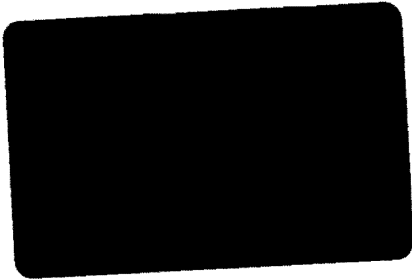
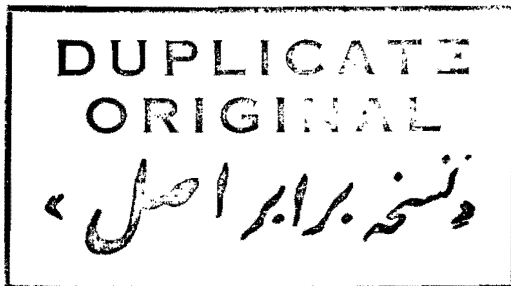


IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داورى دعاوى ایران - ایالات متحدہ



IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه داورى دعاوى ایران - ایالات متحدہ	
ثبت شد - FILED			
Date	۱۳۶۲ / ۱۱ / ۴		
24 JAN 1984			
No.	B-24 ۲۴ - ۱۰۶		

CASE NO. B-24

CHAMBER ONE

AWARD NO. 106-B-24-1

THE UNITED STATES OF AMERICA,
Claimant,
and
THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

I. Facts and Contentions

In a Statement of Claim filed on 19 January 1982 the United States seeks an award in the amount of \$ 32,190.51, together with interest and costs. The United States contends that the claim is based on two agreements between the United States Government and the United States Immigration and Naturalization Service, on the one hand, and the Government of Iran and Iran National Airlines Corporation ("Iran Air"), on the other hand.

The first of these agreements is the Immediate and Continuous Transit Agreement ("Transit Agreement") which permitted Iran Air to transport passengers through the United States for other foreign destinations without complying with certain United States immigration requirements. In this Agreement, the United States agreed to facilitate and guarantee the passage through the United States of alien passengers travelling on Iran Air, and to waive certain documentary requirements under United States law that would otherwise apply to such Iran Air passengers.

Paragraphs 4 and 6 of the Transit Agreement obligate Iran Air to reimburse the United States for salaries, including regular and overtime pay and expenses, of United States immigration officers for their services in maintaining custody of the alien passengers who are in transit on Iran Air.

Paragraph 7 of the Transit Agreement requires Iran Air to transport all aliens in immediate and continuous transit through the United States within the times set by the United States immigration officer. Each failure to comply with this requirement results in a liquidated damage charge of \$ 500.

The United States contends that Iran Air from 1978 through 1979 incurred unpaid charges for immigration services

and overtime charges in the amount of \$ 9,690.51 pursuant to paragraphs 4 and 6 of the Transit Agreement.

The United States also contends that Iran Air during the period 1976 through 1979 incurred unpaid liquidated damage charges pursuant to this Agreement in the amount of \$ 21,500 as a result of the airline's failure to maintain custody of alien passengers, brought into the United States en route to a foreign destination, in "immediate and continuous transit" from the United States within designated time periods.

The second of the agreements on which the claim is based is the Air Transport Services Agreement between the Government of the United States and the Government of Iran ("Air Services Agreement"). This Agreement established and provided for air services between Iran and United States. Under the Agreement, each Government undertook, among other things, to comply with the laws of the other with respect to the operation of international aircraft. In particular, in Article 5, paragraph (b), Iran agreed as follows:

The laws and regulations of [the United States] as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from or while within the territory of [the United States].

The United States position is that this provision incorporates into the Agreement, inter alia, Section 273 of the United States Immigration and Nationality Act, 8 U.S.C. §1323, which makes it unlawful for any person, including a transportation company, to bring into the United States, from any place outside the United States, an alien

who does not have a visa or whose visa has expired. If the carrier fails to check its passengers to determine that they have proper travel papers and an alien without a current visa is brought into the United States, the carrier is subject to a \$ 1,000 fine.

The United States contends that Iran Air, pursuant to the above-mentioned provisions, incurred in October 1978 an unpaid fine of \$ 1,000 by knowingly transporting into the United States an alien passenger not in possession of a valid visa.

Iran has denied the claims.

