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Case No. 946

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** CONCURRING OPINION of _____
- Date _____
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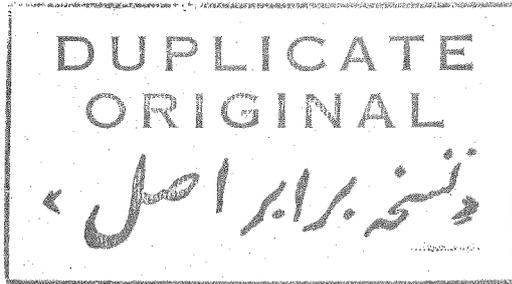
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعوی ایران - ایالات متحده



CASE NO. 946

CHAMBER ONE

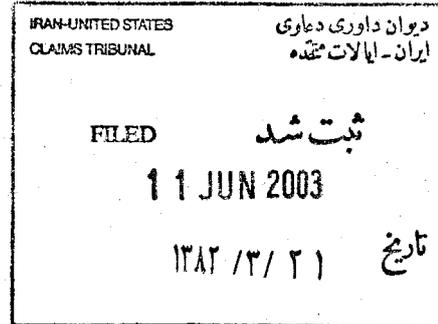
DECISION NO. DEC 131-946-1

DR. ABBAS SHEIBANI,
SA-ED AMANI HAMEDANI,
ALI ASGHAR BAGHANI,

Claimants,

and

GOVERNMENT OF THE UNITED STATES OF AMERICA,
Respondent.

DECISION

I. Introduction and Procedural History

1. On 19 January 1982, DR. ABBAS SHEIBANI, SA-ED AMANI HAMEDANI and ALI ASGHAR BAGHANI ("the Claimants"), members of Iran's parliament (Majlis), brought a claim against THE GOVERNMENT OF THE UNITED STATES OF AMERICA ("the Respondent") for damages arising from the Respondent's alleged involvement in the coup d'état of 19 August 1953 in Iran.¹ The Claimants also request the Tribunal to render various declaratory orders.

2. Acting "on [their] own behalf and by proxy and representation on behalf of all Iranian citizens" the Claimants seek compensation on several grounds. Although the Claimants have not quantified their damages, they claim that "[t]hese damages evidently amount to billions of dollars, the extent of which should be determined at the discretion of the honorable Arbitrators."

3. The Respondent's Statement of Defense of 7 February 1983 does not address the merits of the Case, but requests that the Claim be dismissed for the Tribunal's lack of jurisdiction under Article II, paragraph 1, of the Claims Settlement Declaration. The Respondent further argues that the Claimants have no locus standi before the Tribunal: they have failed to identify any injury that they personally have incurred, but, instead, purport to bring general claims on behalf of all Iranian nationals.

¹ The Claimants' Statement of Claim also had sought damages as compensation for the Respondent's alleged actions in connection with what has become known as the Tabass incident, which occurred on 24 April 1980. In their Reply to the Respondent's Statement of Defense, however, the Claimants have not pursued this claim further. For a discussion of the Tabass incident, and of the Tribunal's lack of jurisdiction over claims related to it, see K. Haji-Bagherpour and The Government of the United States of America, Award No. 23-428-2 (26 Jan. 1983), reprinted in 2 Iran-U.S. C.T.R. 38.

4. By its Order of 25 April 1983, the Tribunal invited the Claimants to reply to the Respondent's Statement of Defense, stating that it "intends to decide the jurisdictional issues in this Case on the basis of the documents submitted."

5. On 28 January 1993, after having been granted 26 extensions, the Claimants filed their "Reply to Statement of Defense and Request to Decide Jurisdiction as a Preliminary Issue." In their Reply, the Claimants interpret the Respondent's request for dismissal for lack of jurisdiction, contained in its Statement of Defense, as a request for a decision on jurisdiction as a preliminary question. The Claimants joined in this request.

6. On 19 August 1993, after having been granted two extensions, the Respondent filed its "Rejoinder and Comments on Claimant's [sic] Request to Decide Jurisdiction as a Preliminary Issue." The Respondent confirms that "both parties take the position that determination of jurisdiction as a preliminary matter in accordance with Article 21 of the Tribunal's Rules of Procedure would be appropriate."

7. Pursuant to the request by the Parties, the Tribunal reiterated, in its Order of 8 October 1999, its intention to decide as a preliminary matter the issue of jurisdiction in this Case on the basis of the documents submitted. By that same Order, the Tribunal invited the Parties to submit any pleadings they may have on the issue of jurisdiction. On 24 January 2000, the Respondent replied that it "does not consider it necessary to submit further argument at this time." On 24 April 2000, after having been granted one extension, the Claimants replied that "the pleadings previously filed on the issue of the Tribunal's jurisdiction do sufficiently serve their purpose and that there is no need for further filing in this respect."

II. Jurisdictional Issues

8. The Claimants state that their Claim arises out of "measures affecting property rights," and thus falls within the purview of Article II, paragraph 1, of the 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, dated 19 January 1981 ("Claims Settlement Declaration"). The Claimants also argue that the Claim is admissible, because the Claimants act as representatives of a large number of Iranian nationals who have personally incurred injuries due to the Respondent's actions in Iran in 1953. They further argue that the issue of whether they personally have sustained losses is immaterial. They also deny any jurisdictional requirement specifically to name every individual member of the group as a party to the Claim.

9. The Respondent, by contrast, contends that this "political" Claim falls outside the Tribunal's jurisdiction, for several reasons, principally because there is no proper Claimant. In this respect, the Respondent argues that (a) the named Claimants have no standing to bring this Case, (b) the Claim was not filed by its "owner" within the jurisdictional time period, and (c) neither the Algiers Accords (Algiers Declarations) nor the Tribunal Rules permit any such "group action."

