

دیوان عدالت بین المللی

B21-32
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ORIGINAL DOCUMENTS IN SA

Case No. B21

Date of filing: 17 APR 85

** AWARD - Type of Award Final
- Date of Award 17 APR 85
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
- Date _____
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** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi

B21

CASE NO. B-21

CHAMBER THREE

AWARD NO. 173-B21-3

IRANIAN CUSTOMS ADMINISTRATION,
Claimant,

and

THE UNITED STATES OF AMERICA,
Respondent.

DUPLICATE
ORIGINAL
نسخه برابر اصل

AWARD

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	17 APR 1985 ۱۳۶۴ / ۱۱ / ۲۸
No.	B21
	تاریخ
	شماره

I. FACTS AND CONTENTIONS

On 15 January 1982, the Iranian Customs Administration filed a Statement of Claim against the United States seeking an award of 50,748,618 rials for the Respondent's alleged failure to fulfill its obligations in connection with temporary importation of certain goods. Attached to the Statement of Claim were a list of the goods in question and copies of Letters of Guarantee issued by the United States Embassy in Tehran guaranteeing that "governing customs regulation will be followed" should certain goods not be re-exported within a stipulated period. The Claimant also demanded its costs of arbitration.

On 19 April 1982, the United States filed a Petition "for an Order Directing the Production of Documents". The United States asserted that the records relating to the transactions in question had been kept at its Embassy in Tehran prior to its takeover 4 November 1979, and asked that Iran be ordered to make these documents available.

Having been invited to respond to the above Petition the Claimant, in a submission filed on 27 August 1982, opposed it. The Claimant stated, inter alia, that "any allegation, concerning involvement or possession by the Government of the Islamic Republic of Iran in [sic] the alleged documents, is refuted."

On 15 November 1982, the United States filed its "Statement of Defence... and Request for Dismissal for Lack of Jurisdiction". On the same date the United States also filed its "Response ... to Petition for Production of Documents". The Respondent reiterated its request for production of the relevant records, and furthermore contended that in any event the Tribunal lacks jurisdiction over the claim. It was argued by the United States that the claim

does not fall within the Tribunal's jurisdiction since it is an "official claim" of one government against the other but is not one "arising out of contractual arrangements between them for the purchase and sale of goods and services" within the meaning of Article II(2) of the Claims Settlement Declaration, it being rather a customs dispute. The Respondent asked that its jurisdictional plea be treated as a preliminary question and that the claim be dismissed for lack of jurisdiction.

The United States also denied the merits of the claim. It admitted that from time to time certain goods were temporarily imported for the purpose of exhibition at the United States Trade Center and at the United States Pavilion at the International Fairgrounds, and that letters of guarantee similar to those attached to the Statement of Claim were issued in such contexts. In the absence of the pertinent records the Respondent, however, denied the importation of the particular goods and the issuance of the particular letters of guarantee in question. It further denied, inter alia, that the terms of the Letters of Guarantee imposed an obligation on its part to pay customs duties and charges. The United States also demanded its costs of arbitration.

On 21 February 1983, the Claimant filed a Reply refuting both the jurisdictional and other assertions of the Respondent. It was stated by the Claimant, inter alia, that "the Respondent's objection based on Article II, paragraph (2) of the Claims Settlement Declaration is incorrect", as there was "a binding relationship between the Customs Administration and the U.S. Embassy" to the effect that the Respondent was obligated to pay customs duties if the goods were not re-exported.

In an Order of 4 February 1983 the Tribunal stated that, after the filing of the above-mentioned Reply, "[i]t

is the Tribunal's intention to decide ... upon the jurisdictional issue raised by the Respondent, on the basis of the documents submitted by the parties."

II. REASONS FOR AWARD

It appears that the obligations which the Respondent allegedly has breached relate to the importation of certain equipment into Iran for the purpose of being displayed at the United States Trade Center in Tehran. The goods which allegedly were imported were allowed to be imported for a stipulated period of time free of customs duties and charges, but, by way of Letters of Guarantee addressed to the Customs Office of Mehrabad, the United States Embassy took upon itself the commitment that they would be re-exported within that period. In the relevant Letters of Guarantee attached to the Statement of Claim it was stated that

The Embassy will guarantee that if the goods in this consignment are not re-exported from Iran at the end of the period stipulated above governing Customs Regulation will be followed.

It is undisputed that the present case concerns a claim raised by an agency of one State Party against the other. As it is clear that the case does not involve an interpretative dispute envisioned by Article II (3) or Article VI (4) of the Claims Settlement Declaration, the only other possible jurisdictional basis for the claim is Article II (2) of the same Declaration. According to this provision

The Tribunal shall also have 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.

The question is whether the present claim arises out of such "contractual arrangements" between the two Governments. In addressing this question the Tribunal is called upon to interpret the quoted provision "in accordance with the ordinary meaning to be given to the terms of the treaty in their context." Article 31 (1) of the Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF. 39/27, 23 May 1969; reprinted in 8 I.L.M.679(1969).

Any responsibility to pay the customs charges in question arises from Iranian customs regulations rather than from any contract. Although it could be argued that through such Letters of Guarantee as may have been issued the United States Embassy entered into contractual arrangements to guarantee the fulfilment of the customs regulations, it is in any case not possible to hold that these arrangements constituted contracts "for the purchase and sale of goods and services". By the issuance of guarantees the Embassy did not undertake to purchase or sell goods or services but rather gave its assurance that the customs duties would be paid in case of non-re-exportation. Such undertakings do not constitute "contractual arrangements for the purchase and sale of goods and services" in the ordinary meaning of those words. That these words of Article II (2) are used in their ordinary meaning rather than to denote a very wide concept of "contract" becomes clear when the provision is compared with paragraph 1 of the same Article. In the latter clause words such as "debts, contracts... or other measures affecting property rights" are used to indicate the wider range of causes of action on which a claim of a national of Iran or of the United States can be based, thus emphasizing the more limited scope of the "official claims" based on "contractual arrangements" in accordance with paragraph 2. The Tribunal therefore concludes that the claim in this case falls outside the Tribunal's jurisdiction.¹

¹ The Tribunal earlier reached the same conclusion in another case between the same parties. See Iranian Customs Administration and United States of America, Award No. 105-B16-1, (24 January 1984).

III. AWARD

For the foregoing reasons,

THE TRIBUNAL HEREBY AWARDS AS FOLLOWS:

The claim of the Iranian Customs Administration is dismissed for lack of jurisdiction.

Each party shall bear its own costs of arbitration.

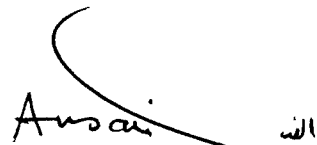
Dated, The Hague

17 April 1985

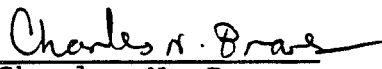


Nils Manbård
Chairman
Chamber Three

In the Name of God



Parviz Ansari Moin
Dissenting



Charles N. Brower