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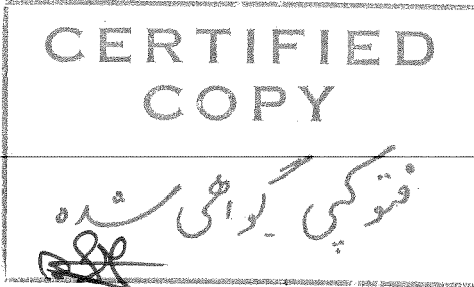
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CASE NO. B54

CHAMBER ONE

AWARD NO. ITL

82-B54-1

MINISTRY OF INDUSTRIES OF
THE ISLAMIC REPUBLIC OF IRAN,
CLAIMANT,
AND
THE UNITED STATES OF AMERICA,
RESPONDENT.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	30 MAR 1999
	تاریخ ۱۳۷۸ / ۱ / ۱۰

INTERLOCUTORY AWARD

I. PROCEDURAL HISTORY

1. On 15 January 1982, THE MINISTRY OF INDUSTRIES OF THE ISLAMIC REPUBLIC OF IRAN ("Claimant") filed a Claim against THE GOVERNMENT OF THE UNITED STATES OF AMERICA ("Respondent"), seeking damages of at least U.S.\$1,920,000, plus interest and costs, allegedly incurred as a result of the Respondent's having withheld export permits following the signing of the Algiers Declarations. The Claimant based its Claim specifically on losses occasioned by the breach of a contract concluded on 5 May 1976 ("1976 contract") between Westinghouse Electric S.A. ("Westinghouse S.A."), a wholly-owned subsidiary of Westinghouse Electric Corporation ("Westinghouse"), a U.S. corporation, and the Industrial Development and Renovation Organization of Iran ("IDRO"), on behalf of Moto Gen, organized in Iran under the laws of Iran.

2. On 19 April 1982, the Respondent filed a "Petition" seeking an order dismissing the Claim for lack of jurisdiction on the basis of Article 21(3) of the Tribunal's Rules of Procedure ("Tribunal Rules"). Further, the Respondent requested, in accordance with Article 21(4) of the Tribunal Rules, that the Tribunal treat the Petition as raising a preliminary question and not require the United States to file a Statement of Defense for a Claim that is manifestly not within this Tribunal's jurisdiction.

3. On 3 June 1982, the Tribunal invited the Claimant to respond to the Petition. On 30 September 1982, the Claimant submitted its Reply to this Petition. In the Reply the Claim-

ant, in addition to the United States Government, treats Westinghouse as a Respondent and seeks relief from both.

4. On 19 November 1982, the Tribunal ordered the Claimant to file details regarding the amount of damages incurred and the dates upon which the damages arose. The Claimant was also ordered to submit evidence in support of its Claim, including copies of i) the 1976 contract; ii) a note delivered by Westinghouse during the negotiations in October 1981; and iii) the complaint filed by Westinghouse before the United States District Court for the Southern District of New York, relied on by the Claimant in its Statement of Claim.

5. On 1 August 1983, after having been granted two extensions, the Claimant filed the following evidence requested by the Tribunal: (i) the minutes of the meeting on 12-13 October 1981 together with two notes exchanged between the Parties, one of which is outlining Westinghouse's costs; and (ii) a copy of the Complaint filed by Westinghouse before the District Court for the Southern District of New York. The Claimant also filed additional documents, not specifically requested by the Tribunal, relating to the contractual relationship between IDRO/Moto Gen and Westinghouse.

6. On 1 November 1984, the Claimant filed the remaining documents requested by the Tribunal, i.e., the 1976 contract and the documents related to purchase orders for goods never received.

7. On 12 June 1987, the Tribunal invited the Parties to submit whatever pleadings and documents they intended to rely on in this Case and pronounced that, unless either Party re-

requested an oral Hearing, "this Case [would be] decided by the Tribunal on the basis of the documents submitted."

8. On 10 September 1987, the Respondent filed a "Statement in Support of Petition of the United States for an Order Dismissing Claims for Lack of Jurisdiction", in which the Respondent renewed its request that the Claim be dismissed.

