

ORIGINAL DOCUMENTS IN SAFE

Case No. 160

Date of filing: 31 oct 1983

** AWARD - Type of Award ITM
 - Date of Award 31 oct 1983
6 pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
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** 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

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 - Date _____
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CASE NO. 160

CHAMBER ONE

AWARD NO. ITM 29-160-1

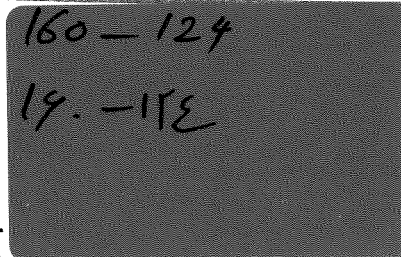
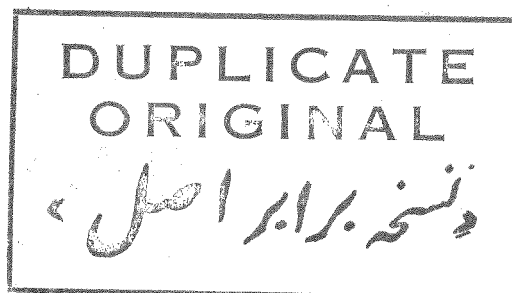
RCA GLOBCOM COMMUNICATIONS INC.
(RCA GLOBCOM INC.),
RCA GLOBAL COMMUNICATIONS DISC,
INC. (RCA GLOBCOM DISC),
RCA GLOBCOM SYSTEMS, INC.,

Claimants,

- and -

THE ISLAMIC REPUBLIC OF IRAN,
TELECOMMUNICATIONS COMPANY OF IRAN,
ISLAMIC REPUBLIC OF IRAN'S ARMY
JOINT STAFF, BANK MELLI IRAN, BANK
MARKAZI, FOREIGN TRADE BANK OF IRAN,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه داوری دعاوی ایران - ایالات متحده	
FILED - ثبت شد			
Date	۱۳۶۲ / ۸ / ۹	تاریخ	
31 OCT 1983			
No.	160	شماره ۱۶۰	



INTERIM AWARD

The Claimants filed a Statement of Claim in this case on 17 December 1981. One of the claims asserted by the Claimants arises out of a contract, dated 16 April 1974, between RCA Globcom Disc and the then Imperial Iranian Supreme Commander's Staff, Military's Switching Project Office, now the Islamic Republic of Iran's Army Joint Staff (the "MSPO Contract") in which the Military's Switching Project Office agreed to purchase certain switching equipment for automatic telegraphic services in Iran together with related installations and services. In the Statement of Claim RCA Globcom Disc and RCA Globcom Systems seek, inter alia, damages arising out of an alleged breach by the Switching Project Office of the MSPO Contract and cancellation of certain letters of guarantee and standby letters of credit that were issued. In the Statement of Claim RCA Globcom Disc contends that it invoked force majeure in December 1978 and, in accordance with a provision of the MSPO Contract, which permitted cancellation of the contract in case of force majeure, cancelled the contract in March 1979.

The Army Joint Staff and The Government of the Islamic Republic of Iran filed Statements of Defence on 29 December 1982 and on 12 January 1983, respectively. The Army Joint Staff denies that RCA Globcom Disc was entitled to cancel the MSPO Contract by reason of force majeure and asserts that RCA Globcom Disc breached the contract by failing to perform all of its contractual obligations.

Prior to 17 May 1983 the Army Joint Staff of the Islamic Republic of Iran filed with the Public Court of Tehran, Second Branch, a claim against RCA Glocom Disc in the amount of Rials 672,543,983. In the case before the Public Court of Tehran, the Army Joint Staff seeks to recover damages for RCA Globcom Disc's alleged breaches of the MSPO Contract. The damages sought comprise Rials 615,927,887 for losses due

to delays caused by RCA Globcom Disc, compensation in the amount of Rials 53,230,240 for taxes owed to the Ministry of Finance and Economic Affairs and compensation in the amount of Rials 33,856,856 for insurance premiums owed to the Social Security Organization of Iran.

Following the filing of the claim with the Public Court of Tehran, RCA Globcom Disc received from the Iranian Interests Section of the Algerian Embassy in Washington, D.C., a notification that a summons had been issued in the case before the Tehran Court directing RCA Globcom Disc to appear before the Court on 12 November 1983. The summons was accompanied by a copy of the claim and a number of exhibits.

