

Case No. 6

Date 5 November 1982

ORIGINAL DOCUMENTS IN SAFE

Award No.: ITL 1-6-FT

6-87
9-1V

(INTERLOCUTORY AWARD)

- Award; No. of pages 8 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 _____

DUPLICATE
ORIGINAL
نسخه برابر اصل

IRAN UNITED STATES
CLAIMS TRIBUNAL
دادگاه داری دعاوی
ایران - ایالات متحده

ثبت شد - FILED

Date ۱۳۶۱ ۸ / ۱۴ تاریخ
5 NOV 1982

No. 6 شماره

IRAN-UNITED STATES CLAIMS TRIBUNAL

Award No.: ITL 1-6-FT

INTERLOCUTORY AWARD

6-87
9-17

Case No. 6

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.

Parties:

Gibbs & Hill, Inc.,

Claimant,

and

Iran Power Generation and Transmission
Company ("TAVANIR") of the Ministry of Energy
of the Government of Iran,
Atomic Energy Organization of
Iran ("AEOI") of the Ministry of Energy
of the Government of Iran,
Ministry of Energy of the Government
of Iran,
Iranians' Bank,
Bank Tejarat East Taleghani,
The International Bank of Iran and
Japan,

Respondents.

Appearances: Mr. John A. Rudy,
Le Boeuf, Lamb, Leiby & MacRae, New York, N.Y., 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.

Part I

Introduction

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."

Chamber Two of the Tribunal has relinquished jurisdiction over this case to the Full Tribunal for the limited purpose of deciding whether 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. Furthermore, a hearing on this issue was held on 21-22 June 1982.

Part II
The TAVANIR Contract

One of the claims in this case is based on a contract between Gibbs & Hill Iran, an alleged affiliate of Gibbs & Hill, Inc., and Respondent TAVANIR, signed on 23 November 1977, for engineering, consulting and construction monitoring services in connection with the implementation of electrical transmission systems (the "TAVANIR Contract"). This contract contains the following provisions:

ARTICLE 24 - SETTLEMENT OF DISPUTES

All the disputes that may arise between the parties hereto over this Contract or the interpretation of its contents, that cannot be settled through negotiation or correspondence in an amicable manner, shall first be referred to a committee consisting of the highest authority of the Client (or his Deputy) and the Consulting Engineer for Settlement, and in case they fail to settle the dispute in accordance with this Contract and current regulations, the dispute shall be settled through competent courts according to Iranian law.

Until such a time as any disputes have been settled, the Consulting Engineer undertakes to carry out his commitments under this Contract, otherwise the Client will take action against the Consulting Engineer according to the Contract in his own judgement. Obviously during the settlement period the Client, too, will perform his commitments according to the stipulations of the Contract in his own judgement.

ARTICLE 30 - GOVERNING LAWS OF CONTRACT

This Contract is in all respects subject to the

laws and regulations of the Imperial Government of Iran, and it is prepared and duly signed in five (5) copies, and all copies are equally valid.

Claimant contends that Article 24 of the TAVANIR Contract does not specify any competent Iranian courts nor does it confer upon any court, Iranian or otherwise, "sole" jurisdiction, as required by the exclusion provision in Article II, paragraph 1, of the Claims Settlement Declaration.

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, Respondents argue, should not be extended beyond what clearly has been intended by the two Governments. In this context Respondents also assert that private entities that enter into agreements with Governments of foreign countries normally subject themselves to the jurisdiction of such countries, unless otherwise expressly agreed by the Government concerned. Moreover, Respondents contend that the mere existence of a separate provision related to the choice of law shows that the purpose of a reference to Iranian laws in article 24 could be only to confer jurisdiction on Iranian Tribunals.

The Tribunal notes that Article 24 of the TAVANIR Contract sets forth that all disputes between the parties regarding the contract or the interpretation of it, failing any settlement of such disputes, shall be settled through competent courts according to Iranian law. Thus, a plain reading of this article shows that it only provides that disputes, failing settlement between the parties, shall be solved through court proceedings and that the disputes shall be subject to Iranian law, whatever the court that deals with them.

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

For the reasons given above

the TRIBUNAL holds

that Article 24 of the TAVANIR Contract 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 contract does not exclude the Tribunal from jurisdiction over claims based on the said contract.

Part III
The AEOI Contract

Another claim in this case is based on a contract between Gibbs & Hill Iran and Respondent AEOI, signed on 26 November 1977, regarding the design and review of a nuclear plant ("the AEOI Contract").

Articles 12 and 13 of the AEOI Contract provide as follows:

ARTICLE 12 - LAWS AND REGULATIONS

The Contractor in the fulfillment of its obligations, shall comply with all relevant laws, regulations and other official provisions in Iran and other countries in which the Contractor performs services for AEOI.

