

ORIGINAL DOCUMENTS IN SAFECase No. 159Date of filing: 4 JUNE 84

** AWARD - Type of Award INTERIM
- Date of Award 4 JUN 84
12 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

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi

DUPLICATE
ORIGINAL

نسخه برابر اصل

Case No. 159

CHAMBER THREE

AWARD NO. ITM 39-159-3

FORD AEROSPACE & COMMUNICATIONS
CORPORATION and 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 DEFENSE OF THE ISLAMIC REPUBLIC OF
IRAN, GOVERNMENT OF IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه داری دعای ایران - ایالات متحده	
ثبت شد - FILED			
Date	1362 / 2 / 14	تاریخ	
	4 JUN 1984		
No.	159	شماره	

INTERIM AWARD

I Procedural History

On 17 December 1981 Claimants filed a claim before this Tribunal seeking inter alia the payment of \$69,732 alleged to be owing under a contract ("Contract 103", referring in paragraph 2.1.8 to "Peace Scepter II Project") between Claimant Aeronutronic Overseas Services, Inc. ("AOSI") and the Government of Iran dated 29 August 1976 (see Exhibit C to Statement of Claim). AOSI alleged that Contract 103 "required [it] to engineer, furnish, install, test and make operational equipment and materials necessary to provide Command Post facilities at two air bases in Iran".

On 7 February 1983 Claimants informed the Tribunal that AOSI had received on 17 January 1983 a summons (bearing "File No. 18-560/61") issued by the Iranian Ministry of Justice advising it that the Iranian Ministry of National Defence had filed suit against AOSI in the General (or Public) Court of Tehran¹ alleging breach of Contract 103. The summons further notified AOSI that a hearing would take place in Tehran on 6 April 1983. The Claim presented in the General Court of Tehran expressly relates to "Subject: Contract No. 103, Peace Scepter Project 2". An attachment to the Claim refers in the first sentence to "a contract in August 1976 ... to supply communications equipment for command posts of Chah-Bahar and Omidieh bases," and continues:

Because of certain discrepancies in the communications equipment of Chah-Bahar Command Post [which] the Contractor ... refused to correct [and] [w]ith regard to the ... Omidieh Command Post, the Contractor has not announced the completion of project and ... Contractor had left Iran in 1978, the employer was forced to correct the discrepancies and make the stations ready for use....The cost of these operations, according to the report of the executor of the project amounted to 4.5 to 5 percent of the total cost of the project approximately One Million Eight Hundred Thousand Rials [approximately \$25,700]....

The Ministry of National Defence apparently sought this amount "and the damages". Additionally, it reserved "the right to start litigation to demand damages for the delays in the performance of the contract, and to demand amounts that the contractor owes the Social Security Organization

¹ The Farsi denomination of the Court may be translated into English as either "General Court" or "Public Court".

and Statistics Organization related to the performance of said Contract." In their submission of 7 February 1983 Claimants requested that the Tribunal order that the proceedings in Iran be dismissed or stayed.

On 22 February 1983 the Tribunal ordered the Government of the Islamic Republic of Iran and the Ministry of National Defence to respond to Claimants' request of 7 February 1983. At the same time the Tribunal invited them to request the General Court at Tehran to postpone the 6 April 1983 hearing "pending the decision by the Tribunal on Claimants' request".

On 15 March 1983 Respondent "Ministry of Defense" replied, stating

[e]xamination of the case pending before the General Court of Tehran is scheduled for a date subsequent to the date of the hearing. Postponement of the proceedings is subject to a motion by both parties....[R]especting the Tribunal's proposal, the Ministry of Defense, reserving its rights, agrees to postponement of the proceedings.

On 14 April 1983 the Deputy Agent of the Islamic Republic of Iran advised the Tribunal that "[t]he Hearing ... on the subject case" scheduled for 6 April 1983 "has now been postponed due to some deficiencies in the case".

On 16 May 1983 all Respondents other than the Ministry of National Defence filed Statements of Defence. None of these Statements addressed directly the claims asserted against the Ministry of National Defence arising out of

Contract 103 or asserted any counterclaim in respect of said contract (although Respondent Bank Markazi did refer to it at pages 13-15 of its Statement). Simultaneously, the Ministry of National Defence requested an extension of time to file its Statement of Defence, which was granted until 1 August 1983, and later extended to 3 October 1983 at said Respondent's request.

On 23 August 1983 Claimants informed the Tribunal that in June 1983 AOSI had received a second summons from the Iranian Ministry of Justice dated 28 April 1983 bearing the same file number as previously and rescheduling the Tehran Courthearing for 29 October 1983.

