

160 - 125  
17 - 125

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 \_\_\_\_\_  
\_\_\_\_\_ 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

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\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

DUPLICATE  
ORIGINAL  
نسخہ برابر اصل

CASE NO. 160

CHAMBER ONE

AWARD NO. ITM 30-160-1

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,  
TELECOMMUNICATION COMPANY OF IRAN,  
THE 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 دعوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	۱۳۶۲ / ۸ / ۹
	31 OCT 1983
No. 160	۱۶۰

160 - 125  
19 - 126

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 then, 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 Government of the Islamic Republic of Iran and the Army Joint Staff 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.

By the terms of the MSPO Contract RCA Globcom Disc was required to take out an all-risk insurance policy covering loss of and damage to certain property in connection with RCA Globcom Disc's activities relating to the contract. RCA Globcom Disc obtained such insurance through Iran Insurance Company ("Iran Insurance") under a policy numbered 11148/53. ~~RCA Globcom Disc asserts that Iran Insurance was national-~~ized by the Government of Iran in June 1979.

On 7 July 1982 Iran Insurance filed with the Public Court of Tehran a claim against "RCA Global Communications" in the amount of Rials 10,294,627 in respect of insurance premiums under policy No. 11148/53 and two addenda thereto.

Following the filing of this claim with the Public Court of Tehran the Claimants received from the Iranian Interest Section of the Algerian Embassy in Washington, D.C. two notifications that a summons had been issued in the case

before the Tehran Court. The first of these notifications directed RCA Globcom Disc to appear before the Court on 17 January 1983 to answer to the complaint filed by Iran Insurance. Later, in March 1983, a new notification was received directing RCA Globcom Inc. to appear before the Court on 8 June 1983.

On 6 May 1983 the Claimants in case No. 160 filed with the Tribunal a Motion requesting that the Tribunal direct the Government of Iran to stay further proceedings against RCA Globcom Inc. and RCA Globcom Disc in the case before the Public Court of Tehran until case No. 160 before the Tribunal had been resolved. In this Motion the Claimants argue that since all matters relating to the MSPO Contract had already been placed before the Tribunal, the Government of Iran should not be permitted to litigate a portion of those issues contemporaneously before Iranian Courts.

In an Order dated 12 May 1983 the Tribunal requested the Respondents to file a Reply to the Claimants' Motion by 23 May 1983, addressing in particular the question as to whether the litigation before the Public Court of Tehran involved any issue that could lead to decisions by the Tribunal inconsistent with decisions by the Public Court of Tehran.

Following a request for an extension submitted by the Deputy Agent of the Islamic Republic of Iran on 23 May 1983, the Tribunal in an Order dated 2 June 1983 granted an extension to file said Reply until 1 August 1983. In view of the Claimants' statement that RCA Globcom Inc. had been ordered to appear before the Public Court of Tehran on 8 June 1983, the Tribunal in that Order found it appropriate immediately to request the Government of Iran to move for a stay of the proceedings before the Public Court of Tehran until such

time that the Tribunal could make a decision on the Claimants' request based on the views of both Parties.

For these reasons, the Tribunal requested the Government of the Islamic Republic of Iran to take all appropriate measures to ensure that the proceedings before the Public Court of Tehran be stayed until 15 August 1983.

On 1 August 1983 the Agent of the Islamic Republic of Iran submitted to the Tribunal a Response to the Tribunal's Orders. In this Response the Government of Iran argues that the Iranian Code of Civil Procedure does not allow the stay of the pending case, and that the Public Court of Tehran on 8 June 1983 issued a judgment obligating RCA Globcom Inc. to pay Iran Insurance U.S. \$120,405. According to a copy of the judgment by the Tehran Court attached to the Response this amount appears to be insurance premiums due to Iran Insurance in accordance with the terms of the above-mentioned insurance policy No. 11148/53 and the addenda thereto. The Government of Iran also argues in its Response that - although the dispute in case No. 160 before the Tribunal and the insurance contract at issue before the Tehran Court both arise out of the MSPO Contract - there is no link between the two disputes that can lead to inconsistent decisions by the Tribunal and the Public Court of Tehran.

In a new Motion, filed with the Tribunal on 26 August 1983, the Claimants have requested that the Tribunal direct the Government of Iran to take such steps as may be necessary to vacate the judgment entered in the Public Court of Tehran, and to stay further proceedings in that Court pending the resolution of the case before the Tribunal. The Claimants argue that the Iranian Government's refusal to stay the proceedings in Tehran represents a contemptuous disregard of the Tribunal's Order and a breach of Iran's commitment to resolve outstanding disputes in accordance with the Claims

Settlement Declaration. The Claimants contend that the judgment entered in the Tehran Court can lead to inconsistency with future decisions by the Tribunal. In this respect the Claimants assert that if the Tribunal determines that the Claimants properly cancelled the MSPO Contract by reason of force majeure, it could also conclude, contrary to the view of the Public Court of Tehran, that the Claimants are similarly relieved of obligations incidental to the performance of that contract, such as the maintenance of the all-risk insurance policy.

It follows from the interim award by the Full Tribunal in the Case E-Systems, Inc. and the Government of the Islamic Republic of Iran et al., Case No. 388, Award No.

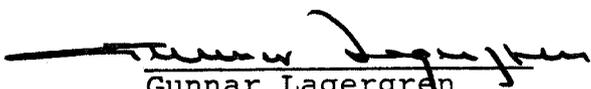
ITM 13-388-FT, that the Tribunal has an inherent power to issue such orders as may be necessary to conserve the respective rights of the Parties and to ensure that the Tribunal's jurisdiction and authority are made fully effective. In order to achieve this end the Tribunal has the power in its discretion to order a Party to stay proceedings before a domestic court, if such proceedings may lead to decisions that are inconsistent with decisions made in proceedings before the Tribunal.

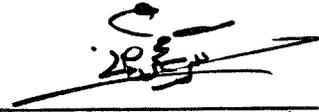
However, in the instant case the proceedings before the domestic court concerns a dispute arising out of a separate contract, and it involves a Party which is not a Party in the case before the Tribunal. The alleged interrelationship between the two cases is not quite clear. Therefore, quite apart from the questions as to whether the Tribunal has power to request the Government of Iran to vacate the judgment entered in the Tehran Court and whether there would be any point in ordering the Government to stay the proceedings in a case which appears to be closed, in the exercise of its discretion the Tribunal does not find sufficient reasons to grant the present request.

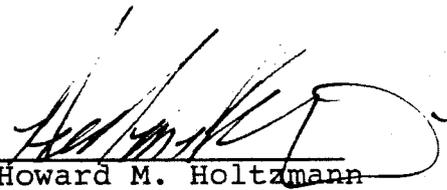
For these reasons,

The Tribunal denies the request by the Claimants that the Tribunal direct the Government of Iran to take steps to vacate the judgment entered in the Public Court of Tehran, and to stay further proceedings in that Court.

Dated, The Hague  
31 October 1983

  
Gunnar Lagergren  
Chairman  
Chamber One

  
Mahmoud M. Kashani  
Concurring for the reasons  
stated in the opinion  
attached to Award No.  
ITM 29-160-1

  
Howard M. Holtzmann  
Dissenting Opinion