

IRAN - UNITED STATES CLAIMS TRIBUNAL
ایران - ایالات متحده
CLAIMS TRIBUNAL

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دادگاه داورى دعاوى ايران - ایالات متحده

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CASE A/2

Request for interpretation: Jurisdiction of the Tribunal with respect to claims by the Islamic Republic of Iran against nationals of the United States of America.

DECISION

The Iran - United States Claims Tribunal sitting at the Peace Palace in The Hague, renders the following decision with respect to the interpretation requested by the Islamic Republic of Iran, represented by M.K. ESHRAGH, its agent. The United States of America was represented by A.W. ROVINE, its agent. /

I

By letter dated 13th November 1981, Iran requested the Tribunal to decide whether the Declaration of the Democratic and Popular Republic of Algeria of 19 January 1981 (called hereafter the General Declaration) and the Declaration of the same Government and same date, concerning the settlement of claims (called hereafter the Claims Settlement Declaration) have conferred upon this Tribunal jurisdiction over claims by the Government of Iran against nationals of the United States. Iran asked the Tribunal to give on that question an interpretation of those two Declarations. It contends that, according to paragraph B of the general principles of the General Declaration, "it is the purpose of both parties 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" and that in the absence of any exclusion in the Claims Settlement Declaration, claims by Iran against nationals of the United States are within the jurisdiction of this Tribunal.

The Government of the United States has submitted on 8 December 1981, through its agent, a memorial contending that such claims are not referred to by either of those two declarations and are not within the jurisdiction of the Tribunal.

The two parties presented their oral arguments through their agents, on 15 December 1981. After having deliberated in camera without the presence of the agents, the Tribunal decided by a vote of 6 to 3 that the Declarations do not provide for jurisdiction by the Tribunal over claims by the Government of Iran against United States citizens, for the reasons hereafter expressed.

II

- A. According to article VI paragraph 4 of the Claims Settlement Declaration, "any question concerning the interpretation or application of this agreement shall be decided by the Tribunal upon request of either Iran or the United States", and according to paragraph 17 of the General Declaration, and Article II, paragraph 3 of the Claims Settlement Declaration, any dispute arising between the parties as to the interpretation of any provision of the General Declaration may be submitted by either party to binding arbitration by the Tribunal. On that dual basis, the Tribunal has not only the power but the duty to give an interpretation on the point raised by Iran.
- B. The jurisdiction of the Tribunal over claims by Iran, the United States, and their nationals, is defined by article II of the Claims Settlement Declaration. As it is said in the first paragraph of that article, the Tribunal is "established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counter claim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim".
- The same paragraph excludes, however, two categories of claims: on the one hand, certain claims arising out of the events of November 1979, and the Islamic Revolution in Iran, and, on the other hand, those arising under a binding contract specifically providing for "the sole jurisdiction of the competent Iranian Courts".
- According to the 2nd paragraph of the same article, "the Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual agreements", and, as noted above, the 3rd paragraph provides that the Tribunal shall have jurisdiction over any dispute as to the interpretation or

performance of any provision of the General Declaration.

Further specific grants of jurisdiction are found in paragraph 4 of article VI of the Claims Settlement Declaration, which, as it has already been said, also gives jurisdiction to the Tribunal for the interpretation or application of this agreement, and in paragraph 2(B) of the related undertakings of the two Governments, concerning possible disputes among banking institutions.

It can easily be seen that the parties set up very carefully a list of the claims and counter claims which could be submitted to the arbitral tribunal. As a matter of fact, they knew well that such a Tribunal could not have wider jurisdiction than that which was specifically decided by mutual agreement.

They mentioned only on that list, aside from requests for interpretation and disputes between the Governments, claims which would be made by nationals of one of the two States. Certainly, they admitted the counter claims submitted by Iran or the United States against nationals of the other State, but under restrictive conditions which are detailed in paragraph 1 of Article II of the Claims Settlement Declaration.

Such a right of counter claim is normal for a respondent, but it is admitted only in response to a claim and it does not mean, by analogy, that each State is allowed to submit claims against nationals of the other State. It means, a contrario, just the opposite. Certainly also, several specified sorts of claims are expressly excluded by the same paragraph, but such exclusion is in "the framework" of this paragraph, i.e.: concerning claims made by citizens against States. Such specific exclusions do not mean that, outside of that framework, any claim which has not been excluded, should be admitted.

- C. Iran pointed in its request and its argument to the principle stated in paragraph B of the General Declaration that "all litigation" should be terminated "between the Government of each party and the nationals of the other", and asserted that, except for formal and expressed exclusions, jurisdiction would be conferred on the Tribunal concerning any claim. But in the same paragraph it is

expressly said that "it is the purpose of both parties to terminate all litigation", "within the framework and pursuant to the provisions of the two Declarations".

Thus, one must look at the specific provisions of the two Declarations for the implementation of this purpose.

The provisions of each Declaration must be completed by the provisions of the other.

The General Declaration sets up only principles about non intervention in Iranian affairs, return of Iranian assets, and settlement of claims, as well as return of the assets of the family of the former Shah. It is not self sufficient as far as settlement of claims is concerned. Not only does the General Declaration not confer on the Tribunal jurisdiction independently of the Claims Settlement Declaration, but it needs that complementary text. Moreover, it is doubtful that there is any inconsistency between them, because the litigations to be terminated in January 1981, to which the General Declaration referred, were litigations brought by nationals of the United States against Iran.

- D. If there were any inconsistency, it is a well recognised and universal principle of interpretation that a special provision overrides a general provision.

Roman law knew that principle under the words "specialia derogant generalibus", and in a recent case, the International Court of Justice agreed on the validity of that principle. See *Ambatielos Case (jurisdiction)*, I.C.J. Reports 1952P.28).

Moreover, the terms of the Claims Settlement Declaration are so detailed and so clear that they must necessarily prevail over the purported intentions of the parties, whatever they could have been.

III

Therefore, it is decided by a majority of 6 votes to 3,

that

the Iran - United States Claims Tribunal has no jurisdiction over claims to be filed by the Islamic Republic of Iran against United States citizens.

The opinion of the minority will be attached hereto.

The Hague,

Rendered, the twenty-first of December 1981

Signed, the thirteenth of January 1982

Gunnar Lagergren (President)

Pierre Bellet

Nils Mangard

Mahmoud M. Kashani

(dissenting)

Howard M. Holtzmann

Shafi Shafeiei

(dissenting)

George H. Aldrich

Seyyed H. Enayat

(dissenting)

Richard M. Mosk