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S CLAIMS TRIBUNAL

دیوان داری دعاوی ایران - ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

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Case No. 375

Date of filing: 11. Mar 88

**** AWARD**

- Type of Award

Final

- Date of Award

10. Mar 88

7 pages in English

9 pages in Farsi

**** DECISION**

- Date of Decision

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_____ pages in Farsi

**** CONCURRING OPINION** of _____

- Date

_____ pages in English

_____ pages in Farsi

**** SEPARATE OPINION** of _____

- Date

_____ pages in English

_____ pages in Farsi

**** DISSENTING OPINION** of _____

- Date

_____ pages in English

_____ pages in Farsi

**** OTHER; Nature of document:** _____

- Date

_____ pages in English

_____ pages in Farsi

140

IRAN UNITED STATES
CLAIMS TRIBUNAL

دادگاه داوری دعاوی
ایران - ایالات متحده

ثبت شد - FILED

Date 11 MAR 1988 تاریخ

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No. 375 شماره

CASE NO. 375

CHAMBER ONE

AWARD NO. 352-375-1

BENDONE-DEROSSI INTERNATIONAL,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances:

For the Claimant:

Mr. M. Silverman,
Mr. M. Clodfelter,
Attorneys.

For the Respondent:

Mr. Mohammad K. Eshragh,
Agent of the Government of
the Islamic Republic of
Iran,
Dr. A. Riyazi,
Legal Adviser to the Agent,
Mr. H. Gholami,
Assistant to the Agent,
Mr. M. Hojati Emami,
Legal Adviser to the
Ministry of Defence,
Mr. H. Sarian,
Representative of the
Islamic Republic of Iran Air
Force.

Also Present:

Mr. M. F. Raboin,
Deputy Agent of the
Government of the United
States of America.

I. INTRODUCTION

This claim originally sought relief based on an award issued by the International Chamber of Commerce ("ICC"). The claim was later withdrawn because the Claimant enforced the award in Germany. At the time the claim was withdrawn, however, counterclaims had been filed by the Respondent and were pending before the Tribunal. The issue at this stage of the proceedings, therefore, is whether the Tribunal has jurisdiction over these counterclaims.

II. THE PROCEEDINGS

1. On 18 January 1982, BENDONE-DEROSI INTERNATIONAL ("the Claimant") filed a Statement of Claim with the Tribunal in which it sought an award of U.S. \$940,705 together with interest and costs against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent"). The claim is based on an award of damages in the Claimant's favour rendered by a sole arbitrator under the Rules of the ICC on 15 December 1980. The claim before the ICC was based on a contract between the Claimant and the Iranian Air Force dated 15 January 1978 for the sale and purchase of 70,000 military uniforms.

2. The Respondent filed a Statement of Defence on 4 January 1984 in which, while defending on the merits, it argued, inter alia, that the Tribunal "is not established to enforce awards issued by other Tribunals". It raised counterclaims for damages totalling U.S. \$2,484,400 based on the Claimant's alleged breach of the underlying sales contract.

3. On 4 April 1984, the Respondent filed a Petition in which it stated that the Claimant had sought to enforce the ICC award by obtaining an attachment order in the Frankfurt-am-Main Regional Court on 9 June 1983 in respect of certain property owned by the Respondent. The Respondent requested the Tribunal to issue an order staying such

alternative, to address the issue of jurisdiction over the counterclaims at a hearing.

7. On 19 January 1987, the Respondent filed a request that proceedings on the counterclaims continue, contending that, once the Claimant had invoked the Tribunal's jurisdiction, the Respondent's right to pursue its counterclaims was unaffected by the purported withdrawal of the claim.

8. In an Order filed on 4 March 1987, the Tribunal scheduled a hearing "on the issue of jurisdiction over the Claim and the Counterclaim". The hearing was held on 20 October 1987.

III. REASONS FOR AWARD

9. The principal claim in this Case has become moot and has been withdrawn by the Claimant. At the time of the withdrawal, however, counterclaims had been filed and were pending before the Tribunal. Once a jurisdictionally sound counterclaim is pending before the Tribunal, the withdrawal of the principal claim does not divest the Tribunal of its jurisdiction over the counterclaim. See Computer Sciences Corp. and The Government of the Islamic Republic of Iran et al, Award No. 221-65-1, p. 55 (16 Apr. 1986) citing Behring International, Inc. and Islamic Republic Iranian Air Force et al, Interim and Interlocutory Award No. ITM/ITL 52-382-3, p. 38 (21 June 1985). Therefore, the issue raised at this stage of the proceedings is whether the counterclaims filed by the Respondent are themselves within the Tribunal's jurisdiction.

