

DUPLICATE  
ORIGINAL  
نسخہ برابر اصل

CASE NO. B-7

CHAMBER ONE

AWARD NO. 132-B7-1

ATOMIC ENERGY ORGANIZATION  
OF IRAN,

Claimant,

and

THE UNITED STATES OF AMERICA,

Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	۱۳۶۳ / ۳ / ۱۸ 8 JUN 1984
No.	B7

PARTIAL AWARD

1. The Proceedings and Contentions of the Parties

On 15 January 1982 the ATOMIC ENERGY ORGANIZATION OF IRAN ("AEOI", hereinafter also referred to as "the Claimant") filed a Statement of Claim with the Tribunal seeking an award of damages against THE ATOMIC ENERGY COMMISSION OF THE UNITED STATES OF AMERICA (hereinafter referred to as "the Commission").

The claim falls within the provisions of Article II paragraph 2 of the Claims Settlement Declaration which gives the Tribunal 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". It is not disputed that the parties to the contracts are governmental agencies of Iran and the United States of America respectively.

The Claimant seeks the reimbursement of advance payments of \$7,933,951.04 made under two contracts between the Parties for the provision of uranium enrichment services, numbered respectively AT(49-14)-UES/IR/100 and AT(49-14)-UES/IR/101 and dated 30 June 1974.

There is also a claim for interest on the principal amount from 30 September 1978 to the date of the Tribunal's Award. The rate claimed is the average LIBOR established by the Midland Bank of London. The Claimant calculates the interest due to the end of 1981 on this basis as U.S. \$3,830,265.96.

The Claimant further seeks damages of U.S. \$5,230,722.96 "to compensate for the devaluation of U.S. Dollar, from July, 1974 to the end of 1981". There is also a claim for costs of arbitration.

Article VIII of each of the two contracts requires advance payments to be made to the Commission and provides for their calculation.

Article II, paragraph 1(b) of each of the contracts provides as follows:

b. The parties recognize that, as of the date of execution of this agreement, the Government of the United States and the Imperial Government of Iran have not concluded an Agreement for Cooperation which authorizes the Commission to distribute uranium enriched in the isotope U-235 to the Customer for use in the designated facility; it is anticipated that such an Agreement for Cooperation will, prior to the first scheduled delivery of U-235 to the Customer under this agreement, be concluded by said Governments. In recognition of the foregoing, and notwithstanding any other provisions of this agreement, in the event that the necessary Agreement for Cooperation does not enter into force on or before September 30, 1975, and unless otherwise agreed, this agreement shall terminate, and, except as provided in Article IX, section 4, the Commission shall return to the Customer any advance payments which may have been made pursuant to Article VIII.

Article IX, paragraph 4, provides:

4. Notwithstanding any other provision of this agreement, in the event that on September 30, 1975, or such later date as may be mutually agreed by the Parties in writing, the Government of the United States and the Imperial Government of Iran have not concluded an Agreement for Cooperation as contemplated in Article II, 1.b. hereof, but that on or before such date the Government of the United States has notified the Imperial Government of Iran in writing that the Government of the United States has complied with all statutory and constitutional requirements for the entry into force of said Agreement for Cooperation, such an event shall be deemed a termination of this Agreement by the Customer, and the advance payment amounts already paid by the Customer as of such date, plus any advance payment installments for which payment is due and outstanding on such date, as provided in Section 1. of Article VIII, shall constitute the entire termination charge under this Agreement.

It is not disputed that a total of \$7,933,951.04 was paid by the Claimant to the Commission pursuant to Article VIII. Nor is there any dispute that no Agreement for Cooperation as contemplated by Article II, paragraph 1(b), ever entered into force between the Parties.

The Claimant contends that the last date for entry into force of such an Agreement for Cooperation was the subject of successive written extensions by agreement between the Parties. The last written extension took the form of a letter dated 25 September 1977 from the United States Ambassador in Tehran to the President of AEÓI, Dr. Etemad, and counter-signed by Dr. Etemad on 2 October 1977, amending the contracts by extending the relevant date to 30 September 1978.

The Claimant contends that since no Agreement for Cooperation was signed, the two contracts terminated automatically on 30 September 1978, and that the Commission was thereafter obligated to refund the advance payments in accordance with Article II, paragraph 1(b).

The Claimant refers to a letter transmitted to the Commission on 14 July 1979, in which a formal request was made for reimbursement. The contents of the letter were confirmed in a letter of 27 August 1979 to the Scientific Attaché at the United States Embassy in Tehran. No such reimbursement was made.

In its Statement of Defence filed on 7 September 1982, the UNITED STATES OF AMERICA noted that the United States Department of Energy had succeeded to the rights and obligations of the Commission. The United States denied that the Commission or the Department of Energy was obligated to make reimbursement. It argued, first, that the time limit for conclusion of an Agreement for Cooperation had been treated by the Parties as extended beyond 30

September 1978, and that the two contracts were treated as subsisting after that date, until early 1979. Secondly, it contended that the failure to conclude an Agreement for Cooperation was attributable to AEOI's failure to comply with its own obligations in this respect after the Government of Iran announced in early 1979 its intention to suspend all nuclear activities; this, it contended, prevented the United States from satisfying the statutory and constitutional requirements for the entry into force of such an Agreement, and thus prevented it from being able to serve upon Iran the notice specified by Article IX, paragraph 4. Under these circumstances, the United States argued, Article IX, paragraph 4 entitled the Respondent to retain the advance payments as termination charges.

