

ORIGINAL DOCUMENTS IN SAFE

Case No. 10517

Date of filing: 16 April '86.

\*\* AWARD - Type of Award final  
 - Date of Award 15 April '86.  
13 pages in English 15 pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

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

- Date \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* SEPARATE OPINION of \_\_\_\_\_

- Date \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DISSENTING OPINION of \_\_\_\_\_

- Date \_\_\_\_\_  
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\*\* OTHER; Nature of document: \_\_\_\_\_

- Date \_\_\_\_\_  
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CASE NO. 10517

CHAMBER ONE

AWARD NO. 222-10517-1

THE TRUSTEES OF COLUMBIA UNIVERSITY  
IN THE CITY OF NEW YORK,  
a claim of less than \$250,000,  
presented by the UNITED STATES OF AMERICA,  
Claimant,  
and

THE ISLAMIC REPUBLIC OF IRAN,  
Respondent.

AWARD

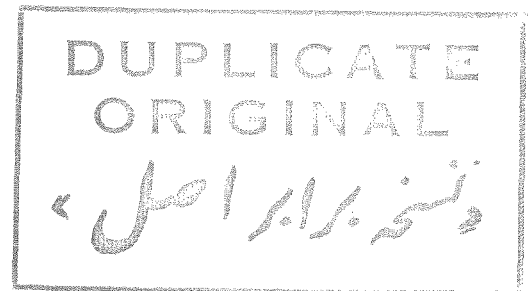
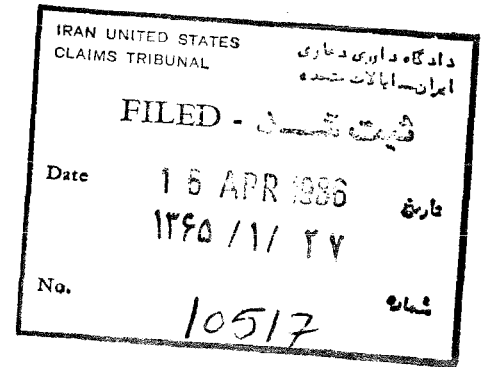
Appearances:

For the Claimant:

Mr. D.M. Price,  
Deputy Agent of  
the United States of America,  
Ms. L. Polk,  
Mr. M.E. Raboin,  
Assistants to the Agent.

For the Respondent:

Mr. M.K. Eshragh,  
Agent of the Government of the  
Islamic Republic of Iran,  
Mr. A.A. Ryazi,  
Mr. A. Mohammadi,  
Legal Advisers to the Agent,  
Mr. S. Rabiee,  
Assistant to the Agent,  
Mr. F. Momemi,  
Attorney of the Atomic Energy  
Organization of Iran.



## I. Procedural History

1. On 19 January 1982 the United States of America filed a Statement of Claim which presented a claim of less than US \$250,000, of The Trustees of Columbia University in the City of New York ("the Claimant"), against the Islamic Republic of Iran, or, more specifically, the Atomic Energy Organization of Iran ("the Respondent" or "AEOI").

2. On 16 December 1983 the Case was assigned to Chamber One, which ordered the Respondent to file its Statement of Defence by 15 March 1984.

3. Following a request by the Respondent for further particulars, the Claimant was ordered to file a Supplementary Statement of Claim, documentary evidence, written statements of witnesses, and a legal brief by 15 May 1984. These were filed on 14 May 1984.

4. The Respondent filed its Statement of Defence (including a counterclaim), documentary evidence, written statements of witnesses, and legal brief on 14 February 1985. On 28 February 1985 the Respondent filed an affidavit from Dr. Mostafa Sohrabpour, formerly Managing Director of Educational Affairs of AEOI, in support of its Defence and Counterclaim.

5. The Claimant filed its Reply to the Statement of Defence and Counterclaim on 22 May 1985, and the Respondent its Response to this Reply on 30 October 1985.

6. On 13 December 1985 the Claimant filed additional documents to which it referred at the Hearing. The Respondent stated that it was not in a position to comment on the contents of these late filings, but stated that it did not

formally object to their admission. The Chairman stated that the Tribunal would decide on the admissibility of the documents after the Hearing.

7. A Hearing in the case was held on 17 December 1985.

8. On 7 March 1986 the Respondent filed a written statement styled its "Objection to the Untimely Filing by the Claimant of Further Evidence and Some Other Remarks," in which the Respondent formally objects to the admission of the documents filed by the Claimant shortly before the Hearing. The submission also includes arguments on the merits.

