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Introduction

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The Islamic Republic of Iran by the letter dated Azar 22, 1360 (November 13, 1981) requested the Iran - United States Claims Tribunal that on the basis of the Algiers Declarations date Day 29, 1359 (January 19, 1981) declare its jurisdiction on proceeding with the claims of the Iranian Government agencies and instrumentalities against the nationals of the United States. The undersigned do not concur with the majority on the interpretation that they make of the jurisdiction of this Tribunal.

1

During the past several years series of different agreements and projects resulted between the Iranian Government agencies and instrumentalities and the American corporations. These agreements have become the source of several disputes from both sides, such that the Islamic Republic Agent explained as for unjustified walkouts, interruption of the needed spareparts and equipment, non-payment of Iranian Government taxes and duties, the maintenance and care-taking expenses of incomplete projects, and the sums that a majority of the American companies had received without performance of their obligations. The American companies, for different other reasons, have also claims against the Islamic Republic Government agencies and instrumentalities. Said disputes plus the claims arising from the sale and purchase of goods and services between the two Governments finally brought the two Governments to conclusion of the Algiers Declarations whereby deciding to terminate such disputes and through a mutually consensual arbitration to bring about their resolution and disposition. This fact was reflected in the general principles of the Declaration of Algeria as follows:

"The undertakings reflected in this Declaration are based on the following general principles:

- B. It is the purpose of both parties, within the frame work of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration...."

This provision clearly comprising mutual intent of both Governments on settlement of disputes existing between them and their nationals is a fundamental principle to guide the Arbitral Tribunal in interpretation of the Algiers Declarations. The contracting parties realizing the significance of such mutual intent decided to stipulate their purpose under the Declaration of Algeria in such express terms constituting the corner stone of all their undertakings under both Declarations. No doubt such significant stipulation could not be treated as an incidental motif subject to any limitative interpretation.

2

The following general principles must also be considered in formulating consistent and reasonable interpretation of the Declarations regarding the question of jurisdiction of this Tribunal.

A. The Declarations have been concluded between two States with equal sovereignty. The principle of equality of States requires that in a sole tribunal the right of pleading and access equally exist for both sides.

B. Both Declarations have contemplated the principle of reciprocity as the main criterion (cause) of the mutual obligations of the two sovereign States.

That principle has been consistently adhered to by several provisions of both Declarations such as:

(1) "[T]o terminate all litigation as between the Government of each party and the nationals of the other,...." Declaration of Algeria, General Principle B.

(2) "[C]laims of nationals of the United States against Iran and claims of nationals of Iran against the United States,...." Claims Settlement Declaration Article II, paragraph 1.

(3) "[O]fficial claims of the United States and Iran against each other,...." Claims Settlement Declaration Article II, paragraph 2.

(4) "The expenses of the Tribunal shall be borne equally by the two governments". Claims Settlement Declaration Article VI, paragraph 3.

3

In view of the above principles the sole task of this Tribunal is to formulate an interpretation as to appropriate application of the Claims Settlement Declaration Article II, paragraph 1 in order to avoid any conflict between the texts of the two Declarations simultaneously concluded by the parties. The Agent of the United States suggests that the Tribunal should read said paragraph in terms of the "sole basis" of the jurisdiction of this Tribunal, and as such the whole purpose of the "general principle" would become redundant. It is a matter of sound interpretation that redundancy of a contractual provision requires sufficient justification. Nothing in support of that position has been offered to warrant such drastic deviation from the expressed terms of the agreements. To the contrary, we have come to the conclusion that the following also supports our holding as to the jurisdiction of this Tribunal for entertaining the Iranian claims against the United States corporations.

The agreements and contracts giving rise to these claims had been concluded between the Iranian Government agencies and instrumentalities and the American companies. The United States Government, for its special administrative and economic structure does not exert such wide and diverse commercial and economic activities as assumed by the Iranian Government. The United States Government basically lacks direct control in conclusion and performance of such agreements. Therefore, in the claims given rise to the establishment of this Arbitration the American Government is basically not a party to the disputes. Nevertheless the two governments have also entered into some purchase and sale agreements. The adjudication of disputes arising from such transactions has become the subject of particular provision of the Claims Settlement Declaration Article II, paragraph 2.

