

A18-84

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دیوان داوری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

Case No. A-18

Date of filing: 9 APR 84

\*\* AWARD - Type of Award \_\_\_\_\_  
 - Date of Award \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of MR. Holtzmann & MR. Aldrich  
 - Date 9 APRIL 84  
4 pages in English \_\_\_\_\_ pages in Farsi

\*\* SEPARATE OPINION of \_\_\_\_\_  
 - Date \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DISSENTING OPINION of \_\_\_\_\_  
 - Date \_\_\_\_\_  
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\*\* OTHER; Nature of document: \_\_\_\_\_  
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۱۴-۱۸

دیوان داری دعاوی ایران - ایالات

IRAN-UNITED STATES CLAIMS TRIBUNAL

IRAN UNITED STATES  
CLAIMS TRIBUNAL

دادگاه داری دعاوی  
ایران - ایالات متحده

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A-18

CASE A/18

DUPLICATE  
ORIGINAL

نسخه برابر اصل

CONCURRING OPINION OF MEMBERS  
HOLTZMANN AND ALDRICH

While we concur in the decision of the Tribunal in this case, we would have preferred a decision that the Tribunal has jurisdiction over claims against Iran by all persons who were at the relevant times citizens of the United States, including those who were also citizens of Iran. We believe it would have been justifiable to conclude that the text of the Claims Settlement Declaration, by defining "nationals" as "citizens", a term of municipal law, makes clear that all nationals, including dual nationals, are entitled to bring claims to this Tribunal. Our reasoning is as follows.

By defining a "national" as a "citizen" in Article VII, paragraph 1, the Parties have thus provided that, for purposes of this agreement, the term "national" shall have the same meaning as the term "citizen" under the national law of the country in question. It is indisputable that the term "citizen" under the laws of the United States includes all citizens, including those who retain also another nationality. Thus, the definition in Article VII of national as coextensive with citizen can only be understood as

meaning that the Tribunal has jurisdiction over claims against Iran by all United States citizens, including those who also retain Iranian nationality.

Iran has argued that the disjunctive "or" in Article VII, paragraph 1 precludes this interpretation, but we find that argument unpersuasive. The structure of that provision, particularly the phrase "as the case may be", makes it clear that under Article VII, paragraph 1, a national of Iran is defined as a natural person who is a citizen of Iran and that a national of the United States is defined as a natural person who is a citizen of the United States.

This analysis of the meaning of "national" is also the interpretation that is most consistent with the object and purpose of the Algiers Declarations. As the Tribunal notes, it seems clear that a major obstacle to the resolution of the crisis then existing in the relations between Iran and the United States was the existence of litigation in United States courts, brought against Iran by citizens of the United States and often involving judicial attachments of Iranian assets. As is stated in General Principle B, that obstacle was overcome by the creation of a new, substitute forum -- this Tribunal -- to which the American claimants could have access in lieu of the courts of the United States. This object and purpose would have been partially

frustrated if the claims of some United States citizens (those who were dual nationals) were left in United States courts. It cannot be assumed that "nationals" has a different meaning in General Principle B from its meaning in Articles II and VII of the Claims Settlement Declaration. If dual nationals cannot bring their claims to this Tribunal, then they could have remained, with their attachments, in the courts of the United States, and such a result would have interfered with the return of Iranian assets and the termination of litigation in American courts, which was the object and purpose of these treaty provisions.

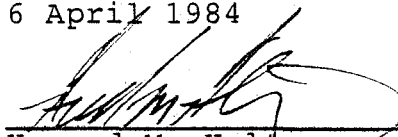
This conclusion is strengthened by the fact that certain claims and claimants have been specifically excluded from the jurisdiction of this Tribunal. Examples are certain claims by or on behalf of the 52 United States nationals referred to in paragraph 11 of the General Declaration and claims arising under certain contracts referred to in Article II, paragraph 1 of the Claims Settlement Declaration. If there remained any doubts about jurisdiction over claims by dual nationals, application of the maxim expressio unius est exclusio alterius would dispel them.

The subsequent practice of the two Parties is consistent with this interpretation in that the United States suspended litigation in the United States by all United States citizens, including dual nationals, and the lawyers

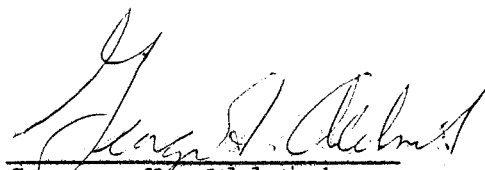
representing Iran in at least one such case involving dual nationals urged dismissal or suspension of the proceedings on the ground that the Declarations required the claimants to come to this Tribunal. Although it is unclear whether the dual nationality of the claimants in that case was apparent at the time, the Iranian surname must have suggested the possibility.

We deeply regret the tone and content of the "Declaration" which the three Iranian arbitrators have inserted above their signatures on the Decision. Such libelous and baseless invective has no place in an international arbitral tribunal, and merits no reply. A factual error relating to the Tribunal's Rules does, however, require correction: the choice of the third-country arbitrators was not the result of an "imposed mechanism of the UNCITRAL Rules." The UNCITRAL Rules were not "imposed"; they were mutually agreed upon by both Governments in the Claims Settlement Declaration. Nor are the Rules unfair; they were recognized by the General Assembly of the United Nations as being "acceptable in countries with different legal, social and economic systems" and were unanimously recommended by that body.\*

Dated, The Hague  
6 April 1984



Howard M. Holtzmann



George H. Aldrich

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\* Resolution 31/98, adopted 15 December 1976.