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DECISION THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-206443 **DATE:** June 25, 1984

MATTER OF: Iran-United States Claims Tribunal

DIGEST: Monetary awards against United States by the Iran-United States Claims Tribunal may, upon becoming final, be certified for payment from the permanent appropriation established by 31 U.S.C. § 1304, provided that payment is "not otherwise provided for" and the Attorney General certifies that payment is in the interest of the United States.

Recent discussions with the Departments of Justice and State have raised a question as to whether monetary awards against the United States by the Iran-United States Claims Tribunal may be paid from the permanent indefinite judgment appropriation established by 31 U.S.C. § 1304 (1982). We conclude that they may, provided that (1) the awards are final, (2) payment is not otherwise provided for, and (3) the Attorney General has certified that payment is in the interest of the United States. A representative case, discussed later in this decision, is Department of the Environment of the Islamic Republic of Iran v. United States, Case No. B-53, January 18, 1984.

Background

On November 4, 1979, the American Embassy in Tehran, Islamic Republic of Iran, was seized and a number of American nationals were held hostage. The Governments of the United States and Iran negotiated a termination of the seizure, embodied in two Algerian Declarations dated January 19, 1981,[1/] and the hostages were released on January 20.

1/ Declaration of the Government of the Democratic and Popular Republic of Algeria, and Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran. The claims settlement declaration is referred to in this decision as the "Second Declaration."

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An important element of the negotiated agreement was a mechanism for the resolution of claims by the American Government or its nationals against Iran and by the Government of Iran or its nationals against the United States. To achieve this end, the Second Declaration established an "International Arbitral Tribunal" to be known as the Iran-United States Claims Tribunal, to sit at The Hague, Netherlands, unless the parties agree to some other location. Article III of the Second Declaration provides for the Governments of the United States and Iran each to appoint one-third of the Tribunal's members, with the members so appointed to select the remaining third by mutual agreement. Claims may be decided by the full Tribunal or by a three-member panel. Article IV provides that decisions and awards of the Tribunal shall be "final and binding," and that awards against either Government "shall be enforceable against such government in the courts of any nation in accordance with its laws." Article VI provides that the Tribunal's expenses are to be borne equally by the two Governments.

The claims settlement mechanism contained in the Algerian Declarations has been upheld as a permissible exercise of the President's constitutional powers. Dames & Moore v. Regan, 453 U.S. 654 (1981). See also Behring International, Inc. v. Imperial Iranian Air Force, 699 F.2d 657 (3rd Cir. 1983). The Declarations make no specific provision for the payment of awards against the United States.

Availability of permanent judgment appropriation

As relevant to this decision, the permanent judgment appropriation is available for the payment of judgments, awards, and compromise settlements under 28 U.S.C. § 2414 which are final and not otherwise provided for. 31 U.S.C. § 1304 (1982). When originally enacted in 1956, the judgment appropriation applied only to certain United States courts. However, 28 U.S.C. § 2414 was amended in 1961 to include the following sentence:[2]/

> "Payment of final judgments rendered by a State or foreign court or tribunal against the United States, or against its agencies or officials upon obligations or liabilities of the United States, shall be made on settlements by the General Accounting Office after certification by the Attorney General that it is in the

[2]/ Pub. L. No. 87-187 (August 30, 1961), 75 Stat. 415.

> interest of the United States to pay the same." (Emphasis added.)

Pub. L. No. 87-187 also amended the judgment appropriation by replacing the existing reference to United States district courts with a reference to 28 U.S.C. § 2414.

Thus, the issue in this case is whether the Iran-United States Claims Tribunal may be viewed as a "foreign court or tribunal" for purposes of 28 U.S.C. § 2414. The availability of the judgment appropriation hinges on this question.

A search of the legislative history of Pub. L. No. 87-187 fails to disclose a definition of "foreign court or tribunal." Similarly, we have never addressed this issue in our own decisions. Thus, our task is to construe the statute in the manner that will best carry out its purpose and intent.

On the one hand, it is certainly possible to argue that the Iran-United States Claims Tribunal is not within the scope of 28 U.S.C. § 2414. An argument along these lines would stress that the Tribunal is more of a board of arbitration than a "court" in the traditional sense, and that it is an international rather than a "foreign" body. The result of this approach would be that, except where agency funds are available to pay a given award, the awards could not be paid without specific congressional appropriations.

Upon careful consideration, however, we think that treating the Tribunal as a "foreign tribunal" for purposes of 28 U.S.C. § 2414 is the better view. The legislative history of Pub. L. No. 87-187 is sparse and, on this issue, inconclusive. The legislation was originally recommended by the Department of Justice. The reports of the Senate and House Judiciary Committees incorporated the Justice Department's comments as follows:

> "A judgment of a State or foreign court is presently payable by the enactment of specific appropriations legislation, unless the agency whose activities gave rise to the litigation has a fund or appropriation which may properly be charged with this type of expense. As of October 1960 the Department of Justice was engaged in the defense of 224 suits against the United States and its agencies or officers in foreign courts. * * * The increased overseas activities of this country, including its new program of development loans, portend a further

> substantial increase in foreign litigation. * * * These considerations, and the importance of maintaining good judicial relations abroad, emphasize the desirability of establishing a simplified procedure for the payment of routine judgments of State and foreign courts.
>
> "The attached draft bill will achieve this objective by making final judgments of State and foreign courts payable, in appropriate cases, from the permanent indefinite appropriation * * *. However, the permanent indefinite appropriation will not be used, by the terms of that act, for the satisfaction of judgments the payment of which [is] 'otherwise provided for,' as in the case of agencies which already have funds or appropriations available for the payment of such judgments. The draft bill provides that judgments of State and foreign courts or tribunals shall only be paid after certification by the Attorney General that it is in the interest of the United States to pay the same, thus precluding automatic payment with respect to cases in which such judgments are considered to have been improperly rendered. The draft bill does not and is not intended to waive any immunity from suit which the United States may otherwise have. The bill provides an administrative method of paying judgments which the Attorney General has certified to be in the interest of the United States to pay."

