

A19-57

دکتر - الشیخ

CLAIMS TRIBUNAL

دیوان داری دعوی ایران - ایالات متحدہ

57

ORIGINAL DOCUMENTS IN SAFE

Case No. A19

Date of filing: 30. Sep 87

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision 30. Sep 87
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** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
- Date _____
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** DISSENTING OPINION of _____
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- Date _____
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DUPLICATE
ORIGINAL
نسخه برابر اصل

CASE NO. A19

FULL TRIBUNAL

DECISION NO. Dec.65-A19-FT

THE ISLAMIC REPUBLIC OF IRAN

and

THE UNITED STATES OF AMERICA

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاری ایران - ایالات متحده	
شیت ثبت - FILED		
Date	3.0 SEP 1987 ۱۳۶۶ / ۷ / ۸	تاریخ
No.	A-19	شماره

Request for a decision of the Full Tribunal on whether the Claims Settlement Declaration empowers the Tribunal to grant interest on its awards.

DECISION

Appearances:

For the Islamic Republic
of Iran:

Mr. Mohammad K. Eshragh,
Agent of the Islamic
Republic of Iran,
Professor Brigitte Stern,
Attorney to the
Islamic Republic of
Iran,
Professor Jafar Niaki,
Mr. Nasser-Ali
Mansourian,
Legal Advisers to
the Agent,
Mr. Hassan Gholami,
Legal Assistant to
the Agent.

For the United States
of America:

Mr. John R. Crook,
Agent of the United
States of America,
Mr. Michael Raboin,
Deputy Agent,
Ms. Lucy F. Reed,
Attorney to the
United States of
America,
Mr. Ronald J. Bettauer,
Ms. Mary Beth West,
Mr. Alan Simon,
Advisers to the
Agent.

I. THE PROCEEDINGS

1. The Agent of the Islamic Republic of Iran, in a letter filed on 4 June 1982, requested that the issue of the award of interest to successful parties by the Chambers of the Tribunal be relinquished to the Full Tribunal pursuant to Presidential Order No. 1 in order to avoid inconsistent decisions by the Chambers. In a subsequent letter, filed on 20 April 1983, the Agent of the Islamic Republic of Iran objected to the award of interest by two of the Chambers and requested that the President restrain the Chambers from awarding interest until Iran had presented its arguments to the Tribunal. On 31 May 1983, the Agent instituted proceedings in this Case by requesting that the Full Tribunal examine the issue of the Tribunal's power to award interest and certain related issues. The Agent based his request on Article VI, paragraph 4, of the Claims Settlement Declaration, which states:

"[a]ny question concerning the interpretation or application of this Agreement shall be decided by the Tribunal upon the request of either Iran or the United States."

2. Pursuant to an Order of the Tribunal, the United States filed a Reply on 6 September 1983. Iran filed an Answer on 12 March 1986, and the United States a Response on 24 June 1986. A hearing took place on 6 April 1987 at which both Governments presented oral argument.

3. Mr. Carl F. Salans participated in the hearing and deliberations in this Case as substitute arbitrator in the place of Mr. Charles N. Brower, pursuant to Presidential Order No. 51 dated 2 February 1987. Mr. Koorosh Hossein Ameli participated in the hearing and deliberations in this Case as ad hoc arbitrator in the place of Mr. Seyed Mohsen Mostafavi, pursuant to Presidential Order No. 52 dated 3 April 1987.

II. CONTENTIONS OF THE PARTIES

4. The first issue presented concerns the jurisdiction of this Tribunal. The United States contends that, in the absence of a dispute concerning the interpretation of a specific provision of the Algiers Declarations, there is no precise issue of interpretation before the Tribunal. Because the Tribunal has consistently awarded interest "on the basis of respect for law", as required by Article V of the Claims Settlement Declaration, the United States denies that there is any outstanding dispute. It further argues that Presidential Order No. 1 can only be used by a Chamber of this Tribunal to refer issues to the Full Tribunal, not by either State Party, and that no such reference has been made with respect to the question of interest. The United States contends that this is, in effect, an attempt to appeal the prior decisions of the Chambers to the Full Tribunal, in violation of Article IV, paragraph 1, of the Claims Settlement Declaration.