On 3 October 1983 the Ministry of National Defence filed its Statement of Defence and Counterclaim regarding inter alia the claim asserted under Contract 103. The Counterclaim "In Respect Of Contract No. 103 Dated August 29, 1976" alleges that the "Counter-Respondents left Iran leaving their contractual obligations unfilled" and seeks \$69,732 for "non-fulfillment of the work" plus "prospective losses" and interest. The Statement further asserts that "Counter-Respondents are indebted for insurance and tax."

On 20 October 1983 the Tribunal rendered Interim Award 28-159-3 in this case, which scheduled a hearing at Respondents' request for 3 May 1984 on Claimants' request for interim measures and concluded:

... the Tribunal ...

(b) requests the Government of Iran to take all appropriate measures to ensure that the proceedings before the Public Court of Tehran be stayed further at least until 30 days after the Hearing

On 28 February 1984 the Claimants informed the Tribunal that a third summons bearing the same file number as previously had been received by AOSI from the Iranian Ministry of Justice dated 9 November 1983. It directed AOSI to appear in court in Tehran on 8 May 1984. Claimants requested that "the Tribunal order Iran in the strongest terms to comply with the request in the Interim Award...."

On 6 March 1984 the Tribunal requested the Government of the Islamic Republic of Iran to comment upon this latest submission of the Claimants by 25 March 1984 and reminded it of the Tribunal's order in its Interim Award 28-159-3, repeating its operative terms in haec verba. This date subsequently was extended to 10 April 1984 at Respondents' request.

On 10 April 1984 the Government of the Islamic Republic of Iran notified the Tribunal that "the Respondent Ministry of Defense was notified to proceed with the enforcement of the Tribunal's Order" of 6 March 1984. It referred specifically to that Order's provisions regarding a "stay of proceedings at the Tehran Public Court for a period of at least 30 days after the hearing" scheduled for 3 May 1984 on Claimants' request for interim measures.

On 23 April 1984 Respondent Ministry of National Defence filed comments announcing its agreement to comply with the Tribunal order calling for a stay of the court proceedings until 30 days after the hearing. Respondent, however, also requested that the Tribunal order "Claimant to notify its consent to these comments of Respondent to that Tribunal so that, based on the Claimant's agreement in the instant case, such a request could be made to Chamber 18 of Tehran's Public Court."

On 3 May 1984 the Tribunal held a Hearing on the interim measures request in this case (as well as a Pre-Hearing Conference on all other issues). All parties appeared and presented oral argument.

On 4 May 1984 the Tribunal issued an Order stating:

AOSI having repeated at the Hearing its request that additional measures be taken by the Tribunal, the representative of the Ministry of Defence declared that, although there were certain internal Iranian law problems involved with complying, the Ministry would do its utmost to have the proceedings in the Public Court of Tehran postponed until at least 30 days from 3 May 1984.

In view of this declaration, and taking into consideration the continuing effect of its Interim Award the Tribunal does not deem it necessary at present to take any additional measures.

The Tribunal went on to state that "[a] final decision on the request for the stay of proceedings within Iran and related jurisdictional issues will be rendered shortly."

On 24 May 1984 the Tribunal was advised by the Iranian Ministry of National Defence that the Tehran court proceedings had "been stayed pursuant to the court decision probably until October or November 1984."

II Reasons for Interim Award

The Full Tribunal has ruled 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 this Tribunal's jurisdiction and authority are made fully effective". E-Systems Inc. and The Islamic Republic of Iran and Bank Melli, Interim Award No. 13-388-FT (4 February 1983) at 10, 2 IRAN-U.S. C.T.R. 51, 57.² It has exercised such power to require a stay of Tehran court

² "Iran-U.S C.T.R." is used herein as an abbreviation for the unofficial reporter the "Iran-United States Claims Tribunal Reports".

proceedings pending completion of Tribunal action where "it is obvious that the claim initiated before the Iranian Court had been admissible as a counterclaim before the Tribunal," even though no counterclaim had been asserted. E-Systems at 7, 2 IRAN-U.S. C.T.R. at 57. Moreover, the Full Tribunal has ruled "that once a counterclaim has been initiated before the Tribunal such claim is excluded from the jurisdiction of any other court." E-Systems at 9, 2 IRAN-U.S. C.T.R. at 56, relying on Article VII, paragraph 2, of the Claims Settlement Declaration.

Inasmuch as Respondent Ministry of National Defence has filed a counterclaim in the instant case, the Tribunal is confronted with two issues: first, do "the provisions invoked by the [Claimants] appear, prima facie, to afford a basis on which the jurisdiction of the Tribunal might be founded",³ and second, is the claim asserted in the court in Tehran tantamount to "such claim," i.e. the counterclaim asserted here by Respondent Ministry of National Defence?