9. On 10 September 1987, the Claimant filed a letter in which it requested the Tribunal to clarify its Order of 12 June 1987 regarding whether it intended to rule on its jurisdiction as a preliminary question or whether it would decide the merits as well. On 5 October 1987, the Tribunal responded to this letter by an Order, providing, inter alia, that:

[u]nless by 10 December 1987 either Party has filed a request for an oral Hearing on the jurisdictional issues in this Case, the Tribunal intends to decide those jurisdictional issues on the basis of the documents submitted. In the event the Tribunal determines that it has jurisdiction, it will issue Orders concerning further proceedings.

10. After having been granted four extensions, the Claimant on 22 November 1988 was given a final extension until 27 December 1988 to submit any further documents and pleadings regarding the Tribunal's jurisdiction.

11. The 22 November 1988 Order also stated that unless the Claimant requested a Hearing on jurisdictional issues by 27 December 1988, the Tribunal would decide its jurisdiction on the basis of the documents submitted. The Claimant did not file a response to this Order. As neither Party has requested

a Hearing, the Tribunal determines the question of jurisdiction over this Case on the basis of documents submitted.

II. FACTS AND CONTENTIONS

II.1 Claimant's Arguments

12. The Claimant bases its Claim on losses caused by the breach of the 1976 contract. The subject matter of the contract was the sale of electric motor components by Westinghouse S.A. to IDRO, for use by Moto Gen. Sales pursuant to the contract continued until the United States barred by executive action¹ the export of goods to Iran in the period following November, 1979. The Claimant therefore contends that although Westinghouse S.A. stood ready and willing to comply with the 1976 contract terms, it was prevented from doing so because of the trade embargo imposed by the United States and the non-issuance of export permits for the goods following the conclusion of the Algiers Declarations.

13. The Claimant specifies three categories of damages:

(i) damages suffered by Moto Gen, and consequently by the Claimant, incurred as a result of having to acquire the ordered goods from third parties at higher prices;

(ii) damages suffered as a result of claims presented to Moto Gen by third parties;

¹ Executive Order No. 12170, 44 Fed. Reg. 65279 (1979).

(iii) damages incurred while the workshop of Moto Gen lay idle awaiting replacement components, including but not limited to loss of profits and fixed costs for idle production resources.

14. The Claimant asks the Tribunal to establish its jurisdiction over the Case and refers to several, alternative grounds upon which jurisdiction can be found. First, the Claimant argues that the Respondent exerted control over Westinghouse within the meaning of Article VII, paragraph 4, of the Claims Settlement Declaration ("CSD")² and thus is responsible for the breached 1976 contract.

15. According to the Claimant, pursuant to Article VII, paragraph 4, of the CSD "the United States" means the Government of the United States, and any agency, instrumentality or entity controlled by the Government of the United States or any political subdivision thereof. The type and manner of "control" expressed in this paragraph involves the control emanating from the Government's sovereign rights, especially since the enforcement of such control has been determined by that paragraph to be carried out through the Government's political agencies.

16. In the Claimant's view, this kind of control, which derives from a government's sovereign rights, differs from the control described in Article VII, paragraph 2 of the CSD, which deals with nationals and the control of shareholders of

² 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, dated 19 January 1981, reprinted in 1 Iran-U.S. C.T.R. 9.

a firm. The Claimant further argues that firms or businesses over whose foreign dealings the United States Government exerts control due to its national and global interests and political considerations are in a similar situation as multinational corporations which engage in the purchase and sale of weaponry, aircraft, technological and scientific services, etc.

17. According to the Claimant, Westinghouse is such a corporation, whose international dealings do not take place without the approval of the United States Government. Consequently, since the probability exists that the Respondent exerted control over the subject matter of this Claim from the commencement of the transaction through its termination, it cannot deny its responsibility and is obligated to compensate the Claimant for the damages it suffered.

18. Second, the Claimant argues that General Principle B of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981 ("General Declaration")³ provides an additional basis for jurisdiction. The Claimant asserts that the purpose of General Principle B is to settle all claims existing between the two Governments.

