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- Date of Award 20 June 86
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____

- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____

- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____

- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi

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CASE NO. 260

CHAMBER TWO

AWARD NO. ITL61-260-2

SEACO, INC.,

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
THE IRANIAN MEAT ORGANIZATION,
IRAN EXPRESS LINES, and
STAR LINE IRAN CO.

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه دآوری دعاوی ایران - ایالات متحده	
فایلت شد - FILED			
Date	20 JUN 1986	تاریخ	
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No.	260	شماره	

DUPLICATE
ORIGINAL

نسخه برابر اصل

INTERLOCUTORY AWARD

Appearances:

For the Claimant:

Mr. Robert M. Riggs
Authorized Representative
and Attorney for Claimant
Mr. James Rayhill
Attorney for Claimant
Ms. Rosalind Kraxaver
Counsel for Claimant
Mr. Edwin S. Hetherington,
Counsel and Secretary for
Claimant

For the Respondents:

Mohammed K. Eshragh
Agent of the Islamic
Republic of Iran
Mr. Seifollah Mohammadi
Legal Advisor to the
Agent
Mr. Sohrab Rabie
Assistant to the Agent
Mr. Ali Nikbakht Finy
Attorney for the Iran
Meat Organization
Mr. Hooshang Haghighi Abyaneh
Mr. Mohammad Ali Okhovati
Representatives of the
Iran Meat Organization
Mr. Hossein Abdollahi
Attorney for Star Line
Iran Company
Mr. Gholamahar Eskavandi
Assistant to Attorney

Also Present:

Mr. Daniel M. Price
Deputy Agent of the
United States of America
Mr. David A. Balton
Legal Advisor to the
Deputy Agent

THE PROCEEDINGS

1. Claimant SEACO, INC. ("SeaCo") filed a Statement of Claim on 14 January 1982 setting forth nine breach of contract and expropriation claims for over 60 million U.S. dollars. SeaCo named as Respondents THE ISLAMIC REPUBLIC OF IRAN ("Government of Iran"), THE IRANIAN MEAT ORGANIZATION ("IMO"), IRAN EXPRESS LINES ("IEL"), STAR LINE IRAN COMPANY ("Star Line"), and AUSTIRAN LIMITED ("AustIran").

2. Following a Pre-Hearing Conference held on 26 January 1984, the Tribunal decided in its Order of 15 February 1984 to separate the issue of its jurisdiction from any issues pertaining to the merits of the claims presented by the Claimant. The Parties exchanged written briefs and submitted evidence on the question of jurisdiction. Pursuant to the request of the Claimant, a Hearing on jurisdiction was held on 11 March 1986.

3. At the Hearing, the Claimant withdrew its Claims One and Two, to which it had named AustIran as the principal Respondent. The Respondents raised no objection to this withdrawal, and the Tribunal by its Order of 17 March 1986 terminated the proceedings with regard to Claims One and Two. Accordingly, the Tribunal decides to strike AustIran as a named Respondent from the caption of the Case.

II. THE TRIBUNAL'S JURISDICTION OVER THE PARTIES

4. The jurisdictional issues raised in this Case include proof of the Claimant's United States nationality, its standing to bring indirect claims on behalf of various non-U.S. entities, and whether all of the claims are claims against "Iran" within the meaning of the Claims Settlement Declaration.

A. Nationality of the Claimant

5. The Claimant submitted evidence that SeaCo, Inc. is a New York corporation whose shares are traded on the New York and Pacific Stock Exchanges. The Claimant submitted a certificate of the Secretary of State of the State of New York showing that SeaCo was incorporated in New York under the name of Sea Containers, Inc. on 13 October 1965 and that it changed its name to SeaCo, Inc. on 15 July 1981. The Claimant also submitted proxy statements for annual shareholders' meetings held in 1978 and 1981, and a corporate certificate evidencing that three shareholders together held 33.3% of SeaCo's common voting stock in 1978 and 34.8% in 1981.

6. From the evidence submitted, the Tribunal is satisfied that SeaCo is a national of the United States within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration.

B. Standing of the Claimant

7. The Claimant clearly has standing to bring direct claims of SeaCo for expropriation of containers and breach of container lease agreements (Claims Five, Six, Eight, and Nine).

