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Case No. 399

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** CONCURRING OPINION of _____
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- Date _____
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CASE NO. 399

CHAMBER ONE

AWARD NO. 496-399-1

SOVEREIGN INTERNATIONAL CORPORATION,
Claimant,

and

GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
SHERKAT PROFIL VA YAKHCHALE
IRAN POYA (PUBLIC JOINT STOCK
COMPANY), FORMERLY PARS & AMERICA CO.,
Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	9 NOV 1990
	تاریخ ۱۳۶۹ / ۸ / ۱۸

AWARD

1. This Award deals with the question whether the Claimant Sovereign International Corporation ("Sovereign") has fulfilled the jurisdictional requirements be defined in Article VII, paragraph 1 of the Claims Settlement Declaration ("CSD").¹ As stated in its most recent Order, filed on 24 November 1989, the Tribunal makes the decision regarding its jurisdiction in this Case on the basis of the evidence before it without a hearing. First, however, it is appropriate to give a survey of the procedural history of this Case.

I. THE PROCEEDINGS

2. On 18 January 1982, Sovereign filed three separate Claims with the Tribunal, each allegedly arising from the sale of materials by Sovereign to different companies in Iran. In three separate Awards filed today, the Tribunal decides each of these Claims. In Case No. 399, Sovereign seeks to recover U.S.\$857,100, plus interest, for certain machinery, equipment and raw materials that allegedly were sold and delivered to Pars & America Co., during 1977 and 1978, and U.S.\$27,383, constituting unpaid interest on four drafts. By a submission filed on 19 January 1982, the Statement of Claim was amended, adding the Government of the Islamic Republic of Iran as a Respondent. On 6 December 1983 a Statement of Defense was filed by the Government of

¹Article VII, paragraph 1 of the CSD states:
1. A "national" of Iran or of the United States, as the case may be, means (a) a natural person who is a citizen of Iran or the United States; and (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.

the Islamic Republic of Iran, and on the same date a Statement of Defense was filed by General Steel Industries Corporation. A Reply was filed on 13 February 1984 and a Rejoinder on 17 October 1984 by Sherkat Profil Va Yakhchale Iran Poya (Public Joint Stock Company) ("Iran Poya"). On 23 October 1984 a Counterclaim was filed by Iran Poya, in which it sought relief in the amount of \$860,120 plus interest and costs on the ground of overpayments made to Sovereign. A Supplementary Counterclaim was filed by Iran Poya on 30 November 1984. On 5 August 1986 the Tribunal ordered each Party to file by 5 November 1986 its remaining written evidence together with a Memorial explaining the evidence and summarizing the issues in this Case. Sovereign did not file a Memorial or any evidence pursuant to this Order, although its time for filing was extended by further Orders.

3. Sovereign later filed requests, on 9 and 22 March 1988, asking permission to file a Memorial and its written evidence. Respondents objected to these requests. The Tribunal, however, granted Sovereign a last opportunity to file a Memorial and its evidence. By the same Order the time limit for the Respondents to file its remaining evidence was extended to 30 June 1988. Filing of rebuttal evidence by both Parties was extended to 30 September 1988.

4. Respondent Iran Poya filed its "Hearing Memorial and Documentary Evidence" on 30 June 1988, and Sovereign filed its Hearing Memorial on 1 July 1988; the accompanying Exhibits were filed with some delay, on 5 August 1988, due to the fact that initially they did not comply with the requirements as to form set forth in note 5 of Article 2 of the Tribunal Rules. A rebuttal brief was filed by Iran Poya on 3 May 1989. On the same date a submission was filed by the Government of the Islamic Republic of Iran, in this Case and also in Cases Nos. 397 and 398, requesting the Tribunal to dismiss the claims asserted in those Cases on the ground of lack of jurisdiction. In particular, the Government of Iran argued that since there was no proof in the record of

the United States nationality of Sovereign's shareholders, the requirements of United States nationality as mandated by Article VII, paragraph 1 of the CSD had not been met. The Government of the Islamic Republic of Iran filed another submission on 3 November 1989, requesting the Tribunal to decide the three Cases on the basis of the evidence before it, and to dismiss the claims for lack of jurisdiction.

