

IRAN-UNITED STATES CLAIMS TRIBUNAL
 دایکھ داوری دعاوی
 ایالات - ایالات متحدہ

فہت شد - FILED

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 25 JAN 1984

B-53

DUPLICATE ORIGINAL
 نسخہ برابر اصل

CASE NO. B-53

CHAMBER ONE

AWARD NO.107 -B-53-1

DEPARTMENT OF THE ENVIRONMENT
 OF THE ISLAMIC REPUBLIC OF IRAN,
 Claimant,
 and
 THE UNITED STATES OF AMERICA,
 Respondent.

AWARD

I. Facts and Contentions

In a Statement of Claim filed on 15 January 1982, the Department of the Environment of the Government of Iran (DOE) seeks reimbursement of \$ 254,656.76 that it transferred to the United States Environmental Protection Agency (EPA) in 1977-1978. This sum was an advance payment for a project that EPA was to perform for DOE according to a "Cooperative Agreement" entered into on 10 November 1976 by EPA and DOE (the "1976 Agreement").

DOE also claims interest on the above sum, "difference in the U.S. dollar time value from date of payment of the subject sums" to the date of the claim, and compensation for expenditures and "material and moral losses".

In the 1976 Agreement, EPA and DOE agreed to "cooperate to assist their respective nations to solve environmental problems of mutual concern" through "exchange of information and personnel" and "joint projects". An Annex to the agreement provided that EPA would make advisors available to DOE, by mutual agreement, to provide services to DOE. These services would include training in the United States and assistance in the acquisition of specialized technical or professional knowledge. At DOE's request, EPA would also prepare technical or economic studies of specific projects. DOE was required to establish a dollar trust account in the United States Treasury for each project, and EPA was to draw on that account to pay costs of carrying out that project.

Thus, paragraph 2 of the Annex provides that EPA may:

undertake the preparation of technical or economic studies of specific development projects and provide technical and professional services for the implementation of these projects in accordance with

mutually agreed upon cost estimates and the provisions of this Agreement. Should such accord be reached, the DOE shall defray any and all costs to the EPA arising from such activities...

and paragraph 3(c)(1) provides that:

[e]xcept as otherwise specifically provided in this Agreement and the Annex, or in agreements entered into by the governments of the United States and Iran pursuant to the Agreement on Technical Cooperation signed on March 4, 1975, the DOE will compensate the EPA for all costs incurred by the EPA personnel in remunerating all personnel assigned to duties in Iran under this Agreement. Such costs will include basic salaries and per diem, housing, educational, removal and transportation allowances....

Paragraph 3(d)(2) contains an obligation for EPA to provide to DOE a statement of account at the end of each six months period during which the Trust Account is operative.

Paragraph 3(d)(4) of the Annex anticipates the possibility that funds may be remaining in the Dollar Trust Account upon termination of the Agreement and provides:

If, upon termination of this Agreement, there are funds remaining in the trust account after all costs have been defrayed and liabilities satisfied, such funds shall be refunded to the DOE.

DOE contends that it cancelled the 1976 Agreement by a Memorandum dated 11 August 1979, and that it, as a consequence thereof, is entitled to reimbursement of the advance payment in accordance with the terms of the Agreement.

The United States admits that DOE is entitled to reimbursement of \$ 217,858.08 under the 1976 Agreement. It computed that amount by deducting from the \$254,656.76 claimed by DOE, the sum of \$36,798.68 on account of costs

which EPA contends that it incurred and which are reimbursable to it under the applicable agreements.

Except for the \$ 217,858.08 to which the United States admits the Claimant is entitled, the United States denies that the Claimant is entitled to any other relief for the matters set forth in the claim.

The United States asserts that, pursuant to the 1976 Agreement and its Annex, DOE and EPA agreed in 1977 to a specific project for "Advisory Services and Training" and both parties are in agreement that in accordance with paragraph 3(d)(1) of the Annex to the 1976 Agreement, DOE transmitted \$ 141,342.76 to EPA for that project on 4 October 1977 and a further amount of \$ 113,314 on 5 March 1978.

The United States contends that between 19 April and 21 April 1978, Mr. Stasys B. Rastonis, an EPA Environmental Protection Specialist, travelled from Washington, D.C., to Denver, Colorado, to perform work under the Agreement, and that between 7 July and 16 July 1978, Dr. I. E. Wallen, the Physical Science Administrator for the EPA (who was in Cairo, Egypt, on other business at the time), travelled to Iran to discuss possible work under the 1976 Agreement with Iranian officials. The United States further contends that on 22 October 1978, Dr. Wallen and his family travelled to Iran from the United States to commence work for a period that was intended to last two to three years but was terminated in January 1979.