19. Finally, the Claimant argues that the Respondent has pledged to return Iran's financial position to that existing prior to 14 November 1979, pursuant to General Principle A of the General Declaration. In violation of this commitment, the Respondent has withheld export permits following the signing

³ Dated 19 January 1981, reprinted in 1 Iran-U.S. C.T.R. 3.

of the Algiers Declarations. The Respondent has therefore breached its obligations under the Algiers Declarations by failing to arrange for the transfer of the properties in question. The Claimant asserts that, as a consequence, the Respondent must be found responsible for the losses it suffered.

20. In its submission of 30 September 1982, the Claimant names not only the United States Government but also Westinghouse as a Respondent. The Claimant moreover declares that the Respondent's objection to the jurisdiction is in reality a defense of Westinghouse's indebted position and constitutes an implicit admission. According to the Claimant, this acknowledgement leads to the conclusion that the Respondent was involved and responsible for its losses.

II.2 Respondent's Arguments

21. The Respondent refers to the Tribunal's Decision in Case No. A2⁴ and concludes that Article II of the CSD vests the Tribunal with jurisdiction over three categories of claims or disputes. Paragraph 1 of Article II authorizes the Tribunal to hear certain claims of nationals of one State against the Government of the other. Paragraph 2 vests the Tribunal with jurisdiction over "official claims" of one Government against the other "arising out of contractual arrangements between them for the purchase and sale of goods and services." Paragraph 3 grants the Tribunal jurisdiction over disputes between the two Governments "as to the interpretation or performance

⁴ Decision in Case No. A2, DEC 1-A2-FT (26 Jan. 1982), reprinted in 1 Iran-U.S. C.T.R. 101.

of any provision of [the General Declaration]." Hence, according to the Respondent these three paragraphs constitute an exhaustive list of the matters over which this Tribunal has jurisdiction and none of the three is applicable to this Claim.⁵

22. The Respondent points out that the Claimant is an agency, instrumentality or entity controlled by the Government of Iran and is not, therefore, a "national of Iran" entitled to bring claims under Article II, paragraph 1 of the CSD. The Respondent further states that the Claim clearly does not come within the Tribunal's jurisdiction under paragraph 1, because Iran has expressly waived such claims. In paragraph 11 of the General Declaration the United States agreed to withdraw its claims against Iran, then pending before the International Court of Justice, and thereafter to bar and preclude the prosecution against Iran of any pending or future claim of the United States or a United States national arising out of Iran's unlawful seizure of the United States Embassy and the United States diplomatic and consular personnel. The Respondent argues that Iran in return expressly agreed in Article II, paragraph 1 of the CSD, that the Tribunal's jurisdiction would not include "claims arising out of the actions of the United States in response to the conduct described in [paragraph 11 of the General Declaration]." Thus, according to the Respondent, the Claim indisputably arises out of the Respondent's counteraction to the conduct described in paragraph 11

⁵ The Respondent adds that "[t]he Tribunal also has jurisdiction over certain claims pursuant to paragraph 2(B) of the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with Respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, of January 19, 1981 ...", but that that jurisdiction is not relevant to this Case.

of the General Declaration and hence is excluded from the Tribunal's jurisdiction by the express terms of Article II, paragraph 1 of the CSD itself.

23. The Respondent next notes that the Tribunal's jurisdiction under Article II, paragraph 2 of the CSD, is limited to claims based on "contractual arrangements between [the United States and Iran] for the purchase and sale of goods and services". According to the Respondent, because the Statement of Claim does not even allege the existence of such contractual arrangements, it does not give rise to a claim under paragraph 2.

