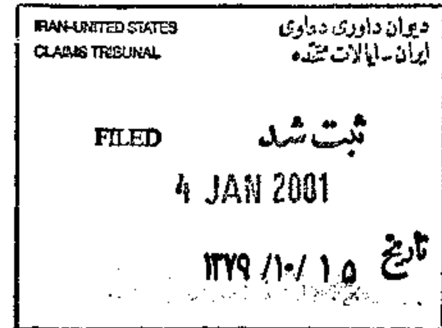
IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. A28
FULL TRIBUNAL
DECISION NO. DEC 130-A28-FT



THE UNITED STATES OF AMERICA and
THE FEDERAL RESERVE BANK OF NEW YORK,
Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN and
BANK MARKAZI IRAN,
Respondents.

CORRECTION TO THE ENGLISH VERSION OF CONCURRING OPINION OF RICHARD M. MOSK

The following correction is hereby made to the last sentence of Paragraph 14 of the English version of the Concurring Opinion of Richard M. Mosk filed on 19 December 2000:

Iran itself has taken the position that the Technical Agreement is one of "the basic agreements regarding all banking and financial relations between the two Governments" and is an "inseparable part[] . . . of the Algiers Declarations." *Iran-United States, Case A/1 (Issues I, III and IV)*, Decision No. DEC 12-A1-FT (3 Aug. 1982), *reprinted in* 1 Iran-U.S. C.T.R. 189, 194.

A copy of the corrected page is attached.

Dated, The Hague

4 January 2001

Richard M. Mosk

Brooks Foundry, Inc., 892 F.2d 1283, 1288 (6th Cir. 1990) ("an arbitrator is to be given broad latitude and discretion in formulating remedies"); *General Tel. Co. of Ohio v. Communications Makers of Am.*, 648 F.2d 452, 457 (6th Cir. 1981) ("remedy need not be specifically authorized by the agreement"); *Advanced Micro Devices v. Intel Corp.*, 885 P.2d 994, 1002 (Cal. 1994) ("arbitrators, unless expressly restricted by the agreement or the submission to arbitrators, have substantial discretion to determine the scope of their contractual authority to fashion remedies . . . .").[2]

13. If Iran should fail to meet the Tribunal's expectations by not complying with its replenishment obligation, the United States must have some right or remedy. *See* Arnold Duncan McNair, *Law of Treaties* 539-540, 553-580 (1961) (discussion of rights and remedies for breach of a treaty). Payment into the Security Account seems to be the least drastic remedy of those available to the United States in the event of Iran's breach of its duty of replenishment.

14. The Tribunal should have determined that it has jurisdiction over Bank Markazi in this case and that Bank Markazi's responsibility is identical to that of Iran. This dispute is covered by the jurisdictional provision of Clause 18(b) of the Technical Agreement. Bank Markazi had not only apparent but actual authority to sign the Technical Agreement with the consent and authority of Iran. Iran itself has taken the position that the Technical Agreement is one of "the basic agreements regarding all banking and financial relations between the two Governments" and is an "inseparable part[] . . . of the Algiers Declarations." *Iran-United States, Case A/1 (Issues I, III and IV)*, Decision No. DEC 12-A1-FT (3 Aug. 1982), *reprinted in* 1 Iran-U.S. C.T.R. 189, 194.

15. It cannot seriously be argued that jurisdiction in this case is affected by the phrase in Clause 18(b) of the Technical Agreement that "[a]ny dispute arising under this Agreement, *which cannot be amicably resolved,* may be submitted by any of the parties to the court of competent jurisdiction . . . or to the Tribunal . . . ." (Emphasis added.) This language establishes no condition precedent to maintaining a claim. Moreover, the 19 January 1993

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[2] Although most of these authorities are American, they represent a formulation of a general arbitral principle.