## II. Facts and Contentions of the Parties

### A. Jurisdiction

9. The Claimant is a private, non-profit New York corporation founded originally in 1754 under the name of "Kings College". In 1912 the New York State Legislature recognized the Claimant entity as "The Trustees of Columbia University in the City of New York". According to the affidavit of the Claimant's Corporate Secretary, the University is governed by a self-perpetuating Board of Trustees, consisting of 24 members all of whom have addresses in the United States and are citizens of the United States.

10. The Respondent contends that the Claimant, an entity without capital stock, does not have locus standi to bring a claim before the Tribunal. The Respondent relies on "the Tribunal's interpretative decision in Case A 2 and the argument contained in Iran's memorial in Case No. 111 in support of this contention".

B. The Claim

11. On 20 June 1977, Dr. P.W. Likins, Dean of the School of Engineering and Applied Sciences of the University, acting on behalf of the Claimant, and Dr. M. Sohrabpour, Director of Educational Affairs of AEOI, entered into an agreement ("the Agreement") to provide graduate engineering instruction to Iranian students sponsored and selected by AEOI.

12. Article IV(B) of the Agreement provides:

"Academic expenses include CU costs of supervision, additional administration, tuition, health insurance, computer utilization and other incidental expenses, and any special supplies and services (on which CU and AEOI may agree) not normally supplied free to other students. These costs shall be paid directly to CU by AEOI within one month of billing by CU. The cost of program initiation and planning for the period of this agreement is \$126,764.00 which shall be billed by CU on July 1, 1977. Although it is intended that at least 10 Master's students and 2 Doctoral students participate in this program, this agreement does not require that either party accommodate any minimum number of students. The program initiation and planning cost is nonetheless fixed, and payment of such costs by the AEOI and subsequent retention by CU shall be without regard to the number of students participating in the program. The other academic costs shall be billed by CU for each academic semester on the previous July 1 or December 1..."

at the contractually prescribed rates.

13. AEOI made the required payment for "program initiation and planning", and the first students enrolled for the 1977-78 academic year. The following academic year, members of the first group re-enrolled and additional students began the program. The Claim concerns allegedly unpaid charges arising from the 1978 Summer and Fall Terms and the 1979 Spring Term.

The first part of the Claim

14. The Claimant alleges that twenty-one students, including sixteen Master's degree students and five Doctoral candidates, registered under the program in the Fall Term of 1978, and that three of these students also attended during

the preceding Summer Term. It further alleges that the charges incurred by these students for these terms, which the Agreement obliged the Respondent to pay, remain unpaid. The Claimant's "1978 Fall Invoice" listed these charges as follows:

i. Administrative charges for the first twelve students	\$ 3,786
ii. Incremental administrative costs for nine additional students at \$708 each	\$ 6,372
iii. Tuition and fees	\$ 42,846
iv. Computer use for five doctoral candidates at \$2,000 each	\$ 10,000
Total	<hr/> \$ 63,004 =====

The second part of the Claim

15. The Claimant alleges that fifteen students, including four doctoral candidates, were registered in the program in the Spring Term of 1979. According to the Claimant's "1979 Spring Invoice", these students incurred the following charges:

i. Administrative charges for the first twelve students	\$ 3,786
ii. Incremental administrative costs for three additional students at \$708 each	\$ 2,124
iii. Tuition and fees	\$ 11,012
iv. Computer use for four doctoral candidates at \$2,000 each	\$ 8,000
v. Expenses incurred by the Claimant to provide airline tickets to enable three students and two spouses to return to Iran	\$ 2,115
Total	<hr/> \$ 27,037 =====

16. The Claimant asserts that it sent the 1978 Fall Invoice to Dr. Hossein Mahban, Vice-President of AEOI, on 14 December 1978, and the 1979 Spring Invoice to him on 5 June 1979. It states that again, on 13 September 1979, it sent invoices and letters requesting the total payment of US \$90,041, to Dr. Asha Khakpour and Dr. Fereydoun Sahabi, both of AEOI, and that Professor Amir Nahavandi, the Claimant's Director for the Iranian program, paid several visits to Iran and made various calls in an unsuccessful effort to obtain payment.

17. The Claimant therefore makes a total claim for US \$90,041 with interest and requests an additional 1½% of the Claim, or US \$1,350, for costs incurred in preparing the Claim.

18. The Respondent admits the execution of the Agreement of 20 June 1977 between AEOI and the University. However, the Respondent contends that the Claimant has failed "to produce and submit AEOI's written permission and consent concerning all the alleged students, so that AEOI may determine whether the alleged students were employed by AEOI and were sent to the University according to AEOI's written permission and consent". The Respondent contends that because the Claimant bears the burden of proof, it must present the written authorization of AEOI in respect of all the allegedly sponsored students.

