

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ

In the Name of God



CASE NO. B/7

CHAMBER ONE

AWARD NO. 246-B7-1

ATOMIC ENERGY ORGANIZATION
OF IRAN,

Claimant,

and

THE UNITED STATES OF AMERICA,

Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	15 AUG 1986 تاریخ ۱۳۶۵ / ۵ / ۲۴
No.	B-7 شماره

CONCURRING OPINION OF MOHSEN MOSTAFAVI

In the present case, I concur on principle with awarding of interest, but I do not find the majority's argument to be in conformity with this Chamber's previous practice. In connection with interest, this Chamber has always invoked the decision in Sylvania Technical Systems, Inc., and The Government of the Islamic Republic of Iran (Award No. 180-64-1). But while it also invokes that award in the present decision and presents the approach taken here as conforming with the underlying "philosophy of Sylvania," in reality there is no such conformity here at all. In the Sylvania decision, it is stated in the section dealing with interest, that

"So far the Tribunal's practice in awarding interest does not show a great degree of uniformity... This Chamber finds it in the interest of justice and fairness to develop and apply a consistent approach to the awarding of interest in cases before it..."

The Chamber thereby abandoned its earlier practice, which was "not uniform," and applied a new rule, which consists of the following:

"Unless there are special circumstances, the rates stipulated in a contract will be accepted by the Tribunal."

However, in the present case this rule has not been used; instead, the Chamber has resorted to the same approach which it had given up in the interest of "justice and fairness." Despite the fact that Article VIII, paragraph 5 of the Contract provides, in connection with the rate of interest to be paid by the Atomic Energy Organization of Iran in the event of a breach of contract, that this rate shall be that set periodically by the United States Atomic Energy Commission, in lieu of this contractual rate the Chamber has accepted the previous rates, which it had deemed to be unjustified, by adducing the following argument:

"...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...; United States of America and Islamic Republic of Iran, Award No. 128-B29-1... 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..."

Contrary to this argument, no rate of 10 percent has been set for the official (B) cases. The policy taken by this Chamber was, that a rate of 8.5% would ordinarily be applied in expropriation claims, and a rate of 10% would be used for other claims and for contractual claims; moreover, it was the Sylvania decision that altered this precedent and which was on principle, as set forth in that decision, rendered for just this purpose.

Judge Holtzmann, who concurs with this argument in the present case, has written a separate Opinion in connection with both Award Nos. 107-B53-1 and 128-B29-1, which have been invoked as a basis for determining interest in the present Award. He opines that

"...the Tribunal should not set interest rates arbitrarily on its awards... Claimant, the Department of the Environment of the Islamic Republic of Iran, sought interest of 18%. The Tribunal without explanation granted 10% interest. Claimant provided no evidence as to the interest rates prevailing during the period at issue; nevertheless, on the basis of publicly available data, it would have been possible for the Tribunal to determine an interest rate approximating the average rate during those years." (See Iran-U.S. Claims Tribunal Reports, 1984-I, Vol.5, p.111)

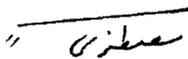
As stated in the present Award, the "underlying philosophy of Sylvania" is, to avoid applying differing rates of interest and to adopt instead a single "fixed rate"-- that is, as Judge Holtzmann says, to provide some criterion whereby the Tribunal may determine interest rates, rather than setting them arbitrarily.⁽¹⁾ However, in the present case, that same rate of interest which had been "arbitrarily" set has been accepted; and this is not in conformity with the "underlying philosophy of Sylvania." Following the approach taken in Sylvania would have required that one of the two criteria set forth therein (ie the average rate of interest on bank deposits over the relevant period, or else the rate of interest provided for in the contract) be applied as a basis for the Award. Although the contractually-set rate in the present case has been provided for with respect to possible breaches by the Claimant, the application of a "uniform" policy (which it was intended in the Sylvania decision to est-

(1) In his separate Opinion on Award No. 184-161-1 (INA Corporation and The Government of the Islamic Republic of Iran), wherein the Claimant was awarded interest at 8.5%, Judge Holtzmann criticized that decision, holding that "it was just this lack of 'uniformity' that Chamber One noted in the Sylvania case and attempted to establish a precedent to correct."

tablish) on the one hand, and the necessity that there be corresponding mutual obligations of the Parties on the basis of analogy and the principles of equity on the other, both dictate that the same rate of interest provided for in the Contract be applied in favor of the Claimant-- unless, of course the intent of the Chamber majority was to derogate from the rule set forth in Sylvania, and to determine the appropriate rate of interest for each case in view of its particular circumstances, thereby avoiding application of a single formula, in which event I concur with such an approach.

The Hague,

Dated 24 Mordad 1365/ 15 August, 1986



Mohsen Mostafavi