24. The Respondent contends that, not only was it not a party to the 1976 contract, but that it does not "control" Westinghouse within the meaning of Article VII, paragraph 4, of the CSD. Presumably the Claimant asserts that the Respondent should be held responsible for any breach of the 1976 contract, but such an assertion is completely unsupported and incorrect. According to the Respondent, Tribunal precedent establishes that the issue whether there is an agency or control relationship between the United States and Westinghouse must be determined by reference to United States law. In Foremost Tehran Inc., et al. the Tribunal stated that "[t]he two main indicators of government control of a corporation are the identity of its shareholders and the composition and behaviour of its board of directors, which must be examined together."⁶ Where individual nationals own the shares of a corporation and in that capacity have the power to elect the board of direc-

⁶ Foremost Tehran Inc. et al. and The Government of the Islamic Republic Iran, et al., Award No. 220-37/231-1, p. 19 (11 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 229, 241-2.

tors, the entity is not considered controlled or managed by the Government.⁷

25. The Respondent submits that as a result, under United States law, Westinghouse is a non-governmental corporate entity of United States nationality and does not fit within the meaning of Article VII, paragraph 4 of the CSD, as construed by this Tribunal. Westinghouse is a privately owned corporation organized and existing under the laws of the State of Pennsylvania. Westinghouse S.A. is a non-governmental corporate entity of Swiss nationality. The United States has no power to appoint and to dismiss managers or directors in charge of the management of Westinghouse or Westinghouse S.A. Nor does the United States own any shares in either of these companies. Westinghouse and its subsidiaries do not consider themselves to be entities of the United States Government.

26. The Respondent argues that the Claimant has made no attempt to show such control by the Respondent. The Claimant has also made no connection between the Respondent and Westinghouse or any of its subsidiaries, including Westinghouse S.A. Instead, it simply states that the Respondent "controls" Westinghouse because the Respondent has "national and global interests" which lead it to exert control over the "foreign dealings" of corporations such as Westinghouse. The Respondent is uncertain of the Claimant's contention, but maintains that such a bald, open-ended assertion must be rejected as a basis of jurisdiction under the Declarations. In effect, according

⁷ The Respondent refers to American Housing International Inc. and Housing Cooperative Society of Officers of State General Gendarmerie, et al., Award No. 117-199-3, p. 6 (19 Mar. 1984), reprinted in 5 Iran-U.S. C.T.R. 235, 238-9.

to the Respondent, the Claimant is trying to substitute the United States as a Respondent because it is precluded from bringing the Claim against the entity with which it had a contractual relationship, Westinghouse S.A.⁸

27. In the view of the Respondent, the Claimant appears to argue, by referring to General Principles A and B of the General Declaration, that "contractual arrangements" are not necessary for this Tribunal's jurisdiction under Article II, paragraph 2, of the CSD. If the Tribunal accepts the Claimant's argument as regards General Principles A and B, this would be tantamount to allowing these Principles to serve as independent bases of jurisdiction. The Respondent argues that the Tribunal rejected the argument in Case No. A2,⁹ and that the obligations of the United States under Paragraph A were to release Iran's assets held in the United States and to lift the trade sanctions lawfully imposed in response to the attack on the United States Embassy in Tehran. The United States complied fully with this undertaking by issuing Executive Orders 12276 through 12285 on 19 January 1981. These Executive Orders were negotiated simultaneously with the Algiers Declarations

⁸ The Respondent asserts that: "[t]he documents submitted by Iran indicate that when representatives of IDRO/Moto Gen and Westinghouse allegedly met on October 12 and 13, 1981 in Austria to discuss claims existing between them, Iran presented to Westinghouse virtually the same claim for damages that it presents before this Tribunal."

⁹ Supra, footnote 4. In addition, the Respondent refers to The Navy of the Government of the Islamic Republic of Iran and General Dynamics Corporation (Pomona Division) et al., Award No. 299-957-1, p. 4 (22 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 251, 253; The Ministry of National Defence of the Islamic Republic of Iran and The Government of the United States of America et al., Award No. 247-B59/B69-1, pp. 4-5 (15 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 33, 35-36.

and Iran was provided with a virtually identical text of the Executive Orders before it signed the Declarations.¹⁰ Iran thus was fully aware of the precise measures that the United States intended to undertake in order to "restore the financial position of Iran" and acquiesced in those measures.

