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ORIGINAL DOCUMENTS IN SAFE

Case No. 375

Date of filing: 7 Jun 84

** AWARD - Type of Award Interim
- Date of Award 7 Jun 84
6 pages in English _____ pages in Farsi

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

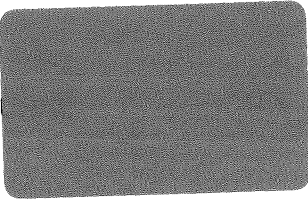
** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
- Date _____
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** DISSENTING OPINION of _____
- Date _____
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** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi



IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحده
FILED - ثبت شد	
Date ۱۳۶۳ / ۳ / ۱۷	تاریخ
7 JUN 1984	
No. 375	شماره

DUPLICATE
ORIGINAL
نسخه برابر اصل

CASE NO. 375
CHAMBER ONE
AWARD NO. ITM 40-375-1

BENDONE-DEROSI INTERNATIONAL,
Claimant,
and
THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
Respondent.

INTERIM AWARD

On 18 January 1982 BENDONE-DEROSI INTERNATIONAL ("the Claimant") filed with the Tribunal a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent") in which it sought an award of \$940,705 together with interest thereon.

The amount sought is based on an award of damages in the Claimant's favour made by a sole arbitrator under the rules of the International Chamber of Commerce ("ICC") on 15 December 1980 pursuant to a contract between the Claimant and the AIR FORCE OF THE ISLAMIC REPUBLIC OF IRAN ("THE AIR FORCE").

THE AIR FORCE filed a Statement of Defence on 4 January 1984 in which it argued that the Tribunal "is not established to enforce awards issued by other Tribunals", but raised a counterclaim for damages based on the underlying contract between the Parties, claiming on various grounds that the ICC award was "null and void".

The Tribunal has ordered the Claimant to file a Defence to the Counterclaim and a Reply to the points raised in the Statement of Defence by 27 June 1984.

On 4 April 1984 the Respondent filed a Petition in which it stated that the Claimant had sought to enforce the ICC award by obtaining an attachment order in the Frankfurt am Main Regional Court on 9 June 1983 in respect of certain shares owned by the Respondent. The Respondent requested that the Tribunal issue an order staying such enforcement measures on the grounds that, once filed with this Tribunal, the claim was excluded from any other court by virtue of Article VII, paragraph 2, of the Claims Settlement Declaration.

It appears from the text of the attachment order of the Frankfurt am Main Regional Court that the Claimant has in

fact sought and obtained by this order an interim measure to safeguard the final enforcement of the ICC award.

By its Order of 9 April 1984 the Tribunal ordered the Claimant to file by 30 April 1984 its comments on the Petition and on the issue of the jurisdiction of the Tribunal over the claim. The date was subsequently extended to 21 May 1984. A request for a further extension was denied by the Tribunal's Order of 17 May 1984, which stated that the issue of jurisdiction referred to in the previous order concerned, in particular, "the Tribunal's competence to grant 'enforcement of the I.C.C. arbitration award'". In a letter filed with the Tribunal on 16 May 1984 the Claimant stated:

"the attachment of assets referred to by the Respondent was in effect for nearly ten months before the Respondent filed its Petition. The Claimant is unaware, and the Respondent has not alleged, that any action with regard to the execution of the attachment is imminent."

In a further letter filed with the Tribunal on 21 May 1984, the Claimant sought reconsideration of the Tribunal's order denying an extension of time, and clarification by the Tribunal of the jurisdictional issues to be addressed.

* * *

In an appropriate case, an international tribunal will grant interim measures of protection before determining its jurisdiction over the merits of the claim, provided that it is satisfied that there is, at least, a prima facie showing that it has jurisdiction over the substantive claim. This test was most recently applied by the International Court of Justice in its Order of 10 May 1984 in Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Provisional Measures, I.C.J.

Reports 1984, p.169, 179. The Court stated, at paragraph 24 of the Order:

"[O]n a request for provisional measures the Court need not, before deciding whether or not to indicate them, finally satisfy itself that it has jurisdiction on the merits of the case, or, as the case may be, that an objection taken to jurisdiction is well-founded, yet it ought not to indicate such measures unless the provisions invoked by the Applicant appear, *prima facie*, to afford a basis on which the jurisdiction of the Court might be founded..."

Without prejudice to the final determination of the jurisdictional issue, the Tribunal is not at present satisfied that it appears, *prima facie*, that there exists a basis on which it can exercise jurisdiction over the present claim.

Article II, paragraph 1, of the Claims Settlement Declaration confers on the Tribunal the power to decide:

"claims of nationals of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this Agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights...."

The present claim is variously described in the Statement of Claim as "aris[ing] out of an arbitration award which was issued by the I.C.C. Court of Arbitration..." (page 6); a "claim for the amount owing to [the Claimant] by Respondent as established by the said Award" (page 6); and an attempt "to pursue the enforcement of the I.C.C. arbitration award by filing this claim before the Tribunal" (page 3).

Though it is also presented as a debt owed by the Respondent to the Claimant, the Tribunal cannot escape the impression that what the Claimant is in effect seeking from the Tribunal is the enforcement of the ICC arbitration award through the medium of the Security Account established pursuant to Paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

The Claimant in the present case had, prior to the signing of the Declarations, an apparently valid and enforceable arbitral award, rendered by an arbitrator pursuant to the Rules of the International Chamber of Commerce, which remained unaffected by the Algiers Declarations. The Claimant has, moreover, for the purpose of enforcement, availed itself of the opportunity to obtain an attachment in the court of a national legal system.

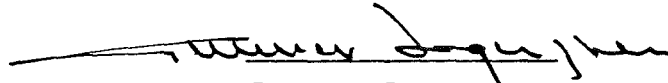
The position of the present Claimant is thus, to the knowledge of this Chamber, fundamentally different from other Claimants before this Tribunal.

The Tribunal at this stage of the proceedings does not consider it a reasonable interpretation of the Algiers Declarations that it should act as a court issuing exequatur or that it should otherwise be empowered to enforce arbitral awards of other, independently constituted arbitral tribunals. This Tribunal is not a national court; it has a specific international character. It is not a manifestation of any one national public authority, and it cannot invest such other awards with any validity or status under any system of national law that those awards do not already possess.

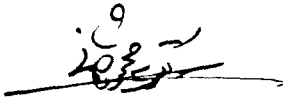
For the foregoing reasons,

The request of the Respondent for an Order granting interim measures of protection is denied.

Dated, The Hague,
7 June 1984



Gunnar Lagergren
Chairman
Chamber One



Mahmoud M. Kashani



Howard M. Holtzmann
Concurring opinion