

DUPLICATE  
' ORIGINAL

نسخه برابر اصل

CASE NO. 112

CHAMBER ONE

PARTIAL AWARD NO:75-112-1

IRAN UNITED STATES  
CLAIMS TRIBUNAL

دادگاه داری دماوی  
ایران - ایالات متحده

ثبت شد - FILED

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CONCURRING OPINION OF MAHMOUD KASHANI, MEMBER OF CHAMBER ONE

Although I concur with the conclusion and many of the arguments made by the Chamber in its decisions taken in the present case, because I disagree with the majority in a part of its reasons I shall state my own arguments below.

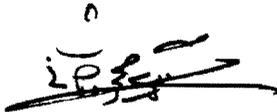
The Claimant's claim is based upon contracts in which provision has been made for a forum to examine disputes between the parties, this forum being the courts of Iran. It has been held in the Single Article Act ratified by the Islamic Revolutionary Council on 8 January 1981, and in the Claims Settlement Declaration, that such claims lie outside the jurisdiction of this Tribunal, in deference to the Act passed by the Islamic Revolutionary Council of Iran. Therefore, the only solution available to the Tribunal was to render an explicit decision that it lacked jurisdiction, and such a decision was indeed reached. Although the Chamber has referred to this portion of the Claims Settlement Declaration in discussing the reasons and arguments which it relied upon in arriving at this conclusion, it has also relied upon the Full Tribunal's decision in Case No.121 (George W. Drucker v. Foreign Transaction Co., etc.) previously brought before the Full Tribunal, by reason of the similarity between the forum selection clause in the latter case and the forum for resolving disputes provided for in the contracts relating to the present case. The Full Tribunal's decision in Case No.121 has had two important aspects. One,

it has held that the Claimant's claim which it had based upon the change of circumstances in the Islamic Republic of Iran following the Islamic Revolution of Iran was irrelevant, and it rejected it. Two, on the basis of the substance of Article II of the Claims Settlement Declaration, it honoured the stipulation giving the courts of Iran jurisdiction as provided for in the related contract, and it thereby divested itself of jurisdiction. Therefore, the true value and validity of the Full Tribunal's decision arises, not from the fact that it was taken by the nine-member Tribunal, but from its submission to the provisions of the Claims Settlement Declaration, which have explicitly delimited the framework of the Tribunal's authority.

In view of this precedent, Chamber One's reliance upon the decision by the Full Tribunal in Case No.121 appears to me to be appropriate and nonproblematical, so far as it respects the terms of the Claims Settlement Declaration in regard to the present case as well. However, it is obvious that if the Full Tribunal has exceeded its powers in a particular case and has disregarded the provisions of a contract because of the forum selection clause, then the decision which it has taken shall be devoid of all legal value. Furthermore, not only is such a decision not binding upon the various Chambers of the Tribunal, but such an act of ultra vires is, in accordance with internationally recognized rules, among the most significant grounds for voiding decisions by tribunals (in this respect, see the Dissenting Opinion by the Iranian arbitrators in Case No.159).

In its Memorial dated 7 January 1983, the Claimant has stated that the terms of the contract had not been freely discussed, but had rather been of such a manner that they were imposed upon the Continental Corporation (page 4 of the English version). In a part of its response to this allegation by the Claimant, the Chamber has stated that "the Chamber finds the Claimant's allegation of unequal bargaining power falls far short of the showing which would be required in order to vitiate the forum selection clauses."

In my opinion, aside from the fact that such an allegation is illogical, on principle even if the forum selection clause were, in arguendo, to be taken as null and void, this would not result in this Tribunal's jurisdiction. Moreover, the courts of Iran constitute the sole forum for examining any manner of claims over these contracts, and this Tribunal will not be empowered to take up the merits of the case or to state an opinion in respect to them, even if the Claimant should produce sufficient reasons to demonstrate that the clauses relating to jurisdiction were imposed upon it. For this reason, in my opinion the Chamber's argumentation merits criticism in this respect.



Dr. Mahmoud Kashani