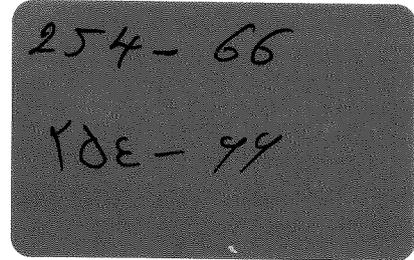


Case No. 254

Date 5 November 1982

ORIGINAL DOCUMENTS IN SAFE

Award No.: ITL 7-254-FT



✓ (INTERLOCUTORY AWARD)
- Award; No. of pages 5 Date of Award 5 November 1982

- Decision; No. of pages _____ Date of Decision: _____

- Order; No. of pages _____ Date of Order _____

- Other
No. of pages _____ Date of Document _____

ثبت شد - FILED

Date ۱۳۶۱ / ۸ / ۱۴ تاریخ

5 NOV 1982

No. 254 شماره

INTERLOCUTORY AWARD

Award No.: ITL 7-254-FT

Case No. 254.

corrected 6-12-1982

Interpretation of the expression "and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position." (Article II, paragraph 1, of the Claims Settlement Declaration.)
Jurisdiction relinquished by Chamber Two* to the Full Tribunal.

Three

Parties:

Zokor International Inc.,
Claimant,

and

the Government of the Islamic Republic of Iran, Société du Chemin de Fer Urbain de Téhéran et de sa Banlieue ("METRO"),

Respondents.

DUPLICATE
ORIGINAL

نسخه برابر اصل

254-66

۲۵۴-۶۶

Appearances:

Mr. Kendall R. Meyer,
Wilson & McIlvaine, Chicago, Ill.,
Mr. Hamid Sabi, for the Claimant,
Mr. Arthur W. Rovine, Agent of the United States of America,

Also present:

Mr. Mohammad K. Eshragh, as Agent of the Islamic Republic of Iran.

Article II, paragraph 1, of the Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the Settlement of Claims by the Government of the United States of

America and the Government of the Islamic Republic of Iran ("the Claims Settlement Declaration") excludes from the jurisdiction of the Tribunal "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position."

Three
Chamber ~~Two~~* of the Tribunal has relinquished jurisdiction over this case for the limited purpose of deciding whether the claims therein arising out of contracts containing provisions for the settlement of disputes fall within the scope of the above-mentioned provision of the Claims Settlement Declaration.

Following orders dated 15 April and 7 July 1982 the parties have submitted Memorials addressing the jurisdictional issue referred to the Full Tribunal by Chamber ~~Two~~^{Three}*. Furthermore, a hearing on this issue was held on 21-22 June 1982.

In March 1978 the Claimant and the Respondent METRO, which Claimant alleges to be an instrumentality of the Government of Iran, concluded a contract under which the Claimant agreed to manufacture and deliver three tunnelling machines. In July 1978 the Claimant and METRO entered into a supplementary contract for the sale of three sets of mine car trains for use with the tunnelling machines. The Claimant also agreed to provide certain after-delivery technical services. The claim is based on METRO's alleged failure to perform its obligations pursuant to these contracts. Both contracts are drawn up in Farsi and contain identical provisions dealing with settlement of disputes. These provisions read as follows in translation into English.

ARTICLE 45 - SETTLEMENT OF DISPUTES

Should a dispute arise between the Manufacturer and the Employer, whether related to the execution of the contractual works or about the interpretation of the Articles of the contract, general conditions of the contract and other contractual documents, and if the dispute is not resolved in an amicable way, the same shall be referred to competent judicial authorities and courts and shall be resolved in

* corrected 6-12-1982

accordance with the laws in force in Iran unless there is a convention between the Imperial Government and the Government of the country of the Manufacturer.

Claimant contends that this article does not specifically provide for the sole and exclusive jurisdiction of Iranian courts, since it does not provide that all disputes arising under the contract shall be submitted to Iranian courts.

Respondents assert that the Treaty provisions conferring jurisdiction on the Tribunal should be interpreted in a restrictive manner. Iran's agreement to refer disputes to arbitration before the Tribunal, Respondents argue, should not be extended beyond what clearly has been intended by the two Governments. Furthermore, Respondents contend that the provision for settlement of disputes is an integral part of the contracts, and that these contracts do not provide for reference of disputes to judicial fora other than the judicial fora of Iran. Therefore, these fora must be considered to have sole jurisdiction over the disputes.

Article 45 of the contracts sets forth that disputes between the parties relating to the execution of the contractual works or the interpretation of the contracts and related documents shall be referred to the competent judicial authorities and courts and shall be resolved in accordance with Iranian law.

Article II, paragraph 1, of the Claims Settlement Declaration excludes from the jurisdiction of the Tribunal only claims arising under contracts which specifically provide for the sole jurisdiction of the competent Iranian courts.

Article 45 of the contracts does not contain any provision which unambiguously restricts jurisdiction to the courts of Iran. Consequently, this article does not with sufficient clarity fulfil the requirements laid down in the exclusion clause of Article II, paragraph 1, of the Claims Settlement Declaration. In the instant case this conclusion is further supported by the following facts. Article 45 confers jurisdiction on the competent judicial authorities and courts only in respect of disputes concerning the

execution of the contractual works or the interpretation of the contract and related documents. As the Tribunal has found in a similar case, this formulation means that the parties have left certain aspects of the contract outside the jurisdiction of the selected courts, if any. Interlocutory Award, dated 5 November 1982, in Case No. 159.

For the reasons given above:

the TRIBUNAL holds

that Article 45 of the instant contracts does not fall within the scope of the forum clause exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration. Consequently, this article in the contracts does not exclude the Tribunal from jurisdiction over claims based on the said contracts.

corrected 6-12-1982

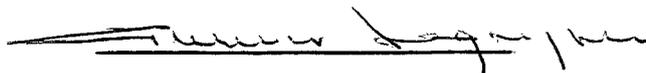
Three

The case is referred back to Chamber ~~Two~~* for further proceedings.

*

The Hague,

5 November 1982



Gunnar Lagergren
(President)

Concurring in the result

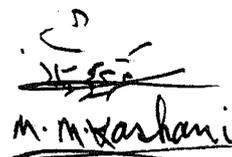
In the name of God,



Pierre Bellet

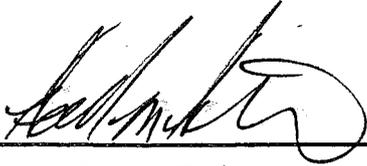


Nils Mangård

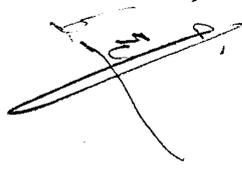


Mahmoud M. Kashani
Dissenting opinion

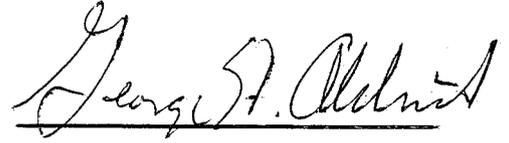
In the name of God,



Howard M. Holtzmann
Concurring opinion



Shafie Shafeiei
Dissenting opinion



George H. Aldrich

In the name of God,



Mostafa Jahangir Sani
Dissenting opinion



Richard M. Mosk
Concurring opinion