

ORIGINAL DOCUMENTS IN SAFE

166

Case No. 333

Date of filing: 7. Aug 86

\*\* AWARD - Type of Award Interim Award  
 - Date of Award 6. Aug 86  
5 pages in English 5 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

166

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحدہ	
ثبت شد - FILED		
Date	7 AUG 1986	تاریخ
	۱۳۶۵ / ۵ / ۱۶	
No.	333	شماره

CHAMBER ONE

CASE NO. 333

AWARD NO. ITM 62-333-1

DUPLICATE  
ORIGINAL  
نسخه برابر اصل

FLUOR CORPORATION,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF IRAN,

NATIONAL IRANIAN OIL COMPANY,

Respondents.

INTERIM AWARD

1. This Interim Award deals with the request of the Respondents, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and NATIONAL IRANIAN OIL COMPANY ("NIOC"), to enjoin the Claimant, FLUOR CORPORATION, from commencing arbitration proceedings before the International Chamber of Commerce ("ICC").

2. On 18 January 1982, the Claimant filed with the Tribunal a claim against the Respondents. The Claim arises from a number of contracts concluded between NIOC and various entities allegedly related to or controlled by the Claimant regarding oil refinery projects in Esfahan, Abadan and Tehran. The Claimant requests monetary relief in the total amount of \$440,253,600 and a number of measures concerning bank guarantees and letters of credit. NIOC has presented three Counterclaims totalling over \$208,000,000 and over Rials 10,220,000,000.

3. On 17 June 1986, NIOC filed with the Tribunal a letter stating that based on correspondence received from the Claimant that it believed that the Claimant intended to submit the present claim to arbitration before the ICC in Paris. Referring to Article VII, paragraph 2, of the Claims Settlement Declaration, NIOC requests an Order enjoining the Claimant from bringing the present claim before the ICC.

4. In its comments filed on 7 July 1986, the Claimant stated that it did not intend to pursue the same claim simultaneously, before the Tribunal and the ICC. The Claimant noted however that, if the Tribunal ultimately decided that it had no jurisdiction over all or any part of this claim, the Claimant, may at that time be ineligible to present its claim before the ICC due to a time bar. Thus, unless an understanding with NIOC could be reached that either Party's rights would not be impaired by a postponement of an action before the ICC, the Claimant would commence proceedings through the ICC. Thereafter, these

proceedings would be kept pending until the Tribunal decided on its jurisdiction over the claim in this Case.

5. A Pre-hearing Conference was held on 9 July 1986 at which both Parties reiterated their positions.

6. Article VII, paragraph 2, of the Claims Settlement Declaration includes a provision stating that

"Claims referred to the arbitration Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court".

Although this provision may be interpreted to exclude recourse not only to courts but also to other arbitration fora, the Tribunal does not accept the view that a claimant is automatically barred from instituting a claim in another forum by the simple fact of having filed the same claim with this Tribunal, particularly when filing elsewhere might be necessary to preserve rights which might otherwise be time-barred. For if this Tribunal were to determine that it lacks jurisdiction it would be unjust to prevent a party thereafter from pursuing its claims in a forum that does have jurisdiction. The Tribunal notes that the above-quoted provision does not stand alone; it is the last sentence of a paragraph defining "claims of nationals", the requirements of which must be met to establish the jurisdiction of the Tribunal.

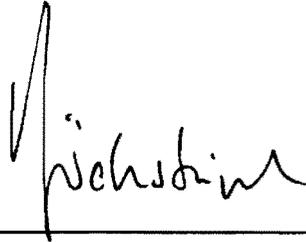
7. In this context, the Tribunal has been prepared, without prejudicing its final decision on jurisdiction, to grant interim measures in cases where it is satisfied that there is at least a prima facie showing that it has jurisdiction over the substantive claim pending before it. See e.g. Bendone-Derossi International and Government of the Islamic Republic of Iran, Interim Award No. ITM 40-375-1, pp. 3-4 (7 June 1984), reprinted in 6 Iran-U.S. C.T.R. 130,

131-132. The Tribunal has not yet decided the question of its jurisdiction in this Case, and has ordered the Parties to submit further evidence and explanation in that regard. Nevertheless, on the basis of the record before it at this time, and taking into account the holding in Housing and Urban Services International, Inc. and The Government of the Islamic Republic of Iran, Award No. 201-174-1 (22 November 1985), there appears to be a substantial question as to whether the Tribunal has jurisdiction over 100 percent of this claim. Moreover, the Tribunal notes that at the Pre-hearing Conference the Claimant explained that it was considering commencing arbitration before the ICC only in order to protect itself against the possible defence of a time bar in the event this Tribunal were later to determine that it did not have jurisdiction, and reaffirmed that it would not pursue the ICC proceeding unless the Tribunal decided that it lacked jurisdiction. Further, at the Pre-hearing Conference NIOC reiterated its refusal to agree to waive a possible time bar in order to eliminate the Claimant's need to commence ICC arbitration at this time.

8. In these circumstances, it would be inappropriate and might unduly prejudice the Claimant's rights to order the Claimant not to commence arbitration before the ICC in view of the substantial question that exists as to the Tribunal's jurisdiction and of the fact that staying the ICC arbitration is not presently necessary to protect this Tribunal's jurisdiction because the Claimant has undertaken only to commence the arbitration but not to pursue it while the issue of the Tribunal's jurisdiction is pending. The foregoing is without prejudice to the Respondent renewing its request for a stay of the ICC arbitration in the event of a change in the above-described circumstances.

9. For these reasons, the Tribunal dismisses NIOC's request to enjoin the Claimant from commencing arbitration before the ICC with respect to the present claim.

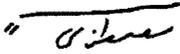
Dated, The Hague  
6 August 1986



---

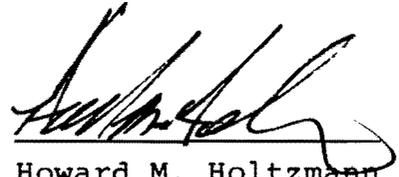
Karl-Heinz Böckstiegel  
Chairman  
Chamber One

In the Name of God



---

Mohsen Mostafavi  
Separate Opinion



---

Howard M. Holtzmann