On 12 September 1983 the Claimants in Case No. 160 filed with the Tribunal a Motion in which they requested the Tribunal inter alia to direct the Government of the Islamic Republic of Iran and the Army Joint Staff to stay further proceedings against RCA Globcom Disc in the case before the Public Court of Tehran until Case No. 160 before the Tribunal has been resolved. In this Motion the Claimants contend that the claims brought before the Court in Tehran all arise out of the same contract, i.e. the MSPO Contract, as the claim previously submitted to the Tribunal by the Claimants.

In an Order dated 20 September 1983 the Tribunal requested the Respondents to file a Reply to the Claimants' Motion by 17 October 1983. On 18 October 1983 the Ministry of Defence of the Islamic Republic of Iran filed a Reply to the Claimants' Motion in which it denied the Tribunal's jurisdiction over the case as well as its competence to order Respondents to stay proceedings in the Iranian Court. The Ministry contends that the MSPO Contract contains a clause which confers exclusive jurisdiction on the competent Courts of Iran and that, consequently, the claim is excluded from

the Tribunal's jurisdiction by virtue of Article II, paragraph 1, of the Claims Settlement Declaration, which excludes "claims arising under a binding contract between the parties, specifically providing that any disputes thereunder shall be within the sole discretion of the competent Iranian courts, in response to the Majlis position".

The Ministry further alleges that the interim relief sought by the Claimant falls outside the scope of the discretion to take interim measures conferred upon the Tribunal by Article 26 of the Tribunal Rules.

Lastly, the Ministry contends that this Tribunal with an ad hoc jurisdiction, cannot order stay or suspension of proceedings in a municipal forum with inherent and general jurisdiction, and further that the laws of Iran do not permit the Government to comply with the Tribunal's request to move for stay of proceedings before the Public Court of Tehran.

In the light of the determination by the Full Tribunal in its Interlocutory Award No. ITL 6-159-FT in the Case Ford Aerospace & Communications Corporation et al. and The Air Force of the Islamic Republic of Iran et al., Case No. 159, that the Tribunal has jurisdiction over a claim based on a contract containing a forum selection clause similar to the above mentioned clause, it would appear that the Tribunal has jurisdiction over RCA Globcom Disc's claim in the instant case.

Further, it appears from the copy of the Army Joint Staff's Claim which accompanied the summons received by RCA Globcom Disc that the Claim filed before the Public Court of Tehran involves the same legal and factual issues as the claims by

RCA Globcom Disc and RCA Globcom Systems before the Tribunal.

As to the contention that the Tribunal does not have power to grant the interim relief sought by the Claimants, the Tribunal notes that the Full Tribunal concluded in its Interim Award No. ITM 13-388-FT in the Case E-Systems, Inc. and The Government of the Islamic Republic of Iran et al., Case No. 388, that the Algiers Declarations leave the Government of Iran free in principle to initiate claims before Iranian Courts even where the claim would have been admissible as a counterclaim before the Tribunal. However, in that Interim Award it is also stated that the Tribunal 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. It is also stated that any award to be rendered in the 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.

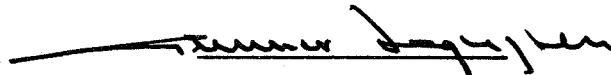
The consistent practice of the Tribunal indicates, that this inherent power is in no way restricted by the language in Article 26 of the Tribunal Rules. Further, the Government of Iran and the Government of the United States have agreed in the Algiers Declarations to confer upon this Tribunal jurisdiction 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.

For these reasons,

The Tribunal requests the Government of the Islamic Republic of Iran or the Islamic Republic of Iran's Army Joint Staff to take all appropriate measures to ensure that the present proceedings before the Public Court of Tehran be stayed, pending the Tribunal's final determination in Case No. 160.

The Hague,

31 October 1983

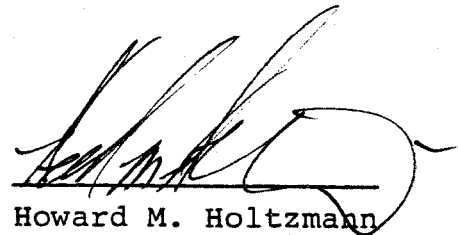
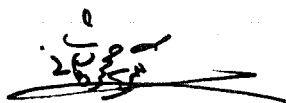


Gunnar Lagergren

Chairman

Chamber One

I dissent from the majority since the claim is based on a contract specifically providing for jurisdiction of Iranian courts, and in accordance with the Single Article Act passed by the Islamic Consultative Assembly of Iran and Article II, paragraph 1, of the Claims Settlement Declaration this arbitral Tribunal is excluded from jurisdiction to proceed with the claim and, a priori, it is without jurisdiction to issue the interim award and make such a request from the Government of the Islamic Republic of Iran in this case.


Howard M. Holtzmann

Mahmoud M. Kashani