5. On 24 November 1989 the Tribunal ordered Sovereign to file the following material before 8 February 1990:

a) Evidence of the number of shares of capital stock of the Claimant issued and outstanding from the date the claim allegedly arose until 19 January 1981 ("the relevant period"). In that connection, the Tribunal notes that it does not consider that the alleged copies of various pages of the Claimant's "stock book" in the form submitted as Exhibit Q of the "Claimant's Exhibits", filed 5 August 1988, are sufficient to prove either the number of shares issued and outstanding during the relevant period, or the identity of the holders of 50% or more of the shares.

b) All evidence that the Claimant wishes the Tribunal to consider in determining (i) whether 50% or more of the shares of its capital stock was continuously owned during the relevant period by natural persons who were citizens of the United States of America, including official documentation of such citizenship, and (ii) the dominant and effective nationality of such persons.

In addition to providing the Respondents with an opportunity to comment on Sovereign's submissions to be filed pursuant to the Order, the Tribunal stated that "[it would] take a decision regarding its jurisdiction on the basis of the evidence before it". However, Sovereign did not file any submission in response to the Order and has remained totally silent to this day. Pursuant to the Order of 24 November 1989, the Government of the Islamic Republic of Iran filed a submission on 8 May 1990, requesting the Tribunal to close

the proceedings in Cases No. 397, 398 and 399 in view of the Tribunal's lack of jurisdiction.

II. REASONS FOR THE AWARD

6. Paragraph 4 of the Order of 24 November 1989 stated, in relevant part:

After 8 May 1990 the Tribunal will take a decision regarding its jurisdiction on the basis of the evidence before it.

As noted in para 5, supra, Sovereign has not filed any evidence as requested by the Tribunal in that Order, nor did it file any submission explaining why it was not able to do so.

7. Article VII, paragraph 1 of the Claims Settlement Declaration states that "[a] national of Iran or of the United States, as the case may be, means ... 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 ... 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." Sovereign has submitted as evidence a Certificate of Incorporation of Sovereign International Corp., filed on 9 December 1949 in the State of New York and also a Certificate of Good Standing of Sovereign International Corp., issued by the New York Department of State on 21 January 1983. These documents demonstrate that the Claimant was organized under the laws of the State of New York and was in existence on the dates the Claim allegedly arose. Thus the Claimant has satisfied the first jurisdictional requirement.

8. However, Sovereign has failed to submit evidence sufficient to prove that United States citizens owned a majority of its capital stock. In its Reply filed on 13

February 1984, Sovereign alleged that four United States citizens own two-thirds of its stock. These citizens were alleged to be: David Khaghan, Gordon Gabbay, Frederick Elghanayan and Jeffrey Elghanayan. However, in its Memorial, filed on 1 July 1988, Sovereign asserted that two different natural persons owned Sovereign:

During the relevant time period (the date when the claims arose through January 19, 1981) the majority of Sovereign's stock was owned by two members of the Elghanayan family whose dominant and effective nationality is the United States, and thus the corporation is entitled to assert its claim in this Tribunal. The Tribunal is respectfully referred to the accompanying affidavits by Nourollah Elghanayan and Aghadjan Elghanayan, which confirm that they own 100% of the outstanding capital stock of Sovereign.

