



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 125-A15(IV)-A24-FT)

11 October 1996

Tribunal:

[Krzysztof J. Skubiszewski](#) (President)

[Bengt Broms](#) (Member)

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

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

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

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Decision (Decision No. DEC 125-A15(IV)-A24-FT)

I. INTRODUCTION

1. On 5 August 1988, the Islamic Republic of Iran ("Iran") presented a Statement of Claim alleging that the United States had breached its obligations under the Algiers Declarations by allowing Foremost-McKesson, Inc., Foremost Tehran, Inc., Foremost Shir, Inc., Foremost Iran Corporation, Foremost Foods, Inc. (collectively "Foremost"), and Overseas Private Investment Corporation ("OPIC") to file a complaint in the United States District Court for the District of Columbia in 1982 identical to the statement of claim submitted before this Tribunal in Cases Nos. 37 and 231, and by allowing the same lawsuit to be revived in 1988 and to proceed before the United States District Court for the District of Columbia as Foremost-McKesson, Inc. v. Islamic Republic of Iran, Civ. No. 82-0220-TAF (D.D.C.) ("Foremost/OPIC lawsuit"). Iran's claim was assigned No. A24.
2. On 16 February 1993, Iran submitted 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."¹ By Decision of 18 May 1993 (Decision No. DEC 116- A15(IV) & A24-FT), the Tribunal denied this request. See *infra*, paras. 5-9.
3. On 10 May 1996, Iran presented a "Request for an Order Requiring the United States to Stay the Foremost-OPIC Proceedings in the United States" ("Request"). Subsequently, on 15 May 1996, in support of its Request, Iran submitted to the Tribunal a copy of a 13 May 1996 Memorandum Opinion by the United States District Court for the District of Columbia ("District Court"), denying a Motion for Stay of the Foremost/OPIC lawsuit, which motion Iran had filed in the District Court on 21 March 1996. On 22 May 1996, Iran produced, *inter alia*, a copy of this Motion for Stay.
4. On 7 June 1996, the United States filed its Opposition to Iran's Request. As an exhibit to its Opposition, the United States proffered, *inter alia*, a copy of the "Amicus Brief of the United States On Force of Iran-U.S. Claims Tribunal Decision In This Proceeding," which the United States had filed in the Foremost/OPIC proceeding before the District Court on 6 June 1996. On 10 June 1996, Iran submitted an objection to the United States' Opposition. On 26 August 1996, Iran reiterated this objection, further elaborating upon it.

II. PROCEDURAL BACKGROUND

¹ Iran had previously submitted a request for a stay of the Foremost/OPIC lawsuit on 5 August 1988, together with its Statement of Claim in Case No. A24. In its Order of 16 August 1988, the Tribunal stated that, "[o]n the basis of the documents presently before it, the Tribunal does not deem it appropriate to take any further action at this time." On 26 September 1988, Foremost and OPIC submitted an "Opposition" to Iran's request for stay. On 28 September 1988, the United States submitted its "Opposition" to that request. In a submission of 14 December 1988, Iran stated, *inter alia*, that "its request for an interim award to stay the United States litigation until final resolution of the present Case is still pending."

A. The Tribunal's 1993 Decision

5. In its 16 February 1993 request for an order requiring the United States to effect a stay of the Foremost/OPIC lawsuit, Iran argued, *inter alia*, that the stay of the lawsuit was necessary (a) to prevent infliction of irreparable harm on Iran and (b) to protect the Tribunal's jurisdiction. With respect to the latter issue, Iran argued that the Foremost/OPIC lawsuit posed a serious threat to the Tribunal's jurisdiction because, in Iran's view, the claim pursued by Foremost and OPIC before the District Court was the same claim dismissed by Chamber One of the Tribunal in Cases Nos. 37 and 231.²
6. The Tribunal ruled on Iran's request by Decision of 18 May 1993 (Decision No. DEC 116-A15(IV) & A24-FT) ("1993 Decision"). In its Decision, the Tribunal noted, as an initial matter, 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." 1993 Decision, para. 20. After reviewing the relevant facts, the Tribunal concluded that neither of those two conditions was satisfied. Consequently, it denied Iran's request for a stay.
7. Concerning Iran's irreparable harm argument, the Tribunal observed:

