

222-75
۲۲۲-۷۵

ORIGINAL DOCUMENTS IN SAFE

Case No. 222

Date of filing: 17 Feb 84

** AWARD - Type of Award interim
- Date of Award 17 Feb 84
5 pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi

IRAN - UNITED STATES CLAIMS TRIBUNAL

دادگاه داری دعاوی ایران - ایالات متحده

222 - 75
۲۲۲ - ۷۵

CASE NO. 222

CHAMBER ONE

AWARD NO. ITM 34-222-1

THE BOEING COMPANY and
its subsidiaries,
LOGISTICS SUPPORT CORPORATION,
BOEING TECHNOLOGY INTERNATIONAL
INCORPORATED,
BOEING CONSTRUCTION EQUIPMENT
COMPANY,

Claimants,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN, THE IRANIAN
AIR FORCE,

Respondents.

IRAN UNITED STATES
CLAIMS TRIBUNAL
دادگاه داری
ایران - ایالات متحده
فیت شد - FILED
Date ۱۳۶۲ / ۱۱ / ۲۸
17 FEB 1984
222

DUPLICATE
ORIGINAL
نسخه برابر اصل

INTERIM AWARD

On 12 January 1982 the Claimants ("BOEING") filed a Statement of Claim with the Tribunal seeking damages for alleged breaches of six contracts entered into with the Respondents ("THE IRANIAN AIR FORCE"). The same claims had, in substance, been filed as Counterclaims on 2 August 1979 and 24 November 1981 in two lawsuits commenced in May 1979 by THE IRANIAN AIR FORCE against BOEING in the United States District Court for the Western District of Washington. The Statement of Claim before the Tribunal was expressed to be a contingent filing to ensure that a forum would be available to BOEING in the event that the United States District Court ruled that it had no jurisdiction over any of the Counterclaims.

The Claim by the IRANIAN AIR FORCE was dismissed by the United States District Court on 2 June 1980. On 14 July 1982 that Court denied a motion for dismissal of BOEING's Counterclaims based on a challenge to the validity of Executive Order 12294. An appeal was lodged by THE IRANIAN AIR FORCE against the dismissal of its claim on 28 January 1983; on 16 August 1983 the Ninth Circuit Court of Appeals upheld the dismissal.

On 7 February 1983 THE MINISTRY OF NATIONAL DEFENCE on behalf of THE IRANIAN AIR FORCE filed a Statement of Defence with the Tribunal, together with a Counterclaim for damages for the alleged breach by BOEING of various contracts for the supply and maintenance of aircraft and the installation of communications systems. In the Statement of Defence filed by THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN on the same date it is stated that the action of BOEING in pursuing its claim in the United States Courts is "against the stipulations of the Claims Settlement Declaration." By an Order of 31 January 1984 the Tribunal, over an objection by THE IRANIAN AIR FORCE, extended the time for filing by

BOEING of its Defence to the Counterclaim and Reply to the Statement of Defence to 21 May 1984.

On 1 November 1983 a final judgment was entered by the District Court in favour of BOEING in the amount of \$70,909,697 on six of BOEING's nine Counterclaims (the same six which are the subject of the claim before the Tribunal). An appeal was lodged by THE IRANIAN AIR FORCE on 4 January 1984. The Tribunal is informed by the Agent of THE GOVERNMENT OF THE UNITED STATES OF AMERICA that this appeal has been dismissed.

On 14 December 1983 THE IRANIAN AIR FORCE filed with the Tribunal a Motion to require the United States and BOEING to terminate and withdraw any proceedings on claims initiated against the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and THE IRANIAN AIR FORCE in the United States Courts. The request is made on the grounds, inter alia, that continuation of proceedings in the United States Courts in respect of the same subject matter as the claim filed with the Tribunal is in violation of General Principle B of the Algiers Declarations and of Article VII, paragraph 2 of the Claims Settlement Declaration.

Pursuant to the Tribunal's Order of 20 December 1983, Memorials in response to the Motion were filed by THE GOVERNMENT OF THE UNITED STATES on 30 January 1984 and by BOEING on 31 January 1984. In its Order of 2 February 1984 the Tribunal ordered THE IRANIAN AIR FORCE to file its comments on these Memorials by 23 February 1984.

On 14 February 1984 the Agent of THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN filed a Request for an Order requiring the United States and the Claimants in Case No.222 to refrain from taking any action for execution of the judgment rendered by the District Court of Washington pending the Tribunal's decision on the Motion for Interim Measures.

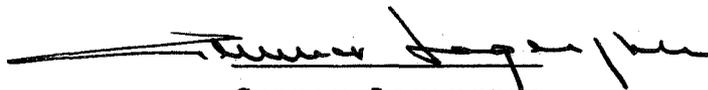
The Request states that there is a likelihood of imminent enforcement of the judgment and that this could result in irreparable damage and loss to THE IRANIAN AIR FORCE.

* * *

A stay of execution of judgment in the present case is not necessary either to protect a party from irreparable harm or to avoid prejudice to the jurisdiction of this Tribunal. Monetary damages are not irreparable harm, and the Tribunal has the power in the proceedings in Case No. 222 to rectify any damages caused by execution of the judgment of 1 November 1983. Given the unusual history of this case, it cannot be said that the jurisdiction of the Tribunal and its ability to make that jurisdiction effective would be prejudiced by the act of execution of the judgment. The Tribunal would not wish to decide on the basis of the present Request the effect of the litigation and the judgments in the United States on the further proceedings in this Tribunal, except to refuse the present Request for a stay of execution.

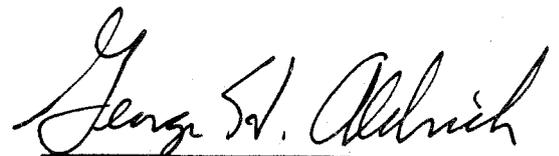
The Tribunal therefore denies the Request made by the Agent of THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN on 14 February 1984.

Dated, The Hague
17 February 1984.



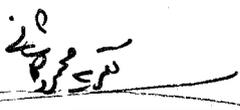
Gunnar Lagergren
Chairman
Chamber One

I dissent from this
(continued on page 5)



George H. Aldrich

decision and consider it as a clear example of this Tribunal's lack of neutrality and its double standard treatment of the two governments. While this Tribunal in the 9 IBEX cases whose contracts specifically provide for the jurisdiction of Iranian Courts and are excluded from the jurisdiction of this Tribunal by the Claims Settlement Declaration, has exceeded its powers and requested the Government of the Islamic Republic of Iran to arrange for the stay of the proceedings in the Iranian Courts, it is inconceivable that same Tribunal refrains from taking any measures with regard to the BOEING proceedings in the United States Courts, which proceedings have continued contrary to the provisions of the Claims Settlement Declaration Article VII(2) and the Declaration of the Government of Algeria General Principle B, whereby jeopardizing the rights of the Islamic Republic of Iran.



Mahmoud M. Kashani