8. The Claimant has also presented a number of indirect claims on behalf of (i) its foreign affiliate company, Sea Containers Limited, (ii) its wholly-owned foreign subsidiaries, Sea Containers Pacific Ltd. ("Sea Containers Pacific") and Oceanic Meat Traders Pty. Ltd. ("Oceanic"), and (iii) AustIran.

1. Sea Containers Limited

9. The Claimant has submitted evidence satisfactory to the Tribunal that Sea Containers Limited is a Bermuda corporation, all of whose traded shares are paired on a share-for-share basis with the shares of SeaCo and trade as combined units on the New York and Pacific Stock Exchanges. The pairing arrangement was evidenced by a copy of the Pairing Agreement between SeaCo and Sea Containers Limited and the provisions of the respective corporate By-Laws restricting transfer of the shares of the two companies except in combination with an equal number of shares in each company. As it decided above with respect to SeaCo, the Tribunal is satisfied that Sea Containers Limited is more than 50% owned by United States nationals. Accordingly, as Sea Containers Limited is not itself entitled to bring its claims, U.S. nationals who are shareholders in Sea Containers Limited have standing to present indirectly the claims of Sea Containers Limited before this Tribunal pursuant to Article VII, paragraph 2, of the Claims Settlement Declaration.

The Claimant has also submitted evidence demonstrating that it owned at the time the claims arose approximately four percent of the shares of Sea Containers Limited. These shares remain from the time when Sea Containers Limited was a wholly-owned subsidiary of SeaCo, and are in addition to the publicly-traded paired shares of Sea Containers Limited and SeaCo. On the basis of these shareholdings, the Tribunal is satisfied that the Claimant, to the extent that it is a U.S. national shareholder of Sea Containers Limited, has standing to present the claims of Sea Containers Limited before this Tribunal (Claims Three, Four, Five, Six, Eight, and Nine). The question of the Claimant's standing to

represent the other U.S. shareholders in Sea Containers Limited is joined to the merits.¹

2. Sea Containers Pacific

10. The Claimant has submitted evidence satisfactory to the Tribunal that Sea Containers Pacific is a Hong Kong corporation whose shares are 100% owned by SeaCo. Accordingly, SeaCo has standing under the terms of Article VII, paragraph 2, of the Claims Settlement Declaration to present indirectly the claims of Sea Containers Pacific before this Tribunal (Claims Four, Five, Six, Eight, and Nine).

3. Oceanic

11. The Claimant has submitted evidence satisfactory to the Tribunal that Oceanic is an Australian corporation whose shares are 100% owned by NuMeat Processors Pty. Limited, also an Australian corporation, whose shares in turn are 100% owned by SeaCo. Accordingly, SeaCo has standing under the terms of Article VII, paragraph 2, of the Claims Settlement Declaration to present indirectly the claim of Oceanic before this Tribunal (Claim Seven).

4. AustIran

12. The Claimant has submitted evidence that AustIran is an Australian corporation. The evidence submitted also shows that AustIran is a joint venture owned 50% by two Iranian banks and 50% by Australian investors and that the Claimant's wholly-owned Australian subsidiary, Sea Containers Australia Ltd. ("Sea Containers Australia")

¹The Tribunal notes that some of the U.S. shareholders of Sea Containers Limited have authorized SeaCo to present the Claims of Sea Containers Limited before this Tribunal.

acquired voting proxies for the 50% Australian share on 7 November 1978. The Claimant contends that it also enjoys a beneficial interest in 27.5% of the common stock of AustIran, pursuant to a deed executed by the two Australian shareholders in favor of Sea Containers Australia. However, the transfer of the shares contemplated by the deed was subject to the formal approval of all of the AustIran shareholders and of the Australian Government. These approvals were required by the terms of the Joint Venture Agreement establishing AustIran, the Articles of Association of AustIran, and the relevant Australian legislation on foreign investment. However, the requisite approvals apparently were never obtained and Sea Containers Australia was therefore not, at the relevant times, a record owner of any shares of AustIran.

13. The Claimant also contends that Sea Containers Australia exercises management control of AustIran by virtue of a delegation of management authority given at the last meeting of the AustIran Board of Directors on 18 December 1978. The Tribunal notes that the Joint Venture Agreement clearly provides that both ownership and control are held equally by the Iranian and Australian parties. Even with the limited delegation of management authority given to Sea Containers Australia by the AustIran Board of Directors at its last meeting, it is questionable whether the Australian shareholders could be said to control AustIran. In any event, Sea Containers Australia did not actually own a single share of AustIran stock during the time between the date the claims arose and the date of the Claims Settlement Declaration. In these circumstances, the Tribunal holds that the U.S. nationals lack ownership interests sufficient to control of AustIran and therefore the claims of AustIran are not within the jurisdiction of the Tribunal.