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." 1993 Decision, para. 21 (citation omitted).
8. The Tribunal also disagreed that the Foremost/OPIC lawsuit posed a threat to its jurisdiction. It stated that, whether or not that lawsuit was decided before the Tribunal issued its decision in Cases Nos. A15(IV) and A24, the Tribunal would always be in a position to render an effective decision upon Iran's claims in those Cases "and, consequently,... there exists no threat to the Tribunal's jurisdiction." *Id.* para. 23. If the Foremost/OPIC lawsuit had not been decided by the time the Tribunal issued that decision, the Tribunal pointed out, it would be in a position, if it found the United States to be in breach of its obligations under the Algiers Declarations, both to order the United States to effect the stay of those proceedings and to award damages to Iran; if the Foremost/OPIC lawsuit had already been decided before that time, then if the Tribunal found that the United States was in breach, it would still be in a position to provide Iran with an effective remedy by awarding it damages. See *id.* para. 25.
9. While denying Iran's request, the Tribunal, in concluding, stated that " 'this decision not to exercise its power [to issue interim measures of protection] does not prevent a Party which has made the request from making a fresh request in the same case based on new facts.' " *Id.* para. 27 in fine.

² Foremost Tehran, et al. and Islamic Republic of Iran, et al., Award No. 220-37/231-1 (11 Apr. 1986), reprinted in 10 Iran-U.S.C.T.R. 228 ("Foremost").

B. The Foremost/OPIC Proceedings in the United States

10. On 12 March 1996, the District Court ordered Foremost and OPIC to file their motion for partial summary judgment against Iran on the issue of liability no later than 13 May 1996. The Court further ordered that Iran should have sixty days to file a response to Foremost's and OPIC's motion.
11. On 21 March 1996, Iran filed a Motion for Stay of the Foremost/OPIC proceedings before the District Court. On 7 May 1996, the United States District Court Judge denied from the bench Iran's Motion for Stay. On 14 May 1996, the District Court Judge issued a Memorandum Opinion, explaining the Court's reasons for denying the Motion. In his Opinion, the District Court Judge, *inter alia*, wrote:

[E]ven if the Claims Tribunal were to rule in Iran's favor in Case A2[4], this Court would still have the authority to determine the preclusive effect of such a ruling on this litigation. As the Court ruled in 1988, "[t]he defense of claim or issue preclusion is commonplace in American courts, and courts faced with such a defense invariably decide on their own what effect the earlier judgment should have, even when that judgment is from an overseas jurisdiction."

III. ARGUMENT

A. Iran's Contentions

12. Iran contends that its present Request for a stay of the Foremost/OPIC lawsuit "is founded on new facts, that is, the proof of the proximity of the U.S. Court's reaching the merits of the case involving a cardinal issue within the jurisdictional grant of the Tribunal." Iran further contends that the Request "also rests, as its legal basis, on the Tribunal's... pronouncement on the Parties' duty to refrain from any action undermining the full effectiveness of the Algiers Declarations."
13. More specifically, Iran urges that its Request should be granted for two reasons. First, Iran argues that the United States District Court proceedings, unless stayed, would harm Iran's rights. Iran recognizes that the Tribunal's award in Cases Nos. A15(IV) and A24 would prevail over any inconsistent decision by the United States Court. However, Iran contends, "this prevailing character of the Tribunal's awards will not hold Iran immune against all kinds of hardship presented by an inconsistent domestic court's ruling; a Tribunal's award would not obviously be as easily enforceable in the United States as it otherwise would absent an inconsistent U.S. court's judgment."
14. Second, according to Iran, the proceedings before the United States District Court should be stayed because that court's decision to take jurisdiction over the Foremost/OPIC claim undermines the full effectiveness of the Tribunal's jurisdiction and authority and conflicts with the object and purpose of the Algiers Declarations. Iran contends that the matter about to be resolved by the United States court--the preclusive effect of the Tribunal's award in Foremost--is a matter that, pursuant to the Algiers Declarations, should properly be resolved by the Tribunal and not by the United States court. A ruling by the United States court inconsistent with that of this Tribunal, Iran argues, would

adversely affect the Tribunal's authority, because the Tribunal's decision would not be as effective as it otherwise would have been without the inconsistent domestic judgment, "though the Tribunal award would eventually prevail."

