

388-107
۳۸۸-۱۰۷

ORIGINAL DOCUMENTS IN SAFE

Case No. 388

Date of filing: 28 OCT 83

** 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 MR. RICHARD. MOSK & HOLTZMAN
- 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

** OTHER; Nature of document: Notification of corrections

- Date _____
_____ pages in English _____ pages in Farsi

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
FILED - ثبت شد	
Date	۱۳۶۲ / ۸ / ۲۸ 28 OCT 1983
No.	388

388-107
۳۸۸-۱۰۷

Case No. 388

Full Tribunal

AWARD NO: ITM 13-388-FT

E-SYSTEMS, INC.,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN and BANK MELLI
IRAN,

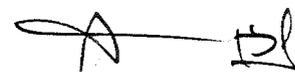
Respondents.

DUPLICATE
ORIGINAL
دستخبره برابر اصل

CONCURRING OPINION OF HOWARD M. HOLTZMANN AND
RICHARD M. MOSK TO INTERIM AWARD RE STAY OF
PROCEEDINGS BEFORE A COURT IN IRAN

NOTIFICATION OF CORRECTION

Attached are corrected pages 4 and 15 of the English version, and pages 4 and 13 of the Farsi version of "Concurring Opinion of Howard M. Holtzmann and Richard M. Mosk to Interim Award Re Stay of proceedings before a court in Iran", filed on 9 February 1983.



The Co-Registrars

enforced by the prevailing party in the courts of any nation...." General Declaration, paragraph 17. See also Claims Settlement Declaration, Article VI, paragraph 4.⁵ Moreover, international law supports the Tribunal's holding that a Tribunal award prevails over any decision by an Iranian court inconsistent with such an award. Selwyn Case (G.B. v. Ven.), 9 R. Int'l. Arb. Awards 381 (1903); see also C. Eagleton, The Responsibility of States in International Law 69 (1928). Indeed, a decision by an Iranian court inconsistent with a Tribunal decision or award would be a violation of Iran's obligations under international law. See International Law Commission Report on Arbitral Procedure (Scelle, rapporteur) UN Doc. A/CN.4/18 (1950) at 76, reprinted in (1950) II Y.B. Int'l. L. Comm'n 114, 143 (1950); Martini Case (Italy v. Ven.), 2 R. Int'l. Arb. Awards 975, 995-96 (1930); J.L. Simpson and H. Fox, International Arbitration 262 (1959); 262 Eagleton, supra at 71.

The Tribunal acted in accordance with established principles of international law when it found that it has "an inherent power to issue such orders as may be necessary

⁵ E-Systems, the Government of Iran and the Government of the United States have all submitted Memorials and presented arguments at an oral hearing on the questions of interpretation of the Algiers Declarations and other issues in this case. The participation of the Government of the United States was pursuant to invitation of the Tribunal in accordance with Article 15, Note 5, of the Provisionally Adopted Tribunal Rules, which permits such participation to assist the Tribunal in carrying out its task.

addressed to one of the Governments which established the Tribunal by international agreement. It is to be presumed that such Government will respect the obligation expressed in the Interim Award stating what it "should" do. Accordingly, we join with those who consider that the term "requests" is adequate in this context.⁸ In these circumstances we consider that a "request" is tantamount to and has the same effect as an order.

Finally, the Interim Award uses the words "to move for a stay." These words are sufficiently general to encompass whatever particular procedural steps are to be taken to halt proceedings in the Iranian court. Legal systems generally provide that a plaintiff may determine whether or not to proceed with its action and that a court may stay or postpone proceedings. See, e.g., Articles 48, 57, 127, 146, 147 298 of the Civil Procedure Code of Iran; see also, Roussel-Uclaf v. G.D. Searle & Co. Ltd. [1978] 1 Lloyd's L.R. 225, 230 ("[I]n the exercise of its inherent jurisdiction," a court may stay an action before it which is inconsistent with a pending arbitration.). Moreover, it should be

⁸ See Pious Fund Case (U.S. v. Mex.), Scott's Hague Court Reports 1, 5 (1902), where the Permanent Court of Arbitration stated:

[A]ll the parts of the judgment or the decree concerning the points debated in the litigation enlighten and mutually supplement each other, and.... they all serve to render precise the meaning and bearing of the dispositif (decisory part of the judgment) and to determine the points upon which there is res judicata and which thereafter can not be put in question....