

ORIGINAL DOCUMENTS IN SAFE

Case No. 158

Date of filing: 27 AUG 84

** AWARD - Type of Award ITM
- Date of Award 24 AUG 84
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

DUPLICATE
ORIGINAL
نسخہ برابر اصل

CASE NO. 158

CHAMBER ONE

AWARD NO. ITM 44-158-1

AERONUTRONIC OVERSEAS
SERVICES, INC.,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN, THE AIR FORCE
OF THE ISLAMIC REPUBLIC OF IRAN,
BANK MARKAZI IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
FILED - ثبت شد	
Date	۱۳۶۲ / ۱۴ / ۵ 27 AUG 1984
No.	158

INTERIM AWARD

On 17 December 1981 AERONUTRONIC OVERSEAS SERVICES, INC. ("AOSI") filed with the Tribunal a claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, THE AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN, and BANK MARKAZI IRAN. The claim is for damages allegedly arising out of Contract No. CP 2054 (the "Peace Net Contract") entered into between AOSI and THE AIR FORCE on 28 January 1970.

In its Statement of Defence filed on 20 September 1982 THE AIR FORCE (LOGISTICS COMMAND) OF THE ISLAMIC REPUBLIC OF IRAN contended that the Tribunal lacked jurisdiction by virtue of the provisions of Article II, paragraph 1, of the Claims Settlement Declaration on the basis that disputes under the contract fall within the sole jurisdiction of the competent Iranian courts. On the same date THE AIR FORCE filed a Counterclaim seeking damages from AOSI for its alleged defaults in performance of Contract No. CP 2054, to be considered by the Tribunal in the event of its having jurisdiction in this case.

On 1 October 1983 THE MINISTRY OF NATIONAL DEFENCE OF THE ISLAMIC REPUBLIC OF IRAN commenced proceedings in the Public Court of Tehran, Branch 14, against AOSI seeking damages for alleged breaches of its obligations under Contract No. CP 2054, and delivery of certain cable installation plans. AOSI has received a summons to appear at a hearing in Tehran on 20 October 1984. It appears from the documents filed that the claim filed with the Public Court of Tehran involves the same issues of law and fact as the counterclaim previously filed with this Tribunal in Case No. 158.

On 26 July 1984 AOSI filed a "Motion to Compel Dismissal or Stay of Proceedings in Iranian Court", in which it requested, inter alia, that the Tribunal direct that the proceedings in the Tehran Court be dismissed, or, in the alternative, stayed pending the final adjudication and termination of the proceedings before this Tribunal.

By its Order of 30 July 1984, the Tribunal invited the Respondents in Case No. 158 to comment on the Motion by 20 August 1984. On 20 August 1984 the Agent of the Government of the Islamic Republic of Iran filed a request for an extension of two months in which to do so.

The disputes settlement clause of Contract No. CP 2054, Article IV of Part C, provides as follows:

"Article IV - Arbitration

All disputes arising in connection with this Contract, relative to interpretation thereof, the carrying out of the provisions therein, refusal to comply with it, or the laws governing it, shall be solved by amicable means between the Parties."

In addition, Article VII paragraph A states that:

"The rights and obligations of the parties under this contract shall be governed in all respects by the laws of Iran."

In the view of the Tribunal these clauses do not appear to come within the terms of Article II, paragraph 1, of the Claims Settlement Declaration, which excludes from the jurisdiction of the Tribunal "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position." (Cf. Interlocutory Awards in Gibbs and Hill, Inc. and Tavanir, et al. (ITL 1-6-FT, Part III); George W. Drucker and Foreign Transaction Co., (ITL 4-121-FT, Part V)).

Article VII, paragraph 2, of the Claims Settlement Declaration provides that claims referred to the 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 stated in the Interim Award No. ITM 13-388-FT in the case of E-Systems, Inc. and The Government of the Islamic Republic of Iran et al., that the Government of Iran is free in principle to initiate claims before Iranian courts. However, the Tribunal stated in E-Systems that it has an inherent power to issue such orders as may be necessary to conserve the respective rights of the Parties and to ensure that its jurisdiction and authority are made fully effective; and that any award to be rendered in a case by the Tribunal, which was established by inter-governmental agreement, will prevail over any decision inconsistent with it rendered by Iranian or United States courts. Moreover, the Tribunal stated in E-Systems that once a counterclaim has been initiated before the Tribunal, such claim is excluded from the jurisdiction of any other court.

The counterclaim in this case was filed with the Tribunal on 20 September 1982. Therefore the filing of the same claim in the Public Court of Tehran on 1 October 1983 is not in conformity with Article VII, paragraph 2, of the Claims Settlement Declaration.

The Governments of Iran and the United States 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.

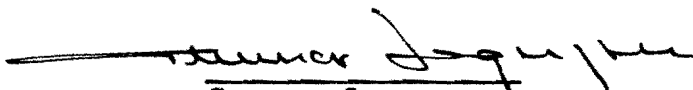
The Tribunal grants the Government of the Islamic Republic of Iran an extension of time to 8 October 1984 in which to file comments on the Motion. However, in view of the fact that the Claimant has been ordered to appear before the Public Court of Tehran on 20 October 1984, the Tribunal finds it necessary immediately to request the Government of Iran to move for a stay of the proceedings before the Public

Court of Tehran until such time as the Tribunal renders a decision on the Claimant's Motion based on the views of both Parties.

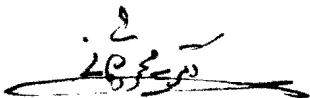
For these reasons,

The Tribunal requests THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN to take all appropriate measures to ensure that the present proceedings before the Public Court of Tehran be stayed until the Tribunal renders a decision on the Claimant's Motion based on the views of both Parties.

Dated, The Hague,
24 August 1984



Gunnar Lagergren
Chairman
Chamber One



Mahmoud M. Kashani
Dissenting Opinion



Howard M. Holtzmann