19. The Respondent also contends that the necessary credits stipulated in Article II of the Agreement "were not taught to the students"; that "no training was provided to the students"; that "necessary, effective and adequate assistance was not provided to the students"; and that "necessary and adequate overseeing, supervision, and co-ordination in respect of the students" were either not provided at all or were of poor quality. Furthermore, the Respondent contends that "since the full three-year study program provided in the Agreement remained incomplete, the

courses were not taught in full and the trainees did not benefit from the training program". Consequently, in the Respondent's view, "AEOI is not legally liable to pay Claimant for the cost of services not received".

20. As to the charges levied in respect of computer usage, the Respondent denies that "the students actually and in practice used the computer" and contends that "as the students did not use computers for their relevant academic courses, the invoices were naturally unjustified and unfounded and are unacceptable to AEOI".

21. As to reimbursement for the cost of airline tickets supplied to three students and two spouses to return to Iran, the Respondent contends that "the cost of students return home is not related to AEOI, and AEOI had not made any commitments to Claimant in respect of such expenses", and further that "assuming that these students were AEOI designated students, still the University acted on its own without authorization by AEOI".

#### C. The Counterclaim

22. The Respondent has filed a counterclaim. It contends that the sum of US \$126,764 specified in Article IV(B) of the Agreement was to cover the cost of program initiation and planning for a three-year study program, and that since the Agreement was implemented for only two years, one-third of this amount has been "unjustly received" by the Claimant. On this basis the Respondent counterclaims for US \$37,779. The Respondent further alleges that in paying a previous invoice, it overpaid a sum of US \$20,000 for computer use, which the Respondent alleges the students never received, and it requests reimbursement for this sum as well. The Respondent states that as early as 1978, it had objected to this payment in a cable, a copy of which it produced as an Exhibit to the Statement of Defence.



### III. Reasons for Award

#### A. Admissibility of the late filing

23. As to the documents filed by the Claimant on 13 December 1985, in determining whether the admission of a late-filed document will cause undue prejudice to a party, the Tribunal considers the nature of the submission and the length and cause of the delay. Here the Claimant waited until just a few days before the Hearing to submit the documents and provided no good reason for the delay. Therefore, notwithstanding that the Respondent did not object to the late filing, the Tribunal does not consider the documents in making this Award. This ruling makes it unnecessary to consider whether the Respondent's recent written objection to the admissibility of the documents would constitute a timely objection.

24. To the extent that the Respondent's unrequested filing of 7 March 1986 addresses the merits, it is untimely and inadmissible, and the Tribunal takes no account of it in making this Award.

#### B. Jurisdiction

25. It is clear that the Claim arises out of a "contract" within the meaning of the Claims Settlement Declaration, and that the Claimant continuously owned it, and that it was outstanding on 19 January 1981.

26. As to the Respondent's argument that a non-profit entity has no locus standi to bring a claim before the Tribunal, the Full Tribunal in International Schools Services, Inc. and National Iranian Copper Industries

Company, Interlocutory Award No. ITL 37-111-FT (6 April 1984), held to the contrary by deciding that Article VII(1)(b) of the Claims Settlement Declaration conferred on the Tribunal jurisdiction over claims by United States non-profit, non-stock corporations.

27. It is not disputed that AEOI is a controlled entity of the Government of Iran as defined in Article VII (3) of the Claims Settlement Declaration.

28. Therefore, the Tribunal is satisfied that it has jurisdiction over the Claim.

C. Merits

29. As to the identification of the students attending the program, the Tribunal notes that Ralph J. Schwarz, the Claimant's Vice-Dean in the School of Engineering and Applied Science, has filed an affidavit to the effect that the students in respect of whom the Claim is made were selected by AEOI after consultation with Professor Amir N. Nahavandi, who served as the Program Director. The earlier charges billed by the University were duly paid notwithstanding the fact that no formal letters or documents were exchanged to confirm that the students were indeed sponsored and selected by AEOI. The Tribunal is satisfied that the students in respect of whom the Claim is made were properly selected and sponsored by AEOI.

30. As to the quality of the Claimant's services, the Tribunal notes that at no time during the course of the program did AEOI complain of the quality of the Claimant's services. Moreover, because AEOI re-enrolled students for the second year of the program and designated additional students for that year, it is reasonable to infer that it was satisfied with the training these students were receiving.

31. The Respondent has objected to the charges for use of the computers, which are based on Article IV(B) (5) of the Agreement:

"The maximum charges for digital computer usage and other incidental expenses approved by the director or the coordinator for each Doctoral student will be US \$2,000 per semester, not to exceed US \$8,000 per student in the course of his entire degree program; this sum is required to be available for running nuclear computer programs, which characteristically have long running times. All students will also have access to free computer facilities to the same extent as other CU graduate students".

