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ORIGINAL DOCUMENTS IN SAFE

Case No. 111

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** AWARD - Type of Award Interlocutory
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18 pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
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** DISSENTING OPINION of _____
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IRAN-UNITED STATES CLAIMS

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دیوان داوری دعاری ایران - ایالات متحدہ

DUPLICATE
ORIGINAL

نسخہ برابر اصل

CASE NO. 111

FULL TRIBUNAL

AWARD NO. ITL 37-111-FT

INTERNATIONAL SCHOOLS
SERVICES, INC. (ISS),

Claimant,

and

NATIONAL IRANIAN COPPER
INDUSTRIES COMPANY (NICICO),

Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاری ایران - ایالات متحدہ	
ثبت شد - FILED		
Date	۱۳۶۲ / ۱۱ / ۱۷ 6 APR 1984	تاریخ
No.	111	شماره

INTERLOCUTORY AWARD

I. Background

This case involves the claim of International Schools Services, Inc. ("ISS") against the National Iranian Copper Industries Co. ("NICICO"), arising out of a contract between them pursuant to which ISS had established and operated a school in Iran for the children of NICICO's foreign employees.

ISS is a non-profit, non-stock corporation organized under the laws of the District of Columbia of the United States of America. While ISS has no stockholders, it appears undisputed that all of its directors are citizens of

the United States. The issue to be decided by the Full Tribunal in this case is whether the Claims Settlement Declaration confers upon the Tribunal jurisdiction over the claims of non-profit and non-stock entities such as ISS.

Claims Settlement Declaration Article VII(1)(b) provides:

1. A "national" of Iran or of the United States, as the case may be, means ... (b) a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock.

ISS had previously sued NICICO and the Government of Iran on this claim in the United States District Court for the District of New Jersey. After the signing of the Algiers Accords,¹ NICICO and the Government of Iran sought the dismissal or termination of that suit on the ground that Article II of the Claims Settlement Declaration and Executive Order No. 12294 issued by the President of the United States required the termination of claims by U.S. nationals

¹ Declaration of the Government of the Democratic and Popular Republic of Algeria (19 January 1981) ("General Declaration"); 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 (19 January 1981); 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 (19 January 1981) ("Claims Settlement Declaration").

capable of being presented to this Tribunal. On 4 November 1981 the United States District Court granted the request of NICICO and the Government of Iran and, in the words of the Court, "administratively terminated" ISS's action. On 18 November 1981 ISS filed its Statement of Claim in this case with the Tribunal.

A Hearing in this case was held before Chamber One on 2 and 3 December 1982. In an Order dated 14 March 1983, Chamber One relinquished jurisdiction in this case to the Full Tribunal for the purpose of deciding whether ISS's claim is a claim of a national of the United States within the meaning of Article VII of the Claims Settlement Declaration. Memorials on this question were invited and received from the Parties, from the Government of the Islamic Republic of Iran and from the Government of the United States of America. The Full Tribunal heard oral arguments by the Parties and the two Governments at a Hearing held on 9 December 1983.

II. The Contentions of the Parties and Governments

Contentions of ISS and the Government of the United States

ISS is a national of the United States, as that term is defined by the plain language of Article VII(1)(b), which confers jurisdiction over any non-profit and non-stock corporation or entity provided that nationals of Iran or the

United States hold fifty per cent or more of the capital stock or equivalent interests in such corporation or entity. The use in the Claims Settlement Declaration of the broad phrase "hold ... an interest" rather than "own" shows that the permissible forms of interests in such entities are not limited merely to ownership. Moreover, the phrase "equivalent to fifty per cent or more of its capital stock" indicates that the "interest" need not consist of stock, but can be "equivalent" to stock; such an interest exists in a non-profit corporation with no stockholders, when powers equivalent to those of stockholders are held by directors. To read Article VII(1)(b) so as to exclude non-profit, non-stock entities such as ISS would lead to an absurd result, contrary to accepted principles of treaty interpretation and to international claims settlement practices generally. The interpretation of Article VII(1)(b) asserted by ISS and the Government of the United States is supported by the positions previously taken by the Government of Iran and NICICO in the courts of the United States and before this Tribunal. Thus, in a letter, dated 20 October 1981, the Government of Iran and its co-defendants, including NICICO, requested termination of ISS's suits in United States District Court on the ground that those suits were claims of a United States national and, therefore, within the jurisdiction of this Tribunal under the Claims Settlement Declaration. Moreover, the Government of Iran acknowledged this Tribunal's jurisdiction over ISS when it joined in a request to Chamber Three for an Award on Agreed

Terms to settle another of ISS's claims. Chamber Three, informed that ISS was a non-profit corporation, found such jurisdiction in International Schools Services, Inc. and The Islamic Republic of Iran and National Petrochemical Co., Case No. 122, Award No. 4-122-3 (Chamber Three, 25 May 1982).

