

international comity, but perhaps more importantly on the constitutional separation of powers doctrine. The Anti Trust Division had not asked the court to question the validity of actions taken by the Australian and New Zealand Governments; to obtain discovery the Justice Department merely needed to demonstrate a reasonable basis in believing the requested information was relevant to a legitimate anti trust investigation. The documents might reveal anti trust violations wholly unrelated to either the validity of actions taken by Australian or New Zealand Governments, or the motives of these foreign sovereigns (see Hunt v. Mobil Oil Corporation 550 F.2d 68 (1977)) which interprets the Act of State doctrine as prohibiting U.S. courts probing the motives of foreign governments. The order of the District Court was reversed.

IRAN - U.S. CLAIMS TRIBUNAL Casenotes in 77 AJIL 642-650 (1983).

JURISDICTION - CORPORATE NATIONALITY. Flexi Van Leasing v. Islamic Republic of Iran. Claim No.36, Order of 15 December 1982. General Motors Corporation v. Islamic Republic of Iran Claim No.94. Order of 18 January 1983. A corporation or other legal entity is one organized under the laws of the U.S. if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporations or entity equivalent to 50 per cent or more (Article VII (1) (b) of the Claims Settlement Agreement). Detailed evidence as to all shareholders is not necessary. Judicial notice was taken of U.S. government statistics showing stock ownership of publicly traded U.S. corporations has been less than 10 per cent. As stock ownership is in constant flux it may be measured on a periodic rather than daily basis. A corporate proxy statement filed with the SEC was an appropriate source of reliable evidence with respect to nationality. A prima facie showing that at least 50 per cent of the stock was owned by U.S. nationals continuously during the relevant period was necessary - this could be satisfied by proxy statements and a notarized affidavit of a corporate officer stating the percentage of voting stock held by persons with U.S. addresses as at the Annual General Meeting.

JURISDICTION - DUAL NATIONALITY

Esphahavian v. Bank Tejorat. AWD 31-157-2. 29 March 1983.

The claimant was a dual national of the U.S. and Iran. Article VII(I) of the Claims Settlement Agreement defines "national" as a citizen of either Iran or the U.S. The tribunal held that its jurisdiction over dual nationals was that of the party's "dominant and effective nationality". Reliance was made on the Nottlebohm Case, Leichenstein v. Guatemala [1955] ICJ 4, and the Merge Case 14 R. Int'l Awards 236 (1955).

JURISDICTION - SUBJECT MATTER

Grimm v. Government of Islamic Republic of Iran AWD 25-71-1 11 February 1983.

Article 11(1) empowers the Tribunal to hear claims arising out of "debts, contracts ... expropriations or other matters affecting property rights". The widow of a company executive stationed in Iran claimed the respondent's failure to protect her husband fell within the tribunal's jurisdiction. This was held not to be within the jurisdiction granted by Article 11(1).

JURISDICTION-STATELESS VESSELS

U.S. v. Marino Garcia 679 F.2d 1373.

Any state has jurisdiction over a stateless vessel, even where there is no needs between the vessel and the country claiming jurisdiction. In the case,

even though a nexus was not established with the U.S., the vessel in question was arrested under the Marijuana on the High Seas Act, 1980.

JURISDICTION - RECIPROCITY

China National Technical Import Corporation Et At v. United States U.S. District Court SDNY, 3 December, 1982; 77 AJIL 315 (1983).

In 1981 a U.S. nuclear submarine and a Japanese merchant vessel collided in the South China Sea. The plaintiff, incorporated in the Peoples' Republic of China, sought recovery for the value of cargo lost. Section 5 of the Public Vessels Act provides that no suit may be brought by a national of any foreign government unless the court is satisfied that the foreign government under similar circumstances will allow nationals of the U.S. to sue in its own courts. After reading evidence offered by Chinese legal counsel, as well as an affidavit by Professor R. Randle Edwards of Columbia Law School, the court found that the requirement in section 5 had been satisfied.

JURISDICTION

Re Israel Discount Bank v. Hadjipateras [1983] 3 All ER 1.

Under Order 14 of the Rules of the Supreme Court of England a plaintiff is entitled to a summary judgement to enforce a foreign judgement if it can be shown there is no defence to the claim. In this case, the Israel Discount Bank lent substantial sums to two Liberian shipping companies. The defendant then aged 20 and his father guaranteed the loans. Undue influence would have been a defence to the original action in New York, but it was not raised in that jurisdiction.

The Court of Appeal ruled that a defendant must raise all reasonable defences in a foreign court. If he failed to do, he could not raise a public policy defence in England.

TRANSNATIONAL INVESTMENT DISPUTES - GOVERNING LAW - DELOCALISATION - SOVEREIGN IMMUNITY

SPP (Middle East Limited) and Southern Pacific Properties Limited v. Arab Republic of Egypt and the Egyptian General Company for Tourism and Hotels (EGOTH). ICC Court of Arbitration No. YD/AS No.3493. 11 March 1983. 22 ILM 752 (1983). Previously noted in [1983] Australian I.L. News 10.

The second claimant, the Ministry of Tourism and the second defendant entered into Heads of Agreement on 23 September 1974 to develop a series of tourist developments. On 12 December 1974, an agreement was entered into by the first claimant and the second defendant which was "approved agreed and ratified by the Minister of Tourism" whose signature also appeared on the agreement. This was to develop two projects including one at the Pyramids. Clause 20 provided "Any disputes relating to this Agreement shall be referred to the arbitration of the International Chamber of Commerce in Paris, France". The Minister of House and Reconstruction advised that the basic infrastructure would be provided by the Government. However opposition to the Pyramids project developed, especially in the Peoples' Assembly, on grounds both legal and environmental. After attempts to defend the project, the government eventually by executive action stopped work on the project. The claimants claimed damages for breach of the Agreements.

The Egyptian government disputed the jurisdiction of the Tribunal and that it was a party in any way to the December agreement.

The Arbitral Tribunal noted that special care was required where an independent sovereign was alleged to have made a submission to arbitration; the burden on