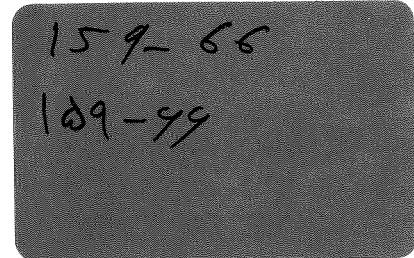


Case No. 159

Date 5 November 1982

ORIGINAL DOCUMENTS IN SAFE

Award No.: ITL 6-159-FT



✓ (INTERLOCUTORY AWARD)

- Award; No. of pages 5 Date of Award 5 November 1982

- Decision; No. of pages \_\_\_\_\_ Date of Decision \_\_\_\_\_

- Order; No. of pages \_\_\_\_\_ Date of Order \_\_\_\_\_

- Other  
No. of pages \_\_\_\_\_ Date of Document \_\_\_\_\_

5 November 1982

DUPLICATE  
ORIGINAL

نسخه برابر اصل

IRAN UNITED STATES  
CLAIMS TRIBUNAL

دادگاه داری و محاربه  
ایران - ایالات متحده

ثبت شد - FILED

Date ۱۳۶۱ / ۸ / ۱۴ تاریخ

5 NOV 1982

No. 159 شماره

IRAN-UNITED STATES CLAIMS TRIBUNAL

INTERLOCUTORY AWARD

Case No. 159

Award No.: ITL 6-159-FT

Interpretation of the expression "and excluding 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." (Article II, paragraph 1, of the Claims Settlement Declaration.) Jurisdiction relinquished by Chamber Three to the Full Tribunal.

Parties: Ford Aerospace & Communications Corporation,  
Aeronutronic Overseas Services Inc.,  
Claimants,

and

The Air Force of the Islamic Republic of Iran,  
The Ground Forces of the Islamic Republic  
of Iran,  
The Ministry of National Defence of the  
Islamic Republic of Iran,  
Bank Markazi and the Government of Iran,  
Respondents.

Appearances:

Mr. John W. Dickey,  
Mrs. Lori Fisler Damrosch  
Mr. Mark McCall  
Sullivan & Cromwell, New York, N.Y.  
for the Claimant,

Mr. Arthur W. Rovine, Agent of the United States  
of America

- 2 -

Also present:

Mr. Mohammed K. Eshragh as Agent of the  
Islamic Republic of Iran.

Introduction

Article II, paragraph 1, of the Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran ("the Claims Settlement Declaration") 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."

Chamber Three of the Tribunal has relinquished jurisdiction over this case to the Full Tribunal for the limited purpose of deciding whether the claims therein arising out of a contract containing provisions for the settlement of disputes fall within the scope of the abovementioned provision of the Claims Settlement Declaration.

Following orders dated 15 April 1982 and 7 July 1982, the Parties have submitted Memorials addressing the jurisdictional issue referred to the Full Tribunal by Chamber Three. Furthermore, a hearing on this issue was held on 21 - 22 June 1982.

The claims in this case relate to a number of agreements between the Claimants and Iranian military authorities. Under one of these agreements, the Peace Sceptre Contract, the Claimant Aeronutronic Overseas Services Inc. was required to provide equipments and services in connection with the installation of certain facilities at two air bases in

Iran. The contract regarding these facilities and services includes the following provision:

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9. Settlement of Differences

All disputes and differences between the two parties arising out of interpretation of the Contract or execution of the Works which can not be settled in a friendly way, shall be settled in accordance with the rules provided by the Iranian laws, via referring to the competent Iranian Courts.

11. Law Governing Contract

The Governing law of this contract is the Iranian law. This contract is subject to the Laws of the Imperial Government of Iran in every respect.

The Respondents contend that according to Article 5 of the 1965 Hague Convention on the Choice of Court which sets forth the principles generally recognised as governing this matter, the mere choice of specific courts must be presumed to confer on these courts an exclusive jurisdiction. The processes of conciliation or mediation envisaged by the term "friendly way" do not constitute an adjudication of the dispute, and thus do not override the sole jurisdiction conferred on Iranian courts.