B. The United States' Contentions

15. In its Opposition of 7 June 1996, the United States contends that Iran's Request for a stay of the Foremost/OPIC lawsuit should be denied on several grounds. The United States asserts that there has been no change in the circumstances since the Tribunal's 1993 Decision that would warrant the issuance of any interim measures of relief in favor of Iran. In the United States' view, Iran has not made any showing that the Foremost/OPIC lawsuit, if not stayed, would inflict irreparable harm on Iran or pose a threat to the Tribunal's jurisdiction.
16. The United States further contends that there can be no dispute that the District Court will give preclusive effect to the Tribunal's decision in Foremost. The District Court, the United States points out, has stated repeatedly that it will do so, and the Plaintiffs in the Foremost/OPIC lawsuit have asked the court to give preclusive effect to the Tribunal's decision. The United States goes on to say that the United States itself filed an amicus brief with the District Court informing it that it must give preclusive effect to the Tribunal's Foremost decision.

IV. DECISION

A. Tribunal's Law On Provisional Measures and Its Relevance To the Matter Before the Tribunal

17. In its Interim Award in E-Systems, Inc. and Islamic Republic of Iran, et al., Interim Award No. ITM 13-388-FT, at 10 (4 Feb. 1983), reprinted in 2 Iran- U.S.C.T.R. 51, 57 ("E-Systems"), the Tribunal stated the following:

This Tribunal has an inherent power to issue such orders as may be necessary to conserve the respective rights of the Parties and to ensure that this Tribunal's jurisdiction and authority are fully effective.

The Tribunal has had recourse to this standard in subsequent cases. In paragraph 20 of its 1993 Decision, the Tribunal noted 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 this Tribunal."

18. Thus, the Tribunal shall have the power to indicate provisional measures if it considers that they should be taken in order

-to conserve the respective rights of the parties, and in particular, to protect a party from irreparable harm; or

-to ensure full effectiveness of the Tribunal's jurisdiction and authority, and in particular, to avoid prejudice to its jurisdiction.

The Tribunal must measure Iran's Request by the yardstick of these standards. In so doing, however, the Tribunal cannot depart from its previous 18 May 1993 Decision unless new facts are found to exist. This is so because the 1993 Decision deals with a request identical to the one at hand, though somewhat differently motivated.

19. As noted, the Tribunal has held that, in cases where it has rejected a previous request for interim relief, a party may make a fresh request based on new facts. In Cases Nos. A4 and A15, the Tribunal stated:

The Tribunal holds that the circumstances, as they now present themselves to the Tribunal, are not such as to require the exercise of its power to order the requested interim measure of protection. The Tribunal notes that this decision not to exercise its power does not prevent the Party who has made the request from making a fresh request based on new facts.

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. The 1993 Decision refers to the quoted statement in paragraph 27. Thus, because the Tribunal previously has rejected a request for a stay of the Foremost/OPIC lawsuit, Iran, in order to prevail in its present Request, must show new facts or prove a change in circumstances that would justify a stay of that lawsuit now. The Tribunal's task is to determine whether Iran has made this showing.

B. The Tribunal's Decision

20. In the present Decision, the Tribunal confines itself to the issues raised in the Request. The Tribunal holds that Iran has not shown any new facts that would warrant a stay of the Foremost/OPIC lawsuit. As an initial matter, the Tribunal finds that the District Court's reaching the merits of the Foremost/OPIC lawsuit does not represent such a new, decisive fact or circumstance. The Tribunal, when it denied Iran's request for a stay in 1993, contemplated a scenario whereby the United States District Court would reach the merits of the case (see *supra*, para. 8) and, further, would even decide the case against Iran and in favor of Plaintiffs prior to the time that the Tribunal issued its award in the present Cases. In paragraph 25 of its 1993 Decision, the Tribunal stated:

But whatever the outcome of the Foremost/OPIC lawsuit, this scenario [that the lawsuit would have been terminated by a judgment of the District Court by the time the Tribunal decided Cases Nos. A15(IV) and A24] 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.

21. In this Case, Iran argues that the "Tribunal's award would not obviously be as easily enforceable in the United States as it otherwise would absent an inconsistent U.S. court's judgment." The Tribunal finds that there is no reason to believe that Iran would have difficulty enforcing or collecting any such award. Any award issued against the United States in an intergovernmental case would be implemented at the government-to-government level. The Tribunal cannot assume that the United States would not comply with any awards rendered against it by this Tribunal.

22. Iran refers to "all kinds of hardship" that would occur if the District Court were to reach a decision inconsistent with that subsequently reached by the Tribunal. Iran has not expressly invoked irreparable harm in support of its Request, and it is not clear to the Tribunal whether, in this context, "hardship" is being identified with some violation of rights, and in particular, with irreparable harm. In its 1993 Decision, the Tribunal observed:

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."