9. Sovereign has not supported this statement with sufficient evidence, and so has failed to meet its burden of proving the necessary jurisdictional facts for two reasons. First, totally disregarding a specific Order of the Tribunal, Sovereign has not presented sufficient documentary evidence of the identity of its shareholders. The various pages of Sovereign's stock book which were submitted as Exhibit Q of the "Claimant's Exhibits", filed on 5 August 1988, and referred to in the Order filed on 24 November 1989, see supra para. 5, do not indicate that either Nourollah or Aghadjan Elghanayan owned any shares in Sovereign at all. The Tribunal reiterates, as also stated in its Order of 24 November 1989, that the pages of the stock book are not sufficient to prove either the number of shares issued and outstanding during the relevant period² or the identity of the holders of fifty per cent or more of the shares.

²The relevant period, pursuant to Article VII, paragraph 2 of the CSD, is from the date the claim arose until 19 January 1981, the date the CSD entered into force.

10. Second, Sovereign has failed to prove that the alleged owners of Sovereign, Nourollah and Aghadjan Elghanayan, are citizens of the United States. In this respect the Tribunal notes that apart from the lack of necessary documentary evidence of United States citizenship, there is not even a sufficient allegation of such citizenship. Nourollah and Aghadjan Elghanayan allege in their Affidavit, signed on 24 June 1988, inter alia, that their dominant and effective nationality has been and still is that of the the United States, and further that they have been permanent residents of the United States since 1953 and 1954, respectively. In addition, Nourollah states in the same Affidavit that he is currently a citizen of the United States. These statements, however, fall far short of proving that they were United States citizens at the time the claim arose.

11. For the reasons stated above, the Tribunal concludes that Sovereign has failed to prove that it complies with the jurisdictional requirements of Article VII, paragraph 1 of the CSD. Therefore, the claim is dismissed for lack of jurisdiction.

12. Since the Claim is dismissed for lack of jurisdiction, it follows that the Counterclaim asserted by Iran Poya is also dismissed for lack of jurisdiction. See e.g., International Technical Products Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Partial Award No. 186-302-3 (19 Aug. 1985), at pp. 42, 43, reprinted in 9 Iran-U.S. C.T.R. 10, 38.

13. In their pleadings the Respondents the Government of the Islamic Republic of Iran and Iran Poya have requested the Tribunal to award them costs incurred in defending the Case. In view of the circumstances of this Case, and paying particular attention to the fact that the Respondents had the expense of filing a number of submissions while Sovereign at various times did not respond to the Tribunal's Orders, the Tribunal finds it reasonable to award the

Respondents, the Government of the Islamic Republic of Iran and Iran Poya, jointly costs of arbitration in the amount of US\$1,500.

III. AWARD

14. For the foregoing reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

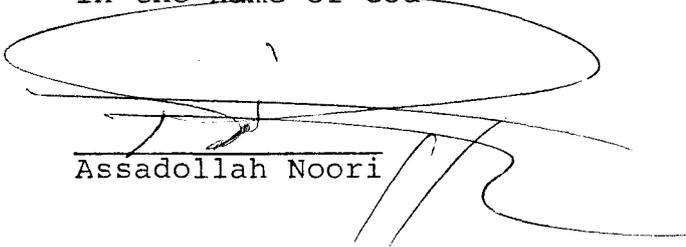
- a) The Claim against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and SHERKAT PROFIL VA YAKHCHALE IRAN POYA is dismissed for lack of jurisdiction.
- b) The Counterclaim asserted by SHERKAT PROFIL VA YAKHCHALE IRAN POYA against SOVEREIGN INTERNATIONAL CORPORATION is dismissed for lack of jurisdiction.
- c) The Claimant SOVEREIGN INTERNATIONAL CORPORATION is obligated to pay the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and SHERKAT PROFIL VA YAKHCHALE IRAN POYA jointly costs of arbitration in the amount of US\$1,500.

Dated, The Hague,
9 November 1990

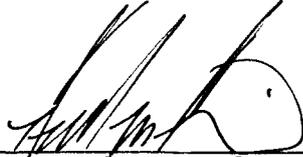


Bengt Broms
Chairman
Chamber One

~~In the Name of God~~



Assadollah Noori



Howard M. Holtzmann