IRAN-UNITED STATES CLAIMS TRIBUNAL

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11045-23

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Concurring opinion

** DECISION - Date of Decision 7 July by MR. HOLTZMANN

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CASE NO. 11045
CHAMBER ONE
DECISION NO. DEC 87-11045-1

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION,
a claim of less that US$250,000 presented by the UNITED STATES OF AMERICA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent,

CONCURRING OPINION OF HOWARD M. HOLTZMANN

1. The Tribunal today dismisses this Case, more than seven years after it was filed, on the technical grounds that the original Statement of Claim improperly named a parent corporation -- rather than its wholly-owned American subsidiary -- as the Claimant. Claimant sought to amend its Statement of Claim to correct this initial error, and the Tribunal now rejects the amendment. In reaching this result, today's Decision relies on this Chamber's prior Award in St. Regis Paper Co. and Islamic Republic of Iran, Award No. 291-10706-1 (29 January 1987), reprinted in 14 Iran-U.S. C.T.R. 86 (hereinafter "St. Regis"). That Award

rejected an amendment to a claim that was offered in similar circumstances.

2. I dissented from the Award in St. Regis, and I continue to believe that the result in that case was wrong. But I also believe that each Chamber in this Tribunal should respect its prior awards, applying them in a consistent fashion to like situations. For me, therefore, whether the amendment to the present Claim should be barred turns not on whether I consider that result wrong as an isolated legal question but on whether I consider it wrong or unfair in light of this Chamber's prior practice. Parties in all cases must be able to rely on prior practice to guide their presentation of cases as well as settlement discussions. And the integrity of the arbitration process therefore requires that this Chamber be consistent in the reasoning of its awards.

3. I conclude that the facts of this Case are sufficiently similar to those of St. Regis that a proper respect for our prior practice compels the same result in both. In this Case -- as in St. Regis -- the original Statement of Claim omitted the name of the Claimant's subsidiary (who was the real party to the disputed contract) but otherwise contained substantial information about that contract, such as the name of the individual who signed it on behalf of Respondent, the contract date, and its identifying number. In both cases, Claimant did disclose the identity of the real party as early as the Supplemental Statement of Claim. In both cases, the Respondent made clear from its very first substantive submission that it understood who the real party was. Despite these indications that no real harm had arisen from the omission of the real party from the Statement of Claim, the Award in St. Regis refused to permit an amendment that would correct this technical defect. I cannot see how a contrary ruling can be justified in the face of such similar facts in the Case before us.

4. I reach this conclusion reluctantly, for I believe that today's Decision, like the Award in St. Regis, raises the Tribunal's already rigid pleading requirements to a new level of harsh formalism. Such a formalistic approach is inconsistent with the Tribunal's own Rules, which permit amendments to claims "unless delay, prejudice, or loss of jurisdiction would result." Article 20, Tribunal Rules. Today's result is particularly regrettable since the United States has offered a compelling reason for its initial mistake -- one that appears to excuse the Claimant itself from any fault in the matter. Under the Claims Settlement Declaration, claims for less than U.S.$250,000 must be presented before this Tribunal by the claimant's government. The Claim before us is one of nearly 3,000 filed at the Tribunal that fall within this category. As in all other cases, these so-called "small claims" had to be filed within one year of the signing of the Claims Settlement Declaration. Obviously, the filing of so many claims in such a short period of time by government officials who were unfamiliar with the facts of the cases posed enormous difficulties. Accordingly, a procedure evolved whereby, for small claims, the United States initially filed very brief Statements of Claim, which were then augmented with Supplemental Statements of Claim as particular cases were scheduled for further consideration by the Tribunal.

5. It was during preparation of the Supplemental Statement of Claim in this Case that the United States (as it has now explained) "initiated further investigation of the factual basis of the claim" and discovered that the real party in interest was the Claimant's subsidiary. There is nothing implausible in the United States' belated discovery of this fact. Nor can the Statement of Claim that was initially filed on behalf of the parent corporation be considered deficient in any respect other than its failure to include the subsidiary's name. As I have already indicated, that

Statement of Claim otherwise identified the contract at issue in this Case with great specificity.

6. In the end, however, even the United States' explanation for its error does not sufficiently distinguish the present Case from St. Regis to justify a different result. For, although the Government did not explicitly offer such an explanation in St. Regis, the facts clearly pointed to the same reason for Claimant's error. Indeed, in explaining why the real party's name was mistakenly omitted from the Statement of Claim, St. Regis stated that it regularly took "legal action on behalf of its subsidiaries as a matter of the Company's 'internal practice.'" St. Regis, at para. 10; reprinted in 14 Iran-U.S. C.T.R. at 88. Moreover, in my dissent, I underscored the special difficulties that the United States faced in presenting small claims. Dissenting Opinion of Howard M. Holtzmann in St. Regis, pp. 6-7; reprinted in 14 Iran-U.S. C.T.R. at 98-99. Nonetheless, the Tribunal declared that "[t]he Clamaint has proffered no explanation for the failure of [the real party] to file its own claim." St. Regis at para. 31, reprinted in 14 Iran-U.S. C.T.R. at 93. I conclude, therefore, that there is no principled basis for declining to apply St. Regis to the Case before us. Accordingly, I concur in rejecting the proposed amendment to the Claim. The importance of doctrinal stability persuades me that this Chamber should adhere to its prior practice.

Dated, The Hague
7 July 1989

Howard M. Holtzmann