



IUSCT (IRAN-US CLAIMS TRIBUNAL)

IUSCT Case Nos. A15(IV) and A24

THE ISLAMIC REPUBLIC OF IRAN V. THE UNITED STATES OF AMERICA

DECISION (DECISION NO. DEC 116-A15(IV)/A24-FT)

18 May 1993

Tribunal:

[José Maria Ruda](#) (President)

[Assadollah Noori](#) (Appointed by the claimant)

[Howard M. Holtzmann](#) (Appointed by the respondent)

[Richard C. Allison](#) (Appointed by the respondent)

[George H. Aldrich](#) (Appointed by the respondent)

[Bengt Broms](#) (Member)

[Gaetano Arangio-Ruiz](#) (Member)

[Koorosh H. Ameli](#) (Appointed by the claimant)

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Decision (Decision No. DEC 116-A15(IV)/A24-FT

I. PROCEDURAL HISTORY

1. On 5 August 1988, Iran filed a Statement of Claim alleging that the United States had breached its obligations under the Algiers Declarations by allowing the lawsuit brought by Foremost-McKesson Inc., Foremost Tehran Inc., Foremost Shir, Inc., Foremost Iran Corp., Foremost Foods Inc. (collectively and individually "Foremost"), and Overseas Private Investment Corporation ("OPIC"), Foremost-McKesson, Inc., et al. v. Islamic Republic of Iran, Civ. No. 82-0220-TAF (D.D.C.) ("the Foremost/OPIC lawsuit"), to be revived and proceed before the United States District Court for the District of Columbia. Together with the Statement of Claim, Iran filed a Motion for Stay of the Foremost/OPIC lawsuit pending the Tribunal's decision in Case No. A24.¹
2. On 16 August 1988, the Tribunal issued an Order requesting the United States to file its Reply to Iran's Statement of Claim and to comment on Iran's Motion for Stay, and inviting the plaintiffs in the Foremost/OPIC lawsuit to file their comments on Iran's filings. The Tribunal also noted Iran's Motion for Stay, but concluded that, on the basis of documents before it, it did not deem it appropriate to take any action at that time.
3. Foremost and OPIC filed their opposition to Iran's Motion for Stay on 26 September 1988, and the United States filed its opposition on 28 September 1988.
4. Iran in its submission of 14 December 1988, filed in response to the Tribunal's Order of 23 November 1988, stated that its request for an interim award to stay the United States litigation until final resolution of Case No. A24, was still pending. Iran also requested that it be allowed to comment on the United States' and Foremost/OPIC's oppositions within a time limit to be fixed by the Tribunal.
5. The Tribunal set 17 April 1989 as the deadline for Iran to respond to the United States' and Foremost/OPIC's oppositions to the Motion for Stay. However, Iran requested and received a number of extensions of time.
6. On 15 October 1991, Iran filed a "Request for Consolidation and Joint Consideration of Cases A/15 (IV) Including Part IV:C, and A24." At the Tribunal's request, the United States responded on 8 November 1991, stating that it had no objection to the consolidation of the two Cases. On 18 November 1991, the Tribunal consolidated Cases No. A15(IV) and A24 for joint proceedings and decision, and scheduled further proceedings in these Cases.
7. On 16 February 1993, Iran filed a "Request for an Immediate Order to Stay the Foremost Lawsuit, Civil Action No. 82-0220, Subject of Case A/24 in the United States" (hereinafter "Request"). On 17 February 1993, the Tribunal issued an Order requesting the United States to file its comments on

¹ Iran's Claim was designated as Case No. A24.

Iran's Request by 26 February 1993. The Tribunal extended this deadline until 18 March 1993 by its Order of 4 March 1993. On the same day, but after the filing of the Tribunal's Order, Iran filed a submission objecting to the United States' extension request.

8. On 18 March 1993, the United States filed its Opposition to Iran's Request. On the same day, Iran filed a sua sponte submission in which it reiterated its request that the Tribunal order the stay of the Foremost/OPIC lawsuit. On 23 March 1993, the United States requested an opportunity to respond to Iran's submission of 18 March 1993, which the Tribunal granted in its Order of 24 March 1993. After having been granted an extension of five days, the United States filed its response on 6 April 1993. On 13 April 1993, Iran filed a submission objecting to the United States' filing of 6 April 1993.

