

ORIGINAL DOCUMENTS IN SAFE

Case No.

B29

Date of filing:

16 MAY 84\*\* AWARD

- Type of Award

Final

- Date of Award

1. MAY 8413 pages in English13 pages in Farsi\*\* DECISION - Date of Decision

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\*\* CONCURRING OPINION of \_\_\_\_\_

- Date \_\_\_\_\_

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعاوی ایران - ایالات متحدہ

CASE NO. B29

CHAMBER ONE

AWARD NO. 128-B29-1

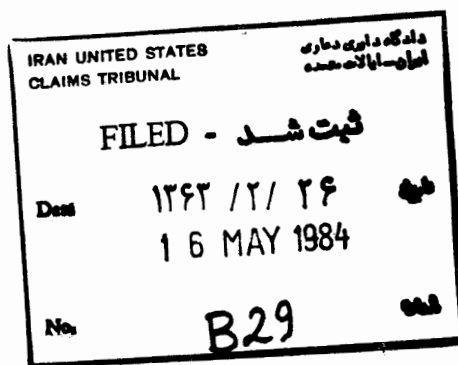
THE UNITED STATES OF AMERICA,

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,

Respondent.



AWARD

I. Facts and Contentions

On 19 January 1982 the United States of America filed a claim against the Islamic Republic of Iran seeking payment of the sum of \$14,324.44, together with interest and costs, allegedly due under a contract for the provision of instruction to Iranian students at the United States Coast Guard Academy.

The claim is said to arise out of an oral agreement entered into in May 1977 by the Naval Attaché of the Embassy of the United States in Tehran and the Commander-in-Chief of the Imperial Iranian Navy and Deputy Commander-in-Chief for Personnel, whereby four Iranian students were accepted for a course of training at the United States Coast Guard Academy in Connecticut. The Deputy Commander-in-Chief allegedly confirmed that funds would be provided through the Imperial Iranian Navy Mission in Washington, D.C., to cover the students' expenses. The Claimant contends that it was understood and accepted by the representatives of the Imperial Iranian Navy that the admittance of foreign students to the Academy was conditional upon their country agreeing in advance to reimburse the cost of instruction, including the pay and allowances to which all cadets were entitled.

Four Iranian students attended the Academy for varying periods of time between 27 June 1977 and 26 June 1979. Two invoices in respect of the pay and allowances received by

these students, and the administrative costs attributed to them, were transmitted to the Embassy of the Respondent Government. The first invoice, dated 30 March 1979, was sent on 18 April 1979 for \$9,344.23; a second request for payment of this invoice was sent on 16 August 1979. The second invoice, for an additional \$4,980.21, was dated 27 September 1979. The Claimant contends that these amounts have remained unpaid despite subsequent requests.

The Respondent<sup>1</sup> contends in its Statement of Defence filed on 8 December 1982 and its subsequent Rejoinder filed on 9 August 1983 that there was no contract to reimburse the pay and allowances of the students; that there is no evidence that the costs were incurred; and that the students were in any event paid their normal Iranian Navy salary. The Respondent did, however, offer to reimburse the administrative costs associated with the attendance of the four cadets amounting to \$1,868.41, provided the Claimant withdrew the remainder of the claim.

In its Order filed 19 January 1983, the Tribunal indicated its intention to decide this case on the basis of the documents submitted.

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<sup>1</sup> Statements of Defence were filed on 8 December 1982 by the Government of the Islamic Republic of Iran and the Navy of the Islamic Republic of Iran. The Statement of Defence of the Government of Iran consisted primarily of a statement of non-attributability of the claim, and a reference to the Statement of Defence of the Iranian Navy. The Rejoinder was filed by the Iranian Navy.

## II. Jurisdiction

This claim falls within the jurisdiction of the Tribunal pursuant to Article II, paragraph 2 of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran ("Claims Settlement Declaration"), which provides for the Tribunal's jurisdiction over "official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services."

## III. Reasons

### A. The Students' Attendance at the Academy

As evidence of the dates on which the four students entered the Academy, Claimant has submitted a witnessed oath signed by each student that commences "I, [name of student], a citizen of Iran, having been appointed a cadet at the United States Coast Guard Academy ...." The oaths appear to have been signed at the Academy itself: they are on Coast Guard letterhead, bearing the address of the Academy, and they are witnessed by members of the Coast Guard. Three are dated 27 June 1977, while the fourth is dated 15 August 1977. These dates correspond to the dates of entrance alleged by Claimant.

In its Rejoinder, Respondent asserts that Mr. Pahlavanzadeh, who signed his oath on 27 June 1977, never entered the Academy because his pre-admission medical

examination proved him physically unfit. In support of this assertion Respondent has submitted a letter from the Commandant of Cadets of the Academy to Mr. Pahlavanzadeh dated 11 August 1977. This letter is addressed to "Cadet 4/c Mohammadali PAHLAVANZADEH, 12533 USCG," and states in pertinent part: "[Y]our status as a cadet is terminated, concurrently you are disenrolled from the U.S. Coast Guard Academy due to pre-existing Medical defect." (Emphasis supplied.) Thus, the letter indicates that Mr. Pahlavanzadeh did in fact enter the Academy, although his termination and discharge followed shortly after his enrollment.