28. Additionally, according to the Respondent, the Claimant has completely misconstrued General Principle B. In that Paragraph the United States undertook specific obligations, *i.e.*, (1) to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran; (2) to nullify all attachments and judgements obtained therein; (3) to prohibit all further litigation based on such claims; and (4) to bring about the termination of such claims through binding arbitration. All of these obligations were directed at termination or suspension of certain suits or actions against Iran by United States nationals. These measures, according to the Respondent, had nothing to do with claims by Iran against the United States and cannot be read to obviate the need for a "contractual arrangement" for Article II, paragraph 2 jurisdiction.

29. Finally, the Respondent points out that the Tribunal's jurisdiction under Article II, paragraph 3 of the CSD, extends to disputes "as to the interpretation or performance of any provision of [the General Declaration]." The Statement of Claim does not allege such a dispute. In any event, a claim based on the Respondent's economic sanctions against Iran prior to the conclusion of the Algiers Declarations of 19

¹⁰ The Respondent refers to the Affidavit of Roberts B. Owen, United States Exhibit IV F-1 to the Statement of Defense of the United States to Claim No. IV (F), Case No. A15.

January 1981, cannot serve as a basis for disputes over the interpretation or performance of those Declarations. Jurisdiction over the Claim cannot, therefore, be based on paragraph 3.

30. The Respondent concludes that there is no basis for maintaining that the Tribunal has jurisdiction over the Claimant's Claim. The Respondent, therefore, in accordance with Article 21, paragraph 3, of the Tribunal's Rules, requests the Tribunal to dismiss the Claim.

III. REASONS FOR THE AWARD

31. The Tribunal's jurisdiction is set forth in Article II, paragraphs 1-3, and Article VI, paragraph 4, of the CSD. For the Tribunal to have jurisdiction, this Claim must fall within one of those categories. The Tribunal considers the Claims against Westinghouse and the United States separately.

III.1. Claims against Westinghouse

32. The Tribunal notes that the Claimant in its submission of 30 September 1982 treats Westinghouse, in addition to the United States Government, as a Respondent and seeks relief from it as well. Nevertheless, the Statement of Claim named only the Government of the United States of America as Respondent.

33. The Claimant has at no stage of the proceedings officially requested permission to add Westinghouse as a Respondent. Nor has the Claimant explained why it regards Westing-

house as a Respondent, particularly as the Claimant stated in its Statement of Claim that: "Westinghouse has always been prepared and willing to hold to its trade ties with Iran, supplying [sic] the latter with the goods Westinghouse manufactures" and that "the breach by Westinghouse of its obligations under the terms of 5th May, 1976 Agreement can only be attributed to the U.S. imposition of trade embargo on Iran."

34. The Tribunal refers to Article 20 of its Rules and Article III, paragraph 4, of the CSD where it is stated that "[n]o claim may be filed with the Tribunal more than one year after the entry into force of this Agreement or six months after the date the President is appointed, whichever is later." The Tribunal has in Refusal to File Claim of the Ministry of Economic Affairs and Finance of the Islamic Republic of Iran¹¹, stated that:

[t]he question arises whether the Claimant is entitled to introduce a new claim and a new Respondent once the closing date for the filing of Statements of Claim has passed... In view of this, the Tribunal does not consider the introduction of the United States Government as a Respondent to be an amendment of the Statement of Claim which can be permitted under Article 20 of the Tribunal Rules.

¹¹ Refusal to file claim of the Ministry of Economic Affairs and Finance of the Islamic Republic of Iran, Decision No. DEC 33-REF-24-3, p. 3 (4 May 1984), reprinted in 6 Iran-U.S. C.T.R. 27, 28. See also Refusal to Accept the Claim of Raymond International (U.K.) Ltd., Decision No. DEC 18-Ref 21-FT, reprinted in 1 Iran-U.S. C.T.R. 394, 395, where the Tribunal stated: "to substitute a new Claimant for the original one is tantamount to the filing of a new claim and cannot be regarded simply as an amendment to the existing claim, timely received by the Registry."

35. The Tribunal therefore concludes that it is impermissible to bring a new claim by introducing a new Respondent after 19 January 1982, which is the Tribunal's filing deadline provided for in Article III, paragraph 4, of the Claims Settlement Declaration and paragraph 3 of Administrative Directive No. 1, of 4 July 1981.

