

OWENS-CORNING FIBERGLASS CORP. *v.* IRAN 1

OWENS-CORNING FIBERGLASS CORPORATION, *Claimant*  
*v.*

THE ISLAMIC REPUBLIC OF IRAN,  
GENERAL INDUSTRIAL COMPANY, TEHRAN AND SHIRAZ, *Respondents*

(Case No. 113)

*Chamber Two: Riphagen, Chairman*

Signed 19 September 1983<sup>[1]</sup>

ORDER

The following is the text as issued by the Tribunal:

ORDER

The Tribunal hereby informs the General Industrial Co., Tehran and Shiraz, that the Claimant in this case has named it as an additional Respondent.

The Tribunal has changed the caption accordingly, but does not, at present, take any decision on the admissibility of adding a new Respondent at this stage of the proceedings.

The Tribunal hereby orders the Respondents in this case and General Industrial Co., Tehran and Shiraz, to file by 1 November 1983 their written comments on this issue. For this purpose, the Tribunal sends to General Industrial Co., Tehran and Shiraz, a copy of the Statement of Claim and of the Amendment thereto.

[1 Filed 19 September 1983.]

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R. J. REYNOLDS TOBACCO CO. *v.* IRANR. J. REYNOLDS TOBACCO COMPANY, *Claimant*  
*v.*THE GOVERNMENT OF IRAN,  
IRANIAN TOBACCO COMPANY, *Respondents*

(Case No. 35)

*Chamber Three: Mangård, Chairman*Signed 24 October 1983<sup>[1]</sup>

ORDER

The following is the text as issued by the Tribunal:

ORDER

The date within which Respondents are invited to comment on the “Post-hearing Memorial of R. J. Reynolds Tobacco Company” is hereby extended to 10 November 1983.

ORDER<sup>[2]</sup>

A Hearing was held in this case on 9 and 10 May 1983. Subsequently, the arbitrator appointed by the Islamic Republic of Iran resigned. A new arbitrator was appointed.

The Tribunal has determined, by virtue of Article 14 of the Tribunal Rules, that a Hearing for continued oral argument will be held on 1 March 1984, at 9.30 a.m., at Parkweg 13, The Hague, The Netherlands.

No further written submissions will be allowed except for the brief mentioned in the Tribunal Order of 29 November 1983.

R. M. MOSK, DISSENT TO ORDER<sup>[3]</sup>

The Hearing was held in this case in early May of 1983. There was no reason why an award could not have been issued prior to the

[1] Filed 24 October 1983. A Dissent to this Order written by R. M. Mosk is reprinted at 3 IRAN-U.S. C.T.R. 41.]

[2] Signed 21 December 1983; filed 21 December 1983.]

[3] Signed 21 December 1983; filed 21 December 1983.]

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resignation of the Iranian arbitrator. Nevertheless, the Tribunal for months and months after the Hearing continued to allow Respondents additional time to file a memorial on one legal issue. Seven months after the Hearing, that memorial has still not been filed.

In September 1983, the new Iranian arbitrator was appointed. From September, 1983 until December 20, 1983 the Tribunal gave no indication that any new hearing was necessary in this case. The case has been fully set forth in writing. Absolutely no reason has been given or exists for a new hearing in this case. Indeed, in other cases in which the new Iranian arbitrator participated and in which decisions were rendered against United States Claimants, (Ultrasystems Incorporated (Award No. 89-84-3<sup>[1]</sup>) and Dames & Moore (Award No. 97-54-3<sup>[2]</sup>)), no new hearings were deemed necessary.

From the history of this case,<sup>3</sup> it should seem obvious that there is a reluctance to render a decision. Yet, this case is just one of the more egregious examples. Over my strong objections, many other cases remain undecided for long periods after hearings.

Accordingly, I dissent to the Order in this case.

[1] See p. 77 below.]

[2] See p. 212 below.]

<sup>3</sup> I have written a number of dissents to the stream of Orders delaying proceedings in this case.

