PHILLIPS PETROLEUM COMPANY, IRAN, *Claimant*
v.
THE ISLAMIC REPUBLIC OF IRAN,
THE NATIONAL IRANIAN OIL COMPANY, *Respondents*

(Case No. 39)

Chamber Two: Bellet, *Chairman*

Signed 29 *June* 1982[1]

LETTER FROM MR. P. BELLET TO MR. M. BALL[2]

The following is the text as issued by the Tribunal:

Dear Mr. Ball,

Chamber Two is in receipt of your "Request for Order that Proceedings Continue in the Absence of Statement of Defence (Including Request for Pre-Hearing Conference)," dated June 18, 1982.

We expect that at the close of the Preliminary Hearing scheduled for September 13, 1982 in the above referenced case, time will be afforded to the arbitrating parties to discuss with the Chamber other matters, including clarification of the issues in the case and a schedule for further proceedings.

The Chamber has noted the Respondent's failure to file the Statement of Defence when due on June 15. The Chamber hopes that such a Statement will be forthcoming from the Respondents. In any event, the proceeding will continue.

[Sgd.] Pierre Bellet

SHAFIE SHAFEIEI, DISSENTING OPINION[3]

Dear Mr. Bellet

I am really surprised by your letter of 29/6/1982 to the Claimant's counsel in Case No. 39 (*Phillips Petroleum Company Iran v. The Islamic Republic of Iran and the National Iranian Oil Company*), by its content, by the reason for its dispatch to the Claimant's counsel, by the expectation that "other matters, including clarification of the issues in the case and schedule of further proceedings" would be discussed at the

[1 Filed 29 June 1982.]
[2 Mr. M. Ball of Wald, Harkrader & Ross, Counsel for Phillips Petroleum Company, Iran.]
[3 Signed 12 July 1982; Filed 21 July 1982. The Dissenting Opinion is in the form of a letter from Mr. S. Shafeiei to Mr. P. Bellet.]

close of the pre-hearing scheduled for 13 September 1982, and by the indication that you somehow viewed the Respondents' conformation with the Full Tribunal's decision as their failure to comply with Chamber 2 order for filing of the Statements of Defence on 15 June 1982 on all other issues in the case.

I was further surprised to learn that the letter was signed and sent by you without consulting with me, as member of Chamber 2, or even giving the slightest indication of your intention to issue such a letter.

Needless to say that scheduling any proceeding to discuss matters other than the jurisdiction of this Tribunal by Chamber 2 is against the Full Tribunal's mandate to this Chamber following the Full Tribunal's decision of its 41st session and reiteration of the same by its 54th session to facilitate the task of the Full Tribunal. In no way was it envisaged that this Chamber do anything further on the case.

Moreover, giving the unnecessary indication to the Claimant's counsel that the Respondents failed to file their Statement of Defence on other issues in the case, is not only contrary to the reality but is also against the decision and mere purpose of the Full Tribunal's grant of separation of the jurisdiction and the merits of these cases.

The Respondents' belief was, as repeatedly reiterated, that the Tribunal has no jurisdiction to decide over the claims of the parties to the nullified oil agreements. The aim was to relieve the Respondents from the burden of huge and exorbitant expenditure and time consumption by alloting legal, technical and financial experts to prepare and file Statements on the cases which do not fall within the jurisdiction of the Tribunal and decided in favour of the Respondents' request, after reviewing their 22nd February 1982 requests and by elaborations of the Iranian Agent on 11 March 1982.

If the purpose of the Full Tribunal's decision was to order NIOC and Iran to file Statements of Defence on jurisdictional matters by 24 May 1982 and to file Statements of Defence on the merits and substance by 15 June 1982, i.e. only 20 days later, then the question arises as to what could NIOC's objective have been in raising such a request and what would have been the benefit that NIOC and the Tribunal have deriven from the separation of the issues. Was then in reality any separation achieved?

In fact drawing a line between jurisdiction and merit in the claims arising out of the nullified oil agreements correspond to reason and logic. This is further proved when we consider the very fact that more than 100 claims are lodged against NIOC, deserving NIOC to be granted the chance to prepare its Statements in other cases while jurisdictional matter in the nullified oil agreements is not yet decided.