This Agreement shall be governed by and construed in accordance with the applicable laws of Iran.

ARTICLE 13 - SETTLEMENT OF DISPUTES

Any and all disputes, disagreements or questions which might arise between the parties in connection with interpretation of any provision of this Agreement or the compliance or non-compliance therewith, which cannot amicably be settled by the parties shall be settled by arbitration laws of Iran.

Claimant contends that the dispute settlement provision in Article 13 does not meet the requirements laid down in Article II, paragraph 1, of the Claims Settlement Declaration, since Article 13 calls for arbitration, not for the jurisdiction of the competent Iranian courts.

Respondents contend that the reference to the arbitration laws of Iran must be considered as a reference to the jurisdiction of the Iranian courts. The Iranian Code of Civil Procedure subjects the arbitral procedure, the arbitral award and the award's enforceability to the control of the courts of Iran. Therefore, according to the view expressed by the Respondents, a provision for arbitration under Iranian law should be deemed equivalent to a submission of the dispute to the Iranian judicial system of which the arbitral process forms a part.

Claimant replies that arbitration is not equivalent to court proceedings under the laws of Iran any more than under most domestic laws. Particularly, it points out that Iranian law does not provide for an appeal to the courts on the merits of an award. It also argues that Article 13 of the contract does not preclude an arbitration from being held in a country other than Iran.

The Tribunal recognizes that arbitration is in essence an alternative to litigation in courts. A contract provision requiring recourse to arbitration is not a provision for the "sole jurisdiction" of any court.

The Tribunal notes that Iranian law provides for a certain control by Iranian courts over the arbitral process, including the appointment of arbitrators in cases where the parties fail to designate

their arbitrator, the issuance of a writ of execution for enforcement of the award, and jurisdiction to nullify an award on specific grounds (Articles 635, 662 and 665 of the Iranian Code of Civil Procedure). But such control by the courts over the arbitral process, similar to that provided by most systems of law, does not deprive the arbitration of its specific character as a means of final settlement of disputes without courtroom litigation. In particular, Iranian courts have to decline jurisdiction over claims covered by an arbitration clause, the arbitrators are not bound to observe the rules of court procedure (Article 657 of the Iranian Code of Civil Procedure), and the award rendered can be declared null and void by the courts only on specific grounds listed in the Iranian Procedural Law (Article 665 of the Iranian Code of Civil Procedure).

Therefore, the Tribunal considers that while Iranian law provides for a degree of control by the Iranian courts over the arbitral process, such limited control does not, in principle, deprive the arbitrators of their jurisdiction. The limited jurisdiction conferred by Iranian law on the courts with regard to arbitration falls far short of the sole jurisdiction of the Iranian courts required by Article II, paragraph 1, of the Claims Settlement Declaration.

For the reasons given above

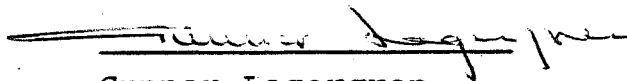
the TRIBUNAL holds

that Article 13 of the AEOI Contract 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 contract does not exclude the Tribunal from jurisdiction over claims based on the said contract.

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


The Hague,

5 November 1982

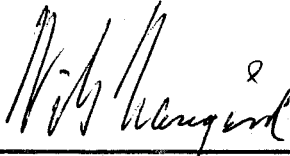


Gunnar Lagergren
(President)
Dissenting opinion as
to Part II

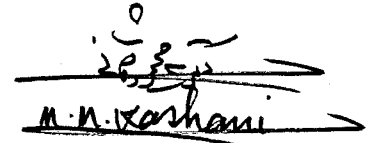
In the name of God,



Pierre Bellet

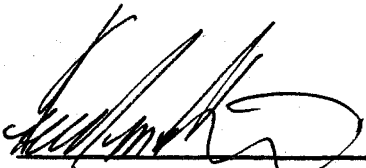


Nils Mangård

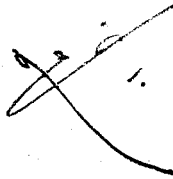


Mahmoud M. Kashani
Dissenting opinion

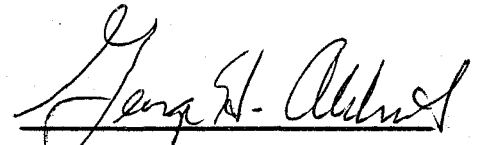
In the name of God,



Howard M. Holtzmann
Concurring opinion as
to Parts II and III

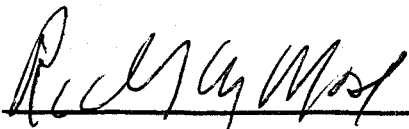


Shafie Shafeiei
Dissenting opinion



George H. Aldrich

In the name of God,



Richard M. Mosk
Concurring opinion as
to Parts II and III



Mostafa Jahangir Sani
Dissenting opinion