

The procedure of dispute settlement in the atomic energy cooperation agreement

Sangcheol Hyung: *wakendragon@kinac.re.kr*

Korea Institute of Nuclear Nonproliferation and Control, 573 Expo-Ro, Yuseong-Gu, Daejeon, Korea

1. Introduction

'UN Charter' Article 33 writes; the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

And 'THE AGREEMENT OF 31 OCTOBER 1975 BETWEEN THE REPUBLIC OF KOREA AND THE AGENCY FOR THE APPLICATION OF SAFEGUARDS IN CONNECTION WITH THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS' (INFCIRC/236) writes ;

Any dispute arising out of the interpretation or application of this Agreement, except a dispute with regard to a finding by the Board under Article 19 or an action taken by the Board pursuant to such a finding, which is not settled by negotiation or another procedure agreed to by the Government of the Republic of Korea and the Agency shall, at the request of either, be submitted to an arbitral tribunal

As above mentioned, the disagreeing parties prefer alternative dispute resolution, abbreviated ADR, to litigation. So we need to study the ADR.

2. Overview of ADR

2.1 Definition

Alternative Dispute Resolution ("ADR") refers to any means of settling disputes outside of the courtroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration. As burgeoning court queues, rising costs of litigation, and time delays continue to plague litigants, more states have begun experimenting with ADR programs. Some of these programs are voluntary; others are mandatory.

2.2 Negotiation

negotiation is almost always attempted first to resolve a dispute. It is the preeminent mode of dispute resolution. Negotiation allows the parties to meet in order to settle a dispute. The main advantage of this form of dispute settlement is that it allows the parties themselves to control the process and the solution.

2.3 Mediation

. Mediation is also an informal alternative to litigation. Mediators are individuals trained in negotiations, who bring opposing parties together and attempt to work out a settlement or agreement that both parties accept or reject. Mediation is used for a wide gamut of case-types ranging from juvenile felonies to federal government negotiations with Native American Indian tribes. Mediation has also become a significant method for resolving disputes between investors and their stock brokers.

2.4 Arbitration

Arbitration is a simplified version of a trial involving limited discovery and simplified rules of evidence. The arbitration is headed and decided by an arbitral panel. To comprise a panel, either both sides agree on one arbitrator, or each side selects one arbitrator and the two arbitrators elect the third. Arbitration hearings usually last between a few days to a week, and the panel only meets for a few hours per day. The panel then deliberates and issues a written decision, or arbitral award. Opinions are not public record. Arbitration has long been used in labor, construction, and securities regulation, but is now gaining popularity in other business disputes

3. Arbitration

Among the ADR methods, an arbitration is most important because it is a final and judicial settlement.

3.1 Submission to an arbitral tribunal

In the America-Japan agreement concerning peaceful uses of nuclear energy, Article 14 says that the parties may agree to submit such dispute to an arbitral tribunal. But the INFCIRC/236 says , 'any dispute... shall, at the request of either, be submitted to an arbitral tribunal '

3.2 Comprise a panel

According to the INFCIRC/236, an arbitral tribunal is composed as follows: the Government of the Republic of Korea and the Agency shall each designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the Chairman. If, within thirty days of the request for arbitration, either the Government of the Republic of Korea or the Agency has not designated an arbitrator, either the Government of the Republic of Korea or the Agency may request the President of the International Court of Justice to appoint

an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall require the concurrence of two arbitrators. The arbitral procedure shall be fixed by the tribunal

3.3 Legal Binding

The decisions of the tribunal shall be binding on the Parties. In this respect, the arbitration has the same effect as the litigation, unlikely the other ADR methods..

4. Conclusion

In many atomic energy cooperation agreement, the parties try to decide the procedure of an arbitration to its own advantage. Because the decisions of the tribunal shall be binding on the parties.

So we should be careful about the dispute settlement part in agreement from the negotiation stage

REFERENCES

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