II. ARGUMENT

A. Iran's Contentions

9. Iran argues in its Request for an Order to Stay, filed on 16 February 1993, that such an order is urgently needed at this stage because "Foremost's vexatious tactics (disingenuous discovery requests and the like) sympathetically and unfairly endorsed by the U.S. District Court seized of the case, has reached its peak." According to Iran, an order to stay the Foremost/OPIC lawsuit is necessary for three reasons: first, to maintain the status quo ante litem; second, to protect the Tribunal's jurisdiction; and third, to prevent infliction of irreparable harm on Iran, which is the Claimant in these Cases Nos. A15(IV) and A24.
10. First, Iran asserts that an order to stay is necessary to maintain the status quo until the Tribunal has decided Case No. A24. Iran argues that, should the Tribunal eventually rule in its favor, the Tribunal would be bound to grant Iran's request that the United States terminate the Foremost/OPIC lawsuit in the United States. If the Tribunal rules against Iran, Foremost and OPIC can proceed with their lawsuit, and no appreciable harm would be done to either the United States or Foremost and OPIC.
11. While denying that the risk of irreparable harm is a requirement for granting the Motion for Stay under the Tribunal's practice, Iran also argues that the continuation of the Foremost/OPIC lawsuit subjects Iran to a potential risk of irreparable harm. Monetary losses which cannot be compensated should be considered as harm of such nature. Iran contends that, "given the temporary nature of the Tribunal's existence and the indeterminate duration of the U.S. lawsuit process," the Tribunal might not be in place by the time the U.S. litigation ends. Accordingly, there would be no forum before which Iran could recover its damages.
12. Finally, Iran asserts that the Foremost/OPIC lawsuit also poses a serious threat to the Tribunal's jurisdiction. According to Iran, the claim pursued by Foremost and OPIC before the District Court for the District of Columbia is the same claim dismissed by Chamber One of this Tribunal in Cases Nos. 37 and 231 seven years ago. See Foremost Tehran, Inc., et al., and Government of the Islamic Republic of Iran, et al., Award No. 220-37/231-1 (10 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 228

("Foremost"). Iran argues, inter alia, that once the Tribunal dismissed a case on the merits, it cannot be renewed in other fora.

B. United States' Contentions

13. The United States argues in its Opposition filed on 18 March 1993 that Iran's "Request for an Immediate Order to Stay the Foremost Lawsuit, Civil Action No. 82-0220, Subject of Case A/24" should be denied on three grounds: first, Iran's claim in Case No. A24 is without merit; second, Iran has established no likelihood of irreparable injury; and third, Iran has failed to demonstrate a threat to the Tribunal's jurisdiction.
14. First, the United States argues that Iran's Request should be denied because Iran's claim in Case No. A24 is prima facie without merit. Foremost has not raised the "same" claim in the district court litigation as in the prior Tribunal arbitration. In Foremost, the Tribunal held that the expropriation had not ripened by 19 January 1981, the jurisdictional cut-off date, but made no determination as to whether the expropriation could have occurred at a later date. Indeed, the United States asserts that the Tribunal could not have done so, because it had no jurisdiction to determine whether or not a claim arose at any date after 19 January 1981. The United States argues that, since in the district court litigation Foremost alleges that the expropriation ripened by October 1981, subsequent to the Tribunal's jurisdictional cut-off date of 19 January 1981, the two cases on their face do not involve the same claim.
15. Second, the United States argues that Iran's Request should be denied because Iran has shown no harm. Moreover, even if, contrary to fact, Iran had demonstrated harm, such harm is not irreparable because it could be compensated by a monetary award. Further, according to the United States, the procedural history of Case No. A24 shows that Iran itself has delayed the consideration of its request that was first raised by it in August 1988. The United States asserts that the fact that the discovery in the district court case already had begun on 19 December 1990, when Foremost made its initial discovery requests, but that Iran's present Request was not made until more than two years later, itself shows that there is no urgency requiring the Tribunal to act.
16. Finally, the United States argues that Iran's Request should be denied because Iran has alleged no threat to the Tribunal's jurisdiction. First, neither the claims asserted in the two fora, nor the parties thereto, are the same, the district court litigation involving a claim that on its face does not fall within the Tribunal's jurisdiction. Second, the Tribunal has already issued its final award on Foremost's claim. According to the United States, there is no indication that the Tribunal's Award will not be respected in the district court litigation.

III. DECISION

17. The issue raised by Iran's Request is whether the United States should be requested to effect a stay of the Foremost/OPIC lawsuit before the United States District Court for the District of Columbia, pending the Tribunal's resolution of Case No. A24. Iran's Request involves, in substance, a request for interim relief and has been characterized as such by Iran in its submissions of 4 March 1993

and 13 April 1993.