5. Iran argues that the absence of any specific provision in the Claims Settlement Declaration concerning interest does not preclude the existence of a "question concerning the interpretation or application" of the Declaration within the meaning of Article VI, paragraph 4. Rather, it is that very silence which calls for interpretation. The need for an interpretative ruling by the Full Tribunal is further evidenced, in Iran's submission, by the absence of consistency in the practice of the Chambers as to the principles governing the award of interest, the rate applicable, and the payment period during which any such interest is to run. Iran cites the divergence between the stated positions of the respective Governments on this issue as an indication that such a ruling is required.

6. Assuming a basis of jurisdiction, the primary relief requested by Iran as to the substantive issue is a finding that the Tribunal has "no authority" to award interest because no such specific power is conferred on it by the Claims Settlement Declaration. An instrument creating and conferring jurisdiction on an international tribunal must be interpreted restrictively, and no such power can be implied if it is not expressly provided. Under international law arbitral tribunals are precluded from awarding interest against a government party in the absence of express authority. Iran further argues that the particular and exceptional events surrounding the Islamic Revolution and the signing of the Algiers Declarations constitute special circumstances which should impel the Tribunal to refrain from awarding interest. Finally, it argues that Iranian municipal law -- which it claims would be applicable in most cases as the law of the debtor -- prohibits the award of interest, as do the laws of the United States in cases where the judgment debtor is the Government, in the absence of a specific contractual provision to the contrary.

7. In the alternative, Iran proposes that the award of interest by the Chambers be governed by certain general principles. Interest may only be awarded in three cases: when it is expressly provided for in the contract; when there is a finding of unlawful expropriation; and, in cases involving banking transactions when trade usage so requires.

8. Iran argues that interest on liquidated debts should run from the date of filing of the claim, and that in other cases it should run only from the date on which the debt becomes "liquid and exigible" and not, for example, from the date the damage was sustained. Further, interest should run to the date of the award and not beyond. Finally, any interest awarded should be between three and

six percent per annum in conformity with the usual practice of arbitral tribunals.

9. The United States argues that the Tribunal is entitled to award interest as an "essential element of compensation", and that the consistent practice of its Chambers in so doing is in accordance with the obligation imposed by Article V of the Claims Settlement Declaration to decide claims "on the basis of respect for law". The Tribunal's practice is consistent with international law which allows the recovery of interest as an element of damages. Even if international law did not so provide, the Treaty of Amity between the United States and Iran requires the prompt payment of just compensation for any taking. That standard includes an interest component. The United States contends that interest should accrue from the date the claim arose and continue to run until the date of payment. In the absence of a contractually stipulated rate, it supports the selection of a rate on the basis of what the Tribunal considers "fair" or "reasonable" in any given case. The United States requests, in sum, that the Tribunal affirm its power to award interest.

10. Alternatively, in the event that the Tribunal determines that it has the limited jurisdiction necessary to give such guidance, the United States joins Iran in asking for the adoption of a uniform approach to the practice of awarding interest. In the absence of a contractually stipulated rate, the United States generally supports the analysis adopted by Chamber One of the Tribunal in Sylvania Technical Systems, Inc. and Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985). It argues, however, that the Tribunal should use the U.S. Prime Rate as the basis for establishing an interest rate to be applied to a particular case, rather than the six-month certificate of deposit rate utilized in Sylvania.

III. REASONS FOR DECISION

11. The Tribunal must first determine whether the issue raised by Iran is one which it has jurisdiction to decide. Since the principal source of authority to award interest must be the Claims Settlement Declaration, the question is necessarily one of the interpretation of that Declaration. Whether the dispute focuses on a specific provision in the Declaration or, as is the case here, involves the construction of the extent of the jurisdiction conferred on the Tribunal from the text as a whole, in the absence of any such specific provision, the process is essentially one of interpretation. Thus, the Tribunal finds that Iran's principal request constitutes a "question concerning the interpretation or application" of the Claims Settlement Declaration within the meaning of Article VI, paragraph 4. The Tribunal therefore has jurisdiction to consider whether it has authority to award interest.