The Claimants reply that the forum clause would not satisfy the requirement of exclusivity as it does not provide expressly for the sole jurisdiction of the Iranian Courts. Instead, the reference to a "friendly way" of settlement envisages other means of settlement including arbitration. The Claimants also argue that the clause would not be "binding" between the parties since a change of circumstances has occurred in Iran which would make such a choice of forum clause not enforceable. Finally, the Claimants contend that the

clause does not cover all disputes as required by the Claims Settlement Declaration, because its scope is expressly limited to the interpretation of the contract and the execution of the works.

Article II, Paragraph 1, of the Claims Settlement Declaration requires that, in order to exclude the Tribunal's jurisdiction, the contractual choice of Iranian Courts must cover any claims arising under the contract. In the present case, the jurisdiction of the Iranian courts has been expressly limited to disputes arising from the interpretation of the contract and the execution of the works. Important aspects of the contract including some of the Claimants' obligations to be performed outside Iran and all the Respondents' obligations such as payment have been left outside the jurisdiction of the selected courts. Such limitation of the jurisdiction places Article 9 of the contract outside the requirement that the Iranian courts must be solely competent for any disputes arising under the contract. Therefore, the Tribunal is not prevented by Article 9 of the Peace Sceptre Contract from asserting jurisdiction over all claims arising under this contract.

For the reasons given above,

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the TRIBUNAL holds

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that Article 9 of the Peace Sceptre Contract does not fall within the scope of the forum clause exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration. Consequently this article in the contract does not exclude the Tribunal from jurisdiction over claims based on the said contract.

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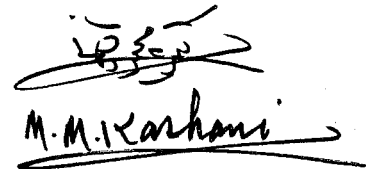
The case is referred back to Chamber Three for further proceedings.

The Hague,  
5 November 1982

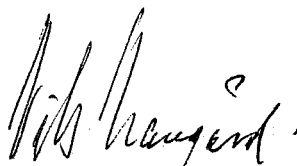


Gunnar Lagergren  
(President)

In the name of God,

  
M.M. Kashani

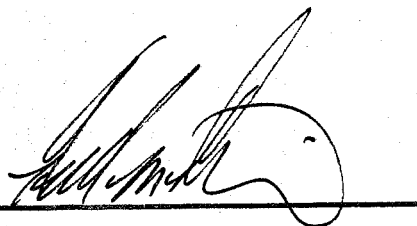
Pierre Bellet



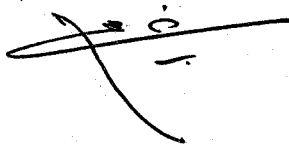
Nils Mangård

Mahmoud M. Kashani  
Dissenting opinion

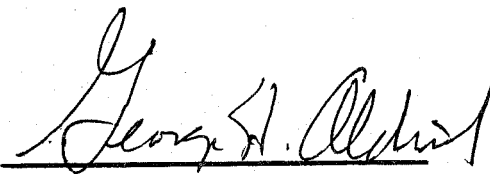
In the name of God,



Howard M. Holtzmann  
Concurring opinion

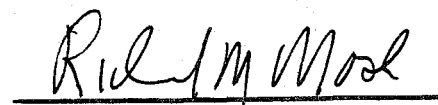
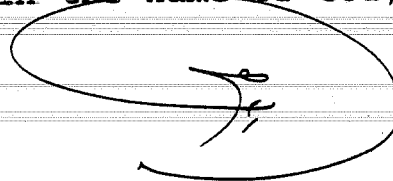


Shafi Shafeiei  
Dissenting opinion



George H. Aldrich

In the name of God,

  
Richard M. Mosk  
Concurring opinion

Mostafa Jahangir Sani  
Dissenting