



IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحده
ثبت شد - FILED	
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1 MAART 1983	
59 - 59	شماره



Case No. 59  
Chamber One  
Award No. ITM 15-59-1

QUESTECH, INC.,  
Claimant,  
and  
THE ISLAMIC REPUBLIC OF IRAN,  
THE MINISTRY OF NATIONAL DEFENCE,  
Respondents.

DUPLICATE  
ORIGINAL  
نسخه برابر اصل

INTERIM AWARD

On 17 November 1981 Questech, Inc. ("Questech") filed with the Tribunal a claim against the Islamic Republic of Iran and the Ministry of National Defence. This claim was alleged to arise out of a contract dated 11 May 1977 between Quest Research Corporation (now Questech, Inc.) and Iran. Under this contract Questech agreed to provide training evaluation services for the Imperial Ministry of War both in Iran and in the United States. In exchange for these training evaluation services, Iran agreed to pay Questech for the work performed. The contract also required that Questech issue a letter of credit as security for the proper performance of the contract by Questech.

Questech contends that the Respondents have failed to pay invoices regarding services performed during the period 1 December 1978 through 30 April 1979 although Questech

performed services in accordance with the terms and conditions of the contract during that period. QuesTech also contends that it has lost funds in the amount of \$3,000 deposited in Bank Omran, Tehran, and that it has incurred certain costs associated with the renewal and maintenance of the letter of credit. Based on these allegations QuesTech seeks to recover damages from the Respondents in excess of \$1,600,000 and declaratory relief that the letter of credit be cancelled and returned to QuesTech without liability. The damages claimed by QuesTech include interest expense and loss of earnings on the outstanding principal amount as of 31 October 1981.

The Respondents argue that QuesTech's claims fall outside the Tribunal's jurisdiction. They further deny liability for any of QuesTech's claims on the alleged ground that QuesTech failed to perform its obligations under the contract in various respects.

On 30 March 1982 the Ministry of National Defence filed with the Tribunal a counterclaim in which the Ministry of National Defence seeks compensation for damages caused by QuesTech's alleged failure to perform its obligations under the contract. These damages comprise compensation in the amount of \$1,801,058 for invoices paid before 1 December 1979, interest on this sum in the amount of \$924,738.38, further damages in the estimated amount of \$2 million caused by QuesTech's alleged non-fulfilment of its obligations and compensation for insurance premiums in the amount of Rials 18,296,465 owed to the Social Security Organization of Iran in respect of QuesTech's activities under the contract.

Prior to 21 September 1982 the Iranian Ministry of National Defence filed a claim against QuesTech with the Public Court of Tehran. In the case before the Public Court of Tehran, the Ministry of National Defence seeks to recover damages

for QuesTech's alleged breaches of the contract. The damages sought comprise \$1,801,055 as compensation for invoices already paid under the contract, other damages related to the non-performance of QuesTech's obligations under the contract and compensation in the amount of Rials 18,296,465 for insurance premiums owed to the Social Security Organization of Iran.

On 3 January 1983 QuesTech filed with the Tribunal a "Motion to Compel Dismissal of Proceedings in Iranian Court". In this Motion QuesTech contends that the claim before the Court in Tehran by the Ministry of National Defence arises out of the same contract, transaction or occurrence as the claim previously submitted to the Tribunal by QuesTech and that the claim in Iran in fact was brought as a counterclaim before the Tribunal by the Respondents. QuesTech argues that for this reason the filing of the claim by the Ministry of National Defence in a forum other than the Tribunal is a violation of the overall intent and spirit of the Algiers Declarations.

More specifically, QuesTech argues that the claim brought before the domestic court in Tehran constitutes a violation of the following provisions of the Algiers Declarations:

- (a) General Principle B of the Declaration, which states that a purpose of both Parties is to settle all claims between the Parties through binding arbitration before the Tribunal;
- (b) Article II, paragraph 1, of the Claims Settlement Declaration, which states that the Tribunal shall decide any counterclaim arising out of the same contract as the subject matter of the main claim; and

- (c) Article VII, paragraph 2, of the Claims Settlement Declaration, which excludes claims filed with the Tribunal from the jurisdiction of the courts of either of the two countries.

In its Motion QuesTech seeks an order by the Tribunal requiring the Islamic Republic of Iran to immediately cause to be dismissed the claim filed with the Iranian Court. QuesTech also requires the Tribunal to issue an order that there be no re-filing of the claim in Iran or any other forum as long as the Tribunal has the instant case pending before it.

Alternatively, if the Tribunal does not deem it appropriate to cause the Islamic Republic of Iran to dismiss the proceedings, QuesTech seeks a declaration by the Tribunal that the Islamic Republic of Iran is in breach of the Algiers Declarations.

By an order dated 16 February 1983 the Tribunal invited the Respondents to file by 27 February 1983 a Response to QuesTech's motion but no Response has been received.

A Pre-hearing conference in the instant case has been scheduled to take place on 13 April 1983. QuesTech has been directed to appear for a trial before the Public Court of Tehran on 7 March 1983.

As the Tribunal has noted in its interim award No. ITM 13-388-FT in the case E-Systems, Inc. v. The Government of the Islamic Republic of Iran, case No. 388, the Algiers Declarations leave the Government of Iran free in principle to initiate claims before Iranian courts even where the claims would have been admissible as counterclaims before the Tribunal. However, the Tribunal has an inherent power

to issue such orders as may be necessary to conserve the respective rights of the Parties and to ensure that its jurisdiction and authority are made fully effective. Moreover, any award to be rendered in this case by the Tribunal, which was established by inter-governmental agreement, will prevail over any decisions inconsistent with it rendered by Iranian or United States courts. Since the Tribunal has pending before it certain jurisdictional issues, it is appropriate in order to ensure the full effectiveness of the Tribunal's decisions that the Government of Iran request that the action in the Iranian court be stayed pending the decision with respect to those jurisdictional issues.

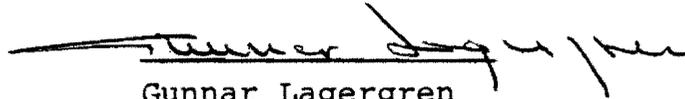
Should the Tribunal determine that it has jurisdiction over QuesTech's claim, then Article VII, paragraph 2, of the Claims Settlement Declaration is applicable. This paragraph provides that claims referred to the Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court. Consequently, as was also stated in the Interim Award in E-systems, once a counterclaim has been initiated before the Tribunal such claim is excluded from the jurisdiction of any other court.

The documents submitted in the instant case clearly demonstrate that the claim initiated before the Public Court of Tehran, is identical to the claim already brought before the Tribunal by the Respondent as a counterclaim to QuesTech's claim in the instant case. Therefore, the filing of the claim with the Public Court of Tehran would not be in conformity with Article VII, paragraph 2, of the Claims Settlement Declaration, if the Tribunal determines that it has jurisdiction.

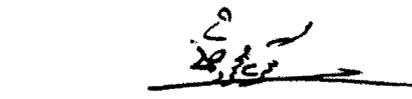
For these reasons,

the Tribunal requests the Government of Iran to move for a stay of the proceedings before the Public Court of Tehran pending the Tribunal's determination concerning its jurisdiction over QuesTech's claim.

The Hague,  
1 March 1983

  
Gunnar Lagergren  
(Chairman)

  
Howard M. Holtzmann

  
Mahmoud M. Kashani  
(Concurring)