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CASE NO. 56

(CASE NO. 56)

DISSENTING OPINION OF RICHARD M. MOSK TO ORDER<sup>[1]</sup>

Signed 24 October 1983<sup>[2]</sup>

The following is the text as issued by the Tribunal:

DISSENT TO ORDER

I have recently pointed out in a dissent to an order, “[t]he mechanism of hearing and deciding cases is becoming so long delayed that the Tribunal adjudicatory process may begin to be perceived as nothing more than an illusion.” The parties in this case should have no illusions. With absolutely no justification, the Tribunal has permitted Respondents to ignore previous orders for filing Statements of Defense and has allowed approximately two years to pass without the filing of any Statements of Defense.

I dissent to an order which further stalls the proceedings in this case.

[1 Not reprinted.]

[2 Filed 24 October 1983.]

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 RCA GLOBCOM COMMUNICATIONS, INC. (RCA GLOBCOM INC.),  
 RCA GLOBCOM SYSTEMS, INC., *Claimants*

*v.*

THE ISLAMIC REPUBLIC OF IRAN,  
 TELECOMMUNICATIONS COMPANY OF IRAN,  
 ISLAMIC REPUBLIC OF IRAN'S ARMY JOINT STAFF,  
 BANK MELLI IRAN,  
 BANK MARKAZI,  
 FOREIGN TRADE BANK OF IRAN, *Respondents*

(Case No. 160)

*Chamber One: Lagergren, Chairman; Kashani, Holtzmann, Members*Signed 31 October 1983<sup>[1]</sup>

AWARD NO. ITM 29-160-1

The following is the text as issued by the Tribunal:

## 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, 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 Army Joint Staff and the Government of the Islamic Republic of Iran filed Statements of Defence on 29 December 1982 and on 12

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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.

Prior to 17 May 1983 the Army Joint Staff of the Islamic Republic of Iran filed with the Public Court of Tehran, Second Branch, a claim against RCA Globcom Disc in the amount of Rials 672,543,983. In the case before the Public Court of Tehran, the Army Joint Staff seeks to recover damages for RCA Globcom Disc's alleged breaches of the MSPO Contract. The damages sought comprise Rials 615,927,887 for losses due to delays caused by RCA Globcom Disc, compensation in the amount of Rials 53,230,240 for taxes owed to the Ministry of Finance and Economic Affairs and compensation in the amount of Rials 33,856,856 for insurance premiums owed to the Social Security Organization of Iran.

Following the filing of the claim with the Public Court of Tehran, RCA Globcom Disc received from the Iranian Interests Section of the Algerian Embassy in Washington, D.C., a notification that a summons had been issued in the case before the Tehran Court directing RCA Globcom Disc to appear before the Court on 12 November 1983. The summons was accompanied by a copy of the claim and a number of exhibits.

On 12 September 1983 the Claimants in Case No. 160 filed with the Tribunal a Motion in which they requested the Tribunal *inter alia* to direct the Government of the Islamic Republic of Iran and the Army Joint Staff to stay further proceedings against RCA Globcom Disc in the case before the Public Court of Tehran until Case No. 160 before the Tribunal has been resolved. In this Motion the Claimants contend that the claims brought before the Court in Tehran all arise out of the same contract, i.e. the MSPO Contract, as the claim previously submitted to the Tribunal by the Claimants.

In an Order dated 20 September 1983 the Tribunal requested the Respondents to file a reply to the Claimants' Motion by 17 October 1983. On 18 October 1983 the Ministry of Defence of the Islamic Republic of Iran filed a Reply to the Claimants' Motion in which it denied the Tribunal's jurisdiction over the case as well as its competence to order Respondents to stay proceedings in the Iranian Court. The Ministry contends that the MSPO Contract contains a clause which confers exclusive jurisdiction on the competent Courts of Iran and that, consequently, the claim is excluded from the Tribunal's jurisdiction by virtue of Article II, paragraph 1, of the Claims Settlement Declaration, which excludes "claims arising under a binding contract between the parties, specifically providing that any disputes thereunder shall be within the sole discretion of the competent Iranian courts, in response to the Majlis position".