Respondent also contests the starting date of 27 June 1977 alleged by Claimant for three of the four students. On that date, Respondent asserts, all four students were attending a 2½ month orientation and language course at The Citadel, an institution in South Carolina. Respondent has submitted an invoice from The Citadel, dated 8 May 1978, for "The Summer English Language and Indoctrination Program for 49 Iranian students." The date of the summer program is not indicated, but it may be assumed that the invoice relates to the summer of 1977. Respondent has also submitted a list of 25 Iranian students, including the four students in question here, sent by the Navy to The Citadel for the 1977 summer session. Neither document indicates the duration of the summer session or the duration of each individual's participation in the session. However, the second document purports to show that a fee of 743 dollars was paid by the Navy

for each student's attendance. This figure, supplied by Respondent, appears inconsistent with the assertion that each of the four students in this case attended The Citadel for 2½ months during the summer of 1977. The fee would appear more consistent with an attendance of one or two weeks, a period which would not preclude the students' matriculation at the Academy on the dates alleged by Claimant.

Respondent has not contested the termination dates alleged by Claimant for the four students.

In view of the evidence in the record before the Tribunal and described above, the Tribunal concludes that the four students entered and departed the Academy on the dates alleged by Claimant.

B. Existence and Contents of an Agreement

It being established that the four students did attend the Academy, the question remains as to the nature of the understanding between the two Governments that permitted them to do so. Respondent concedes that at least some background agreement existed; in its Rejoinder it states:

[F]or many years, a great number of Iranian Navy personnel had been sent to the U.S.A. to receive training. In the case of the cadets nominated to the Coast Guard Academy, there was, therefore, no need for detailed negotiations.

Thus, Respondent appears to contend that a general agreement between the Governments permitted the Navy to nominate and

enroll its cadets at the Academy. Respondent does not indicate its views as to the nature or contents of this agreement except to the extent of denying that it provided for the payment to the Claimant of the expenses that are the subject of this claim.

The Claimant asserts that very specific conditions were attached to the students' attendance at the Academy. Claimant asserts that these conditions, which concerned the payment of the expenses at issue, were communicated to the Navy, and that the Navy accepted them explicitly.

Claimant has submitted the text of the statute that was amended in 1976 to enable a limited number of foreign nationals to attend the Academy. The relevant portions of that statute provide:

(a) A foreign national may not receive instruction at the Academy except as authorized by this section.

. . . . .

(c) A person receiving instruction under this section is entitled to the same pay and allowances, to be paid from the same appropriations, as a cadet appointed pursuant to section 182 of this title. A person may receive instruction under this section only if his country agrees in advance to reimburse the United States, at a rate determined by the Secretary [of Transportation], for the cost of providing such instruction, including pay and allowances, unless a waiver therefrom has been granted to that country by the Secretary.

14 U.S.C. §195, as amended by Pub.L. 94-468.



Claimant has submitted a series of cables to substantiate its assertion that the requirements of the above-quoted statute were communicated to Respondent. The first of these is a cable sent in December 1976 from the U.S. Department of State to all diplomatic posts abroad, informing them of the change in law permitting foreign nationals to attend the Academy and authorizing them, in their discretion, to inform their host governments of this possibility and of the preconditions to such attendance. Paragraph 1 of this cable states that the first vacancies are to be for the Academy class to graduate in 1981, "entering approx[imately] 27 Jun[e] 77." Paragraph 2 states that:

A student under this section is entitled to the same pay and allowances as a U.S. citizen appointed to the CG Academy. Prior to acceptance, the foreign nominee's country must agree to reimburse the United States for the cost of providing such education, including pay and allowances, unless a waiver therefrom has been granted.

Paragraphs 4 and 8 of the same cable indicate that applications from a host government on behalf of potential nominees were to be communicated to the U.S. Embassy in that country; the Embassy then would cable such applications to the Academy. This in fact is the pattern of communications that is reflected in the subsequent cables submitted by Claimant.

The second cable was sent in March 1977 from the Tehran Embassy to the Academy. Paragraph 1 of the cable states that the contents of the cable have been "coordinated within

mission and with IIN [Imperial Iranian Navy]." Paragraphs 2 and 3 list eight nominees for admission to the Academy; among these are the four students who ultimately entered the Academy in the summer of 1977.

The third cable was sent in May 1977 from the Tehran Embassy to the Secretary of State in Washington, D.C. Paragraphs 1 and 2 of the cable report:

1. CINC [Commander-in-Chief] Imperial Iranian Navy (IIN) and Deputy CINC for Personnel informed by Naval Attache on 22 May of Iranian selectees to Coast Guard Academy....