18. There appears to be no dispute between the Parties that the Tribunal has jurisdiction over Iran's claim in Cases Nos. A15(IV) and A24, where Iran alleges that the United States is in breach of its obligations under the Algiers Declarations. Under paragraph 17 of the General Declaration and Article II, paragraph 3 of the Claims Settlement Declaration the Tribunal has jurisdiction over disputes concerning the interpretation or performance of the Algiers Declarations. Consequently, the Tribunal is satisfied that, at least prima facie, it has jurisdiction over Iran's claim.
19. The Tribunal also finds that it is at least arguable, although the Tribunal is not prepared to make any decision on this issue at this stage of the proceedings, or on the basis of the documents before it, that the Foremost/OPIC lawsuit before the District Court and the Foremost claim decided by the Tribunal seven years ago were initially the same, the Foremost claims having been filed with the Tribunal on 16 November 1981 (Case No. 37) and on 12 January 1982 (Case No. 231), and the Foremost/OPIC lawsuit having been filed with the District Court soon thereafter, on 22 January 1982. The Tribunal notes, on the other hand, that the complaint now before the District Court, amended in December 1990, alleges an expropriation subsequent to the Tribunal's jurisdictional cut-off date of 19 January 1981. For the purposes of the present Decision, however, the Tribunal need not decide whether the Foremost/OPIC lawsuit and the earlier Tribunal Award involve the same claim, and the Parties may revert to that issue in connection with the merits.
20. As to the substance of Iran's Request, the Tribunal notes that, under Tribunal precedent, interim relief can be granted only if it is necessary to protect a party from irreparable harm or to avoid prejudice to the jurisdiction of the Tribunal. See *Boeing Co., et al., and Government of the Islamic Republic of Iran*, Award No. ITM 34-222-1, at 4 (17 Feb. 1984), reprinted in 5 *Iran-U.S. C.T.R.* 152, 154 ("Boeing"). The Tribunal has determined that this standard also applies in government-to-government cases. See *Islamic Republic of Iran and United States of America*, Decision No. DEC 85-B1-FT (18 May 1989), reprinted in 22 *Iran-U.S. C.T.R.* 105, 108 ("Case No. B1").
21. The Tribunal is not satisfied that Iran has discharged its burden to show that it risks irreparable harm if its Request is not granted. Should the Tribunal eventually determine in Case No. A24 that the United States has not complied with its obligations under the Algiers Declarations by allowing the Foremost/OPIC lawsuit to proceed in the United States, the Tribunal can compensate Iran for any damages that the Tribunal finds Iran has sustained by awarding an adequate monetary relief. The Tribunal has previously held that "injury that can be made whole by monetary relief does not constitute irreparable harm." Case No. B1, para. 11, *supra*, 22 *Iran-U.S. C.T.R.* at 109 (citing *Boeing*, *supra*). Although Iran refers to "Foremost's vexatious tactics," *supra*, para. 9, and alleges that in the proceedings before U.S. courts it has been subjected to extraordinary discovery orders, it has failed to demonstrate how this would lead to infliction of irreparable harm on Iran.
22. The issue as to whether there exists a threat to the Tribunal's jurisdiction requires a more intricate analysis. According to Iran's Statement of Claim in Case No. A24, Iran seeks, inter alia, a declaratory judgment holding the United States liable for a breach of the Algiers Declarations by allowing the Foremost/OPIC lawsuit to proceed in the United States; an order directing the United States to terminate the Foremost/OPIC lawsuit; and damages to compensate Iran for any losses it may have incurred as a result of the United States' breach. Therefore, the Tribunal must determine whether the Tribunal's jurisdiction to arbitrate Iran's claim is prejudiced if its Request is not granted.