S. Rep. No. 733, 87th Cong., 1st Sess. 2-3 (1961); H.R. Rep. No. 428, 87th Cong., 1st Sess. 2-3 (1961). Note the reference in the committee reports to "routine" judgments. It seems clear from this that a situation such as the Iran-United States Claims Tribunal was not specifically contemplated. Neither, however, is it specifically precluded.

Thus, we are thrown back to the statutory language, to be construed in light of its apparent purpose. As noted, the statute uses the phrase "foreign court or tribunal." While the legislative history does not explain this choice of language, we must assume that Congress had a reason for including the words "or tribunal." Absent any other explanation in the legislative history, it seems logical to infer that the reason was to encompass certain foreign adjudicative bodies other than "courts" as that term might be viewed by the American

jurist. Forms of adjudication vary considerably throughout the world. Had Congress used only the word "court," the statute would be susceptible of being construed to cover only those foreign "courts" which resemble an American court. This was not its purpose. In addition, the requirement that the Attorney General certify that payment is in the interest of the United States seems designed to permit the payment decision to include considerations of national policy as well as legal liability.

The Iran-United States Claims Tribunal is not a "foreign tribunal" in that it is not under the control of any single "foreign" country. Nevertheless, under a broader view of the term, it may be regarded as "foreign" at least in the sense that it is not a United States body. As noted above, its awards are to be final and binding. Further, the Tribunal, on claims within its jurisdiction, largely supplants access to the more traditional courts of both countries.3/

On balance, therefore--and we emphasize that we do not necessarily regard this decision as precedent for any other situation in the future--we conclude that the Tribunal is a "foreign tribunal" for purposes of 28 U.S.C. § 2414. Awards made by it against the United States may therefore be paid from the judgment appropriation provided that the award is final and payment is not otherwise provided for. A further prerequisite for payment is the statutorily required certification by the Attorney General that payment is in the interest of the United States. 56 Comp. Gen. 592 (1977).

Case No. B-53

In 1976, the Department of the Environment of the Government of Iran and the U.S. Environmental Protection Agency (EPA) entered into a cooperative agreement under which EPA was to perform certain services for the Government of Iran. Iran transferred $254,656.76 to EPA as an advance payment, to be held in a non-interest bearing trust account, from which reimbursable expenses incurred by EPA would be deducted. The cooperative project was terminated in 1979.

3/ The Second Declaration, Article VII, paragraph 2, provides: "Claims referred to the Arbitral Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court."

In its claim filed with the Tribunal, Iran sought reimbursement of its advance, with interest. The United States argued that Iran was entitled to reimbursement only of the balance remaining in the trust account after the deduction of certain reimbursable expenses. The Tribunal reviewed the terms of the agreement, allowed some of the expenses claimed by EPA, disallowed others, and awarded Iran the sum of $218,666.31, plus 10 percent simple interest from March 1, 1980, to the date of payment.

We are advised that EPA, by returning the funds remaining in the trust account, can satisfy the award up to $233,446.70. However, the trust account does not have sufficient funds to pay the entire award which, as noted, includes approximately 4 years of simple interest at 10 percent (approximately another $80,000). It is this interest that we are asked to pay from the judgment appropriation. The Justice Department advises us that the award is final.

The judgment appropriation, while it refers to "interest and costs specified in the judgments or otherwise authorized by law," also includes specific restrictions on the payment of interest on judgments against the United States. 31 U.S.C. § 1304(b). These restrictions have been consistently recognized and applied by the courts. E.g., DeLucca v. United States, 670 F.2d 843 (9th Cir. 1982); Kelley v. United States, 568 F.2d 259 (2nd Cir. 1978), cert. denied, 439 U.S. 830. However, these restrictions by their terms apply only to judgments of specified United States courts. It has been our position since shortly after the enactment of Pub. L. No. 87-187 that 31 U.S.C. § 1304 does not restrict the payment of interest on a judgment of a foreign court or tribunal where interest is expressly awarded in the judgment. Accordingly, the fact that the amount we are asked to pay represents interest on the award does not present a problem in this case.

The splitting of a judgment between the judgment appropriation and some agency fund is rare and normally not permissible. In the typical case, a judgment is payable in its entirety either from the judgment appropriation or, if otherwise provided for, from the applicable agency fund, and the insufficiency of funds in the agency fund would not make a difference. Here, however, the agency fund is not a congressional appropriation, but is the trust account consisting essentially of the moneys advanced by Iran. It is entirely proper for EPA first to satisfy the award up to the balance remaining in the trust account. To this extent, payment is "otherwise provided for." However, the insufficiency of funds in the trust account in this case is attributable to the award

of interest, not to the use of those funds for other purposes. EPA would have no authority to use its operating appropriations to satisfy the balance of the Tribunal's award in this case.

Accordingly, upon receipt of the Attorney General's certification that payment of the award in Case No. B-53 is in the interest of the United States, we will certify the difference between the $233,446.70 available to EPA and the total award, including interest, for payment under 31 U.S.C. § 1304.

for Milton J. Socolar
Comptroller General
of the United States