It must be established that jurisdiction exists prima facie as to the claim of AOSI in respect of which the counterclaim was filed, since, were the main claim to fail for lack of the requisite jurisdiction, the counterclaim

³ Military and Paramilitary Activities in and against Nicaragua (Nic. v. U.S.) Interim Protection Order issued by the International Court of Justice on 10 May 1984; J. Elkind, Interim Protection, A Functional Approach 178 (1981) ("This is the position accepted by the majority of the [International Court of Justice] in recent cases"); see also Oellers-Frahm, "Interim Measures of Protection" in 1 Encyclopedia of Public International Law 69, 70 (1981).

automatically would fall with it. See, e.g., Technology Enterprises Inc. and Foreign Transaction Company, Award No. 109-238-2 (31 January 1982) at 4. It must then be determined that said counterclaim "arises out of the same contract, transaction or occurrence that constitutes the subject matter of" the claim to which it responds, as required by Article II, paragraph 1, of the Claims Settlement Declaration.

In the present case the jurisdictional defence most developed thus far is the question of the effect of the forum selection clause in Contract 103 under Article II, paragraph 1, of the Claims Settlement Declaration. The Full Tribunal has addressed this precise issue in its Interlocutory Award 6-159-FT (5 November 1982) at 4, 1 IRAN-U.S. C.T.R. 268, 270, however, holding that "Article 9 of the Peace Scepter Contract [Contract 103] does not fall within the scope of the forum clause exclusion...." The Iranian Ministry of National Defence nonetheless has reargued the position that the forum selection clause in Contract 103 divests this Tribunal of jurisdiction. Article IV, paragraph 1, of the Claims Settlement Declaration states that all "awards of the Tribunal shall be final and binding".⁴ The Tribunal Rules provide also, in Article 32, that "awards", which include "interlocutory or partial awards,"

⁴See Decision of 16 September 1983 in Henry Morris and The Government of the Islamic Republic of Iran et al., Case No. 200; and Decision of 12 January 1984 in Mark Dallal and The Government of the Islamic Republic of Iran et al., Case No. 149.

"shall be final and binding on the parties". Hence the Full Tribunal's Interlocutory Award on jurisdiction in this case must be respected as binding law.

At this point in the proceedings Claimants have made a prima facie showing of United States nationality; although this aspect of jurisdiction is contested by Respondents and remains to be determined definitively in the main proceedings in this case, the record at this juncture does not include any evidence contradicting Claimants' assertions in this regard. No doubt has been raised as to the propriety of Respondents being named in this case. Respondents have objected to the aggregation of claims in this case so as to exceed a total of \$250,000. That plea, however, concerns the propriety of the claims in this case being heard in a consolidated fashion rather than separately, and does not address the jurisdiction of the Tribunal per se. (See Minutes of Full Tribunal, 24th Meeting, 18 December 1981). Accordingly, Claimants have demonstrated prima facie that this Tribunal has jurisdiction over the claim in issue.

Further, it is clear that the counterclaim "arises out of the same contract ... that constitutes the subject matter of" AOSI's claim, i.e. Contract 103 of 29 August 1976. Hence jurisdiction exists prima facie in respect of the counterclaim as well.

Finally, it is evident from the documents before the Tribunal reviewed above, and the arguments delivered at the Hearing confirm, that the claim filed by the Iranian National Ministry of Defence against AOSI in the court in Tehran is the same as the counterclaim filed with the Tribunal regarding Contract No. 103.

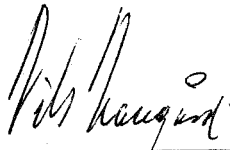
Article VII, paragraph 2, of the Claims Settlement Declaration provides that "claims referred to the Arbitral Tribunal shall ... be considered excluded from the jurisdiction of the Courts of Iran...". As noted above, the Full Tribunal has held in E-Systems that this provision applies also in respect of counterclaims. Pending final decision by this Tribunal regarding jurisdiction in this matter, it is appropriate that the Tehran proceedings be stayed rather than dismissed.

III Award

In view of the above, the Tribunal requests the Government of the Islamic Republic of Iran, and particularly its Ministry of National Defence, to take all appropriate measures to ensure that the proceedings now pending before the General Court of Tehran, Chamber 18, against Aerotronic Overseas Services, Inc. brought by said Ministry of

National Defence in regard to Contract No. 103 of 29 August 1976 relating to Peace Scepter Project 2 be stayed until further order of the Tribunal.

Dated, The Hague
04 June 1984

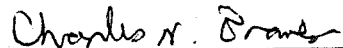


Nils Mangård
Chairman
Chamber Three

In the Name of God



Parviz Ansari Mo'in
Dissenting Opinion



Charles N. Brower
Concurring Opinion