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ORIGINAL DOCUMENTS IN SAFE

Case No. 159

Date of filing: 21 OCT 1983

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

** CONCURRING OPINION of RICHARD M. MOSK
- Date 21 OCT 1983
4 pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
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** OTHER; Nature of document: _____
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DUPLICATE ORIGINAL
نسخہ برابر اصل

Case No. 159

Chamber Three

Award No. ITM 28-159-3

FORD AEROSPACE AND COMMUNICATIONS CORPORATION, and AERONUTRONIC OVERSEAS, INC.,

Claimants,

and

THE AIRFORCE OF THE ISLAMIC REPUBLIC OF IRAN, THE GROUND FORCES OF THE ISLAMIC REPUBLIC OF IRAN, THE MINISTRY OF DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN, THE GOVERNMENT OF IRAN and BANK MARKAZI IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعوی ایران - ایالات متحدہ
ثبت شد - FILED ۱۳۶۲ / ۷ / ۲۹	
Date	۲۱ OCT 1983
No.	159 - 159

CH.3

CONCURRING OPINION TO INTERIM AWARD

Although I concur in the Order (or "Interim Award"), I do not believe that a hearing on the request for interim measures is necessary or appropriate in this case. The Order does not indicate that a hearing is legally required by the Tribunal Rules. Article 15, paragraph 2, of the Tribunal Rules, which provides that upon the request of a party made "at any stage of the proceedings", the "arbitral tribunal shall hold hearings," does not specify that a

hearing is necessary for every decision. Note 2 to Article 15 provides that the Tribunal "shall determine without hearing any written requests ... with respect to procedural matters unless it grants or invites oral argument in special circumstances."

Thus the rule, although somewhat ambiguous, should not be read to provide a right to a hearing in connection with a request for interim measures. The request for interim measures here is for the purpose of preserving the rights of the Parties pending the Tribunal's award, and thus the issue raised by the request is arguably a procedural matter. Moreover, the purpose of the rule seems to be to guarantee a right to a hearing in connection with a decision on the merits of the case.

A number of orders similar to the instant one have been issued without any hearing. Indeed, this Interim Award was granted without a hearing, thus demonstrating that the Rule cannot be read to impose a hearing requirement in the event of a request. In many instances, interim measures must be granted before a hearing can be held.

In this case, although a hearing can be held, it is an unnecessary burden on the Parties and the Tribunal. All of the facts and legal issues are before the Tribunal. There is no indication that any further evidence will be presented. There is ample authority arising out of other

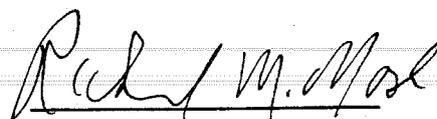
Tribunal cases which present issues virtually identical to those in the instant request for relief. Thus, I see no reason for holding a hearing in connection with the request for interim measures in this case.

I also believe that the Order should have specified that the proceedings before the Public Court of Tehran be stayed until further order of the Court rather than until 30 days after the Tribunal hearing. Based on a history of this Tribunal, I have some concern that a decision may not be forthcoming within the 30 day period.

With regard to assertions that a case in Iran cannot be stayed without the request of both parties, the fact is that the Respondents are fully able to comply with the Order under Iranian municipal law. Generally courts have inherent power to stay proceedings. See Roussel-Uclaf v. G.D. Searle & Co. Ltd. [1978] 1 Lloyd's L.R. 225, 229-230. Iranian municipal law provides for means for complying with the Order. See, e.g., Civil Procedure Code of Iran, Articles 127, 298. That the Respondents may take effective steps short of withdrawal of the action is confirmed by a letter of April 25, 1983 filed in Case No. 928 by the Islamic Republic of Iran, in which its Agent stated that in a case before the Public Court of Tehran involving similar circumstances, a stay of proceedings was obtained at the mere request of the attorney for the Ministry of Defense. In the instant case, the matter was postponed in Iran without any intervention by Claimant in the Iranian proceedings.

Moreover, Iran has a legal obligation to comply with orders of this Tribunal since the Tribunal was established pursuant to an international agreement to which Iran is bound. The Algiers Declarations and Iran's obligations thereunder have the force of law in Iran. The Civil Code of Iran, Article 9. In addition, Iran is responsible for the acts of its judiciary in violation of international obligations. See Simpson and Fox, International Arbitration 262 (1959); Eagleton, The Responsibility of State in International Law 69-71 (1978).¹

I also note that in connection with Interim Award No. 21-28-1, the Chairman of this Chamber sent a telegram to the United States party against whom interim relief was granted explaining that the "request" stated in the Award "is tantamount to and constitutes an order." I presume that this statement is equally applicable to this Order in accordance with the requirement of Article 15, paragraph 1, of the Tribunal Rules that "parties [be] treated with equality."



Richard M. Mosk

Dated, The Hague
21 October 1983

¹ It should be noted that the Full Tribunal has already held that the particular forum-selection clause in the contract in issue in this case does not divest the Tribunal of jurisdiction. Interlocutory Award No. ITL 6-159-FT (Nov. 5, 1982).