

ORIGINAL DOCUMENTS IN SAFE

Case No. 11045

11045-22

Date of filing: 7 July 1989

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision 7 July
4 pages in English 5 pages in Farsi

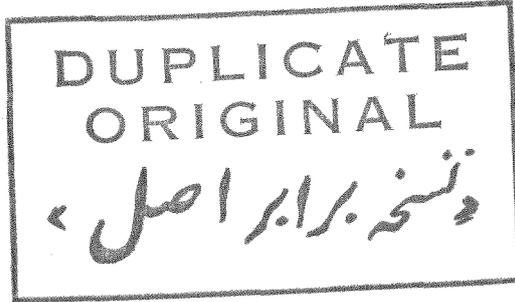
** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** 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



CASE NO. 11045

CHAMBER ONE

DECISION NO. DEC 87-11045-1

INTERNATIONAL TELEPHONE AND TELEGRAPH
CORPORATION,

a claim of less than US\$250,000 presented
by the UNITED STATES OF AMERICA,

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,

Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داورى دعاوى ایران - ایالات متحده
شیت شد - FILED	
Date	7 JUL 1989
	۱۳۶۸ / ۴ / ۱۴ تاریخ

DECISION

1. This Decision addresses the request by the Claimant International Telephone and Telegraph Corporation ("ITT") for amendment of the Claim in order to substitute Avcron, Incorporated ("Avcron") as the Claimant pursuant to Article 20 of the Tribunal Rules.
2. On 19 January 1982, the Government of the United States of America presented a Claim of less than \$250,000 of ITT.
3. On 14 October 1986, the United States filed a Supplemental Statement of Claim. On 13 April 1987, the Respondent Bank Markazi filed a Statement of Defense. On 23 April 1987, the United States filed a Request for Amendment. On 13 October 1987, the Government of the Islamic Republic of Iran filed its comments on the

"Request for Amendment" by way of a "Motion to Dismiss the Case". By the same date, the Navy of the Islamic Republic of Iran filed a Statement of Defense and Counterclaims.

4. In its "Request for Amendment", the Claimant seeks permission, in light of the Tribunal's decision in St. Regis Paper Company and Islamic Republic of Iran, Award No. 291-10706-1 (29 Jan. 1987), reprinted in 14 Iran-U.S. C.T.R. 86, to amend the Claim pursuant to Article 20 of the Tribunal Rules, introducing Avcron as the Claimant in this Case. The United States contends that, in response to the Tribunal's Order of 30 May 1986, it initiated further investigation of the factual basis of the Claim. In the Supplemental Statement of Claim filed on 14 October 1986, it set forth the details of the Claim and apprised the Respondent that Avcron, allegedly a wholly-owned subsidiary of ITT, was the primary party to the contract with the Iranian Navy. The Claimant argues that an amendment would not change the legal or factual basis of the Claim or prejudice the Respondent in any way.
5. In a "Motion to the Tribunal to Dismiss the Case" filed on 13 October 1987 pursuant to the Tribunal's Order of 4 May 1987, as extended by Order of 17 July 1987, the Respondent the Government of the Islamic Republic of Iran requested the Tribunal to deny the Claimant's Request. The Navy of the Islamic Republic of Iran submitted the same request in its Statement of Defense of 13 October 1987. The Iranian Navy argues that Avcron was itself entitled under the Claims Settlement Declaration to file the Claim. Having abstained from doing so, it is barred from bringing a claim in 1987.
6. The Tribunal is mindful of the requirements of Article 20 of the Tribunal Rules, which permits the amendment of a claim, unless delay, prejudice, or loss of juris-

diction would result. See, e.g., St. Regis, supra; see also, Fedders Corporation and Loristan Refrigeration Industries, Decision No. DEC 51-250-3 (28 Oct. 1986), reprinted in 13 Iran-U.S. C.T.R. 97.

7. As stated in St. Regis, "[t]he Tribunal has further held that, in considering a proposed amendment to add or to substitute a party, it must determine whether the proposed amendment is an 'attempt to introduce a new claim after the deadline presented in Article III, paragraph 4, of the Claims Settlement Declaration', see The Austin Company and Machine Sazi Arak, Award No. 257-295-2 (30 Sept. 1986), or simply the clarification of the true identity of the proper Claimant". Award No. 291-10706-1 at para. 25, reprinted in 14 Iran-U.S. C.T.R. at 91. See also Refusal to Accept the Claim of Raymond International (U.K.) Ltd., Decision No. DEC 18-Ref 21-FT (8 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 34.

8. In the present Case, the Tribunal holds that, in accordance with the decision of St. Regis, the proposed amendment would amount to a substitution of Avcron for ITT as the Claimant and that this would be "tantamount to the filing of a new claim." Award No. 291-10706-1 at para. 26, reprinted in 14 Iran-U.S. C.T.R. at 91.

9. As also noted in St. Regis, "[w]hen the real party is referred to sufficiently clearly in the original Statement of Claim, the circumstances may permit the Tribunal to allow an amendment to name the proper Claimant." Id at para. 29, reprinted in 14 Iran-U.S. C.T.R. at 92. In the present Case, there was no indication in the Statement of Claim that the contracting party was other than ITT, or that there was any other Claimant. Only after the filing of the Supplemental Statement of Claim on 14 October 1986 did it become clear that the alleged contract involved Avcron.

The Supplemental Statement of Claim represented for the first time that Avcron, and not ITT, was the contracting party.

10. In the circumstances of this Case, Article VII, paragraph 2 of the Claims Settlement Declaration precludes the exercise of the Tribunal's jurisdiction by providing for jurisdiction over indirect claims only when the "other entity is not itself entitled to bring a claim . . ." Because Avcron could have asserted this Claim itself, ITT cannot assert an indirect claim before this Tribunal on behalf of Avcron, its alleged subsidiary. Thus, the proposed amendment would substitute a proper party, Avcron, for an improper party, ITT, after the jurisdictional deadline of 19 January 1982 prescribed by the Claims Settlement Declaration. See also St. Regis, supra, para 31, reprinted in 14 Iran-U.S. C.T.R. at 93.

11. For the foregoing reasons,

- a) The Tribunal denies the Request for Amendment and dismisses this Claim.
- b) Since Avcron is not a proper Claimant, the Counterclaims are dismissed on the same grounds.
- c) The Claimant is obligated to pay the Navy of the Islamic Republic of Iran costs of arbitration in the amount of U.S.\$500.00.

Dated, The Hague,
7 July 1989

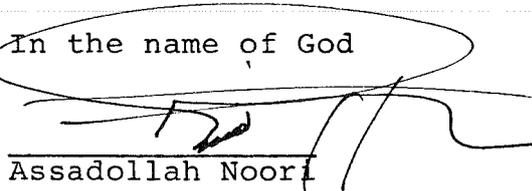


Bengt Broms

Chairman

Chamber One

In the name of God



Assadollah Noori



Howard M. Holtzmann

Concurring Opinion