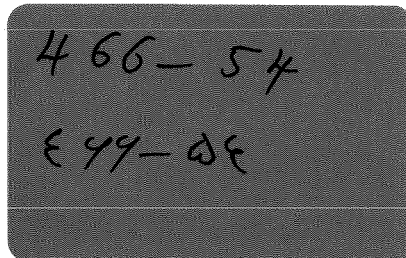


Case No. 466Date 5 November 1982ORIGINAL DOCUMENTS IN SAFE

Award No.: ITL 9-466-FT

✓ (INTERLOCUTORY AWARD)

- Award; No. of pages 6 Date of Award 5 November 1982

- Decision; No. of pages _____ Date of Decision _____

- Order; No. of pages _____ Date of Order _____

- Other

No. of pages _____ Date of Document _____

DUPLICATE
ORIGINAL

نسخه برابر اصل

Award No.: ITL 9-466-FT

Case No. 466

INTERLOCUTORY AWARD

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحده
FILED - ثبت شد	
Date ۱۳۶۱/۸/۱۴ 5 NOV 1982	تاریخ
No. 466	شماره

Interpretation of the expression "and excluding 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." (Article II, paragraph 1, of the Claims Settlement Declaration.) Jurisdiction relinquished by Chamber Three to the Full Tribunal.

Parties: Dresser Industries, Inc.,
Claimant,

- and -

The Government of the Islamic Republic of Iran;
The National Iranian Oil Company,
Respondents.

Appearances: Mr. Scott Nickson, Jr.
Mr. Rock Grundman
Mr. Keith C. Hennessee, Dallas
for the Claimant

Mr. Arthur W. Rovine, Agent of the United
States of America

Also present: Mr. Mohammed K. Eshragh, as Agent of the
Islamic Republic of Iran

466-54
۴۶۶-۵۴

Introduction

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 ("the Claims Settlement Declaration") excludes from the jurisdiction of the Tribunal "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."

Chamber Three of the Tribunal has relinquished to the Full Tribunal jurisdiction over this case for the limited purpose of deciding whether claims therein arising out of a contract containing provisions for the settlement of disputes fall within the scope of the above-mentioned provision of the Claims Settlement Declaration.

Following orders dated 15 April and 7 July, the parties have submitted Memorials addressing the jurisdictional issue referred to the Full Tribunal by Chamber Three. Furthermore, a hearing on this issue was held on 21-22 June 1982.

The claim in this case is based on a contract entered into in early 1977 between Dresser Industries, Inc. and N.I.O.C. for the purchase of various compressors. The General Conditions of Purchase portion of the contract contains the following provisions.

23) Arbitration

23.1 Any dispute arising from the execution or interpretation of the provisions of the Conditions or Purchase Order which cannot be solved by mutual agreement shall upon written notice of one party to the other be settled by an arbitration board consisting of three arbitrators. Each

of the parties shall appoint one arbitrator. The two arbitrators, before proceeding to arbitration, shall appoint a third arbitrator who shall be the president of the arbitration board.

23.2 If one of the parties does not appoint its arbitrator or does not advise the other party of the appointment made by it within one (1) month of the institution of the proceeding, the other party shall have the right to apply to the President of the Supreme Court of Iran for such appointment.

23.3 If the two arbitrators cannot within one (1) month from the date of appointment of the second arbitrator agree on the person of the third arbitrator, the latter shall, if the parties do not otherwise agree, be appointed at the request of either party by the President of the Supreme Court of Iran.

31) Governing Law

The validity of the Purchase Order and the legal relations of the parties to it shall be governed by the Laws of Iran, and the parties shall submit to the sole jurisdiction of the Supreme Court of Iran.

The Respondents declare that Article 31 of the Contract confers on the Supreme Court of Iran exclusive jurisdiction over disputes arising from the contract. And, the Respondents add, were the arbitration clause contained in Article 23 of the said contract to take effect, the Laws of Iran applicable to arbitration would entail the jurisdiction of the Iranian Courts. Therefore, in the view of the Respondents the Tribunal should hold that it has no jurisdiction.