Contentions of NICICO and the Government of Iran

Article VII(1)(b) brings within its scope only commercial enterprises, into which the organizers contribute assets in return for capital stock reflecting their ownership interests. Article VII(1)(b) requires that a corporation or other legal entity be organized under the laws of Iran or the United States, and that natural persons who are citizens of such country own fifty per cent or more of its capital stock. The drafters of the Claims Settlement Declaration limited the Tribunal's jurisdiction to commercial enterprises that issue stock; thus, the capital input of the organizers is specified. The Claims Settlement Declaration establishes the jurisdiction of the Tribunal, and should be subject to a narrow interpretation. ISS has no capital stock or equivalent interests owned by stockholders; therefore, it is not within the definition of nationals of the United States, over whose claims the Tribunal has jurisdiction. NICICO and the Government of Iran are not estopped by positions allegedly taken by them in the United States District Court, or by the Joint Request

for an Award on Agreed Terms in another ISS case before the Tribunal, because the doctrine of estoppel may only be relied upon with regard to questions of fact. Moreover, the Tribunal must determine its jurisdiction strictly on the basis of the Algiers Accords; a party's constructive consent cannot extend the jurisdiction of the Tribunal.

III. Reasons

The Tribunal is asked to decide whether a non-profit, non-stock corporation can qualify as a "national of Iran or of the United States" within the meaning of Article VII(1)(b) of the Claims Settlement Declaration. In determining this question the Tribunal finds guidance in the Vienna Convention on the Law of Treaties, which the Tribunal has previously held to be applicable,² and which provides that a treaty should be "interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Article 31(1). It is to be noted that the Vienna Convention does not envisage that the words of a treaty be regarded in isolation; on the contrary it places "the ordinary meaning" of those words first within the framework of "their context" and then within the still wider framework of the "object and purpose" of the treaty. The Vienna Convention thereby codifies an established principle of international law.

² Case No. A-1 (Issue I), 1 Iran-U.S. C.T.R. 189, 190-91 (Full Tribunal, 30 July 1982).

Thus, for example, as Judge Anzilotti wrote:

Mais je ne vois pas comment il est possible de dire qu'un article d'une convention est clair avant d'avoir déterminé l'objet et le but de la convention, car c'est seulement dans cette convention et par rapport à cette convention que l'article assume sa véritable signification.

Interpretation of the Convention of 1919 Concerning Employment of Women During the Night, 1932 P.C.I.J., ser. A/B, No. 50, at 383 (Dissenting Opinion).³

³ P.C.I.J. Translation:

But I do not see how it is possible to say that an article of a convention is clear until the subject and aim of the convention have been ascertained, for the article only assumes its true import in this convention and in relation thereto.

Id.

To the same effect see Yasseen:

Mais il y a lieu d'observer que l'analyse grammaticale est impuissante à faire ressortir le sens véritable du texte, lequel doit englober toutes les conséquences qui peuvent normalement et raisonnablement s'en dégager. Evidemment, il n'est pas nécessaire de prouver que les parties ont visé une à une la foule d'espèces que la vie internationale fait surgir; il va de soi qu'en adoptant un texte on est du même coup censé en adopter tous les résultats, quoique non formellement exprimés. S'en tenir aux termes sans les envisager comme étant l'expression d'une idée réfléchie, c'est dénaturer la conception de l'interprétation et aboutir parfois à une absurdité.

M.K. Yasseen, "L'Interprétation des traités d'après la Convention de Vienne sur le droit des traités", 151 Recueil des Cours (Hague Academy of International Law) 1, 25 (III-1976).

Translation:

But it is appropriate to observe that grammatical analysis is powerless to bring out the true meaning of a text, which must encompass all the inferences that can normally and reasonably arise therefrom. Obviously, it is not necessary to prove that the parties have envisaged every single one of the host of eventualities to which international life gives rise; it is self-evident that in adopting a text one is at the same time deemed to adopt all of its implications, even if these are not made explicit. To adhere to the bare terms without considering them as the expression of a developed concept, is to distort the process of interpretation and sometimes to reach an absurd result.

