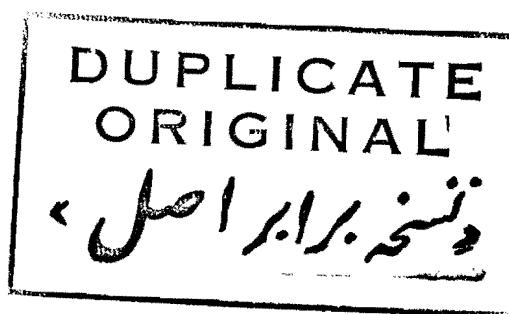


دیوان داوری

IRAN-UNITED STATES CLAIMS TRIBUNAL



CASE NO. B-7
CHAMBER ONE
AWARD NO. 246 -B7-1

ATOMIC ENERGY ORGANIZATION
OF IRAN,

and

THE UNITED STATES OF AMERICA,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دیواری ایران-آمریکا
ثبت شد - FILED	
Date 15 AUG 1986	تاریخ ۱۵ آگوست ۱۹۸۶
۱۳۶۵ / ۰۱ / ۲۹	
No. B-7	شماره B-7

AWARD

I. INTRODUCTION AND PROCEDURAL HISTORY

This Award deals with three claims of the Claimant, THE ATOMIC ENERGY ORGANIZATION OF IRAN ("AEOI"), made against the Respondent, THE ATOMIC ENERGY COMMISSION OF THE UNITED STATES OF AMERICA, which were reserved for further consideration pursuant to the Partial Award, Award No. 132-B7-1 (8 June 1984), issued by the Tribunal earlier in this Case. In particular, this Award deals with AEOI's claims for interest, damages for alleged devaluation of the United States Dollar and costs of arbitration.

On 15 January 1982, AEOI filed a Statement of Claim with the Tribunal seeking an award of damages against the United States.

It is not disputed that the Parties are, respectively, governmental agencies of Iran and the United States of America, nor that the claim falls within the terms of Article II, paragraph 2 of the Claims Settlement Declaration which provides for 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".

AEOI sought reimbursement of advance payments of U.S. \$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.

AEOI also claimed interest on the principal amount from 30 September 1978 to the date of the Tribunal's award, at the rate of the average LIBOR established by the Midland Bank of London. AEOI calculated the interest accrued up to the end of 1981 on this basis as U.S. \$3,830,265.96.

AEOI further sought damages of U.S. \$5,230,722.96 "to compensate for the devaluation of U.S. Dollars, from July, 1974 to the end of 1981". Finally, AEOI claimed its costs of arbitration.

A pre-hearing conference was held on 4 March 1983. On 23 January 1984, the United States filed a Memorial in which it stated that it was unable to obtain declassification of the documents necessary to support its denial of any liability to reimburse the advance payments, and confirmed that it would accept the consequences of its failure to do so. The Memorial, however, denied any liability to AEOI for interest, compensation for devaluation or costs.

After an exchange of written pleadings between the Parties, the Tribunal announced, in its Order of 7 February 1984, that it intended to decide the question of AEOI's entitlement to reimbursement of the advance payments on the basis of the documents submitted.

On 8 June 1984, the Tribunal rendered a Partial Award, Award No. 132-B7-1, which set out the background to the claim and described the history of the Parties' contractual relations. The Partial Award was confined to the issue of the entitlement of AEOI to reimbursement of the advance payments under the two contracts. The Partial Award granted AEOI reimbursement in the amount of U.S. \$7,933,951.04. The questions of AEOI's entitlement to interest, compensation for devaluation, and costs of arbitration were reserved for further consideration, and are the subject of the present Award. Both Parties briefed these issues further, AEOI in a document filed on 11 May 1984, and the United States in a Reply filed on 20 July 1984. Neither Party requested a hearing. On 29 May 1985, the Tribunal notified the Parties in an Order that it would decide the remaining issues on the basis of the written submissions and evidence before it.

II. CONTENTIONS OF THE PARTIES

1. Interest

AEOI made its initial claim for interest in its Statement of Claim, and subsequently amended the amount claimed in a Memorial filed on 2 March 1983, prior to the Pre-Hearing Conference, to U.S. \$8,886,034, calculated on the same basis up to the end of December 1982.

AEOI bases its claim for interest on the principles of equity and reciprocity. Neither of the two Contracts entered into on 30 June 1974 contain any obligation to pay interest on advance payments reimbursed pursuant to their terms. AEOI is, however, obliged by Article VIII, paragraph 5, of the contracts to pay interest to the United States on any delayed payments. AEOI contends that the principle of reciprocity requires that the United States assume a corresponding obligation in the case of default in reimbursement, particularly in view of the length of time AEOI was thus deprived of the use of its funds.

In response, the United States argues that, in the absence of a specific provision in the contract, no obligation to pay interest may be implied. It refers to the choice-of-law provisions of the two contracts, which provide that each contract "shall be construed in accordance with the internal federal law applicable in the United States District Courts to agreements to which the Government of the United States of America is a party". The United States argues that under such federal law it is not obligated to pay interest on a claim in the absence of an express contract provision or statute to the contrary; and that, having agreed to be bound by this law, AEOI is not entitled to interest. Further, the United States argues that any delay in repayment is due entirely to AEOI's own actions and its refusal to act on repeated offers by the United States to settle the claim. Finally, the United States argues,

no interest was requested by AEOI in its letters seeking reimbursement of the advance payments.

