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ORIGINAL DOCUMENTS IN SAFE

Case No. 222

Date of filing: 25 MAY 84

\*\* AWARD - Type of Award Interim  
- Date of Award 25 MAY 84  
7 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: \_\_\_\_\_  
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- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

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DUPLICATE ORIGINAL  
«نسخه برابر اصل»

CASE NO. 222  
CHAMBER ONE  
AWARD NO. ITM 38-222-1

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 داوری دعاری ایران - ایالات متحده
ثبت شد - FILED	
Date	۱۳۶۲ / ۲ / ۴ 2 5 MAY 1984
No.	222

INTERIM AWARD

On 12 January 1982 the Claimants THE BOEING COMPANY ("BOEING") and its subsidiaries, including LOGISTICS SUPPORT CORPORATION ("LOGISTICS") filed a Statement of Claim with the Tribunal seeking damages from the Respondents for alleged breaches of six contracts entered into with various Iranian organisations. The Statement of Claim indicated that 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 ISLAMIC REPUBLIC OF IRAN and THE IRANIAN AIR FORCE against BOEING and LOGISTICS and consolidated into one action 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 the Claimants in the event that the United States District Court were found to lack jurisdiction over any of the Counterclaims.

The Claims by THE ISLAMIC REPUBLIC OF IRAN and THE IRANIAN AIR FORCE were dismissed by the United States District Court on 2 June 1980. On 14 July 1982 that Court denied a motion filed in February 1982 seeking dismissal of the Counterclaims of BOEING and LOGISTICS based, inter alia, on the assertion that the Algiers Declarations excluded all claims and counterclaims of U.S. nationals against Iran from the courts of the United States.

On 25 October 1982 THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN filed with this Tribunal Case No. A-15 against THE GOVERNMENT OF THE UNITED STATES OF AMERICA. Part IV:A of that Case makes specific reference to the Boeing litigation in the United States, amongst other cases, and seeks, inter alia, the following relief:

"B. A declaration that U.S. Executive Order No. 12,294 and Treasury regulation section 535.222 violate the Algiers Declarations in failing to terminate litigation, including counterclaims, based on claims of

U.S. nationals against the Government of Iran in U.S. courts ..."

An appeal was lodged on 28 January 1983 by THE IRANIAN AIR FORCE against the dismissal of its claim by the District Court; on 16 August 1983 the United States Court of Appeals for the Ninth Circuit upheld the dismissal.

On 7 February 1983 THE MINISTRY OF NATIONAL DEFENCE OF THE ISLAMIC REPUBLIC OF IRAN on behalf of THE IRANIAN AIR FORCE filed a Statement of Defence in Case No. 222 before the Tribunal, together with a Counterclaim for damages for the alleged breach by the Claimants 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 the Claimants in pursuing their Claim in the United States Courts is "against the stipulations of the Claims Settlement Declarations."

On 1 November 1983 a "Final Judgment" was entered by the District Court in favour of BOEING and LOGISTICS in the amount of \$70,909,697 on six of the nine Counterclaims (the same six which are the subject of the Claims before the Tribunal). THE ISLAMIC REPUBLIC OF IRAN and THE IRANIAN AIR FORCE appealed to the United States Court of Appeals for the Ninth Circuit. The appeal was dismissed on 7 February 1984 as untimely, but a petition for rehearing on the issue of its timeliness apparently is still pending.

On 14 December 1983 THE IRANIAN AIR FORCE filed with the Tribunal a Motion to require THE GOVERNMENT OF THE UNITED STATES and the Claimants in Case No. 222 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 both of General Principle B of the Declaration of the Government of Algeria, and of Article VII, paragraph 2, of the Claims Settlement Declaration.

Pursuant to the Tribunal's Order of 15 December 1983, Memorials in response to the Motion were filed by Claimants in Case No. 222 on 20 January 1984 and by THE GOVERNMENT OF THE UNITED STATES on 30 January 1984. In its response THE GOVERNMENT OF THE UNITED STATES objected, inter alia, that it was not a party either to Case No. 222 before the Tribunal or to the litigation in the United States.

On 14 February 1984 the Agent of THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN filed a Request for an Order requiring the THE GOVERNMENT OF 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, pending the Tribunal's decision on the Motion for Interim Measures.

This Request was denied by the Tribunal in its Interim Award of 17 February 1984 (Award No. ITM 34-222-1).

On 1 March 1984 THE MINISTRY OF NATIONAL DEFENCE filed "Comments of the Ministry of Defence (Iranian Air Force of the Islamic Republic of Iran) in Respect of the Claimants' Memorandum Filed on January 20, 1984 and the Statements of the United States of America Filed on January 30, 1984," stating, inter alia, that the actions by the Claimants before the United States courts could not be regarded as counterclaims even on the basis of the national laws of the United States, but were brought against the Respondents under the guise of being counterclaims. In addition, THE MINISTRY stated that neither the Algiers Declarations nor the Tribunal Rules provide for filing contingent claims.

