

Case No. 39

Date 30 Dec 1982

ORIGINAL DOCUMENTS IN SAFE

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CASE NO. 39

CHAMBER TWO

PHILLIPS PETROLEUM COMPANY, IRAN,  
Claimant,

AWARD NO. ITL 11-39-2

and

THE ISLAMIC REPUBLIC OF IRAN;  
THE NATIONAL IRANIAN OIL COMPANY,  
Respondents.

INTERLOCUTORY AWARD

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعوی ایران - ایالات متحده
FILED - ثبت شد	
Date	۱۳۶۱ / ۱۰ / ۹ 30 DEC. 1982
No.	39 ۳۹

Appearances:

For the Claimant:

Mr. Markham Ball,

Mrs. Lucy F. Reed, as representatives.

For the Respondents :

Mr. M.K. Eshragh as Agent of the  
Islamic Republic of Iran

Prof. Dr. J. Niaki legal advisor to  
the Agent

Dr. H. Sefai, legal advisor to the Agent

Mr. A. Moori,

Prof. Derek Bowett,

Mr. David Lloyd-Jones, as representa-  
tives.

Mr. R. Brown, of counsel.

Also Present:

Mr. Arthur Rovine, Agent of the United  
States.

DUPLICATE  
ORIGINAL

نسخه برابر اصل

On 16 November 1981 Phillips Petroleum Company Iran ("Phillips") filed a claim against the Islamic Republic of Iran ("Iran") and the National Iranian Oil Company ("NIOC"). Relief is sought in the amount of \$152,928,400 plus interest, costs and fees.

Phillips explained that its assignor Phillips Petroleum Company, AGIP s.p.a. ("AGIP") and the Oil and Natural Gas Commission of India ("Indian Commission") entered into a Joint Structure Agreement ("JSA") with NIOC on 17 January 1965, under which they acquired rights concerning the exploration, development and production in and from certain offshore petroleum fields in Iran. These three foreign companies, as "Second Party" to the JSA, and NIOC as "First Party" thereto, formed the Iranian Marine International Oil Company (IMINOCO) to conduct the operations. By a letter dated 11 August 1980, prior to the expiration of the term of the oil agreements, the Minister of Petroleum of the Islamic Republic of Iran (also acting as Chairman of the Board of NIOC) informed Phillips that the "Special Committee" convened pursuant to the Single Article Act of 8 January 1980 had "...after due consideration of all relevant facts, declared null and void" the "IMINOCO Agreement dated February 13, 1965, and the relevant supplemental agreement(s). While not specifically referred to as such, the "IMINOCO Agreement" appears to be the JSA, since the JSA became effective on February 13, 1965 pursuant to approval of the Majlis and the Shah. Both

parties have characterized the dispute as relating to the nullification of the JSA. We find it somewhat more accurate, however, to phrase our discussion with reference to the nullification, if any, of the IMINOCO Agreement.

In response to Phillips' Statement of Claim, the Respondents requested the Tribunal to consider as a preliminary question their assertion that the Tribunal lacks jurisdiction in the case because of this alleged nullification. On 24 May 1982, NIOC filed a "Statement of Defence on the issue of jurisdiction", but none of the Respondents - though they had been requested to do so, before 15 June 1982 - has filed any statement on the merits of the case.

By an Order dated 15 June 1982, the parties were informed that a "preliminary hearing on the issue of the jurisdiction of the Tribunal arising out of the nullification of oil agreements" would be held on 13 September. The Claimant was invited to submit a Reply before 30 July 1982, and the Respondent a Rejoinder before 1 September 1982. The Reply was received on 30 July 1982 and the Rejoinder on 13 September 1982. The hearing was held on 13 September 1982 as scheduled. The Respondents submitted a post-hearing note on 3 December 1982.

In their written submissions and oral explanations the Respondents argued that this Tribunal lacks jurisdiction over Phillip's claims for the following reasons: First, that the

Single Article Act of 8 January 1980, "issued by the Revolutionary Council of the Islamic Republic of Iran, and pertaining to the establishment of a special commission concerning oil agreements", provided for the exclusive jurisdiction of the said commission in this case. Second, the provisions of Article II of the Claims Settlement Declaration of 19 January 1981, particularly the last words of that paragraph, "in response to the Majlis position", would exclude the claim from the jurisdiction of this Tribunal. Third, the claim was not outstanding on 19 January 1981 since the case had not been filed with any court. Fourth, since Phillips, AGIP, and the Indian Commission entered into the IMINOCO Agreement as a partnership as "Second Party" any claims by the partnership against NIOC as "First Party" would have to be asserted by the "Second Party", not Phillips alone.

