

IRAN-US CLAIMS TRIBUNAL CASES

Tippets, Abbett, McCarthy, Stratton v TAMS-AFFA Consulting Engineers of Iran (Case No. 7)

Chamber Two: Riphagen (Chairman), Aldrich, Shafeiei

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I. Facts

I(i) The investment

The Claimant, Tippets, Abbot, McCarthy, Stratton (“TAMS”) was a United States engineering and architectural consulting partnership. TAMS and an Iranian engineering firm, Aziz Farmanfarman and Associates (“AFFA”), created and held a 50% ownership interest each in TAMS-AFFA, an Iranian entity created for the sole purpose of performing engineering and architectural services on the Tehran International Airport (“TIA”) project. TAMS-AFFA operated on the principle of joint control until 1979 and

any decision it made required the consent of at least one member appointed by TAMS and at least one member appointed by AFFA. The TIA project was based on a contract entered into on 19 March 1975 between TAMS and AFFA and the Civil Aviation Organization (“CAO”). However, as a consequence of the Iranian Revolution, work on the TIA project stopped almost completely from December 1978 to January 1979.

I(ii) The taking

The Plan and Budget Organization of the Government of Iran appointed a temporary manager for AFFA on 24 July 1979. The Farmanfarmaian family was one of the 51 individuals or families whose enterprises were placed under Government management pursuant to Paragraph 15 of the Law for the Protection and Development of Iranian Industry. Although the appointment named only AFFA, the Official Gazette published the appointment on 11 August 1979 of a manager for TAMS-AFFA. The new manager assumed the right to sign cheques on TAMS-AFFA’s accounts by himself and make personnel and other decisions without consulting TAMS.

Between August and November 1979 TAMS representatives in Iran managed to partially rectify these violations of the partnership agreement and the practice of all cheques being signed by signatories of both TAMS and AFFA was restored. TAM, with the cooperation of the Government-appointed manager, was successful in obtaining payment of 34 million Rials owed to it by TAMS-AFFA. However, the crisis in relations between the United States and Iran that developed in November 1979 reversed this trend. The last remaining TAMS representative with signatory authority left the country in December 1979. TAMS wrote and telexed TAMS-AFFA on several occasions in January and February 1980 concerning further work on the TIA project but received no response. After December 1979, TAMS-AFFA ceased all communication with TAMS, neither reporting to it on the status of the TIA project and TAMS-AFFA’s finances nor responding to its letters and telexes.

II Relevant findings

II(i) Applicable law

The Majority held that the applicable law was “international law and general principles of law”, citing the *Chorzow Factory Case* and the *Norwegian Shipowners’ Claims Case*. The Tribunal noted that the parties in this case had not presented arguments on the applicability of the investment protection provisions of Article IV, paragraph 2 of the Treaty of Amity.

II(ii) Discrete expropriation or nationalization scheme

The Tribunal concluded that there had been an expropriation; “the Claimant had been subjected to ‘measures affecting property rights’ by being deprived of its property interests in TAMS-AFFA since at least 1 March 1980 and that the Government of Iran was responsible, by virtue of its acts and omissions, for that deprivation”

(6 Iran US CTR 219 at 225). The Tribunal held that a “deprivation or taking of property may occur under international law through interference by a state in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected” (6 Iran-US CTR 219 at 225). The Tribunal held that compensation would be required whenever events demonstrated that the owner was deprived of fundamental rights of ownership which were not merely ephemeral. In the present case, although the Claimant and the Government-appointed manager of TAMS-AFFA managed to cooperate until mid 1979, the developments of late 1979 and early 1980, (such as the government-appointed managers failure to respond to correspondence from TAMS) effectively ended such cooperation and deprived the Claimant of its property interests in TAMS-AFFA.

II(iii) Lawful or unlawful taking

The Tribunal did not make a finding as to whether the taking was lawful or unlawful.

II(iv) Description of the assets

TAMS’ 50% interest in engineering consultancy partnership TAMS-AFFA.

II(v) Date of taking and date for calculating compensation

Both the date of the taking and the date to be used for the purpose of calculating compensation were held to be 1 March 1980.

II(vi) Choice of remedy (restitution/compensation)

The Tribunal awarded compensation to the Claimant for the taking of its property.

II(vii) Standard of compensation

The Majority stated that “the Claimant was entitled under international law and general principles of law to compensation for the full value of the property of which it was deprived” (6 Iran-US CTR 219 at 225) (citing the *Chorzow Factory Case* and the *Norwegian Shipowners Claims Case*).