2. Deputy for Personnel indicated three Iranian selectees would report on 27 Jun[e] and funding would be provided by Chief IIN Mission Washington to cover first year costs.

As noted above, the oaths signed by the students indicate that three of them did in fact report on 27 June 1977, with the fourth reporting on 15 August 1977.

Finally, Claimant has submitted two invoices dated 30 March 1979 and 27 September 1979 directed to Lt. Commander Naziri at the Iranian Embassy in Washington, D.C., for the pay, allowances, and administrative expenses attributable to the four students. Cover letters submitted by Claimant indicate that the earlier invoice was transmitted for the first time on 18 April 1979 and a second time to Lt. Commander Naziri on 16 August 1979. No evidence has been submitted by either Party to suggest that Respondent either protested or paid these invoices.

It is apparent that the Iranian students could not have entered and attended the Academy unless some agreement permitting them to do so had been reached between the Parties in this case. It is undisputed that Iranian students had not previously entered the Academy as cadets, and that the statute permitting them to do so for the first time in 1977 is the statute enacted in 1976, the text of which has been set out above.

The Tehran Embassy served as the intermediary between the U.S. Department of State and the Academy on the one hand, and the Navy on the other. It must be accepted that, acting in that role, the Embassy informed the Navy of the possibility of sending Iranian students to the Academy; that it received the Navy's nominations of students for the positions at the Academy, and relayed these nominations to the Academy; that it informed the Navy of the nominees who had been accepted by the Academy; and that it relayed back the Navy's answer that three nominees would report to the Academy on 27 June 1977, the date on which they did in fact report.

The only reasonable inference to draw from these circumstances is that an agreement was concluded between the Parties, and that both Parties manifested their assent to the agreement by their subsequent performances: on the one side, by sending the designated students to the Academy at the appointed time; on the other side, by enrolling these same students as cadets in the Academy.

The statute permitting the instruction of foreign students at the Academy categorically requires the countries of such students to agree in advance "to reimburse the United States . . . for the cost of providing the instruction, including pay and allowances, unless a waiver therefrom has been granted." It is undisputed that the State Department directed the Tehran Embassy to inform the Navy of this and other preconditions of the students' attendance. Furthermore, the evidence indicates that the Tehran Embassy subsequently advised Washington that the Navy would pay the costs of the students' attendance through its Washington mission.

In view of the intermediary role played by the Tehran Embassy, and the accuracy, as borne out by later events, of the messages it conveyed between the Parties, there is no reason to doubt that the Embassy's May 1977 cable accurately reported the Navy's undertaking to answer for the costs at issue here. This conclusion is the easier to reach, in that it accords with a common-sense appreciation of the circumstances: the Navy cannot reasonably have expected the Academy to train its students gratis, absent some specific offer to that effect by the Claimant. Respondent has not alleged such an offer. It has merely asserted that the students entered the Academy pursuant to arrangements similar to those that had governed the training of other Iranian students at other places in the United States; it has not, however, indicated the nature of those arrangements, and has presented no evidence that they were free of

cost to the Navy. The fact that the Navy Mission in Washington never contested the invoices sent to it for the costs at issue further buttresses the inference that the Navy had agreed to bear these costs.

The Tribunal therefore concludes that the Navy agreed to reimburse Claimant for the training of the four Iranian students at the Academy. Respondent is thus liable to pay to the Claimant U.S. \$9,344.23 as stated in the invoice transmitted 18 April 1979, and U.S. \$4,980.21 as stated in the invoice of 27 September 1979, plus 10 percent simple interest thereon. As the invoices do not indicate a specific date for payment, the Tribunal recognizes that a reasonable period for payment should be allowed, and therefore determines that interest shall run 30 days from the above mentioned dates to the date of this Award. Each Party shall bear its own costs of arbitration.

#### IV. Conclusion

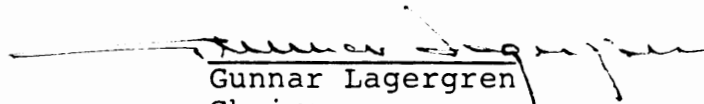
The Islamic Republic of Iran is obligated to pay the United States of America:

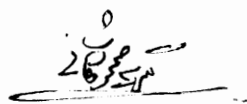
1. U.S. \$9,344.23, plus 10% simple interest thereon from 18 May 1979 up to and including the date of this Award;
2. U.S. \$4,980.21, plus 10% simple interest thereon from 27 October 1979 up to and including the date of this Award.


The above obligations shall be satisfied out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

This Award is submitted to the President of the Tribunal for the purpose of notification to the Escrow Agent.

Dated, The Hague  
1 May 1984

  
Gunnar Lagergren  
Chairman  
Chamber One

  
Mahmoud M. Kashani  
Dissenting Opinion

  
Howard M. Holtzmann  
Concurring. I  
believe, however,  
that the rate of  
interest in the  
Award should have  
been determined  
taking into account  
interest rates  
prevailing during  
the period at issue.  
See my Concurring  
Opinion in Case  
No. B-53.