

ORIGINAL DOCUMENTS IN SAFE

Case No. 10513

Date of filing: 10 APR 85

\*\* AWARD - Type of Award Interim  
- Date of Award \_\_\_\_\_  
5 pages in English 5 pages in Farsi

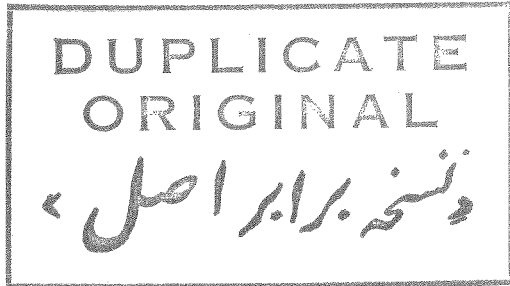
\*\* DECISION - Date of Decision \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
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\*\* SEPARATE OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DISSENTING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
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CASE NO. 10513

CHAMBER TWO

AWARD NO. ITM 48-10513-2

THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA,  
on behalf and for the benefit of  
LINEN, FORTINBERRY AND ASSOCIATES,  
INCORPORATED,

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,  
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	10 APR 1985 تاریخ
	۱۳۶۴ / ۱ / ۲۱
No.	۱۰۵۱۳ شماره

INTERIM AWARD

I. THE PROCEEDINGS

On 19 January 1982, The Government of the United States of America filed the present Claim on behalf and for the benefit of Claimant, Linen, Fortinberry and Associates Incorporated. The Claim is directed against the Islamic Republic of Iran and seeks damages in the amount of \$145,000.00 plus interest for an alleged breach of contract by the Iranian Ministry of Information and Tourism.

On 30 November 1983, Claimant received a summons to appear before the Public Court of Tehran on 4 March 1984 in a lawsuit brought against it by the Ministry of Islamic Guidance of Iran. That suit apparently involves the same contract that constitutes the subject matter of the instant claim before the Tribunal.

Claimant, on 27 February 1984, filed a Request for Interim Measures seeking an Order from the Tribunal directing the Ministry of Islamic Guidance of Iran to dismiss its suit before the Public Court of Tehran, or, in the alternative, directing the Ministry to stay such proceedings until the Tribunal has ruled on the merits of the claim before it.

On 2 March 1984, the Tribunal ordered the Respondent to file its comments to Claimant's Request for Interim Measures and requested Respondent to take all appropriate measures to ensure that the proceedings before the Public Court in Tehran be stayed until the Tribunal decided on Claimant's request. Respondent filed its comments on 27 June 1984.

By Order filed 21 September 1984, the Tribunal ordered Claimant to reply to Respondent's comments. The Order further stated that the Order of 2 March 1984 remained in effect until the Tribunal decided on Claimant's request. On 30 November 1984, Claimant filed its Reply.

Respondent filed an additional memorial on 5 March 1985. Respondent argues that the Civil Procedure Code of Iran does not provide for a stay of proceedings and that the only way to stay the proceedings in Iranian Courts would be by submission of a joint agreement of Claimant and Respondent requesting the Court for a postponement of proceedings. Respondent therefore requests the Tribunal to direct Claimant to provide the Ministry of Islamic Guidance with a written agreement to that effect. Claimant objects to the filing of such a written agreement "because of potential prejudice to its argument that it is not subject to the jurisdiction of the Tehran Court."

## II. REASONS FOR INTERIM AWARD

It is evident from the documents in this Case that the lawsuit filed against Claimant in the Public Court of Tehran arises out of the same contract and involves the same subject matter as the Claim pending before this Tribunal. Thus, the claim pending in the Iranian court "arises out of the same contract, transaction, or occurrence that constitutes the subject matter" of the claim before the Tribunal and could be filed as a counterclaim here, pursuant to the Claims Settlement Declaration, Article II(1). Irrespective of whether such a counterclaim is filed, the Iranian court may nonetheless be called upon to adjudicate issues of law and fact identical to those pending here.

Respondent has not denied that the two actions are related nor has it, as yet, challenged the Tribunal's jurisdiction over the claim presented here. The Tribunal is satisfied that, prima facie, it has jurisdiction over the claim pending before it. Such preliminary determination, however, is without prejudice to any final decision on jurisdiction to be made by the Tribunal.

The Full Tribunal has ruled that "[t]his Tribunal has an inherent power to issue such orders as may be necessary to conserve the respective rights of the Parties and to ensure that this Tribunal's jurisdiction and authority are made fully effective." E-Systems, Inc. and Islamic Republic of Iran, Interim Award No. 13-388-FT (4 Feb. 1983) at 10, 2 Iran-U.S. C.T.R. 51, 57. The Tribunal has exercised such power to require a stay of proceedings in the courts of Iran pending determination of cases before the Tribunal where such proceedings involve claims admissible as counterclaims before the Tribunal, even if not filed as such, "in order to insure the full effectiveness of the Tribunal's decisions . . . ." Id. "[T]he award to be rendered in this case by the Tribunal, which was established by inter-governmental agreement, will prevail over any decisions inconsistent with it rendered by Iranian or United States courts . . . ." Id.; therefore, to prevent such inconsistent determinations and any concomitant prejudice to the rights of the Parties, actions pending in the courts of the United States or Iran that are likely to present issues of law and fact common to those presented in a claim pending before the Tribunal must be stayed until the Tribunal terminates or adjudicates finally the relevant claim before it. Thus, a stay of proceedings would be warranted in this case.

The Government of the Islamic Republic of Iran and the Government of the United States of America have agreed in the Algiers Declarations to confer upon this Tribunal jurisdiction over certain claims. It follows that both governments are under an international obligation to comply with any decisions rendered by the Tribunal pursuant to this agreement. See Aeronutronics Overseas Services, Inc. and Government of Islamic Republic of Iran, Interim Award No. 47-158-1 (14 Mar. 1985) at 5.

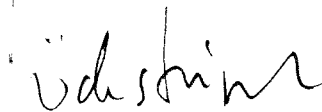
The Tribunal therefore concludes that the proceedings in the Public Court of Tehran should be stayed pending final resolution of this Case by the Tribunal.

III. INTERIM AWARD

For the foregoing reasons, THE TRIBUNAL AWARDS AS FOLLOWS:

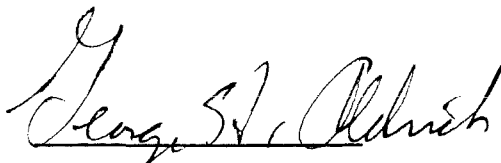
The Tribunal requests the Government of the Islamic Republic of Iran to take all appropriate measures to ensure that the proceedings before the Public Court of Tehran against Linen, Fortinberry and Associates, Incorporated be stayed pending the Tribunal's final resolution of the proceedings in this case.

Dated, The Hague,  
10 April 1985



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Karl Heinz Böckstiegel  
Acting Chairman  
Chamber Two



George H. Aldrich

In the name of God



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Parviz Ansari Moin

dissenting