I would like to draw your kind attention to the Iranian Arbitrators memorandum of 31 May 1982 to the Full Tribunal through which vacation of all dates fixed for response and hearing was recommend-

ed. As we mentioned there Iran is required to respond to more than 500 cases and to 216 of such cases within 3 months of the Summer. Preparation of even a very simple and primitive response to these cases, in most of which each Claimant is suing several Respondents (ranging from 10 to 20 government organizations and private companies) will be a very difficult and, sometimes impossible task, even for a well organized European state with all its financial and scientific capabilities. We have shown in that memorandum that imposition of such a burden on Iran was due to lack of understanding of the situation of Iran which amounted to deprivation of its right of defence. This very fact was recognized by the Full Tribunal and decided to extend all the time limits already fixed and not to fix further time limits in other cases against Iran for the Summer.

On the other hand, you are aware that several thousands of claims are lodged with this Tribunal and that the Tribunal has undertaken to deal with them as well. In some cases no pre-hearing is yet set, even for jurisdictional matters. Pre-hearings in several cases will not be held at least for a couple of years. Therefore fixing a date for pre-hearing on jurisdictional matters for cases 39 and 55 at this time is a privilege given to multinational oil companies by the Tribunal.

I would consider your letter of 29/6/1982 to Phillips Petroleum Company Iran's counsel as a personal letter.

[Sgd.] Shafie Shafeiei

GEORGE W. DRUCKER, JR., *Claimant*
v.
FOREIGN TRANSACTION CO., INSURANCE COMPANY OF IRAN,
NATIONAL GRAIN, SUGAR AND TEA ORGANIZATION, *Respondents*

(Case No. 121)

Chamber Two: Bellet, *Chairman*

Signed 6 *December* 1982[1]

ORDER

The following is the text as issued by the Tribunal:

ORDER

The Chamber has examined this case in the light of the Full Tribunal's Interlocutory Award No. 4-121-FT of 5 November 1982,[2] issued in connection with the forum-selection clauses which appear in contracts upon which certain of the claims in this case are based. The ''First'' and ''Second'' claims against the Foreign Transactions Co. are excluded from our jurisdiction to the extent that they are based on contract. Neither the ''Third'' nor the ''Fourth'' claim against the Foreign Transactions Co., nor the ''Fifth'' claim against the Insurance Co. of Iran and the National Grain, Sugar and Tea Organization are excluded from our jurisdiction.

The Respondents are ordered to file with the Tribunal a Rejoinder to the Claimant's Reply with respect to the Third, Fourth, and Fifth Claims by 28 January 1983. The Claimant is ordered to file by the same date its comments with respect to whether any parts of the ''First'' and ''Second'' claims remain within our jurisdiction. The Claimant is also requested to address the relationship between its requests for release of certain bank guarantees and the Rice Contract, Cement Contract, and Cement Offer.

[1 Filed 6 December 1982.]
[2 1 IRAN—U.S. C.T.R. 252.]

TECHNOLOGY ENTERPRISES, INC., *Claimant*
v.
FOREIGN TRANSACTION COMPANY, *Respondent*

(Case No. 328)

Chamber Two: Bellet, *Chairman*

Signed 7 *January* 1983[1]

ORDER

The following is the text as issued by the Tribunal:

ORDER

The Tribunal has reviewed the forum selection clause in the contract on which the claim in this case is based. It would appear that the claim is excluded from the Tribunal's jurisdiction to the extent that it is based on contract.

See: George Druker, Jr. v. Foreign Transaction Company; Insurance Company of Iran; National Grain, Sugar and Tea Organization (Jurisdiction), Case No. 121, (Interlocutory Award 4-121-FT of 5 November 1982 Parts II and III).[2]

The Parties are accordingly ordered to file with the Tribunal by 15 March 1983, any observations or briefs they wish to address to the Tribunal on the issue of jurisdiction.

[1 Filed 12 January 1983.]
[2 1 IRAN—U.S. C.T.R. 252.]

REXNORD INC., *Claimant*
v.
THE ISLAMIC REPUBLIC OF IRAN, TCHACOSH COMPANY and
IRAN SIPOREX INDUSTRIAL AND MANUFACTURING WORKS, LIMITED,
Respondents

(Case No. 132)

Chamber Three: Mangård, *Chairman;* Mosk[1], Sani[2], *Members*

Signed 10 *January* 1983[3]

AWARD NO. 21—132—3

The following is the text as issued by the Tribunal:

APPEARANCES:

For the Claimant:
Mr. A. Baum
Hughes, Hubbard & Reed, Paris
Attorney

Mr. W. H. Levit, Jr.
Secretary and General Counsel
Rexnord Inc.