23. In this connection, there are two possibilities. Either the Foremost/OPIC lawsuit in the United States will be decided before the Tribunal issues its decision in Cases Nos. A15(IV) and A24, or the Foremost/OPIC lawsuit will not have been decided when the Tribunal issues its decision in Cases Nos. A15(IV) and A24. The Tribunal finds that in either event, it will be in a position to render an effective decision upon Iran's claim and, consequently, that there exists no threat to the Tribunal's jurisdiction.
24. There is clearly no threat to the Tribunal's jurisdiction if the Foremost/OPIC lawsuit in the United States has not been decided when the Tribunal renders its decision in Cases Nos. A15(IV) and A24. The Tribunal would then be in a position to decide whether or not the United States was in breach of its obligations under the Algiers Declarations and, if so, to request the United States to take all necessary steps to bring about the termination of the Foremost/OPIC lawsuit and to obligate the United States to compensate Iran for any damages it has incurred. In other words, the Tribunal would be in a position to rule on all aspects of Iran's claim in Cases Nos. A15(IV) and A24.
25. If the Foremost/OPIC lawsuit is decided before the Tribunal has rendered its decision in these Cases, the situation is different from the first possibility to the extent that Iran seeks the termination of the Foremost/OPIC lawsuit. Assuming the Tribunal upholds Iran's claim that the United States is in breach of its obligations under the Algiers Declarations, the issue as to whether the Tribunal should request the United States to terminate the Foremost/OPIC lawsuit clearly would have become moot; that lawsuit would have already been "terminated" by a judgment of the District Court. But whatever the outcome of the Foremost/OPIC lawsuit, this scenario poses no threat to the Tribunal's jurisdiction. The Tribunal would still be in a position to provide Iran with an effective remedy by issuing an award obligating the United States to compensate Iran for any damages it may have incurred in the Foremost/OPIC lawsuit. Although the other remedy--termination of the Foremost/OPIC lawsuit--would no longer be available, a monetary relief would provide an effective compensation and no prejudice would have been done to the Tribunal's jurisdiction in this proceeding.
26. Finally, the Tribunal also notes that an order granting Iran's Request would not operate so as to maintain the status quo pending the Tribunal's decision in Case No. A24, as alleged by Iran. Quite the contrary, the interim measures sought by Iran would not operate so as to maintain the status quo--the continuing proceedings before the District Court--but would modify that "status quo" by suspending those proceedings. Consequently, should the Tribunal grant Iran's Request, it would, in effect, make an interim judgment in favor of Iran on the merits. Absent compelling reasons for doing so, such as the protection of the Tribunal's jurisdiction or a risk of irreparable damage, Iran's Request cannot be granted. See *Behring International, Inc. and Islamic Republic of Iran, et al.*, Award No. ITM 46-382-3 (22 Feb. 1985), reprinted in 8 *Iran-U.S. C.T.R.* 44 (dismissing the Respondents' request for interim relief because it would have been "tantamount to awarding Respondents the final relief sought in their counterclaim.")
27. Having reached the above conclusion, the Tribunal notes that, although Iran has not been able to substantiate its Request for interim relief, it has nevertheless been able to present a case which it is at least arguable on the merits; the evidence presented suggests that the Foremost/OPIC lawsuit may be an attempt to relitigate an Award by this Tribunal. See *supra*, para. 19. Under Article IV, paragraph 1 of the Claims Settlement Declaration, the Tribunal's decisions and awards, including Foremost, are final and binding and consequently must be respected by all concerned.² Parties to

claims decided by the Tribunal are not entitled to relitigate those claims in other fora, and, as the Tribunal has previously stated, a decision rendered by the Tribunal will prevail over any decision inconsistent with it rendered by a national court. See, e.g., *E-Systems, Inc. and Islamic Republic of Iran, et al.*, Award No. ITM 13-388-FT (4 Feb. 1983), at 10, reprinted in 2 Iran-U.S. C.T.R. 51, 57. The Tribunal further notes that in General Principle B of the General Declaration there is a clear obligation for the United States to prohibit certain further litigation based on claims of United States persons and institutions against Iran and its state enterprises.³ Consequently, should the Tribunal determine in the present Cases that the claim pursued by Foremost and OPIC in the United States courts falls within the definition of claims whose further litigation should have been prohibited under the Algiers Declarations, the liability of the United States would exist regardless of the outcome of that litigation, and could include damages due to the fact that the litigation was allowed to continue in its national court.⁴ The Tribunal also notes that, as the Tribunal held in an earlier case, "this decision not to exercise its power [to issue interim measures of protection] does not prevent the Party which has made the request from making a fresh request in the same case based on new facts." See Order of 18 January 1984 in *Islamic Republic of Iran and United States of America*, Cases Nos. A4 and A15, Chamber Two, reprinted in 5 Iran-U.S. C.T.R. 112, 114.

28. For the foregoing reasons,

THE TRIBUNAL DECIDES

that Iran's "Request for an Immediate Order to Stay the Foremost Lawsuit, Civil Action No. 82-0220, Subject of Case A/24 in the United States," is denied.

It is the purpose of both parties, within the framework 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. Through the procedures provided in the Declaration relating to the Claims Settlement Agreement, the United States agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.

"[N]o action taken *pendente lite* by a State engaged in a dispute before the Court with another State 'can have any effect whatever as regards the legal situation which the Court is called upon to define' (*Legal Status of the South-Eastern Territory of Greenland*, P.C.I.J., Series A/B, No. 48, p. 287), and such action cannot improve its legal position *vis-a-vis* that other State[...]"

² . In this connection, the Tribunal notes that the United States District Court's Memorandum Opinion of 18 April 1989 requested the parties to the Foremost/OPIC lawsuit to address in their further pleadings several issues relevant to the preclusive effect of this Tribunal's 1986 Award.

³ General Principle B of the General Declaration provides as follows:

⁴ . Moreover, as the International Court of Justice recently held in *Case Concerning Passage Through the Great Belt (Fin. v. Den.)*, 1991 I.C.J. 12, 19 (Order of 29 July):