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ORIGINAL DOCUMENTS IN SAFE

Case No. 928

Date of filing: 18 NOV 83

\*\* AWARD - Type of Award Interim  
- Date of Award 18 NOV 83  
6 pages in English 6 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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CASE NO. 928

CHAMBER THREE

AWARD NO. ITM 31-928-3

CBA INTERNATIONAL DEVELOPMENT  
CORPORATION,

Claimant,

- and -

THE GOVERNMENT OF IRAN,

Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ	
ثبت شد - FILED		
Date	۱۳۶۲ / ۸ / ۲۷	تاریخ
18 NOV 1983		
No.	928	شماره



INTERIM AWARD

I. STATEMENT OF PROCEEDINGS

On 19 January 1982, the Claimant, CBA INTERNATIONAL DEVELOPMENT CORPORATION, filed with the Tribunal a claim against the Respondent THE GOVERNMENT OF IRAN seeking payment of sums allegedly due to it under a Contract dated 31 May 1978 entered into between the Claimant and the Ministry of War of the Respondent for the provision of certain military equipment and services.

On 3 February 1983, the Ministry of Defense of the Islamic Republic of Iran ("Ministry of Defense") filed a Statement of Defence in which it contended, inter alia, that Article 23 of the Contract contained a forum selection clause which excluded the claim from the jurisdiction of the Tribunal by virtue of Article II paragraph 1 of the Claims Settlement Declaration. The Respondent also asserted a counterclaim for damages arising out of the Claimant's alleged unilateral termination of the contract.

On 25 November 1982, the Ministry of Justice for General Court 19 of Tehran issued a summons by which the Claimant was to appear before that Court on 17 April 1983 in connection with litigation commenced against it by the Ministry of Defense.

On 18 March 1983, the Claimant filed with the Tribunal a Motion requesting the Tribunal to order the dismissal or stay of the proceedings in the Tehran Court.

The Tribunal issued an Order on 25 March 1983 ordering the Respondent to file by 5 April 1983 a Response to the Claimant's Motion, together with a copy of the Statement of Claim filed in the Tehran proceedings. The Order invited the Respondent to request General Court 19 of Tehran to postpone the hearing scheduled for 17 April 1983 pending the

Tribunal's decision on the Claimant's Motion. The Order indicated the Tribunal's intention to render its decision on the basis of the written pleadings and documents unless by 5 April 1983 either Party had requested an oral Hearing of the Motion. Both the dates for filing of the Response and for requesting an oral Hearing were subsequently extended to 11 April 1983.

Neither Party filed with the Tribunal by 11 April 1983 a request for an oral Hearing on the Claimant's Motion.

In a letter filed on 25 April 1983, the Deputy Agent of the Islamic Republic of Iran indicated that the Respondent had obtained a postponement of the hearing in the General Court of Tehran.

On 3 May 1983, the Respondent filed a copy of the plaint in the proceedings before the General Court of Tehran. On 15 July 1983, the Respondent filed its Response to the Claimant's 18 March 1983 Motion. A further Memorial was filed on 4 August 1983 which also addressed the question of the proceedings in Iran.

In the above mentioned Order of 25 March 1983, the Parties were further ordered to file by 25 April 1983 Memorials addressing the issue of whether Article 23 of the contract caused the claim to be excluded from the Tribunal's jurisdiction by virtue of Article II, paragraph 1, of the Claims Settlement Declaration. The period for filing of the Respondent's Memorial was successively extended until 5 August 1983.

The Claimant filed a Memorial on this issue on 25 April 1983. In a letter of the Deputy Agent of the Islamic Republic of Iran of that same date, the Respondent requested that a Hearing be held on the issue. The Respondent addressed the merits of the question in its Memorial of 4 August 1983.

## II. EFFECT OF THE CONTRACT'S FORUM SELECTION CLAUSE

The Respondent having requested a Hearing on the issue of whether the claim is excluded from the Tribunal's jurisdiction under the final exclusion clause of Article II, paragraph 1, of the Claims Settlement Declaration by virtue of Article 23 of the Contract of 31 May 1978, the Tribunal defers consideration of this issue until the Hearing scheduled to take place on 1 December 1983.

## III. THE REQUEST FOR INTERIM MEASURES

Article VII, paragraph 2, of the Claims Settlement Declaration provides 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".

The Tribunal has previously stated that, while this provision does not give it exclusive jurisdiction over claims which could be presented as counterclaims, but have not been so presented, "it follows from this provision that once a counterclaim has been initiated before the Tribunal such claim is excluded from the jurisdiction of any other court". E-Systems, Inc. v. Iran, Interim Award No. ITM 13-388-FT.

It appears from the documents filed by the Respondent that the plaint filed by the Ministry of Defense against the Claimant in the General Court of Tehran states the same claim as is stated in the counterclaim filed with the Tribunal in this case.

Therefore 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 the Tribunal decides that it has no jurisdiction over it.

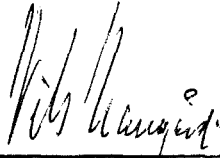
Accordingly, the request for a stay of the proceedings in Iran must be granted.

V. AWARD

THE TRIBUNAL AWARDS AS FOLLOWS:

The Respondent GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is hereby requested to take all appropriate measures to ensure that proceedings in General Court 19 of Tehran in connection with the above described plaint of the Ministry of Defense be stayed, unless and until the Tribunal decides that it has no jurisdiction over this case.

Dated, The Hague  
18 November 1983



Nils Mangård  
Chairman  
Chamber Three

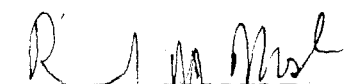
In the Name of God

I dissent from the Majority's  
decision for the following  
reasons:

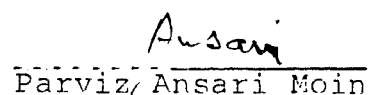
First; until such time as the jurisdiction of this Tribunal, which is a restricted one, is established to hear a dispute, it would be illogical and contrary to all recognized legal principles for it to request a court of general jurisdiction to stay proceedings with respect to the said dispute.

Secondly; the issuance of such a request prior to the judicial interpretation of the choice of forum clause in the disputed contract, is premature and would indicate that the issue is prejudged. See in this respect the Tribunal's agenda for the Hearing scheduled for 1st December 1983.

Thirdly; as explained in my previous dissenting opinions and those of other Iranian arbitrators in relation to past similar requests, the stay of proceedings before the Iranian courts are by law restricted to certain specified cases none of which is applicable to the present instance. The request from the Government of the Islamic Republic of Iran to take the necessary measures to stay the present proceedings before the Iranian court is therefore one which cannot be legally complied with.



Richard M. Mosk



Parviz Ansari Moin