As to the fourth issue raised by NIOC, the Tribunal determines that it must be joined to the merits of the case, since it does not relate to the narrow jurisdictional issue related to the alleged nullification of oil agreements, for which issue NIOC requested and the Tribunal ordered that the Preliminary Hearing be held.

With respect to the first three reasons, the Tribunal does not share NIOC's views and finds that none of its arguments are valid.

I. On the first point

It is provided by the Single Article Act of 8 January 1980 that "All oil agreements considered by a special commission appointed by the Minister of Oil to be contrary to the Nationalization of the Iranian Oil Industry Act shall be annulled and claims arising from conclusion and execution of such agreements shall be settled by the decision of the said commission. The representative of the Ministry of Foreign Affairs shall participate in the said commission."

It cannot be denied that the Act seems to give jurisdiction to the special commission to settle claims arising from the conclusion and execution of oil agreements annulled by it.

The Respondents have therefore contended that any consent they may have given to the jurisdictional provisions of the Claims Settlement Declaration was limited by the Act's terms, an Act they allege to constitute "a specific restriction" on the authority of Iran's representatives to express the consent of Iran to the Declarations within the meaning of Article 47 of the Vienna Convention on the Law of Treaties of 1969. Article 47, however, requires that any such restriction must be "notified to the other negotiating States prior to [the representative's] expressing [his] consent" to the treaty. The only evidence submitted on this point is the affidavit of Bahzad Nabavi, the former Iranian Minister of State for Executive Affairs, and Iran's chief

negotiator of the Algiers Declarations. He states only that he had neither the "authority", nor "the slightest intention" to nullify or abrogate the January 1980 Single Article Act in entering into the Algiers Declarations, viewing himself bound by the terms of that Act. We accept that view as Mr. Nabavi's understanding of his limited role; we note, however, that he nowhere states that he communicated that understanding to the United States. It can therefore not now be invoked as a valid limit on Iran's consent.

Nor is there an argument made that the Single Article Act constituted a "rule of [Iran's] internal law of fundamental importance" within the meaning of Article 46 of the Vienna Convention, such that a "manifest" violation of the same would be grounds for invalidating Iran's consent to the Algiers Declarations in whole or in part. It is therefore relevant to note that Iran may not now invoke "provisions of its internal law" such as the Single Article Act to avoid any obligations to perform the Algiers Declarations. See Vienna Convention, Article 27. The task remaining before us is therefore to determine whether any provision of the Algiers Declarations excludes our jurisdiction over claims arising under the IMINOCO Agreement.

## II. On the Second Point

Article II, paragraph 1 of the Claims Settlement Declaration gives jurisdiction to this Tribunal, over "claims of nationals of the

United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this agreement, whether or not filed with any court...." The jurisdiction of this Tribunal is thus very broad. In this connection, it should be noted that the preamble of the General Declaration states that it was the purpose of the two Governments "to terminate all litigation as between the government of each party and the nationals of the other."

The exceptions to our jurisdiction are enumerated specifically in the last part of paragraph 1 of Article II of the Claims Settlement Declaration, and are of two sorts. The first exclusion covers claims described in paragraph 11 of the General Declaration, i.e., concerning the seizure of the 52 U.S. nationals, their subsequent detention, injury to property within the U.S. Embassy, and injuries resulting from popular movements which were not acts of the Government of Iran. Second, claims are excluded which arise out of the actions of the United States in response to conduct described in paragraph 11. The third exclusion covers "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position."



The first two exceptions are inapplicable on their face. As for the third exception, far from providing for the sole jurisdiction of Iranian Courts, the Joint Structure Agreement contained an arbitration clause, clearly applicable to disputes relating to any performance thereunder, with provision for the appointment of arbitrators by judges of the highest court of Denmark. The Iranian courts exception therefore plainly does not affect this Tribunal's jurisdiction in this case.

The Respondents contend that the last words of the paragraph 1 of Article II of the Declaration, "in response to the Majlis position" mean that the provisions of the Single Article Act of 8 January 1980 must be taken into consideration, and constitute an additional exception from the jurisdiction of this Tribunal.