It is therefore appropriate to commence the analysis of Article VII (1)(b) by looking at the context in which it appears and at the object and purpose of the Claims Settlement Declaration of which it is a part. As pertinent to this case, the Declaration's object and purpose are stated in Article II(1):

An International Arbitral Tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States

Thus, the two Governments agreed to create a forum in which the claims of the nationals of each State against the other State could be heard.

As the Tribunal was to be open only to nationals of the two States, it was desirable that a definition of such "nationals" be provided. This is the express function of Article VII(1) of the Claims Settlement Declaration. It defines the term "'national' of Iran or of the United States," and thus describes the category of claimants over which the Tribunal has jurisdiction; it is in this context that the terms of Article VII(1) must be understood. Article VII(1)(a) states the criteria to be applied in determining the nationality of a natural person, while Article VII(1)(b) states the criteria to be applied in determining the nationality of a "corporation or other legal entity." Thus, in context there can be no doubt that the terms of Article VII(1)(b) are directed to the determination of the nationality of corporations and other legal entities presenting themselves as claimants before the Tribunal, and

not to the prescription of the particular character or organizational structure of such claimants.

The problem of determining the nationality of corporations and other legal entities is one which is well known in international law and to which various solutions have been applied in the past. Under a number of treaties, including the Claims Settlement Declaration, it has not been considered sufficient to determine the nationality of a corporation or other legal entity solely by attributing to it the nationality of the State under whose laws it was organized; rather, other conditions have been added in order to require the existence of further links between the legal entity and the State of organization. Thus, Article VII(1)(b) requires not only that a corporation or other legal entity be organized in Iran or the United States, but also that natural persons who are citizens of one of those States "hold ... an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock." This language reflects the two Governments' recognition that a wide variety of different Iranian or U.S. entities might have genuine links to their States of organization, and so be appropriately considered "nationals" of Iran or the United States. As the textual analysis which follows demonstrates, the Governments expressed the required links between such entities and their States of organization most flexibly, extending the Tribunal's jurisdiction to all forms of corporations and other legal entities, regardless of whether they were organized for profit or whether they have issued capital stock.

Viewed in its context in this manner, Article VII(1)(b)'s focus on the nationality of claimants as the determinant of the Tribunal's jurisdiction over them is consistent with the broad purpose of the Algiers Accords, as expressed in General Principle B of the General Declaration: "to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration." Recognition of this Tribunal's jurisdiction over the claims of non-profit, non-stock organizations is clearly consistent with that expressed purpose.⁴

The Tribunal also finds it significant in this regard that no plausible explanation has been advanced as to why the drafters of the Claims Settlement Declaration would have deliberately excluded from the Tribunal's jurisdiction the claims of a non-profit or non-stock corporation such as ISS, which all parties agree is connected in every conceivable way with the United States.

Analysis of the text of Article VII(1)(b) demonstrates that the ordinary meaning of its terms plainly carries out

⁴ As noted above, NICICO and the Government of Iran, acting pursuant to Article II of the Claims Settlement Declaration, did in fact obtain a stay of ISS's suits before the courts of the United States, on the ground that those claims were capable of being presented to this Tribunal.

its above-described function, as well as the object and purpose of the Claims Settlement Declaration as a whole.

Broken down into its operative clauses, Article VII(1)(b) provides that a "national" of one of the two countries means

- (i) "a corporation or other legal entity";
- (ii) "organized under the laws" of one of the two countries;
- (iii) "if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock."

It is apparent from the first clause that a "national" need not be a corporation, but may be an "other legal entity." The second clause, which requires that the entity in question be organized under specified laws, is not at issue in this case. The third clause, which is joined to the preceding clauses with the conjunction "if," specifies the conditions that a corporation or other entity must fulfill in order to qualify as a "national." A corporation or other entity is a "national" of one of the two countries if citizens of that country "hold ... an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock."

The third clause, viewed in its context and considering its language, does not appear to modify "corporation or other legal entity," but rather to impose a particular

condition that such a corporation or entity must meet. That is, it does not specify the nature or structure of the entity, but specifies the extent of the interest in the entity that must be held by citizens of Iran or the United States.

This interest need not amount to beneficial ownership. The phrase used, "hold ... an interest," is broader than the words "own" or "beneficially own." It thus appears that a broader variety of interests is covered by the language chosen. Nowhere does Article VII(1)(b) require that the "interest" be a personal financial interest which can be sold, transferred or inherited -- criteria which have been suggested but which we cannot accept as being indispensable in this context.