It is the position of the United States in this case that it incurred the following costs in connection with Mr. Rastonis' and Dr. Wallen's services to Iran:

Salary and benefits for Mr. Rastonis during his trip to Denver, Colorado, in April 1978 333.98

Travel expenses for Mr. Rastonis' trip to Denver 474.25

Salary and benefits for Dr. Wallen during his trip from Cairo to Tehran in July 1978 and his trip to Tehran between 22 October 1978 and 29 January 1979 15,355.40

Travel expenses for Dr. Wallen's trip from Cairo to Tehran in July 1978 454.25

Travel of Dr. Wallen and family from the United States to Tehran in October 1978 14,768.24

Expenses of evacuation from Iran for Dr. Wallen and family in January 1979 5,412.56

Total
36,798.68

DOE admits, in a memorandum which it submitted in evidence, that Dr. Wallen travelled to Iran to perform work in

connection with the 1977 project entitled "Advisory Services and Training". However, DOE asserts that the salary and travel expenses of Mr. Rastonis were not authorized by it, and that Dr. Wallen left Iran without rendering any substantial services, and that, consequently, the United States is not entitled to compensation for any of the costs incurred in connection with his assignments.

The United States argues that Dr. Wallen indeed performed substantial services in Iran during his stay there, and that these services included:

1. Assistance in the development of a National Museum for Iran.
2. Assistance in the design of a National Wildlife Park near Bandar Turkoman, Iran.
3. Assistance in Iran's five-year plan for the development of pollution control facilities to control effluents from the cities along the coast of the Caspian Sea.
4. Assistance in the development of an international program for the protection of the Persian Gulf from pollution by oil.
5. Assistance in planning a national committee for marine science activities, with particular emphasis on the control of water pollution in Iran.

DOE also contends that the expenses charged against the Dollar Trust Account for salary and travel of Dr. Wallen were improper, which is demonstrated by the facts that none of the plans or projects for which he allegedly performed work was implemented or now exists, and that EPA breached the agreement by permitting Dr. Wallen to leave Iran; that the

United States did not present sufficient evidence to substantiate its claims; and, lastly, that the United States failed to submit statements regarding the status of the Trust Account in accordance with paragraph 3(d)(2) of the Annex, which indicates that EPA was not entitled to deduct any expenses from that account.

II. Reasons

The United States admits that DOE is entitled to reimbursement of the difference between the amount paid by DOE to the Trust Account and the sum representing the costs incurred by EPA in performing its obligations under the applicable agreements. The only questions at issue in the instant case are therefore whether EPA was entitled to draw these costs on the Trust Account, whether DOE is entitled to interest on the balance and, lastly, whether DOE is entitled to other relief as set forth in the claim.

As to the right of EPA to compensation from DOE for costs incurred in connection with projects under the 1976 Agreement, the Annex to that Agreement distinguishes between costs incurred for personnel assigned to Iran, on the one hand, and the preparation of technical or economic studies and other technical and professional services, on the other. While the general rule is that DOE shall defray costs for such studies and services subject to a mutual agreement on the estimated costs, paragraph 3(c)(1) of the Annex provides that DOE shall compensate EPA for all costs incurred for personnel assigned to duties in Iran unless the Parties have specifically agreed otherwise.

The evidence presented by the United States regarding Mr. Rastonis' journey from Washington, D.C., to Denver, Colorado, in July 1978 does not demonstrate that the costs incurred by EPA in connection with that journey were based on a mutually agreed cost estimate within the framework of any

specific development project or that the Parties had otherwise agreed that these costs would be borne by DOE. The United States has submitted two affidavits regarding Mr. Rastonis' journey. These affidavits clearly show that EPA has incurred the costs for which it claims compensation in connection with Mr. Rastonis' journey, but neither of the affidavits addresses the question as to whether EPA had been authorized to draw down these costs from the Trust Account. The Tribunal consequently holds that the United States has failed to demonstrate that it is entitled to compensation for the costs in connection with Mr. Rastonis' trip to Denver. These costs amount to \$ 808.23.