Two sorts of Majlis Resolutions are invoked by the Respondents, one dated 2 November 1980, and another dated 14 January 1981. The January 1980 Act was an Act of the Revolutionary Council, not the Majlis. The November 1980 Resolution, enumerating the conditions upon which the Islamic Republic of Iran then proposed to free the 52 U.S. nationals, specifies that the United States should take "all legal and administrative proceedings required for cancellation and annulment of all the claims and demands made by the Government of the United States of America and

American companies against Iran under any title whatsoever, ... and prevent[ion] from instituting new cases whether civil, penal or financial, by natural or artificial persons, official or non-official citizens of the States...."

It must be admitted that in November 1980 the Majlis indicated very clearly that its intention was to put an end to any judicial claims by U.S. nationals against Iran in U.S. courts, presumably including claims by U.S. oil companies. The Bill enacted by the Majlis on 14 January 1981, however, is narrower in scope than the resolution of 2 November 1980, since it defines in its "Note" the disputes to be excluded from international arbitration as only "those disputes the settlement of which in competent courts of Iran has been provided for in the respective contract." The words "in response to the Majlis position" were included in the Declaration as a result of what had been said by the Majlis, not in November 1980, but in January 1981. Thus, the reference to the position of the Majlis also does not affect the jurisdiction of this Tribunal in the present case.

The Respondents would nevertheless have us read that Note as barring from jurisdiction "disputes the settlement of which has been provided for in" the January 1980 enactment of the Revolutionary Council, as well as in "the respective contract." Since the terms of the Note are clear and unambiguous, we have no occasion to read more into it than that which already appears.

### III. On the Third Point

It is true that Article II, paragraph 1 of the Claims Settlement Declaration limits the jurisdiction of this Tribunal to claims "outstanding on the date of this agreement". The provision continues, however, to say "whether or not filed with any court". The latter phrase was inserted in Article II at the request of the Iranian negotiators, who perceived a gap in the jurisdictional grant. Mr. Nabavi states that it was Iran's intent "to merely protect and secure the position of Iran by providing for the Iranian ministries and organizations the possibility of referring their respective disputes against the United States corporations to the Arbitral Tribunal", since those Iranian entities "had not previously filed their claims with any court....."

Whatever might have been Iran's intent, the phrase "whether or not filed with any court" modifies the phrase "such claims", which in turn refers to claims of nationals of the United States as well as claims of nationals of Iran. There is no language supporting the view that all "unfiled" claims are barred except those of Iran against United States corporations, claims which are themselves barred by our decision in Case A/2. We note further that the phrase "outstanding claim" refers to a cause of action which "existed" as of 19 January 1981, whether or not that claim had previously been sought to be enforced in court or arbitral proceedings.

Thus, the previous filing of a claim with a tribunal is not necessary for the claim to be "outstanding". It is clear, moreover, that Phillips' claim was outstanding on 19 January 1981, since on 11 August 1980, NIOC had informed Phillips that the Contract had been declared null and void.

For the foregoing reasons,

THE TRIBUNAL DECIDES that the alleged nullification of the agreement of 13 February 1965 does not affect its jurisdiction over Phillips' claim. The remaining issue whether any alleged partnership among Phillips, AGIP, and the Indian Commission bars our jurisdiction is hereby joined to the merits.

Accordingly,

THE TRIBUNAL ORDERS that each of the Respondents file a written Statement of Defence on the other issues, including the merits of the case, before 30 April 1983. Pursuant to §3 of Article 19 of the Tribunal Rules of Procedure and in view of the exceptional circumstances of the proceedings, the Tribunal decides that the same time limit applies to any counterclaim.

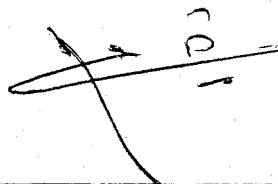
Dated, The Hague  
30 December 1982



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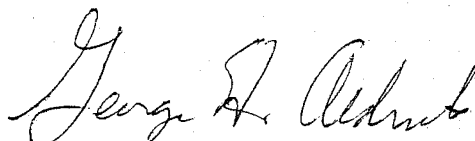
Pierre Bellet  
Chairman  
Chamber Two

In the name of God



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Shafie Shafeiei  
Dissenting



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George Aldrich