

ORIGINAL DOCUMENTS IN SAFE

Case No. 159

Date of filing: 20 OCT 1983

** AWARD - Type of Award INTERIM AWARD
 - Date of Award 20 OCT 83
6 pages in English 6 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 _____
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CLAIMS TRIBUNAL

دیوان دآوری دعاوی ایران - ایالات متحدہ

DUPLICATE
ORIGINAL

دستخبر برابر اصل

CASE NO. 159

CHAMBER THREE

AWARD NO. ITM 28-159-3

FORD AEROSPACE & COMMUNICATIONS
CORPORATION and AERONUTRONIC
OVERSEAS, 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,
BANK MARKAZI IRAN, and THE
GOVERNMENT OF IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه دآوری دعاوی ایران - ایالات متحدہ
FILED - ثبت شد		
Date	۱۳۶۲ / ۷ / ۲۸	تاریخ
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INTERIM AWARD

payment of 1,800,000 Rials, and damages, in respect of this contract, and that AOSI had been summoned to appear before the General Court of Teheran on 6 April 1983. AOSI requested the Tribunal to order the dismissal or stay of the proceedings in the Tehran Court.

On 22 February 1983, the Tribunal ordered that the Respondents Government of Iran and Ministry of Defense file a Response to the 7 February Motion by 15 March 1983. In the same Order, the Tribunal invited those Respondents to request The General Court of Tehran to postpone the Hearing scheduled for 6 April 1983, pending the decision by the Tribunal on AOSI's Motion. The Order also indicated that it was the Tribunal's intention to proceed to render its decision on the basis of the written submissions, unless either Party requested otherwise.

On 15 March 1983, the Respondent Ministry of Defense filed a submission containing, inter alia, the following:

"1. With regard to the contents of the case, The Respondent requests for an oral hearing of case No. 159.

2. Examination 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. For its share, and respecting the Tribunal's proposal, the Ministry of Defense, reserving its rights, agrees to postponement of the proceedings."

The Tribunal has previously stated that, while this provision does not accord it exclusive jurisdiction over claims which could be presented as counterclaims, but have not been so presented, "it follows from this provision that once a counterclaim has been initiated before the Tribunal such claim is excluded from the jurisdiction of any other court". E-Systems, Inc. v. Iran, Interim Award No. ITM 13-388-FT. In that connection it was further 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.

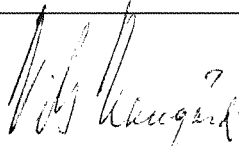
In the light of the Tribunal's Order of 22 February 1983 and on the assumption that the request for an oral hearing contained in the Respondent Ministry of Defense's letter of 15 March 1983 refers to the issue of interim measures, the Tribunal deems it appropriate to schedule an oral hearing on this question.

In view of the above, the Tribunal

(a) orders that a Hearing on the issue of the requested interim measures shall be held on 3 May 1984 at 9.30 a.m., at Parkweg 13, The Hague; following the hearing a prehearing conference on all issues in the case will be held at which the Parties are requested to be prepared to discuss the matters suggested in the attached schedule.

(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 mentioned under (a).

Dated, The Hague
20 October 1983

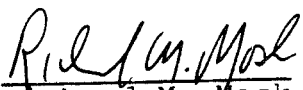

Nils Mangård
Chairman
Chamber Three

I dissent from the majority decision for the following two reasons:

First, the present claim arises out of a contract which contains a clause specifically providing for the jurisdiction of the Iranian Court. In accordance with Article II, paragraph 1 of the Claims Settlement Declaration, this Tribunal has no jurisdiction to hear the claim and cannot, therefore, issue an interim award.

Secondly, the Iranian law, as detailed in the concurring opinion of the Iranian arbitrators in Case No. 388, does not permit the parties' motion to stay proceedings before an Iranian court. Adjournment of a hearing is allowed, however, provided that the parties mutually agree. An ex parte motion such as that proposed in the majority's decision is hence legally unenforceable.

In the Name of God,


Richard M. Mosk
Concurring


Parviz Ansari Mo'in
Dissenting