The Claimant replies that the reference to the jurisdiction of the Supreme Court of Iran was provided for in Article 31 in order to express the previously existing right of the Supreme Court to declare the law of Iran, which was applicable to the Contract. This reference was also intended to ensure that the President of the Supreme Court of Iran would

be prepared to appoint arbitrators in cases where it was necessary. However, as to the forum competent for the settlement of disputes, the intent of the contracting parties expressed in Article 23 was clearly to subject to arbitration all disputes arising from the contract.

The Tribunal notes that the provision for arbitration in Article 23 and the submission to the Supreme Court of Iran in Article 31 are apparently inconsistent. However, it does not appear that the Supreme Court of Iran is in principle competent to investigate disputes in the first instance. Consequently the reference to the Supreme Court of Iran cannot be interpreted as a choice of forum; it can relate solely to the appointment of arbitrators.

The parties intended to subject the disputes arising from the contract to an arbitration in which the President of the Supreme Court of Iran was to intervene as appointing authority in cases where the parties failed to designate their arbitrators. If the arbitration was to be held or the award was to be enforced in Iran, there is no doubt that the control by the Iranian courts over the arbitral process would confer a measure of jurisdiction on these courts. But such control, similar to that provided by most systems of law, does not deprive arbitration of its specific character as a means of settlement of disputes.

In particular, Iranian courts have to decline jurisdiction over claims covered by an arbitration clause; the arbitrators are not bound to observe the rules of court procedure (Article 657 of the Iranian Code of Civil Procedure); and the award rendered can be declared null and void by the courts only on specific grounds listed in the Iranian Procedural Law (Article 665 of the Iranian Code of Civil Procedure).

Therefore, the Tribunal considers that even though Iranian law provides for a degree of control by the Iranian courts over the arbitral process, such limited control does not, in principle, deprive the arbitrators of their jurisdiction. The limited jurisdiction conferred by Iranian Law on the courts with regard to arbitration falls far short of the sole jurisdiction of the Iranian Courts required by Article II, paragraph 1, of the Claims Settlement Declaration.

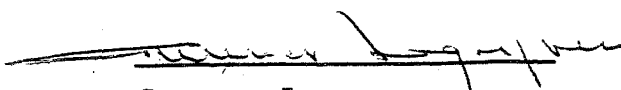
For the reasons given above

The TRIBUNAL holds

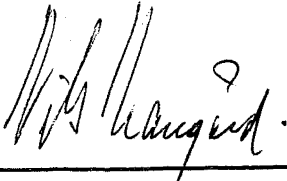

that Articles 23 and 31 in this contract do not fall within the scope of the forum clause exclusion contained in Article II, paragraph 1 of the Claims Settlement Declaration. Consequently, these articles in the contract do not exclude the Tribunal from jurisdiction over claims based on the said contract.

The case is referred back to Chamber Three for further proceedings.


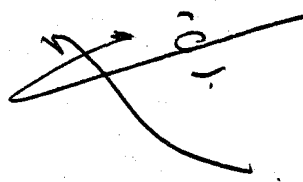
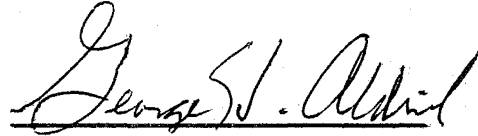
The Hague,
5 November 1982


Gunnar Lagergren
(President)

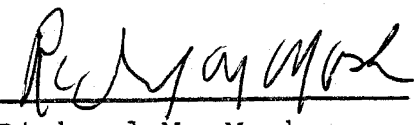
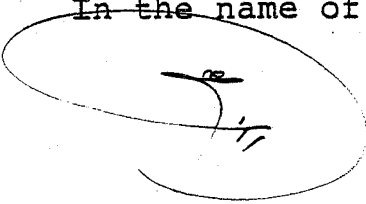
In the name of God,


Pierre Bellet
Nils Mangård
Mahmoud M. Kashani
Dissenting opinion

In the name of God,


Howard M. Holtzmann
Concurring opinion
Shafie Shafeiei
Dissenting opinion
George H. Aldrich

In the name of God,


Richard M. Mosk
Concurring opinion
Mostafa Jahangir Sani
Dissenting