II(viii) Elements of compensation

The Majority of the Tribunal decided to award the Claimant its share of the dissolution value of the partnership, as this was the measure of compensation requested by the Claimant. The elements of compensation were accordingly the following: (i) the valuation of bank accounts and fixed assets (ii) the valuation of TAMS-AFFA's accounts receivable, including those under the TIA contract. From this value, TAMS-AFFA’s liabilities had to be subtracted: (i) TAMS-AFFA's debts, including those to the tax and social security authorities, and (ii) potential liabilities such as those represented by the counterclaims under the TIA contract asserted in this case and those that could possibly arise under the bank guarantees.

II(ix) Principles of valuation

The Tribunal made its “best estimate” of the assets and liabilities of TAMS-AFFA as of 1 March 1980. Despite holding that the contractual claims arising out of the TIA contract

were outside the Tribunal's jurisdiction, the Tribunal held that "it would have been unjust and logically indefensible to completely ignore such assets as the accounts receivable under the TIA contract and such debts as the tax and social security liabilities" (6 Iran-US CTR 219 at 227). The Tribunal accordingly decided that it was necessary to examine these issues for determining TAMS-AFFA's probable assets and liabilities. The Tribunal pointed out that it could not simply assume that all payments on the TIA project "alleged by the claimant to have been wrongfully withheld, were in fact so withheld, or assume that all tax and social security obligations alleged by the Respondent to be due by TAMS-AFFA were in fact due and were not paid" (6 Iran-US CTR 219 at 228).

II(x) Method of valuation

The Tribunal stated that in the circumstances they could only make a very rough evaluation of the assets and liabilities involved. The Majority determined the dissolution value of TAMS-AFFA as of 1 March 1980 to be Rials 800,000,000. Thus, the Claimant was to \$5,594,405 (400,000,000 Rials) for its 50% interest in TAMS-AFFA.

Judge Shafeiei, who dissented, criticised the Majority's failure to look more closely at the contracts under which TAMS-AFFA was owed fees. He argued that the Tribunal should have appointed an expert (as requested by Iran) to consider objections raised to the standard of work performed by TAMS-AFFA and whether this would have reduced fees earned by TAMS-AFFA from the contracts.

II(xi) Approximation of compensation

The Majority acknowledged the difficulties in determining an accurate figure for the value of TAMS-AFFA's assets and liabilities at the date of the taking and that the amount awarded would of necessity be an imprecise estimate.

II(xii) The impact of equitable considerations

The Tribunal relied on equitable considerations to defend its decision to take into account issues outside its jurisdiction, such as contractual counterclaims and tax liabilities. The Tribunal noted that "if payments for work on the TIA project had been wrongfully withheld by an Agency of the Government of the Islamic Republic of Iran and if for the lack of such payment the Tribunal did not include such monies in the dissolution value of TAMS-AFFA, then the Respondent Agency would have profited by its own wrong. Conversely, if TAMS-AFFA wrongfully failed to pay tax and social security obligations and if the Tribunal did not deduct such obligations, then TAMS-AFFA would profit by its own wrong" (6 Iran-US CTR 219 at 228). The Tribunal emphasized that it was a well recognized principle in many municipal systems and in international law that no one should be allowed benefit from their own wrong.

II(xiii) Amount of award

U.S. \$5,594,405 plus interest.

II(xiv) Interest

Simple interest of 12% per annum from the date of the taking to the date of the award.

III. Conclusion

The Tribunal held that the Claimant's 50% interest in TAMS-AFFA - an engineering consulting partnership - had been expropriated by Iran. Under "international law and general principles of law", the Claimant was entitled to "the full value of the property of which it was deprived". The Claimant requested, and was awarded, the "dissolution value" of its interest in TAMS-AFFA ie TAMS-AFFA's assets less its liabilities. In order to determine TAMS-AFFA's assets and liabilities, the Tribunal was required to examine issues that fell beyond the scope of its jurisdiction, such as contractual counter-claims against TAMS-AFFA and the extent of its tax liabilities. While the Tribunal made it clear that it could not make a determinative finding on these issues, it was necessary to take them into account in order to determine the amount of compensation. In the Tribunal's view, failure to do so would have been "unjust and logically indefensible" as it would have allowed a party to benefit from its own wrong-doing (eg Iran's alleged wrongful withholding of amounts contractually due or Claimant's alleged non-payment of tax liabilities).