36. Further, even were the introduction of Westinghouse as a Respondent not deemed impermissible as a result of the procedural considerations discussed above, it would also not be allowed on other jurisdictional grounds. Specifically, the Tribunal recognizes that the Claimant is a political subdivision and instrumentality of the Government of Iran within the meaning of Article VII, paragraph 3 of the CSD, and that IDRO has been found by the Tribunal to be controlled by the Government of Iran within the meaning of the same provision.¹² The Tribunal has also acknowledged Westinghouse as a United States national.¹³ The Full Tribunal stated in its Decision in Case No. A2¹⁴ that the Tribunal has no jurisdiction over claims by one Government against the nationals of the other. That decision has been affirmed in later decisions by the Chambers, e.g., The Navy of the Government of the Islamic Republic of

¹² See Bechtel, Inc. et al. and The Government of the Islamic Republic of Iran et al., Award No. 294-181-1, para. 31 (4 Mar. 1987), reprinted in 14 Iran-U.S. C.T.R. 149, 157. Also Harnischfeger Corp. and Ministry for Roads and Transportation et al., Award No. 144-180-3, pp. 12-13 (13 Jul. 1984), reprinted in 7 Iran-U.S. C.T.R. 90, 97-8.

¹³ See, e.g., Westinghouse Electric Corporation and The Islamic Republic of Iran et al., Partial Award on Agreed Terms No. 177-389-2 (10 May 1985), reprinted in 8 Iran-U.S. C.T.R. 183. It is not disputed that Westinghouse S.A. is a wholly owned subsidiary of Westinghouse and that it is a private company incorporated in Switzerland.

Iran and General Dynamics Corporation (Pomona Division) et al., Award No. 299-957-1 and The Ministry of National Defence of the Islamic Republic of Iran and The Government of the United States of America et al., Award No. 247-B59/B69-1.¹⁵ Therefore, the Tribunal in this Case must conclude that it does not have jurisdiction over such a direct Claim by the Islamic Republic of Iran against a United States national, Westinghouse.

III.2. Claims against the Government of the United States

37. The Tribunal now turns to examine Article II, paragraph 1, of the CSD. It confers jurisdiction over claims of nationals of the United States against Iran and claims of nationals of Iran against the United States. As discussed in paragraph 36, neither the Claimant nor IDRO constitutes an Iranian "national," since neither is a natural person, nor a legal entity fifty percent or more of whose capital stock is held by natural persons, as required by Article VII, paragraph 1 of the CSD. It follows that the Ministry's Claim cannot be one of the "claims of nationals" defined in Article VII, paragraph 2 of the CSD, so as to fall within the Tribunal's jurisdiction within the meaning of Article II, paragraph 1 of the CSD.

38. Article II, paragraph 2 of the CSD, confers jurisdiction over "official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services." In order to meet the requirements of Article II, paragraph 2

¹⁴ See, supra, footnote 4.

¹⁵ See, supra, footnote 9.

of the CSD, the Claimant needs to, at the least, allege the existence of a contract between it and the United States. The Claimant has not done this. Instead, the Claimant has brought its Claim based on alleged interference on the part of the Respondent with the performance of a "contractual arrangement" between Iran and a third-party, Westinghouse S.A., "for the purchase and sale of goods and services." The Claim does not therefore arise out of a "contractual arrangement" between Iran and the United States within the meaning of Article II, paragraph 2 of the CSD, unless Westinghouse S.A. is somehow regarded to come within the definition of "the United States" in Article VII, paragraph 4, of the CSD.

39. In fact, the Claimant has made a general statement in its Reply that "the U.S. Government exerts control over its multinational corporations and is therefore, responsible for their actions." The Claimant further states that Westinghouse is "one of the large enterprises whose international dealings do not take place without the approval of the United States Government." No facts, however, are forwarded in support of this contention insofar as it concerns either Westinghouse S.A. or Westinghouse. Moreover, the Claimant has tied the definition of "control" in Article VII, paragraph 4 of the CSD, to the governmental power to grant or withdraw export licenses. This power, whose use gave rise to the losses alleged in the Claim bears no relation to the kind of control over legal entities which is required under the jurisdictional definitions of Article VII, paragraph 4 of the CSD. Thus, the Claim does not fall within the Tribunal's jurisdiction within the meaning of Article II, paragraph 2 of the CSD.

