — Majority decision — English

- Order; No. of pages

- Other

No. of pages