It is a matter of fair dealing that should the American companies be permitted to sue the Iranian Government before this Tribunal a comparable jurisdiction must also be conferred to the Tribunal to deal with the enormous claims of the Iranian Government against the American companies. We therefore hold that:

(1) From the stand point of both theory and judicial precedents, it is a well-established principle of interpretation that agreements should be interpreted on the basis of intention and purpose of the parties. The expressed mutual intention of the parties is the cancellation of all American litigations. If the Iranian claims cannot be brought to this Arbitration and the Iranian Government, despite bearing half of the expenses of this Arbitration, has to refer to other courts and tribunals for prosecution and adjudication of its claims, it not only bears additional expenses, but also it would be put in an unequal and unjust situation for which it has waived a part of its sovereign immunity so that the American companies whose claims have been pending before United States courts can utilize the facilities of this Arbitration but the claims of Iranian Government and its instrumentalities

would be left uncertain as before the Algiers Declarations.

(2) If notwithstanding the reciprocity of the Algiers Declarations and the fundamental point that in a reciprocal agreement the cause of undertaking of one party is the undertaking of the other party, the Claims Settlement Declaration should be interpreted not in a manner that only one party benefit from it and the claims of Iranian Government and its instrumentalities be excluded and consequently only the claim of American national and companies against Iran could be instituted. If that be the case then this agreement would obviously lose its apparent ballance and turn to an agreement without cause or with superficial cause. The reason is self-explanatory; the United States, being away from much economic and commercial activities, would not be a person against which the Iranian nationals would file claims.

In such a situation the phrase: "claims of nationals of Iran against the United States", stated in the Claims Settlement Declaration Article II paragraph 1 becomes ineffective and purposeless and it turns more to a poetic rhythm making in the Declaration losing every useful and effective legal concept and meaning.*

(3) Refusing jurisdiction of this Arbitral Tribunal over the claims of the Iranian Government instrumentalities would cause institution of thousands of claims by American companies against Iran before this Tribunal while excluding Iran from any claim against them. In such situation it is unclear why Iran should bear half of the expenses of this Tribunal. It may be said that Iran may against such claims file its own counter-claims but it is obvious that counter-claims cannot be viewed as sufficient consideration for one sided Tribunal's jurisdiction over the claims of the United States nationals. Since counter-claim is a mere defensive measure that could only be invoked against the same claimant it is not helpful in granting Jurisdiction to the Tribunal for inde-

*It is a rule of interpretation that agreements should be interpreted in a manner not ineffectuating or abrogating any clauses therein. French Civil Code Article 1157 emphasising said rule provides that where a contractual clause is susceptible of two meanings, the meaning should be taken that gives the clause legal meaning and effect, not the meaning

pendent claims of Iran against the United States nationals. Moreover counterclaim is a right that every defendant benefits from; it is not a right has to be granted by the Claims Settlement Declaration.

4

The Algiers Declarations were simultaneously concluded on Day 29, 1359 (January 19, 1981) and because of their simultaneous conclusion none of the instruments may supesede or abrogate the provisions of the other. Moreover, because of the clarity and explicitness of the expressed mutual intent of the parties, it appears that those instruments should not be interpreted in contradictory terms. Even assuming inconsistency or contradiction between the Declaration of Algeria general principle B and the context of the Claims Settlement Declaration Article II, paragraph 1, several manners of interpretation in municipal and international law could direct resolution of the issue by the Arbitral Tribunal.

