

ORIGINAL DOCUMENTS IN SAFE

Case No. 480

Date of filing 13 June 1983

I.T.O.
AWARD. Date of Award 13 June 1983

480-33
← 10-22

5 pages in English. pages in Farsi.

 DECISION. Date of Decision

 pages in English. pages in Farsi.

 ORDER. Date of Order

 pages in English. pages in Farsi.

 CONCURRING 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.

DUPLICATE
ORIGINAL
نسخہ برابر اصل

CASE NO. 480

CHAMBER ONE

AWARD NO. ITM 22-480-1

TOUCHE ROSS & COMPANY,
a Partnership,
Claimant,
and
THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران - ایالات متحدہ

FILED - ثبت شد

No. 480

Date ۱۳۶۲ / ۲ / ۲۲
13 JUN 1983

INTERIM AWARD

480-33

۴۸۰ - ۳۳

On 18 January 1982 the Claimant filed with the Tribunal a claim against the Respondent seeking payment of sums allegedly due to it under a contract (No. 115) dated 11 June 1977 entered into between the Claimant and the Government of Iran for the performance of certain auditing services. The Claimant seeks payment in the amount of US \$874,847 for services rendered by it prior to its cancellation of the contract on 17 July 1979 pursuant to a force majeure clause in the contract, together with consequential damages, interest, costs and attorneys' fees.

On 2 November 1982 the Respondent filed a Statement of Defence and a counterclaim, in which it contended that the claim was excluded from the jurisdiction of the Tribunal, inter alia, by virtue of Article II, paragraph 1, of the Claims Settlement Declaration. In the event of the Tribunal's jurisdiction being upheld, the Respondent asserted a counterclaim for damages arising out of the failure of the Claimant to discharge its obligations under the said contract, including recovery of payments amounting to US \$1,177,886 made to the Claimant.

In January 1983 the Claimant was served with documents giving notice that an action had been commenced by the Ministry of Defence of the Islamic Republic of Iran against the Claimant in the General Court of Tehran on 16 November 1982 in which action the Ministry of Defence contends that the cancellation of the contract by the Claimant was wrongful and seeks a declaration that the cancellation was invalid, together with damages of one hundred million Rials, costs and attorney's fees.

The documents included a notice requesting the Claimant to appear before the General Court of Tehran on 1 June 1983 in connection with the action.

On 26 May 1983 the Claimant filed with the Tribunal a Motion requesting the Tribunal to order the dismissal or stay of the proceedings in the General Court of Tehran.

In an Order issued by the Tribunal on 30 May 1983 the Government of Iran was

- (i) invited to submit by 8 June 1983 a Reply to the Claimant's request filed on 26 May 1983, and
- (ii) requested to move for a stay of the proceedings before the General Court of Tehran until 13 June 1983.

In a letter dated 8 June 1983 the Deputy Agent of the Islamic Republic of Iran requested the Tribunal to extend for a period of at least two months the time within which the Respondent shall submit a Reply to the Claimant's request.

The Tribunal considers that the request for extension should be granted so as to give the Respondent further time to respond to the Claimant's motion.

However, it appears from the copy of the documents received by the Claimant that the claim filed against it in the General Court of Tehran by the Ministry of Defence of the Islamic Republic of Iran is substantially the same as the counterclaim previously filed with the Tribunal in this case.

It is provided in Article VII, paragraph 2, of the Claims Settlement Declaration that "claims referred to the Arbitral

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".

Thus, it seems that the subject matter of the counterclaim is excluded from the jurisdiction of the Courts of Iran from the date when the counterclaim was filed with this Tribunal unless and until this Tribunal decides that it has no jurisdiction over it.

Accordingly, the request for a stay of the proceedings in Iran must be granted until such time that the Tribunal can render a decision on the Motion by Touche Ross on the basis of the views by both Parties.

For these reasons, and pursuant to Article 26 of the Tribunal Rules, the Tribunal

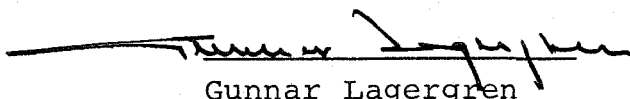
(1) extends to 5 August 1983 the time within which the Respondent is invited to submit a Reply to the Claimant's request filed on 26 May 1983, and

(2) requests the Respondent to take all appropriate measures to ensure that the proceedings before the General

Court of Tehran be stayed further at least until 1 September 1983.

Dated, The Hague

13 June 1983

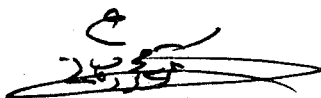


Gunnar Lagergren

Chairman

Chamber One

I dissent from the majority since the claim is based on a contract specifically providing for jurisdiction of Iranian courts, and in accordance with the Single Article Act passed by the Islamic Consultative Assembly of Iran and Article II, paragraph 1, of the Claims Settlement Declaration this arbitral Tribunal is excluded from jurisdiction to proceed with the claim and, a priori, it is without jurisdiction to issue the interim award in this case.


Howard M. Holtzmann

Mahmoud M. Kashani