IRAN-UNITED STATES CLAIMS TRI

A18-88
A8 - 11 اف

دیوان داوری دعاوی ایران - ایالات متحد

ORIGINAL DOCUMENTS IN SAFE

Case No. A-18 Date of filing: 11 APRIL 84

** AWARD - Type of Award _____
- Date of Award _____
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of MR. RIPHAGEN

- Date 11 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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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایا

CASE NO. A-18

FULL TRIBUNAL

CONCURRING OPINION OF WILLEM RIPHAGEN

1. I concur in the Decision in rejecting both contentions to the effect that the Tribunal - a priori and per se - has, respectively has no jurisdiction over claims by persons who are, under U.S. law, citizens of the United States of America, and are, under Iranian law, citizens of the Islamic Republic of Iran (hereinafter referred to as "dual nationals").

2. I also concur with the majority in holding that the Tribunal is not faced with the question of "diplomatic protection" in the classic public international law sense of that notion, though it is certainly relevant that even there where international courts and tribunals were faced with the question of the persona standi of a state, rather than of an individual, before such international court or tribunal, there is a clear tendency - as noted in the Decision - to search for what is then often called the "dominant" or "effective" nationality.

3. That the Tribunal is not faced with the question of "diplomatic protection" is confirmed by a comparison between the system of dispute settlement, as embodied in the Algiers Declarations, and the system underlying

other arrangements dealing with the procedures of settlement of disputes between states only. In this connection, and among other differences - some of which are noted in the Decision -, one may point to the difference between Art. V of the Claims Settlement Declaration and, e.g. Art. 37 of the Statute of the I.C.J. The enforcement of the Tribunal's Awards through the Security Account, and the particular jurisdictional exception, contained in Art.II(1) in fine of the Claims Settlement Declaration (forum selection clauses) are also illustrative in this respect.

4. At least within the framework of such particular system as the one to which this Tribunal belongs, dual nationality raises questions, not so much relating separately to "jurisdiction" only, or to the choice of the "better" (i.e. the "dominant" or "effective") nationality only, but rather relating to the search for the most relevant nationality within a specific context (including the context of persona standi before this Tribunal).

5. Indeed the fact that the person presenting the claim is a citizen of Iran, under the law of the Islamic Republic of Iran, as well as a citizen of the United States of America, under United States law, may well remain relevant within specific contexts.

Thus, e.g., it is - even within the framework of "diplomatic protection" - often admitted that, if one state treats a dual national as an alien (i.e. by arbitrarily discriminating against that person as compared with its own citizens) a claim may validly be brought before an international Tribunal on the basis of that persons other nationality. It is also often admitted that no international protection is given to a

dual national as regards rights acquired by him through the use of his "other" nationality, if such rights are validly reserved to its citizens by the other state.

In both cases the merits of the particular claim are involved. (Incidentally, it would not seem that either of those cases is a case where the doctrine of estoppel, as applied in the relationships between private individuals under municipal law, could be applicable by analogy).

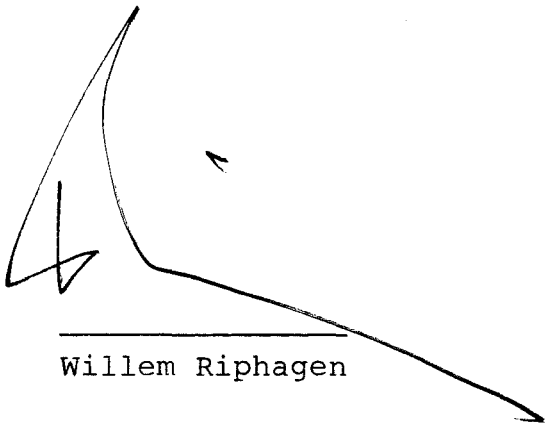
6. Quite apart from the foregoing considerations relating to the merits of the claim, the search for the most relevant nationality within a specific context cannot be undertaken without taking into account the "cause" of dual nationality.

Grosso modo dual nationality is caused by divergent municipal nationality provisions as regards (a) acquisition of nationality at birth (ius sanguinis versus ius soli); or (b) the effect of change of family status (such as marriage, in which case some municipal legislations attach automatic consequences, while some other make the acquisition of another nationality dependent upon a unilateral declaration to that effect of the person concerned); or (c) change of nationality through naturalization.

7. The relevance - for the purpose of determining the most relevant nationality in a particular context - of, on the one hand, social conduct (such as the choice of one's habitual residence and of one's centre of interests, family ties, and participation in the social life of a particular community) and, on the other hand, of the presence or absence of deliberate acts aimed at the relinquishment from the "other" nationality, is clearly different in the various cases of dual nationality.

8. This concurring opinion is certainly not the place to enter into casuistics.

I understand the Decision as leaving it to each Chamber to decide in view of the detailed circumstances of each particular case, in accordance with the above considerations.



Willem Riphagen