1993 Decision, para. 21. Iran has pointed to no change in circumstances that would justify the Tribunal in abandoning this conclusion.

23. Iran further contends that the District Court's decision to take jurisdiction over the Foremost/OPIC claim poses a threat to the full effectiveness of the Tribunal's jurisdiction and authority. See *supra*, para. 14.

24. As noted, in its 1993 Decision, the Tribunal dismissed Iran's argument that the Foremost/OPIC lawsuit posed such a threat. It opined that, whether or not that lawsuit was decided prior to the time that the Tribunal issued its decision in Cases Nos. A15(IV) and A24, the Tribunal would always be in a position to render an effective decision upon Iran's claim in those Cases "and, consequently,... there exists no threat to the Tribunal's jurisdiction." 1993 Decision, para. 23. See *id.* paras. 23-25. See also *supra*, para. 8.

25. The Tribunal finds that Iran has not adequately explained why it is that now, three years later, the Foremost/OPIC lawsuit poses such a threat, nor has it pointed to any developments in the proceedings before the District Court that would warrant such a conclusion. Consequently, for the same reasons stated in its 1993 Decision, see *supra*, para. 8, the Tribunal determines that there exists no threat to the Tribunal's jurisdiction if the Foremost/OPIC lawsuit is not stayed.

26. Iran also points to the statement in the 13 May 1996 Memorandum Opinion by the District Court Judge referring to a "judgment... from an overseas jurisdiction" in connection with a possible future ruling by the Tribunal. See *supra*, para. 11. In Iran's view, this statement shows that "the U.S. Court

recognizes no intergovernmental status with a prevailing authority and jurisdiction for this Tribunal." Iran argues that the District Judge's statement somehow represents a threat to the Tribunal's authority and jurisdiction.

27. The Tribunal finds that the above-quoted statement by the District Judge does not justify the indication of any interim measures of relief. Nonetheless, the Tribunal deems it appropriate in this context to note that under international law it would be inaccurate to describe the Tribunal as an "overseas jurisdiction" because the Claims Settlement Declaration, which is an international agreement between the Islamic Republic of Iran and the United States of America, defines it as "[a]n international arbitral tribunal." Claims Settlement Declaration, Article II, paragraph 1. The Tribunal also notes that it is for this Tribunal ultimately to determine, for international legal purposes, whether or not the two claims are in any measure identical and whether or not there is an international law violation on the part of the United States.
28. Iran also has referred to the preclusive effect of the Tribunal's awards. The Tribunal finds that, in the present Case, there is no indication of any threat to this preclusive effect that would justify the granting of interim relief.
29. The Tribunal, however, recalls paragraph 27 of its 1993 Decision and notes, in particular, that, with respect to the issue of the preclusive effect of its awards, the Tribunal's jurisdiction and authority may not be impinged upon and that awards and decisions of this Tribunal prevail over judgments of courts of the Islamic Republic of Iran and the United States of America.
30. In sum, on the basis of the foregoing considerations, the Tribunal finds that Iran has not shown either new facts or a change in circumstances since the Tribunal's 1993 Decision that would warrant a stay of the Foremost/OPIC lawsuit. In the circumstances as they present themselves to the Tribunal, a stay of that lawsuit is neither necessary to protect Iran's rights, in particular to protect it from irreparable harm, nor to avoid prejudice to the jurisdiction and authority of this Tribunal.³
31. Having reached the above conclusion, the Tribunal recalls what it stated in paragraph 27 of its 1993 Decision, namely, that "this decision not to exercise its power [to issue interim measures of protection] does not prevent a Party which has made the request from making a fresh request in the same case based on new facts."
32. For the foregoing reasons,

THE TRIBUNAL DECIDES

that Iran's "Request for an Order Requiring the United States to Stay the McKesson-OPIC Proceedings in the United States" is denied.

³ By Communication to the Parties of 20 June 1996, the President of the Tribunal, so authorized by the Tribunal, informed the Parties that the Tribunal had held deliberations concerning Iran's present Request and had denied that Request. The President further informed the Parties of the Tribunal's position as reflected supra, in paras. 27 and 29, and of the Tribunal's request that the United States of America forward a copy of the Communication to the District Court for the District of Columbia.