II. Reasons

The Islamic Republic of Iran has not raised any objections to the Tribunal's jurisdiction over the claims. However, the Tribunal holds that it has to determine ex officio whether it has jurisdiction in this case. Since the claims at issue are asserted by one of the Governments against the other, the Tribunal's jurisdiction is governed by Article II, paragraph 2, of the Claims Settlement Declaration. This paragraph provides that the Tribunal shall 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".

It is a well established principle of international law that provisions conferring jurisdiction upon an arbitral tribunal shall be interpreted in a restrictive manner. The question as to whether the Tribunal has jurisdiction over the claims in this case must be decided on the basis of this principle.

(i) Claims based on the Transit Agreement

The Transit Agreement was entered into by the Commissioner of Immigration and Naturalization on behalf of the United States, on the one hand, and Iran Air, on the other. The essence of that Agreement is that Iran Air undertakes to observe a number of rules specified in the Agreement in regard to non-United States passengers in transit to foreign countries. These undertakings by Iran Air include that all alien passengers brought into the United States under the Agreement shall be detained in quarters provided or arranged for by the airline, in the custody of immigration officers of the United States or such other custody as the Commissioner of Immigration and Naturalization may approve, provided that the airline shall reimburse the United States for salaries and expenses of immigration officers during such times as they are actually employed in maintaining custody of such alien passengers. The Agreement further provides that the airline shall maintain supervision of all such passengers at all times while they are in the United States and not in the actual custody of immigration officers or other custody approved by the Commissioner. In return for these undertakings by the airline, the United States agrees to waive certain documentary requirements as to alien passengers proceeding through the United States.

Such an agreement can be entered into only by a Government or any of its agencies, and there can consequently be no doubt that the claims based on the Transit Agreement are "official claims" within the meaning of Article II, paragraph 2, of the Claims Settlement Declaration. But the Transit Agreement cannot possibly be characterised as an arrangement for the sale and purchase of goods and services. It must be regarded as akin to an ordinary set of administrative or police regulations. As pointed out above, the essence of the Agreement is that the United States permitted Iran Air to transport passengers through the country for other foreign destinations without complying with certain United States immigration requirements, while Iran Air had to comply with

certain administrative rules specified in the Agreement. It is far from a natural reading of this Agreement to regard these mutual commitments by the Parties as a contractual arrangement for the purchase and sale of services. In this context, it has to be observed that the Transit Agreement does not contain any explicit obligation by the United States to provide immigration officers or facilities for the supervision of transit passengers. The Transit Agreement states that transit passengers shall be detained in quarters provided and arranged for by the airline, and that the airline shall maintain supervision of all such passengers whenever they are not in the actual custody of immigration officers or other custody approved by the Commissioner. Against this background, it is obvious that if the United States, despite the obligation of the airline to maintain supervision over the passengers, finds it necessary to take measures in order to arrange for supervision of passengers by immigration officers, such measures are taken by the United States in order to protect its own interest of preventing illegal immigration rather than as a service to the airline.

The Tribunal therefore concludes that the claims based on the Transit Agreement do not fall within the scope of Article II, paragraph 2, of the Claims Settlement Declaration and consequently are outside the jurisdiction of the Tribunal.

(ii) Claims based on the Air Services Agreement

The claim for a fine of \$ 1,000, relating to the transportation into the United States of an alien passenger without a valid visa in October 1978, is primarily based on Section 273 of the United States Immigration and Nationality Act, irrespective of the general obligation of Iran in Article 5, paragraph (b) of the Air Services Agreement to observe the laws and regulations of the United

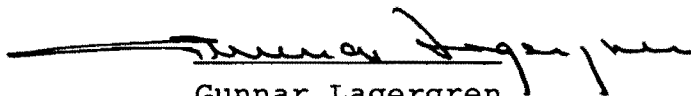
States as to the admission to or departure from the territory of that State of passengers, crew, or cargo of aircraft. Furthermore, the Air Services Agreement, which contains provisions regulating the air services between Iran and the United States, can by no means be characterised as a contractual arrangement for the purchase and sale of goods and services. This claim is therefore also outside the jurisdiction of the Tribunal.

III. Conclusions

The claims by the United States are dismissed for lack of jurisdiction.

Each Party shall bear its own costs of arbitration.

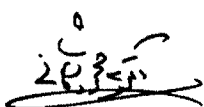
Dated, The Hague,
18 January 1984



Gunnar Lagergren

Chairman

Chamber One



Mahmoud M. Kashani



Howard M. Holtzmann

Dissenting Opinion as to the claim under the Transit Agreement; Concurring as to the claim under the Air Services Agreement.