14. Since the Tribunal finds that it has no jurisdiction over the claims of AustIran, it does not reach Respondents'

argument that the forum selection clauses contained in the contracts with AustIran operate to oust this Tribunal's jurisdiction.

C. The Respondents

15. The status of the Government of Iran and the IMO as proper Respondents is not in dispute in this Case.

16. Both IEL and Star Line, however, assert that they are private corporations that do not come within the definition of "Iran" contained in Article VII, paragraph 3, of the Claims Settlement Declaration, and therefore are not proper Respondents to claims presented to this Tribunal pursuant to Article II of the Claims Settlement Declaration.

17. Chamber Three of this Tribunal has previously held that Star Line is a government-controlled corporation, and therefore within the definition of "Iran" contained in the Claims Settlement Declaration. RayGo Wagner Equipment Company and Star Line Iran Company, Award No. 20-17-3 (15 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 411, 413. The Tribunal has reviewed the evidence submitted in this proceeding and confirms that Star Line is an Iranian government-controlled entity and therefore a proper Respondent before this Tribunal.

18. Respondent IEL submitted evidence in the form of affidavits of former employees and a state certificate that it is a private corporation not managed by any government authority. The Claimant submitted evidence that IEL submitted an Answer in a U.S. lawsuit in which it defended on the ground of sovereign immunity, stating that, pursuant to Law 6738 of 19 June 1979, certain private corporations, including IEL, are administered by the Government of Iran. On the basis of the evidence presented and for the same reasons given by this Tribunal with respect to Star Line,

the Tribunal holds that IEL is a government-controlled entity, and therefore a proper Respondent before this Tribunal.

III. THE TRIBUNAL'S JURISDICTION OVER THE CLAIMS

19. The Parties do not dispute that the claims were outstanding on 19 January 1981, that the claims arise out of "debts, contracts . . . , expropriations or other measures affecting property rights", and that the claims were owned continuously from the date the claims arose to 19 January 1981, as required by Article II and Article VII, paragraph 2, of the Claims Settlement Declaration.

20. However, as the Tribunal has decided that it lacks jurisdiction over the indirect claims of AustIran, the Tribunal must consider the Claimant's alternative theories of recovery with respect to contracts involving AustIran in Claims Three and Four. In Claims Three and Four, the Claimant has advanced alternative theories based on unjust enrichment, detrimental reliance, and third party beneficiary principles as indirect claims of Sea Containers Limited and, where appropriate, Sea Containers Pacific. To the extent that claims can validly be asserted on the basis of these theories, and to the extent that the Tribunal has determined above that the Claimant has standing to present indirectly the claims of Sea Containers Limited and Sea Containers Pacific, the Tribunal decides that it has jurisdiction to consider these claims. The Tribunal joins to the merits the determination of whether any relief can be granted on the basis of these alternative theories in the context of claims based on contracts involving AustIran in Claims Three and Four.

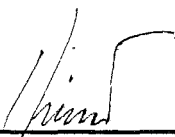
IV. INTERLOCUTORY AWARD

For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:


- a) The indirect claims of SEACO, INC. on behalf of AustIran Limited against the IRANIAN MEAT ORGANIZATION and THE ISLAMIC REPUBLIC OF IRAN are dismissed for lack of jurisdiction.
- b) Any remaining jurisdictional issues with respect to the remaining claims are joined to consideration of the merits.

Dated, The Hague,
20 June 1986

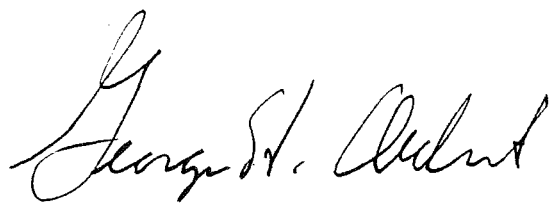


Robert Briner
Chairman
Chamber Two

In the name of God



Hamid Bahrami-Ahmadi
Concurring in part,
Dissenting in part
See separate opinion



George H. Aldrich