As to Dr. Wallen's assignments to Iran in July 1978 and between 22 October 1978 and 29 January 1979, DOE does not deny that Dr. Wallen travelled to Iran to perform work in accordance with an agreement between DOE and EPA. Paragraph 3(c)(1) of the Annex provides that all costs incurred by EPA for personnel assigned to Iran shall be compensated by DOE unless the Parties have specifically agreed otherwise. DOE does not contend that any such agreement has been made. The relevant agreements do not indicate that payment shall be made in relation to the quality and usefulness of the services provided by such personnel. The Tribunal therefore does not have to reach the question whether DOE under the circumstances prevailing in Iran at the end of 1978 could make full use of Dr. Wallen's services and, if so, whether he provided the services that could reasonably be required.

The United States has submitted affidavits which demonstrate to the Tribunal's satisfaction that EPA, in connection with Dr. Wallen's assignments to Iran, has incurred all the costs for which compensation is being claimed in the instant case.

Even though the United States admits that Dr. Wallen's stay

in Iran was intended to last two to three years, the Tribunal, in view of the conditions in Iran at the relevant time, does not find that there is any merit in DOE's allegation that EPA breached the agreement with DOE by permitting Dr. Wallen to leave Iran at the end of January 1979 and that the United States as a result thereof is not entitled to compensation for the costs incurred during the time he actually was assigned to Iran.

Also, it must be considered a fair interpretation of the Annex to the 1976 Agreement that EPA should be compensated for the travel expenses of Dr. Wallen and his family from Iran back to the United States, although they departed much earlier than originally contemplated.

Based on the evidence in the case, the Tribunal therefore finds that the United States is entitled to deduct the costs in connection with Dr. Wallen's assignments to Iran. These costs amount to \$ 35,990.45.

That EPA failed to submit statements regarding the status of the Trust Account, as required by paragraph 3(c)(1) of the Annex does not affect this conclusion in the face of the evidence submitted in the case.

Paragraph 3(d)(4) of the Annex contains an unequivocal obligation for EPA to return to DOE any balance remaining in the Trust Account upon termination of the 1976 Agreement. DOE has submitted a copy of a Memorandum from the Iranian Ministry of Foreign Affairs to the United States Embassy in Tehran dated 12 August 1979 in which the 1976 Agreement was terminated. According to paragraph 4 of that Agreement, termination by any party shall take effect six months (180 days) after notice has been given to the other party. No evidence has been presented to indicate when this Memorandum was received by the United States. However, it can reasonably

be assumed that the Memorandum had been received by the United States by the end of August 1979. Based on this assumption, the termination can be deemed to have taken effect at least on 1 March 1980. Leaving aside the question whether it could reasonably be expected that the United States would have returned the balance in the account to Iran at that time, the United States did hold those funds. Accordingly, the Tribunal holds that the United States is obligated to pay interest on the balance from the date on which the obligation to refund the balance became effective in accordance with the terms of the Agreement.

DOE has not provided any evidence to substantiate its allegation that it has suffered any loss resulting from differences in the dollar "time value". The Tribunal therefore need not reach that question. Neither has DOE submitted any evidence to pursue its claim regarding compensation for expenditures and material and moral losses. These claims are therefore denied.

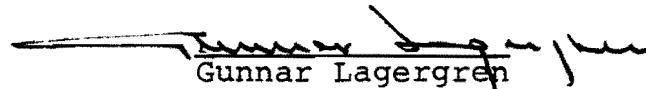
For the reasons stated above, the Tribunal holds that DOE is entitled to reimbursement of \$ 218,666.31 plus 10 percent simple interest thereon from 1 March 1980 to the date of payment.

III. Conclusions

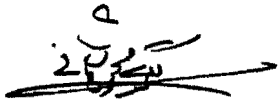
The United States of America is obligated to pay the Department of the Environment of the Islamic Republic of Iran the amount of Two Hundred and Eighteen Thousand Six Hundred and Sixty Six and 31/100 United States Dollars (US \$ 218,666.31) plus 10 percent simple interest thereon from 1 March 1980 to and including the date on which payment is made.

Each Party shall bear its own costs of arbitration.

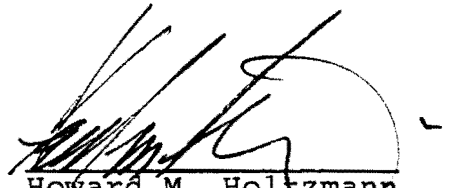
Dated, The Hague,
18 January 1984



Gunnar Lagergren
Chairman
Chamber One



Mahmoud M. Kashani
Concurring in part
Dissenting in part
See separate Opinion



Howard M. Holtzmann
Concurring Opinion