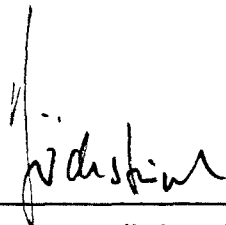
12. As to the merits, the Tribunal observes that its mandate, as set out in Article II, paragraph 1, of the Claims Settlement Declaration, is to decide "claims" of nationals of either of the respective States against the other State, which arise out of debts, contracts, expropriations or other measures affecting property rights. In most cases, the relief sought in claims filed with the Tribunal includes a claim for interest on the principal amount awarded. Such claims for interest are part of the compensation sought and do not constitute a separate cause of action requiring their own independent jurisdictional grant. This Tribunal is required by Article V of the Claims Settlement Declaration to decide claims "on the basis of respect for law." In doing so, it has regularly treated interest, where sought, as forming an integral part of the "claim" which it has a duty to decide. The Tribunal notes that the Chambers have been consistent in awarding interest as "compensation

for damages suffered due to delay in payment". Sylvania, supra, p. 31. In McCollough & Company, Inc. and Ministry of Post, Telegraph and Telephones, Award No. 225-89-3, paras. 88-104 (22 Apr. 1986), Chamber Three observed that interest is awarded as an element of compensation in most legal systems. Indeed, it is customary for arbitral tribunals to award interest as part of an award for damages, notwithstanding the absence of any express reference to interest in the compromis. Given that the power to award interest is inherent in the Tribunal's authority to decide claims, the exclusion of such power could only be established by an express provision in the Claims Settlement Declaration. No such provision exists. Consequently, the Tribunal concludes that it is clearly within its power to award interest as compensation for damage suffered.

13. Both Governments argue in the alternative that even if the Tribunal has the power to award interest, the Full Tribunal should establish uniform rules governing the circumstances in which interest may be granted, the period during which interest should be calculated, and the rate to be allowed. This request, however, does not pose a question concerning the interpretation or application of the Claims Settlement Declaration. Rather, it relates to the exercise by the Chambers of the discretion accorded to them in deciding each particular case. According to paragraph 2 of Presidential Order No. 1, claims falling under Article II, paragraph 1, of the Claims Settlement Declaration "shall be decided by panels of three Members (Chambers), except insofar as paragraph 6 below provides otherwise." In the absence of any reference of a particular issue to the Full Tribunal by a Chamber pursuant to paragraph 6(b) of Presidential Order No. 1, there is no basis on which the Full Tribunal may intervene in the exercise of the Chambers' essential and autonomous function in this respect. As stated in Case No. A20, Decision No. DEC 45-A20-FT, paras. 9

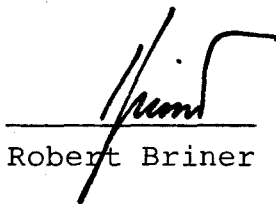
and 10 (10 July 1986), both Governments have agreed that neither Article VI, paragraph 4, nor the Tribunal Rules, provide any basis for review by the Full Tribunal of awards made by the Chambers. The determination of the applicable principles of law in any given case, and consequently the question of whether an award of interest is appropriate, must rest with the Chamber concerned, and the Tribunal therefore concludes that the alternative request for the establishment of general rules governing the award of interest by the individual Chambers must be denied.

Dated, The Hague
30 September 1987



Karl-Heinz Böckstiegel
President

In the name of God,



Robert Briner

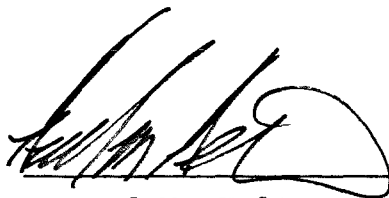


Michel Virally

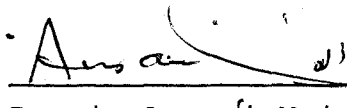


Hamid Bahrami-Ahmadi
Dissenting

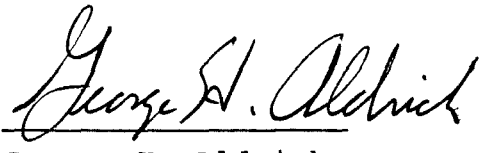
In the name of God



Howard M. Holtzmann



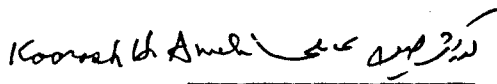
Parviz Ansari Moin



George H. Aldrich

Dissenting

In the name of God



Koorosh H. Ameli
Dissenting



Carl F. Salans