2. Damages for Devaluation

In its Statement of Claim, AEOI sought payment of "damages in the amount of U.S. \$5,230,722.96 to compensate for the devaluation of U.S. Dollars, from July, 1974 to the end of 1981". AEOI's subsequent pleadings, however, contain no further mention of this claim.

The United States argues in response that the claim for damages for alleged devaluation was frivolous and unfounded. In any event, it should be treated as having been withdrawn in view of the absence of any reference to it in AEOI's later pleadings.

3. Costs of Arbitration

AEOI claims its costs of arbitration, although no specific amount has been mentioned.

The United States contends that the Tribunal has not previously awarded costs on an official claim, and that to do so would be contrary to the spirit of the joint undertaking of the two Governments in the Algiers Declarations to share the cost of maintaining the Tribunal.

III. REASONS FOR AWARD

1. Interest

It has been the practice of the Tribunal to award interest, when claimed and due, to compensate for damages suffered due to delay in payment, whether the contract in question provides for it or not and notwithstanding general choice of law provisions. Thus,

AEOI is entitled to an award of interest on the amounts owed to it by the United States.

With respect to the appropriate rate of interest to be applied, this Chamber has expressed its intention to develop and apply a consistent approach to the awarding of interest in cases before it in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985). In the absence of a contractually stipulated rate of interest, it is the Tribunal's policy to derive a rate of interest based approximately on the amount that the successful claimant would have been in a position to have earned if it had had the funds available to invest in a form of commercial investment in common use in its own country.

Unlike the present Case, Sylvania involved a successful claimant that was a private corporation. It was therefore appropriate to award interest based on prevailing commercial investment rates. Indeed, Sylvania and the subsequent cases which have applied it have been premised on the assumption that the successful claimant was a private party and would act as such.

The present Case, however, is an official claim in which the successful claimant is a Government. As such, it would be inappropriate to apply a rate of interest based on commercial investment rates, particularly in the absence of any evidence as to fiscal practices of either Government. Nevertheless, Sylvania expresses this Chamber's intent to develop a consistent approach to awarding interest. In this regard, the Chamber notes that it has previously awarded interest in two official claims, one involving a successful Iranian claimant and one involving a successful United States claimant. See Department of the Environment of the Islamic Republic of Iran and United States of America, Award No. 107-B53-1 (25 January 1984) (successful Iranian claimant); United States of America and Islamic Republic of Iran, Award No. 128-B29-1 (16 May 1984) (successful United States claimant). In both of these cases, in

the absence of a contractually stipulated rate of interest, the Chamber awarded the successful claimant interest at the rate of 10 percent per annum. Under the circumstances, the Chamber deems it fair also to award interest at the rate of 10 percent per annum in the present Case. Such a decision is consistent with the prior practice of this Chamber in official claims and conforms to the underlying philosophy of Sylvania.

As to the date from which interest should accrue, the Tribunal notes that in the Partial Award to this Case it found that the contracts in question expired in accordance with their own terms on 20 September 1978. See Partial Award No. 132-B7-1, p. 7 (8 June 1984). The contracts having expired on that date, AEOI was entitled to reimbursement of the advance payments under paragraph 1(b) of Article II of the contracts. No formal written request for reimbursement was made by AEOI, however, until 14 July 1979. This request was followed up by a letter to the United States Embassy in Tehran on 27 August 1979. Thus, the Tribunal finds that reimbursement should reasonably have been made by 30 September 1979 and that interest should be calculated from that date.

Although on principle the interest should have been paid at the time the Partial Award was paid, the Claimant has not sought payment of any further interest on that interest from the date of payment of the 1984 Partial Award to the date of payment of the present Award. Accordingly, the Tribunal is not required to decide the issue of whether the Claimant would have been entitled to such interest with respect to the intervening period.

2. Damages for Devaluation

No evidence or argument has been advanced by AEOI to substantiate either the legal or factual basis for its claim for damages for the alleged devaluation of the U.S. Dollar. The Tribunal accordingly dismisses this claim.

3. Costs

It has not been the Tribunal's practice in official claims to award costs to the successful party. The Tribunal accordingly dismisses AEOI's claim for costs.

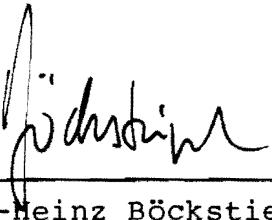
IV. AWARD

For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

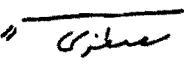
- a) The Respondent THE UNITED STATES OF AMERICA is obligated to pay the Claimant ATOMIC ENERGY ORGANIZATION OF IRAN simple interest on the amount of U.S. \$7,933,951.04 at the rate of 10 per cent per annum (365-day basis) from 30 September 1979 up to and including the date of payment of the said amount pursuant to Partial Award No. 132-B7-1 of 8 June 1984 in this Case.
- b) The claims of the ATOMIC ENERGY ORGANIZATION OF IRAN for damages arising out of the alleged devaluation of the United States Dollar are dismissed.
- c) Each Party shall bear its own costs of the arbitration.

Dated, The Hague,
14 August 1986



Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God



Mohsen Mostafavi
Concurring opinion


Howard M. Holtzmann