Mr. R. A. Wheals
Financial Controller
Rexnord Inc.

Mr. R. G. Morgan
General Manager
Rexnord Inc.

For the Respondents:
Mr. M. K. Eshragh
Deputy Agent of the Islamic Republic of Iran

Mr. Tabaie
Legal Adviser to the Agent

Mr. Moini
Tchacosh Company

Mr. Tarkeshi
Iran Siporex Industrial and Manufacturing Works, Limited

[1 Concurring Opinion, see p. 27 below.]
[2 Mr. Jahangir Sani's reasons for not signing the decision appear at p. 14 below.]
[3 Filed 10 January 1983.]

AWARD

I. FACTS

Claimant, Rexnord Inc. (''Rexnord'' or ''The Claimant'') is a corporation organized under the laws of the State of Wisconsin of the United States and is a manufacturer of heavy industrial equipment.

The Respondents are the Islamic Republic of Iran, Tchacosh Company (''Tchacosh''), a corporation organized under the laws of Iran and engaged in the business of building construction, and Iran Siporex Industrial and Manufacturing Works, Limited (''Siporex''), a corporation organized under the laws of Iran for the production of building materials.

The Claimant has alleged that, through its Process Machinery Division located in Ealing, England, it entered into an agreement with Siporex and Tchacosh for the sale of stone crushing machinery and other equipment for use in a plant to be constructed in Abyek, Iran. This Agreement is represented by a series of telexed orders and invoices beginning on 21 February 1974. Under the terms of the agreement, the total purchase price of the equipment, together with estimated freight charges, was UK £570,915.25. Part of the price was to be paid by an irrevocable letter of credit as the equipment was delivered. The reminder of the purchase price was to be paid over a period of forty-two months upon presentation of drafts made to the order of Rexnord.

The equipment was delivered in shipments during 1975 and 1976. The letter of credit, representing UK £114,183.05 of the purchase price, was paid in full. Drafts in the amount of UK £231,061.95 were presented and also paid. However, the Claimant alleges that, beginning in November 1977, some drafts presented for payment were dishonoured and that, after October 1978, payment was refused for each remaining draft duly presented. Rexnord therefore makes a claim for the balance of the unpaid drafts, totalling UK £287,595.57.

Rexnord also alleges that it entered into other agreements with Siporex and Tchacosh for equipment the purchase price of which has been paid in full. These agreements, as well as the above discussed agreement, all provided that freight charges in excess of those estimated at the time of purchase and included in the purchase price, would be for the purchaser's account. Rexnord paid a total of UK £513,996.85 in freight charges incurred in shipping the equipment under all of these agreements, of which amount UK £158,086.78 was later billed to Siporex as excess freight charges. In response to this billing, Tchacosh sent a letter dated 26 February 1978, indicating that it considered itself responsible only for the increases in shipping rates up to the shipping dates upon which the parties had originally agreed.

Rexnord then dispatched a credit note to Siporex for UK £27,910.77 representing the disputed amount. Both the amount of the credit and the remaining amount outstanding were apparently accepted by Siporex and Tchacosh as no further objection was raised or communicated. Rexnord therefore claims against Siporex for the remaining UK £130,176.01.

The Claimant alleges that both Tchacosh and Siporex are entities controlled by the Government of Iran by virtue of the Government's appointment, in August 1979, of directors who have managed the affairs of both companies since that date.

The Islamic Republic of Iran has not filed a Statement of Defence.

In its Statement of Defence of 5 March 1982, Tchacosh has objected to the Tribunal's jurisdiction in the case. First, it contends that the claim belongs to the Process Machinery Division which is an English company and that Rexnord has not proven its ownership of the division. Second, Tchacosh contends that it is a "national of Iran" and, by implication, not an entity controlled by the Government of Iran, because it "has not . . . been nationalized". Third, Tchacosh alleges that it is now in the process of being formally liquidated under Iranian law and that the Claimant should have presented its claim to the liquidator.

Tchacosh does not deny that it owes the draft amounts claimed by Rexnord but contends that any liability must arise out of the drafts and not out of the agreement to purchase the equipment.

Siporex makes all of the above defences in its Statement of Defence also filed on 5 March 1982, and, in addition, denies that it is either a party to the purchase agreement in dispute or an obligor under the drafts. Instead, it argues, both the contract and the drafts are obligations entered into by Tchacosh for its own account.