The Ministry further alleges that the interim relief sought by the Claimant falls outside the scope of the discretion to take interim measures conferred upon the Tribunal by Article 26 of the Tribunal Rules.

Lastly, the Ministry contends that this Tribunal with an *ad hoc* jurisdiction, cannot order stay or suspension of proceedings in a municipal forum with inherent and general jurisdiction, and further that the laws of Iran do not permit the Government to comply with the Tribunal's request to move for stay of proceedings before the Public Court of Tehran.

In the light of the determination by the Full Tribunal in its Interlocutory Award No. ITL 6-159-FT in the Case *Ford Aerospace & Communications Corporation et al. v. The Air Force of the Islamic Republic of Iran et al.*, Case No. 159<sup>[1]</sup>, that the Tribunal has jurisdiction over a claim based on a contract containing a forum selection clause similar to the above mentioned clause, it would appear that the Tribunal has jurisdiction over RCA Globcom Disc's claim in the instant case.

Further, it appears from the copy of the Army Joint Staff's Claim which accompanied the summons received by RCA Globcom Disc that the Claim filed before the Public Court of Tehran involves the same legal and factual issues as the claims by RCA Globcom Disc and RCA Globcom Systems before the Tribunal.

As to the contention that the Tribunal does not have power to grant the interim relief sought by the Claimants, the Tribunal notes that the Full Tribunal concluded in its Interim Award No. ITM 13-388-FT in the Case *E-Systems, Inc. v. The Government of the Islamic Republic of Iran et al.*, Case No. 388<sup>[2]</sup>, that the Algiers Declarations leave the Government of Iran free in principle to initiate claims before Iranian Courts even where the claim would have been admissible as a counterclaim before the Tribunal. However, in that Interim Award it is also 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. It is also stated that any award to be rendered in the case by the Tribunal, which was established by inter-governmental agreement, will prevail over any decision inconsistent with it rendered by Iranian or United States Courts.

The consistent practice of the Tribunal indicates, that this inherent power is in no way restricted by the language in Article 26 of the Tribunal Rules. Further, the Government of Iran and the Government of the United States have agreed in the Algiers Declarations to confer upon this Tribunal jurisdiction over certain claims. It follows that both

[1] 1 IRAN-U.S. C.T.R. 268.]

[2] 2 IRAN-U.S. C.T.R. 51.]

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Governments are under an international obligation to comply with any decisions rendered by the Tribunal pursuant to this agreement.

For these reasons,

The Tribunal requests the Government of the Islamic Republic of Iran or the Islamic Republic of Iran's Army Joint Staff to take all appropriate measures to ensure that the present proceedings before the Public Court of Tehran be stayed, pending the Tribunal's final determination in Case No. 160.

[The following note is appended to the signature of Mr. Kashani:]

I dissent from the majority since the claim is based on a contract specifically providing for jurisdiction of Iranian courts, and in accordance with the Single Article Act passed by the Islamic Consultative Assembly of Iran and Article II, paragraph 1, of the Claims Settlement Declaration this arbitral Tribunal is excluded from jurisdiction to proceed with the claim and, *a priori*, it is without jurisdiction to issue the interim award and make such a request from the Government of the Islamic Republic of Iran in this case.



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 THE ISLAMIC REPUBLIC OF IRAN'S ARMY JOINT STAFF,  
 BANK MELLI IRAN,  
 BANK MARKAZI,  
 FOREIGN TRADE BANK OF IRAN, *Respondents*

(Case No. 160)

*Chamber One:* Lagergren, Chairman; Kashani, Holtzmann<sup>[1]</sup>, *Members*Signed 31 October 1983<sup>[2]</sup>

AWARD NO. ITM 30-160-1

The following is the text as issued by the Tribunal:

## 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

<sup>[1]</sup> Dissenting Opinion, see p. 12 below.<sup>[2]</sup> Filed 31 October 1983.

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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 nationalized 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