A. Municipal Law. From the standpoint of both legal doctrines and judical precedents, it is a well-settled rule of interpretation that agreements should be interpreted on the basis of intent and purpose of the parties. The Iranian law as well as the Islamic law have reflected this rule as that "contracts follow the intentions" and "provisions of the texts are for the intentions and understandings, not for the letters and the phrases."*The French Civil Code Article 1156 has stated the same rule that contracts should be reviewed and inquired as to mutual intent of the contracting parties, not that to stop at the letters and terms used. Article 1135 of the same Code provides for application of the law and fairness in interpretation where discovery of the real intention of the parties is impossible. In other words, it supplements the law and fairness to mutual intent of the parties. The French judicial precedents (Jurisprudence) are based on that where the letters and terms of a contract are in contradiction with the intent of the parties, the letters and terms should be set aside and the real intention of the parties be followed.

*Al-Magillah Article

B. International law. The 1969 Vienna Convention on the Law of Treaties, entered into force in 1980, codifying customary and judicial international law, could be a useful guide where it provides for several rules of interpretation.

The first principle that the Vienna Convention Article 31, provides for interpretation is the principle of good faith. Said Article inter-relates the principle of good faith to the entire agreement and its purpose and object. As such the good faith is not only a rule of morality but a part of codified international law that governs on all reciprocal relations among the states member to the international community. *

Application of good faith to implementation stage of agreements has also been provided for by Article 26 of the same convention. It is obvious that if an international agreement were to be implemented on the basis of good faith, interpretation of such agreement should necessarily be made on the basis of good faith. The plain meaning of good faith in interpretation of agreements is application of the spirit of honesty and respect for law. To put it more precisely it has been stated that resort should not be made to concealment of reality, fraud and deceit in relations with the other contracting party .**

Considering the above and taking into account that the mutual intent of the contracting parties to the Declaration of Algeria has explicitly been the settlement

* A. Verdross, Regle Général du droit de la paix, 30 RCADI 427 (1929)

** Union Académique Internationale, Dictionnaire de la terminologie du droit international 91 (1960):

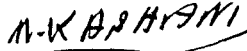
"Esprit de loyauté, de respect du droit, de fidélité aux engagements de la part de celui dont l'action est en cause, absence de dissimulation, de tromperie, de dol dans les relations avec autrui".

of all pending claims of each government and the nationals of the other, if the mutual intent is not applied to the Claims Settlement Declaration and instead resort be made to letters of the Claims Settlement Declaration Article II paragraph 1, for the purpose of interpretation the decision would be inconsistent with the principle of good faith. Any such ruling would presume that one contracting party through improper conduct had deviated from the mutual intent of both parties by which they are bound. Thus interpretation of the Declarations should be made in conformity with the principle of good faith and consistent with the expressed mutual purpose of the parties.

Furthermore, on the basis of Articles 31 and 32 of the Vienna Convention we thus conclude that in rendering the above interpretation the Tribunal shall consider both Declarations and read them consistent with the expressed intent of the sovereign parties in order to declare its jurisdiction to deal with Iranian claims against United States nationals. Should the literal reading of the text amount to any inconsistent, ambiguous or unreasonable result, it is the Tribunal's mandate to remedy such improper conclusion through resort to sound judicial interpretation. In its decisions the International Court of Justice has continuously applied this in interpretation of international agreements, and particularly when reliance on the ordinary and natural meanings of the word gives rise to a conclusion contrary to the subject and purpose of the agreement.*

*
South-West Africa (Judgment), [1962] I.C.J. 33 6;
Polish Postal Service in Danzig, [1925] P.C.I.J. Ser. B.No. 11 at 39: "It is a cardinal principle of interpretation that words must be interpreted in the sense they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd;"
Temple of Preah Vihear (Judgment), [1961] I.C.J. 33;
Professor Sauser-Hall in Affaire de l'or albanais arbitral award of 1953 also refused to give effect to ordinary meanings of the words used in agreement between governments when such meanings were contrary to the purpose and object of the agreement, XII United Nations Series of Arbitral Awards 41.

We therefore conclude that the Iran - United States Claims Tribunal has jurisdiction over the claims of the Islamic Republic of Iran against the nationals of the United States.



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