

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعاوی ایران - ایالات متحدہ

16

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CASE NO. B40

CHAMBER TWO

AWARD NO. 330-B40-2

DUPLICATE
ORIGINAL
نسخه برابر اصل

IRAN NATIONAL GAS COMPANY,
Claimant,
and
UNITED STATES OF AMERICA,
Respondent.

AWARD

I. FACTUAL AND PROCEDURAL BACKGROUND

1. On 15 January 1982, the IRAN NATIONAL GAS COMPANY ("the Claimant") filed a Statement of Claim seeking 25,252 million Rials in damages from the UNITED STATES OF AMERICA ("the Respondent"). The claim arises from the economic sanctions imposed on Iran by the Respondent on 14 November 1979. These sanctions allegedly prevented the shipment of machinery and equipment procured by the Claimant, which in turn resulted in delays in the completion and productive operation of the Khangiran Gas Refinery, the Khangiran Gas Collection system, and related projects.¹

2. On 19 April 1982, the Respondent filed a "Petition of the United States for an Order Dismissing Claims for Lack of Jurisdiction."² In its Petition, the United States argues that the claim is excluded from the Tribunal's jurisdiction as it does not conform with the requirements of Article II of the Claims Settlement Declaration. In any event, the Respondent asserts that, as the claim arises from the imposition of economic sanctions, it is excluded from the Tribunal's jurisdiction by Article II, paragraph 1, of the Claims Settlement Declaration. In conclusion, the United States requests the Tribunal, in accordance with Article 21 of the Tribunal Rules of Procedure, to rule on its Petition as a preliminary question before proceeding further with the Case.

¹ The Statement of Claim does not purport to raise a dispute or question of interpretation or performance of the Algiers Declarations or, indeed, to relate to actions by the Respondent subsequent to the date those Declarations entered into force, that is, 19 January 1981.

² The Petition also sought similar relief in Case No. B46, Case No. A10, and Case No. B54. The first two Cases were subsequently terminated following requests for withdrawal by the Claimants. Case No. B54 is currently pending before Chamber One.

3. By Order filed on 20 November 1986, the Tribunal instructed the Claimant to file its comments on the Respondent's Petition, which it subsequently did on 26 August 1987. In its Reply, the Claimant denies that Iran has waived claims arising out of the imposition of economic sanctions and, more specifically, denies that such claims are covered by the exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration. In addition, in response to the Respondent's arguments that this claim does not fall within the specific grants of jurisdiction contained in Article II, the Claimant relies on a broader argument based on General Principle B of the General Declaration³ namely, the Parties' stated intention to settle disputes through arbitration.

4. On 29 September 1987, the Respondent sought the Tribunal's permission to file a "short Rejoinder" to the Claimant's Reply. Since both Parties have had the opportunity to present their views on the jurisdictional issue raised in this Case and in view of the Tribunal's decision infra, the Respondent's request is denied.

5. Neither Party has requested a Hearing. The Tribunal decides to determine the question of jurisdiction raised in this Case on the basis of the documents submitted.

II. REASONS FOR THE AWARD

6. The Tribunal notes that the claim was filed by the Iran National Gas Company under the signature of the Deputy Minister of Oil of the Islamic Republic of Iran. The Tribunal has previously determined that this Claimant is an

³ Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

entity controlled by the Government of Iran and that it clearly falls within the definition of "Iran" contained in Article VII, paragraph 3, of the Claims Settlement Declaration. See Dames and Moore and The Islamic Republic of Iran et al., Award No. 97-54-3 (20 December 1983) at p. 11; and Onesco, Inc. and National Iranian Gas Company, Award No. 254-263-2 (18 September 1986) at p. 3. Therefore, the claim is one between the two Governments and is an "official claim[]" the Tribunal's jurisdiction over which is defined in Article II, paragraph 2, of the Claims Settlement Declaration.

7. The Tribunal's jurisdiction over "official claims" is limited to those which arise out of contractual arrangements entered into between the two Governments for the purchase and sale of goods and services. In this Case, the Claimant has not alleged the existence of such a contract or contracts between itself and the Respondent. Indeed, it states categorically that the claim "resulted from the economic sanctions of the United States of America." Therefore, as the claim is an official claim but does not arise out of contractual arrangements of the type specified in Article II, paragraph 2, the Tribunal is satisfied that the claim is outside its jurisdiction. In view of this finding, the Tribunal finds it unnecessary to rule on the Parties' arguments as to the relevance of the exclusion set forth in Article II, paragraph 1, of the Claims Settlement Declaration.

8. The Claimant, however, also relies on General Principle B of the General Declaration as an alternative basis for jurisdiction in this Case. It argues that, notwithstanding the express reference to contractual arrangements for the purchase and sale of goods and services contained in Article II, paragraph 2, of the Claims Settlement Declaration, the stated intention of the two Governments was to settle all disputes through arbitration and, therefore, that the Claims

Settlement Declaration must encompass this Claim. The Full Tribunal has previously ruled that this expressed intention of the two Governments is qualified by the phrase which immediately precedes it, namely, "within the framework of and pursuant to the provisions of the two Declarations". See Decision No. DEC 1-A2-FT (26 January 1982). The Tribunal is of the view that if this claim as presented, is to be within the Tribunal's jurisdiction, it must be considered under the rubric of Article II, paragraph 2, of the Claims Settlement Declaration⁴. For the reasons stated above (see paragraph 7 supra) the Tribunal finds that the claim fails to satisfy the requirements of Article II, paragraph 2, of the Claims Settlement Declaration and must therefore be dismissed.

III. AWARD

9. For the foregoing reasons,


THE TRIBUNAL AWARDS AS FOLLOWS:

- (a) The claim of the Iran National Gas Company is dismissed for lack of jurisdiction.

⁴ See footnote 1 supra.

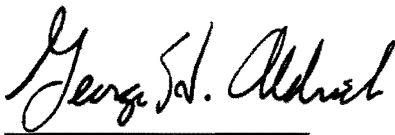
(b) Each Party shall bear its own costs of arbitration.


Dated, The Hague
20 November 1987



Robert Briner
Chairman

In the name of God,



George H. Aldrich

Hamid Bahrami-Ahmadi
Dissenting