10. The Respondent further argues that, if the Claim were to be construed as an "official" claim submitted by the Government of Iran, it is inadmissible because it fails to meet the requirements of Article II, paragraph 2, of the Claims Settlement Declaration. Likewise, if the Claim were to be regarded as a private claim, the subject matter of the Claim falls outside the Tribunal's jurisdiction: under the principle of ejusdem generis and Tribunal precedent, the words "other measures affecting property rights" in Article II, paragraph 1, of the Claims

Settlement Declaration, referred to by the Claimants, encompass only actions similar to expropriation.

III. The Tribunal's Findings

11. Article II of the Claims Settlement Declaration gives the Tribunal jurisdiction over two kinds of claims: private and official. With respect to private claims, Article II, paragraph 1, of the Declaration gives the Tribunal the power to decide "claims of nationals of the United States against Iran and claims of nationals of Iran against the United States. . . [that] arise out of debts, contracts . . . expropriations or other measures affecting property rights. . . ."

12. Article VII, paragraph 2, of the Claims Settlement Declaration further provides in relevant part:

"Claims of nationals" of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this Agreement enters into force, by nationals of that state....

13. Therefore, in order for nationals of Iran or the United States to be deemed proper claimants by the Tribunal under the Claims Settlement Declaration, they must claim before this Tribunal as the owners of the claims and must show that their claims were "owned" by nationals of Iran or the United States, as the case may be, continuously from the time they arose until the time that the Algiers Accords entered into force on 19 January 1981. This requirement is further established by Tribunal precedent.² Here, however, the Claimants do not even

² See, e.g., Tchacosh Company, Inc. et al. and The Government of the Islamic Republic of Iran, et al., Award No. 540-192-1, paras. 22-23 (9 Dec. 1992), reprinted in 28 Iran-U.S. C.T.R. 371, 380-381; Harrington and Associates, Inc. (a claim of less than US\$250,000) and The Islamic Republic of Iran, Award No.321-10712-3, paras. 14-20 (27 Oct. 1987), reprinted in 16 Iran-U.S. C.T.R. 297, 301-302; Richard D. Harza, et al. and The

purport to "own" the instant Claim; they profess to have brought it on behalf of others. Such a "group action," as the Respondent has styled this Claim, is not permitted by the Claims Settlement Declaration or Tribunal Precedent.³

14. In addition, the Claimants have not claimed that they personally (as distinct from the Iranian population as a whole) suffered any injury as a result of the Respondent's alleged actions or that they have properly acquired such claims of other Iranian nationals prior to the Tribunal's jurisdictional cutoff date. On the contrary, in their Reply of 28 January 1993, the Claimants clearly contend that "they represent a large number of people who have personally incurred injuries." Because ownership of a claim is a sine qua non of a party's standing in a private claim, and because the Claimants have not pleaded such injury or ownership, the Tribunal finds that they have no standing to bring this Claim.

15. The Claimants, moreover, have not stated an "official claim[] . . . arising out of contractual arrangements . . . for the purchase and sale of goods and services," as required by Article II, Paragraph 2, of the Claims Settlement Declaration, and in any event lack standing to bring any such claim. A claim for damages alleged to result from the cited event does not implicate any of the "contractual arrangements" that alone can form the subject matter of an official claim and hence falls outside the Tribunal's jurisdiction. In addition, since "official claims" must be "of the United States and Iran against

Islamic Republic of Iran, et al., Award No. 232-97-2, paras. 21-22 (2 May 1986), reprinted in 11 Iran-U.S. C.T.R. 76, 84-85; and McCollough & Company, Inc. and The Ministry of Post, Telegraph and Telephone, et al., Award No. 225-89-3, paras. 12-14 (22 Apr. 1986), reprinted in 11 Iran-U.S. C.T.R. 3, 7.

³ The Tribunal also notes that those persons who have allegedly suffered a loss have not filed a Claim of their own with this Tribunal.

each other," as also required by Article II, Paragraph 2, the Claimants here have no standing to advance such a claim, as they themselves recognize that "[t]his claim . . . is not brought by the Government of Iran, its agencies, instrumentalities or controlled entities" against the United States and "cannot, therefore, be characterized as an official claim within the meaning of the Claims Settlement Declaration"

16. Having established that the Claimants in this Case lack proper standing to bring a private claim and do not purport to bring an official claim, the Tribunal need not consider whether the instant Claim otherwise satisfies the jurisdictional requirements set forth in Article II, Paragraph 1, of the Claims Settlement Declaration.

IV. DECISION

17. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

a) The Claim of DR. ABBAS SHEIBANI, SA-ED AMANI HAMEDANI, and ALI ASGHAR BAGHANI is dismissed.

b) The arbitral proceedings in Case No. 946 are terminated in accordance with Article 34, paragraph 2, of the Tribunal Rules.

c) Each party shall bear its own costs of arbitration.

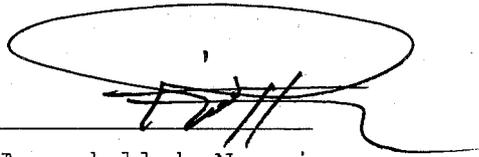
Dated, The Hague

11 June 2003

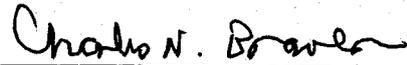


Bengt Broms
Bengt Broms
Chairman
Chamber One

In the name of God



Assadollah Noori
Assadollah Noori



Charles N. Brower
Charles N. Brower