On 14 April 1982, in response to a request made by the Tribunal, Rexnord filed a Statement Regarding the Public Character of Tchacosh and Siporex, containing its evidence and arguments in support of the allegation that these two Respondents are entities controlled by the Government of Iran.

A Pre-hearing Conference was held on 18 June 1982. On 29 June 1982, the Tribunal issued an Order for Hearing and written submissions. That Order required the Claimant to submit certain evidence and explanations by 23 August 1982 and required the Respondents to submit a Reply to the Claimant's 14 April Statement, along with evidence, and certain other explanations. The Order also required all parties to make final written statements by 1 October 1982 and fixed 22 October 1982 as the date for a Hearing.

The Claimant filed a memorial in the case, including evidence, and also its final written statement. The Respondents failed to file any of the submissions required by the Tribunal's Order.

A Hearing was held in the case on 22 October 1982 at which all of the parties were represented. Tchacosh later filed an unauthorized memorial raising new defences and arguments available to it early in the case.

Fairness, orderliness and possible prejudice to the other parties in the case require that the Tribunal disregard this latter submission.

II. REASONS FOR AWARD

1. Jurisdiction

a. The Claimant's Nationality

Jurisdiction is invoked under Article II, paragraph 1, of the Claims Settlement Declaration which establishes the Tribunal for the purpose, among others, of "deciding claims of nationals of the United States against Iran . . .".

Rexnord has submitted evidence, including a certificate of the Secretary of State of the State of Wisconsin, indicating that it is a corporation organized under the laws of that State. Further evidence shows that 45 per cent of the 20,122,468 outstanding shares of Rexnord's common stock is held by persons having addresses in the United States and that the remaining shareholders having United States addresses are corporations, institutional investors and other entities; only 0.34 per cent of the shares were registered in the names of persons or entities having addresses outside of the United States.

Furthermore, in a "Petition pertaining to Foreign Interests" submitted to the United States Government on 30 June 1982, Rexnord has represented, under penalty of criminal prosecution for a false statement, that foreign interests do not own directly or indirectly even five per cent of Rexnord's stock.

In view of this evidence, which has not been challenged by the Respondents, the Tribunal holds that Rexnord is a national of the United States as defined in Article VII, paragraph 2, of the Claims Settlement Declaration.

b. Ownership of the Claim

The Claimant also submitted sufficient evidence that the Process Machinery Division, located in Ealing, England, is not a juridical person separate from Rexnord, but that it was, at all appropriate times, an operating branch of the Claimant. Therefore, the Tribunal holds that the claim is owned directly by Rexnord.

c. Control of Tchacosh and Siporex

The Claimant has submitted evidence demonstrating that, after the revolution, the government of the Islamic Republic of Iran through

various agencies, appointed a succession of managing directors to operate both Tchacosh and Siporex. The directives by which the appointments were made cite various laws as authority. It is unnecessary to discuss the specific sources for such authority because the Respondents do not contest the fact of the governmental appointment of managers. Instead, they rest their defence on the allegation that no expropriation or nationalization of Tchacosh and Siporex has occurred.

The evidence thus presented by the Claimant clearly shows that the power to appoint and dismiss managers and directors in charge of the day-to-day management of the companies has been with the Government of Iran or its appropriate Ministry or Agencies since the latter half of 1979 and that this power has been exercised with regard to both companies. In view of this, and regardless of whether the two companies were in effect nationalized or expropriated by Iran, the Tribunal holds that both Tchacosh and Siporex are entities controlled by Iran.

d. Effect of Liquidation Proceedings

Tchacosh and Siporex have both alleged that they are currently under liquidation in Iran and that the Claimant may present its Claims to the liquidators. The process of liquidation in Iranian law is to be distinguished from the process of bankruptcy. The latter commences upon a declaration of insolvency to a court having bankruptcy jurisdiction which thereupon appoints an official receiver. Liquidation, however, is a process undertaken by the owners of a company to wind up its affairs after a decision to dissolve the company. The Claims Settlement Declaration does not exclude claims which may be brought under either of these processes. The mere availability of a local remedy, whether judicial or otherwise, cannot preclude the Tribunal from jurisdiction.

e. Conclusion

The Tribunal determines that the claim is the claim of a national of the United States against Iran within the meaning of the Claims Settlement Declaration and that, therefore, the Tribunal has jurisdiction.

2. The Merits

a. Unpaid Drafts

The Claimant maintains that both Tchacosh and Siporex are liable on the unpaid drafts because both were parties to, and therefore liable on, the underlying purchase agreement. It bases Siporex's liability on