32. The Tribunal concludes that this provision does not prescribe that computer charges be made for the time "students actually and in practice used the computer". Instead, the Agreement contemplated a global, per-semester fee for each doctoral student. Since the AEOI-sponsored doctoral students had access to the facilities which this fee covered, AEOI must pay these charges.

33. On the question of the airline tickets paid for by the Claimant, Article IV(C) of the Agreement obliged AEOI to pay student expenses, including travel expenses, directly to the students. The Claimant apparently provided the tickets to the three students and two of their spouses because they were stranded in the United States without funds to return home. AEOI would in any event have had to incur these expenses in respect of the three students, and under the circumstances the Claimant was justified in advancing the cost of the airfares to them. However, the Agreement did not oblige AEOI to pay the spouses' airfare. Accordingly, the Tribunal allows the Claim insofar as it seeks reimbursement of the students' airfare, but denies it as to that of the spouses.

34. As to the first counterclaim, the Tribunal concludes that the initiation and planning cost is a fixed fee representing the cost to the Claimant of establishing the

academic program. It is an "upfront", non-refundable cost regardless of the number of students actually participating in the program, and is payable even though the program terminated before the full term of the Agreement had run. The Tribunal concludes that the Respondent's counterclaim for return of one-third of this fee is not justified.

35. As to the second counterclaim, for the refund of US \$20,000 in fees paid for computer usage, the Tribunal has already stated that the Respondent's obligation under Article IV(B) (5) of the Agreement, which provides for the payment of computer and other incidental expenses, did not depend on actual student utilisation of computer time. The counterclaim is therefore dismissed.

#### D. Interest and Costs

36. The 1978 Fall Invoice and the 1979 Spring Invoice are dated 14 December 1978 and 5 June 1979 respectively. Article IV(B) of the Agreement provides that "other academic costs shall be billed by the University for each academic semester on the previous 1 July or 1 December". The same Article provides that academic expenses shall be paid within one month of billing. In these circumstances, and on the basis of the practice outlined in Sylvania Technical Systems Inc. and The Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985), the Tribunal decides that interest shall be awarded on the amount of the Award at the rate of 11.5 percent per annum calculated as to the first part of the Claim, i.e. US \$63,004, from 14 January 1979, and at the rate of 11.5 percent per annum calculated as to the second part of the Claim, on the amount awarded, i.e. US \$26,191, from 1 August 1979, i.e. one month after the date of billing prescribed in the Agreement.

37. As to costs, there is no objection in principle to making an award for costs in Claims of Less Than US

\$250,000. However, the Tribunal holds that in this Case the Claimant has not established to the Tribunal's satisfaction the level of costs incurred in the preparation and presentation of the Claim. The Tribunal therefore awards no costs in this matter.

#### IV. Award

38. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

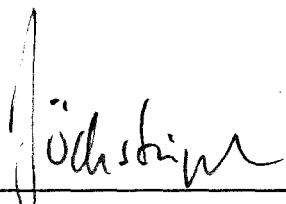
(a) The Respondent, THE ISLAMIC REPUBLIC OF IRAN is obligated to pay the Claimant THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK the sum of Eighty Nine Thousand One Hundred Ninety Five United States Dollars (US \$89,195), plus simple interest at the rate of 11.5 percent per annum calculated as to the first part of the Claim, i.e. Sixty Three Thousand Four United States Dollars (US \$63,004) from 14 January 1979, and at the rate of 11.5 percent per annum calculated as to the second part of the Claim, i.e. Twenty Six Thousand One Hundred Ninety One United States Dollars (US \$26,191) from 1 August 1979, until the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account. This obligation shall be satisfied by payment out of the Security Account established by paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

(b) The remainder of the Claim and the Counterclaim are dismissed on the merits.

(c) Each Party shall bear its own costs of arbitrating this Claim.

(d) This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague  
15 April 1986

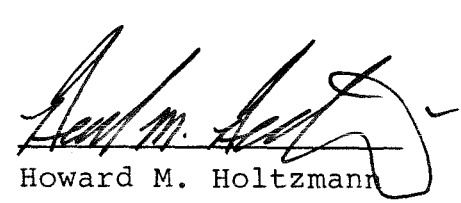


Karl-Heinz Böckstiegel  
Chairman  
Chamber One

In the name of God



Mohsen Mostafavi



Howard M. Holtzmann

Concurring in part  
Dissenting in part  
See Separate Dissenting Opinion