In response to the Tribunal's Order of 16 March 1984, the Claimants filed a further Brief on 2 April 1984, arguing, inter alia, that under the procedures of the federal courts of the United States a claimant must submit itself to any counterclaims that the defendant may bring. THE IRANIAN AIR FORCE filed on 19 April 1984 a Brief identifying the actions and judgments in the courts of the United States of America in respect of which it has sought relief from the Tribunal. This Brief identifies six Counterclaims of BOEING and four of LOGISTICS which have been brought in the United States District Court. Judgment was given on 1 November 1983 in favour of BOEING on its first, second, third and fifth Counterclaims; and in favour of LOGISTICS in respect of its first and second Counterclaims. THE IRANIAN AIR FORCE requested that the Tribunal issue an order staying execution of this Judgment. It further requested an order staying proceedings in three of the remaining Counterclaims, the sixth Counterclaim of BOEING and the third and fourth of LOGISTICS. An award of damages in these actions apparently is contingent upon the entering of judgments against BOEING and LOGISTICS in separate actions brought on behalf of certain victims of the same aircraft accident which was the subject of the original Claims of THE ISLAMIC REPUBLIC OF IRAN and THE IRANIAN AIR FORCE in the United States courts. None of these three Counterclaims forms part of the Claim filed by the Claimants in Case No. 222.

\* \* \*

The Tribunal holds that the characterisation of the Counterclaims of BOEING and LOGISTICS in the United States court proceedings is a matter which is governed by the procedural law of the forum, in that case the United States District Court for the Western District of Washington. In submitting their Claims to the jurisdiction of that Court, THE ISLAMIC REPUBLIC OF IRAN and THE IRANIAN AIR FORCE must be taken to have accepted its procedural rules. Therefore, on the evidence before it, the Tribunal accepts that the

Claimants brought their legal actions in that Court in the form of counterclaims.

Whether BOEING's and LOGISTICS' Counterclaims were permitted to be pursued after the signing of the Algiers Declarations will be decided in Case A-15, Part IV:A.

No new relevant facts have come to the Tribunal's attention since 17 February 1984 which would warrant reconsideration of the Interim Award of that date (compare Article 75, paragraph 3 of the Rules of the International Court of Justice).

Given the facts of this case and the Parties to it, the execution of the Judgment of the District Court dated 1 November 1983 could not be considered to cause sufficiently grave harm to justify a stay, despite the substantial sum of money involved. Furthermore, if the Tribunal ultimately holds in Case A-15, Part IV:A that continued proceedings on counterclaims in the United States are a violation of the Algiers Declarations, rectification of any damages caused by the execution might be made the subject of future proceedings based on that holding, or of proceedings in Case No. 222.

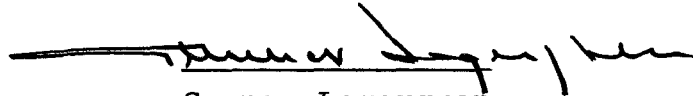
Consequently the request for a stay of execution of the Judgment of the District Court dated 1 November 1983 in favour of BOEING and LOGISTICS is denied.

The Tribunal defers its decision on the relief sought by THE IRANIAN AIR FORCE as to the further proceedings on the sixth Counterclaim of BOEING and the third and fourth Counterclaims of LOGISTICS concerning their rights to contribution and indemnity in the event of recovery by the plaintiffs in J. Elwood Clements v. The Boeing Company, C77-554M, and J. Elwood Clements v. Logistics Support Corporation, C78-263M, respectively.

The Tribunal considers in the context of the Motion of 14 December 1983 and the Brief of 19 April 1984, both filed by THE IRANIAN AIR FORCE, that the request by THE IRANIAN AIR FORCE for a stay of the court proceedings in the United States does not cover the pursuit of any legal remedies THE IRANIAN AIR FORCE itself may have in those proceedings.

Dated, The Hague

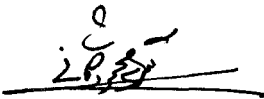
25 May 1984



Gunnar Lagergren

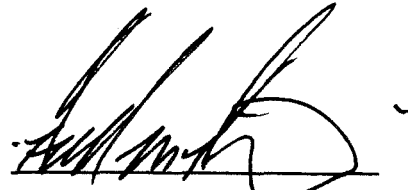
Chairman

Chamber One



Mahmoud M. Kashani

Dissenting Opinion



Howard M. Holtzmann

Concurring Opinion