

OR

SAFE

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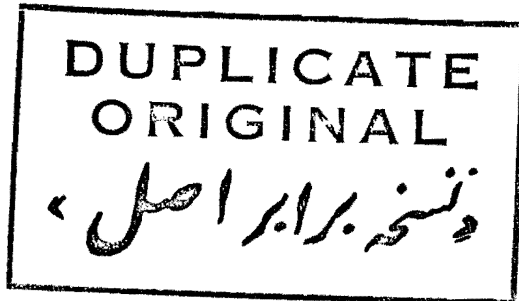
** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
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** DISSENTING OPINION of _____
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CASE NO. 158

CHAMBER ONE

AWARD NO. ITM 47-158-1

AERONUTRONICS 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.

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| IRAN UNITED STATES CLAIMS TRIBUNAL | دیوان داوری دعاوی ایران - ایالات متحدہ |
| FILED - ثبت شد | |
| Date | 14 MAR 1985 تاریخ |
| | ۱۳۶۳ / ۱۲ / ۲۲ |
| 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 received a summons to appear at a hearing in Tehran on 20 October 1984. It appears from the documents 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 filed on 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.

In its Interim Award No. ITM 44-158-1 filed on 27 August 1984, the Tribunal granted an extension until 8 October 1984. However, in view of the fact that the Claimant had been ordered to appear in the Public Court of Tehran on 20 October 1984, the Tribunal found it necessary immediately to request the Government of Iran to take all appropriate measures to ensure that the proceedings before the Public Court of Tehran be stayed until the Tribunal rendered a decision on the Claimant's Motion based on the views of both Parties.

On 9 October 1984 the Deputy for Parliamentary and Legal Affairs of the Ministry of Defence of Iran filed comments on behalf of the Respondents. The Respondents' observations can be summarised as follows:

- (1) that in issuing any Interim Award in this connection the Tribunal would presuppose that it had jurisdiction, whereas until jurisdiction were established such an award would be without effect;
- (2) that the Claimant had shown no threat of damage, and did not risk imminent or irreparable harm by the continuance of Iranian court proceedings in which it was entitled to participate, even if they resulted in an award of monetary damages against the Claimant;
- (3) that, as was recognised by the Tribunal in its Interim Award No. ITM 13-388-FT of 4 February 1983 in E-Systems, Inc. and The Government of the Islamic Republic of Iran et al, the Tribunal had no exclusive jurisdiction over Counterclaims raised by Iranian

Respondents, and the Algiers Declarations left the Government of Iran free to initiate claims before Iranian Courts even where those claims had been admissible as Counterclaims before the Tribunal;

- (4) that the relief sought by the Claimant did not fall within any of the specified grounds provided by the Civil Procedure Code of Iran on which proceedings might be stayed or suspended, and was thus incapable of being granted by an Iranian court;
- (5) that according to the Constitutional Laws of Iran, the Government of Iran was not empowered to request the judicial branch to act in a particular manner;
- (6) that if the Claimant desired to stay action by the Tehran Court it would have to submit a joint request together with the Respondent.

With regard to point (1), the fact that the question of the Tribunal's jurisdiction remains to be decided does not preclude the granting of interim relief in an appropriate case, provided the Tribunal is satisfied that there is, at least, a prima facie showing that it has jurisdiction over the substantive claim (see Interim Award No. ITM 40-375-1 of 7 June 1984 in Bendone-Derossi International and The Government of the Islamic Republic of Iran, at page 3). In the present case, the Tribunal has stated in its Interim Award of 27 August 1984 that the disputes settlement clause of the contract at issue, Contract No. CP 2054, Article IV of Part C, does not appear to fall within the terms of Article II paragraph 1 of the Claims Settlement Declaration which would exclude it from the Tribunal's jurisdiction.

Points (2), (3) and (6), in the Tribunal's view, betray an incorrect understanding of the effect of Article VII, paragraph

2 of the Claims Settlement Declaration. The Tribunal recognised in its Interim Award in E-Systems, Inc. that the Algiers Declarations leave the Government of Iran free, in principle, to initiate claims before Iranian courts even where they would have been admissible as counterclaims before the Tribunal; however, the Tribunal invoked its inherent power to issue such orders as were necessary to conserve the respective rights of the Parties and to ensure that its jurisdiction and authority were made fully effective. Moreover, once a counterclaim is actually filed with the Tribunal, as it was in the present case on 20 September 1982, then by virtue of Article VII paragraph 2 it is excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court, from the date of its filing with this Tribunal unless and until this Tribunal decides that it has no jurisdiction over it. Thus the questions of whether the Claimant might participate in those proceedings by joining in a request for a stay or otherwise, or whether an award of damages would constitute grave or irreparable harm, become irrelevant.

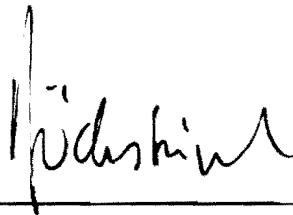
The Tribunal notes the Respondents' observations on the requirements of the Civil Procedure Code and Constitutional Laws of Iran, and on the independence of the judiciary, summarised above as points (4) and (5). However, in adhering to the Algiers Declarations the Governments of Iran and the United States agreed to confer upon this Tribunal jurisdiction over certain claims. Each Government has thereby assumed an international obligation to take whatever steps may be necessary to comply with any decisions, awards or orders rendered by the Tribunal pursuant to their agreement.

Having thus taken account of the views of both Parties, the Tribunal considers that the request made in its Interim Award of 27 August 1984 must continue in effect for the reasons stated therein until such time as proceedings in this Case are finally determined.

For the foregoing reasons,

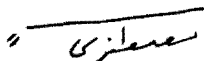
The Tribunal requests THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN to take all appropriate measures to ensure
that the present proceedings before the Public Court of
Tehran be stayed until final determination of the
proceedings in this Case.

Dated, The Hague,
13 March 1985

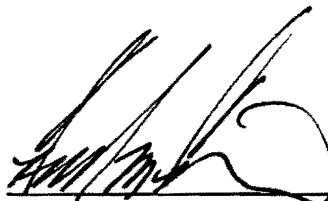


Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God



Seyed Mohsen Mostafavi Tafreshi
Dissenting



Howard M. Holtzmann