Because some legal entities do not issue capital stock, the natural reading of the phrase "an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock" is that (i) in the case of a stock corporation or other stock-issuing entity, fifty per cent or more of the capital stock must be held by citizens of the relevant country; and (ii) in the case of a non-stock corporation or entity, such citizens must hold an interest that is equivalent to the requisite level of stockholding in a stock corporation. The type of interest in a non-stock entity that is equivalent to the holding of stock in a stock corporation must, of course, be defined by reference to the character of the entity in each case.

This interpretation is buttressed by the necessity of giving a meaning to the words "equivalent to." These words cannot be intended to refer to indirect interests, such as indirect ownership through intervening persons or entities, because such interests are already covered by the explicit phrase "hold, directly or indirectly, an interest." For the same reason, the Tribunal cannot accept the argument that, because the word "its" appears before the words "capital stock" in Article VII(1)(b), only a corporation or other legal entity which has issued capital stock may be a "national" for the purpose of the Tribunal's jurisdiction. That assertion places undue emphasis on the placement of "its," and would deprive the key words "equivalent to" of all meaning.

Analysis of the law of the District of Columbia, under which ISS was organized, confirms that the directors of a non-profit, non-stock entity do indeed hold an interest "equivalent to" fifty per cent or more of capital stock within the meaning of Article VII(1)(b). ISS was incorporated under Chapter 10 of Title 29 of the District of Columbia Code, relating to "Charitable, Educational, and Religious Associations."⁵ A corporation organized under the provisions of Chapter 10 may issue capital stock or not, as it elects. In either case, the directors of the corporation "shall have the control and management of the affairs

⁵ D.C. Code §§29-1001 through 29-1006 (Michie, 1981).

and funds of the society." D.C. Code §29-1003. Chapter 10 enumerates the rights and powers of stockholders in stock corporations organized thereunder. See D.C. Code §§29-1003; 29-1004; 29-1005. The same sections provide that, in the case of non-stock corporations organized under Chapter 10, the directors shall enjoy the same rights and powers. Thus, under the relevant corporate law, the rights and powers of the directors of ISS, a non-stock corporation, are literally "equivalent" to the rights and powers of the holders of capital stock in a stock corporation. It must therefore be concluded that where more than fifty per cent of the directors of a non-stock corporation are U.S. citizens, then "citizens [of the United States] hold ... an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock" within the meaning of Article VII(1)(b) of the Claims Settlement Declaration.

The Vienna Convention provides that in interpreting a treaty "[t]here shall be taken into account," inter alia, "any relevant rules of international law applicable in the relations between the parties." Article 31(3)(c). In view of the foregoing conclusions concerning the ordinary meaning to be given to the terms of Article VII(1)(b), it suffices to observe that no case has come to the attention of the Tribunal in which an international tribunal has refused jurisdiction over a corporation or legal entity because it did not issue capital stock or because it was an educational, charitable or other non-profit organization.

While the circumstances of various past cases and the terms of controlling treaties have, of course, differed, available international precedents indicate that international tribunals routinely have accepted jurisdiction over non-profit, non-stock institutions, just as they have over commercial entities.⁶

The Vienna Convention also provides that the factors to be taken into account in construing a treaty include "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation." Article 31(3)(b). As noted above, ISS contends that the action of NICICO and the Government of Iran in seeking termination of the claims of ISS in the United States courts, on the ground such claims were those of a United States national capable of being presented

⁶ See, e.g., German Interests in Polish Upper Silesia (Germ. v. Pol.), 1926 P.C.I.J., ser. A, No. 7, at 73-75 (Judgment of May 25); The Peter Pazmany University v. The State of Czechoslovakia (Czech. v. Hung.), 1933 P.C.I.J., ser. A/B, No. 61, at 231 (Judgment of December 15). Decisions of the United States Foreign Claims Settlement Commission have repeatedly held that non-stock, non-profit organizations are nationals of the United States, based on provisions of the United States International Claims Settlement Act which are quite similar to Article VII(1)(b), although less flexible in that they use the words "own" and "beneficial" interest which are not included in the Claims Settlement Declaration. See, e.g., Board of Trustees of Foreign Parishes of the Protestant Episcopal Church in the United States of America, Claim No. G-2876, Decision No. G-2315 (10 September 1980); California Date Growers Association, Claim No. CU-0371, Decision No. CU-432 (21 November 1967).

before the Tribunal, constitute a subsequent practice which should be given weight by the Tribunal in deciding the present case. ISS also contends that further subsequent practice is demonstrated by the fact that the Government of Iran joined in the request that Chamber Three accept jurisdiction over ISS for the purpose of rendering an Award on Agreed Terms in Case No. 122.⁷ In view of our conclusion that the interpretation of Article VII(1)(b) is clear, we need not discuss or rely on these points other than to observe that the action of the Iranian parties both before the courts in the United States and this Tribunal are consistent with our conclusion that ISS is a national of the United States.