The United States also sought, in the alternative, to set off certain unspecified contractual costs incurred under the contracts, as well as costs incurred under a related training programme, amounting to \$150,528.50.

The Claimant filed a Reply on 17 January 1983, and a Pre-hearing Conference Memorial on 2 March 1983. A Pre-hearing Conference was held on 4 March 1983, at which the Respondent withdrew its request for \$150,528.50 on the ground that this set off did not arise out of the same contracts, transaction or occurrence as the claim. In a letter dated 8 June 1984, the Agent of the United States of America confirmed this withdrawal and also stated that the United States does not further pursue its other set off claims.

On 23 January 1984 THE UNITED STATES OF AMERICA filed a Memorial in which it stated that it was unable to obtain declassification of the documents necessary to support the denial in its Statement of Defence of any liability to reimburse the advance payments, and confirmed that it would accept the consequences of its failure to do so. The

Memorial further denied any liability to AEOI for interest or compensation for devaluation.

In its Order of 7 February 1984 the Tribunal stated that it intended to decide the question of the advance payments on the basis of the documents submitted. It invited the Claimant to comment on the remaining issues in the case. The Claimant filed its comments on 11 May 1984.

The present Partial Award therefore addresses itself solely to the entitlement of the Claimant to reimbursement of the advance payments under the two contracts. The question of the Claimant's entitlement to interest, compensation for devaluation and costs is deferred.

## 2. Reasons for Award

It is not disputed that the Claimant, AEOI, made payments amounting to U.S. \$7,933,951.04 pursuant to Article VIII of the two contracts entered into with the Commission on 30 June 1974 for the provision of uranium enrichment services. The question for the Tribunal is whether the Claimant has established its entitlement to reimbursement of this amount pursuant to Article II, paragraph 1(b) of the contracts.

Article II, paragraph 1(b) provided that, in the event that no Agreement for Cooperation entered into force by 30 September 1975, the contracts would terminate "unless otherwise agreed", and that any advance payments were required to be returned by the Commission "except as provided in Article IX, section 4".

No Agreement for Cooperation such as the one contemplated by the contracts ever entered into force between the Parties. But it does not necessarily follow that the contracts thus became terminated automatically on 30 September 1975. The Parties agree that the date was extended to 30 September

1978 by consent between the Parties. The Agreements to extend the date, placed in evidence before the Tribunal, were in writing.

It is in the Tribunal's view a reasonable inference, in the absence of any evidence to the contrary, that the Parties had adopted the practice of extending the contracts by written agreement. This inference is supported by the language of Article IX, paragraph 4, which provides for the conclusion of an Agreement for Cooperation by 30 September 1975 "or such later date as may be mutually agreed by the Parties in writing". (Emphasis supplied) Since there was no such written extension beyond 30 September 1978, the contracts must be taken to have expired in accordance with their own terms on that date.

Nor is there any evidence before the Tribunal to support the assertion that actions by the Claimant prevented the United States from satisfying the statutory and constitutional requirements for the entry into force of an Agreement for Cooperation, and thus prevented the United States from serving the notice specified in Article IX, paragraph 4 which would have entitled it to retain the advance payments.

The Tribunal is satisfied that AEOI has adduced sufficient evidence to establish, in the absence of evidence to the contrary, its right to reimbursement of the advance payment.

THE UNITED STATES OF AMERICA, in its Memorial filed on 23 January 1984, asserts that documentary evidence to the contrary exists, but acknowledges that, since such documents cannot be made public, it cannot pursue a defence based on them.

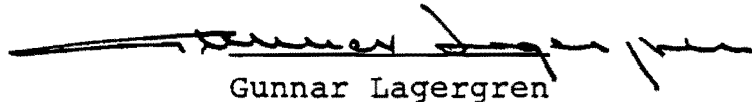
For the foregoing reasons,

The Tribunal makes the following Partial Award:

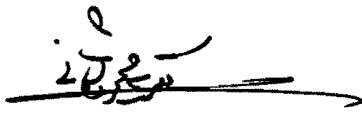
The Respondent THE UNITED STATES OF AMERICA is obligated to pay the Claimant ATOMIC ENERGY ORGANIZATION OF IRAN the amount of U.S. \$7,933,951.04 (Seven Million Nine Hundred Thirty Three Thousand Nine Hundred and Fifty One United States Dollars and Four Cents).

The question of the Claimant's entitlement to interest, compensation for devaluation and costs of arbitration is reserved for further consideration.

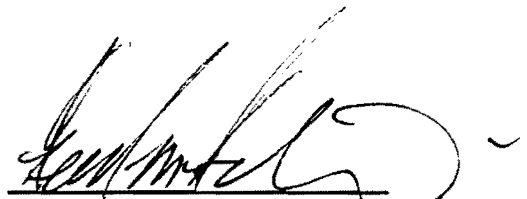
Dated, The Hague  
8 June 1984



Gunnar Lagergren  
Chairman  
Chamber One



Mahmoud M. Kashani



Howard M. Holtzmann