10. The criteria for a finding of jurisdiction over a counterclaim are well established: the counterclaim must, in the words of Article II, paragraph 1 of the Claims Settlement Declaration, arise out of "the same contract, transaction or occurrence that constitutes the subject matter" of the claim, and it must have been "outstanding" at the date of the Claims Settlement Declaration, 19 January

1981. It is a logical prerequisite to such a finding that the claim to which the counterclaim relates is within the jurisdiction of the Tribunal.

11. At the time it rendered its Interim Award, the Tribunal had reason to express doubts, on the basis of the material then before it, whether a claim which was based on an award previously rendered by another arbitral body was within its jurisdiction. The Tribunal noted:

"Though it is also presented as a debt owed by the Respondent to the Claimant, the Tribunal cannot escape the impression that what the Claimant is in fact seeking ... is the enforcement of the ICC arbitration award through the medium of the Security Account"

Interim Award No. ITM 40-375-1, p. 5 (4 June 1984).

12. The Tribunal observed that, at that stage of the proceedings, it did not "consider it a reasonable interpretation of the Algiers Declarations that it should act as a court issuing exequatur or that it should otherwise be empowered to enforce arbitral awards of other, independently constituted arbitral tribunals."

13. In further pleadings addressing the basis of the claim, the Claimant has sought to establish that its claim is founded either on debt, in the sense of a debt created by the valid and binding award of the ICC, or on the contract, whether express or implied, to arbitrate and to abide by the resulting arbitral award. Such a contract might either be based directly on the terms of reference for the ICC arbitration, signed by both parties on 25 June 1980, or otherwise construed as an implied agreement to comply with the terms of the award. In arguing that its claim was within the Tribunal's jurisdiction, the Claimant cited numerous authorities tending to support the proposition that under the laws of the United States and certain other legal systems, there exists the possibility of instituting an action in contract or debt evidenced by an arbitral award,

as an alternative to an action seeking enforcement of the award itself.

14. Having examined the arguments raised in this context, the Tribunal is not persuaded that there is any reason to depart from the view initially expressed in the Interim Award as to the essential nature of the claim. Even if it were to be demonstrated that certain national legal systems afford the possibility of a suit in contract or debt based on an arbitral award, this would fall short of establishing, as a matter of comparative analysis, that such a cause of action is sufficiently widespread to amount to a "principle of commercial and international law" of the type envisaged by Article V of the Claims Settlement Declaration. Nor is it argued that such a contract is or should be governed by Iranian or United States law in the present Case.

15. Thus, in the circumstances of the present Case, the Tribunal does not find any basis to support a finding of jurisdiction over the claim.

16. In the absence of jurisdiction over the claim it is by now well established in the Tribunal's jurisprudence that any counterclaim which depends upon it must likewise fail. See e.g. William Bikoff and George Eisenpresser and Islamic Republic of Iran, Award No. 138-82-2 at 11 (29 Jun. 1984), reprinted in 7 Iran-U.S. C.T.R. at 7.

17. Contrary to the Respondent's argument, a party cannot be said to have "invoked" jurisdiction over a claim where no jurisdiction exists, so as to establish a basis on which a counterclaim might proceed. Further, the counterclaims in the present Case are based squarely on the underlying contract between the Parties, while the claim, as formulated, clearly does not arise out of that contract, but out of the ICC arbitral award. Thus the necessary relationship required by Article II, paragraph 1, of the

Claims Settlement Declaration is lacking, and the counterclaims must fail in any event.

18. Since the issue raised by the claim has become moot, and the claim has been withdrawn by the Claimant, it only remains for the Tribunal to dismiss the counterclaims for the reasons stated.

19. In view of the procedural history of this Case the Tribunal determines that each Party shall bear its own costs of arbitration.

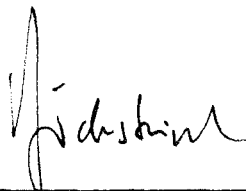
IV. AWARD

For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

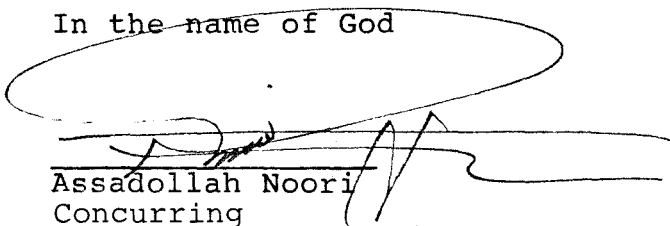
- i) proceedings on the claim of BENDONE - DEROSI INTERNATIONAL are hereby terminated;
- ii) the counterclaims of the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN are dismissed for lack of jurisdiction;
- iii) each Party shall bear its own costs of arbitration.

Dated, The Hague
10 March 1988




Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God



Assadollah Noori
Concurring



Howard M. Holtzmann
Concurring Opinion