The Tribunal concludes that Article VII(1)(b) does not, either expressly or impliedly, require that a "national" of Iran or the United States be a stock-issuing corporation or entity, nor does it require that a "national" be a

⁷ The Tribunal cannot issue an Award on Agreed Terms unless it determines that the claimant is a national of the United States or Iran:

[T]he Tribunal has no jurisdiction over any matter not conferred on it by these Declarations. Therefore, if requested to make an Award on Agreed Terms, the Tribunal will make such examination concerning its jurisdiction as it deems necessary.

corporation or other entity organized for profit. Article VII(1)(b) permits any "corporation or other legal entity" organized under the laws of Iran or the United States to present itself as a claimant before the Tribunal, provided that (i) if it is a stock-issuing corporation or entity, citizens of the appropriate country hold fifty per cent or more of its capital stock; and (ii) if it is a non-stock corporation or entity, citizens of the appropriate country hold an interest (in the required amount of fifty per cent or more) that is equivalent to the holding of capital stock in a stock-issuing entity. The nature of the interest that will be equivalent to capital stock will necessarily be determined in accordance with the character of the entity in each case.

In this case, involving a non-profit, non-stock corporation organized under the law of the District of Columbia, the Tribunal concludes that under that law the directors hold interests equivalent to those that would be represented by capital stock if the corporation were a stock-issuing entity.

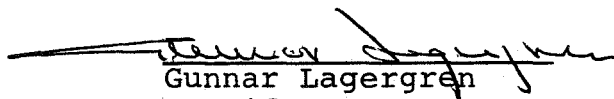
IV. Conclusion

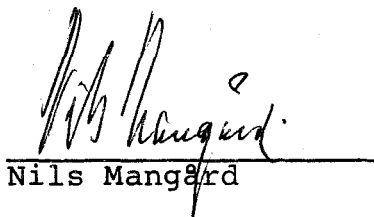
The Tribunal therefore concludes that ISS is a "national of the United States" within the meaning of

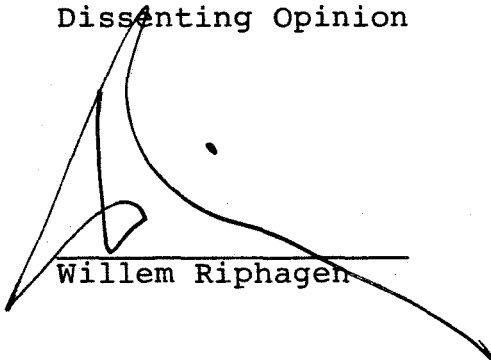
Article VII(1)(b) of the Claims Settlement Declaration.
Case No. 111 is referred back to Chamber One for further
proceedings in accordance with this Interlocutory Award.

Dated, The Hague

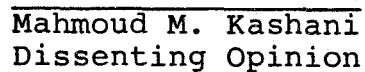
6 April 1984


Gunnar Lagergren
President
Dissenting Opinion


Nils Mangård

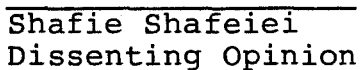

Willem Riphagen

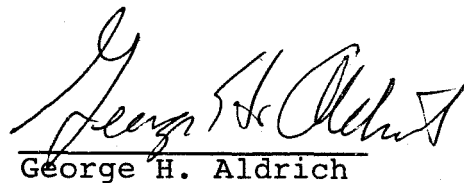
In the name of God,


Mahmoud M. Kashani
Dissenting Opinion



Howard M. Holtzmann

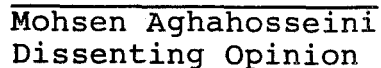
In the name of God,


Shafie Shafeiei
Dissenting Opinion

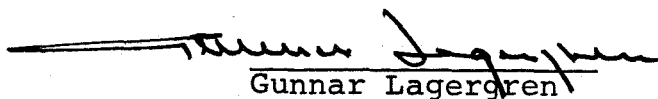

George H. Aldrich

In the name of God,


Richard M. Mosk


Mohsen Aghahosseini
Dissenting Opinion

In this case final deliberation and voting took place
in the week of 5-9 March, 1984. The Iranian Members of
the Tribunal refuse to sign the Award because they assert
that the Award was "improperly provided by a U.S. Arbitrator
and signed by the so-called neutral arbitrators without due
deliberation and consideration".


Gunnar Lagergren