

# Champion Trading Company and others v. Arab Republic of Egypt (ICSID Case No. ARB/02/9)

## Introductory Note

The Decision on Jurisdiction in *Champion Trading Company and others v. Arab Republic of Egypt* was issued in a case brought to ICSID by five Claimants, two companies and three individuals, under the 1982 Treaty between the United States of America and the Arab Republic of Egypt Concerning the Reciprocal Encouragement and Protection of Investments, which entered into force in 1992 (the Treaty). The Claimants, all shareholders of a cotton trading and processing company incorporated in Egypt, National Cotton Company (NCC), alleged that Egypt had violated the Treaty by taking a series of measures in the cotton industry affecting their investment.

ICSID registered the Claimants' request for arbitration on August 8, 2002 and the Arbitral Tribunal, composed of Dr. Robert Briner (President), Mr. L. Yves Fortier, Q.C. and Professor Laurent Aynès, was constituted on January 30, 2003. On March 5, 2003, the Respondent raised objections to the jurisdiction of the Tribunal, which the Tribunal decided to deal with as a preliminary matter. The parties thus submitted pleadings on jurisdiction and a hearing was held in Paris on June 27, 2003.

The Respondent objected that the individuals acting as Claimants, three brothers who were described as United States nationals in the request for arbitration, in fact also held Egyptian nationality. Under Article 25(2)(a) of the ICSID Convention, which provides that the definition "national of a Contracting State" does not include any person who on the date of consent and on the date of registration of the request also had the nationality of the Contracting State party to the dispute, these Claimants would be ineligible as parties to an ICSID arbitration.

The Respondent also objected that the corporate Claimants, two companies incorporated in the State of Delaware, the United States, could not be defined as United States companies under the Treaty. The Treaty requires

(Article I(b)(i)) that natural persons who are United States nationals have a substantial interest in a company for such company to be viewed as a United States juridical person. The Respondent argued that, because the majority of the shareholders in the corporate Claimants are dual American and Egyptian nationals, the criterion of “substantial interest” had not been demonstrated.

Finally, the Respondent objected that the dispute had already been submitted by NCC to proceedings before Egyptian authorities. Under the Treaty (Article VII(3)(a)), a party would be precluded from bringing the dispute before ICSID if it had already submitted it to the courts, administrative tribunals or agencies of the host State.

In regard to Egypt’s first objection, the Tribunal had been presented with evidence by both parties, including evidence respecting the nationality situation of the father of the three individual Claimants. The Respondent claimed that the father possessed Egyptian nationality and that the three individuals had therefore, under Egyptian law, acquired Egyptian nationality at birth. The Claimants, on their part, claimed that the father had given up his Egyptian nationality before his sons were born and that, in any event, the three individuals did not possess real and effective Egyptian nationality under international law.

The Tribunal first found that the Claimants had not shown that the father had lost his Egyptian nationality before the individual Claimants were born and that they had thus under Egyptian law acquired Egyptian nationality upon birth. The Tribunal further held that the principle of real and effective nationality has no application within the meaning of the ICSID Convention, as “Article 25(2)(a) contains a clear and specific rule regarding dual nationals” (p. 16 of the Decision, p. 288 of this issue). Only under exceptional circumstances “where the exclusion of dual nationals could lead to a result which was manifestly absurd or unreasonable” could this result be questioned, the Tribunal stated (p. 16 of the Decision, p. 288 of this issue). The Tribunal therefore concluded that it had no jurisdiction over the three individual Claimants.

As regards the two corporate Claimants, the Tribunal held that neither the Treaty nor the ICSID Convention precluded juridical persons controlled by dual nationals (also holding the nationality of the host State) from bringing a dispute before ICSID, and thus concluded that it had jurisdiction over those Claimants.

Finally, the Tribunal found that the proceedings initiated by NCC before Egyptian authorities did not prevent its shareholders, separate entities and individuals, from initiating ICSID proceedings under the Treaty.

The question of how to determine the nationality of claimants in ICSID proceedings has been raised in many cases, although most have dealt

with the nationality of juridical persons (Article 25(2)(b) of the ICSID Convention). Recently, another ICSID tribunal rejected jurisdiction over a natural person because it found that he had failed to prove that he was at the relevant dates a national of a certain Contracting State to the ICSID Convention and thus covered by a particular bilateral investment treaty.<sup>1</sup>

The Decision in *Champion Trading Company and others v. Arab Republic of Egypt* shows the difference between the standards for determining nationality of natural persons and of juridical entities. While the requirement in Article 25(2)(a) of the Convention (concerning natural persons) is absolute and ICSID could not register a request for arbitration submitted by a person who clearly had the nationality of the host State, Article 25(2)(b) of the Convention (concerning juridical persons) provides certain scope for Contracting Parties and investors to agree on how to determine the nationality of a company. In this case, it was not disputed that the shareholders of the corporate Claimants were all nationals of the United States, and the Tribunal therefore found that the provision under the Treaty on determining nationality of companies had been complied with. In another recent decision on jurisdiction in *Tokios Tokelés v. Ukraine*,<sup>2</sup> the majority of the tribunal held that a company incorporated in Lithuania could bring a claim against Ukraine under the relevant bilateral investment treaty despite the fact that the shareholders of that company were Ukrainian nationals. The dissenting arbitrator in that case found that it would be against the object and purpose of the ICSID Convention to cover a dispute between a host State and a company of another Contracting State whose capital originated from nationals of the host State.<sup>3</sup> According to the dissenting opinion, Contracting States do not have the discretion under the Convention to agree on a definition of corporate nationality which would allow such situation.

The text of the Decision on Jurisdiction in *Champion Trading Company and others v. Arab Republic of Egypt*, issued in English, is reproduced with the parties' consent and is also posted on ICSID's website at [www.worldbank.org/icsid](http://www.worldbank.org/icsid). The case is still pending before the Centre and is now referenced *Champion Trading Company and Ameritrade International Inc. v. Arab Republic of Egypt*.

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<sup>1</sup> See Award of July 7, 2004 in *Hussein Nuaman Soufraki v. The United Arab Emirates*, ICSID Case No. ARB/02/7, available online at <<http://ita.law.uvic.ca/documents/Soufraki.pdf>>.

<sup>2</sup> The text of the decision is available at <<http://www.worldbank.org/icsid/cases/tokios-decision.pdf>>.

<sup>3</sup> See dissenting opinion at <[http://www.worldbank.org/icsid/cases/tokios-dissenting\\_opinion.pdf](http://www.worldbank.org/icsid/cases/tokios-dissenting_opinion.pdf)>.