40. The Tribunal has jurisdiction pursuant to Article II, paragraph 3 of the CSD, over disputes "as to the interpreta-

tion or performance of any provision" of the General Declaration as specified in its Paragraphs 16-17. The Claimant has alleged that the United States has failed to restore the financial position of Iran to that which existed prior to 14 November 1979 by withholding export permits following the signing of the Algiers Declarations. The Claimant's view is therefore that the Claim emanates from the United States obligations under General Principle A of the General Declaration. Moreover, the Claimant also relies on General Principle B of the General Declaration as a basis for the Tribunal's jurisdiction.

41. The Tribunal finds that Case B54 resembles Part II:A in Case No. A15, which is pending before the Full Tribunal, although partly decided in 1992.¹⁶ In Part II:A, Iran demanded that the United States be ordered to arrange the transfer to Iran of all Iranian properties not yet transferred after the conclusion of the Algiers Declarations and to compensate Iran for all direct and indirect damages resulting from the alleged violation of obligations after 19 January 1981, *i.e.*, the failure to remove or modify earlier blocking Orders and Regulations. The Full Tribunal held that it had jurisdiction under paragraph 17 of the General Declaration and paragraph 3 of Article II of the CSD, since Part II:A is based upon the interpretation of General Principle A and the performance of the Parties thereunder.¹⁷

42. As in Case No. A15, the Parties in this Case disagree as to whether the Claim is excluded from the Tribunal's juris-

¹⁶ The Islamic Republic of Iran and The United States of America (Case No. A15 II:A and II:B), Partial Award No. 529-A15-FT (6 May 1992), reprinted in 28 Iran-U.S. C.T.R. 112.

¹⁷ Id. pp. 122, para. 25.

diction because it is related to "actions in response" to the conduct described in paragraph 11 of the General Declaration. The Tribunal also notes that the Parties disagree on the interpretation of General Principles A and B in so far as they relate to the issues raised in this Case. The Parties also have different views as regards the obligations General Principle A impose on the Respondent. Finally, the Parties take a divergent stand on the interpretation of paragraph 9 of the General Declaration.

43. Since only the Full Tribunal has jurisdiction over disputes or questions under Article II, paragraph 3, of the CSD, all the above-mentioned issues must be decided by the Full Tribunal.

44. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Claim of the MINISTRY FOR INDUSTRIES OF THE ISLAMIC REPUBLIC OF IRAN against WESTINGHOUSE ELECTRIC CORPORATION is dismissed for lack of jurisdiction.

(b) To the extent the Claim of the MINISTRY FOR INDUSTRIES OF THE ISLAMIC REPUBLIC OF IRAN against THE UNITED STATES OF AMERICA is based of Article II, paragraphs 1 and 2, of the Claims Settlement Declaration, it is dismissed for lack of jurisdiction.

(c) The dispute falls under Paragraph 17 of the General Declaration and Article II, paragraph 3, of the Claims Settlement Declaration. Therefore, this Case is reclassified and renum-

bered as Case No. A32, and pursuant to Presidential Order No. 1 of 19 October 1981, paragraph 1, as modified by Presidential Order No. 8 of 24 March 1982, Chamber One relinquishes jurisdiction with respect to this Case to the Full Tribunal.

Dated, The Hague,
30 March 1999

Bengt Broms

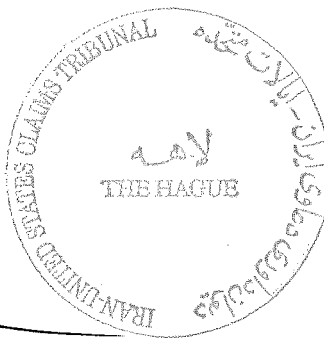
Bengt Broms

Chairman

Chamber One

~~In the Name of God~~

Assadollah Noori
Assadollah Noori



Charles T. Duncan

Charles T. Duncan